'Death and Taxes' and Hypocrisy

John W. Lee
William & Mary Law School, jwlee@wm.edu

Copyright © 1993 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
http://scholarship.law.wm.edu/facpubs/1377
I. Introduction

The intended implication of the “death and taxes” poem published by Rep. Thomas Ewing (R-Ill.) in the June 30, 1993, Congressional Record, and reprinted in Tax Notes (July 12, 1993, p. 235), is that the Clinton tax plan is aimed at the common person largely through consumption taxes. Rep. Ewing states in the Congressional Record that, in response to a survey, he received the poem from one constituent “expressing their [sic] concern about the Clinton tax package,” 139 Cong. Rec. H 4281 (House, June 30, 1993, Daily Ed.). This is rich, albeit probably unintended, irony. First, the ultimate inspiration of Rep. Ewing’s doggerel is the populist “Mellon ditty” published in the 1924 Congressional Record, where it fit much more aptly the tax plan of Secretary of the Treasury Andrew Mellon, under whom, the joke ran, three Republican presidents served, than the watered-down Ewing piece applies to the Clinton tax plan. Part of Mellon’s tax plan in 1924 was to reduce progressivity still further by cutting the top ordinary rate a second time; Clinton’s tax plan, in contrast, would restore further some of the progressivity lost in the Mellon-like ordinary and capital gains cuts of 1981. The Ewing poem, of course, omits the populist anti-rich elements of the original. Second, the common thematic element to both ditties is a heavy use of consumption taxes, which in recent political debate has been more preferred by Republican administrations than the Clinton administration. Third, the Clinton tax plan’s reliance in part on consumption taxes, such as energy taxes, appears in large part politically responsive to the Republicans’ use over the past 25 years of tax revolt rhetoric.

Table of Contents

I. Introduction ........................................ 1393
II. Populist Origins of the Mellon Ditty .............. 1394
III. ‘Symbolic’ Progressivity in the 1920s and 1930s .... 1394
IV. Symbolic Progressivity from the 1960s to the 1980s: Mellon’s Legacy Lives On ...... 1395
V. Progressivity and Clinton Income Tax Proposals .... 1396
VI. Consumption Taxes .................................. 1399

165 Cong. Rec. (Part 3) 3031-32 (House Feb. 23, 1924) (Remarks of Rep. William Lankford, D-Ga.). He introduced the “Mellon ditty” as follows: “We find the Secretary of the Treasury at one time advocating a sales tax, at another suggesting three cents postage on ordinary letters, and a tax on all checks drawn on banks regardless of their size. At all times we find him urging less taxes for the millionaire profiteer and more for the common folks. So it is most evident that his plan is to tax more and more the poor and to finally relieve entirely the very rich.” For identical, contemporaneous sentiments by other members of Congress, see notes 10 and 40 infra.
II. Populist Origins of the Mellon Ditty

While most workers were exempted from the federal income tax from the early 1920s to the early 1940s due to generous personal exemptions, they were instead regressively and heavily burdened by excise taxes. This pattern of (regressive) consumption taxes as well as exemptions,2 prompted the "Mellon ditty."3

The real Mellon plan is summed up in the following:

Tax the people, tax with care,
Tax to help the millionaire;
Tax the farmer; tax his fowl;
Tax the dog and tax his howl;
Tax his hen and tax her egg;
And let the bloomin’ mudsill beg.
Tax them just all you can,
This is, friends, the Mellon plan.

2Only 2.5 million individuals paid federal income taxes in 1925 out of perhaps 30 million workers. See Kornhauser, "The Origins of Capital Gains Taxation: What’s Law Got to Do With It?" 39 SW L.J. 869, 873 n. 18 (1985). The $2,000 personal exemption for married taxpayers was worth over $15,600 in 1990 dollars.

