PROSPECTS FOR DIRECT (OR INDIRECT) TAXATION OF WEALTH
Background Paper and Bibliography

for the

American Bar Association
Section of Taxation
Tax Policy and Simplification Committee

September 19, 2014

by

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I. THE PROGRAM AND SPEAKERS

Friday, September 19, 2014
9:30 AM – 11:00 AM
Tax Policy & Simplification Committee
Chair: Professor Jonathan B. Forman, University of Oklahoma College of Law, Norman, OK

9:30 AM **Prospects for Direct (or Indirect) Taxation of Wealth.** This panel will discuss Thomas Piketty's proposal for a global tax on capital (*Capital in the Twenty-First Century*, Harvard University Press 2014), the Constitutionality and mechanics of a wealth tax, and ways that the income tax, alternative minimum tax, estate and gift taxes, and property taxes can serve as proxies for a wealth tax.

MODERATOR: Roger Royse, Royse Law Firm PC, Palo Alto, CA, http://rroyselaw.com/people/roger-royse/

PANELISTS:

Professor Alice G. Abreu, Temple University Beasley School of Law, Philadelphia, PA, http://www.law.temple.edu/pages/faculty/n_faculty_abreu_main.aspx

Diana Furchtgott-Roth, Senior Fellow, Manhattan Institute for Policy Research, Washington, DC, http://www.manhattan-institute.org/html/furchtgott-roth.htm

Professor Richard Lavoie, University of Akron School of Law, Akron, OH, http://www.uakron.edu/law/faculty/profile.dot?identity=698521

Professor John T. Plecnik, Cleveland-Marshall College of Law, Cleveland, OH, http://facultyprofile.csuohio.edu/csufacultyprofile/detail.cfm?FacultyID=J_PLECNIK

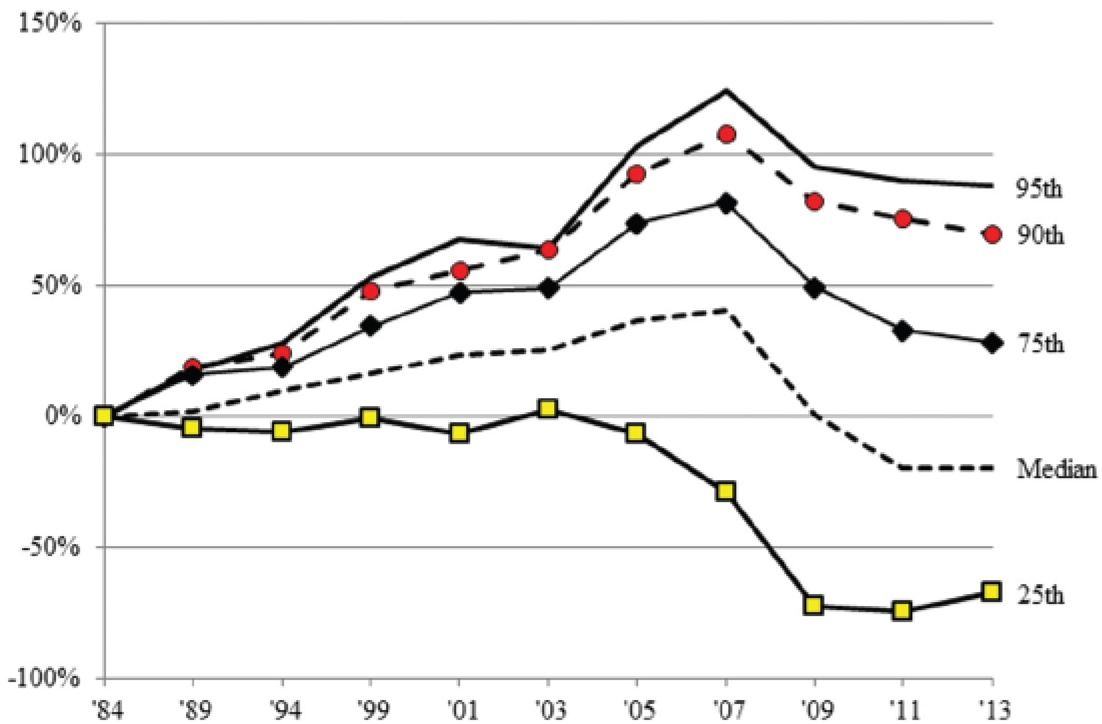
II. WEALTH INEQUALITY

Table 1. Wealth of American households before and after the Great Recession (in 2013 dollars)

