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REVENGE OF THE MUCKRAKERS

by Sheldon D. Pollack

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In this article, Pollack evaluates how journalists portray the tax policymaking process, focusing on some of the most notable popular books and newspaper articles on tax issues published in recent years. Most of these journalistic accounts of the policymaking for the income tax assume a crude interest-group model of politics in which "special interests" control policy outcomes. In the typical story, he finds, the tax system is portrayed as thoroughly manipulated by the "wealthy" and special interests for their own selfish purposes. Members of Congress are viewed as "lackeys" of the rich who are ready to enact new tax "loopholes" or just look the other way as "shrewd" tax lawyers and investment bankers make use of "techniques" that permit their wealthy clients to avoid paying taxes. Because of this, Pollack believes a good deal of skepticism is in order when reading such journalistic descriptions of tax policy. Even worse, he writes, popular accounts of the income tax betray a cynicism of the journalists that has spread to the public, contributing to undermining confidence in representative government. For this reason, the author questions whether the increasingly prominent role of journalists in shaping popular opinion with respect to tax policy is very healthy for the polity. Indeed, the public interest may be best served when the tax committees meet behind closed doors — out of the view of both lobbyists and journalists.

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> All successful newspapers are ceaselessly querulous and bellicose. They never defend anyone or anything if they can help it; if the job is forced upon them, they tackle it by denouncing someone or something else.
>
> — H.L. Mencken (1919)

I. The Media and Tax Policy

Since the rise of the "new" politics of reform in the mid-1970s, the media has played an enhanced role in influencing the direction of tax policy — at least, in shaping public opinion, which in turn impacts on the kind of tax provisions congressmen enact into law. By the 1980s, journalists came to routinely "investigate" the politics of the income tax — failing to heed Bismarck's warning not to examine too closely how sausage or laws are made. In so delving into tax policy, journalists portray the legislative process as just one big sausage grinder — dirty, corrupt, and producing little more than fatty pork by-products.

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In their reports wherein journalists tend to confuse "openness" (to say nothing of their own reporting and sense of self-importance) with the public interest, the tax policymaking process is typically portrayed as dominated by lobbyists and "special interests." In so doing, these new "muckrakers"[1] contribute much to the public perception that all it takes to pass a tax provision is to hire some powerful lobbyist. In this way, the cynicism of journalists contributes to undermining the public's confidence in their representatives and the legislative process. Perhaps this explains why every

[1]For those who do not recognize the term, "muckraker" refers to that style of investigative reporting which was commonly practiced by progressive journalists from the late 19th century through World War I. For a discussion of the muckraking tradition, see Richard Hofstadter, *The Age of Reform* (New York: Vintage Books, 1955), 187-198.

four years an inordinate share of the electorate is ready to turn over the reins of government to some ranting and raving egomaniac (i.e., the one from Texas with a billion dollars) who claims that all we need do to achieve paradise on earth is abolish the Internal Revenue Service and the income tax.

But the subject *de jour* is the political sensibilities of journalists, not the shortcomings of Texas billionaires or the evils of Washington lobbyists — both perfectly respectable topics for another day. How journalists portray the tax policymaking process has important consequences, and the conclusion here is that all is not well with the media. A good deal of skepticism is in order when reading journalistic accounts of the politics of the income tax. Furthermore, it is uncertain whether the enhanced role of journalists in shaping popular opinion with respect to tax policy is really very healthy for the polity. One almost longs for the "good old days" when the tax committees met behind closed doors and journalists (other than the esteemed professionals who write for this august and venerable journal) ignored the tax code altogether.

II. The Campaign for Tax Reform

The increasingly important role of the media, especially television, in influencing the political process has been much observed and discussed by political scientists.[2] Some claim that the media now constitutes a "fourth estate," challenging and checking the institutional powers of the presidency and Congress, and restraining the overweening ambition of political elites.[3] Of course, members of the media like to encourage such reports of their importance in the world.

Whether and how the media influence the tax policymaking process is uncertain and open to debate. But the very fact that in recent years the media has focused on tax policy at all is itself surprising. This phenomenon has been most closely associated with the "new politics" of the income tax witnessed in the 1980s.[4] Because the substance of tax policymaking is highly technical and arcane, it usually did not attract much attention by the popular media. Yet, journalists can mold popular perceptions about even such a dry subject as the federal income tax — if they write about it enough!

And beginning in the 1980s, journalists started to pay considerable attention to the income tax. The media was suddenly in the vanguard in orchestrating public opinion in favor of tax reform — and this with considerable effect. Journalists popularized the position papers of so-called public interest groups that strongly supported tax reform. For instance, the sale-leaseback transactions sanctioned by Congress under the 1981 tax bill resulted in massive sell-offs of tax benefits by loss corporations at an enormous cost to the U.S. Treasury. A number of major safe harbor lease transactions received considerable attention by the media.[5] Several public interest groups, most particularly Robert McIntyre's Citizens for Tax Justice, publicized the most dramatic incidents of safe harbor leasing. These media reports stimulated a strong negative public reaction, something Congress had not anticipated. This led to the quick repeal of the safe harbor lease provision in 1982.

> ***One almost longs for the 'good old days' when the tax committees met behind closed doors and journalists ignored the tax code altogether.***

Similarly, during critical moments building up to the enactment of the Tax Reform Act of 1986 (TRA), the media was instrumental in cultivating public opinion for tax reform. This in turn pushed key congressional policymakers to support the movement. It has been calculated that stories on tax reform were featured on the front page of *The Washington Post* 12 times in 1984, 54 in 1985, and 46 in 1986; *The New York Times* featured on its front page 15 stories on tax reform in 1984, 53 in 1985, and 46 in 1986.[6] News stories targeting opponents of tax reform initiatives made clear the media's prefer-

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[2]*See, e.g.*, Richard Josyln, *Mass Media and Elections* (Reading, Mass.: Addison-Wesley, 1984); Benjamin Ginsberg, *The Captive Public: How Mass Opinion Promotes State Power* (New York: Basic Books, 1986); Martin Linsky, "The Media and Public Deliberation," in Robert Reich, ed., *The Power of Public Ideas* (Cambridge: Harvard University Press, 1988). Political scientist John Kingdon concludes that the media plays a minimal role in putting issues on the policy agenda. However, he also concedes that the media is instrumental in affecting "public opinion," thereby playing an important role in indirectly shaping policy. John W. Kingdon, *Agendas, Alternatives, and Public Policies* (New York: Harper Collins, 1984), 71-72; *see also* Donald R. Kinder and Shanto Iyengar, *News That Matters: Television and American Opinion* (Chicago: University of Chicago Press, 1989).