During this entire period, the individual income tax applied to a small fraction of the population, and only a small fraction of income was subject to tax. Between 1918 and 1920, taxable individual income tax returns covered an average of 9.5 percent of the U.S. population. Between 1921 and 1929, the comparable figure was 5.2 percent of the population. Similarly, in 1918, taxable income was only 13 percent of personal income; in 1926, taxable income was only 14 percent of personal income. Furthermore, most taxpayers had — by today's standards — very low incomes. In 1920, 7.3 million returns were filed. Returns with less than $2,000 of income represented 37 percent of all returns and included 17 percent of income. Returns with incomes of less than $3,000 represented 72 percent of total returns and 43 percent of income. Finally, 91 percent of returns (with 64 percent of income) had incomes below $5,000. The top rate of 77 percent applied to taxable income over $1 million. There were only about 30 such returns.


Tax his pig and tax his squeal,
Tax his boots, run down at heel;
Tax his horses, tax his lands,
Tax his blisters on his hands;
Tax him just all you can;
This is, friends, the Mellon plan.

Tax his plow and tax his clothes,
Tax his rag that wipes his nose;
Tax his house and tax his bed,
Tax the bald spot on his head;
Tax the ox and tax the ass;
Tax his "Henry," tax the gas;
Tax the road that he must pass
And make him travel o’er the grass;
Tax him just all you can;
This is, friends, the Mellon plan.

Tax his cow and tax the calf,
Tax him if he dares to laugh;
He is but a common man,
So tax the cuss just all you can,
This is, friends, the Mellon plan.

Tax the lab’rer, but be discreet,
Tax him for walking on the street;
Tax his bread and tax his meat,
Tax his shoes clear off his feet.
Tax the pay roll, tax the sale,
Tax all his hard-earned paper kale;
Tax his pipe and tax his smoke;
Teach him government is no joke;
Tax him just all you can,
This is, friends, the Mellon plan.

Tax their coffins, tax their shrouds,
Tax their souls beyond the clouds;
Tax “small” business, tax the shop;
Tax their incomes, tax their stocks;
Tax the living, tax the dead;
Tax the unborn before they’re fed;
Tax the water, tax the air,
Tax the sunlight if you dare;
Tax them all, tax them well,
Take it all, don’t leave a smell;
Tax the good roads, tax the stones,
Tax the farmers, tax their loans,
Kill their credit, raise their rates,
Tax the cities, tax the States;
Save the profiteer his gold,
Tax the poor, tax the old;
Tax them just all you can,
This is, friends, the Mellon plan.

III. ‘Symbolic’ Progressivity in the 1920s and 1930s

Ogden Mills, who had been a Wall Street tax lawyer, a member of the House Ways and Means Committee in the early 1920s, and President Hoover’s last Secretary of Treasury, pointed out in the 1932 Senate Finance Committee Hearings that the real tax burden was state and local taxes, which were borne by low-
moderate-income taxpayers. The federal individual income tax was, until the Revenue Act of 1942, only a token “class” tax on the rich and well-to-do. Secretary Mellon already had achieved a reduction in the top individual rate from 77 to 58 percent in the Revenue Act of 1921, and was in the process of persuading Congress to cut the top rate further as it did in 1924 and 1926, ultimately down to 25 percent. But even these reduced nominal top individual income tax rates did not tell the full story. During the boom year of 1925, almost 50 percent of the individual income covered by the “class” income tax was long-term (two-year or longer holding period) capital gains (85-percent public stock), subject to a flat tax of 12.5 percent, earlier introduced by Mellon. The top 10,000 individuals in income, who garnered over 90 percent of the benefits of this preference, paid half of the individual income taxes. And the capital gains preference was just one of many Mellon introduced in the Revenue Act of 1921 to reduce the burden on high-income individuals. In short, the 1920s (and the 1930s as well) saw consumption taxes on the masses and both nominally and decreasingly progressive income taxes on only the rich and well-to-do, which is what some supporting a value added tax call for today.

