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VIEWPOINTS

ESTATE AND GIFT RAP

LETTERS TO THE EDITOR

Arenas of Federal Tax Policy

By Sheldon D. Pollack

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Sheldon D. Pollack is a professor of law and political science at the University of Delaware. He is the author of *The Failure of U.S. Tax Policy: Revenue and Politics* (1996); *Refinancing America: The Republican Antitax Agenda* (2003); and *War, Revenue, and State Building: Financing the Development of the American State* (2009).

In this report, Pollack argues that there are three distinct types of tax policy: distributive, regulatory, and redistributive. Each type is made in a different political arena, by different political actors and for different purposes. Further, each policy arena is characterized by its own distinctive pattern of politics, decision-making, and interaction among the participants. Pollack delineates the characteristics of the three types of federal tax policy and then links them to their own political arena. The goal is to explain how the separate policy streams converge to form what we refer to as "federal tax policy."

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In the study of public policy, political scientists commonly identify three types of policies: distributive, redistributive, and regulatory. It has been said that each type of public policy generates its own unique "arena of power,"[1] which is characterized by a distinctive pattern of decision-making and interaction among participants in the policymaking process (legislators, political elites, interest groups). In other words, each type of public policy is associated with a unique pattern of politics as well as distinct political institutions wherein that policy is made. As Ted Lowi famously put it, "policy causes politics."[2] This typology is particularly useful in making sense of the varied and often conflicting aspects of federal tax policy.

That said, tax policy does not fit neatly into any single category of public policy. Different aspects of federal tax policy fall into each of the three categories. Indeed, there is no single federal tax policy but rather separate policy streams, each generated in its own distinct political arena by different groups of political elites; that is, there are multiple arenas of power for federal tax policy.[3] A good deal of federal tax policy originates in Congress and follows the classic pattern characteristic of distributive policies; others can be traced to regulatory policy initiatives set in motion by nonpartisan experts and professional staff in the executive branch. Still others implement highly partisan redistributive policies that originate in the White House or with one of the major political parties. These redistributive policies often emerge as salient political issues in nationally contested elections while regulatory tax policies are typically negotiated and resolved behind closed doors.

Simply put, not all tax policies are the same. Some are distributive, some are regulatory, and some are redistributive. Moreover, each type of tax

[1]In a seminal review more than 45 years ago, political scientist Theodore Lowi outlined a typology for public policy based on that classification of public policies: "American Business, Public Policy, Case Studies, and Political Theory," 16 *World Politics* 679 (1964). Over the years, the conceptual framework has been subject to refinement, debate, and criticism. *See, e.g.*, James Q. Wilson, "The Politics of Regulation," in *The Politics of Regulation* 364-372 (1980) (suggesting that the important factor in distinguishing types of public policy is the distribution of costs and benefits to the relevant political actors and suggesting an alternative typology).

[2]Lowi, *Arenas of Power* 12 (2009).

[3]In assessing Lowi's original typology, Robert Spitzer, in "Promoting Policy Theory: Revising the Arenas of Power," 30 *Pol'y Studies J.* 675 (1987), perceptively observed that particular policies often possess the traits of more than just one type of policy. The same can be said for federal tax policy.

policy is associated with its own distinctive pattern of politics as well as ensembles of political actors and political institutions.

In this report, I delineate the characteristics of the three types of federal tax policy and then link them to their own associated politics, political institutions, and political actors. Academics, economists, political scientists, tax professionals, and journalists all tend to focus on different aspects of federal tax policy, and in doing so, overlook the other types of tax policy and their associated arenas of power. For instance, in this era of fiscal deficit, tax academics and economists have focused their attention on tax preferences and how they erode the income tax base and cost the national government revenue. Political scientists, on the other hand, traditionally study the congressional arena of policymaking and distributive tax policies. For their part, journalists focus on ''corruption'' in the tax code as well as the contemporary political debate over tax rates, virtually to the exclusion of regulatory tax policies — the domain of tax professionals. The goal here is to present a portrait of the three policy streams and their respective political arenas and explain how those streams converge to form what we collectively refer to as federal tax policy.

Of the various types of public policy, the most familiar to the public and students of American politics is distributive policy, which is the time-honored politics of Congress and its committees. The associated politics are logrolling and vote trading, the objective of which is to provide special benefits to favored constituents and interest groups. Representatives support subsidies, spending, earmarks, and other forms of ''pork-barrel'' legislation (the pejorative term for distributive policy) for constituents of fellow lawmakers as reciprocity for favorable votes on legislation that secures benefits for their own constituents. The politics of logrolling and vote trading favors incumbents in their efforts to secure reelection — widely recognized as the primary objective of congressional policymakers.[4] Outside Congress, coalitions of convenience form among the various interests affected by specific policies and legislation, but those groups have little organizational connection and no overarching ideological affinities that bind them.

There are few, if any, coherent policies or principles underlying the public law enacted by Congress through such a political process.[5] The resulting distributive legislation consists of ''highly individualized decisions that only by accumulation can be called a policy.''[6] For example, the accumulation of the countless votes in Congress on rivers and harbors projects throughout the 19th century is what amounted to river and harbor ''public policy.''[7] There was no principle guiding the lawmakers who cast their votes, only their interest in distributing localized benefits to their constituents. Similarly, 19th century tariff policy was little more than a long succession of bills bestowing preferential rate schedules on favored industries and sectors.[8]

Regulatory policy is specific and narrow in its application, and most significantly, when it is directed for a public purpose (rather than ''captured'' for the benefit of the regulated), it has a negative impact on those discretely defined groups or industries targeted by regulators. These policies impose costs on targeted groups, which accordingly have a strong interest in organizing to oppose them. Affected interests organize and exert their opposition at the sector level, where political coalitions coalesce. Coalitions form around specific issues that affect groups, but each member of the group is affected differently. Hence, coalitions that form in opposition to regulatory policies tend to be unstable and short-lived.[9] The political networks that coalesce are loose and informal, and the political bargaining among relevant participants (regulators and organized opposition groups) is generally conducted outside the view of the public.

Redistributive policies affect broad social or economic classes, rather than narrow economic sectors and, consequently, generate their own distinctive pattern of politics and decision-making. The politics of redistributive policies is relatively stable over time but is highly responsive to major shifts in partisan affiliation or the composition of the electorate — for example, a so-called critical election.[10]

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[4]Arguably, elections are the most significant factor affecting the behavior of those in Congress. The classic statement of that perspective is David R. Mayhew, *Congress: The Electoral Connection* (1974).

[5]The incoherence or lack of a unifying principle of legislation produced by interest group politics (or ''interest-group liberalism'') is one of the central themes of Lowi's most influential study, *The End of Liberalism: Ideology, Policy, and the Crisis of Public Authority* (1969).

[6]Lowi, ''American Business,'' *supra* note 1, at 690.

[7]For an account of rivers and harbors policy, see John A. Ferejohn, *Pork Barrel Politics: Rivers and Harbors Legislation, 1947-1968* (1974).

[8]Those were the politics observed by E.E. Schattschneider in the late 1920s in his classic study of policymaking for the tariff, *Politics, Pressures, and the Tariff* 86 (1935).

[9]*See* Lowi, ''American Business,'' *supra* note 1, at 698.

[10]Political scientists commonly divide American political history into five periods, with the transition from one party system to another marked by voter realignment and a critical

(Footnote continued on next page.)

Because cleavages fall along broad social or economic classes, coalition building requires ''complex balancing on a large scale.''[11]

Implementing redistributive policies requires the support of a majority political coalition. As such, the politics of redistributive policy is played out at the highest level, which means electoral competition between the two major political parties. If regulatory policies are contested discreetly behind closed doors, the political issues raised by redistributive policies play out in full public view during national elections and on the floor of Congress. The conflicts that arise over redistributive policies are reflected in the highly partisan debates over divisive issues, such as the establishment of major social programs (for instance, Social Security, Medicare, Medicaid, and healthcare reform) and the rate structure of the federal income tax.

The Primacy of the Federal Income Tax

When we talk about federal tax policy, we usually are referring to public policies relating to the federal income tax. That is because the income tax is the most important component in the U.S. revenue system. In the early 20th century, the United States moved from its traditional 19th century revenue system based on the taxation of imported goods and commodities (the tariff and various federal excise taxes) to a revenue system based on the taxation of income. Revenue from the federal income tax steadily increased from the relatively insignificant $28 million raised in 1913 (the first half-year the modern income tax was in effect) to $29 billion in 1945 at the height of World War II, to $561 billion in 1990, and to the historic high of $1.53 trillion collected in 2007. In 1914 the income tax provided just 9.7 percent of the total receipts of the federal government. Today, the tax is the primary source of revenue for the national government, generating in excess of 55 percent of total federal receipts.[12]

Those figures actually understate the importance of the income tax in financing the operations of the national government. The Social Security wage tax is the second most productive source of federal revenue, accounting for more than 40 percent of total federal receipts.[13] But the revenue from the wage tax is dedicated to paying current beneficiaries under the Social Security program. The same is true of the Medicare wage tax; benefits are dedicated to recipients of that program.[14] That leaves the income tax to finance virtually all the discretionary spending (military and nonmilitary) authorized in the federal budget. That includes federal spending on education, healthcare, highways, transportation, housing, the environment, relief from natural disasters, law enforcement, bank bailouts, etc. — to say nothing of national defense. The revenue collected under the income tax makes possible all those programs. Little wonder the tax attracts so much political attention. As such, the modern income tax has been continually debated, amended, revised, and reformed since its adoption in 1913. The scope and volume of income tax legislation has exploded in recent decades. While no less controversial politically, the federal gift and estate tax (a unified tax imposed on the transfer of wealth) is an insignificant source of revenue compared with the income tax, raising just $18.9 billion in 2010 — less than 1 percent of total federal receipts.[15] An assortment of excise taxes, custom duties, and user fees generate the balance of the revenue of the federal government — collectively amounting to just 5.61 percent of federal receipts.[16] But the federal income tax is the golden goose that finances the American state. For that reason, the income tax is central to American politics and the focus of this study.[17]

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election. V.O. Key Jr., ''A Theory of Critical Elections,'' 17 *J. of Pol.* 3 (1955). The concept was expanded into a theory of political realignment and institutional development in Walter Dean Burnham, *The American Party Systems: Stages of Political Development* (1967).