[3]S. Robert Lichter, Stanley Rothman, and Linda S. Lichter, *The Media Elite: America's New Power Brokers* (Bethesda, Md.: Adler & Adler, 1986).

[4]Timothy J. Conlan, David R. Beam, and Margaret T. Wrightson, "Tax Reform Legislation and the New Politics of Reform" (paper delivered at the annual meeting of the American Political Science Association, Washington, D.C., 1988), 28-30.

[5]Global Marine Corporation was reported to have "sold" to Hilton Hotels some $135 million of tax benefits derived from oil rigs, and Ford Motor Company reportedly transferred to IBM some $1 billion of tax benefits for a price estimated to range from $100 to $200 million. Popular accounts suggested at the time that many other corporations were entering into similar transactions, albeit of lesser magnitude. The media's reporting on these transactions is recounted in Jeffrey H. Birnbaum and Alan S. Murray, *Showdown at Gucci Gulch: Lawmakers, Lobbyists, and the Unlikely Triumph of Tax Reform* (New York: Vintage, 1988), 11.

[6]Timothy J. Conlan, Margaret T. Wrightson, and David R. Beam, *Taxing Choices: The Politics of Tax Reform* (Washington, D.C.: Congressional Quarterly Press, 1990), 250. These figures far exceed the coverage given to tax reform during prior periods.

ence on this issue, although hard evidence of popular sentiment in favor of tax reform was scant. In this way, the media played a significant role in orchestrating public opinion, thereby aligning congressmen in favor of tax reform.[7] Highly critical accounts of chairmen Rostenkowski's and Packwood's initial opposition or indifference to tax reform are credited with moving them in the other direction.[8]

In the end, the media certainly did not dictate that tax reform would become a reality in 1986. However, the sympathies of reporters and journalists was clearly in favor of tax reform, and the unusual interest in tax policy that was stimulated by the media's publication and promotion of Treasury I in 1985 can be credited with pushing committee members toward support of tax reform proposals they otherwise would likely have opposed. Likewise, policy "entrepreneurs" such as Bill Bradley and Jack Kemp found that the media provided convenient and direct access to the public, and thereby to the tax policy agenda. The success or failure of tax policy initiatives now hinges on how well proponents use media coverage for their own purposes. This is a lesson not lost on Republican advocates of "fundamental tax reform" (i.e., dumping the income tax for a flat consumption-based tax), who fully understand the need to use the media to advance their own vision of tax reform. The media made Steve Forbes and his campaign for the flat tax the "hot" issue in the GOP primaries last January, but by spring the media lost interest and Forbes's candidacy floundered. Whether there was any comparable shift during this period in the public's support for the flat tax or the Republican Party's stance on tax policy is doubtful.

III. Muckraking Journalists

In the 1980s, the media came down on the side of tax reform — and won! This success stimulated interest among journalists in investigating the world of tax policymaking — just as the success of Carl Bernstein and Bob Woodward in bringing down a sitting president stimulated a generation of muckraking Washington reporters to go hunting for their own Nixon. Since the 1980s, it seems as if every journalist writing on tax policy is out to win a Pulitzer Prize by exposing some Watergate-type scandal of corruption and greed lurking behind the provisions of the tax code.

In recent years, major national newspapers have run unbelievably long and tedious articles purporting to document how the tax laws have been influenced, corrupted, and even outright bought, by the ubiquitous "special interests" that are said to control the political process. Rather than just playing a role in pushing policymakers toward favored reform policies — serving perhaps as a healthy counterweight to the lobbying efforts of organized economic interests — journalists began to play a new role in attacking, and thereby undermining the policymaking for the income tax. Henry Kissinger was right a quarter of a century ago when he observed that the national media had assumed a new role and function in Washington — that of undermining U.S. foreign policy. It just took a little longer for the trend to spread to the realm of tax policy.

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The fundamental problem with popular accounts of tax policy is that journalists view the policymaking process through a crude and particularly narrow interest group model of politics.[9] This is one reflection of the long tradition of muckraking in American journalism. The media by nature adopt the muckraker's posture in attacking "corruption" and questioning the motives and integrity of lawmakers: "Since the content of tax policy is both complex and uninteresting to most readers, the press prefers to write about corruption and lobbying. The ideal story reports on a political campaign contribution to a member of the tax committee who has gotten a special interest amendment adopted for the contributor."[10] Unfortunately, journalists sometimes learn this cynical worldview from academics in law schools who should know better.[11]

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[7]Birnbaum and Murray concluded that the media's favorable response to tax reform during the initial bargaining suggested to committee members that if they "allowed tax reform to die, they would take a beating in the press, and probably in public opinion." Jeffrey H. Birnbaum and Alan S. Murray, "Tax Reform: The Bill Nobody Wanted," *Pub. Opinion*, March/April 1987, 43.

[8]An infamous story in the *New Republic* portrayed Senator Packwood in most unflattering terms as "Senator Hackwood" on account of his perceived opposition to tax reform and his stated preference for protecting the favored treatment of certain special interest groups in the tax code. *See* Fred Barnes, "Senator Hackwood," *New Republic*, May 5, 1986, 12-14.

[9]Typical of the approach of journalists is Morton Mintz and Jerry S. Cohen, *America, Inc.: Who Owns and Operates the United States* (New York: Dell, 1971); Philip M. Stern, *The Rape of the Taxpayer* (New York: Vintage, 1974); David Burnham, *A Law Unto Itself: The IRS and the Abuse of Power* (New York: Vintage, 1989); Jeffrey H. Birnbaum, *The Lobbyists: How Influence Peddlers Get Their Way in Washington* (New York: Random House, 1992).

[10]Thomas J. Reese, *The Politics of Taxation* (Westport, Conn.: Quorum Books, 1980), 56.

[11]I am thinking of those law school professors who adhere to what is generally referred to as the "economic theory of regulation." Some of the worst examples of this school of thought are Richard L. Doernberg and Fred S. McChesney, "On the Accelerating Rate and Decreasing Durability of Tax Reform," 71 *Minn. L. Rev.* 913 (1987); *idem*, "Doing Good or Doing Well? Congress and the Tax Reform Act of 1986," 62 *N.Y.U. L. Rev.* 891 (1987); Fred S. McChesney, "Rent Extraction and Rent Creation in the Economic Theory of Regula-

(Footnote 11 continued on next page.)