IV. Symbolic Progressivity from the 1960s to the 1980s: Mellon’s Legacy Lives On

Four and five decades later, in the 1960s and 1970s, high-income individuals achieved an effective federal income tax rate of 35 percent as the top ordinary rate gradually was cut from 90 percent to 70 percent on unearned income. Sen. Russell Long, D-La., Senate Finance Committee member and manager of the Senate floor debate on the Revenue Act of 1964, disclosed in the 1963 capital gains debate that the vast majority of very top-bracket individuals (e.g., yearly income of $1 million in 1963 dollars or over $4 million in 1990 dollars) used the Mellon-originated capital gains preference (75 percent of their income consisted of capital gains) to obtain “surprisingly” low effective rates, viz. 22 percent when the top individual ordinary rate was still 90 percent — high-income individuals in general had an effective rate of around 35 percent. The individual capital gains preference during this era was a maximum rate of 25 percent for the large capital gains income and a 50-percent deduction for the small capital gains.

---

4Hearings on the Revenue Act of 1932 before the Senate Finance Committee, 72d Cong., 1st Sess. 3 (1932) (Secretary Ogden Mills), reprinted in 10 1909-1950 Legislative Histories. This pattern continued under President Franklin Roosevelt, notwithstanding soak-the-rich rhetoric after his first term (apparently to head off Huey Long’s populist income tax proposals). Due to continuation of the broad personal exemptions, the federal income tax remained a tax only on higher-income taxpayers, who maintained low effective rates through the capital gains preference, while the masses remained subject to regressive excise taxes. In short, only “symbolic reform” was affected by FDR income tax changes. Cf. Left, The Limits of Symbolic Reform 2-3, 288-93 (Cambridge Univ. Press 1984) (“symbolism” consists of using “political enemies” in political discourse, such as “economic royalists,” which deflects and reassures reformists, or at least the populace, thereby undermining reform efforts). Roosevelt espoused soak-the-rich income tax policies, but regressive excise taxes raised even more revenues compared to income tax returns during the New Deal era than in the 1920s or late 1940s. Id.


6The Revenue Act of 1921 reduced the maximum rate from 73 to 58 percent. Pub. Law 67-98, section 210 (normal tax of 8 percent) and section 211 (maximum surtax of 50 percent on net income over $200,000), 42 Stat. 227, 233, 237. Mellon directed further reductions in the Revenue Act of 1924, and the Revenue Act of 1926 reduced the top rate to 25 percent. Pub. Law 69-20, sections 210 (maximum normal rate of 5 percent) and 211 (maximum surtax of 20 percent of net income in excess of $100,000), 44 Stat. 9, 21-23.


10Kornhauser, “Section 1031: We Don’t Need Another Hero,” 60 So. Cal. L. Rev. 397 (1987). Professor Kornhauser, using a historical research approach, has convincingly hypothesized several factors involved in the enactment of section 1031 in 1921 and the amendments in 1923 and 1924: (1) concern about whether capital gains were income; (2) confusion about when realization occurs; (3) sympathy for a consumption theory of income; and (4) economic and political conditions encouraging an economic policy in the tax laws to foster investment. Id. at 411, 400, 438-439 (the trick was for Congress to encourage investment while maintaining nominally progressive rates, which capital gains preference and tax-free like-kind exchanges accomplished). The populist rhetoric in opposition to applying the predecessor of section 1031 to investments including stock strikingly paralleled the introduction to the Mellon ditty. Rep. John Nance “Cactus Jack” Garner, D-Tex., explained how Mellon persuaded the Senate Finance Committee to so extend it: “Why, it happened just as it always will as long as the Treasury Department has the viewpoint of taxation that it now has. That will happen as long as you have a House or a Senate that obeys the mandates of the Treasury Department. It is the viewpoint of those who desire to relieve the heavy taxpayer from his taxes and continue the taxes upon the masses of the people, as they have done in this bill.” 61 Cong. Rec. 8073 (Part 8) (House Nov. 21, 1921) (Remarks of Rep. Garner, D-Tex.). This was rhetoric as to the “class” income tax since it did not tax the masses. See note 2 supra.


