

A History of the Death Tax - A Source of Revenue or Vehicle for Wealth Redistribution

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This article will review the history of death taxes in the United States, up through the most recent changes in the Economic Growth and Tax Relief Act of 2001, and the evolving and recurring policy implications. This article will also present two noted ideas for changes to the current estate tax and anticipated policy implications thereof.

I. What is a death tax?

The Egyptians were the first to establish a death tax, later the concept was adopted by the Greeks and Romans. *The Rise and Decline of the Estate Tax*, 11 Tax L. Rev. 223 (1946). Generally, a tax placed upon property transfers at death is a death tax; more specifically, it is a tax on the power to transmit or the transmission or receipt of property by death. Also, death taxes are commonly referred to as “estate”, “inheritance” or “wealth” taxes. An “estate” tax is an excise tax (as opposed to a direct tax on property) levied on the privilege of transferring property at death. *Federal Estate and Gift Taxation*, John K. McNulty, 5TH Ed., West Publishing Co., St. Paul, Minnesota, p.1. (1994). The estate tax is usually measured by the size of the decedent’s estate. In the United States the estate tax generally includes all property over which the decedent owned, possessed incidents of ownership of, or exercised control of, at death. 26, U.S.C. §2036. An “inheritance” tax, is also an excise tax levied on the privilege of receiving property from the decedent. *Federal Estate and Gift Taxation*, John K. McNulty, 5th Ed, West Publishing Co., St. Paul, Minnesota, p.1. (1994). The inheritance tax is usually measured by the amount of property received by each particular taker, rather than by the amount of the total estate, and by the takers relationship to the decedent. *Id.* The inheritance tax is sometimes referred to as a “legacy” tax. Death taxes may also be referred to as a “wealth” tax. The wealth tax seems to mean a tax on “wealth” (as opposed to estates) transferable at death or during life. The wealth tax implies a subjective value judgment (by a collective legislative body) as to “how much” constitutes wealth. On occasion, the death tax has been termed a “privilege” tax.

II. History of the death tax

As early as 1797 Congress imposed a legacy tax. The purpose of this tax was to begin construction of a Navy for America and was supported by then President John Adams. *John Adams*, David McCullough, Simon & Schuster, New York, New York, (2001). This legacy tax was a tax on all “testamentary dispositions, descents and successions to the estates of intestates excepting those to parents, husbands, wives or lineal descendants”, and included stamp duties. *Knowlton v. Moore*, 178 U.S. 41 (1900). Stamp

duties were generally an expense of probate administration. An actual stamp was placed on letters of probate whereby the title of the deceased's property was transferred to the new owner's name. This 1797 tax was primarily an administrative fee and the fair market value of the decedent's property was not a factor in the amount to be paid to the federal government. *Id.* This tax was repealed by Congress in 1802.

In 1862 a federal estate tax on property transfers was enacted in the form of an inheritance tax. The purpose of this tax was to raise revenue to pay for the Civil War. *Id.* A tax was chargeable against each legacy or distributive share and a probate duty was chargeable against the entire estate. *Id.* Initially, this tax did not apply to real estate (it applied only to personal property), but in 1864 the legislation was reenacted, increasing the tax rates and extending to real estate as well. The Act of 1864 was similar to the English Succession Duty Act. *Id.* An amendment to the Act of 1864 provided an exemption for property passing to a minor child of the decedent. *Id.* In 1870, Congress repealed this tax because the Civil War concluded. It has been noted that this tax "barely generated revenue for the federal government". *Federal Estate and Gift Taxation*, John K. McNulty, 5TH Ed., West Publishing Co., St. Paul, Minnesota, p.3, (1994).