In general, the media portray the politics of tax reform as a battle between reformers intent on cleansing the tax laws on one side and lobbyists representing "special interests" on the other. Law professor Daniel Shaviro recalls the media in the mid-1980s as having "simplistically portrayed each tax reform proposal as the outcome of a struggle between 'good' reformers serving the public interest and 'bad' lobbyists serving the special interests."[12] In equally apt terms, two prominent political scientists, Martha Derthick and Paul Quirk, describe journalists as "having received the views of the academic professions and reinforced them with a cynicism of their own about the relations among economic interests, government agencies, and congressional committees."[13] Amazingly, when applied to journalists who write on tax policy, this turns out to be an understatement! A review of the most popular journalistic accounts of tax policy will bear this out.

A. The King of Muckraking

Surely the worst offender among the current crop of muckrakers is Martin L. Gross. Every year or so, Gross (a journalist who has taught courses at the New School for Social Research in New York City) writes a new book (in essence the same one) harping on the same extravagant and entirely unproven claims. Incredibly, Gross's books sell — big time. Indeed, if sales are any indication, Gross may very well be the leading source of information (or misinformation) on tax policy for the general public. This is very sad indeed. Perhaps more than any other single individual, Gross has contributed to lowering and distorting the public debate on issues relating to federal taxation.[14]

One good illustration of the worst tendencies in Gross's understanding of tax politics is found in his 1992 *New York Times* bestseller, *The Government Racket: Washington Waste From A to Z*, wherein the author concludes: "Much of government spending is dictated by the needs of special-interest groups."[15] Gross applies this trite observation to tax policymaking in the equally popular (and equally awful), *The Tax Racket: Government Extortion From A to Z*. In his simplistic account of how Congress makes tax laws, Gross again instructs his audience of the evils of "special interests" and explains how they control tax legislating: "The reality is that for the last quarter century, Congress and the presidents have betrayed us by concocting tax laws that are insincere, unfair, and convoluted. We're just learning that when it comes to taxes, Washington speaks with an accomplished forked tongue."[16]

Gross portrays congressmen as crooks and the whole legislative process as corrupt. He apparently sees himself as the only one who has not sold out to the Great Rent Seeker in Washington who speaks with a "forked tongue." Ugh! But the real tragedy is that a large segment of the population actually reads and believes the silly and pompous books cranked out by the Martin Gross Racket. The health of the Republic is much worse for the experience.

B. Muckrakers in Philly

The case for the inability of journalists to comprehend the subtleties and complexities of the tax policymaking process, reducing the whole legislative process to that of serving special interests, rests not only on the musings of this one sad writer. Unfortunately, Martin Gross has much company, and his comrades are equally angry and equally oblivious to anything but "special interests." Indeed, a perfect illustration of the horror of muckraking journalism is the massive polemic on U.S. tax policy, "America: What Went Wrong?" published in 1991 by reporters Donald L. Barlett and James B. Steele in the *Philadelphia Inquirer*.[17] This major newspaper is highly respected and has won numerous awards for the quality of its investigative reporting. These same authors had previously won a Pulitzer Prize in 1989 for a widely praised seven-part expose of the "special tax breaks" embodied in the Tax Reform Act of 1986 — in particular, the transition rules used to protect special interests from the reforms otherwise enacted by the 1986 act.[18]

In their 1991 series, Barlett and Steele again investigated the impact of special interests on tax policymaking. The series was extremely well received by the newspaper's readers, was awarded the George

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tion," *J. Legal Stud.* 101 (1987). For an excellent description and critique of the economic theory of regulation as applied to tax policy, see Daniel Shaviro, "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.* 1, 6-7 (1990). Shaviro describes the central tenets of this school as follows: "[L]egislation (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."

[12] Shaviro, "Beyond Public Choice and Public Interest," 139 *U. Pa. L. Rev.* 1, 108 (1990); *see also* Conlan, Wrightson, and Beam, *Taxing Choices*, 251: "[I]t is clear that populist rhetoric, bright lights, and the casting of tax reform as something legislators could only be 'for' or 'against' converted many who would not have sympathized with the cause under other circumstances."

[13] Martha Derthick and Paul J. Quirk, *The Politics of Deregulation* (Washington, D.C.: Brookings Institution, 1985), 12.

[14] Gross's books on politics are just as bad and just as popular. For example, *A Call for Revolution* (New York: Ballantine, 1993), was on *The New York Times* bestseller list for months. The latest outburst from Gross to hit bookstores across America is *The Political Racket: Deceit, Self-Interest and Corruption in American Politics* (New York: Ballantine, 1996). In this self-described "hard-hitting" investigation, Gross claims that he "exposes the secret world of American politicians" and outlines a plan to "totally reform the system" and "replace the political class" in Washington. Humility and moderation are not traits characteristic of Mr. Gross.

[15] Martin L. Gross, *The Government Racket: Washington Waste From A to Z* (New York: Bantam Books, 1992), 5.

[16] Gross, *The Tax Racket: Government Extortion From A to Z* (New York: Ballantine Books, 1995), 11.

[17] Donald L. Barlett and James B. Steele, "America: What Went Wrong?" *Phila. Inquirer*, October 20-28, 1991.

[18] Barlett and Steele, "The Great Tax Giveaway," *Phila. Inquirer*, April 10-16, 1988. Barlett and Steele also won a Pulitzer Prize in 1975 for a series of articles titled "Auditing the IRS," which reported on inequities in IRS audits.

Polk award for economic reporting, and soon after was republished as a paperback book, *America: What Went Wrong?* — which immediately became a national best-seller.[19] The series catalogues nearly every imaginable negative economic trend of the 1980s and blames them all on an evil conspiracy of "special interests" and the "powerful and influential" ruling elite, who, along with their "lackeys in Congress," "write the complex tangle of [tax] rules" for their own express benefit.

Perhaps more than any other single individual, Gross has contributed to lowering and distorting the public debate on issues relating to federal taxation.

Not content with the success of their 1991 series, Barlett and Steele pretty much rewrote the same polemic in 1994 — this time focusing specifically on the tax laws. The new series was published under the familiar title *America: Who Really Pays the Taxes?*[20] Once again, their negative portrait of tax policy emerged as a "literary" success, as evidenced by the widespread and largely uncritical attention heaped on the book by the news media and by the authors' many appearances on all the right television and radio talk shows (e.g., *Larry King Live* and National Public Radio).[21] Together, these two massive polemics by Barlett and Steele, which contain unsubstantiated claims too numerous to recount here, add up to little more than the same unproven assertion that Congress passes every tax statute, bankruptcy law, and labor law for the sole purpose of benefiting "the privileged, the powerful and the influential . . . at the expense of everyone else."[22] To experience the full flavor of this journalistic account, the reader is referred to the third part of the series, which is based on the singular premise that "Congress has stood for the rich" and thus has enacted "laws and regulations crafted for the benefit of special interests."[23]

For those who care for this sort of thing (and obviously, I do not), Barlett and Steele struck again in 1996 with a new series in the *Philadelphia Inquirer* published under the title, "America: Who Stole the Dream?" — which diatribe was also republished in paperback.[24] About the only good thing about the latest effort (which was nominated for a 1997 Pulitzer Prize) is that it pretty much leaves the tax code alone, focusing instead on the general decline of the U.S. economy (and of course, blaming it all on the Rich and Powerful).