12110 Cong. Rec. (Part 2) 1438 (Senate Feb. 1964) (Remarks of Floor Manager Senator Long).
gains income.\textsuperscript{13} The "Surrey Papers"\textsuperscript{14} pointed out in 1968 that wealthy individuals with large amounts (and percentages) of capital gains income often achieved substantially lower effective rates than the 25-percent alternate maximum capital gains rate by offsetting or "sheltering"\textsuperscript{15} the taxable income remaining after the 50-percent capital gains deduction with other deductions.\textsuperscript{16} Assistant Secretary of Treasury Stanley Surrey, testifying at the end of lame duck President Johnson's administration in late 1968, revealed that for about 75 percent of the individual taxpayers with over $1 million in actual annual income, the effective income tax rate clustered in the area between 20 and 30 percent, compared with about 60 percent of the individual taxpayers with between $20,000 and $50,000 of actual income who clustered in the same effective rate range. Moreover, while the effective rate increased with actual income of up to $50,000 and flattened from $50,000 to $100,000, the effective rates began to decrease above $100,000 in income.\textsuperscript{17} He further testified that these figures did not appear to be a one-shot phenomenon as to high-income individuals. The capital gains preference constituted the primary reason for these low effective rates.\textsuperscript{18} By the early 1980s, high-income individuals as a whole (those with at least $200,000 in annual income) after over a decade of restrictions on tax shelters, had an effective rate of around 22 percent when the maximum ordinary rate was 50 percent.\textsuperscript{19} By the 1980s, tax shelter deductions (principally depreciation and interest deductions as to depreciable real estate) played a much more important role in lower effective rates at the top. In both periods, these effective rates were averages with 25 percent of the high-income taxpayers paying an effective rate much closer to the nominal rates, e.g., 50 to 60 percent in the early 1960s, and 75 percent paying a much lower effective rate than the average effective rate.

"Cats and dogs" high-income directed deficit-reducing tax legislation in 1982, 1984, 1987, and 1990, together with the 1986 restrictions on tax shelters and capital gains, recaptured about half of the lost progressivity.\textsuperscript{20} The effective rate at the top currently is about 28 percent.

V. Progressivity and Clinton Income Tax Proposals

The tax revolt of the American people, sparked by the passage in a 1978 California referendum of Proposition 13, was the political foundation for the capital gains tax cut in 1978 and the top ordinary income and capital gains cuts in 1981.\textsuperscript{21} Congressional proponents of these cuts argued in political debate "that lower taxes on capital gains will stimulate investment, create more jobs, broaden the tax base, and increase federal revenues.\textsuperscript{22} But Republicans won presidential elections in the 1980s with the key issue of painting opponents as tax-and-spend Democrats, which to many was code for lower taxes on both the upper and middle..."
classes resulting in less government, i.e., less funding for programs seen as benefitting minorities. This lower taxes/less federal government/more racism theme, linked with support of the antiabortion and cultural "values" key issues of the religious right, constituted the basis for the margin of victory in successful Republican presidential elections of the 1980s: the core Republican groups in L.A. Times/Gallup Poll terminology of "Enterprisers" (high-income professionals, business people, etc.) and "Moralists" (religious right, mostly white southern males) constituting about 25 percent of the electorate, plus "Disaffected Democrats" (mostly white male Protestant working-class Democrats in the South and white male Catholic/ethnic working class Democrats in the industrial midwest) and other conservative independents.

By the end of the 1980s, populist and liberal Democrats began to assert that trickle-down economics had failed (again) — only the rich got richer, the before-tax real income of middle- and lower-income households stagnated or declined. This trend was exacerbated by the tax cuts of 1978 and 1981. The effective combined federal income and payroll tax rate for the top declined 25 percent from 1978-1980, while effective rates for the middle stayed constant and the effective rate at the bottom rose after taking payroll or Social Security taxes into account.

