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Randolph W. Thrower Lecture: Your Tax Dollars at Work: Why U.S. Tax Law Needs to be Changed

Michael J. Graetz
Columbia Law School, mgraet@law.columbia.edu

RANDOLPH W. THROWER LECTURE: YOUR TAX DOLLARS AT WORK: WHY U.S. TAX LAW NEEDS TO BE CHANGED

*Michael J. Graetz**

I focus here on prospects for tax reform.[1] Things are quiet, politically, on the tax reform front. The Republicans in 1999 are talking about an across-the-board tax cut less extensive than Ronald Reagan's tax cut of 1981.[2] On February 1, 1999, President Clinton, in his budget proposals, offered thirty-eight "targeted" tax reduction proposals and seventy-four tax increase proposals.[3] It took the Treasury Department 197 closely typed, single-spaced pages to describe the proposals. We do not appear to be on the verge of major tax simplification.

Despite the present lull, however, a tide of tax reform seems inevitable. It may come later rather than sooner, but the income tax has fallen into a state of disrepute with the American people. In every year until 1972, polls revealed that the public regarded the income tax as the most fair tax in the system.[4] Since 1979, the public has regarded the income tax as the least fair.[5]

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* Michael J. Graetz is the Justus S. Hotchkiss Professor of Law at Yale Law School. He is an Atlanta native and attended Emory University. He is co-author, with Deborah H. Schenk, of FEDERAL INCOME TAXATION: PRINCIPLES AND POLICY (1995), author of THE DECLINE (AND FALL?) OF THE INCOME TAX (1997) and THE U.S. INCOME TAX: WHAT IT IS, HOW IT GOT THAT WAY, AND WHERE WE GO FROM HERE (1999) and co-author, with Jerry L. Mashaw, of TRUE SECURITY: RETHINKING AMERICAN SOCIAL INSURANCE (1999). The author wishes to thank Randolph Thrower for setting an example for him by his dedication, intelligence, determination, and integrity.

[1] This Article a slight adaption of a speech made by Professor Graetz at the Randolph W. Thrower Symposium, Emory University School of Law, February 18, 1999. The material contained herein is an abridgement of arguments advanced in MICHAEL J. GRAETZ, THE DECLINE (AND FALL?) OF THE INCOME TAX (1997), reprinted with a new Afterword and Appendix detailing the tax reform proposal described herein as MICHAEL J. GRAETZ, THE U.S. INCOME TAX: WHAT IT IS, HOW IT GOT THAT WAY, AND WHERE WE GO FROM HERE (1999).

[2] *See* MICHAEL J. GRAETZ, THE DECLINE (AND FALL?) OF THE INCOME TAX 56 (1997); *see also* DAVID A. STOCKMAN, THE TRIUMPH OF POLITICS: THE INSIDE STORY OF THE REAGAN REVOLUTION 275 (1986).

[3] BUDGET OF THE UNITED STATES GOVERNMENT—FISCAL YEAR 2000.

[4] *See* GRAETZ, *supra* note 2, at 3.

[5] *See id.* at 4; *see also* Richard Goode, *Overview of the U.S. Tax System*, *in* THE PROMISE OF TAX REFORM (Joseph Pechman ed., 1985).

The presidential campaign of 1996 was an extraordinary event in American politics. For the first time this century—the first time since the enactment of the Sixteenth Amendment in 1913—important presidential candidates ran for office promising to repeal the income tax.[6] Politicians discovered that they could get guaranteed applause simply by promising to pull the income tax out, root and branch.

As we approach the year 2000, it is unlikely that anyone is going to launch a campaign to save the current tax code. While there is a strong movement to reform the current tax system, proponents of current tax law are difficult to find.