[11]Lowi, ''American Business,'' *supra* note 1, at 715.

[12]Federal receipts from all forms of taxation (income, excise, estate) reached $1 trillion for the first time in 1990. The individual income tax alone raised $1 trillion in 2000. In the postwar era, the national government has extracted a fairly constant share of the national economy (19 percent of GDP) through federal taxation. Figures from Census Bureau, ''Statistical Abstract of the United States: 1985,'' Table 488, at 307; and Congressional Budget Office, ''The Budget and Economic Outlook: Fiscal Years 2011 to 2021'' (Jan. 2011), Table E-3, *Doc 2011-1753*, *2011 TNT 18-16*.

[13]*Id.* The Social Security tax is imposed at a flat rate of 12.4 percent (split between employee and employer) on the applicable wage base ($110,100 in 2012). Under an agreement between congressional Republicans and the Obama administration regarding the extension of the 2001 Bush tax cuts, the employee's share of the Social Security wage tax was lowered 2 percentage points to 4.2 percent for calendar year 2011 (the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312 (Dec. 17, 2010)). That cut was extended into 2012.

[14]An additional tax of 2.9 percent (split between employer and employee) finances the Medicare Trust Fund. The wage base for the Medicare tax is not capped.

[15]The intense politics behind the repeal of the federal gift and estate tax in 2001 is described in Michael J. Graetz and Ian Shapiro, *Death by a Thousand Cuts: The Fight Over Taxing Inherited Wealth* (2005); *see also* Sheldon D. Pollack, *Refinancing America: The Republican Antitax Agenda* 137-158 (2003).

[16]Figures from CBO, *supra* note 12.

[17]Political scientists have only recently appreciated the importance of tax policy in American politics. Among the best

(Footnote continued on next page.)

Within the national government itself, the Constitution formally assigns the power of taxation to Congress.[18] All forms of federal taxation (as well as amendments and additions to existing tax laws) must be authorized through legislation duly enacted by the national legislature. As Woodrow Wilson famously observed more than 125 years ago, Congress legislates through its committees.[19] That places the congressional taxwriting committees at the center of the federal tax policymaking process.

The Constitution further requires that revenue bills originate in the House. Hence, the House Ways and Means Committee has the first opportunity to articulate and define federal tax policy, while the Senate Finance Committee plays a secondary, albeit critical, role in shaping tax policy initiatives.[20] The congressional taxwriting committees are the political arena for distributive tax policy.

Distributive Tax Policy

The income tax is a highly effective tool for raising revenue for the federal government. It also happens to be ideally suited for use by individual lawmakers in distributing economic benefits to their constituents. That nonpartisan, *instrumental* use of the income tax takes the form of enacting special rules, regulations, and statutory amendments to the tax code that shelter favored groups and taxpayers from the burden of the impost. It is now practically expected that lawmakers will pursue special tax provisions that benefit organized interest groups, industries, economic sectors, and wealthy individuals located in their home districts and states. They do not always succeed, but they constantly try.

Distributive revenue policy in Congress is nothing new, but the specific form and content has changed over time. As the income tax replaced the tariff as the principal source of revenue of the national government in the early 20th century, the focus of distributive revenue policy shifted from providing constituents with special tariff rates to special preferences under the federal income tax. The seminal account of distributive tax policymaking was written by Stanley Surrey more than 50 years ago and little has changed since.[21] Powerful institutional forces compel congressional policymakers to enact special tax preferences for their constituents. Hence, to understand the nature of distributive tax policy, one needs to consider the peculiar characteristics of the political institution in which federal tax policy is made: U.S. Congress.

Congress is a political institution that imposes its own unique framework of incentives (and disincentives) that alter the behavior of those who serve in it.[22] First and foremost, the elections mandated by the Constitution establish a critical linkage between representatives and their constituents — the so-called electoral connection.[23] With the entire House up for reelection every two years, representatives face nearly constant pressure to satisfy the electorate. That is especially true for incumbents in marginal, or swing, districts who feel particularly vulnerable come election time. While U.S. senators were originally selected by the legislatures of the various states rather than through popular elections (a procedure that created its own set of behavioral incentives and constraints), they too were formally subjected to the electoral connection with the ratification of the 17th Amendment in 1913.[24] Because of that fundamental change in the rules of the game, senators also must appeal to (some would say pander to) their constituents for the right to hold office.[25]

All politicians have personal agendas they wish to advance in office; however, reelection is the

studies of the politics of the federal income tax are John F. Witte, *The Politics and Development of the Federal Income Tax* (1985); Ronald F. King, *Money, Time, and Politics: Investment Tax Subsidiaries and American Democracy* (1993); Cathie Jo Martin, *Shifting the Burden: The Struggle Over Growth and Corporate Taxation* (1991); Timothy J. Conlan, Margaret T. Wrightson, and David R. Beam, *Taxing Choices: The Politics of Tax Reform* (1990).

[18]Article I, section 7.

[19]As Wilson put it in *Congressional Government: A Study in American Politics* xvi (1885), ''Congressional government is Committee government.''

[20]Under Article I, section 7, amendments to revenue legislation originating in the House may be added in the Senate. Major tax policies are commonly added in the Senate as amendments to relatively minor revenue bills originating in the House.

[21]Stanley S. Surrey, ''The Congress and the Tax Lobbyist — How Special Tax Provisions Get Enacted,'' 70 *Harvard L. Rev.* 1145 (1957).

[22]In his landmark study of the Senate, *U.S. Senators and Their World* (1960), Donald R. Matthews explained how the values and mores of the institution influence the behavior of its members.

[23]The importance of elections in affecting the behavior of elected officials is Mayhew's central theme in *Congress: The Electoral Connection*, *supra* note 4. In a famous reformulation of the concept of democracy, the Austrian economist Joseph Schumpeter argued in *Capitalism, Socialism & Democracy* (1947) that elections are the chief mechanism for imposing some measure of accountability on politicians — and that the ability of the electorate to ''throw out the rascals'' is the fundamental prerequisite for a democratic polity.

[24]By the time the direct election of senators was mandated by the 17th Amendment, a majority of states had already adopted or experimented with popular election of senators. For a discussion of the transformation of the election process, see William H. Riker, ''The Senate and American Federalism,'' 49 *Am. Pol. Sci. Rev.* 452-469 (June 1955).

[25]Whether politicians pander to their constituents is the subject of Paul J. Quirk, ''Politicians Do Pander: Mass Opinion, Polarization, and Law Making,'' 7 *The Forum* Art. 10 (2009); *but*

(Footnote continued on next page.)

prerequisite to satisfying all other political objectives. Little is accomplished during a single term of office, and hence all members of Congress have a strong interest in reelection if they wish to have any lasting impact on public policy — to say nothing of retaining a fairly prominent and lucrative job. Thus, the electoral connection has a profound impact on the behavior of elected officials as it links them to their constituents, whose support and financial contributions are critical for reelection.

Congress is a representative legislative body, but not all national legislatures are organized the same. Congress has its own idiosyncratic institutional features — in particular, the use of single-member districts to elect the members of the House.[26] Electing representatives from defined geographic territories magnifies the connection between lawmakers and the dominant interests in the local districts they represent.[27] While it is not constitutionally mandated, Congress enacted a series of statutes beginning in 1842 requiring the states to elect their representatives from single-member districts. From 1932 to 1967, that mandate lapsed, and several states experimented with electing at-large representatives to the House in winner-take-all elections. In 1967 Congress reenacted a statutory requirement for single-member districts. As such, that procedure has been followed over the last 170 years in all but a handful of cases.[28]

The overall effect has been to strengthen the link between local interests and their representatives in the House. Senators represent larger and more diverse territories, and arguably are less beholden to local parochial interests and more inclined to focus on national policy issues. Even so, senators are just as zealous as representatives in promoting the dominant interests and individual sectors in their home states. They too understand that distributive policy is a highly effective means of satisfying the needs of their constituents (constituency service), and in doing so, improving their own political fortunes. Thus, powerful incentives established by the rules and procedures (both formal and informal) that organize Congress as a political institution encourage senators and representatives to use the powers of their office to distribute particularized benefits to local interests in their home states and districts.[29] The affinity for distributive policy is nearly universal among those who serve in Congress, even those who would prefer to focus on national or international issues with broader consequences. Even conservatives opposed to big government readily succumb. As David Stockman, director of the Office of Management and Budget during the Reagan administration, once confessed: ''There is no such thing as a fiscal conservative when it comes to his district or his subcommittee.''[30]

A member of Congress ignores distributive policymaking and other forms of constituency service at his own peril. Distributive revenue policy itself takes a variety of forms — enacting special income tax preferences for the benefit of constituents is but one example. But the lawmakers' ability to ''customize'' the tax code makes it an efficient and attractive tool for distributing particularized economic benefits to constituents. That is constituency service with a direct economic payoff. Generally, it is easier to provide those benefits to constituents through the tax code than through direct appropriations included in the annual federal budget. An appropriations bill must first clear the relevant subcommittee with jurisdiction and pertinent technical expertise over the subject matter of the bill before it reaches the Appropriations Committee, whereas a provision enacted through the tax code is under the singular jurisdiction of the tax committees.[31] (Earmarks are another ideal method for

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see Lawrence R. Jacobs and Robert Y. Shapiro, *Politicians Don't Pander: Political Manipulation and the Loss of Democratic Responsiveness* (2000).