The attack on trickle-down economics, dubbed class warfare by proponents of a renewed capital gains preference, first prevailed in modern times when President Bush, in pushing (in the 1990 budget negotiations) a renewed generic capital gains preference primarily benefitting the rich and at the same time very regressive user and excise taxes to reduce growth in the federal deficit, opened the door for the Democrats to paint the Republicans as the party of the rich. The ultimate triumph of this rhetoric was the successful 1992 Clinton presidential campaign. The voters most strongly supporting Clinton were those who both were concerned about the future economy and felt that their standard of living was slipping.

Clinton charged in the presidential television "debates" (especially in the third debate), campaign speeches, and his book/program Putting People First: A National Economic Strategy for America that 1979-1990 stagnation in pretax income of the middle 40 percent of households and drop in income of the bottom 40 percent, while the income of the top 20 percent alone increased (doubling at the top 1-percent level), were due to a failed economic policy: trickle-down economics — "The economic philosophy... that you make the economy grow by putting more and more wealth into the hands of fewer and fewer people at the top, getting government out of the way, and trusting them to make the right decisions to invest and to create jobs." Clinton liked to encapsulate this aspect of the 1980s distribution of income in the following "wonk-bite" derived from The New York Times. "During the 1980s, the wealthiest one percent of Americans got 70 percent alone..."
percent of income gains... The rich got richer, while the middle class took it on the chin.28 "And for the first time since the Roaring '20s, the top one percent of the American people now control more wealth than the bottom 90 percent."29 In the third debate, Clinton opened30 with the assertion that "middle-class Americans are basically the only group of Americans who've been taxed more in the 1980s and during the last 12 years, even though their incomes have gone down, the wealthiest Americans have been taxed much less, even though their incomes have gone up."31 The 1992 Democratic candidate for Vice President, Senator Al Gore, D-Tenn., claimed that the rich had taken from the middle class during the 1980s,32 but Governor Clinton put it more accurately:

No American would have begrudged... [the rich being big winners in the 1980s] since we all want in this free enterprise system to at least believe our children might grow up to be rich. No one would have begrudged that if the rest of us had been helped. But in 1980 we had the highest wages in the world. Now we're 13th. The census document itself shows that most Americans are working longer work weeks for lower wages, paying higher taxes on lower income, paying a bigger percentage of their income for housing and for health care, and yes, for education.33

The Clinton/Gore campaign proposed to raise the income tax rate on families (husband and wife filing joint return) earning $200,000 or more a year to 36 percent (then 31 percent at this level) with a 10-percent surtax commencing at the $1 million or more in income. President Clinton's 1993 tax plan followed these lines, but lowered the thresholds for the 36-percent bracket to around $140,000 in family income and for the "Millionaire's Surtax" to $250,000. This would raise the effective rate at the top to 33.1 percent.34 The president's tax plan thus calls for more progressivity, while the 1920s Mellon tax plan and its modern incarnation in the Reagan tax cuts in 1981 called for less. A conservative35 Republican's critique of the president's tax plan on the basis of populism simply is unfounded at best and a "Big Lie" at worst.

---

28Id. The source of Clinton's statistic was Nasar, "The 1980s: A Very Good Time for the Very Rich," New York Times, A-1, col. 3 (Thursday, March 5, 1992) (top 1 percent earned 60 percent; later CBO corrected unadjusted figure to 70 percent.). See generally Nasar, "The Richest Getting Richer: Now It's a Top Political Issue," New York Times, D-1, col. 1 (Monday, May 11, 1992) ("He [Clinton] was reading the paper that morning and went crazy." . . . 'The story proved a point he had been trying to make for months, so he added the statistic to his repertoire.").

29Remarks by Governor Bill Clinton, note 27 supra.

30The question asked was whether voters should be concerned whether Clinton's promises (infrastructure, reform health care, reduce the deficit, and guarantee a college education) could be kept with financial pain only for the rich. Much later in the debate, Clinton pledged not to raise taxes on the middle class to pay for (it appeared) investment incentives (possibly limited to targeted investment tax credit and targeted capital gains), if taxes on the rich and foreign subsidiaries would not pay for such incentives.