The hostile attack on policymakers by Messrs. Barlett and Steele is not aberrational. Most journalists adopt a similar stance, informed by the same interest group model — although it is seldom as crudely and simplistically expressed as by Barlett and Steele. For instance, a recent investigative report, also published by the *Philadelphia Inquirer*, linked the tax code to abuses perpetrated by the rich and powerful through charities and foundations.[25] The series took the familiar form of an expose, showing how nonprofit, tax-exempt entities (generally and inaccurately lumped together under the category of "charities") have grown wealthy, expanding their activities beyond traditional notions of charity. Surely, it is only a matter of time now before the *Philadelphia Inquirer* publishes a "hard-hitting" investigation of how section 501(c)(3) organizations are commonly used for partisan political purposes by various national political officials who are speakers of the House of Representatives. In another example of muckraking journalism, a December 1992 investigative series in the *Philadelphia Inquirer* focused on the "predatory" pricing policies of the U.S. pharmaceutical industry.[26] A major theme of the series was that highly profitable pharmaceutical companies have exploited the tax credit provided under section 936, which credit was enacted by Congress to strengthen the economies of U.S. commonwealth nations, most particularly Puerto Rico.[27] The authors were apparently dismayed to learn that U.S. drug companies actually relocated some of their drug-manufacturing facilities to Puerto Rico to take advantage of the section 936 tax credit.

While there is a real critique to be made of the misguided attempt by Congress to "create" jobs through such tax credits, journalists uniformly misunderstand this, focusing instead on the profits of those who make use of such tax benefits. Politicians responded to the increasingly shrill outcry against the section 936 credit — spearheaded by such journalistic accounts as that which appeared in the *Philadelphia Inquirer*. In early 1993 strong political sentiment emanated from the White House and floated about Congress for its outright repeal. A political compromise was ultimately reached pursuant to the Revenue Reconciliation Act of

[19]Barlett and Steele, *America: What Went Wrong?* (Kansas City: Andrews & McMeel, 1992). The book was on *The New York Times* paperback bestseller list for several months in 1992.

[20]Barlett and Steele, *America: Who Really Pays the Taxes?* (New York: Simon & Schuster, 1994).

[21]Among the few critical reactions to the Barlett/Steele phenomenon is Christopher Caldwell, "Pulitzer Bait in Philly," *Weekly Standard*, October 14, 1996.

[22]Barlett and Steele, "America: What Went Wrong?" *Phila. Inquirer*, October 20, 1991, A1.

[23]Barlett and Steele, "Big Business Hits the Jackpot With Billions in Tax Breaks," *Phila. Inquirer*, October 22, 1991, A1, A18.

[24]Barlett and Steele, *America: Who Stole the Dream?* (Kansas City: Andrews & McMeel, 1996).

[25]Gilbert M. Gaul and Neill A. Borowski, "Warehouse of Wealth: The Tax-Free Economy," *Phila. Inquirer*, April 18-24, 1993.

[26]Donald C. Drake and Marian Uhlman, "Making Medicine, Making Money," *Phila. Inquirer*, December 13-16, 1992.

[27]"Nothing better illustrates the industry's profitmaking ingenuity than the way drug companies have taken advantage of Section 936 of the U.S. tax code." *Id.*, December 16, 1992, A17.

1993, which imposed relatively minor limitations on the amount of the credit that could be claimed.[28] This was a much less radical approach than that found in the more severe proposals bandied about by members of Congress engaged in public grandstanding before their constituents.[29] Further cut-backs to the section 936 credit were made under the Small Business Job Protection Act of 1996.[30]

The muckrakers see an evil conspiracy lurking behind every inequality among workers.

The muckraking team of Barlett and Steele (which the *Washington Journalism Review* described in 1990 as "almost certainly the best team in the history of investigative journalism") has just announced its departure from the *Philadelphia Inquirer* to join media mega-conglomerate Time-Warner. So now Barlett and Steele will have an even greater audience for their simplistic message that Congress makes the tax laws for the "privileged, the powerful and the influential." After 26 years together at the *Philadelphia Inquirer*, one might conclude that Barlett and Steele have already said it all. In fact, they *have* said it all — over and over and over. Look for more of the same in their future exposes in *Time* magazine.

C. IRS-Bashing in Los Angeles

Lest readers conclude that the problem is somehow restricted to the pages of the *Philadelphia Inquirer*, a number of notable examples of the muckraking phenomena appeared in other major national newspapers this past year. For instance, the *Los Angeles Times* ran a three-part series in December 1996 on the failures of the federal government's "information technology" programs. The second article in the series, "To an IRS Mired in the '60s, '90s Answers Prove Elusive," written by staff reporter Ralph Vartabedian, focused on the well-publicized difficulties of the Internal Revenue Service in modernizing its computer systems.[31] Confusing bureaucratization *per se* with inefficiency and meaningless routines ("Along a dreary row of metal tables, Internal Revenue Service clerks perform what for ages has been the quintessential government job — stamping forms"), Vartabedian portrays the IRS as hopelessly out of date, employing tens of thousands of clerks who have no apparent purpose other than to stamp tax returns. That these employees are actually part of a bureaucracy that collects over $1 trillion annually and is the envy of the rest of the tax-collecting world seems lost on Vartabedian, who after all, in the best of the muckraking tradition, must show that *something* is rotten in Washington. The two "stinks" to which Vartabedian objects are the failed computer modernization program (which the IRS itself has admitted is a mess) and the $170 billion in taxes that apparently went uncollected in fiscal year 1995. This uncollected debt is presented as proof of the inadequacy of the IRS — although what it really evidences is the *under-bureaucratization* of the agency, a failing no doubt exacerbated by lay-offs in IRS personnel whose job it was to track down and collect revenue from deadbeat taxpayers.[32]

This kind of portrait of the Internal Revenue Service by journalists breeds popular antipathy toward government and makes the job of the tax collector even more difficult.[33] Unfortunately, I personally experienced first-hand the public's reaction to the *Los Angeles Times* article. The very morning that the article ran, I appeared as a guest on "Talk of the City," a radio talk show originating from the local National Public Radio (NPR) affiliate, and heard an earful from irate Angelenos who called in. Most wanted nothing more than to dismantle the IRS on account of its alleged failures reported in the *Los Angeles Times* that morning. One caller concluded that we could eliminate the budget deficit by shutting down the IRS (presumably, saving the $7.2 billion or so budgeted to the IRS an-

[28]Pub. L. No. 103-66, 107 Stat. 312, section 13227, amending section 936.

