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Taxation's Troubling Toxicity

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Abstract

Occupy Wall Street spurred cries of indignation, including calls to reform the tax code. This article examines the difficulty of raising taxes in the United States at a time when the federal government faces many needs and new taxes could help address the growing income disparity. In Part 1, it looks at several trends—the substantial federal deficit and rising debt, the lack of funding for infrastructure, and increasing income disparity among US residents—to establish the premise that resistance to higher taxes is troublesome. The article then turns to the question why taxes are viewed negatively. It surveys literature about the general public's attitudes toward taxation (Part 2) and the intensely political views of taxation on and surrounding Capitol Hill (Part 3). Parts 2 and 3 confirm the challenges of raising federal taxes and find a range of forces at work with varying levels of intensity. Part 4 looks forward and considers mechanisms that might help overcome the perception of taxes as politically poisonous and increase their acceptance. The article draws on research from numerous disciplines, but its analysis of potential paths forward looks through the lens of the law at ways in which various legal procedures and legally oriented approaches might help overcome resistance. It concludes that taxation is politically toxic, which is troublesome given the important roles that taxation plays in society, but that there are some glimmers of hope that the structure and details of the law may help create some opportunities for change.

Key words

Taxation; tax reform; income disparity; federal deficit; federal debt; supply-side economics; fiscal politics

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Resumen

Occupy Wall Street impulsó gritos de indignación, incluyendo una llamada a reformar el código tributario. Este artículo analiza la dificultad de aumentar los impuestos en Estados Unidos, en un momento en el que el gobierno federal se enfrenta a muchas necesidades, y la creación de nuevos impuestos podría ayudar a abordar la creciente disparidad de ingresos. En la Parte 1, se tratan diversas tendencias —el sustancial déficit federal y el aumento de la deuda, la falta de financiación para infraestructuras, y el aumento de la diferencia de ingresos entre los residentes de EE.UU.—, para establecer la premisa de que la resistencia a la subida de impuestos es problemática. Seguidamente, se aborda la cuestión de por qué los impuestos se perciben de forma negativa. Se examina la literatura sobre la actitud del público en general hacia la fiscalidad (Parte 2) y la visión política sobre los impuestos que rodea el Capitolio (Parte 3). Las partes 2 y 3 confirman los retos de aumentar los impuestos federales, y encuentran una variedad de fuerzas que trabajan con diferentes niveles de intensidad. La sección 4 busca y plantea mecanismos que podrían ayudar a superar la percepción de los impuestos como un hecho políticamente perjudicial, y aumentar así su aceptación. El artículo se basa en la investigación de numerosas disciplinas, pero el análisis de posibles vías de avance se enfoca a través del derecho, mediante procedimientos y acercamientos legales diversos, que ayuden a superar la resistencia. Se llega a la conclusión de que los impuestos son políticamente perjudiciales, lo que es problemático, dado el papel tan importante que la fiscalidad juega en la sociedad. Sin embargo, hay algunos visos de esperanza de que la estructura y los detalles legislativos puedan ayudar a crear algunas oportunidades de cambio.

Palabras clave

Tributación; reforma fiscal; disparidad de ingresos; déficit federal; deuda federal; economía de la oferta; política fiscal

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> *"Taxpayer Protection Pledge: I, ______, pledge to the taxpayers of the _____ district of the state of ____ and to the American people that I will: One, oppose any and all efforts to increase the marginal income tax rates for individuals and/or businesses; and Two, oppose any net reductions or elimination of deductions and credits, unless matched dollar for dollar by further reducing tax rates."*
>
> *Americans for Tax Reform (2013c)*

Introduction

Taxation is a contentious subject in the United States, as it has been since colonial residents threw tea into Boston Harbor—the original tea party—to protest taxation without representation. Today, representation exists, but politicians have very divergent views on the role of federal taxes in society. On the conservative side, the Republican Platform (2012) stated, "Taxes, by their very nature, reduce a citizen's freedom. … We reject the use of taxation to redistribute income…. Our goal is a tax system that is simple, transparent, flatter, and fairer" with reduced tax rates across the board. The 21st century grassroots Tea Party movement, a conservative force, has underscored the low-tax, small-government message (Formisano 2012, p. 1).[1] Low-tax advocates urge members of Congress to sign the Taxpayer Protection Pledge quoted above and vote against tax increases (Americans for Tax Reform 2013a). On the liberal side, the Occupy Wall Street protests focused attention on the "top 1%" of the population (Ehrenreich and Ehrenreich 2012), and the Democratic National Platform (Democratic National Platform 2012) espoused increasing the tax burden for upper income individuals but still urged tax cuts for the middle class, a much broader segment of society.

While views diverge sharply, at a fundamental level both parties are wary of imposing higher tax burdens that will affect large numbers of voters. Taxation can be politically toxic, potentially poisoning politicians' careers. Yet taxation provides the lifeblood for government programs at a time when continued federal deficits and historic levels of debt (approaching $18 trillion in fiscal year 2014 (Executive Office of the President 2014c, Table 7.1.)) threaten the government's ability to support the privileges of a civil society. It also offers opportunities to address income disparity, which is increasing at an alarming rate. The top 1% of the population claimed 9% of national income, including capital gains, in 1974 and 23.5% in 2007 (Hacker and Pierson 2010, p. 15). Hence, taxation's toxicity is very troubling.

This article explores the question, "Why is it so difficult to raise federal taxes?" Part 1 sets the context and highlights why taxation—and indignation over taxation—deserves serious attention at this point in US history. Part 2 explores the general public's attitudes toward taxation and possible reasons behind the difficulty in building popular support for higher taxes. Turning to the national political arena, Part 3 delves into the question of the degree of taxation's toxicity in Washington's elite political circles and its causes. Although public opinion can shape positions, other strong forces are at play as well. Part 4 suggests potential ways to overcome resistance to tax increases, drawing on the trends that emerge from Parts 2 and 3.

The issue of American attitudes toward taxation warrants a book unto itself and hence this article must necessarily limit its scope. The coming sections focus primarily on attitudes toward federal taxes paid by individuals during their lives, largely federal income and payroll taxes; it does not delve into federal corporate or estate taxes, which generate a relatively small portion of federal tax revenues.[2] At

[1] "Tea" stands for "Taxed Enough Already" (Formisano 2012, p. 1). One study (Rapoport *et al.* 2013) indicates a 17-point spread between Tea Party Republicans and non-Tea Party Republicans on "oppose reduce deficit/raise taxes".

[2] Federal receipts from these individual income and payroll taxes totaled $1.977 trillion in fiscal year 2012, 81% of federal receipts. Corporate income taxes totaled $242 billion, 10% of federal receipts (Executive Office of the President 2013b, Table 14-1).

the same time, the article takes a broad, multi-disciplinary approach by surveying the issues from the perspectives of law, political science, polling, history and economics. It attempts to provide an explanatory synthesis of material emerging from various disciplines rather than a unique analysis of attitudes toward taxation from one particular perspective. Nevertheless, in Part 4, it focuses on opportunities to raise taxes that can be embodied in or are related to the law. While all tax changes ultimately are executed through the law, the article looks in particular at legal mechanisms that may open doors for increased taxes or significant changes in the legal structure of taxes. The authors recognize that one relatively short paper cannot comprehensively and authoritatively determine why it is so difficult to raise taxes in the US, but they hope that the discussions below will at least paint a partial picture of attitudes toward taxation and possible avenues for the future.

Part 1: Why do we care about taxation's potential toxicity, particularly now?

Before delving into the public's and politicians' attitudes toward taxes, it is useful to consider why society should care about tax policies, particular at the start of the 21st century. From a theoretical perspective, taxation plays an essential part in defining the role of government in society. Taxation links directly to the three basic functions of government that Musgrave and Musgrave (1976, p. 6-16) identified: the allocation function, the distribution function, and the stabilization function. First, taxation provides the revenue lifeblood that allows government to finance public services in furtherance of its responsibility to provide social goods (its allocation function).[3] Second, the structure of the tax system that government uses to generate that revenue will affect the distribution of income and wealth across society—an issue of fundamental concern to any government. A progressive tax code that draws more revenue from those at higher income levels will serve a stronger distribution function. Finally, in accordance with the stabilization function, tax policies may influence the health of the economy either by providing revenue for government disbursements that strengthen the economy or by adjusting tax burdens on economic activities.

This article does not attempt to define the theoretical point of equilibrium at which federal spending policies and federal tax policies maximize the public interest. It instead draws on three types of evidence that illustrate why the question of raising taxes currently warrants attention: the level of the federal deficit and debt; the need for public investment in infrastructure; and the increasing level of income disparity in the United States. Taxation has a strong foothold in all three examples. It can provide the revenue to meet the government's fiscal and economic needs, and it can influence the distribution of society's income and wealth.

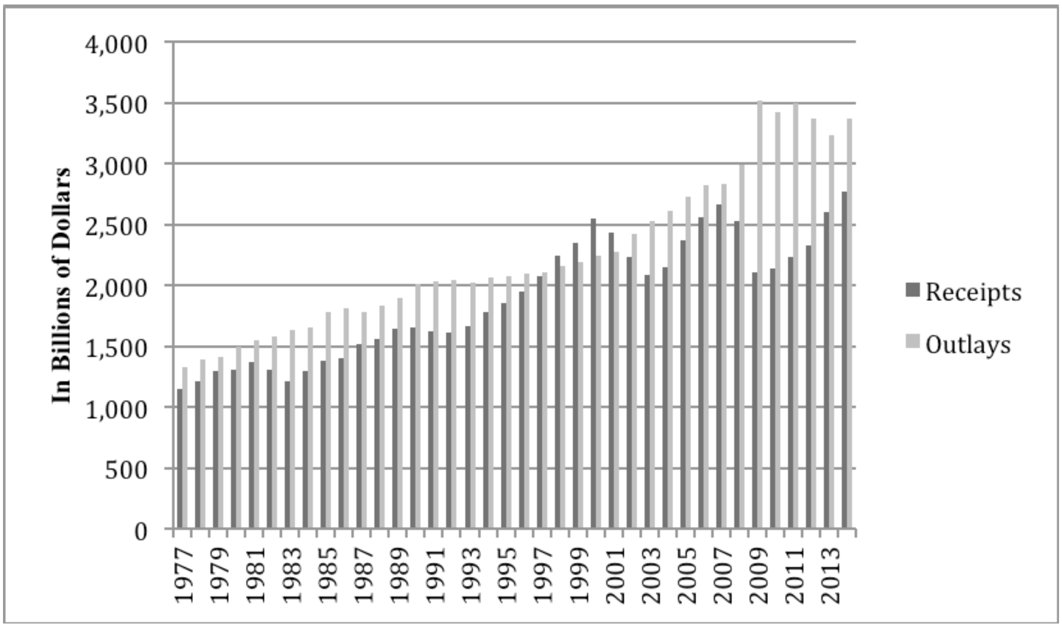
1.1. The debt and deficit

The federal government currently faces the significant challenge of reducing its annual deficit and the national debt. A country's fiscal profile is a direct product of the balance between its revenue (primarily taxes) and its spending. Over the past 40 years, the federal government has frequently relied on deficit financing, choosing not to raise taxes to balance the budget or to cut spending to match tax receipts. As illustrated in Figure 1, the effects of this tendency have been amplified since 2001, when tax rates were cut, and particularly during the recession that followed the 2008 global economic crisis, when revenue declined and the federal government offered tax relief to try to stimulate the economy in furtherance of the stabilization function. As a result of annual deficits, the federal debt has grown substantially over the past decade, from $5.6 trillion (33.6% of Gross Domestic Product (GDP)) in 2000 to an estimated $17.9 trillion (74.4% of GDP) in fiscal year

[3] Government can also engage in indirect spending through the use of tax expenditures.

2014 (Executive Office of the President 2014c, Table 7.1).[4] Although the deficit is currently getting smaller (falling from 10.1% of GDP in 2009 to a projected 2.1% in 2015), the Congressional Budget Office (2013a, p. 1) estimates that it will rise to 3.5% of GDP in 2023, higher than the 3.1% average over the past 40 years and the 2.4% 40-year average before the 2008 recession.

Figure 1: Summary of Receipts, Outlays, and Surpluses or Deficits: 1977–2014 in Constant FY 2009 Dollars



Source: Executive Office of the President (2013c, Table 1.3)

Demands to reduce the deficit and control the debt have become a mantra from the political right[5] to the left,[6] but there is no agreement on the level of acceptable deficit and debt[7] or the paths toward reducing each. As explored in Parts 3 and 4, political debate has been fierce over whether to raise taxes or reduce spending to control the deficit and the debt—a debate that goes to the heart of the question of the functions and size of government. Whatever the outcome, it is indisputable that the deficit and debt problem spotlights the issue of the role of taxation.[8] To control the deficit and debt, should the federal government raise revenue through increased taxes or reduce spending, and by how much? If the government needs more tax revenue, which tax burdens should increase?