[26]Of the other democracies that employ single-member districts, most use them in conjunction with proportional representation. Canada and the United Kingdom select national representatives from local districts but in the context of a centralized parliamentary system. The localizing effect of the single-member districts is partially negated there.

[27]For an account of how single-member districts reinforce the importance of local interests and constituency service in the House, see Frances E. Lee, ''Interests, Constituencies, and Policy Making'' in *The Legislative Branch* 281-313 (2005); Thomas D. Lancaster and W. David Patterson, ''Comparative Pork Barrel Politics,'' 22 *Comp. Pol. Stud.* 458-477 (1990) (finding stronger incentives for pork-barrel legislation in single-member districts than multimember districts).

[28]2 U.S.C.A. chapter 1, section 2c (Title 2: ''The Congress''); P.L. 90-196. The constitutionality of that statutory requirement is questioned in Paul E. McGreal, ''Unconstitutional Politics,'' 76 *Notre Dame L. Rev.* 519 (2001).

[29]The relationship between the distribution of pork barrel benefits and congressional elections was suggested in Mayhew, *Congress: The Electoral Connection*, *supra* note 4; *see also* Ferejohn, *Pork Barrel Politics*, *supra* note 7; Morris Fiorina, ''Some Problems in Studying the Effects of Resource Allocation in Congressional Elections,'' 25 *Am. J. of Pol. Sci.* 543 (1981); Robert M. Stein and Kenneth N. Bickers, ''Congressional Elections and the Pork Barrel,'' 56 *J. of Pol.* 377 (1994) (finding connection between vulnerable incumbents and increased flow of particularized benefits to constituents).

[30]Quoted in D. Roderick Kiewiet and Mathew D. McCubbins, ''Congressional Appropriations and the Electoral Connection,'' 47 *J. Pol.* 59, 65 (1985).

[31]For a summary of differences between the tax and appropriations processes, see Thomas J. Reese, *The Politics of Taxation* 198-201 (1980); Christopher Howard, *The Hidden Welfare State: Tax Expenditures and Social Policy in the United States* 10 (1997).

providing particularized economic benefits to constituents by bypassing the regular budgetary process; however, in this political climate, the use of earmarks has become politically suspect and restricted by the party leadership.[32]) Moreover, once enacted, tax preferences generally (but not always) become permanent features of the tax code. Except in special circumstances, tax preferences are not subject to annual review and scrutiny, as are budgetary appropriations.[33] Further, while economically equivalent, a tax provision that *reduces* taxes is often easier to sell politically to both the electorate and to legislative colleagues than a direct appropriation that *increases* the budget deficit — especially when facing a soaring national debt.[34] That is because the connection between the cost of a policy and its economic benefit is less transparent in the tax policy arena. A tax preference is easily buried in the tax code, and its price tag never appears as a separate line item in the formal federal budget. All of this makes tax preferences a particularly attractive form of distributive policy for members of Congress.

There are institutional incentives that encourage representatives to use distributive tax policy for political advantage, but there are few disincentives. The cost of a tax preference (as well as other forms of pork-barrel legislation) is widely dispersed among many taxpayers, while the tax subsidy is enjoyed by a few targeted beneficiaries. Consequently, opposition to a special tax provision tends to be weak, diffuse, and difficult to organize, while the few beneficiaries of the provision are highly motivated to lobby those members of Congress who control the power of the purse — especially those on the taxwriting committees.[35] The result is a classic politics of logrolling and vote trading that generates a seemingly endless supply of tax preferences for nearly every organized interest group in America. Democrats and Republicans alike pursue targeted tax preferences for their respective constituents. Sometimes they have the *same* constituents. Distributive tax policy is nonpartisan as much as it is unprincipled.

The rise of distributive tax policy correlates with the decline of political parties and the gradual weakening of the congressional party leadership since the early 20th century.[36] The trend toward decentralized power in the House intensified after World War II. As a result, individual lawmakers were left relatively free to pursue special interests on behalf of their constituents.[37] Because enacting special tax preferences is such an effective tool for satisfying the political interests of elected representatives and their constituents, it became common practice in the modern Congress. While the post-Watergate reforms of the mid-1970s reversed those trends, there has been no return to the kind of centralized leadership last seen in Congress before the major changes adopted in 1910.[38]

Concurrently, one of the most significant institutional developments in the legislative process for tax policy in the last 50 years has been the weakening of control over the tax policy agenda formerly exercised by the Ways and Means Committee.[39] That committee once played a vital institutional role in checking individual lawmakers in introducing bills that grant special tax treatment to constituents — what political scientist David Mayhew refers to as ''institutional maintenance.''[40] For decades, lawmakers who introduced these bills relied on Wilbur

[32]The controversy over earmarks is described in David M. Herszenhorn, ''Earmark Ban Exposes Rift in Both Parties,'' *The New York Times*, Nov. 17, 2010, at A1. The Tea Party movement has campaigned against the use of earmarks, and with their success in the 2010 midterm elections, the use of earmarks has been curtailed — for now.

[33]Occasionally, tax policies are enacted on a year-by-year basis. In recent years, Congress has enacted an annual package of tax extenders to renew some tax credits, deductions, and exemptions. While the package varies from year to year, it invariably includes an extender for the research and experimentation credit and a provision to index the alternative minimum tax to shelter middle-income taxpayers from its effects. The cost of enacting a permanent patch is enormous; hence, Congress provides only one-year AMT extensions.

[34]Conservatives typically favor tax preferences because they view economic incentives built into the tax code as a less coercive form of government intervention than direct subsidies or ''command and control''-type regulations.

[35]While contributions do not necessarily sway representatives, the money does flow more freely to members of the more important committees, including Ways and Means. For an analysis of the relationship between campaign contributions and voting on the Ways and Means Committee, see John R.

(Footnote continued in next column.)

Wright, ''Contributions, Lobbying, and Committee Voting in the U.S. House of Representative,'' 84 *Am. Pol. Sci. Rev.* 417 (1990).

[36]The possibility of a relationship between the rise of political institutions that implement macroeconomic fiscal policy in America and the decline of political parties is considered in John J. Coleman, *Party Decline in America: Policy, Politics, and the Fiscal State* (1996).

[37]For an overview of changes to the organization of Congress and the committee system, see Eric Schickler, ''Institutional Development of Congress,'' in *The Legislative Branch* 35-62 (2005). The classic account of the committee system in Congress remains Richard Fenno, *Lawmakers in Committees* (1973).

[38]*See* Barbara Sinclair, *Legislators, Leaders, and Lawmaking: The U.S. House of Representatives in the Postreform Era* (1998); Sinclair, ''Parties and Leadership in the House,'' in *The Legislative Branch*, *supra* note 37, at 224-254.

[39]The role of the Ways and Means Committee in the tax policymaking process is examined in Randall W. Strahan, *New Ways and Means: Reform and Change in a Congressional Committee* (1990); *see also* John F. Manley, *The Politics of Finance: The House Committee on Ways and Means* (1970).

[40]Mayhew, *Congress: The Electoral Connection*, *supra* note 4, at 142.

Mills (the powerful Ways and Means chair from 1957 to 1975) to defend the integrity of the tax legislative process and reject their own proposals.[41] Since Mills's fall in 1974, no one has had much interest in playing that role.[42] In the breach, individual representatives and senators were left comparatively free to use distributive tax policies to advance their own personal political objectives — in particular, constituency service. The result has been an increase in distributive tax policy included in the massive omnibus revenue legislation that Congress enacts every few years, loaded with scores of special tax provisions for constituents of both parties.[43] Omnibus tax legislation occasionally implements genuine public policy, but the package is mostly an accumulation of unrelated tax provisions that distribute special preferences to favored interests. Sadly, that is what commonly passes for tax policy in Washington.

Tax preferences are enacted through legislative techniques that are difficult for nonspecialists to comprehend. Sometimes, the class of taxpayers who benefit from a tax preference is so narrow that it consists of a single individual taxpayer or corporation — as in the case of transition rules that protect unnamed taxpayers from the adverse effects of new tax legislation by grandfathering them under prior law.[44] Even members of the congressional taxwriting committees do not always know the intended beneficiary of the transition rules they adopt — although someone on their staff certainly does, and is keeping score. Tax preferences targeted to a broader class of taxpayers for a longer period of time are generally enacted through statutory amendments or new provisions to the tax code itself. Those preferences take the form of deductions, credits, deferrals, and exemptions designed to benefit specific groups or economic interests. They are now collectively referred to as tax expenditures to emphasize the extent to which they are functionally equivalent (at least as far as the net economic impact on Treasury) to direct expenditures or outlays authorized in the budget. The concept of tax expenditures has been with us for decades — formally introduced to budget analysis by Treasury in 1968 during Surrey's tenure as assistant secretary for tax policy. Recognized by statute in 1974, tax expenditures are defined as "those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability."[45] Every tax expenditure represents a departure from a pure "economic" income tax.[46]

Tax expenditures are not loopholes, which tax professionals generally think of as unintended tax benefits derived from a glitch in the tax laws or the intersection of different unrelated provisions of the

[41]Mills's important role in federal tax policymaking is the subject of Julian E. Zelizer, *Taxing America: Wilbur D. Mills, Congress, and the State, 1945-1975* (1998).