[29]For an account of the drug industry's successful effort to moderate any congressional cutback to the section 936 tax credit, see Rick Wartzman and Jackie Calmes, "How Drug Firms Saved Puerto Rico Tax Break After Clinton Attack," *Wall St. J.*, December 21, 1993, A1.

[30]Section 1601(a) of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, H.R. 3448, amending section 936(j).

[31]Ralph Vartabedian, "To an IRS Mired in the '60s, '90s Answers Prove Elusive," *Los Angeles Times*, December 9, 1996, A-1.

[32]It is ironic that one style of muckraking, typified by the *Los Angeles Times* article, condemns the Service as inefficient and incapable of collecting those taxes owed to the U.S. government. Another genre of IRS-bashing denounces the agency as *too aggressive* in its role as tax collector. This kind of story usually recounts the plight of those "innocent" taxpayers who lose their homes when the IRS levies on their property for back taxes. Typical of this school of muckraking journalism is David Burnham, *A Law Unto Itself: The IRS and the Abuse of Power* (New York: Vintage, 1989), a full-length account of the "Internal Revenue Service, the United States' most powerful bureaucratic institution, whose operations are exposed in this ground-breaking work of investigative journalism." (Why am I not surprised that the *Philadelphia Inquirer* praised Burnham's book as the "fullest portrait yet of an unchecked agency operating while outside the bounds of accountability.") That the Service cannot be *both* incapable of collecting taxes and overly vigilant in the same endeavor is lost in the rush to sell newspapers and books.

[33]The IRS-bashing has already begun in 1997. A feature story on the IRS in *Money* magazine's January 1997 issue asserts that the Service is "guilty of sloppy, discourteous and sometimes devious behavior." The article concludes that: "taxpayers are being punished by [the IRS's] wasteful expenditures, inadequate service and at times unrepentant abuse of decent, hard-working individuals." Ann Reilly Dowd, "*Money* Audits the IRS," *Money*, January 1997, 79. For an excellent and reasoned assessment of the outbreak of IRS-bashing in 1996, see Ryan J. Donmoyer, "IRS Everyone's Favorite Target in '96 — But Was It Deserved?" *Tax Notes*, Jan. 6, 1997, 17.

nually) and repealing the income tax altogether — somehow forgetting in his calculation the revenue the income tax raises (now exceeding $800 billion annually) and the revenue the "inefficient" IRS does manage to collect (over $1 trillion a year). Obviously, mathematics was not this fellow's strong suit. But the really scary thing is that he may have actually voted in November — most likely for that ranting and raving billionaire from Texas who likewise would dump the income tax and IRS.

D. *The New York Times* Wants a Pulitzer

In 1996, *The New York Times* made its contribution to muckraking — no doubt in an effort to win its own Pulitzer Prize for smearing the federal tax system. The self-proclaimed Newspaper of Record ran a number of major front-page articles, all purporting to show in various ways how the "wealthy" take advantage of "special" laws enacted solely for their benefit.

In the first article in a two-part series that ran in October, reporters David Cay Johnson and Christopher Drew describe how the practice of using deferred compensation to reward executives has "spread" to middle-level managers.[34] To say the least, the tone of their article, "Special Tax Breaks Enrich Savings of Many in the Ranks of Management," suggests that the use of deferred compensation is very bad, that wealthy executives use this scam to "avoid" paying tax on their compensation, and that the whole arrangement just cries out for "reform" legislation. As if we need a new reincarnation of section 89 for deferred compensation! This article was followed the next day by another front-page story, "Managers Stay Dry as Corporations Sink," in which Johnson was joined by fellow reporter Diana Henriques in showing how even after corporate bankruptcies, the high-level managers of some companies have been able to collect on their employer's "unfunded promise" for future compensation.[35] Both of these articles go far beyond the typical newspaper story in the level and sophistication of analysis. Both offer interesting and informative accounts of how deferred compensation plays out for mid-level managers when their employer goes bust — although the second article undermines many of the claims made in the first.

Apparently, some high-level managers have been able to cut sweetheart deals in bankruptcy court to ensure payment of all or most of their deferred compensation, while others with less pull and importance to the restructured businesses were left holding the bag as unsecured creditors. On one hand, the journalists are concerned with the plight of those executives who did not receive their retirement payments. On the other, they question why executives should be allowed to get away with "avoiding" (confused with what is really deferring) taxation on their salaries (which obviously are too high and undeserved, anyway). But why should anyone care if some executives choose to defer taxation on some portion of their compensation by deferring payment until retirement? And what these articles demonstrate, although the authors seem incapable of grasping the point, is that holding off taxing employees on their deferred compensation is entirely warranted — at least, absent credit enhancement for the Rabbi Trust — as future payments are very much at risk. Some companies actually do go broke and some employees do *not* get paid what was promised them. The risk that they will not be paid is precisely the justification for not imposing current taxation on compensation that is not currently paid. Surely the "problem" to be deplored is not that some executives were actually paid those retirement benefits owed them by their insolvent former employers? That is hardly an "abuse."

Perhaps sensing that there is no real scandal here, the reporters quickly switch subjects in midstream, turning to the very different issue of how some ordinary workers were hurt financially as their employers forced them into pension plans invested too heavily in the corporation's own stock. Later, the businesses of some of these employers went bad, and the retirees lost their pensions. This is a tragedy for the workers. But it is a problem of diversification of investments in *qualified* pension plans and has nothing to do with the spread of unfunded nonqualified deferred compensation plans. The reporters do show that some mid-level managers were pressured into taking deferred compensation and that they probably would have fared better if they had demanded and received currently taxable compensation or an employer contribution to a qualified (ERISA) plan. Employers exert this kind of pressure on employees not for tax reasons, but because they need the capital and would prefer not to make current payments of compensation. (Certainly, the companies are *not* hoping that they will go bankrupt in the future so as to avoid making the retirement payments owed their former employees.) Employers can get away with this sort of thing because there is great inequality in the respective bargaining positions of employees and their employers. This would have made an interesting story line. But in the end, what is really upsetting these reporters is that some big shot executives collected their nonqualified retirement payments while other ordinary workers were hurt when their investments in their qualified plans decreased in value due to the decline of their former employer's stock. It is the disparate outcomes and the risk of investment that is bugging these guys.