1.2. Infrastructure

Fiscal pressures are not confined to the issues of the deficit and debt. Demands for new funds come from other directions as well. For example, the federal government faces unmet needs to invest in the nation's physical and human infrastructure. The American Society of Civil Engineers has projected that federal, state, and local funding for transportation, water and wastewater facilities, electricity, airports, and

[4] The amount of debt indicates the gross federal debt, which includes debt held in government accounts and by the public. The percent-of-GDP indicates publicly held debt as a percent of GDP.
[5] For example, the US House of Representatives Budget Committee (Committee on the Budget 2013) proposed $4.6 trillion in deficit reduction over ten years. The resolution passed the House of Representatives by a vote of 221 to 207. All 197 Democratic Representatives and 10 Republican Representatives voted against it. H.R. CON. RES. 25, 113th Cong. (2013).
[6] For example, in 2013 President Obama proposed $1.8 trillion in deficit reduction over ten years (Executive Office of the President 2013a, p. 5-6).
[7] *See, e.g.*, Stockman (2013), advocating for a balanced budget; Krugman (2013), combating the austerity position; and Davidson (2013), offering the differing opinions of Larry Summers, Secretary of Treasury under President Clinton, and Glenn Hubbard, advisor to both Presidents Bush.
[8] *See* Part 4 *infra*.

inland waterways and ports will only meet 60% of the needs by 2020, falling short by $1.1 trillion and resulting in the loss of 3.5 million jobs, $3.1 trillion in GDP, and $1.1 trillion in trade between 2012 and 2020 (American Society of Civil Engineers 2013, p. 4-5). The federal government plays a significant role in this funding. For example, the Obama Administration's proposed budget for fiscal year 2014 called for an additional $50 billion in investment in transportation infrastructure (Executive Office of the President 2013a, p. 137). The federal government is also increasingly called upon to rebuild existing infrastructure following catastrophic events. After Hurricane Sandy ravaged the Northeastern US coast in 2012, the federal government authorized over $50 billion in immediate relief to help the battered states and their residents (Chen 2013) and over $500 million for drinking water and waste water systems damaged by the storm.[9] The impacts of climate change threaten to wreak more damage in the years ahead, creating more pressure for federal relief aid and adaptation. Some, including President Barack Obama, also argue that the federal government needs to invest in strengthening an economy weakened in part by the recession, calling for support for innovation and emerging technologies such as green industries that represent new areas of growth (*e.g.* Executive Office of the President 2013a, p. 8-13).

Again, the level of revenue from taxation will play a pivotal role in defining the extent to which the government can meet these spending and economic stabilization needs. The presence of both deficits and a burgeoning national debt compound the complexity of the issues, heightening tensions in the debate over whether the country should cut, not increase, spending and whether it should raise taxes to pay for past or future spending.

1.3. Income disparity

The increasing income disparity in the United States constitutes a third, strong reason why tax policies are center front. Other experts have written books on the troubling trend of income disparity and its consequences (*e.g.* Noah 2012, Stiglitz 2012), so this analysis provides only a few examples to illustrate the trend. A study of tax data from 2001 to 2010 (Dungan and Parisi 2013) illustrates the significant growth in the share of income at higher income levels as well as the decline in share of wealth at the bottom half of the population.

Table 1: Percentage Share of Adjusted Gross Income Reported on Individual Tax Returns (according to percentage of total returns filed)

	2001	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Top 0.1%	8.05	7.04	7.56	9.14	10.64	11.23	11.95	10.06	7.94	9.24
Top 1.0%	17.41	16.05	16.73	18.99	21.19	22.10	22.86	20.19	17.21	18.87
Top 5%	31.61	30.29	30.99	33.31	35.61	36.62	37.39	34.95	32.18	33.78
Top 50%	85.60	85.50	85.87	86.51	87.06	87.58	87.81	88.08	88.12	88.26
Bottom 50%	14.40	14.50	14.13	13.49	12.94	12.42	12.19	11.92	11.88	11.74

Source: Dungan and Parisi (2013, p. 56-57, Table 5)

As Table 1 indicates, the growth in the share of national income attributable to the higher income levels was dampened by the recession, but nonetheless remained remarkably dominant in terms of the proportion of income throughout the decade. The top 1% earned almost one-fifth of taxpayers' income in 2010 and the top 5% one-third, while the bottom half fell to just over one-tenth.

[9] *Disaster Relief Appropriations Act*, 2013, H.R. 152, Pub. L. 113-2 (2013); US EPA (2013).

The past decade is part of a longer trend. Since 1979, after-tax income has quadrupled for the top 1% but has only increased by 40% for the middle 60% (National Economic Council 2012, p. 1). When arguing for higher tax rates, billionaire investor Warren Buffett (2012) illustrated the income disparity issue quite dramatically:

> The Forbes 400, the wealthiest individuals in America, hit a new group record for wealth this year: $1.7 trillion. That's more than five times the $300 billion total in 1992. In recent years, my gang has been leaving the middle class in the dust… The group's average income in 2009… works out to a "wage" of $97,000 per hour based on a 40-hour workweek. (I'm assuming they're paid during lunch hours.)

At the same time, upper income people have received income tax relief in recent years. The average (effective) tax rate for the top 0.1% fell from 28% in 2001 to 23% in 2010, as it did for the top 1% (Dungan and Parisi 2013).[10] Thus, as more income went to the higher levels, upper income taxpayers were paying a smaller share of their income in taxes. All income levels benefited from a drop in effective tax rates, with the national average falling from 14.47% to 11.83% (Dungan and Parisi 2013), indicating that the decade was not one that promoted an increase in progressivity in the allocation of the tax burden.[11]

Rising income disparity is cause for concern. Nobel Prize-winning economist Joseph Stiglitz (Stiglitz and Furman 1998) argues that rampant inequality can negatively affect long-term economic growth, causing unemployment and economic instability. Just as this article was finalized, Thomas Piketty published a book on troubling global income disparity trends, *Capital in the Twenty-First Century* (Piketty 2014), that ignited media attention. The structure of the federal income tax code can provide some redress through its allocation of tax burdens.

In short, the federal government faces demands for new revenue to further its spending and economic stabilization functions and the challenges of growing income disparity directly related to its role as an arbiter of society's distribution of income and wealth. Each is a reason why taxation is in the spotlight—and why it is important to keep the issue of increasing taxes on the table. Supreme Court Justice and legal theorist, Oliver Wendell Holmes, Jr., succinctly captured the essence of taxes when he wrote, "[t]axes are what we pay for civilized society."[12] As explored below, however, the political landscape creates significant barriers to tax increases and new taxes.

Part 2: In the public mind, why is it so difficult to increase taxes?

Even though government in the abstract may have good reason to raise taxes, the American public as a whole is not clamoring to pay more taxes. A variety of factors appear to influence Americans' reluctant attitudes toward increasing tax burdens. The following discussion draws on academic literature, polling, and historical trends. At the acknowledged risk of over-simplifying and over-generalizing, it highlights some factors that may be at play in order to better understand how policymakers could approach the task of adjusting taxes.

As a threshold matter, it is important to note that it is often difficult to determine with any certainty people's attitudes toward taxes. Taxation is an inherently opaque subject about which the public may not have developed fully informed views, and understandably so.[13] The topic is complex and often technical. In addition,

[10] As discussed later in this article (*infra* text at footnotes 46 and 54), the top marginal tax rate increased in 2013.

[11] Nevertheless, the upper income levels continued to contribute the lion's share of the income tax revenue. The top 10% were responsible for 64% of the income tax revenue in 2001 and 71% in 2010. The top 50% were responsible for 97.6% in 2010 (Dungan and Parisi 2013).

[12] Compania General de Tabacos de Filipinas v. Collector of Internal Revenue, 27 U.S. 87, 100 (1927) (Holmes, J., dissenting).

[13] For one discussion of the challenges of polling on tax issues, see Hansen (1983, p. 179-82).

questions about taxation may involve intricate tradeoffs, such as how to weigh the benefits of lower taxes against the harms (or benefits) of reduced government spending, or conversely, the pain of higher taxes against the benefits (or harms) of increased spending. The general public may not adequately link tax decisions with spending decisions and evaluate the consequences (Listokin *et al.* 2013). For example, the public may support balanced budgets in principle but be ambivalent about wanting to either pay higher taxes or cut spending to cure the problem (Fisher 2005, p. 138). And the public may take contradictory positions. In early 2013, 58% of Americans thought that the best way to reduce the deficit is through a combination of spending cuts and tax increases, but 68% were opposed to paying more personally in taxes while even more opposed cuts to Social Security and Medicare (The New York Times, CBS News Poll 2013).[14] Hence, it is prudent to look cautiously for very generalized trends and to apply a generous grain of salt. The ideas explored below are somewhat speculative but nonetheless perhaps worthy of consideration.

2.1. Lack of trust

A lack of trust in government can potentially undermine the willingness of people to reach into their pockets to support its services (Nye 1997) and to support compromises that can overcome political divides (Rudolph 2009). If these correlations are strong, they may carry significant implications for taxation because the public appears to have relatively low confidence in Washington. Public confidence that the federal government will do what is right has declined significantly in the last half-century. In the late 1950s, over 70% of the American people thought that government was making the right choices "always" or "most of the time"; however by 2013 that approval had dropped to 26% (Orren 1997, p. 81, and Pew Research Center 2013a). Similarly, disapproval of Congress has been climbing fairly steadily, apart from a dramatic shift in opinion in 2001 that perhaps was attributable to softening of attitudes after the September 11th attacks. In early 2013, only 13% of Americans approved of the way Congress was handling its job (Newport 2013a).

2.2. Tax-cut expectations

Most Americans have grown accustomed to cuts rather than increases in their tax rates, a historical trend (Witte 1985, p. 339) that has continued over the past three decades. As indicated in Table 2 below, major reductions in marginal tax rates occurred in 1981 with the tax cuts under President Ronald Reagan, in 1986 in the course of comprehensive tax reform, in 2001 and 2003 with the tax cuts under President George W. Bush (the second President Bush), and in 2008-2011 as part of economic stimulus legislation. In recent years, increases in the marginal tax rates have focused on the higher income brackets (in 1990, 1993, and 2013); thus for decades most Americans have not experienced an increase in the nominal marginal tax rates for ordinary income.[15]

[14] *See also* Hansen (1983, p. 195-96), discussing inconsistent positions on taxes and spending; King (1997), people want lower taxes but more spending. A recent poll presenting a specific set of deficit-reduction options found that people favored tax increases over other options (more heavily among Democrats than Republicans) and that preserving Social Security and Medicare were the least favored options (Listokin *et al*. 2013).

[15] Note, however, that some taxpayers saw an increase in the early 1980s before the Tax Reform Act of 1986. The Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, raised revenue without actually adjusting the marginal tax rates. Marginal tax rates are the tax rates that apply to different levels of a taxpayer's income. They are different from a taxpayer's effective tax rate, which is the *de facto* average rate that a taxpayer pays on his or her income.