The principal question is, why is the income tax in such trouble today? In answering this question, I offer three prominent reasons why the income tax has fallen into disrepute:

First, the income tax has strayed too far from the values of the people it represents.[7] The marriage penalty is the best illustration. Two-thirds of all married couples pay higher taxes today, simply because they are married, than they would if they were single.[8]

Take the case of David and Angela Boyter. The Boyters were married in Baltimore, Maryland, on April 2nd, 1966, and they stayed married from 1966 through 1974.[9] They vacationed frequently in the Caribbean, and in a genuine burst of creativity they realized that the government would help pay for their Caribbean vacations if they simply divorced.[10]

Angela went to the Pratt Public Library in Baltimore and obtained the name of a Haitian lawyer.[11] On December 8, 1975, while she and David were vacationing in Haiti, she went into a Haitian court, and that court granted the Boyters a divorce on the grounds of incompatibility of character.[12] After a few

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6 *See* GRAETZ, *supra* note 2, at 4, 5, 197.

7 *See* GRAETZ, *supra* note 2, at 7.

8 *See id.* at 7, 29-30; *see also* HOUSE COMM. ON WAYS AND MEANS, 92ND CONG., TAX TREATMENT OF SINGLE PERSONS AND MARRIED PERSONS WHERE BOTH SPOUSES ARE WORKING (1972); Boris Bittker, *Federal Income Taxation and the Family, in* COLLECTED LEGAL ESSAYS 397 (Boris Bittker ed., 1989); Daniel R. Feenberg & Harvey Rosen, *Recent Developments in the Marriage Tax*, 48 NAT'L TAX J. 91 (1995).

9 *See* GRAETZ, *supra* note 2, at 35.

10 *See id.*; *see also* Transcript at 18, Boyter v. Commissioner, 74 T.C. 989 (1980) (Nos. 11445-77, 11446-77).

11 *See* GRAETZ, *supra* note 2, at 35.

12 *See id.*

days of vacationing happily together, the Boyters went back to Ellicot City, Maryland, and remarried on January 9th, 1976.[13]

In November of that year, they traveled to Santo Domingo, in the Dominican Republic.[14] Because Angela had gone into court in Haiti, it was David's turn in Santo Domingo. The Dominican court granted them another divorce decree, this time on the ground of "incompatibility of temperaments, making life together unbearable."[15]

On February 10, 1977, the incompatible and unflappable David and Angela once again remarried in Ellicot City, Maryland.[16] About this time, the Internal Revenue Service investigated the Boyters, and attacked their divorces under the tax law in tax court.[17] The tax court judge held for the IRS, saying that the divorces would not be recognized by the Maryland state courts.[18] However, the tax court judge rendered his decision without ever asking the Maryland state courts whether they would consider the divorces to be valid. The tax court decision prompted David Boyter to remark, "[w]e were the only couple to ever be remarried in tax court."[19]

The Fourth Circuit upheld the tax court decision, but offered a new ground, concluding that the divorces were a sham.[20] After this decision was announced, David Boyter told the *Washington Post*, "[a]sk me if I am married or not, and I will tell you, I honestly don't know."[21] He said, "Corporations merge and diverge strictly for tax purposes and nobody questions it as a sham. Why should couples be treated any differently?"[22]

The Boyters did not sit idly by while their court cases progressed, waiting to see whether the IRS was going to be successful, ultimately, in taxing them

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13 *See id.*

14 *See id.* at 35-36.

15 *See id.* at 36; Transcript at attachment, *Boyter* (Nos. 11445-77, 11446-77).

16 *See* GRAETZ, *supra* note 2, at 36.

17 *See id.* The Boyters appeared on more than seventy radio shows and on television talk shows in more than a half a dozen major cities. *See id.* Highlighting the absurdity of the tax law, they also published a pamphlet entitled "Divorce for Fun and Profit." *See id.*

18 *See id.*

19 *See id* at 36-37; Bruce Olson, *Protesters Say Tax Reform Is Still Unfair to Married Workers*, UPI, Oct. 8, 1981.

20 *See* Boyter v. Commissioner, 668 F.2d 1382 (4th Cir. 1981).

21 *Divorced, and $18,000 Richer*, WASH. POST, Feb. 3, 1981, at B5.