Of course, these muckrakers believe that new "reforms" are needed to prevent such undesirable outcomes. They view the current state of turmoil as a departure from the good old days when the pension laws treated all workers the same: "This executive privilege is known as deferred compensation. . . . And it is spreading quickly, even as half the private workforce has no retirement benefits and many companies have been trimming pension benefits for rank-and-file workers. Indeed, its growth represents a threat to a

[34]David Cay Johnson and Christopher Drew, "Special Tax Breaks Enrich Savings of Many in the Ranks of Management," *The New York Times*, October 13, 1996, 1, col. 1.

[35]David Cay Johnson and Diana B. Henriques, "Managers Stay Dry as Corporations Sink," *The New York Times*, October 14, 1996, 1, col. 1.

prime tenet of the nation's retirement policies: that companies offer benefits as fairly and to as many workers as possible." The problem is that there never was such a world of equality in pensions or compensation. And the notion that prior "reforms" such as limiting corporate deductions on executive pay, to say nothing of the burdensome discrimination rules that apply to qualified pension plans, may be partially responsible for so many companies pushing deferred compensation plans on their employees is lost on these reporters — who sense that there is some connection, but refuse to connect the dots. The muckrakers see an evil conspiracy lurking behind every inequality among workers. They believe that private companies must be stopped from paying their own executives "excessive" compensation. And finally, they believe that legislation is needed to cure all these problems, failing to heed the admonition that human inventions such as "tax reform" frequently "bite back" with unintended consequences that often make matters worse.[36]

Henriques and Norris unwittingly present a clinic on how journalistic accounts of complicated tax and economic issues so often go awry.

The New York Times continued its 1996 assault on the tax system in December. In a prominent front-page article that appeared on December 1, "Wealthy, Helped by Wall St., Find New Ways to Escape Tax on Profits," reporters Diana Henriques and Floyd Norris document how the "wealthy" are able to avoid paying capital gains tax on their appreciated assets by using "loopholes" bestowed on them by an overly sympathetic and acquiescent Congress and financial gimmicks dreamed up and marketed by Wall Street financiers who rake in exorbitant fees for their services.[37] Henriques and Norris produced a provocative and informative account of how Wall Street investment bankers created a special niche for themselves selling complicated financial products that reduce not only *economic risk* for their clients, but also help them reduce, defer, or avoid *tax* on their investments. This is a very highly arcane and technical subject, and Henriques and Norris should be commended for their effort to explain to the public the complicated techniques used to bail out the gain inherent in capital investments without triggering the tax that would otherwise be due on the sale of assets such as stock, bonds, and real estate.

But the authors also unwittingly present a clinic on how journalistic accounts of complicated tax and economic issues so often go awry. The problem is that these reporters, like most journalists writing on tax policy, draw all the wrong conclusions about why Congress enacts "loopholes" and why the investment bankers are able to market their tax-preferred financial products that have little or no economic substance. Even worse, they fail to recognize the most important and obvious conclusions to be drawn from their account — namely, that Congress would do better not to implement public policy *per se* through the tax code and that the "double tax" imposed on U.S. capital investment is not only unwise and counterproductive, but also creates significant distortions in economic activity. The latter point is evidenced by the authors' own account of how investors will go to such great lengths to structure their affairs in overtly uneconomical ways just to avoid the second tier of (double) tax on the return to their investments.

In all fairness it must be stated that Henriques and Norris avoid the worst and most common distortions found in other popular accounts of tax policy. I know Barlett and Steele, and they are no Barlett and Steele — although they wannabe. But like their colleagues in journalism, they are obsessed by an interest group model of politics holding that "special interests" and the "wealthy" control the tax policymaking process and merely have to call up their flunkies in Congress to have them write some new tax legislation to help them escape their "fair share" of taxes. While Henriques and Norris avoid the excesses of Barlett and Steele, and are far more sophisticated than Martin Gross (which isn't saying much), their article conveys much the same theme — that Congress has designed the tax code to allow the wealthy to avoid taxes. For instance, Henriques and Norris describe a provision in the Internal Revenue Code that allows owners of a business to sell a controlling interest in their company to employees (via a company-sponsored ESOP) and avoid immediate taxation by "rolling over" the sale proceeds into the stock of other domestic corporations. This allows the seller (who is undoubtedly wealthier than the average taxpayer) to defer tax on the sale of this capital asset — even to avoid tax altogether if he has the good fortune to die while still owning the replacement securities. (This is due to the "step up" in basis afforded the stock left to the seller's heirs, a benefit that is a true and unjustifiable tax loophole that Congress and several presidents have tried repeatedly to close — but which special interests have successfully lobbied to keep in the tax code.) However, the problem is not that some wealthy owners are "allowed" to avoid tax on the sale of their businesses (which saving is the essence of a tax incentive), but rather that Congress attempts to implement this ill-conceived public policy through the tax laws in the first place.

This particular dubious policy — encouraging employee stock ownership plans (ESOPs) — became enshrined in the tax code largely through the efforts of former Democratic chairman of the Finance Committee Russell B. Long of Louisiana, who with a straight face once asserted on the floor of the Senate that employee ownership of companies will "breathe new life" into "tired, labor-plagued companies. It will revitalize what

[36]Such an unintended consequence of reform legislation is one more manifestation of the "revenge effect" that Edward Tenner writes about in his interesting new book, *Why Things Bite Back: Technology and the Revenge of Unintended Consequences* (New York: Alfred A. Knopf, 1996).

[37]Diana B. Henriques and Floyd Norris, "Wealthy, Helped by Wall St., Find New Ways to Escape Tax on Profits," *The New York Times*, December 1, 1996, 1, col. 1.

is wrong with capitalism. It will increase productivity. It will improve labor relations. It will promote economic justice. It will save the economic system. It will make our form of government and our concept of freedom prevail over those who don't agree with it."[38] Regardless of whether Senator Long actually believed this claptrap, the "problem" evidenced by Henriques and Norris in their article is the folly of using tax incentives to implement half-baked, unsubstantiated economic theories through tax preferences that inevitably must benefit only wealthier taxpayers. It should hardly come as a surprise to discover that some business owners actually elect to take advantage of this policy by selling out to their employees, and by doing so, achieve significant tax savings. Yes, the rest of us who do not own our own businesses will never be able to enjoy these kinds of tax benefits. What's lost in focusing on the tax savings for the rich is the foolishness of the policy itself. Much the same can be said of using tax credits to induce companies to invest in Puerto Rico — the surprise is not that so many drug manufacturers took Congress up on the invitation to relocate their U.S. operations, but rather that anyone thought of this as a means for stimulating "new" industry.