In 1894, Congress enacted a personal income tax which included a provision that taxed as income, "money and the value of all property acquired by gift or inheritance". This income tax was held unconstitutional in *Pollock v. Farmers' Loan & Trust Company*, 157 U.S. 429 (1895), on the ground that it violated the direct tax clauses of the Constitution. The direct tax clauses are found in Article I of the Constitution. Section 2 instructs that "representatives and direct taxes shall be apportioned among the several states". Section 9 provides: "No Capitation, or other direct tax shall be laid, unless in proportion to the census...". There has been a great deal written about how the direct tax clauses made their way into the Constitution. It was clear then, as it is now, that Congress needed to have broad taxing powers. The Articles of Confederation had failed to provide adequate fiscal powers for the national government. Bruce Ackerman, Taxation and the Constitution, 99 Colum. L. Rev.1, (1999), states that the origins of the direct tax clauses are tainted by the issues of slavery. Ackerman claims that "direct" tax clauses were introduced to resolve the conflict between large and small states over the basis of representation and to determine whether and how black slaves should be counted. For example, would black slaves count the same as whites on a one for one basis; would slaves count as a 3/5 person; or would only free men count? The decision would have a huge impact on the Northern versus the Southern states. Prior to 1894, the United States Supreme Court had upheld all taxes except the personal income tax. The Pollock case was overruled by the enactment of the Sixteenth Amendment to the Constitution in 1913.

In 1898 Congress enacted an estate and inheritance tax. *Federal Estate and Gift Taxation*, John K. McNulty, 5TH Ed., West Publishing Co., St. Paul, Minnesota, p.2, (1994). The size of the decedent's estate and the relationship between the recipient and the decedent determined the payable tax rate. Like the death taxes of 1797 and 1862, the purpose of this tax was the need for revenue for military spending. Legacies passing by Will or by state law to the spouse of a decedent were exempt from tax. The tax was repealed by Congress in 1902. The constitutionality of this estate tax was challenged on the ground

that it was a “direct” tax, required by the Direct Tax Clause of the Constitution (Article I §8) to be apportioned among the states in proportion to their population. The United States Supreme Court held that this estate tax was not a direct tax because “death is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested”. The Court said the tax was an excise tax. The only limitation on an excise tax is the requirement of uniformity. A tax is uniform when it operates with the same form and effect in every place where the subject of it is found. The Constitution requires in Article I, section 8 that “the duties, imposts, and excises shall be uniform throughout the United States” and that direct taxes must be apportioned. “In order to determine whether a tax be direct within the meaning of the Constitution, it must be ascertained whether the one upon whom by law the burden of paying it is first cast, can thereafter shift it to another person. If he cannot, the tax would then be direct in the constitutional sense...”. *Knowlton v. Moore*, 178 U.S. 41, (1900). The progressivity of the tax was also challenged on the ground that this violated both due process and equal protection within the meaning of the Fourteenth Amendment to the Constitution. The Court relied on holdings in prior cases that the right to take property by devise or descent is a creature of law, thus conditions on it may be imposed. This tax was upheld in *Knowlton v. Moore*, 178 U.S.41 (1900).

In Knowlton, the United States Supreme Court reviewed the history of the death tax. The Court stated that because the first inheritance tax in 1797 was adopted by the founders of our government and the actual framers of our Constitution, these men gave a practical construction to the Constitution they wrote and adopted. The Court also noted that similar taxes “have at other periods and for a considerable time been enforced...the question of the want of authority of Congress to levy a tax on inheritances and legacies was never urged against the acts in question”. In 1916 a federal estate tax was enacted, in part, out of pressure to help defray the cost of military preparedness for World War I and in part to undue concentrations of wealth through inheritance. *Federal Taxation of Income, Estates and Gifts*, Boris I. Bittker, Lawrence Lokken, 2nd Ed., Warren, Gorham & Lamont, Boston, Massachusetts, (1993). The Committee on Ways and Means of the U.S. House of Representatives explained that “a new type of tax was needed, because the consumption taxes in effect at that time bore most heavily upon those least able to pay them”. Our then revenue system needed to be equitably balanced and “a larger portion of our necessary revenues collected from the incomes and inheritances of those deriving the most benefit and protection from the Government”. *The Rise and Decline of the Estate Tax*, Louis Eisenstein, 11 Tax Law Rev. 230-231 (1956). An estate tax rather than an inheritance tax was recommended because many states already imposed inheritances taxes. The estate tax would help to form a well-balanced system of inheritance taxation between the federal government and the various states. The estate tax could also be more efficiently administered and with less conflict than a tax based upon inherited shares. www.ustreas.gov/opc/opc0038.html.