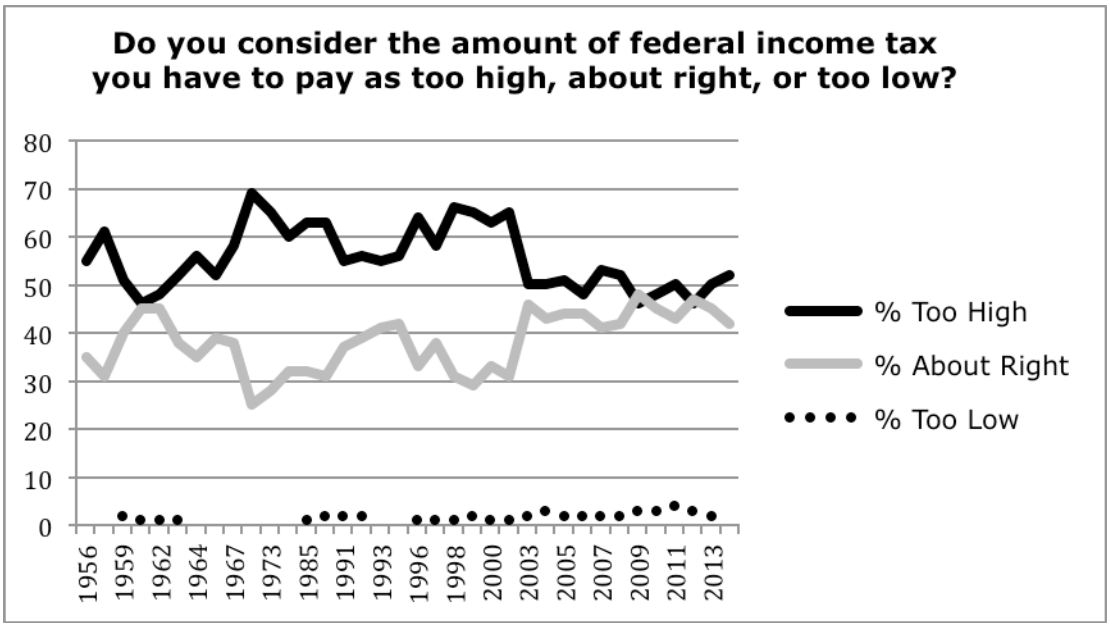
Table 2: Summary of Major Tax Changes 1981-2013

Legislation	**Marginal Income Tax Rate (joint filers, not adjusted for inflation)**	**Top Marginal Rate**	**Maximum Long Term Capital Gains Tax Rate**	**Other Provisions**
Status immediately pre-1981	16 tax brackets, ranging from 0% to 70% (over $215,400)	70%	28%	
Economic Recovery Tax Act of 1981	13 tax brackets, ranging from 0% to 50% (top bracket rising from over $85,600 in 1982 to over $162,400 after 1983)	50%	20%	
Tax Reform Act of 1986	15% 28% top rate (over $29,750)	28%	28%	Repeal of a number of deductions and credits
Omnibus Budget Reconciliation Act of 1990	Added new 31% top rate (over $78,400)	31%		Limit on personal exemption, itemized deductions upper income households
Omnibus Budget Reconciliation Act of 1993	Added two new top rates: 36% (over $140,000) 39.6% (over $250,000)	39.6%		
Taxpayer Relief Act of 1997			20%	
Economic Growth and Tax Relief Reconciliation Act of 2001	Reduced rates 15% to 10%, 28% to 25% 31% to 28% 36% to 33% 39.6% to 35 (phased in by 2006 and effective through 2010)	35%	25% (through 2012)	
Jobs and Growth Tax Relief Reconciliation Act of 2003	Accelerated the 2001 rate reductions, effective for 2003		15% (through 2012)	
Emergency Economic Stabilization Act of 2008				Targeted tax incentives
American Recovery and Reinvestment Act of 2009				Targeted tax incentives
Tax Relief, Unemployment Reauthorization and Job Creation Act of 2010	Extended the 2001 rate reductions through 2012			Social Security tax on individuals reduced from 6.2% of wages to 4.2% for 2011
Temporary Payroll Tax Cut Continuation Act of 2011				Social Security tax cut continued for first two months of 2012
Middle Class Tax Relief and Job Creation Act of 2012				Social Security tax cut continued through 2012
American Taxpayer Relief Act of 2012	39.6% top rate reinstated for income over $450,000	39.6%	20% rate for gain for high-income individuals	Limit on itemized deductions for joint files with income over $300,000

Note: This table presents a simplified version of complex tax legislation, focusing primarily on marginal tax rates.

Polling indicates that the public has been more content with the level of federal income taxes following the Bush tax cuts in 2001 than previously. Roughly half the population believes that they are paying too much in taxes, and half that they are paying about the right amount, although 2013 data shows a tick toward rising dissatisfaction. Though these polls do not specifically examine whether these attitudes are attributable to an expectation of cuts, they suggest that policymakers will have difficulty finding popular support for generalized tax increases.

Figure 2: Polling Data on Tax Burden



Source: Gallup, http://www.gallup.com/poll/1714/taxes.aspx#1.

The endowment effect, whereby people irrationally place more value on what they are asked to give up than what they might acquire (*e.g.* Kahneman *et al*. 1991, Plott and Zeiler 2005, Kahneman 2011, p. 298-99, Pope and Schweitzer 2011), may play a role. The endowment effect has been studied in a number of contexts, and Jack Knetsch, an early proponent of the endowment effect, has suggested that it can also apply to taxation.[16] Dollars paid to the government in the form of taxes represent an out-of-pocket loss, particularly when the taxpayer does not see a visible benefit. If the endowment effect is at work, it may reinforce taxpayers' dislike for tax increases, adding to the difficulty of reversing expectations for tax cuts and enacting increases.

Moreover, protecting the middle class has become a political mantra, which may further accentuate expectations. For example, President Barack Obama (2013a) proclaimed in his second inaugural address in 2013, "[w]e believe that America's prosperity must rest on the broad shoulders of a rising middle class." The 2012 Republican Platform (2012, p. i) "affirms that America has always been a place of grand dreams and even grander realities; and so it will be again, if we return government to its proper role, making it smaller and smarter…. If we lift up the middle class." For both parties, concern over the middle class translates into policy positions that specifically protect the middle class from tax increases. In the thirty years from 1979 to 2009, the effective (average) federal tax rate for households in the middle quintile fell from 18.9% to 11.1% (a 41% drop) and their share of the total federal tax burden fell from 13.6% to 8.4% (a 31% drop), taking into account all federal taxes (Stark and Zolt 2013). President Obama's proposed budget for fiscal year 2014 advocated tax increases for "millionaires and billionaires," but the President stated in the preface, "I will not agree to any [deficit-cutting] deal that

[16] Global Conference on Environmental Taxation, Keynote Presentation, Sept. 21, 2012 (notes on file).

seeks to cut the deficit on the backs of middle class families." (Executive Office of the President 2013a, p. 6.). The 2012 Republican Platform (2012) expressly advocated lower taxes.[17] The middle class is part of the American psyche, and recent concern over the welfare of the middle class is particularly understandable, given the losses and vulnerability of the middle class over the past decade (see generally Pew Research Center 2012).[18] Nevertheless, these concerns may create expectations that stand in the way of tax increases. It will be difficult to raise the revenue required for significant deficit reduction or infrastructure investment without reaching into the pockets of middle class taxpayers.

2.3. A weak appetite for income redistribution

As indicated in Part 1, one of the functions of government and the tax system can be to redistribute income and temper accumulations of wealth. The American public, however, generally has not demonstrated a strong desire to use the federal tax system to engage in redistribution.[19] Stated differently and somewhat more broadly, using fiscal measures to achieve greater equality has not been a high priority.

Polls and surveys offer some insights into American attitudes toward the redistribution of wealth and income, generally through tax measures. Since 1939, Gallup has been asking Americans whether "government should or should not redistribute *wealth* by heavy taxes on the rich" (emphasis added). The country has been almost evenly split, with support never rising above 51% until 2013, when it reached 52% (Shaw and Gaffey 2012, Table 5, Newport 2013b).[20] Surveys also show that the public has a range of opinions on whether government should reduce *income* differences between rich and poor, perhaps through increased taxes on the wealthy or assistance to the poor, but many do not feel strongly. For example, in 2010, people were asked to rank their feelings on this topic on a scale of 1 to 7, with "1" signifying that government should and "7" that government should not. Fifty percent indicated a lack of strong preference, responding in the middle range with a "3" (16%), "4" (18%), or "5" (16%). Those who more strongly supported government action and those who opposed it were about equally split, with 27% choosing "1" or "2" in support and 24% choosing "6" or "7" against government intervention. Only 1% did not know (Shaw and Gaffey 2012, Table 4). However, when the question is divorced from taxing or spending issues, people believe in the abstract that income should be distributed more fairly.[21] Thus, there seems to be a difference in opinion between how income is initially allocated among income levels and whether government might use its powers, including taxation, to redistribute income.[22] Perhaps the somewhat confiscatory flavor of taxation may affect public opinion.[23]

[17] The platform proposes an across-the-board cut in marginal tax rates but also the elimination of taxes on interest, dividends and capital gains for middle and lower income taxpayers.

[18] The first decade of the 21st century was the only decade since 1970 when median household income at the end of the decade was lower than at the start. The percent of adults in middle-income households fell from 61% in 1971 to 51% in 2011 (Pew Research Center 2012, p. 62, 65).

[19] For a useful, historical analysis of the ambiguity of public opinion toward progressivity in the tax code and the difficulty of interpreting polling results, see Witte (1985, p. 339-64).

[20] The current 52% represents a relative high, as this number has typically been stuck in the high 40s and low 50s, never before rising above 51%.

[21] Sixty-eight percent of Americans think wealth should be more evenly distributed in the country (Newport 2008). Attitudes toward income redistribution may vary with economic conditions, with the counterintuitive result of less support during the recession. *See* Kuziemko and Norton (2012, p. 280-93).

[22] Older polling data indicate that a plurality thought that the maximum tax rate should not exceed 25-30% except in times of war (Hansen 1983, p. 196).

[23] Although not examining public opinion polls or redistribution in particular, Brennan and Buchanan note the confiscatory nature of taxes: "For the ordinary citizen, the power to tax is the most familiar manifestation of government's power to coerce. … The power to tax, per se, does not carry with it any obligation to use the tax revenue raised in a particular way. … Seen this way, the power to 'tax' is simply the power to 'take.'" (Brennan and Buchanan 1980, p. 8.)

Researchers have pointed to several causes for this weak interest in redistribution. The American public is overly confident that America is a land of economic opportunity where mobility is possible and inequality is natural (Alesina *et al*. 2001, p. 51-55, Glazer 2003, p. 111-12, Stiglitz 2012, p. 17-23). In addition, society's racial diversity may diminish the desire for redistribution (Alesina *et al.* 2001, p. 43-48), as can attitudes toward federal welfare programs (Michelmore 2012, p. 133). Institutional considerations may play a role as well, particularly with redistribution through the tax code. For example, progressivity of the tax code is just one of many competing tax policy factors, and the complexity of tax legislation may camouflage the redistribution issue (Witte 1985, p. 375-76). The lack of trust in government can also undermine the desire to use taxation for redistribution (Michelmore pp. 2012, p. 133). Finally, some research has pointed to the possibility that some members of the polled public are not sufficiently well informed to reach logical conclusions. Hence, they support tax cuts for the rich because they project their perceptions of their own tax burdens even when cuts may be against their own interest (Bartels 2005, p. 23-24).

2.4. Lack of direct, personal benefit

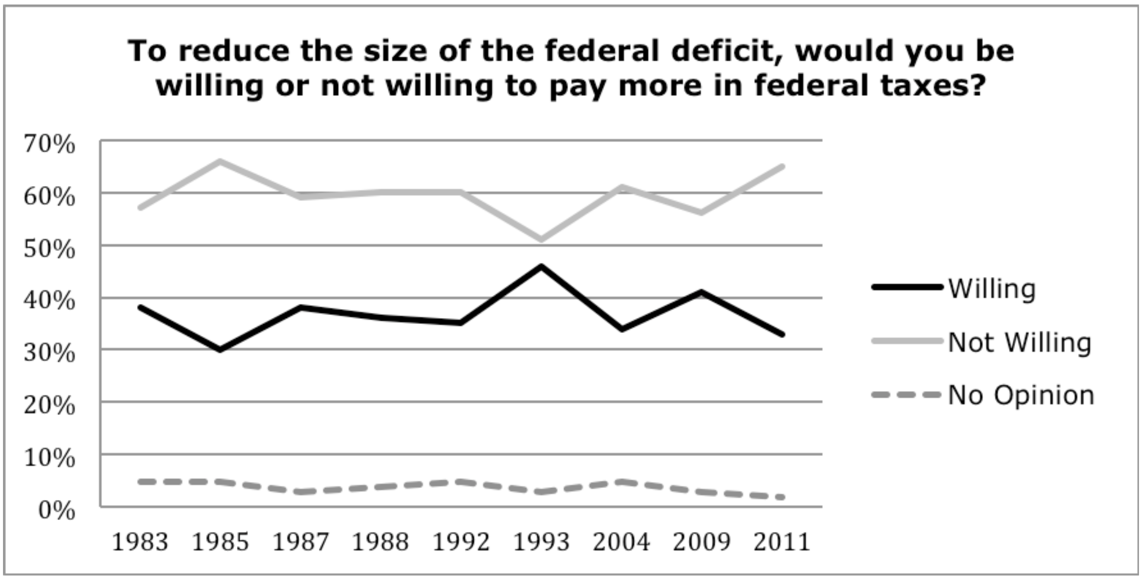
Some analysts point to the benefits received from a tax as a reason why people may be willing to support taxes (Musgrave and Musgrave 1976, p. 212).[24] Conversely, the public may be less favorably inclined toward paying for more diffused functions of government for which they do not see a direct benefit (Steinmo 1993, p. 193). Anthony Downs (1960) posited that citizens in democracies cannot fully comprehend the costs and benefits of government budgets and therefore are rationally ignorant. They are particularly likely to undervalue the remote benefits that government can provide and to pay more attention to taxes, which have a "confiscatory cast", thereby further reducing their desire to support remote benefits. They are also more keenly aware of taxes that affect their status as income-earners, particularly income taxes, and taxes on consumption that government cannot conceal,[25] a form of the fiscal illusion theory (Hadenius 1985). As a result, democratic governments find it more difficult to fund remote benefits, particularly as society becomes increasingly complex (Downs 1960).[26]

Thus, it is not surprising that proposals to raise taxes to reduce the deficit and debt often may not receive strong support.[27] As indicated in Figure 3, the public is generally not enthusiastic about raising taxes to pay for the federal deficit, although the gap between negative and positive views diminished during the deficit-reduction discussions in 1993. Note, however, that as suggested at the start of Part 2, people responding to polls may not necessarily appreciate the linkage between tax rates and government spending, and how they might suffer from spending cuts if taxes are not increased. A survey conducted in late 2012 that presented people

[24] The direct benefit principle can also be related to trust in government; a more explicit linkage between the tax and the spending purpose may engender more trust in how government will use the revenue. *See* Fisher (2005, p. 39-40).
[25] For an interesting study of how these factors played out in Sweden, see Hadenius (1985). The study found that attitudes toward Swedish taxation are more negative when people are asked about tax burden alone than when they are also asked about taxes in the context of benefits. The study questioned a general application of "fiscal illusion" theory that people are more sensitive to direct taxes than indirect taxes, finding public disapproval not only of income taxes but also of visible consumption taxes.
[26] Downs' analysis is based on the assumption that governments are primarily motivated by the desire to court citizens' votes and hence do not fully serve the general welfare if doing so would cost votes. Its conclusion recognizes that there may be situations where central players can act selflessly but that the analysis nonetheless captures "underlying tendencies in democracy" (Downs 1960, p. 563).
[27] Deficit reduction generally has not been high on the public list of priorities. When the Gallup poll asked people to name the most important problem facing the nation, more than 15% of the respondents named the deficit only at the times when Congress was dealing with deficit-related issues (1985, 1990, 1993 and 1996) (LeLoup 2005, p. 213). These points in time correspond with the up-tick in voter willingness to pay more in taxes evidenced in Figure 3.

with a specific deficit reduction goal and ten options for reducing the deficit found that 84% of the respondents were willing to raise tax rates on at least some Americans, suggesting that increased taxes might be preferable to other tax and spending-cut alternatives (Listokin *et al*. 2013).