Most of the other "abuses" of the tax system that Henriques and Norris describe in their article are not "loopholes" enacted by Congress to benefit the rich, but rather "techniques" used by the wealthy to game the tax system, employing financial products designed by "clever" tax attorneys and marketed by Wall Street investment bankers. (I actually know quite a few tax attorneys who are not so "clever" — but never mind.) These include a wide variety of hedging techniques, such as the now infamous short sale "against the box" used by Esteé Lauder and her son to defer recognition of tax on the gain inherent in their stock in the family business. Similarly, Wall Street bankers sell their clients all sorts of exotic "derivative" instruments that allow them to effectively "lock in" the gain inherent in their investments without triggering tax. None of this is really new. Taxpayers have long been allowed to borrow against their appreciated assets, effectively "cashing out" their profits without recognizing gain. This is done by wealthy investors who want to hold their assets until death to give their heirs the favorable "step up" in basis and wipe out tax on the gain altogether. The only thing "new" is the ease and skill by which the investment bankers now design financial products that allow investors to achieve these results.

Journalists (and Democrats) love to fret about such matters, proposing elaborate and complex "reforms" that only render the tax system even more complicated and aid tax professionals in peddling their services. Even worse, such reforms divert attention from the underlying problem — that the double taxation of the return on capital distorts the economic behavior of otherwise perfectly rational investors. What is it that encourages investors to go to such great lengths to avoid a sale or exchange of their investment assets, forcing them to hold their investments until death, paying ludicrous fees to their investment advisers along the way, regardless of whether it makes good investment sense? The answer is simple: The way we currently tax capital encourages uneconomical behavior. To the extent that businesses pay tax on income when it is earned, taxing the appreciation and distributions on the intangible assets held by investors (e.g., stock) represents double taxation. To the extent that we insist on imposing this double tax, we should not be surprised that investors enter into contorted financial transactions to lower the after-tax rate of return on their investments. But this is the kind of economic analysis of which journalists seem incapable of conducting.[39]

Yes, compliance includes making use of the $600,000 lifetime exemption granted to each citizen. Structuring one's affairs so to make use of this exemption is expensive, unproductive, and even silly, but it is not an abuse of the system.

The article by Henriques and Norris was followed on December 22, by a front-page assault on the federal estate tax, "For Wealthy Americans, Death Is More Certain Than Taxes," by Drew and Johnson.[40] The singular theme of the article is that the wealthy use a host of "techniques for circumventing the estate tax." What are these "techniques," you may ask? Well, they range from such "abuses" as using a credit shelter trust to make use of each spouse's lifetime unified credit against federal gift and estate tax (at least, this is my technical description of what is portrayed in the article as some kind of gimmick to "avoid" estate taxes on $1.2 million in assets), purchasing life insurance to cover one's estate taxes, and mass-marketed "estate planning" for the affluent. These techniques, of course, are not just *legal*, as the authors reluctantly concede, but they are exactly what is warranted by the statutes. This is precisely how Congress has told American citizens to organize their financial affairs to *comply* with the gift and estate tax. Yes, *compliance* includes making use of the $600,000 lifetime exemption granted to each citizen. Structuring one's affairs so to make use of this exemption is expensive, unproductive, and even silly, but it is *not* an abuse of the system.[41]

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[38] Speech by Senator Russell B. Long, *Congressional Record*, 94th Cong., 2d sess. (June 10, 1976), pt. 14, 17595-96.

[39] That journalists are incapable of engaging in economic analysis of tax and fiscal policy is the theme of an interesting op-ed piece that appeared in *Wall Street Journal* this past summer. Journalists have also been properly criticized for their failure to appreciate the economics underlying the 1996 Dole tax cuts. *See, e.g.*, Martin A. Sullivan, "Dole Economics, Part II — The Estimates Deserve a Better Debate," *Tax Notes*, Sept. 23, 1996, 1576.

[40] Christopher Drew and David Cay Johnson, "For Wealthy Americans, Death Is More Certain Than Taxes," *The New York Times*, December 22, 1996, 1, col. 1.

[41] But I somehow doubt that *The New York Times* reporters wish to join the Heritage Foundation in calling for the abolition of the estate tax.

On the other hand, the story does describe some genuine abuses of the tax system — for instance, those business executives who transfer stock options to their children and claim ridiculously low values for their gifts. The same can be said for transfers to family limited partnerships at unjustifiable 70 percent discounts. Now these generous parents are prime candidates for investigation — by the IRS, not just reporters for *The New York Times*. And hopefully, Congress will give the IRS sufficient funds so as to increase the number of audits it conducts and fraud cases it litigates. But the truly amazing story uncovered by Drew and Johnson is that of one Martin M. Shenkman, a tax lawyer from Teaneck, New Jersey. (Got that name and address, Commissioner Richardson?) In an act of self-promotion that defies all logic and deserves the McLean Stevenson Award for dumb career moves, Shenkman describes in great detail how he and his wife created a "qualified personal residence trust" to hold their $539,000 personal residence for the benefit of their three children. I will leave it to the IRS (and perhaps Lee Sheppard in a future column) to evaluate whether this method of valuing a "transfer" (with a retained interest) in trust will pass muster under the new proposed regulations — and if it does, whether Congress ought not reexamine the whole idea of QPRTs. My only question for Mr. Shenkman is: Is the value of any extra legal work that you might possibly attract on account of this article in *The New York Times* really worth all the *tzuris* that you are going to get for exposing to the scrutiny of the Service a transaction that is, in your own words, "obviously a fiction"? Good luck, counselor! Remember the ancient adage that a tax lawyer who represents himself in a sham transaction deserves to have the "Book" (namely, the Internal Revenue Code) thrown at him.

To finish the tax year off with a bang, the December 29, 1996 edition of the Sunday *New York Times* included yet one more expose, "10 Years After Tax Overhaul, the Loopholes Expand," by Diana Henriques — this time on the alleged Return of Tax Shelters for the Rich.[42] In her article, Henriques dredges up material that previously appeared in the *NYT* series, this time to support the proposition that tax shelters (supposedly shut down in 1986) are making a big comeback: "[T]he shrewdest among the wealthy, in collaboration with eager expert advisers, are finding ingenious new shelters to keep the tax collector at bay. . . ." Henriques notes that these new tax shelters "are not available to most Americans" (of course, they were designed solely for the rich), and the very appearance of these techniques of avoiding tax "raises old questions of fairness" and violates the "longstanding principle that the American tax system should be progressive." (Tell that one to Dick Armey.)