The constitutionality of the 1916 estate tax was challenged, in part, on the ground that it was an unconstitutional interference with the rights of the states to regulate descent and distribution. The tax was upheld in *New York Trust v. Eisner*, 256 U.S. 345 (1921).

When this tax was adopted, many states did not have their own estate tax, or even a tax on transfers of property, thus causing many taxpayers to change domicile to avoid paying the death tax. *Federal Estate and Gift Taxation*, John K. McNulty, 5th Ed., West Publishing Co., St. Paul, Minnesota, p.3, (1994). Because, in general, the 1916 estate tax reached only property owned by the decedent at death, the tax could easily be minimized or avoided by taxpayers who could afford to make lifetime gifts. *Federal Taxation of Income, Estates and Gifts*, Boris I. Bittker, Lawrence Lokken, 2nd Ed., Vol. 5 Warren, Gorham & Lamont, Boston, Massachusetts, p. 120-2, (1993). In addition, the estate tax did not reach generation-skipping transfers. These were typically transfers made to a child in a trust for his or her lifetime. At the child's death the trust property would be directed by the trust to pass to the decedent's grandchildren, thereby avoiding an estate tax at the decedent's death (i.e. because he or she did not "own" the property) and avoiding tax again at the child's death.

In response to the development of taxpayer manipulation and avoidance of the law, Congress enacted a credit against the federal estate tax for state death transfer taxes paid to achieve a uniform estate tax scheme, and also enacted the federal gift tax in 1924. *Federal Estate and Gift Taxation*, John K. McNulty, 5th Ed., West Publishing Co., St. Paul, Minnesota, p.4. (1994). The gift tax was repealed in 1926, but was reinstated in 1932. This gift tax was progressive in nature and cumulative over a donor's lifetime. *Id.* Today's federal estate and gift taxes retain many essential features of their 1916 and 1932 forebearers. *Federal Taxation of Income, Estate and Gifts*, Boris I. Bittker, Lawrence Lokken, 2nd Ed., Vol. 5, Warren, Gorham, & Lamont, Boston, Massachusetts, p.120-1 (1993).

With the passage of the Tax Reform Act of 1976 (P.L. 94-455), the formerly separate estate and gift tax rate schedules were integrated by the creation of the unified transfer tax and credit system. *Id.* at 120-2. The limitation on the marital deduction was increased to the greater of \$250,000 or one-half (1/2) of the decedent's gross estate. The Act also increased the \$60,000 estate tax exemption to \$175,000. This Act was in part Congress' attempt to expose weaknesses in the estate and gift tax scheme, most frequently used by wealthy people. Congress' first attempt to curb the weaknesses through a generation-skipping tax enacted in 1976, was not successful. *Id.* at 120-3. However, a new generation-skipping tax, enacted in 1986, has apparently become a permanent part of our transfer tax structure. *Id.* at 120-1-3.

The next evolution of the federal estate tax occurred with the passage of the Economic Recovery Tax Act of 1981 (P.L. 97-34). These changes coincided with the Reagan presidency and occurred simultaneously with income tax reforms. This Act drastically changed several provisions of estate and gift tax law. The most important change was the adoption of an unlimited marital deduction in both the estate and gift tax context, which treats the married couple as a single unit for transfer-tax purposes. Most inter-spousal transfers were excluded from transfer tax liability. *Federal Estate and Gift Taxation*, John K. McNulty, 5th Ed., West Publishing Co., St. Paul, Minnesota, p.10, (1994). The second major change was the increase in the annual exclusion for gift tax to \$10,000 per individual per year. In addition, transfers which occurred within three (3) years prior to a