Figure 3: Polling Data on Deficit and Taxes



Source: CBS/New York Times Poll, March 1983-October 2011, Roper Polling Database (Years shown represent available data.)

To compound the taxes-for-benefit problem, data show that when asked which level of government gives them the most for their money, members of the public increasingly believe they receive less value from the federal government than from state and local governments. Those favoring the federal government fell from 39% to 23% between 1972 and 1999, while those favoring state government rose from 18% to 29% (Cole and Kincaid 2000).[28]

In sum, although some of the theories above are speculative, these public attitudes may make it more difficult for the federal government to raise taxes to support its spending programs and to pay for past spending, particularly when the benefits to taxpayers are more remote. The general wariness of using the design of the tax system to significantly reduce wealth and reallocate income also potentially diminishes the ability of taxation to advance the government's role in redistributing income and wealth. These public perception factors do not conclusively mean that tax increases or new taxes are politically impossible, but they help shape the political landscape. Public opinion in a democracy inevitably informs policymakers' decisions. Nevertheless, democracy in the United States is not a simple policy-by-voters system akin to the public selecting winners on the television program American Idol.[29] As others have concluded (*e.g*. Jacobs and Shapiro 2000), decisions in Washington's corridors of power are the product of a complex matrix of forces affecting politicians and those who seek to influence them, not just public opinion. Some have suggested that political parties may take more extreme positions than their constituents (King 1997). Hence, Part 3 turns to the question of attitudes toward taxation among the Washington power brokers and factors that influence those attitudes.

[28] In 1999 31% favored local government and 17% either did not know or did not answer. The responses varied significant by demographics, with black respondents (51%) and Democrats (36.9%) favoring the federal government in 1999 (Cole and Kincaid 2000).

[29] The 2013 vote in the US Senate over gun-control legislation vividly illustrates this point. Some Senators voted against the measure even though a majority of their constituents wanted more control, such as Kelly Ayotte, the Republican Senator from New Hampshire whose constituency favored background checks by 95% (O'Keefe 2013).

Part 3: Why is it so hard to raise taxes on Capitol Hill?

Today, the Republican Party is widely considered the political party of tax cuts and low taxes. Because the Republican Party is one of only two major political parties in the United States and has held at least the presidency or one house of Congress for all but four of the last 32 years, its antipathy toward taxes is perhaps the most important factor in the thirty-year decline in tax rates and the challenges for raising taxes today. At the same time, Democrats have done little to combat the lower-taxes trend, frequently opposing all but the most progressive tax increases. This Part explores the roots of this anti-tax attitude in the political arena. It examines the Republicans' arguments against taxes and then explores other potential causes of anti-tax positions, all with an eye toward understanding the underlying political reasons why taxation is so toxic in Washington.

3.1. The Republicans' policy arguments against taxes

The Republican view of federal income taxes flows directly from two basic conservative principles: lower tax rates will yield a stronger economy, and the federal government should be as small as possible, playing a restrained role in American society. The first principle supports using the federal tax system to serve the government's economic stabilization function. The second principle—smaller government—seeks to limit government's programs, a result that can be achieved by reducing tax revenue and/or by cutting spending. The question of *whose* taxes are lowered implicates the government's redistribution role. Thus, the Republican positions on taxation go to the core issue of government's role in society.

3.1.1. Supply-side theory

In calling for tax cuts, Republicans typically rely on supply-side economic theory, which asserts that lower tax burdens have a positive effect on the economy by increasing rewards for labor, entrepreneurship, and risk taking, encouraging savings and investment, and keeping money in the private sector. Thus, proponents argue (The Laffer Center 2013), tax cuts increase the supply of such activities, improving the overall economy because "real growth…depends…on factors affecting supply rather than effective demand." (Black *et al*. 2012, p. 103.) Republicans generally focus on high-income individuals who arguably have the biggest impact on crucial economic decisions such as hiring, savings, and investment. They claim that reducing the tax burden at upper income levels will ultimately increase aggregate wealth at all income levels (Ungar 2012).

While the point of lowering taxes under this theory is to benefit the wealthy and thus spur the economy from the top, this approach can be difficult to sell politically. Thus, politicians may prefer an across-the-board tax cut that also benefits middle and lower income earners. David Stockman, President Ronald Reagan's Director of the Office of Management and Budget and one of the architects of the 1981 tax cuts, described this dilemma succinctly to the *Atlantic Monthly*:

> The original argument was that the top bracket was too high, and that's having the most devastating effect on the economy. Then, the general argument was that, in order to make this palatable as a political matter, you had to bring down all the brackets. But, I mean, [the Reagan tax cut] was always a Trojan horse to bring down the top rate. (Greider 1981)

Accordingly, President Reagan promoted and achieved broadly applicable tax cuts in the 1980s, as did the second President Bush in 2001 (see Part 2, Table 2).

Crucial to supply-side theory is the Laffer curve, the economic theory that asserts that lower tax rates can actually result in increased tax revenue. Pioneered in the mid-1970s by economist Arthur Laffer, who later became a Reagan advisor, the Laffer curve attempts to demonstrate how tax rates influence taxable income and thus government revenue. The curve shows that zero revenue is produced with a tax rate of both zero and 100 percent and that somewhere between those points exists a tax rate at which revenue is maximized. Beyond the maximization point, revenue will decrease as tax rates increase because of deadweight loss, the economic inefficiencies that occur once a tax becomes so burdensome as to discourage productive activity (Wanniski 1978). Laffer and his followers theorized that lower taxes would increase government revenues or offset the potential losses from lower rates (Wanniski 1978). This belief helped set the stage for tax cuts in the administrations of President Reagan and President George W. Bush by allowing proponents to claim that large tax cuts would shrink rather than grow the budget deficit.

Although supported by some scholarship,[30] supply-side theory has come under considerable scrutiny and criticism. Statistical analyses raise questions about the legitimacy or force of the supply-side theory,[31] and the Laffer theory in particular has come under scrutiny over the years. In 1999, Austan Goolsbee (1999), later the Obama Administration's Chairman of the Council of Economic Advisors, released a report studying the revenue effects of tax changes dating back to 1922. He found little support for the proposition that the government could raise revenue by cutting taxes from their current rates.

Even some conservatives have sought to distance themselves from supply-side theory and its rhetorical progeny. During the 1980 presidential primary, George H.W. Bush (later the first President Bush) famously called it "voodoo economics" (Smith 1980), although he eventually helped to carry out supply-side policies as vice president and president. Economist Bruce Bartlett (2009b), an advisor to President Reagan, now distinguishes the original supply-side theory from conservative positions held today:

> The original supply-siders suggested that some tax cuts, under very special circumstances, might actually raise federal revenues. For example, cutting the capital gains tax rate might induce an unlocking effect that would cause more gains to be realized, thus causing more taxes to be paid on such gains even at a lower rate. …But today it is common to hear tax cutters claim, implausibly, that *all* tax cuts raise revenue.

Despite these concerns, Republicans have not stopped making supply-side arguments, although they might not use the exact terminology. The 2012 Republican Platform (2012) took basic supply-side principles as a given, stating that "[l]owering taxes promotes substantial economic growth." The Laffer curve

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[30] Among the most influential studies in favor of supply-side theory is a study by President Reagan's Chairman of the Council of Economic Advisors, Martin Feldstein (1995). He looked at the effects of the Tax Reform Act of 1986, which reduced the highest marginal rate from 50% to 28% while also closing a variety of loopholes. By examining the tax returns of the highest earners between 1985 and 1988, Feldstein found a 45% increase in average taxable income after the tax cut. He attributed this result to the positive incentives of the rate reduction, stating "the greater net reward for extra effort and extra risk-taking led to increases in earnings, in entrepreneurial activity, [and] in the expansion of small businesses" (Feldstein 1995, p. 570) Economist Thomas Sowell (2012) has made a similar argument using other historical tax cuts. Their argument is bolstered in a report by economists Christine and David Romer of the University of California, Berkeley (Romer and Romer 2010, p. 799), which found that "an increase of one percent of taxes lowers real GDP by almost three percent." Their study is notable because it was authored by two New Keynesian economists, one of whom (Christine Romer) served as an early advisor to President Obama. A report from the Congressional Budget Office (2012b) found that the expiration of the Bush tax cuts would create a drag on the economy equivalent to 2.0% of real GDP, 0.7% of which would come from the expiration of the tax cuts for high earners and 1.3% from the expiration of the tax cuts for middle and low income earners.

[31] A recent report from the non-partisan Congressional Research Service (CRS) compared real per capita GDP growth since 1945 to the top federal tax rates on income and capital gains from those years. The report found "no conclusive evidence…to substantiate a clear relationship between the 65-year reduction in the top statutory rates and economic growth." (Hungerford 2012, p. 1-2). Another CRS report (Hungerford 2010) noted that reductions in the capital gains tax rate—which would encourage savings and investment according to traditional supply-side theory—did not yield the expected economic results. Further, in 2006 the second President Bush's Department of the Treasury found that even in the best-case scenario, making the 2001 Bush tax cuts permanent would contribute less than a point to economic growth over the next decade (Office of Tax Analysis 2006).

also retains political vibrancy.[32] During his 2008 presidential campaign, John McCain made that case explicitly, stating, "tax cuts…as we all know, increase revenues" (Fox 2007). In sum, Republicans use supply-side theory to reinforce the economic stabilization function of taxation, but in a way that builds the case against higher tax burdens. Regardless of the substantive merits of the argument, it has become a political ideology that has significantly contributed to the political toxicity of raising taxes.

3.1.2. Starve the beast

Many proponents of lower tax burdens argue that cutting taxes (and avoiding tax increases) is an effective way to limit government spending because lower tax rates pinch the government's purse for years to come. As Nobel Prize-winning economist Milton Friedman (2003) argued:

> How can we ever cut government down to size? I believe there is one and only one way: the way parents control spendthrift children, cutting their allowance. For governments, this means cutting taxes. Resulting deficits will be an effective—I would go so far as to say, the only effective—restraint on the spending propensities of the executive branch and the legislature. The public reaction will make that restraint effective.

Coined "starve the beast" by an anonymous Reagan staffer in 1985 (Bartlett 2007), this approach seeks to restrain government's spending function. Thirty years of consistent tax cuts and few tax increases, however, have failed to bring about the expected reductions in the size of government because politicians have been more willing to rely on deficit financing than starve-the-beast theorists originally predicted. While the theory has come under attack from both liberal and conservative academics,[33] many Republicans continue to use the theory as a reason to press for tax cuts and to resist higher taxes. The vast majority of Republicans in Congress have signed the Americans for Tax Reform's Taxpayer Protection Pledge (Americans for Tax Reform 2013b), a document devised in part to advance the starve-the-beast strategy.

Despite past criticisms of the theory, the current deficit and debt situation could eventually lead to the desired smaller-government result. With the difficulty in raising taxes and calls to control the deficit and debt, large-scale cuts to entitlement programs remain on the table, indicating that the beast's diet of restrained tax revenues might prove effective in the long run.