[42]In October 1974 Mills was stopped by police following a minor traffic violation. He was intoxicated. The incident is described in Stephen Green and Margot Hornblower, "Mills Admits Being Present During Tidal Basin Scuffle," *The Washington Post*, Oct. 11, 1974, at A1. Mills was reelected to his seat from Arkansas in November 1974, but following a second display of public drunkenness, he resigned as chair and did not seek reelection.

In *Taxation and Democracy* (1993), Sven Steinmo describes the fall of Mills and the subsequent reforms of Ways and Means: "The effect of these rule changes . . . was to break open the tax policy-making system and undermine the already weak forces of restraint. . . . This made an already overly open process even more open and made an already porous system even more loop-hole ridden."

[43]More than 30 years ago, Surrey characterized contemporary tax legislation as a "catch-as-catch-can affair that produces complexities, unfairness, conflicting moves in all directions, almost mindless provisions." *See* "Our Troubled Tax Policy," *Tax Notes*, Feb. 2, 1981, p. 179.

[44]For a discussion of how narrow tax preferences are granted under transition rules, see Lawrence Zelenak, "Are Rifle Shot Transition Rules and Other Ad Hoc Tax Legislation Constitutional?" 44 *Tax L. Rev.* 563 (1989). Special transition rules were enacted for the Tax Reform Act of 1986 that saved individual and corporate taxpayers (identified only indirectly through technical language) millions of dollars in taxes by grandfathering them under prior law. The story is told in Donald L. Barlett and James B. Steele, "The Great Tax Giveaway: How the

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Influential Win Billions in Special Tax Breaks," *The Philadelphia Inquirer*, Apr. 10, 1988, at A1; *see also* Graetz and Shapiro, *Death by a Thousand Cuts*, *supra* note 15, at 18-19. The practice of providing special tax treatment in transition rules received so much negative publicity that it has been used only sparingly since 1986.

[45]Congressional Budget and Impoundment Act, P.L. 93-344, section 3(a)(3).

[46]The classic accounts of the political process that produces tax expenditures are Surrey, *Pathways to Tax Reform: The Concept of Tax Expenditures* (1973); and Surrey and Paul McDaniel, *Tax Expenditures* (1985). The concept of tax expenditures has been subject to criticism over the years. *See, e.g.*, Boris I. Bittker, "Accounting for Federal 'Tax Subsidies' in the National Budget," 22 *Nat'l Tax J.* 244 (1969); Douglas A. Kahn and Jeffrey S. Lehman, "Tax Expenditure Budgets: A Critical View," *Tax Notes*, Mar. 30, 1992, p. 1661; Leonard E. Burman, "Is the Tax Expenditure Concept Still Relevant?" 56 *Nat'l Tax J.* 613 (2003); Clifton Fleming Jr. and Robert J. Peroni, "Can Tax Expenditure Analysis Be Divorced From a Normative Tax Base? A Critique of the 'New Paradigm' and Its Denouement," 30 *Va. Tax Rev.* 135 (2010). For a spirited defense of the use of tax expenditures, see Edward A. Zelinsky, "James Madison and Public Choice at Gucci Gulch: A Procedural Defense of Tax Expenditures and Tax Institutions," 102 *Yale Law J.* 1165-1207 (Mar. 1993).

tax code that produce an unanticipated tax advantage (for example, a tax shelter).[47] Rather, tax expenditures are provisions enacted by Congress for the express purposes of allowing those taxpayers (individuals or corporations) who comply with the dictates of the statute to reduce their tax liability. Among the many tax expenditures found in the tax code are those that reward taxpayers who contribute to a charity, drill for oil or gas, invest in research and development or a corporate jet, purchase energy-efficient windows or an automobile with a hybrid engine, produce ethanol, pay for a dependent's college tuition, or buy municipal bonds. The list goes on and on. Hedge fund managers pay a preferential rate of 15 percent not because of some glitch or loophole in the tax code but because Congress expressly prescribed that rate to encourage capital investment. Business benefits from many similar tax preferences; labor has a host of its own. But middle-income taxpayers are also beneficiaries of tax preferences. Year after year, the most expensive tax expenditures are those that subsidize the cost of employer-sponsored healthcare insurance, home mortgage interest, and contributions to retirement accounts.[48] Those tax expenditures are claimed by so many middle-income taxpayers (many of whom are voters) that political efforts to remove them from the tax code are invariably doomed to failure. Reform proposals to eliminate tax preferences and broaden the tax base run contrary to the incentives and interests established by the political institutions within which policymakers act, and hence, are unlikely to succeed.[49]

One major consequence of the growth of tax expenditures is that the revenue-raising capacity of the income tax has been undermined. That erosion of the tax base continues despite the great success of reformers in stripping the tax code of special-interest provisions under the Tax Reform Act of 1986.[50] While an extraordinary number of tax expenditures were repealed under that historic legislation, the political process for making tax policy was left unchanged. Not surprisingly, the same political institutions continued to produce the same kind of distributive tax policies in the decades that followed, and soon enough, the tax code was again loaded with special-interest provisions.[51]

And it remains so. Tax expenditures cost the U.S. treasury an estimated $1.2 trillion in fiscal 2011 — up from $878 billion in 2008.[52] Because of increases in tax expenditures (and the budget deficits attributable to them), Congress is under constant pressure to increase tax rates. Thus, the distinctive feature of the income tax in the postwar era has been high marginal tax rates with an abundance of tax preferences doled out to constituents by elected representatives eager to alleviate the burden of the taxes they themselves enacted.[53] Distributive tax

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[47]Tax loopholes are used to shelter liabilities arising under the income tax. Unfortunately, it is not so easy to distinguish a tax shelter from a tax expenditure. *See* Calvin H. Johnson, ''What's a Tax Shelter?'' *Tax Notes*, Aug. 14, 1995, p. 879, *95 TNT 160-21*. Graetz once defined a tax shelter as ''a deal done by very smart people that, absent tax considerations, would be very stupid.'' Quoted in ''A Special Summary and Forecast of Federal and State Tax Developments,'' *The Wall Street Journal*, Feb. 10, 1999, at A1. The most abusive corporate tax shelters fall into this category because they lack economic substance.

[48]OMB, ''Budget of the U.S. Government, FY 2011,'' Analytical Perspectives, Table 16.3. The budget lists more than 150 tax expenditures. With the exception of a few refundable tax credits targeted to the working poor, tax expenditures largely benefit middle- and upper-income taxpayers. Burman et al., ''How Big Are Total Individual Tax Expenditures, and Who Benefits From Them?'' Tax Policy Center Discussion Paper No. 31 (Dec. 2008), *Doc 2008-25536*, *2008 TNT 235-21*.

[49]A report by the Debt Reduction Task Force of the Bipartisan Policy Center proposed the elimination of most tax deductions and preferences (as well as a host of other unrealistic reform proposals). *See* ''Restoring America's Future: Reviving the Economy, Cutting Spending and Debt, and Creating a Simple, Pro-Growth Tax System'' (2010), *Doc 2010-24611*, *2010 TNT 222-29*.

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Likewise, Alan Simpson and Erskine Bowles, the co-chairs of President Obama's National Commission on Fiscal Responsibility and Reform, recommended the elimination of all tax expenditures in their report ''The Moment of Truth'' (Dec. 2010), *Doc 2010-25486*, *2010 TNT 231-35*. It is easy to make those recommendations but harder to convince lawmakers to act contrary to their own political interests.

[50]P.L. 99-514. Not surprisingly, the ''sacred'' tax preferences (*e.g.*, the home mortgage interest deduction and exclusions for employer-provided healthcare and retirement contributions) were left untouched by TRA 1986.

[51]According to Treasury estimates, tax expenditures increased from 5.2 percent of GDP in 1976 to 8.3 percent in 1985. With TRA 1986, the level of tax expenditures dropped to levels of the mid-1970s and thereafter rose to a constant 7 percent of GDP. The JCT lists 159 new tax expenditures enacted since 1986. *See* JCT, ''Background Information on Tax Expenditure Analysis and Historical Survey of Tax Expenditure Estimates,'' JCX-15-11 (Feb. 28, 2011), at 26, *Doc 2011-4215*, *2011 TNT 40-19*.

[52]JCT, ''Estimates of Federal Tax Expenditures for Fiscal Years 2009-2013,'' JCS-1-10 (Jan. 11, 2010), *Doc 2010-631*, *2010 TNT 7-22*; Donald B. Marron, ''How Large Are Tax Expenditures?'' *Tax Notes*, Mar. 28, 2011, p. 1597, *Doc 2011-6124*, *2011 TNT 62-50*. Income tax expenditures amount to roughly 8 percent of GDP. In its computations, the JCT does not take into account behavioral effects or the interaction among the various tax expenditures. Thus, totaling those expenditures listed in the tax expenditure budget does not provide a perfect measure of the total cost to the treasury (although taking into account all the interactions and behavioral responses, that figure is close). Burman et al., *supra* note 48 (concluding that revenue loss from all nonbusiness individual income tax expenditures is 5 to 8 percent higher than the simple mathematical total).