decedent's date of death would now be included in the decedent's estate for estate tax purposes. Previously, only transfers made within that three (3) year period which were made "in contemplation of death" were included in the decedent's estate. The contemplation of death provision resulted, as one might guess, in much litigation with the IRS to determine the decedent's intent in making gifts within three (3) years of death. Finally, an increase in the wealth transfer tax credit to produce an exemption for all estates of \$600,000 or less was enacted. This effectively increased the amount of property transferable at death without being subject to estate or income taxes "ten-fold" from \$60,000 just prior to the 1976 Act to \$600,000 in 1981. These changes also reduced the long term revenue from taxing bequests by two-thirds (2/3). *To Praise the Estate Tax, Not to Bury It*, Michael Graetz, 93 Yale L.J. 259, p. 3 (1983).

The Tax Reform Act of 1986 (P.L. 99-514) included a complete revision of the generation-skipping transfer tax. *Federal Estate and Gift Taxation*, John K. McNulty, 5th Ed., West Publishing Co., St. Paul, Minnesota, p.10, (1994). In 1993, further changes were made in the marginal rate structure of the income tax, resulting in a new 36 percent marginal tax rate on taxable income of an estate or trust in excess of a rather low threshold, (\$5,500), and a maximum estate and gift tax rate at 55% for amounts over 3 million. *Id* at 11.

The most recent changes to the federal estate tax occurred in 2001 as a part of President Bush's Economic Growth and Taxpayer Relief Act of 2001. The changes gradually increase the amount of the unified credit, which every individual can pass free of estate tax, and reduce the estate tax rate over a period of time from 50% to 45%. The estate tax is fully repealed in 2010. However, the full repeal is only in effect for one year, 2010. Upon full repeal of the estate tax, the law will replace the current stepped-up basis on assets transferred at death with carry-over basis. This will require heirs to keep track of the original basis of property. The law does allow \$1.3 million of basis to step-up for some assets and \$3 million to step-up with regard to assets transferred to a surviving spouse. This provision excludes property acquired by a decedent by gift from a non-spouse within three years prior to decedent's death. In 2011, the law provides for an automatic reinstatement of the 2001 estate tax rules. Tax experts disagree on whether the estate tax will be revived and if so, to what extent.

III. The impact of policy and politics on the death tax

Historically, the federal government established a death tax when the government needed revenue. Most often that revenue was needed for a specific purpose, during periods of war, for military preparedness, or repayment of debt. When the revenue was no longer needed, or the crisis ended, the tax was repealed. At some point towards the late 1800's a call for death taxes for the purpose of redistribution of wealth began. Andrew Carnegie appears to have led the charge for taxing large estates at death and argued that at least 50% of a "rich man's estate" should be taken. *The Rise and Decline of the Estate Tax*, Louis Eisenstein, 11 Tax Law Review, p. 227, (1956). Carnegie and other advocates of the death tax after him failed to define the bounds of the "rich man's estate". Carnegie felt that leaving great wealth to one's spouse and children was a burden to them and

would “deaden the talents and energies of the son, and tempts him to lead a less useful and less worthy life than he otherwise would”. *The Gospel of Wealth*, Andrew Carnegie, (1889). The death tax movement was propelled into the limelight by President Theodore Roosevelt in 1906. Roosevelt proposed a radical death duty for the purposes of improving the distribution of the tax burden, producing revenue, and preserving equality of opportunity. Roosevelt stated that the “prime object (of the death tax) should be to put a constantly increasing burden on the inheritance of those swollen fortunes which it is certainly of no benefit to this country to perpetuate”. In 1912 there was a movement of the Progressive Party for a graduated inheritance tax as a social policy to equalize property holdings. Despite the rhetoric, no death tax was again enacted until 1916. Even then the primary purpose of the tax remained the need for revenue to pay for World War I. But in 1916, wealth in the United States was recognized as an “untapped” source of revenue and a progressive estate tax was imposed (initially there was a 10% rate of tax on any amount over 5 million and one year later this rate was increased to 25% on amounts over 5 million). In *Democracy, Taxes and Wealth*, Repetti, 76 NYU L. Rev. 825 (2001), Professor Repetti argues the estate tax was enacted in 1916 in response to the harmful social effects of wealth concentration.