3.2. Other causes

While the theories described above have come under significant scrutiny over the years, Republicans have continued to rely on them in arguing both for tax cuts and

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[32] More recently, the Laffer curve battle has shifted from the campaign trail to the backrooms of the Capitol, as Republicans have pushed for the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT), the non-partisan research organizations responsible for providing analysis of various fiscal measures, to adopt "dynamic scoring" in measuring the effects of various tax bills (The Committee for a Responsible Federal Budget 2012). Controversial due to its speculative nature, dynamic scoring would require the CBO and the JTC to estimate the revenue effects of a tax bill by including potential resultant economic growth in their calculations. Predictions of such effects from the CBO and the JTC may make it easier for politicians to argue in favor of tax cuts and against tax increases. The Senate recently joined the House of Representatives in requiring dynamic scoring analysis for all legislation that changes revenue. 159 Cong. Rec. S2318 (daily ed. March 22, 2013). The House has had a similar rule since 2003. H.R. 5, 108th Cong. (2003). *See also* Bartlett (2013).

[33] William Niskanen, Chairman of the conservative Cato Institute and former head of President Reagan's Council of Economic Advisors, finds starve-the-beast thinking problematic for three reasons: first, reducing taxes without decreasing government services has effectively made government services seem cheaper and thus artificially increased the demand for them amongst the public, thereby making it harder for politicians to cut spending; second, starve-the-beast theory is inconsistent with facts, as thirty years of tax cuts have failed to produce like spending cuts; finally, the theory allows conservatives to forget the real "discipline" required to control government spending because they instead focus on the "fantasy" that tax cuts will naturally result in smaller government (Niskanen 2006). For a liberal criticism, see Frankel (2008).

against tax increases, which raises the question whether the empirical truth of these theories matters in the political arena. Supply-side theory and other attendant schools of thought might just be convenient rhetorical points. Simple and appealing, the arguments are difficult to overcome in a sound-bite political debate. But if the benefits of low taxes to the economy are only minimal or unproven, why support them with such enthusiasm? To answer this question, it is important to look at the electoral history of the Republican Party as well as other factors in the political debate.

3.2.1. Electoral history

The Republican Party was not always as eager to cut taxes as it is today. In 1953 Republican President Dwight D. Eisenhower argued against tax cuts for the sake of fiscal responsibility, stating, "we cannot afford to reduce taxes…until we have in sight a program of expenditures that shows that the factors of income and of outgo will be balanced." (Marotta 2010) Eisenhower's stance speaks to the Republican Party's past commitment to fiscal responsibility, even ahead of cutting taxes. After a time, however, the Republicans found that their commitment to balanced budgets earned them little success at the ballot box. As Republican influence reached its nadir in the mid-1970s following the politically damaging Watergate events of the Nixon Administration, a group of conservative thinkers began to formulate a new political strategy, one built on tax cuts instead of balanced budgets (Berman 1998, p. 48).

In response to concerns over the Republican Party's electoral viability, conservative commentator Jude Wanniski (1976) formulated his "two-Santa Claus" theory, which asserted that if Democrats were offering one kind of gift to voters through spending on popular programs, then Republicans had to offer another kind of gift in the form of tax cuts. Simply being the party of fiscal discipline—playing Scrooge, as Wanniski called it—would not work. Wanniski's theory nevertheless ran into resistance from deficit hawks, who worried about the budget implications of tax cuts. However, supply-side economics, the Laffer curve, and starve-the-beast theory helped to disguise the deficit ramifications of their tax policies (Frankel 2008).

Over the past thirty years, a number of elections have shown the political benefits of the two-Santa Claus theory, rewarding Republicans for reducing taxes and further wedding the party to the issue. The success of Proposition 13, a 1978 California ballot initiative that severely limited property taxes in that state, proved the electoral viability of the low-tax issue in the mind of Republicans. Next, President Reagan won two sweeping elections in 1980 and 1984 on a platform of tax cuts. In each election he faced specific challenges to his tax policy, from George H.W. Bush (later the first President Bush) in the 1980 Republican primary and Walter Mondale in the 1984 general election, yet still prevailed. This demonstrated the public's apparent appetite for tax cuts and bolstered Republicans' belief in the power of tax cuts at the ballot box (Berman 1998, p. 66, 113).

Even though the Republican Party had adopted tax cuts as a major issue by the end of the 1980s, the transformation was incomplete. Party leaders had not yet adopted the intransigence on tax increases that defines the party today. Throughout the 1980s, President Reagan and congressional Republicans repeatedly agreed to raise various taxes as a part of broader deficit reduction measures.[34] This spirit of compromise began to erode quickly in the early 1990s, as a new generation of conservative Republicans, led by House Minority Whip and conservative firebrand Newt Gingrich, came to power. This group blamed the first President Bush's loss in the 1992 election on a 1990 deficit reduction compromise that raised taxes and broke the President's famous and succinct campaign pledge in 1988: "Read my lips: no new taxes." (Bush 1988) In 1993 Gingrich corralled the entire Republican congressional caucus into voting against President Bill Clinton's tax-raising deficit

[34] Tax increases were part of deficit reduction packages in 1982, 1984 and 1987 (Calmes 2012).

reduction bill. The next year, voters rewarded the Republican Party for this refusal with majorities in both houses of Congress for the first time in fifty years (Berman 1998, p. 166, 175-76). Through these events, the party learned a new lesson: compromise on taxes leads to defeat at the ballot box, stubbornness to victory.

3.2.2. Campaign spending

While such electoral lessons are important to explaining Republican intransigence on tax issues, they are far from the only factors. Over the past thirty years, political contributions have increased dramatically, especially among corporations and wealthy individuals. This shift gives considerable influence to a small group of constituents that stands to gain or lose substantially from changes in tax policy (Hacker and Pierson 2010, p. 118, 199). The increase in political giving has also fueled the growth of a number of think tanks devoted to conservative policies (Berman 1998, p. 67-68). The Supreme Court's *Citizen's United* decision in 2011 further accelerated the flow of money into politics by striking down limits on political contribution from corporations and labor unions.[35] Groups such as the Heritage Foundation and the American Enterprise Institute helped push supply-side economics, the Laffer curve, and starve-the-beast theory into the political mainstream. Other organizations, including Americans for Tax Reform and the Club for Growth, have used the threat of primary challenges, selective donations, and negative press to enforce rigid orthodoxy among Republican politicians on tax issues (Hacker and Pierson 2010, p. 123, 209).

3.2.3. Strong leaders and organizations

Americans for Tax Reform's Grover Norquist, a thirty-year veteran of the fight against taxes, has been especially effective in this realm by designing and promoting the Taxpayer Protection Pledge. A declaration signed by nearly the entire Republican Congressional caucus and a handful of Democrats at the start of the 113th Congress in 2013—39 of the 100 Senators and 219 of the 435 Representatives in total (Americans For Tax Reform 2013b)—the pledge commits signatories to not raise income taxes under any circumstance. Norquist's ultimate goal, which reflects starve-the-beast theory, is to "reduce [government] to the size where I can drag it into the bathroom and drown it in the bathtub." (Norquist 2001). Throughout the thirty-year campaign against higher taxes, Norquist has been the one constant presence. Politicians like Gingrich and President Reagan have had an impact on changing the discussion around taxes, but once changed, Norquist has been largely responsible for maintaining its sharp focus (Blake 2012).

The Tea Party movement, a loose collection of activists, grassroots organizations, and influential benefactors that emerged early in the Obama Administration in response to fears of growing government influence and rising deficits (Formisano 2012, p. 11-14), has also been a force in the debate. The amorphous network, comprised predominantly of Republicans (Abramowitz 2012, p. 204), is committed to the dual goals of shrinking the size of government and lowering taxes (Bailey *et al.* 2012). The Tea Party and its figureheads have had considerable success in Republican primaries, targeting more moderate Republicans and supporting hardline insurgents (Formisano 2012, p. 37-39). They have successfully reduced the influence of the traditional Republican leadership—which is arguably more rational on fiscal matters—while electing candidates especially opposed to compromise, making tax increases even more challenging.[36] The congressional elections in the fall of 2014 will offer a test of whether their influence is gaining or losing force.

[35] Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010). *See generally* Buckley (2013).

[36] Polling indicates that Tea Party members are quite adamant about opposing compromise. Over 80% agree (to some degree) that they should not compromise with political opponents on issues about which they feel strongly (Rapoport *et al.* 2013, p. 32-33).

3.2.4. The Democrats

The tax-aversion theme is not limited to the Republican Party. At risk of oversimplification, several interrelated trends emerge in the Democrats' positions—a willingness to cut taxes despite the Democratic instinct for government spending, a desire to protect middle and lower income taxpayers from tax increases, and recently a movement toward increasing taxes, but only on wealthy individuals. The Democrats have actively participated in cutting taxes. Under Republican administrations, Democrats voted with Republicans to reduce taxes in 1981, 1997, 2001 and 2003, while agreeing to large cuts in government spending along the way (Michelmore 2012, p. 145). President Obama has called for increases in taxes on the wealth (see Part 4.3 *infra*), but he and Democrats in general tend to protect middle and lower income taxpayers from tax increases and have supported increased tax cuts directed at the middle class and lower classes (*e.g.* Democratic National Platform 2012).[37] President Obama has often displayed his aversion to higher tax burdens for most Americans. For example, in the midst of 2012 fiscal negotiations to prevent an imminent automatic tax increase, he stated (as quoted in Kimm (2012)):

> For the last few days, leaders in both parties have been working toward an agreement that will prevent a middle-class tax hike from hitting 98 percent of all Americans starting tomorrow. Preventing that tax hike has been my top priority, because the last thing folks…can afford right now is to pay an extra $2,000 in taxes.

President Obama understandably is constrained by a weak economy and the need to keep rates low in order to avoid dampening the recovery, but his statement projects Democrats' general unease regarding tax increases for anyone but the very wealthy.

The issue of the level of taxes is inevitably tied to positions on government spending—lower spending (a less generous Santa) may reduce the demand for tax revenue. Democratic fiscal discipline was particularly pronounced under the Clinton administration in the 1990s, when President Clinton curbed spending and balanced the budget (Berman 1998, p. 146). Democrats and President Obama have called for increasing public investments (e.g. Democratic National Platform 2012), but as suggested above, raising taxes on the general population is not visibly on the Democrats' agenda.

Together these factors influencing both Republicans and Democrats have contributed to the current political toxicity of taxes. Many economic arguments with differing levels of validity remain viable enough to provide ideological cover to Republicans intent on lowering taxes and keeping them low. They are motivated in this quest by a combination of self-interest and outside pressure that keeps the issue seemingly intractable, while Democrats have their own interests in low tax burdens as well. If the federal government needs new tax revenue, breaking the logjam will require a mixture of finesse and brawn as discussed in the next section.[38]

Part 4: Glimmers of hope

The preceding pages paint a somewhat discouraging picture of attitudes toward taxation. Taxes serve as the primary source of revenue that funds government's

[37] Unlike the Republican supply-side tax cuts, the Democratic tax cuts are based on demand-side efforts to stimulate consumer activity. For analyses of specific demand-oriented tax cuts, see Steindel (2001, p. 5), (Shapiro and Slemrod (2001, p. 31-33), Congressional Budget Office (2012b, p. 4), and Eggertsson (2011, p. 38).

[38] Unlike the Republican supply-side tax cuts, the Democratic tax cuts are based on demand-side efforts to stimulate consumer activity. For analyses of specific demand-oriented tax cuts, see Steindel (2001, p. 5), (Shapiro and Slemrod (2001, p. 31-33), Congressional Budget Office (2012b, p. 4), and Eggertsson (2011, p. 38).

spending function, but higher taxes face numerous barriers: a lack of trust in government; expectations of lower, not higher taxes; the lack of visible benefits; the desire to shrink, not build, government; and the political risks of voting for tax increases. Taxes can address income inequality and further government's distribution function, but the public has a relatively weak appetite for using taxes to redistribute income and wealth; campaign finance rules may allow deeper pockets to have a greater say in the debate; and again the electoral risks of voting for taxes are high. A central part of the tax debate is the effect of taxation on the economy, cutting to the heart of taxation's role in furthering the economic stabilization function. Supply-siders argue for lower tax rates, especially on higher income levels and on capital investment; demand-siders seek more consumer-oriented adjustments to increase the progressivity of the tax code. Conservatives think that starving the beast will build a stronger economy; liberals seek to build a stronger safety net for those vulnerable to the economy and more spending to stimulate the economy, both of which require more tax revenue, not less. Table 3 contains a summary of barriers to higher taxes and their relationship to government functions.

Although popular opinion is not aggressively demanding tax increases and conservative political forces adamantly oppose them, the landscape is not devoid of hope for the possibility of new taxes or increases in existing taxes. The following pages focus on the potential role of the law in overcoming barriers that seem to lie in the way of increasing taxes. The law offers opportunities to reduce taxation's toxicity, disguise its toxicity and to force acceptance of higher tax burdens. However, opportunities that relate to the law, such as the design of taxes, legislative procedures, and the choice of the level of government at which taxes are imposed, cannot be divorced from the political setting within which the law operates.