22 Richard Haitch, *Tax Split*, N.Y. TIMES, Feb. 15, 1981, at 49.

as a married couple.[23] They decided they were better off simply getting divorced, staying divorced, and paying lower taxes.[24]

In 1978 the IRS issued a ruling saying that a couple who lives together but is divorced and intends to stay divorced shall be treated as divorced under the income tax law.[25] This ruling led to the following exchange between Senator Robert Dole and the Boyters at a Senate Finance Committee hearing in 1980:

Senator Dole:	"You are divorced now?"
Mr. Boyter:	"We are divorced now and have been for several years."
Senator Dole:	"You live together, though?"
Mr. Boyter:	"That is right. The IRS told us that was preferable to getting remarried every year and divorced."
Mrs. Boyter:	"My mother did not think so, but the IRS did."[26]

When the tax law departs from what the mothers of America believe, people are going to lose respect for it. When they lose respect for it, they will not comply with it. As Angela Boyter told the Congress, "This kind of failure threatens the people's willingness to comply with the income tax and their willingness to follow the law."[27]

The second reason people hate the income tax is that it is too complicated for anyone to understand.[28] It is much too complicated for the hundreds of millions of people who have relatively simple financial lives. Any tax lawyer can poke fun at the many complexities that abound in the law.[29]

Why is the tax law so complicated? The answer is that Congress has come to view the tax law the way my mother viewed chicken soup: as an elixir that will cure any ill that is facing the country. If there is a problem in education,

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23 *See* GRAETZ, *supra* note 2, at 37.

24 *See id.*

25 Priv. Ltr. Rul. 78-35-076 (June 1, 1978).

26 *Hearing on § 336, § 1247, and § 1877 before the Senate Finance Comm., Subcomm. on Taxation and Debt Management Generally*, 96th Cong. 187 (1980).

27 HOUSE COMM. ON WAYS AND MEANS, 96TH CONG., TAX TREATMENT OF MARRIED, HEAD OF HOUSEHOLD, AND SINGLE TAXPAYERS 164 (1980).

28 *See* GRAETZ, *supra* note 2, at 7.

29 *See, e.g.*, GRAETZ, *supra* note 2, at 68-88. For a comprehensive list of such tax law provisions see Reed Shuldiner, *Indexing the Tax Code*, 48 TAX L. REV. 537, 544 (1993).

then education tax credits are the answer. If there is a savings problem, the Roth IRA is the answer.[30]

President Clinton's 1999 budget offered three new health-related tax breaks, including a well-publicized tax credit for long-term care, six new education tax cuts, two new child-care proposals, five proposals to "revitalize communities," a new retirement savings tax program, and six tax credit proposals to promote energy efficiency, ranging from roof-top solar systems to electric cars.[31]

There are two main reasons why tax deductions and credits have come to be viewed as such a panacea. First, Democrats would like to spend money on social programs, and Republicans would like to cut taxes. If the government spends money on social programs through targeted tax cuts, both parties are happy, resulting in a majority.

The second reason is that tax policy, like so much of our public policy, is being driven by public polling data and focus-group inquiries. For example, polling data in 1996 revealed that the public favored greater tax benefits for children,[32] greater tax allowances for education,[33] and more liberal IRA opportunities.[34]

In response, the Taxpayer Relief Act of 1997[35] provided for Roth IRA's,[36] Hope tax credits,[37] and new tax credits for children.[38] Therefore, many of the tax benefits that are being proposed and enacted today are not attributable to special interest groups. These are tax cuts (and tax complexities) that the average American wants. If we enact a flat tax,[39] the American public is soon going to want education tax credits against a flat tax.

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30 *See* GRAETZ, *supra* note 2, at 246-47.

31 *See* BUDGET OF THE UNITED STATES GOVERNMENT, *supra* note 3.

32 *See* Ronald G. Shafer, *Washington Wire*, WALL ST. J., Dec. 13, 1996, at A1.

33 *See* John F. Harris, *President Serves Bite-Sized Proposals to Maintain Split the Difference Style*, WASH. POST, Oct. 30, 1996, at A19.

34 *See Broader IRA Tax Exemption Would Boost Savings, Poll Shows*, TAMPA TRIB., May 25, 1996, at 3.