[53]The United States has long ranked just behind Japan for the dubious distinction of having the highest combined federal/state corporate tax rate (39.3 percent versus 39.5 percent). *See*

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policy is a product of the unique political incentives that shape the behavior of congressional policymakers, and it is responsible for a significant portion of what we generously refer to as federal tax policy.

Regulatory Tax Policy

The political arena of distributive (pork-barrel) tax policy will seem familiar to many from the countless stories in the popular press and news media on the lobbying, special interests, and ''corruption'' that purportedly is endemic to American politics. In recent years, journalists have devoted considerable attention to federal tax policy, exploring similar themes as they relate to the tax code.[54] In their investigations, they depict legislators as shills for corporate interests and the supposedly ubiquitous special interests. The income tax is portrayed as a scheme by which the wealthy enrich themselves at the expense of middle-income Americans.[55] Law professors commonly portray the tax law as little more than a tool for ''rent extraction.''[56] If that view is descriptive of the distributive arena of federal tax policy (and that is debatable), it ignores significant aspects of other arenas of tax policy — specifically, those times when public officials impose *their* policy preferences on private economic interests. That is the essence of regulatory tax policy, which is made by different political elites and within different political institutions than those that generate distributive tax policy.

If the political arena for regulatory tax policy is familiar territory to tax professionals and scholars of public policy, it is largely unknown to the public — as well as most political scientists. There is good reason for that: Regulatory tax policies are implemented through highly technical rules and regulations that are exceedingly difficult for nontax professionals to decipher because of the specialized and arcane language. Further, the most onerous and complex of those rules and regulations affect only a relatively small number of taxpayers — typically business corporations and those with high incomes and access to competent professional counsel. For that reason, regulatory tax policy is largely ignored by journalists and the popular press.

The professional bureaucracy in Treasury and the IRS that drafts tax regulations was created by Congress to administer and enforce the tax legislation it enacts. Congress also relies on the nonpartisan tax bureaucracy (including the staff of its own taxwriting committees) to help draft the technical rules and regulations that implement the tax laws. Further, Congress created the nonpartisan Joint Committee on Taxation and Congressional Budget Office to advise members on fiscal and budgetary matters.[57] The professional staff responsible for making regulatory tax policy is relatively insulated from the pressures of interest groups and lobbyists as well as the vagaries of partisan politics. Professional ethics and academic principles of taxation and economics, rather than political expediency, guide regulatory policymakers.

Tax Foundation, ''Illinois Corporate Tax Hike Inches U.S. Closer to #1 Ranking Globally,'' Fiscal Fact No. 257 (Jan. 14, 2011), Table 1. With recent reform in Japan, the United States now has the highest corporate tax rate in the world. *See* Meg Shreve, ''Republicans Bemoan U.S. Corporate Tax Rate Ranking,'' *Tax Notes*, Apr. 9, 2012, p. 146, *Doc 2012-6824*, or *2012 TNT 63-6*.

[54]For a critique of ''muckraker'' journalists who sensationalize tax policy, see Sheldon D. Pollack, ''Revenge of the Muckrakers,'' *Tax Notes*, Apr. 14, 1997, p. 255, *Doc 97-10244*, or *97 TNT 71-88*. A contemporary practitioner of muckraker tax journalism is David Kocieniewski, a business reporter for *The New York Times*. Filling the void left by the departure of David Cay Johnston, Kocieniewski has devoted himself to (in the words of his editor) ''exposing the obscure provisions that businesses and the wealthiest Americans exploit to drive their tax bills down to rock bottom.'' Kocieniewski won a Pulitzer Prize in 2012 for explanatory reporting.

[55]Other examples of sensationalist journalism on tax policy include: Martin L. Gross, *The Tax Racket: Government Extortion From A to Z* (1995); Donald L. Barlett and James B. Steele, *America: Who Really Pays the Taxes?* (1994); Johnston, *Perfectly Legal: The Covert Campaign to Rig Our Tax System to Benefit the Super Rich — and Cheat Everyone Else* (2003) and *Free Lunch: How the Wealthiest Americans Enrich Themselves at Government Expense and Stick You With The Bill* (2008).

[56]Examples of the so-called economic theory of regulation as applied to tax policy include Richard L. Doernberg and Fred S. McChesney, ''On the Accelerating Rate and Decreasing Durability of Tax Reform,'' 71 *Minn. L. Rev.* 913 (1987), 913; Doernberg and McChesney, ''Doing Good or Doing Well? Congress and the Tax Reform Act of 1986,'' 62 *N.Y.U. L. Rev.* 891 (1987), 891; McChesney, ''Rent Extraction and Rent Creation in the Economic Theory of Regulation,'' 16 *J. of Legal Stud.* 101 (1987). Daniel Shaviro neatly summarizes the central themes of that school in ''Beyond Public Choice and Public Interest: A Study of the Legislative Process as Illustrated by Tax Legislation in the 1980s,'' 139 *U. Pa. L. Rev.* 6-7 (1990):

> Legislation (along with other government action) is a product supplied to well-organized interest groups that are struggling to maximize the incomes of their members, often at the expense of the less well-organized. In effect, legislation is sold to the highest bidder, with bids being paid in the currency of votes, campaign contributions, and personal benefits such as honoraria.

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[57]The JCT was created in 1926. The chair rotates between the chairs of the Ways and Means and Finance committees. The JCT staff includes lawyers and economists who advise the committees and individual lawmakers on tax legislative proposals and provide the official revenue estimates on all proposed tax legislation. The CBO was created by Congress in 1974 for the purpose of providing it with an independent source of expertise to counterbalance the recommendations of the OMB, an agency in the executive office whose reputation for nonpartisanship was tainted during the Johnson and Nixon administrations.

This arena of power is within the executive branch and the professional agencies, outside the political arena of the congressional committee system where private interest groups more typically exert influence over decision-making. True, the highest officials in the tax bureaucracy are political appointees, including the Treasury secretary, assistant Treasury secretary for tax policy, IRS commissioner, IRS chief counsel, and the JCT chief of staff.[58] But the tax professionals who formulate and administer the regulatory tax policies are civil servants (formally nonpartisan) rather than political appointees. Most important, none of them (including the political appointees) are required to compete in elections to retain their office. As such, they are less susceptible to the pressures of the electorate or organized interest groups.

How particular regulatory tax policies make it onto the policy agenda is itself a complicated matter.[59] Some policies are proposed by the congressional leadership or the White House under the guise of ''corporate welfare or shutting down abusive transactions.'' Those initiatives may be politically motivated because such themes resonate with the liberal constituency of the Democratic Party. The tax bar and accounting associations also periodically weigh in with concerns about abusive transactions or practices.[60] Their recommendations for regulatory policies are given great deference by the tax authorities because those groups are made up of tax professionals intimately familiar with private practices. Occasionally, the media will play a similar role in publicizing abuses and instigating reforms — although by the time the media reports on an abusive practice, invariably it is already familiar to the tax authorities and private bar.[61] Most important, many regulatory tax policies can be traced to initiatives set in motion by the professional staff itself.

The professional staff routinely proposes to the taxwriting committees regulatory policies for ending abusive transactions, loopholes, or technical glitches in the tax code. Many reform measures enacted by Congress can be traced to internal position papers drafted by Treasury or the JCT. That was the case with many of the reforms enacted under TRA 1986.[62] For example, the enactment of the passive activity loss rules (which limit the deduction for artificial tax losses generated by tax shelter investments) was a regulatory response to widespread abusive practices among wealthy taxpayers.[63] Similarly, the original issue discount rules (which require the economic accrual of interest on debt instruments sold at a discount) were devised by economists in Treasury's Office of Tax Policy in the early 1980s and later enacted through omnibus tax legislation.[64] In both cases, the regulatory tax policies were first suggested by the professional staff and later included in legislation that laid out a general regulatory scheme. Thereafter, the policies were given substance through regulation projects drafted by the professional staff.[65]

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[58]The professional staff of the taxwriting committees function differently because they are appointed by the leadership to advise them on revenue issues. For an account of the role of nonpartisan staff in the tax legislative process, see Michael J. Malbin, *Unelected Representatives: Congressional Staff and the Future of Representative Government* 170-187 (1980); Hedrick Smith, *The Power Game: How Washington Works* 270-325 (1988).

[59]For a general discussion of how particular issues arise on the political agenda, see John W. Kingdon, *Agendas, Alternatives, and Public Policies* (1984).

[60]The American Bar Association Section of Taxation (as well as several regional associations — most prominently, those of Philadelphia and New York) is the main professional association that represents tax attorneys, while the American Institute of Certified Public Accountants is the professional association of CPAs. Since 1954, both organizations have been active in lobbying the government for new rules and regulations to close loopholes and abuses.

[61]A good example of how abusive practices known to tax professionals slowly are recognized by journalists and regulators involves the rise of fraudulent corporate tax shelters. Those were marketed almost as soon as the ink was dry on TRA 1986, which allegedly ended those practices. It was not until the mid-1990s that the practice was noticed by even professional journalists. Only later did the IRS take decisive steps to end the most blatant abuses.

[62]President Reagan initiated the campaign for tax reform in his 1984 State of the Union address, when he called on Treasury to study the feasibility of tax reform and simplification. The first draft for a tax reform bill (known as ''Treasury I'') was based on Treasury's report. *See* ''Tax Reform for Fairness, Simplicity, and Economic Growth: The Treasury Department Report to the President'' (1984).