Table 3: Summary of Barriers, Opportunities and Their Relationship to Government Functions

Function	Role of tax	Barriers	Opportunities related to law and taxation	Other considerations
Allocation (such as spending for social goods)	Source of revenue	Lack of trust	Remember state tax alternatives	Long term political resolution by all parties
		Low tax expectations (and middle-income protection)	New tax bases Force issue with deficit, budget rules Use complexity	
		Lack of direct benefit	Emphasize linkage Remember state tax alternative	
		Starve the beast (low taxes) versus higher spending and higher taxes	Force issue with deficit, budget rules	Political resolution
		Electoral risk of tax increases	Build on momentum to design progressive taxes New tax bases Use complexity	
		Campaign finance rules		Non-tax legal solution (beyond this article's scope)
Distribution of income and wealth	Choice of tax and design of tax	Weak appetite for redistribution	Build on momentum to design progressive taxes Use complexity	
		Electoral risk of tax increases	Force issue with deficit, budget rules	
		Campaign finance rules		Non-tax legal solution
Economic stabilization	Design and amount of tax	Supply-side versus demand-side debate (design and amount of tax) Starve the beast (amount of tax)	Force issue with deficit, budget rules	Political resolution
		Campaign finance rules		Non-tax legal solution

4.1. The current state of political play

Part 3 identified political factors that shape attitudes toward taxation over the course of the past three decades, but important political events in 2012 and 2013, examined in this section, particularly set the context for considering future opportunities to reduce taxation's toxicity. Tax issues have been highly visible but not yet resolved. The standoff between Republicans and Democrats remains.

Much of the 2012 presidential election focused on the debate over tax policy. In the first of the three national presidential debates between President Obama and Republican presidential candidate Mitt Romney in October 2012, taxation dominated the 90-minute debate; "tax" or "taxes" were mentioned 108 times (see CBS News 2012). President Obama campaigned hard for progressive tax reform, while Romney fought the notion on the grounds that tax increases would hurt the economy—essentially a debate over redistribution versus supply-side stabilization. After an unusually partisan campaign (Jacobson 2013), President Obama won reelection, taking 51.1% of the popular vote and scoring 332 out of 538 the Electoral College votes (Zeleny and Rutenberg 2012). It seemed that the Democratic Party's call for increased progressivity through higher taxes on the wealthy had carried the day.[39] Exit polls showed that six in ten voters believed that taxes should increase for those earning more than $250,000 a year (Schultheis 2012).

The issue of progressivity then met its road test with the negotiations over the "fiscal cliff."[40] A fiscal cliff of spending cuts loomed due to an agreement that Congress and the President reached in August 2011 in the face of the need to raise the federal debt limit.[41] The agreement mandated a slew of automatic spending cuts (or "sequestration") on January 1, 2013 if budget negotiations did not reach a successful conclusion by that date.[42] Tax increases also would automatically go into effect the same day with the expiration of the Bush tax cuts, which by design remained in effect for only ten years,[43] along with the expiration of the payroll tax holiday.[44]

The political momentum for increased taxes on the wealthy helped lead to the fiscal cliff deal reached between Congress and the White House at the last possible moment—on January 1, 2013. The agreement postponed the automatic sequestration budget cuts until March 1, 2013.[45] It spared the majority of Americans from the tax increases that would have come with the expiration of the Bush tax cuts, but it allowed the top marginal income tax rate to return to 39.6% for those earning more than $450,000 a year.[46]

[39] For an interesting discussion of public attitudes toward the income inequality issue and the increased tax issue during the campaign, see Bartels (2013). Bartels concludes that the perception that Romney cared more about the wealthy than the poor was a more important factor in the election than positions on taxes.
[40] Federal Reserve Chairman Ben Bernanke (2012) coined the term "fiscal cliff" when he warned in early 2012: "Under current law, on January 1, 2013, there is going to be a massive fiscal cliff of large spending cuts and tax increases. I hope that Congress will look at that and figure out ways to achieve the same long-term fiscal improvements without having it all happen one day."
[41] For a discussion of the debt limit issues, see text at footnote 72 *infra*.
[42] *Budget Control Act* of 2011, § 101(b), Pub. L. No. 112-25.
[43] *Economic Growth and Tax Relief Reconciliation* Act of 2001, § 901(c), Pub. L. No. 107-16. In 2010 the tax cuts were extended temporarily until 2012. Tax Relief Unemployment Insurance Reauthorization, and Job Creation Act of 2010, § 101(a), Pub. L. No. 111-312.
[44] *American Recovery and Reinvestment* Act of 2009, § 1001(a), Pub. L. No. 111-5. The payroll tax holiday was extended in 2010 and 2011, before expiring at the end of 2012. Tax Relief Unemployment Insurance Reauthorization, and Job Creation Act of 2010, § 601(a), Pub. L. No. 111-312; Temporary Extension of the Payroll Tax Cut Continuation Act of 2011, Pub. L. No. 112-78.
[45] *American Taxpayer Relief* Act of 2012, § 901(c), Pub. L. No. 112-240.
[46] *Id.* § 101(b). The top marginal rate had dropped to 35% as a result of the Bush tax cuts. Despite the political momentum, it was not easy for President Obama to raise the tax rate (Bartels 2013).

While there was some optimism that the last minute agreement on tax rates would pave the way for more compromise in President Obama's second term, little has since been accomplished on the tax front. When the automatic spending cuts were set to go into effect on March 1, 2013, President Obama sought to engage the Republicans in negotiating a "grand bargain," trading cuts to entitlement programs for further high-end tax increases in effort to dramatically reduce the budget deficit. Those negotiations failed (see Parker 2013, Weisman 2013a, Weisman 2013c), and House Speaker John Boehner said in March 2013, "[t]he president got his tax hikes in January. The talk about raising revenue is over. It's time to deal with the spending problem." (Weisman 2013d) Following a publicly unpopular, Republican-led government shutdown in the fall of 2013 that brought the US to the brink of a sovereign debt crisis (Weisman and Parker 2013), a budget agreement in late 2013 again showed some spirit of compromise in the Capitol, but left tax rates untouched.[47] As of mid-2014, the spending cuts from sequestration remained in place. President Obama continued to press for a compromise involving some progressive tax increases (Executive Office of the President 2014a, p. 7), and there was some renewed discussion of fundamental tax reform on the Republican side,[48] but leaders from both parties showed little interest in pressing a tax agenda before the 2014 midterm election.

Although procedurally convoluted, this history captures the way in which political positions explored in Part 3 hardened from late 2012 into 2014. After the tax increases in the fiscal cliff agreement, Republican leadership focused on spending cuts, not taxes. Democratic leadership sought to find some combination of the two. For both parties, the deficit is a significant driving force but precipitates different policy responses from each party. Even still, few in Congress seemed ready to tackle controversial issues like possible tax increases ahead of the midterm elections in November 2014.

Against the background of the current context, the following discussion considers whether there are glimmers of hope for overcoming the barriers identified in Parts 2 and 3, with a particular eye toward finding legally related opportunities for overcoming taxation's toxicity. First, however, it is useful to identify barriers that are inherently political in nature and must be accepted as such.

4.2. The raw power battle—politics, not law

To a significant extent, the raw political battle will determine the future role of taxation. As illustrated above, political parties differ on whether to reduce taxes or to increase spending, whether taxes should serve a supply-side or demand-side role, and who should bear the tax burden. The resolution of these politically charged issues will depend in large part on the relative strength or weakness of the individuals in the key positions of leadership, the ranking of these issues against others that are on the political agenda (such as gun control or immigration reform), and whether a split in party power between the White House and Congress or within the chambers of Congress generates gridlock.[49] In the 2013-2014 term of Congress, power was divided, with Republicans controlling the House of Representatives and Democrats controlling the Senate and the White House, but elections can change this result, giving one party greater sway. Some of these considerations link to legal questions, such as campaign finance rules and rules governing the boundaries of voting districts (Jacobson 2013), topics largely beyond

[47] Bipartisan Budget Act of 2013, § 5, Pub. L. No. 113-67.

[48] Republican David Camp, chairman of the House Ways and Means Committee released a revenue-neutral tax reform proposal that would lower personal and corporate taxes while eliminating various loopholes, deductions, and credits. Although not a measure designed to increase rates or even revenue, the measure could add progressivity to the tax code and force some higher earners to pay more (Weisman 2014).

[49] For a discussion of the correlation between tax increases and control of the White House and Congress, see Foster (2013) and Jacobson (2013).

the scope of this article,[50] but these political considerations in essence reflect the marrow of the political beast at work in Washington. As a result, Table 3 consigns these factors to the arena of political resolution.

The political debate over the role of taxation in the functions of government inevitably involves the public, even if public positions do not translate perfectly into politicians' positions in the corridors of power. As suggested in Part 2, public trust in government may affect the willingness to support the functions of government and increased tax burdens. Here again, politics will determine whether Washington can gain sufficient trust to engender public support for an increased level of investment through their taxes: Will the general public trust politicians with this tax-raising power? The events and culture of politics will answer that question, not the law.

4.3. A stronger focus on progressive tax design

The public debate in popular and political circles currently is focusing more on progressivity than it has for many decades, creating a glimmer of opportunity for redistribution through marginal income tax rate increases for high-income individuals. The law will play a role in effecting any such changes through revisions in the technical, legal design of the tax code's income tax provisions.

This increased attention to progressivity is the result of several interrelated forces. Spurred by the outrages of the recession, the indignation of the Occupy Wall Street movement blew air on coals that had been smoldering and ignited a more intense discussion of income inequality and the extent to which the top 1% are paying their fair share of taxes. It spotlighted income inequities and the income-and-wealth distribution function of government and taxes (Bartels 2013, p. 4).

Billionaire investor Warren Buffett then put an especially sharp, public point on the issue of taxes and income disparity when he started arguing in 2011 that his employees should not pay tax at a higher effective tax rate than he does, pointing primarily to the fact that he can take advantage of the 15% capital gains tax rate (Buffett 2011). He proposed that wealthy Americans should pay at least 30% of their income in taxes (Weisman 2012).[51] As promised during the 2012 presidential campaign (Obama 2012), the re-elected Obama Administration pressed for increased progressivity and endorsed the Buffett proposal (Obama 2013b). The linkage between tax and equity (in the fairness sense of the word) became embodied in a succinct and powerful term—the "Buffett Rule"—and was reinforced by the picture of Buffett's secretary sitting beside the First Lady when President Obama delivered the 2013 State of the Union address (Caldwell 2013).

Congress has not passed the Buffett tax, but President Obama's budget proposal for the fiscal year 2015 pressed for it under the name "Fair Share Tax" (Executive Office of the President 2014b, p. 162). Phased in for taxpayers with incomes over $1 million and fully in force for those with incomes over $2 million, the tax would ensure that taxpayers pay 30% of their adjusted gross income in federal income taxes. Although the current top marginal tax rate in the progressive, multiple-bracket rate structure is 39.6%,[52] many taxpayers can substantially reduce their tax liability through deductions and tax credits, significantly lowering their effective tax rate (see Part 1). Subject to some minor exceptions, the proposal would ensure

[50] Campaign finance can play a significant role in both the battle for congressional seats and the White House and the battle for public trust. The law governing campaign finance is complex and, as noted in Part 3, the rules shape elections and perceptions. Campaign finance reform, however, warrants an unto itself, so this article notes its significance but does not pursue this avenue. This article focuses on legally related opportunities that are tied more closely and uniquely to the tax arena, not those that are important but affect a wide range of political and policy issues.

[51] Buffett proposed that people with income over $1 million should pay at least a 30% effective tax rate, whereas data shows that 22,000 households earning more than $1 million paid less than 15% in 2009, and one-third of the 400 highest income Americans paid less than 15% in 2008 (National Economic Council 2012).

[52] 26 U.S.C. § 1.

that taxpayers generally cannot use otherwise available deductions and tax credits to reduce their tax liability below the 30% level (Executive Office of the President 2014b, p. 162). The budget also proposed limiting the value of itemized deductions for taxpayers in the top three tax brackets.[53] By contrast, the budget plan in the Republican-controlled House of Representatives called for only two marginal tax brackets—10% and 25% (Committee on the Budget 2014, p. 82-84). It suggested simplifying the tax code but did not indicate the extent to which it would eliminate tax deductions and credits, with the result that the effective rates might be even lower than 10% and 25%.