A movement against estate taxation, initiated by then Treasury Secretary Mellon, began in the 1920's, arguing that there was no social necessity for breaking up large fortunes and that this tax would “subvert” the economy. Mellon's arguments that estate taxation has an adverse impact on savings, investment and capital formation continue to this day. In contrast, Professor Repetti argues that wealth concentration “is detrimental to the nation's long term economic growth” because it creates education disadvantages for the poor and sociopolitical malaise. Wealth concentration also harms the democratic process because it gives the affluent a disproportionately large political voice. *Democracy, Taxes and Wealth*, Repetti, 76 NYU L. Rev. 825 (2001). Repetti responds to the argument that the wealth tax discourages savings by citing empirical studies. First, he shows that technological advances and population growth contribute to economic growth and not wealth concentration. Second, he argues that estate taxes are likely to have less disincentive effects on savings than lifetime income taxes. Professor Repetti cites a study which includes tax rates in a regression model that shows high tax rates do not play a negative role in growth. Roberto Perotti found that the coefficient for tax was positive and highly significant, suggesting that higher tax rates correlate with higher growth. *Growth, Income Distribution and Democracy: What the Data Say*, Roberto Perotti, 1 J. Econ. Growth 149, 154 (1996).

President Franklin Roosevelt was deeply concerned and fearful about the effects of concentrated wealth and inherited economic power and in 1935 recommended significant and progressive death taxes to regulate the wealth of the few for the benefit of the many. “The transmission....of vast fortunes by Will, inheritance, or gift is not consistent with the ideals and sentiments of the American people”. *The Rise and Decline of the Estate Tax*, Louis Eisenstein, 11 Tax Law Review, 229, 235 (1956). Although the actual destruction and redistribution of great wealth was more talk than action during the Roosevelt years, the debate continues to this day. Identical arguments were prominent in June 2001 as the Economic Growth and Tax Relief Act was debated and passed. Quite

prophetically, Eisenstein notes that in prosperous times there is often a war on the death tax.

It is important to note that the fiscal impact, the amount of revenue generated by the death tax has decreased, in part, because of the growth of other revenue sources, that is, corporate, personal income and payroll taxes. Louis Eisenstein describes a “formula for success” in tax policy as the technical amendment which has also quietly impacted the revenue generated by the estate tax. Technical amendments make subtle changes in the tax laws, benefit the wealthy and result in less politically charged revenue loss from the changes. Technical amendments have dealt with very significant changes in the estate tax, for example, the marital deduction, gifts in contemplation of death and the proceeds of life insurance. The estate tax reaches less than five (5) percent of the population. Total transfer taxes (estate and gift) were estimated, based on the law in effect in 1998, at 27 billion in 1999 and were expected to grow to 44 billion by 2009. www.tax.org Charles Davenport, Jay Soled, citing *Joint Committee on Taxation, JCX 2-98*, January 1998. Some argue that even if we were to remove the political obstacles and clean up the estate tax loopholes, “a tax on death time transfers of wealth will thus not serve as a major source of federal revenues”. *To Praise the Estate Tax, Not to Bury It*, Michael Graetz, 93 Yale L.J. 259 p.9 (1983).