31Putting People First, note 26 supra, at 2. Substitution of lower income for middle income would render Clinton's statement in the third debate more factually accurate, but less politically sound. Since the 1970s, Republicans have wooed the formerly Democratic white lower-middle and working class (male voters) with the mantra that the tax-and-spend Democrats exact higher taxes from the rich to pay for (it appeared) investment incentives in the rich; more for those who already have more thanks to a decade of Reagan-Bush economics, already pay less in taxes. Most Americans cannot pay their mortgage or afford health care and President Bush wants to reward those who have the extra cash to speculate on the stock market. For middle-income families, George Bush offers warmed-over leftovers — and he would make them wait months for them, serving his rich friends first. He still does not get it.

32Id. The source of Clinton's statistic was Nasar, "The 1980s: A Very Good Time for the Very Rich," New York Times, A-1, col. 3 (Thursday, March 5, 1992) (top 1 percent earned 60 percent; later CBO corrected unadjusted figure to 70 percent.). See generally Nasar, "The Richest Getting Richer: Now It's a Top Political Issue," New York Times, D-1, col. 1 (Monday, May 11, 1992) ("He [Clinton] was reading the paper that morning and went crazy." . . . 'The story proved a point he had been trying to make for months, so he added the statistic to his repertoire.").

33Remarks by Governor Bill Clinton, note 27 supra.

34The question asked was whether voters should be concerned whether Clinton's promises (infrastructure, reform health care, reduce the deficit, and guarantee a college education) could be kept with financial pain only for the rich. Much later in the debate, Clinton pledged not to raise taxes on the middle class to pay for (it appeared) investment incentives (possibly limited to targeted investment tax credit and targeted capital gains), if taxes on the rich and foreign subsidiaries would not pay for such incentives.

35That fact that our Nation is in recession is partly due to the fact that we have had this major change in the distribution of taxation in this country.

Middle-income families have seen their real income go down, a very slight increase in the top 20 percent, but look at the top 1 percent. Real incomes after taxes and after inflation adjustment have gone up 136 percent. That is fine if it does not come at the expense of the rest of the country, but what we have done is we have increased, more than doubled the income of the top wealthiest 1 percent by taking money away from middle-income Americans.

---

(Footnote 32 continued.)

Despite the flip-flop-flip on his "no new taxes" promise — in an election year confession, admitting he made a mistake by breaking his promise — George Bush has not had a conversion. If nothing else, he is consistent. In this case, consistently pushing for tax breaks for the rich; more for those who already have more thanks to a decade of Reagan-Bush economics, already pay less in taxes. Most Americans cannot pay their mortgage or afford health care and President Bush wants to reward those who have the extra cash to speculate on the stock market. For middle-income families, George Bush offers warmed-over leftovers — and he would make them wait months for them, serving his rich friends first. He still does not get it.

138 Cong. Rec. S 3385-86 (Senate March 12, 1992 Daily Ed.) (Emphasis added); see also id. at H 620-21 (House Feb. 26, 1992 Daily Ed.) (Remarks of Rep. Jim Moody, D-Wis., Ways & Means member) ("The tax bill of 1981 and a number of subsequent measures produced what has generally been acknowledged to have been the most massive redistribution of wealth in this Nation.").

33Remarks by Governor Bill Clinton, note 27 supra. The drop in wages should be limited to drop in manufacturing wages, if services wages, salaries, and profits are included, the average wages may not have dropped. Farrell, "In 1992, Country Faces Stark Choice of Philosophies," Boston Globe, p. 1 (Sunday, Sept. 6, 1992).