As indicated above, President Obama won one skirmish in the battle over progressivity and redistribution when the budget negotiations over the "fiscal cliff" resulted in reinstatement of the 36.9% top marginal rate.[54] Budget negotiations over the coming years will determine whether further tax increases at the upper-income levels such as the Buffett tax are possible. The public seems somewhat supportive. In 2011, 57% of Americans believed that the wealthy do not pay their fair share in taxes (up from 51% in 2003) (Pew Research Center 2013b). In April 2013, 59% indicated that the wealth and income should be more fairly distributed, and 52% thought that the government should do so with heavy taxes on the rich (Newport 2013b). Even if the Republican anti-tax posture holds firm in the short term, the recent years' attention to increased progressivity may fuel continued debate about income equality in the long term. It is difficult to conceive of a presidential campaign in 2016 that does not incorporate positions on this question, but even upper-income tax increases will not fully address the country's need for new revenue to meet its needs.

4.4. Disguise the tax increases

Although calls for simplifying the tax code are constant from both sides of the political aisle, legal complexity in the structure of the tax code may disguise the level of tax burden, dilute the political volatility of tax increases and improve the chance of raising taxes, whether for the purpose of enhancing the government's spending power or increasing the redistribution function of the tax code. This approach draws on a variant of the fiscal illusion theory sometimes referred to as fiscal obfuscation (Sanandaji and Wallace 2011).

Recent history demonstrates the success of the complexity approach and how it can create a more progressive tax code without explicitly raising marginal tax rates. For example, tax legislation in 1990 and 2013 included provisions that served as back-door rate increases. They phased out certain types of income tax deductions for higher income taxpayers, raising the effective tax rate for those taxpayers without adjusting their marginal tax rate.[55] In addition, the 2010 federal Affordable Care Act, a multifaceted federal law designed to reform health insurance coverage, included an increase in taxes on investment for higher income individuals.[56] The

[53] Under the proposal, taxpayers in the 33%, 35% and 39.6% tax brackets would apply a 28% tax bracket to their itemized deductions. As a result if a taxpayer were in the 39.6% bracket, for example, $1 of deduction would be worth only $0.28 in tax savings, rather than $0.396 cents.

[54] American Taxpayer Relief Act of 2012, § 101, Pub. L. 112-240 (amending 26 U.S.C. § 1).

[55] Omnibus Reconciliation Act of 1990, § 11103, Pub. L. 101-508 (adding 26 U.S.C. §68); American Taxpayer Relief Act of 2012, §101, Pub. L. 112-240 (amending 26 U.S.C. §68). The 1990 legislation reduced high-income taxpayers' itemized income tax deductions by 3% for married taxpayers with adjusted gross income over $300,000 and single taxpayers over $250,000. Thus, for taxpayers in the then-highest 35% marginal tax bracket, the loss of deductions translated into about a one point increase in the effective marginal tax rate, from 35% to 36.05%. *See* Hungerford (2013). This limitation, which was phased out during the Bush tax cuts, was reinstated by the American Taxpayers Relief Act of 2012. The personal exemptions for high-income taxpayers also are reduced, again effectively raising the top marginal tax rate. *Id.* at 758.

[56] Health Care and Education Reconciliation Act of 2010, § 1402(a)(1), Pub. L. 111-152 (adding the tax code by 26 U.S.C. § 1411). Investment income from interest, dividends, annuities, royalties, rent and dispositions of property is subject to a 3.8% income tax for taxpayers with income over $250,000 (if married and filing jointly) or $200,000 (if single). If the amount of a taxpayer's income over the

political merits of national health care reform dominated the policy debate, and the details of the tax changes that helped pay for the reform were largely secondary in the public discourse.

The repeal of tax subsidies can also operate as an indirect means of raising rates for sectors that otherwise would benefit from the subsidies. For example, as part of emergency legislation in the early days of the recession, Congress reduced some oil and gas subsidies in order to pay for green job initiatives.[57] In 2013, President Obama proposed to repeal other tax subsidies for fossil fuels (Executive Office of the President 2013b, p. 189, 191).[58]

In sum, efforts to raise taxes for spending or redistribution purposes that focus just on the marginal income tax rates are often a highly visible magnet for controversy, but other lower visibility approaches embedded in more complex legislation may yield new revenue and redistribution at a lower political price. This approach runs counter to the constant drumbeat of tax simplification, but as experience has shown, it may offer a more realistic approach to success.[59]

4.5. Use the art of budgetry to force the issues

A key component of the fiscal machine, taxation is inevitably tied into the larger budgetary picture, which determines how much the government will spend and for which purposes. The budget also determines the extent to which deficit financing will support these purposes. Pressure to reduce deficits, and therefore future debt, will result in either reduced spending or increased taxes—or some combination of the two. Hence, the need to address deficits can play a key role in creating opportunities for overcoming resistance to taxes, as can the legal rules governing budget processes. The budget is the battleground on which the battles over small versus large government, starve the beast, supply-side economics, and income redistribution are fought, and the budget procedures provide the rules of battle.

Deficits have consistently been a force both in the creation of new taxes and in increasing existing taxes. All the major federal tax expansions took place during times of rising deficits. Although these often occurred during periods of war (see Tax Foundation 2013), deficits also drove tax increases at other times. Former Reagan economics advisor Bruce Bartlett (2009a) called a round of tax increases in the early 1980s "the largest peacetime tax increase in American history," resulting from a roll-back of some tax expenditures in 1981 tax-cutting legislation and the addition of enforcement and reporting-related provisions. Similar concerns about deficits inspired tax increases in 1990 and 1993.[60]

Even when economists agree that deficits have to be reduced by tax increases or spending reductions, politicians are also motivated to put off those politically painful realities for as long as possible (Hubbard 2012, p. 224). Technical legal budget rules can create a discipline that forces the issues. Over the years, Congress has adopted budgetary rules meant to control new spending and tax cuts and thus keep the deficit manageable. Inspired by general concern over the deficit, some of these can potentially create opportunities for new tax revenues, as they have in the past.

$250,000 or $200,000 threshold is less than the amount of investment income, then only the income over the threshold is subject to the 3.8% tax. 26 U.S.C. § 1411.

[57] Emergency Economic Stabilization Act of 2008, Div. B §§ 210, 401, 402, Pub. L. 110-343 (amending 26 U.S.C. §§ 199, 613A, 907).

[58] Note, however, that the repeal of tax benefits, estimated to generate $44 billion in new revenue over a 10-year period, would still violate the Taxpayer Protection Pledge cited at the start of this article unless tax rates are commensurately reduced.

[59] As a corollary, policymakers can also look at ways to achieve redistribution through non-tax means, such as pressing for an increase in the federal minimum wage, thereby bypassing the politics of taxation.

[60] Omnibus Reconciliation Act of 1990, Pub. L. 101-508, Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66.

Pay-As-You-Go (PAYGO) rules require Congress to pay for any new discretionary spending programs or tax cuts with offsetting spending cuts or tax increases, thus keeping the deficit in check. The first PAYGO rule, part of the Budget Enforcement Act of 1990,[61] resulted from the 1990 budget compromise, and was meant to keep Congress from straying from its deficit reduction goals. It was largely successful in doing so until 1998, when surpluses appeared and concern over the deficit faded. Congress began to rely on a provision in the Act allowing legislation to circumvent the requirements in the event of an emergency—legislators were allowed to use their discretion to determine what was, in fact, an emergency, and did so liberally after 1998. The rule expired in 2002 at the end of its 11-year statutory life, but a permanent statutory Pay-As-You-Go Act became law in 2010.[62] PAYGO rules, when enforced through sequestration,[63] can create momentum for new revenues to fund an expansion in discretionary spending, but given current calls to reduce spending, they at a minimum help to prevent new tax cuts.

A different but related form of budget constraint, the Byrd Rule, allows Senators to block bills passing through the budget reconciliation process if they raise the deficit beyond a ten-year period.[64] Named for late West Virginia Senator Robert Byrd, this Senate budgetary rule created the opportunity for a tax increase of sorts. In order to avoid the Byrd Rule, the Bush tax cuts of 2001 contained a 10-year sunset provision.[65] Although temporarily extended in 2011 to the end of 2012,[66] this expiration date brought tax issues directly into the 2012 fiscal cliff debate. To avoid letting taxes go up for all Americans after the end of the year, Republicans eventually agreed to the tax increase for high-income taxpayers described at the beginning of this Part (Keith 2010). Thus, the Byrd Rule at least prevents some tax cuts from becoming permanent and can create a window for rolling back rate reductions.[67]

Sequestration mechanisms could also create the opportunity for tax increases, and may have helped to push tax increases forward in 1990 and 1993. The Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Control Act of 1985[68] mandated specific deficit reduction targets over a period of five years. If those targets were not met, drastic and painful cuts to discretionary spending—sequestration—would automatically go into effect. Finding it difficult to meet those targets, Congress resorted to numerous accounting devices to adjust the numbers and even pushed back the timeline to 1993 (Jacobson 1993). The issue came to a head in 1990, as the public grew frustrated with gridlock in the Capitol and worried about the ballooning deficit (Berman 1998, p. 150). Congress eventually passed two rounds of deficit reduction measures in 1990 and 1993.[69] Each contained a mix of tax increases and spending cuts and each achieved an estimated $500 billion in deficit reduction over five years (Congressional Budget Office 1998). The most recent sequester, which went into effect on March 1, 2013 as a result of the 2011 debt-ceiling crisis (discussed below),[70] has so far failed to force a compromise on

[61] Budget Enforcement Act of 1990, § 13101(a), Pub. L. No. 99-177 (codified as 2 U.S.C. § 900). See generally Penner and Steurle (2007).

[62] Statutory Pay-As-You-Go Act of 2010, § 5, Pub. L. No. 111-139. 2 U.S.C. § 934.

[63] If Congress fails to pay for any new spending or tax cuts with attendant spending cuts, discretionary spending will automatically be sequestered in a manner specified by the law.

[64] 2 U.S.C. § 644.

[65] Economic Growth and Tax Relief Reconciliation Act of 2001, § 901(c) Pub. L. No. 107-16. 26 U.S.C. § 1.

[66] Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, § 101 Pub. L. No. 111-312. 26 U.S.C. § 1.

[67] The Byrd Rule might also encourage tax increases in situations where Congress has a strong desire to increase spending. Congress would need to find new revenue, through tax increases or spending cuts, to avoid application of the rule.

[68] Balanced Budget and Emergency Deficit Control Act of 1985. § 250 Pub. L. No. 99-177. 2 U.S.C. § 900.

[69] Omnibus Reconciliation Act of 1990, Pub. L. 101-508, Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66.

[70] Budget Control Act of 2011, § 101(b), Pub. L. No. 112-25.

taxes.[71] Thus, sequestration has been a factor in tax increases of the past. Although its current effectiveness has yet to be seen, it remains an arrow in the tax-forcing quiver.

Finally, legal procedures surrounding the national debt come into play. By statute, Congress must vote to raise the level of national debt when it approaches a previously established level.[72] Although often a routine procedural vote authorizing the Treasury to borrow funds to pay bills already incurred by Congress, the debt-ceiling vote was weaponized by the Republicans in the summer of 2011. Congressional Republicans refused to raise the debt ceiling without spending cuts and in doing so brought the country not only to the brink of a catastrophic default but also close to a "grand bargain" of deficit reduction that would have included both spending cuts and tax increases (Bai 2012). The grand bargain fell apart over tax issues (Bai 2012), leaving sequestration in its place as a measure meant to precipitate an eventual compromise. That compromise has not yet materialized even though cuts under the sequester began on March 1, 2013.

Since the debt ceiling crisis of 2011, the debt ceiling has been raised a number of times. The Republican caucus allowed a last minute increase of the debt ceiling in February 2013 with relatively symbolic concessions from the Democrats.[73] They did so again in October 2013 as a part of a broader Republican retreat in the aftermath of the politically disastrous government shutdown that fall.[74] Congress most recently lifted the debt ceiling in February 2014, this time until March 2015, well after the midterm congressional elections in November 2014.[75] Thus, for the moment Republicans seemed to have tempered their demands not to raise the debt ceiling—yielding just enough votes to raise the debt ceiling each time while forcing Democrats to produce most of the votes (Weisman and Parker 2014), but some speculate that they stood down only temporarily in order to appeal to more centrist voters in the run up to the midterm elections in November 2014 (Weisman and Parker 2014). It is difficult to predict what the next attempt to raise the debt ceiling will bring in terms of demands and negotiations around the budget and taxes. Nevertheless, the debt ceiling has, on one occasion in 2011, brought the nation close to a compromise that would have included new taxes. It might create such an opportunity again.

While budget rules might create some opportunities for tax increases, the driving force behind those rules—and thus opportunities for new revenues—has traditionally been concern over the deficit. Although the political arena will ultimately determine what measures the country will take to address the deficit and debt, the budget rules are very effective in at least forcing the debate.