[63]The idea for the passive activity loss rules came from David Brockway, JCT chief of staff, who sold the concept to Sen. Bob Packwood, chair of the Finance Committee. Jeffrey H. Birnbaum and Alan S. Murray, *Showdown at Gucci Gulch: Lawmakers, Lobbyists, and the Unlikely Triumph of Tax Reform* 218-220 (1988). The concept was then given content by the professional staff and enacted by Congress under TRA 1986 in unusually detailed legislation as new section 469.

[64]The role of the Office of Tax policy is described in Ronald A. Pearlman, ''The Tax Legislative Process: 1972-1992,'' *Tax Notes*, Nov. 12, 1992, p. 939; and Kenneth W. Gideon, ''Tax Policy at the Treasury Department,'' *Tax Notes*, Nov. 12, 1992, p. 889. The original issue discount rules were introduced in the 1980s to prevent the deferral of tax on interest payments made on debt instruments issued at a discount. The principles were adopted in section 1271 et seq. and in regulations. The regulations are 441 pages long and use complicated economic concepts. Both sets of rules are now part of the regulatory landscape that every tax professional must navigate.

[65]The professional staff commonly relies on economists to formulate regulatory policies. The original issue discount rules fall into that category. Likewise, section 482 authorizes the IRS to adjust the income and deductions regarding transfers of

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Some regulations merely interpret statutes enacted by Congress and provide much-needed guidance to taxpayers and practitioners and hence are welcomed by the private groups most directly affected. (Interest groups definitely will lobby for more than just guidance; they also want more favorable interpretations of the tax code. Occasionally, they get their way.) On the other hand, Congress also commonly broadly delegates substantive legislative rulemaking authority to the regulatory authorities. Scholars have considered the conditions and circumstances under which Congress will delegate legislative authority to an administrative agency, but conclusions are tentative.[66] However, that is a particularly common practice when it comes to tax policy.[67] The resulting legislative regulations have the full force and authority of law and are afforded considerable deference by the federal courts.[68]

Ironically, in this budgetary climate of massive federal budget deficits, regulatory tax policies have become popular among legislators for the simple reason that they raise revenue. Regulatory revenue raisers are commonly paired in a single legislative package with unrelated legislation (distributive or redistributive) that reduces tax revenues or authorizes new spending. Regulatory tax policies have become popular because they help offset the costs of such tax cuts or spending programs. That pairing was once formally required under the "pay as you go" rules set forth in the Budget Enforcement Act of 1990.[69] Under pay-go, any tax reduction must be offset by a comparable revenue increase or reduction to direct discretionary spending programs; net revenue losses from all new legislation must be offset by revenue enhancement or direct spending cuts.[70] Technically, pay-go only required annual revenue offsets, but the rule was translated by then-Ways and Means Committee Chair Dan Rostenkowski and then-Finance Chair Lloyd Bentsen to require that any single legislative proposal resulting in a net revenue loss be coupled with an offsetting revenue raiser in the same bill.[71]

The pay-go budget rule created an increased demand for regulatory tax policies that raise revenue. While it expired at the end of 2002, legislators remain under pressure to find revenue raisers to offset the cost of new spending programs. A version of pay-go was introduced as a standing rule of the House in January 2007. (True, the House procedural rule has been easily avoided, as was the original pay-go statute.[72]) Perhaps because of that, a new

goods, services, or intangibles between commonly controlled corporations. The rules and regulations that govern transfer pricing involve complicated economic adjustments intended to produce results consistent with transfers between unrelated parties. In litigation and settlement agreements, the respective parties (taxpayer and IRS) rely on their own teams of economic advisers to navigate the technical requirements of the regulations promulgated under section 482.

[66]The various explanations and models put forth by scholars are reviewed in Mathew D. McCubbins, "The Legislative Design of Regulatory Structure," 29 *Am. J. Pol. Sci.* 721-748 (Nov. 1985); *see also* McCubbins and Talbot Page, "The Congressional Foundations of Agency Performance," 51 *Public Choice* 173-190 (1986). According to two observers, legislators will delegate legislative authority to administrative agencies when the gain from the ability to shift the blame for the cost of regulation outweighs the loss of the benefit to be claimed by the legislators. *See* Fiorina and Noll, "Majority Rule Models and Legislative Elections," 41 *J. Pol.* 1081-1104 (Nov. 1979); *see also* Noll, "The Behavior of Regulatory Agencies," 29 *Rev. Soc. Econ.* 15-19 (Mar. 1971).

[67]Perhaps the most famous case of an extraordinarily broad delegation of legislative authority to Treasury and the IRS to draft regulations (which were never actually finalized) involved the task of promulgating regulations to distinguish debt from equity for purposes of federal income taxation. Those legislative regulations were authorized under section 385. The statute authorizes Treasury to issue regulations to deal with a perceived (and entirely unarticulated) problem. There is no other guidance on the policy to be implemented.

[68]The difference between interpretive and legislative regulations in the field of tax law is discussed in Steve R. Johnson, "*Intermountain* and the Importance of Administrative Law in Tax Law," *Tax Notes*, Aug. 23, 2010, p. 837, *Doc 2010-15990*, or *2010 TNT 163-4*. Legislative tax regulations are afforded considerable deference under the Supreme Court's holding in *Chevron*. The application of *Chevron* deference was modified by the Supreme Court in *Christensen v. Harris County*, 529 U.S. 576 (1999) (limiting *Chevron* deference to legislative rules); and *United States v. Mead Corp.*, 533 U.S. 218 (2001) (limiting *Chevron* deference to cases when Congress has delegated authority to make rules carrying the force of law).

[69]2 U.S.C.A. section 601 et seq. (Title 6, "Budget Agreement Enforcement Provision"), amending the Congressional Budget and Impoundment Control Act of 1974, P.L. 93-433.

[70]2 U.S.C.A. sections 633(c), (f), and 902. The Budget Enforcement Act of 1990 also provided for adjustable spending caps and caps on discretionary spending. Those were easily avoided. Nevertheless, pay-go was an effective mechanism whereby Congress was able to impose some restrictions on the impulses of its individual members to spend beyond the government's capacity to raise revenue. For a thorough discussion of the impact of the pay-go rule, see Elizabeth Garrett, "Harnessing Politics: The Dynamics of Offset Requirements in the Tax Legislation Process," 65 *U. Chi. L. Rev.* 501 (Spring 1998).

[71]For years, the taxwriting committees continued to follow that procedure even after Rostenkowski and Bentsen left Congress.

[72]The House pay-go procedural rule does not apply to emergency spending (as designated by the House itself). Likewise, the rule does not apply to discretionary spending — only changes to mandatory spending. Further, it does not apply to previously enacted increases to mandatory spending, such as those already scheduled for Social Security. Finally, the procedure can be waived under a rule from Ways and Means, which was the case with the Economic Stimulus Act of 2008, P.L. 110-185, which was estimated to decrease revenues by $152 billion in 2008. The $787 billion stimulus package enacted in

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statutory version of pay-go favored by Democrats was enacted on February 12, 2010.[73] While this anti-deficit rule can be evaded by many of the same techniques that were used to avoid the old pay-go statute and the House procedural rule, it maintains the strong demand for regulatory tax policies that raise revenue. Recall that the Health Care and Education Reconciliation Act of 2010 included several regulatory tax provisions with no connection to the legislation other than that they helped offset the significant costs of the new program. One such revenue raiser codified the economic substance doctrine, purportedly shutting down some abusive tax practices (for example, bogus tax shelters) and in the process, raising revenue for the treasury.[74]

The rules and regulations that implement regulatory tax policies affect narrowly defined groups of taxpayers while leaving virtually everyone else unaffected. Rather than bestow an economic benefit (for example, lower taxes) on a narrow class of beneficiaries (as is the case with distributive tax policies), regulatory tax policies impose an economic burden on those affected. Targeted taxpayers might be an entire industry, an economic sector, or a small number of similarly situated firms. Those taxpayers adversely affected by a new regulatory tax policy have a strong incentive to organize and lobby against it. Consequently, whenever those policies appear on the policy agenda, the lobbyists and representatives for affected industries quickly swing into action.[75] Industry and economic sectors are represented by their own expert legal advisers and tax professionals (lawyers and accountants), as well as lobbyists. The government's staff may hear from their private-sector counterparts through comments offered at public hearings held for new regulations projects or through informal contacts, but usually the contacts and bargaining are informal. The government's professional staff often is personally familiar with the professionals representing taxpayers. Many of those hired guns previously worked for the government and left for more lucrative employment in the private sphere representing those they once regulated.

The significant costs associated with organizing and lobbying to resist regulatory tax policies is usually shared by affected taxpayers through their trade associations or new organizations created for the occasion. In rare cases, individual firms or persons have a sufficiently strong economic incentive to bear the entire cost of opposing a new regulatory tax policy. Sometimes they succeed in blocking or weakening regulatory initiatives through appeals to friendly representatives or senators — especially members of the taxwriting committees. Most often, they do not. With all the new regulatory policies enacted in the past five decades, the federal tax laws and code of federal regulations have swelled in scope and volume, thereby contributing to the increasing complexity of the federal tax laws.[76]

Redistributive Tax Policy

Redistributive policies generate their own distinctive pattern of politics and decision-making and involve broad national policies that provoke intense political conflict reflecting deep-rooted cleavages such as class, wealth, and region. Those conflicts typically play out at the highest levels of American politics — on the floor of Congress and in national elections contested by the two major political parties. Ultimately, they are resolved only when a majority coalition successfully imposes its will on the minority opposition. Among redistributive policies, few have provoked as much controversy and acrimony as the decision to adopt a national income

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February 2009 was exempt from the pay-go rule under the emergency spending designation.