35In the 1992 Congressional Quarterly listing of four interest groups' scoring of votes, Rep. Ewing scored almost 20 percentage points higher than the Republican average (100 percent versus 80 percent or so) in the two conservative groups' ratings and about 12 percentage points below the Republican average as the liberal interest groups' ratings — zero in the case of the ADA. I grew up in working-class environments in Dayton, Ohio, and the mountains of North Carolina (including trailer camps, center city tenements, and mountain shacks). I know populism. Rep. Ewing is no populist.
VI. Consumption Taxes

If the Ewing poem was intended as an indictment of the Clinton tax plan for relying on nonincome taxes, as the plan does in part, here, too, the use of the poem is hypocritical. The 1990 budget accord negotiated by the Bush administration and a handful of congressional leaders takes the Mellon plan look-alike prize as to regressive consumption taxes. The Bush administration aided the Democratic redistribution/retribution for the 1980s camp in the House by (1) negotiating regressive excise and user taxes as the main revenue source in the 1990 "parliamentary"-like budget accord to meet the challenge of Ways and Means Chairman Dan Rostenkowski, D-Ill., for a $511 billion "reduction" in the federal deficit over a five-year period, while (2) providing "growth incentives" for small business, including a targeted capital gains preference plus an upfront deduction for such investments as a last-minute substitute for a generic capital gains deduction.

A common argument was that this regressive distribution of the budget accord's burden among lower-, middle-, and high-income individuals would have continued the Reagan tax policies of the 1980s under which only the upper-income individuals (and corporations) had an increase in real income (nearly 100 percent) and a reduction in taxes, both as to nominal rate and effective rates. This led to the cynical view that growth and investment rhetoric was a smokescreen for the Republicans' real agenda — taking care of the rich. A metaphor frequently used by the 1990 budget accord opponents was that the rich were at the 1980s party, but now they won't have to pay. (Interestingly, essentially the same rhetoric was used by Democratic critics of Mellon's tax cut plan in 1924.) House Democrats gleefully charged that President Bush would rather shut down the government than give up on his plan for granting more tax breaks to the rich in the form of a resuscitated capital gains preference, and that the budget accord's "growth incentives" further rewarded the rich for having made

---

36 The administration's directive of no new income taxes inexorably resulted in the September 30, 1990, budget meeting Rostenkowski's $500 billion challenge target largely through raising "truly regressive" excise rates (on gas and "sin" or tobacco and alcohol) and user fees (principally affecting the elderly, in Medicare premiums) on the revenue side of the agreement. The 1990 budget accord would have increased annual taxes for (1) the "lower income" (less than $10,000 in taxable income) by 7.6 percent; (2) the lower "middle income class" (from $20,000 to $30,000), by 3 percent; (3) the "near rich" (those making over $100,000), by only 1.9 percent; and (4) the super-rich (earning over $500,000 a year), by less than 1 percent.

37 Wessel & Birnbaum, "Consolation Prize: Tax Shelters for Rich Could Return in Plan to Aid Small Business," Wall Street Journal, A-1, col. 6 and A-18, cols. 1-3 (Tuesday, Oct. 2, 1990). By far the most expensive of these items would have been the 25-percent deduction for small-business stock ($7.3 billion over 1991-95 or over 60 percent of the a five-year total of $11.5 billion). Indexing and 50-percent deduction each would have counted for small fractions of the total estimated revenue loss (minimum basis or 50-percent deduction, $700 million over the five-year period; indexing $400 million over five-year period). See Hoerner, "Small Business Incentives: An Eight-Fold Path to Who Knows Where?," 49 Tax Notes 143 (Oct. 8, 1990). These "growth incentives" were criticized from the right as too targeted and from the left as creating tax shelters again. Opponents denounced five months of closed-door meetings at Andrews Air Force Base between eight congressional leaders and administration representatives as anti-democratic and providing pork for those members while calling for "tough choices" by others.