[71] Beyond the pain of the current cuts, the sequestration legislation contains no other mechanisms for forcing a budget deal and has no expiration date. The debt ceiling compromise also created the United States Congress Joint Select Committee on Deficit Reduction, or the 'super-committee" as it was generally called. The Committee, made up of Democrats and Republicans from both houses of Congress, was tasked with negotiating a compromise to avert sequestration and reduce the deficit. It failed to do so by the established deadline (Steinhauer 2011). That failure echoed earlier bipartisan attempts at compromise. Coming slightly closer to a long-term deficit compromise was the National Commission on Fiscal Responsibility, more popularly known as the "Simpson-Bowles Commission." The Commission, made up of both presidential appointees and a bipartisan congressional contingent, created a multifaceted deficit reduction proposal, which included both tax increases and entitlement reforms. Although a majority of members supported it, including equal numbers from both parties, it failed to garner enough support to advance to Congress (Dennis 2010). In both negotiations, tax increases were a key sticking point.

[72] 31 U.S.C. § 3101.

[73] No Budget, No Pay Act of 2013, Pub. L. No. 113-3 (amending 31 U.S.C. § 3101(b)).

[74] Continuing Appropriations Act, 2014, Pub. L. No. 113-46.

[75] Temporary Debt Limit Extension Act, Pub. L. No. 113-83.

4.6. Explore new tax bases

Much of the current political debate about tax increases has focused on whether to raise the top marginal tax rates on income and capital gains, issues that relate directly to revenue generation, income disparity, and economic implications of tax increases. As indicated above, the parties have assumed clearly identified and quite entrenched positions. An alternative is to use budget negotiations and tax reform discussions to explore other tax options that might overcome some of the causes of taxation's toxicity.

In the search for new revenue, the alternative of raising the income tax rates for middle-income taxpayers may warrant serious consideration in the long term but be difficult in the short term. The top 10% paid 78% of the revenues collected from the federal income tax on individuals in 2009, up from 48% in 1979 (Congressional Budget Office 2012a). This raises a genuine long-term question about the extent to which raising taxes only on the top income levels can adequately address the needs for deficit reduction and spending.[76] The desire to protect the middle class, however, has echoed consistently through political debates about tax burdens, and during the years of a recovering economy, it may be very difficult to increase the marginal tax rates for the middle class.

As a shorter-term alternative, policymakers could step outside the clearly drawn battle lines that exist in the realm of individual income taxes and consider other tax bases, such as consumption taxes—an idea by no means novel to this article. The federal government currently employs very limited consumption taxes (only 3% of tax revenues) (Joint Committee on Taxation 2010, Table 12), primarily in the form of gasoline taxes at the low rate of $0.184 per gallon of gasoline.[77] With its heavy reliance on income taxes (individual and corporate) and payroll taxes,[78] it has constrained its tax base by not pursuing consumption taxes more aggressively. It may be time to start considering this option as a means to raise new revenue, not just to shift the source of existing tax revenues from one form of tax to another. Some suggest that taxpayers are less resistant to consumption taxes than direct taxes on income, calling this phenomenon the "fiscal illusion" (Sanandaji and Wallace 2011). If so, they may offer promise.[79]

Consumption taxes that could be considered can take various forms, such as a value added tax (VAT) (see, *e.g.*, Strain and Viard 2013). It is also worthwhile to consider targeted consumption taxes, such as carbon taxes. Although very controversial in the United States, they can offer a substantial source of new revenue. The Congressional Budget Office estimated in 2011 that a $20 price on each ton of carbon dioxide emissions would generate an additional $1.2 trillion over the next decade (Marron and Toder 2013, p. 6). A carbon tax also introduces a new issue into the debate—the need to address climate change and its impacts. The tax itself would act in a regulatory capacity, furthering government's interest in protecting the public welfare, but its economic incentives also can serve an economic stabilization function by promoting the development of green jobs. The tax revenue could be used for redistribution, spending programs, and economic

[76] President Obama's "Fair Share Tax" on incomes over $1 million would raise $70 billion over 10 years and the proposed reduction in itemized deductions for people with incomes over $250,000 (married) or $200,000 (single) would raise $490 billion over 10 years (Joint Committee on Taxation 2013, p. 11). The Congressional Budget Office, however, projects total revenues for that 10-year period at $41.3 trillion, which means that these tax increases represent only 1.35% of the total revenues (Congressional Budget Office 2013b). See Stark and Zolt (2013) for a very useful discussion of the allocation of tax burdens and the implications for the middle class and Strain and Viard (2013) for a discussion of limits on raising revenue from the highest income taxpayers.

[77] 26 U.S.C. § 4081.

[78] For example, in 2009, individual income taxes represented 43.5% of federal tax revenue, corporate income taxes 6.6%, and employment taxes 42.3% (Joint Committee on Taxation 2010, Table 12).

[79] Some highly salient indirect taxes, such as the gas tax, may nonetheless have difficulty flying under the public radar. The Reason Rupe Public Opinion Survey (2011) showed that 77% of Americans oppose increasing the gas tax, while 58% favor a toll system instead.

stabilization (such as transition assistance for industry or deficit reduction).[80] Interestingly, a carbon tax is gaining some support from conservative corners (Laffer and Inglis 2008, Porter 2013)—including Laffer, the conservative economist—suggesting that it offers the possibility of some common ground between Democrats and Republicans in the search for new revenue. A survey conducted in late 2012 found that 56% of the respondents approved of a carbon tax as one option for reducing the deficit, placing it in the middle of the range of ten options in terms of popularity; two-thirds were Democrats and one-third were Republicans (Listokin *et al*. 2013). One might also consider starting with a small carbon tax used to fund assistance after major storms and adaptation for areas prone to the impacts of climate change, combining the benefits of dedicating revenue (as explored below) with the introduction of a new tax.

While new tax bases offer political opportunities to preserve or expand government's spending power, they may come at the price of reducing the distribution function of the tax code. Consumption taxes tend to be more regressive in nature if they are not linked to the taxpayers' ability to pay. As a result, policymakers will need to consider how to balance the government's desire for new revenue to further its allocation function against its distribution function.

4.7. Emphasize the linkage between taxes and benefit

Policymakers may have the opportunity to increase the acceptance of tax increases by building on the popular desire to see a direct linkage between tax dollars and the benefit of the resulting spending programs under government's allocation function. As indicated in Part 2, the public may be more skeptical of taxes that support general governmental purposes or purposes without a direct linkage to personal benefit. Conversely, the dedication of a tax's revenues to a specific purpose can increase public acceptance of the tax, particularly as voters become more cynical about government.[81] Although public finance literature traditionally has discouraged legally binding earmarking of tax revenues because it reduces government's budgetary flexibility, earmarking has its political advantages.[82]

American taxpayers have shown a relative degree of enthusiasm for taxes that are earmarked to specific purposes, such as Social Security taxes.[83] For example, in 1979 the public viewed these taxes as more "fair" than federal or state income taxes, sales taxes, and property taxes.[84] Public attitudes toward Social Security taxes have remained relatively positive since then. In 2003, almost 25 years later, the public thought that Social Security taxes and state income taxes were more fair (or less unfair) than federal income taxes and the local property tax.[85] More recently, a majority initially opposed the Obama Administration's 2010 proposal for a "payroll tax holiday" that cut employees' Social Security taxes by 2%, from 6.2%

[80] *See, e.g.,* Climate Protection Act of 2013, US Senate Bill 332 (introduced Feb. 14, 2013, but not yet enacted).

[81] Bogart (2011, p. 30) discusses earmarking revenue from alcohol taxes, and Brett and Keen (2000) and Kallbekken and Aasen (2010) discuss earmarking environmental taxes.

[82] For a review of earmarking literature in general (and as applied to environmental taxes), see Soares (2012).

[83] Laursen (2012, p. 414-415) presents 1995 polling data that found that 71% of respondents thought Social Security taxes were "very fair" or "moderately fair," the same result as ten years prior, and 1999 survey data that found that 71% would favor increasing Social Security taxes and lowering benefits to strengthen Social Security. The Social Security tax burden is significant, with one-quarter of the households paying more in Social Security taxes than income taxes (Fisher 2005, p. 35).

[84] Hansen (1983, p. 183) presents a CBS/New York Times poll in which Social Security taxes ranked most fair by 24%, leading sales taxes (19%), state and federal income taxes (17% and 13% respectively) and property tax (10%). The poll does not directly focus on the benefit linkage.

[85] According to the American Enterprise Institute (2013, p. 19), a Gallup/CNN/USA Today poll showed that the "least fair" taxes were the local property tax (38%), federal income tax (21%), state sales tax (13%) and Social Security and state income taxes (each 11%)).

to 4.2%, despite its being in their short-term interest.[86] When the recession-driven holiday for payroll taxes came to an end on January 1, 2013, Congress did not extend the reduced rates but instead let the tax relief lapse. This decision affected millions of working Americans but did not generate a firestorm of revolt, perhaps because the benefit to taxpayers is more transparent.

Similarly, after the BP oil spill in the Gulf of Mexico in 2010, a small increase in the tax on petroleum moved through Congress with little resistance (Milne 2011). By law, the tax revenue flows into the Oil Spill Liability Trust Fund, which is dedicated to providing emergency relief from oil spills.[87] Again, the tax-benefit linkage was clear, in this case executing the polluter-pays principle.

Even if revenue is not legally earmarked for a given purpose, policymakers can present tax proposals in terms of the specific needs they are meant to address, highlighting the benefit. The information that accompanies a proposal can be extremely valuable in overcoming the difficulty in public understanding of complex tax issues (Hansen 1983, p. 179-82, Kallbekken and Aasen 2010).

This article has concentrated largely on the federal picture, but it is important to remember the role of state governments in protecting the public interest. As indicated above (Part 2), people may hold greater trust in state and local governments than in the federal government. Recent experience has demonstrated that when the needs are clear and immediate, the citizenry may support tax increases. In November 2012, Governor Gerry Brown asked the voters of California to increase their own taxes in order to stave off massive cuts to the state education system.[88] Since the late 1970s, California has required either a two-thirds vote of the legislature to pass tax increases or a majority vote of the general public.[89] Thus, tax hikes are rare in that state, leaving many state programs chronically underfunded. After a heated campaign, 54% of Californians voted for the measure, which included a slight increase in the state sales tax and an income tax increase for those earning more than $250,000 a year. The tax was expected to raise $6 billion over the next seven years for the beleaguered state education system (Onishi 2012), again perhaps accentuating the power of the linkage between the need for a tax and the willingness to support it. Although this example illustrates the potential persuasiveness of the tax-benefit linkage, it also serves as a strong reminder to consider the potential for raising taxes to meet public needs at the state and local levels.

As summarized in Table 3, the opportunities identified above do not target the core of the political obstacles. Politics will have to determine whether starve-the-beast and supply-side theories and perceptions of political risk continue to discourage higher taxes. Nevertheless, opportunities at a smaller and more nuanced scale may allow policymakers to chip away at taxation's toxicity. To support new or existing levels of spending, they may be able to look for new tax bases and more direct linkages to benefit. In the quest for greater income equality, policymakers can use complexity to seek effective marginal rate increases at potentially lower political cost in the face of a relatively weak public appetite for income redistribution. Whether the resolutions involve the raw battle of politics over fundamental political concepts or these more technical features of the tax system, budget procedures and fiscal concerns can help hold policymakers' feet to the fire and force the issues.

[86] Laursen (2012, p. 672) cites an ABC News/Washington Post poll, finding 18% supported, 39% strongly opposed and 18% opposed somewhat. The tax holiday did not diminish employees' benefits, so opposition was not linked to a loss in benefit. Note, however, that the polled public was more supportive of cuts in the payroll tax after the proposal went into effect (American Enterprise Institute 2013, p. 117-120). Hibbs and Madsen (1981) present a study of the "welfare-state backlash" in northern Europe suggesting that public resentment of earmarked, programmatic taxes, such as social security taxes, was lower than for general revenue income taxes.
[87] 26 U.S.C. §§ 4611, 9509.
[88] The referendum resulted in an amendment to the California Constitution. Cal. Const. art. XIII, § 36.
[89] Cal. Const. art. XIIIA, § 3.

5. Conclusion

It comes as no surprise that the general public is not spontaneously offering to pay more taxes. It is difficult and somewhat contrary to human nature—or at least American nature—to reach into deeply one's pocket for government. On both sides of the aisle, political positions on taxation and spending have become vehicles for winning campaign contributions, creating succinct political sound bites, and luring votes. Nevertheless, recent history demonstrates a polarization in the political debate that does not necessarily represent the feelings of the citizenry. And in fact, politicians have found modest ways to seek out new revenue.

Future opportunities for overcoming taxation's toxicity may involve political strategies, such as attacking the concept of supply-side economics or sending stronger messages about the value of government services. They are perhaps most likely to be driven by demands to reduce the deficit and debt, whether in budget negotiations or as a result of budget rules. The increased attention to progressivity will likely generate more debate about the top marginal rates. However, as illustrated above, tax changes can also draw on the sometimes complex legal mechanisms that allow change to happen even in the face of a less than enthusiastic public and political polarization. Taxation's toxicity is troubling, but perhaps not fatal.

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