[73]The Statutory Pay-As-You-Go Act of 2010 was enacted as part of P.L. 111-139 and states that all new legislation taken as a whole that reduces taxes, fees, or mandatory expenditures must not increase projected deficits. As with the 1990 version, the sequestration provisions are not triggered by emergency costs associated with legislation designated as such by Congress.

[74]P.L. 111-152, section 1409. The legislation included new section 7701(o), which codifies the economic substance doctrine applied by the federal courts. For a description of the measure, see Martin J. McMahon Jr., ''Living With the Codified Economic Substance Doctrine,'' *Tax Notes*, Aug. 16, 2010, p. 731, *Doc 2010-14844*, or *2010 TNT 158-2*.

[75]That is true for regulatory tax policy as well as most other forms of regulation that affect private interests. Curiously, former SEC Chief Arthur Levitt was surprised to learn from his experience that in the nation's capital, highly organized interests wield extensive power over agendas and policy design:

> During my seven and a half years in Washington . . . nothing astonished me more than witnessing the powerful special interest groups in full swing when they thought a proposed rule or a piece of legislation might hurt them, giving nary a thought to how the proposal might help the investing public. With laserlike precision, groups representing Wall Street firms, mutual fund companies, accounting firms, or corporate managers would quickly set about to defeat even minor threats. Individual investors, with no organized labor or trade association to represent their views in Washington, never knew what hit them.

Levitt, *Take on the Street: How to Fight for Your Financial Future* 250 (2002).

[76]The increase in the complexity of the tax law was noted decades ago. For an account of the factors that have contributed to the increased complexity, see Surrey, ''Complexity and the Internal Revenue Code: The Problem of the Management of Tax Detail,'' 34 *Law & Contemp. Probs.* 673 (1969); Pollack, ''Tax Complexity, Reform, and the Illusions of Tax Simplification,'' 2 *Geo. Mason Indep. L. Rev.* 319-359 (Summer 1994).

tax — in particular, an income tax with a progressive rate structure. By definition, a progressive income tax has a disproportionate impact on the wealthiest citizens, and not surprisingly, those adversely affected are strongly motivated (and have sufficient resources) to organize and resist such an impost through all available political means. The more progressive the rate structure, the more intense the opposition. Without a mature party system to mediate the political conflicts triggered by redistributive tax policies, those targeted (for example, the powerful and wealthy) may resort to tax rebellions, protests, and generally more contentious politics that is disruptive to the political system. That has often been the case elsewhere.[77] Fortunately, the divisive issues raised by redistributive tax policy in the United States have been largely resolved through elections and normal politics rather than recourse to politics in the streets.[78]

The origins of the modern income tax can be traced to February 1913, when the states ratified the 16th Amendment, granting Congress the authority to tax ''incomes, from whatever source derived.'' A modest income tax was enacted in October of that same year.[79] With the constitutional issue resolved, a century-long political battle commenced over the distribution of the federal income tax. Since the enactment of the modern income tax in 1913, its rate structure has reflected shifts in the partisan affiliation of the electorate and the balance of power between the political parties. With the ebb and flow of majority coalitions, the rate structure has shifted. During periods of one-party hegemony in Congress (for example, during the 1960s), rates have remained relatively stable. When conservative majorities have emerged, Republicans have reduced taxes at the margin; liberal-left majorities have raised taxes on the wealthy. If ''politics as usual'' in Washington is associated with distributive tax policies (that is, tax preferences for organized interests), and regulatory tax policy is enacted by nonpartisan professionals in the executive branch, majority party politics is associated with redistributive tax policies that affect the progressivity and distribution of the income tax. That has been the pattern of income tax politics for nearly 100 years. In those political conflicts, the underlying question invariably is who will bear the burden of the impost. Ultimately, that is the divisive political issue raised by all redistributive tax policies.

Since 1913 there have been several distinct periods of intense politics over the federal income tax. Those were triggered by changes in the electoral bases of the major parties or in economic conditions. For instance, tax reduction first became a basic tenet of the dominant Republican Party following World War I, when Republican presidential candidate Warren G. Harding campaigned on a platform favoring a ''return to tax normalcy.'' That translated into repealing the extraordinary wartime rates that had soared to a maximum of 77 percent. Successive pro-business Republican administrations supported by congressional majorities held the maximum rate below 25 percent throughout the 1920s.[80] Following a major shift in the electorate and a reconstitution of the party system in 1932, the new Democratic majority provided the Franklin D. Roosevelt administration with a mandate to use the tax code as a tool for redistributive policy. The maximum marginal rate rose to 63 percent during Roosevelt's first term and reached 79 percent during his second. Indeed, the structure of the income tax was one of the most politically divisive partisan issues of the New Deal.[81]

While New Deal redistributive tax policy was a major wedge issue throughout the 1930s, World War II put an end to the partisan bickering. The fiscal crisis of war necessitated unprecedented borrowing by the national government and extraordinary tax increases for all Americans. By 1945, the maximum rate for individuals soared to a historic 94 percent. Moreover, those wartime tax rates were retained after the cessation of hostilities.[82] As a consequence, postwar American politics has been marked by intense partisan conflict over marginal

[77]The Bourbon monarchy of 18th century France and the imperial czars of Russia imposed high taxes on powerful social and economic classes, thereby fomenting social revolution. Theda Skocpol, *States and Social Revolutions: A Comparative Analysis of France, Russia, and China* (1979). Contentious politics (revolutions, social movements, civil wars, and violent ethnic conflicts) that occur when the political system cannot resolve divisive issues is described in Charles Tilly and Sidney Tarrow, *Contentious Politics* (2006).

[78]That was not always the case, as local tax revolts and rebellions were common during the period of the Articles of Confederacy (1781-1788).

[79]Revenue Act of Oct. 3, 1913 (the Underwood-Simmons Act), P.L. 63-16, chap. 16. The legislation was mostly concerned with tariff reform. The income tax is found at Section II. The story of the politics behind the adoption of the 1913 income tax is told in Pollack, ''Origins of the Modern Income Tax, 1894-1913,'' 62 *Tax L.* __ (forthcoming Winter 2013); *see also* Roy G. Blakely and Gladys C. Blakely, *The Federal Income Tax* 71-104 (1940).

[80]For an analysis of these tax cuts, see Gene Smiley and Richard H. Keehn, ''Federal Personal Income Tax Policy in the 1920s,'' 55 *J. Econ. Hist.* 332 (1995).

[81]The definitive account of New Deal tax policy is Mark H. Leff, *The Limits of Symbolic Reform: The New Deal and Taxation, 1933-1939* (1984).

[82]Levels of taxation and government spending tend not to return to prewar levels following major military conflicts. For a discussion of that ratchet effect, see Alan T. Peacock and Jack

(Footnote continued on next page.)

rates. The conflict has played out repeatedly in national elections — during the late 1940s when a resurgent Republican Party took control of the 80th Congress and set out to roll back the wartime rates, and then again following the historic shift in the political balance of power that carried Ronald Reagan to the White House.[83]

During Reagan's first term, Congress enacted the Economic Recovery Tax Act of 1981, which lowered the maximum income tax rate for individuals to 50 percent. While Reagan was later forced to accept some tax increases in the face of rising deficits, he successfully lowered marginal tax rates. After his landslide reelection in 1984, he again turned to tax reform. Against all odds, supply-siders in the White House seeking lower marginal rates joined liberal Democrats in Congress who were pushing for a broader tax base to enact revenue-neutral tax reform legislation.[84] The result was TRA 1986, widely hailed as the most significant reform legislation in the history of the U.S. income tax.[85] The legislation dramatically reduced the maximum rate for individuals to 28 percent and simultaneously repealed a host of tax preferences enacted during the postwar era.

Despite Reagan's success in lowering income tax rates, his successor in the White House, George H.W. Bush, was forced to accept modest tax increases in the face of rising deficits. That led to a split between the moderate Republican administration and congressional conservatives. Bush failed to win a second term in 1992, and the new Democratic administration immediately proposed tax increases for those with high incomes. In his 1993 State of the Union address, President Clinton called for a major tax increase on the wealthy.

The Revenue Reconciliation Act of 1993 would have imposed a new maximum tax bracket of 36 percent for individuals with incomes exceeding $115,000 and a 10 percent surtax on incomes exceeding $250,000. Consequently, the maximum marginal tax rate for individuals would have climbed to 39.6 percent, while the corporate income tax would have topped off at 35 percent. As the administration moved forward with its proposal, the level of partisanship and acrimony intensified. In early 1993, the Ways and Means Committee reported Clinton's plan. As has become the rule for contemporary tax policy legislation, voting on the floor of the House followed strict party lines, and the measure passed by the narrow margin of 218 to 216. The next day, a split vote in the Senate was decided by Vice President Al Gore.

The legislation provoked a partisan response from Republicans. With the GOP returning to power following the 1994 midterm elections, tax policy began to swing in the other direction. A compassionate conservative from Texas would capture the 2000 Republican presidential nomination and lead a majority coalition in favor of tax cuts at the margins.