35 Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (codified in scattered sections of 26 U.S.C.).

36 *See* 26 U.S.C. § 408A (Supp. 1997).

37 *See* 26 U.S.C. § 25A (Supp 1997).

38 *See* 26 U.S.C. § 24 (Supp. 1997).

39 *See generally Hearings on Flat Tax Proposals before the Senate Finance Comm.*, 104th Cong. 29 (1995); GRAETZ, *supra* note 2, at 212-43; *A Flat Tax: Is it a Threat to Retiree's Security?*, N.Y. TIMES, July 9, 1995, at F5.

Congress creates the complexity in the tax law, and then blames the IRS for not being able to cope with it. Last year, after the IRS-bashing hearings, a widely-repeated anecdote, which was no doubt apocryphal, held that an IRS employee set up his office in the men's room. When he was asked why he was there, he said it seemed to be the only place where anybody knew what they were doing.

Legislation to restructure the IRS has led recent IRS Commissioners to speak of a customer-friendly culture at the IRS. They have even paid consultants for customer-satisfaction surveys from people who undergo IRS audits or collection activities. Perhaps they will soon give out free aspirin when you are audited. The idea is that the IRS should become, in what is rapidly becoming a cliché, a modern, user-friendly financial services institution.

When politicians claim that they are making the IRS user-friendly, I am reminded of Emerson's comment about an acquaintance: "[T]he louder he talked of his honor, the faster we counted our spoons."[40] In fact, the most promising aspect of the IRS restructuring legislation of last year is one that, so far, has been completely overlooked by the press. In one section of that legislation,[41] Congress confesses that it is the true culprit. This provision requires a so-called "tax complexity analysis" before Congress enacts any changes in the tax law.[42] The good news is that if they follow that provision, there will not be many changes this year.

When the Congress tries to solve fundamental national problems through the tax law, it does not work very well, and it is not likely to work very well in the future. Virtually all other industrialized countries have universal health coverage, and all of them spend a fraction of what we spend on health care costs. None of them gets its health insurance through the tax law, but we do. If we are not poor and not elderly and we have health insurance, we probably get it through our employers, due to a tax break for health insurance.[43]

How well does this work? The result is we have forty-three million people uninsured.[44] A long-term care tax credit that President Clinton has proposed,[45]

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40 *See* RALPH WALDO EMERSON, *The Conduct of Life*, *in* THE COMPLETE WORKS OF RALPH WALDO EMERSON 211 (Edward W. Emerson ed., 1904).

41 *See* Pub. L. No. 105-206, § 4022(b), 112 Stat. 785 (1998).

42 *Id.*

43 *See* I.R.C. § 106 (1994); GRAETZ, *supra* note 2, at 161, 236-37.

44 *See* GRAETZ, *supra* note 2, at 161, 236-37.

which was also endorsed in the Republicans' "Contract with America" in 1994, and seems a sure bet to be enacted, is nothing but a fig leaf. It would provide three dollars a day for long-term care, and it will distract us from seriously attempting to solve the major problem of providing long-term care for an expanding population of elderly citizens, particularly citizens over age 85. It will distract us from seeking real solutions to a real problem, but the politicians will claim that they have made a good start.

The third reason people hate the income tax is because the average American does not believe he gets a fair shake. He believes that corporations and people with money have tax advisors, alchemists, to help them arrange their affairs and help them avoid paying their fair share of tax.[46]

The key culprit in this story is the tax shelter phenomenon that occurred during the 1970s and the 1980s.[47] By the late 1970s, the vast majority of the public had come to believe that everyone else was engaging in tax avoidance or outright tax evasion.[48] By 1982, the pollster Lou Harris revealed to the Senate Finance Committee what he described as the shocking fact that, by an eighty-six or eighty-seven percent majority, people believed that while lower- and middle-income people now pay their tax by taking standard deductions, most higher-income people get out of paying their tax by hiring clever accountants and lawyers who show them how to use loopholes in the tax law for tax shelters and other devices.[49]

At that time the people were right. Capital was running around the country like the Keystone Cops looking for the most tax-favored investments. The nation's energies, its entrepreneurial spirit, its marketing imagination had all become engaged in the creation and selling of tax shelter investments. P.T. Barnum would have loved it.