A complex and “theoretically flawed” death tax system currently exists. The most recent 2001 changes result in a full repeal of the estate tax in 2010, to be simultaneously followed by an administratively complicated gift tax scheme, and a full reinstatement of today’s law in 2011. Transfer tax provisions (estate and gift taxes) have been used as political bargaining chips. *Reforming Federal Wealth Transfer Taxes After ERTA*, Harry L. Gutman, 69 VA. L. Rev. 1183, p. 8 (1983). For example, farmers and small businesses were able to convince Congress (in 1981 and again in 2001) that estate and gift tax reductions were necessary to preserve the family farm and family business. No data was shown to document the frequency of sales of these businesses resulting from the need to pay estate taxes. In fact, prior to 1981, only 2.8% of all decedents possessed sufficient assets to incur estate tax liability. *Id* at p. 15. During a time of an aging population, an increasing gap of wealth inequality, and a need for increased revenue sources, the wealth tax is a truly viable source for financing important social policy initiatives. The estate tax has done very little to break up vast concentrations of wealth. The portion of total wealth held by the richest one percent of wealth holders has remained very stable. Policy focus should be less on the concept of breaking up wealth concentration and more for the need for revenue to facilitate social justice.

The political unpopularity of the estate tax will remain a very real barrier to significant change. Americans do not like heavy taxes on bequests, even where the tax will not affect them. *Id* at 20 citing the *Washington Post*, August 30, 1972 , at A-11, col 1. George McGovern’s proposal in 1972 to confiscate inheritances above a certain amount was not well received; and California ’s initiative to repeal the state’s inheritance tax received a 64% positive vote, a greater majority than those in favor of a nuclear freeze or against gun registration. *Id*. It has been argued that many Americans hold out hope that one day they will be wealthy too and this hope contributes to the unpopularity of the

estate tax. *Id.* With the right data and correct political timing a case can and should be made for the resurrection of the estate tax.

IV. Proposals for change

Equality of opportunity has always been an integral part of the American psyche. The ability and willingness to work hard are supposed to make “all things possible”. *Curtailling Inherited Wealth*, Mark L. Ascher, 89 Mich. L. Rev. 69 (1990). There will continue to be proponents for greater wealth redistribution. Americans are becoming increasingly aware of the widening wealth gap dividing this country. In the late seventies, the top 1% of Americans owned thirteen (13%) percent of the wealth. By the late eighties they owned twenty-one (21%) percent. *Id.* The following represent two more radical proposals for resurrection and enhancement of the estate tax. While the likelihood of political success in the near future may seem dim, it is the dialogue and the awareness that these proposals bring about which may result in future changes. The first proposal was presented by Mark L. Ascher in an article, “*Curtailling Inherited Wealth*”, 89 Mich. L. Rev. 69 (1990). Professor Ascher proposed that the current system of transfer taxation (estate and gift tax) be maximized by abolishing the right to inherit. His article was written during a time of very large federal budget deficits which spending cuts alone could not effectively minimize. This article will not address whether the right to inherit is a natural right or a privilege. Ascher assumes inheritance is merely a custom turned into positive law. This question, however, could be argued forcefully either way.

Ascher compares the United States to 15 industrialized nations in 1984 and shows that wealth taxes contribute only 0.2% of our gross domestic product. During the same period, Japan, Germany, Austria, Norway and Switzerland derived substantial greater revenue from the transfer of wealth. Ascher concludes that the United States should generate more revenue from the wealth tax. For Ascher, the importance of equalizing opportunity is the heart and soul of America and he finds support for his theory in the Declaration of Independence, “All men are created equal”. Property rights should end at death and inheritance, in particular to healthy adults, is proposed to be abolished. Ascher concedes that inheritance is not the only cause of inequality of opportunity and admits that even with its abolishment, inequalities will remain. Ascher allows for six exemptions, all of which reallocate the deceased’s property in a manner which will benefit society. The exemptions are briefly described as follows: a marital exemption (which grows based on years of marriage), an exemption for dependent lineal descendants (which decreases as the age of the child-dependent increases and equals “0” at age 25); an exemption for lineal ascendants, and an exemption for disabled lineal descendants. These four exemptions allow a decedent to provide for family members who might need support and would otherwise relieve the government of this potential obligation. Only the exemption for lineal ascendants is unlimited. This particular exemption has the purpose of creating social policy encouraging children to provide for their elders, the costs of health care and old age. Because lineal ascendants rarely survive their descendants, and when they do they are quite old, the government would not wait too long for the tax at the ascendant’s death. *Id.* The two remaining exemptions are a limited charitable exemption and a universal exemption (to allow individuals to exempt

assets in which the government has limited interest, i.e. heirlooms and mementos). These exemptions are consistent with current values as reflected in existing exclusions and exemptions from both income and estate taxation. While Ascher's proposal would yield increased revenue from taxation, many of his assumptions smack of the ideologies surrounding the poor laws and omit the necessary consideration of those who are unable to succeed in spite of the equalization of opportunity.