With George W. Bush eking out a victory, Republicans took back the White House after an eight-year hiatus during which the maximum marginal tax rate had increased 28 percent. Republicans also took control of the 107th Congress, allowing Bush to make good on his campaign pledge to reduce tax rates. The House approved a major tax reduction bill by a 230-198 vote, while the Senate passed a more moderate package of tax cuts that spring. Later, a conference committee worked out a compromise: The Economic Growth and Tax Relief Reconciliation Act of 2001 enacted $1.25 trillion in tax cuts and included a new 10 percent tax bracket for low-income taxpayers, retroactively effective to January 1, 2001. The maximum tax rate was scheduled to fall to 35 percent by 2006. The Republican legislation effectively repealed the Clinton tax increase. That was redistributive tax policy on a grand scale — just like the 1993 tax increase enacted by the Democrats.

Not satisfied, the Bush administration pushed for a second round of tax cuts. Over the objections of Democrats, Republicans enacted the Jobs and Growth Tax Relief Reconciliation Act of 2003, which accelerated the effective date of the tax cuts adopted in 2001. The 35 percent maximum rate was made retroactive to January 2003; the effective date for reduced capital gains rates was likewise accelerated. But Republicans still lacked the requisite 60 votes in the Senate to make the tax cuts permanent. The 10-year sunset provision included in the 2001

Wiseman, ''Approaches to the Analysis of Government Expenditure Growth,'' 7 *Public Fin. Q.* 3 (1979); Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* 57-74 (1987).

[83]I previously discussed the intense politics over postwar income tax rates in ''Revenge of the 80th Congress,'' *Tax Notes*, Nov. 15, 2010, p. 819, *Doc 2010-22639*, or *2010 TNT 221-9*.

[84]Despite the purported revenue-neutral framework for TRA 1986, the legislation slightly increased the overall progressivity of the income tax. Henry J. Aaron, ''The Impossible Dream Comes True,'' in *Tax Reform and the U.S. Economy* 13-14 (1987). The compromise that brought together liberal reformers and conservative supply-siders behind TRA 1986 is analyzed in Amy Gutmann and Dennis Thompson, ''The Mindsets of Political Compromise,'' 8 *Persp. on Pol.* 1125 (Dec. 2010).

[85]Witte, *supra* note 17, at 4 (''TRA can only be viewed as . . . by far the most radical example of peacetime tax reform in history''); Shaviro, ''Beyond Public Choice,'' 139 *U. Penn. L. Rev.* 5 (1990) (''The 1986 Act was the all-time leading example of tax reform'').

legislation remained intact.[86] So when Democrats had a major electoral victory in 2008 and regained the White House and a decisive majority in the Senate, it appeared as if tax policy would once again reverse course and the Bush tax cuts would be left to expire on schedule at the close of 2010. But the electorate is divided and fickle. Before the expiration date, the Republican Party made an improbable comeback in the 2010 midterm elections, once again altering the political framework for redistributive tax policymaking. Knowing that Republicans would control the House in the 112th Congress, President Obama struck a compromise with the Republican leadership on the expiring tax cuts. The lame-duck Congress passed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, which was signed into law by the president on December 17, 2010.[87] The Bush tax cuts were extended for another two years — through December 31, 2012. Therefore, the 2012 elections will decide the issue. But with neither party likely to gain a definitive advantage, the same divisive issues are sure to be raised again and again — regardless of which political party controls the redistributive tax policymaking process.

Today, the composition of our national political institutions remains sharply divided along partisan lines. As long as the underlying cleavages remain (as they surely will), future shifts in the electorate and the balance of power between the two major parties will produce new majorities, and the resulting majority coalitions will enact new redistributive tax policies that will change marginal tax rates to reflect the political commitments and prevailing ideology of the dominant party. Redistributive tax policy is an ongoing political drama for which there is no final act or conclusion.

Assessment

There is no single federal tax policy but rather three distinct policy streams, each generated in its own political arena and created by different groups of political actors. To a large extent, those political arenas operate independently of one another. For instance, while the battle over marginal tax rates was waged by the two parties for more than five decades, the nonpartisan tax bureaucracy continued to draft its rules and regulations, largely unaffected by the results of that political contest. Likewise, Congress and the taxwriting committees continue to enact new special tax preferences and other pork-barrel tax policies regardless of who is president or which party controls the policy agenda. At the same time, the separate policy streams are interconnected because all tax policy ultimately must come before Congress and the taxwriting committees for review and approval. The policy streams converge in massive omnibus legislative packages that include a hodgepodge of distributive, regulatory, and redistributive tax policies. What we commonly refer to as federal tax policy is really the amalgamation of the policy outcomes produced in those discrete political arenas.

Each arena is characterized by its own distinctive pattern of politics, decision-making, and interaction among the relevant participants. Congress's institutional architecture favors distributive tax policymaking, just as the norms of the professional tax bureaucracy drive regulatory tax policymaking. Electoral contests and majority politics produce their own unique (and erratic) pattern of redistributive tax policymaking, especially regarding the rate structure and distributional impact of the federal income tax.

There is an inherent logic and reason underlying the segmentation of tax policymaking into separate political arenas. While the Constitution formally assigns to Congress the authority to make revenue and tax policy, as a practical matter, it is in the interest of Congress as a political institution comprised of elected officials to delegate that authority to the taxwriting committees, which introduce some measure of restraint to the policymaking process. Simultaneously, the committee system that organizes Congress facilitates distributive tax policymaking and accordingly serves the political interests of individual lawmakers.

The incentives created by the unique institutional features of Congress (for example, elections and single-member districts) encourage congressional policymakers to exercise the power of the purse in very specific ways; namely, to impose high taxes to finance governmental operations and then enact targeted tax preferences that relieve their own constituents of the burden of those taxes. That translates into an income tax with a high marginal rate and countless exceptions. The resulting structure of the federal income tax serves the political interests of individual members of Congress, if not the interests of the treasury.

[86]The 2001 legislation included a sunset provision for the tax cuts, virtually all of which were scheduled to expire at midnight on December 31, 2010. That was necessary to keep the tax reduction package from running afoul of the Senate's Byrd rule, which requires 60 votes to overcome a point of order raised against legislation that reduces revenue beyond the 10-year time frame of budget resolutions. Republicans had a majority in the Senate, but not the 60 votes necessary to survive a point of order — hence the sunset provision. That meant from the onset that the Bush tax cuts were only temporary.

[87]The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312.

Within Congress itself, there are political rewards for those who serve on the taxwriting committees and bring home the tax bacon for their constituents. There are few comparable rewards for making regulatory tax policy. Thus, it is not surprising that Congress has delegated the authority to make regulatory tax policies to a nonpartisan bureaucracy of experts and professionals, sheltered from the direct pressures of interest groups and partisan elections. Treasury is assigned the duty of administering the tax laws, but Congress also delegates to it considerable authority to draft the technical rules and regulations of enforcement. That makes sense from the perspective of the individual members of Congress, who have an interest in retaining the power to enact pork-barrel tax policies while delegating to anonymous bureaucrats the difficult task of making unpopular but necessary regulatory tax policies. Standing before their constituents at election time, incumbents can then blame the bureaucracy for the onerous tax regulations and claim credit for all the popular tax expenditures. While Congress as a legislative body created those organizations to satisfy institutional objectives, individual lawmakers find it politically expedient to rail against the tax bureaucracy that they themselves created.

While morally perverse, that is perfectly logical within the complex web of incentives and disincentives imposed on elected policymakers by Congress as a political institution. Of course, congressional politics does not consist only of individual members going their separate ways to maximize their own preferences. If it did, the institution would soon collapse under its own weight. To avoid that, Congress has created institutional mechanisms to check the impulse of individual lawmakers to accommodate their constituents with generous special tax preferences. Those include Treasury's Office of Tax Policy, the JCT, and the CBO. The Ways and Means Committee once played a central role in checking and restraining the distributive tendencies of lawmakers, but that role has diminished.

So we see that while Congress must give its approval to redistributive and regulatory tax policies, those policies are made in different political arenas, through different political processes, by different political actors, and for different purposes than its own distributive tax policies. While logrolling and vote trading are particularly effective techniques for making distributive tax policy, they are dysfunctional for redistributive tax policy. Likewise, a decentralized committee system based on seniority is an ideal institutional arrangement for satisfying the interests of individual lawmakers in distributing special tax preferences to constituents, but it is ill-suited for enacting major national tax policies that redistribute wealth between economic or social classes. Those policies require the support of majority coalitions and political parties backed by a mandate from the electorate. Support from the White House is also vital. Without a strong majority partisan coalition bridging the chasm between the legislative and executive branches, a major redistributive tax policy is unlikely to be enacted, and if it is, it is unlikely to persist for long. Political compromises entered into by the party leadership in the absence of a strong majority are susceptible to reversal with the next shift in the electorate. That has been the erratic pattern of federal tax policy since the modern income tax was enacted in 1913.

Without the extraconstitutional institutional innovation of political parties, it is hard to imagine how the U.S. political system could cope with the highly charged political issues raised by redistributive tax policies. For the past century and a half, the national party system has contained the political conflicts provoked by such contentious redistributive policies as the imposition of a progressive income tax and wealth transfer taxes. But ''contain'' does not mean ''resolve.'' These conflicts are endemic to redistributive tax policy — and ultimately, politics itself. There can be no end to redistributive tax policymaking any more than to politics. Federal tax policy is the result of elected politicians making tax laws that raise revenue while conforming to the ideological preferences of the dominant political majority, the partisan affiliations of the electorate, the interests of organized interest groups, the demands of tax regulators, and lawmakers' own individual interest in reelection. The result is a complex, incoherent, and unprincipled accumulation of the three policy streams that collectively make up federal tax policy.