Roscoe Egger, who was Ronald Reagan's IRS Commissioner in 1981, said that the IRS's battle against tax shelters was like Mickey Mouse's battle

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45 *See* BUDGET OF THE UNITED STATES GOVERNMENT, *supra* note 3.

46 *See* GRAETZ, *supra* note 2, at 24. Nearly sixty percent of the American people now think the tax system is unfair. *Id.*

47 *See id.* at 41-51; *see also* JOINT COMM. ON TAXATION, 98TH CONG., PAMPHLET ON TAX SHELTERS AND OTHER TAX-MOTIVATED TRANSACTIONS (Comm. Print 1983); Roscoe L. Egger, *The I.R.S. Versus the Tax Shelter*, BEST REVIEW, Oct. 1985, at 78.

48 *See* Egger, *supra* note 47, at 42.

49 SENATE COMM. ON FINANCE, 96TH CONG., THE FLAT TAX RATE 245 (Comm. Print 1982) (testimony of Louis Harris).

against the multiplying mops in the Sorcerer's Apprentice.[50] Every time the IRS cut a mop in half, at least twice as many more came down the stairs.[51]

The most bizarre tax shelter transaction of all involved sales and lease-backs by the U.S. Navy for thirteen ships of its Rapid Deployment Force. This deal involved the Navy, shipbuilding contractors, investment bankers, some investors, and obviously, more than a handful of tax lawyers and accountants.[52]

When all was said and done, this scheme added $300 million, or twelve percent, to the cost of the Navy ships, but it decreased the Defense Department's annual expenditures because the additional money had come through the back door of the U.S. Treasury in the form of tax breaks.[53] The deal went over the top when the Navy agreed to reimburse the investors for any tax benefits that had been anticipated but that were disallowed in litigation with the IRS.[54] The Navy Department had agreed to pay investors for private lawsuits against the IRS.[55]

The 1986 tax reform ended these tax shelters for individuals.[56] If you look at the data today you will see that high-income taxpayers are paying a substantial share of taxes at quite high rates. Now, it is corporate tax shelters that are eating away at the federal fisc.

Again, in the corporate context, Congress pointed the way. In 1981, Congress enacted something called "safe harbor leasing," which was known to most people as "buy a tax break."[57] Under that legislation, a company that did not owe any taxes could capture the tax breaks that it would have gotten under rapid depreciation and other advantages by selling those tax breaks to another company, just by putting the word "lease" at the top of a piece of paper.[58] The government could have accomplished this more straightforwardly just by writing those companies a check, but that would have been corporate welfare.

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50 *New Directions in Tax Shelters*, DAILY TAX REP., Oct. 30, 1981, at J4.

51 *Id.*

52 *See* GRAETZ, *supra* note 2, at 46-47.

53 *See id.* at 47.

54 *See id.*

55 *See id.*

56 *See id.* at 48.

57 *See* Economic Recovery Tax Act of 1981, Pub. L. No. 97-34 § 201(a), 95 Stat. 172 (codified at 26 U.S.C. § 168(f)(8)), *repealed by* Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248 § 208, 96 Stat. 324, 432-42; GRAETZ, *supra* note 2, at 126-28.

58 *See* GRAETZ, *supra* note 2, at 126-28.

This "buy-a-deduction" scheme went along for a while, and Art Buchwald started describing humorous extensions of the idea. A New York tax lawyer, Diane Bennett, suggested that two-worker families should be able to "lease" a welfare family in order to get the personal exemptions of their children.[59] I think that the ninety-nine percent of people whose wealth is too low to be subject to estate taxes ought to be able to "lease" their unified credit against the estate tax to people who could really use it.[60] This would allow people to leave the welfare rolls quickly and completely, because they could sell their credits for as much as three hundred thousand dollars.