What are these "new" tax shelters, you may ask? Well, it turns out that the post-TRA tax shelters consist of the use of deferred compensation (yes, the deferred compensation that hurts the poor middle-level managers), devices such as selling short against the box, and certain unnamed "new kinds of trusts" that "allow the most prosperous and resourceful citizens to leave homes, family businesses, and stock options to their heirs with minimal [estate] taxes." While Henriques claims that these new tax shelters are "costing the Treasury money," she admits that no one knows how much. Nevertheless, Henriques is convinced that there is a conspiracy out there of "shrewd lawyers and investment bankers" who are at it again finding new ways for the wealthy to avoid paying their "fair share" of taxes. Even the IRS is deemed to be part of the conspiracy. Henriques sees the role of the Service as providing the wealthy with private letter rulings that "permit one specific tax-avoidance technique." Of course, all this takes place while Congress watches with "chilly indifference" — which means they are indifferent on Capitol Hill to the bold attempts by the Clinton administration to tame Wall Street and the "shrewd" tax lawyers by closing down the short sale against the box.

In a single article, Henriques manages to drag out virtually every cliche from the repertoire of muckraking journalists to make a totally unfounded case against the tax system for a crime that has not even been committed.

In this single article, Henriques manages to drag out virtually every cliche from the repertoire of muckraking journalists to make a totally unfounded case against the tax system for a crime that has not even been committed. This is just the kind of newspaper story that encourages the public to believe that the whole tax system is "unfair" and that the rich never pay any taxes. That the top 1 percent of U.S. income earners typically pay around 28 percent of the taxes collected under the individual income tax is lost on the readers of *The New York Times*. Of course, that figure comes from the IRS, and who trusts the competency or integrity of the IRS? Certainly not the readers of *The New York Times* after its 1996 assault on the tax system.

IV. Conclusion

Journalists tend to view the world of Washington politics through a crude interest group model in which "special interests" control policy outcomes. In the classic journalistic story, the rich pass on their game plan via their lobbyists to their flunkies in Congress, who are all too ready to enact new tax "loopholes" or just look the other way as shrewd tax lawyers and investment bankers make use of "techniques" that permit their wealthy clients to avoid paying taxes. To the new muckrakers who write for such newspapers as the *Philadelphia Inquirer*, the *Los Angeles Times*, and *The New York Times*, the tax system is one thoroughly manipulated by the wealthy and special interests for their own selfish purposes.

[42]Diana B. Henriques, "10 Years After Tax Overhaul, the Loopholes Expand," *The New York Times*, December 29, 1996, E3, col. 1.

Even the austere and generally pro-business *Wall Street Journal* regularly engages in its own brand of "investigative" journalism. It is quite common to read articles in the *WSJ* identifying those interests lobbying for or against some particular provision in the tax code.[43] At least articles in the *WSJ* are free of the conspiracy theory that pervades those stories published in other newspapers. They generally just portray the jostling over the income tax as indicative of the "hardball" politics that pervades the evil Sodom and Gomorrah of the Potomac — Washington, D.C.

Not that there is not a good deal of lobbying, and not that congressmen do not use the tax system to provide all sorts of exemptions, exclusions, and preferences for important interests in their home districts. Unfortunately, this use of public power for private purposes is the overall defining characteristic of what Theodore Lowi of Cornell University has pejoratively referred to as "interest group liberalism." But tax policymaking is not *only* interest group politics; all the other political interests, principles, and ideologies that define and shape tax policy are ignored by the simplistic interest group model through which journalists view the world of tax policymaking.[44] This interest group model fails to explain why some groups are successful in achieving their goals through tax legislation, while others are not. If certain industries and economic sectors are protected by the tax laws, it is not just because they are big and powerful, hired the right lobbyist, or contributed to the right political action committee. Particular interests can succeed — even without lobbying, logrolling, and other devices characteristic of interest group politics. As Joseph White and the late Aaron Wildavsky once asked: "Interest groups are ubiquitous, but are they dominant?"[45] And one can add: Are they necessarily pro-business or pro-wealthy? After all, it is sometimes Citizens for Tax Justice that prevails. The follow-up questions are: How and when do pro-business interests prevail? And what are the preconditions for the success of tax reform? These are the kind of tougher questions that are not even addressed by journalists who write on tax policy.

The obsession of journalists with interest group politics has contributed to the widespread popular cynicism about policymaking, and in particular, about the tax system. Comfortable middle-class taxpayers who benefit from a host of tax preferences specifically designed for them are convinced that everyone else is avoiding taxes through "loopholes," while they are paying at exorbitant rates. They believe that the IRS is incompetent, and they know that policymakers in Washington have sold out to the special interests. On the whole, little of this is accurate. But you would never know it by reading any of our leading national newspapers or Martin Gross's latest effort. Better yet, don't bother.

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[43]Examples of articles in *The Wall Street Journal* recounting the interest group politics behind recent tax legislation include: Alan Murray and Jackie Calmes, "How the Democrats, With Rare Cunning, Won the Budget War," *Wall St. J.*, November 5, 1990, A1; "Clinton Suggestion of Possible Capital Gain Tax Upon Death Stirs Ire Among Powerful Interests," *Wall St. J.*, January 5, 1993, A16; Eugene Carlson, "How a Small-Business Group Found a Niche in Tax Bill," *Wall St. J.*, May 26, 1993, B-2; Jackie Calmes, "Congressman Who Cooked Up Tax Break for Restaurants May Get Taste Himself," *Wall St. J.*, October 29, 1993, A3; Milo Geyelin, "Revival of Sick Firms' Tax Break Is Sought," *Wall St. J.*, December 23, 1994, B-6; "Auto Lobbyists Try to Get Congress to Kill or Phase Out a Luxury Tax," *Wall St. J.*, August 30, 1995, A1; Glenn R. Simpson, "Budget-Cutting Bill Calls for Breaks That Would Aid Funeral Industry," *Wall St. J.*, December 7, 1995, A16, col. 1; Christina Duff, "Insurance Industry's Lobbying and Donations Pay Off Handsomely in Balanced-Budget Bill," *Wall St. J.*, December 18, 1995, A16, col. 1; Jackie Calmes, "GOP Tax Plan Is Cheered by Football Coaches, Convenience Stores and Various Other Interests," *Wall St. J.*, October 24, 1995, A24, col. 1; Christopher George, "Conservative Heritage Foundation Finds Recipe for Influence," *Wall St. J.*, August 10, 1995, A10; Rick Wartzman and Jackie Calmes, "How Drug Firms Saved Puerto Rico Tax Break After Clinton Attack," *Wall St. J.*, December 21, 1993, A1.

[44]That tax policy is the outcome of a considerably more complicated political process than what is supposed by the interest group model is the theme of my own modest contribution to the literature, *The Failure of U.S. Tax Policy: Revenue and Politics* (University Park: Pennsylvania State University Press, 1996).

[45]Aaron B. Wildavsky and Joseph White, *The Deficit and the Public Interest: The Search for Responsible Budgeting in the 1980s* (Berkeley and Los Angeles: University of California Press, 1989), 532.

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