Bruce Ackerman and Ann Alstott, two professors at Yale Law School, propose in their book, *"The Stakeholder Society"*, (1999) that wealth taxation be used as a tool for social justice. Their proposed wealth tax is not a death tax. An annual tax of two (2%) percent would be levied on all the nation's wealth. Wealth would include a taxpayer's entire property (excluding the first \$80,000), for example, real estate, pension and retirement assets, cash, investment assets, business interest, and personal items. A taxpayer's debt (mortgages, car loans) would reduce his or her wealth value. The proposed tax would provide each American a one-time grant of eighty thousand (\$80,000) dollars, "a stake" upon reaching adulthood. There is no requirement on how each stakeholder may use his or her \$80,000. Ackerman and Alstott propose age twenty-one (21) for distributions in general, however, an earlier age of eighteen (18) is proposed upon graduation from high school. The "stake", as it is referred to, may be used for college, to start a business, buy a home, save for the future, or raise a family. The authors recognize the risks, "can they be trusted to invest the money wisely in themselves, their families, their businesses and their communities? Won't they fritter away the nation's patrimony on drugs and decadence?" *The Stakeholder's Society*, Ackerman, Bruce A., Alstott, Ann, New Haven ; London : Yale University Press, (1999). The authors believe stakeholding can be structured to enhance the likelihood of responsible decision making. An 11 year residency requirement is proposed. There is a recognition that stakeholding sanctions will be necessary for criminals. Each American will use his \$80,000 in a way that makes the most sense to him or her. The authors compare their proposal to the G.I. Bill of Rights as it was initially formulated after World War II. Ackerman and Alstott estimate that this 2% annual wealth tax will raise 378 billion dollars each year. Approximately 92.9% of the tax is estimated to fall on the top quintile of wealth class, those with a median wealth of \$4,611,750. *The Stakeholder's Society*, Ackerman, Bruce A., Alstott, Ann.; Yale University Press, New Haven ; London (1999). The cost of stakeholding, the distribution of the \$80,000 each year, is estimated to cost 225 billion dollars each year. The symbolism of this tax, it is hoped, will build a common sense of citizenship, and to "reaffirm their common commitment to economic citizenship as an enduring aspect of a revitalized political identity". The stake will also allow every American to enter adult life with "a certain independence and resiliency against the recurring shocks of the competitive marketplace". The authors hope that patriotism and gratitude to one's country will be a residual benefit of their proposal.

Ackerman and Alstott, also use a wealth tax in their attempt to equalize opportunity. But unlike Professor Ascher, their proposal attempts to provide each American with a "stake" in his country. Their proposal does more than Ascher's, as in addition to "taking away" via taxation, it also "gives back" in a very positive, inclusive, and highly visible way.

V. Conclusion

The history of the death tax demonstrates that it has its most political support when the purpose is to raise needed revenue. Often that revenue was for a specific purpose, military spending. A case should be made to use the estate tax to pay for the long term care of the elderly and the education of young people. Policymakers need to focus less on wealth redistribution and more on the need for revenue and a national long term care policy. Data is needed to show that a model estate tax will enhance economic growth and perhaps citizenship as well. This article highlights only two (2) ideas for change, however, they are illustrations of many ideas strongly suggesting we must rethink our estate tax policy. History also shows that the strongest cases for estate tax repeal were made during periods of strong economic growth. Perhaps now is the time to move forward on the case for a properly structured estate tax and the much needed social policies its revenues can support.