By 1986, Congress got rid of "safe harbor leasing," but the damage had been done. The attitude of large corporations toward the tax system had changed forever.[61] They had come to regard their tax departments as another potential profit center. They could increase their returns by selling a better product, selling more goods or services, or saving taxes. Often, saving taxes was easiest.

The average American's attitude has changed as well. No matter what the data shows about taxes paid by high-income people and corporations, the average American still does not believe he gets a fair shake.

This phenomenon not only has diminished popular support for the income tax, it also has changed the tax-compliance culture. Lou Harris, for example, reports shocking attitudes, particularly among the young, that there is nothing wrong with tax cheating.[62]

There has also been a dramatic shift in the practice of tax planning advice, now involving investment bankers, accountants, and lawyers. All of these groups are now competing to offer creative tax savings to large corporations, frequently for a contingent fee based on the amount of the tax savings.[63] There is no single body of state or federal law that governs these advisors. There is no uniform set of rules of ethics or ethical conduct that governs them. Given the competitive focus that is now going on in the industry, advisors are willing

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59 *See* Timothy B. Clark, *Selling Tax Breaks—If Both Parties Benefit, Then Why is Congress Unhappy?*, 13 NAT'L L.J. 2238 (1981).

60 *See* GRAETZ, *supra* note 2, at 127.

61 *See id.* at 130.

62 Tom Herman, *Tax Report*, WALL ST. J., June 14, 1995, at 1.

63 *See* GRAETZ, *supra* note 2, at 105.

to write unqualified opinions about tax deals that more conservative and reasoned judgment would regard as completely unreasonable.[64]

Corporate tax practice today is reminiscent of the individual and partnership tax shelter practice of the 1970s and early 1980s. I remember sitting in a bar in Scottsdale, Arizona, after Carr Ferguson, who was Jimmy Carter's Assistant Attorney General, had given a very hard-hitting speech to the tax section of the American Bar Association about the ethics of tax shelter opinion writing. A married couple were sitting at the table next to me, and the wife asked the husband, who had been in the meeting, "What went on in the meeting?" and he said, "Well, Mr. Ferguson gave a very impressive speech about the ethics of tax practice." "What did he say?" she asked. He responded, "Well, he said that if you do a deal that is just nothing but a sham, you're getting pretty close to the line."[65]

Given this sad state of affairs, the question is: Where do we go from here? There are three politically popular alternatives: fixing the income tax, adopting a flat tax, or adopting a national sales tax. Both the flat tax and the national sales tax have weaknesses that I believe will ultimately prove fatal. A pure flat tax, with few deductions, is not going to stay either flat or pure for very long. The political allure of targeted tax breaks for certain kinds of expenditures or investments is simply irresistible to Congress and to the White House, no matter who occupies those seats.

More importantly, a complete replacement of the income tax with either the flat tax or a national sales tax would provide a major tax reduction for those who need it least: the country's wealthiest citizens.

Thirty years ago, Dan Throop Smith, who was a renowned Harvard economist and President Eisenhower's key tax advisor, went to his daughter's one-room school house in Montana.[66] He decided to ask the children in the Montana school house about what would be a fair tax on a family with an income of $5,000 if a family with an income of $2,000 paid $200 in tax.[67]

Mr. Smith reported that "[t]he first child said, '500 dollars,' thereby showing a predisposition for proportional burdens and perhaps a desire to make use

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[64] *See id.* at 50.

[65] *Id.* at 51.

[66] Dan Throop Smith, *High Progressive Tax Rates: Inequity and Immorality?*, 20 U. FLA. L. REV. 451, 452 (1968).

[67] *Id.*

of a newly acquired familiarity with percentages. A second child immediately disagreed, with the comment that the payment should be more than 500 dollars because 'each dollar isn't so important' to the family with the larger income. A third child agreed but with the reservation that the additional tax over 500 dollars shouldn't be 'too much more or they won't work so hard.'"[68]

As Mr. Smith explained, "[e]laborate theoretical structures concerning diminishing utility and incentives and disincentives are all really refinements of the quasi-intuitive opinions of those children and may not lead to any greater certainty."[69]

In the spring of 1998, after my book, *The Decline (and Fall?) of the Income Tax*, was published, my daughter's fifth grade class asked me to come visit and talk about the book. While I was there, I decided to repeat Dan Throop Smith's experiment. I asked the same question that he had asked in Montana thirty years earlier, and, believe it or not, the first three students to speak gave exactly the same answers, in exactly the same order. The intuitions about progressive taxation of the children in a New Haven, Connecticut, private school in the 1990s were exactly the same as those of Montana children of the 1960s.