---

38 136 Cong. Rec. at H 8057 (House Sept. 26, 1990 Daily Ed.) (Remarks of Rep. Barbara Boxer, D-Cal.). See Edsall & Dionne, note 22, supra, at C-2, col. 4 ("Republicans, who have never forgotten their core constituency among the wealthy, have been disingenuous . . . They have talked one game [less government and lower taxes] and played another [income of middle and lower classes stagnated while income of top 1 percent shot up 87 percent."]).

39 136 Cong. Rec. H 8829 (House Oct. 3, 1990 Daily Ed.) (Remarks of Rep. Major Owens, D-N.Y.); 136 Cong. Rec. S 14556-57 (Senate Oct. 4, 1990 Daily Ed.) (Remarks of Sen. Patrick Leahy, D-Vt.). Conversely rhetoric characterized the subsequent House Democrat alternative with an increase in the top permanent rate to 33 percent as making the rich pay for the party of the 1980s. 136 Cong. Rec. H 10117 (House Oct. 16, 1990 Daily Ed.) (Remarks of Rep. Richard Lehman, D-Cal.); id. at 9940, 9959 (House Oct. 16, 1990 Daily Ed.) (Remarks of Rep. Jolene Unsoeld, D-Wash.); id. at 10111 (House Oct. 16, 1990 Daily Ed.) (Remarks of Rep. Ted Weiss, D-N.Y.); 136 Cong. Rec. S 15753-54 (Senate Oct. 18, 1990 Daily Ed.) (Remarks of Sen. Tom Harkin, D-Iowa) ("We are asking those who can least afford it to pay for the loss left by the rich who had the party in the 1980s. I say let us make the rich pay for their own party they had during the last decade.") The apparent inspiration for the party metaphor was the S&L crisis. 136 Cong. Rec. H 3599 (House June 14, 1990 Daily Ed.) (Remarks of Rep. Joseph Kennedy, D-Mass.) (commenting on CBO estimates of cost of S&L crisis; ["Why should the taxpayer[s] have to pay for a party they were never invited to? It was the wealthy as a class who benefitted from the high interest rates caused by the S&L feeding frenzy in the 1980s . . . It is time we stop transferring wealth in this country from the poor to the rich, it is time to make the people who had the party pay for it. Let us end this system of socialism for the rich and free enterprise for the poor."]).

40 65 Cong. Rec. (Part 4) 3332-3 (House Feb. 29, 1924) (Remarks of Rep. Robert Cresser, D-Ohio) ("Ah, my friends, the real position of those who argue that it is proper for the government to cut down by almost a half the tax on big incomes, on incomes in excess of $92,000 [$708,400 in 1990 dollars], and instead get the money by taxing more the people with smaller incomes, the real feeling of most men who want such a plan is that if we increase the wealth of those financially powerful, those at the top of the economic structure, enough will dribble down from them to help out those lower down . . . During the war [WWII] thousands of new millionaires were added to those in the United States prior to the war. The present debt of the government resulted largely from the war. Is it then unjust that the fabulous incomes of the country should bear a greater proportion of the expense of the government than the smaller incomes?").
more money in the 1980s than ever before. They declaimed that Reagan’s 1981 “riverboat gamble” of reducing taxes at the top, including a cut in the maximum individual capital gains rate to 20 percent (while increasing defense spending), had tripled the deficit rather than reaching a balanced budget as promised, and had benefitted only the highest-income individuals. Of course, Bill Clinton successfully ran for president in 1992 on precisely this populist theme.

In conclusion, I find Rep. Ewing’s “populist” humor about as hypocritical as President George Herbert Walker Bush’s comparison of himself, in vetoing the first 1992 tax bill, to President Harry Truman vetoing the 1948 tax bills. Bush’s 1992 vetoes were sustained by the “Conservative Coalition” of Republicans and conservative (largely Southern) Democrats. Truman’s 1948 vetoes of tax legislation were overridden by the self-same Conservative Coalition.


42For a discussion of the political science concept of “conservative coalition” see Lee, “President Clinton’s Capital Gain Proposals,” 59 Tax Notes 1399, 1402 and n. 10 (June 7, 1993).