After I told these children that they had given the same answers in exactly the same order as the kids in the Montana school house, a number of them wrote to me remarking, quote, "how cool," "neat," "amazing," and "weird" that was. One concluded, "I guess that must be fair if both schools got the same answers."

These two stories are a caution to people like Mr. Armey, Mr. Rabushka, Mr. Hall, and others who believe that the American public will regard replacing a progressive tax on income with a flat tax on consumption as fair.[70] That sentiment will last only until the second child answers.

However, the income tax in its current form cannot be saved. The bipartisan coalition that enacted a tax reform in the 1980s has come unglued. At that time, Republican supply-siders and deregulators were determined to lower tax rates and tax incentives.[71] Traditional Democratic tax reformers joined them because they were interested in taxing income alike, regardless of its source.

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68 *Id.*
69 *Id.*
70 *See* GRAETZ, *supra* note 2, at 225-26.
71 *See id.* at 137.

Both of those groups are today endangered species. The legislation of the last few years—indeed, of all of the years since 1986—shows that the income tax, left in its current state, marches toward targeted tax breaks and higher tax rates.

The American people may respond, "none of the above" if they are presented only a choice between the status quo, a national sales tax, and a flat tax.

Congress should enact a value-added tax, otherwise known as a "business transaction tax," of ten to fifteen percent that would finance an exemption from the income tax of one hundred thousand dollars. This would eliminate from the tax rolls 100 million of the 120 million people who now file income tax returns.

The income tax then could be lowered to twenty or twenty-five percent without shifting the tax burden and would return to the status it enjoyed before the Second World War as a relatively small tax on a relatively small slice of the American public. The sliver of the income tax that remained could be made very simple.[72] Before the legislature will implement any of these solutions, however, something must be done about our political process.

George Lefcoe, a friend and colleague at the University of Southern California, made a few pertinent comments when he retired from the Los Angeles County Regional Planning Commission. He said he might have made a mistake by retiring before, rather than after, Christmas. He said, "I really missed the cards from engineers I never met, the wine and cheese from development companies I never heard of, and especially the Honeybaked Ham from, of all places, Forest Lawn [a well-known Los Angeles mortuary], even though the company was never an applicant before the commission when I was there.

"But because I missed them," he concluded, "is why I think it was a good idea I resigned. I do not think it is wise to stay in public office for too long a time."

He continued, "My first Christmas as a commissioner, when I received the ham, I tried to return it at once, though for the record, I did not because no one at Forest Lawn seemed authorized to accept hams, apparently not even for burial. My guess is that no one of the many public servants who received the hams ever had tried to return it. . . . When I received another ham the next Christmas, I gave it to a worthy charity. The next year, some worthy friends

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[72] For a detailed description of this proposal, see the Appendix to MICHAEL J. GRAETZ, THE U.S. INCOME TAX: WHAT IT IS, HOW IT GOT THAT WAY, AND WHERE WE GO FROM HERE (1999).

were having a party, so I gave it to them. The next year, I had a party and we enjoyed the ham. In the fifth year, about the 10th of December," said Lefcoe, "I began wondering, 'Where is my ham? Why is it so late?'" Lefcoe laughed and sighed, "So much for the seduction of public officials. It was then I thought it was time to retire, though it took me two more hams and three years to finally do it."[73]

George Lefcoe's hams are miniscule compared to the vast sums of money given each year to members of Congress, particularly members of the tax-writing committees. And they provide plenty of pork in return.

73 Sam Hall Kaplan, *When He Missed the Ham, He Quit*, LOS ANGELES TIMES, January 25, 1987, at 2.