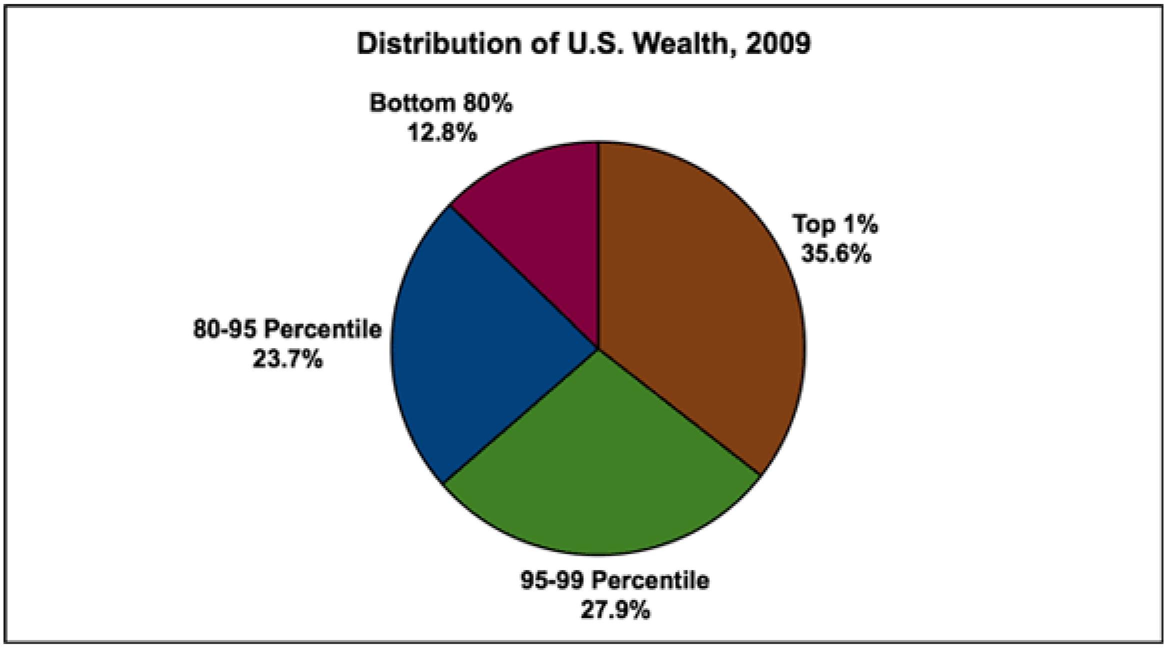
	2003	2007	2009	2013
Mean	**337,233**	**423,592**	**411,178**	**308,276**
Percentiles				
5th	-9,749	-13,482	-27,689	-27,416
25th	10,129	6,966	2,723	3,200
50th (median)	**87,992**	**98,872**	**70,801**	**56,335**
75th	302,221	367,959	302,412	260,405
90th	736,853	934,223	819,824	763,099
95th	1,192,639	1,629,133	1,420,304	1,364,834

Source: Fabian T. Pfeffer, Sheldon Danziger & Robert Schoeni, *Wealth Levels, Wealth Inequality, and the Great Recession* (Russell Sage Foundation, June 2014), http://web.stanford.edu/group/scspi/_media/working_papers/pfeffer-danziger-schoeni_wealth-levels.pdf.

Figure 1. Change in wealth since 1984 for various percentiles (in 2013 dollars)



Source: Fabian T. Pfeffer, Sheldon Danziger & Robert Schoeni, *Wealth Levels, Wealth Inequality, and the Great Recession* (Russell Sage Foundation, June 2014), http://web.stanford.edu/group/scspi/_media/working_papers/pfeffer-danziger-schoeni_wealth-levels.pdf.



Source: Wealth Inequality (last accessed June 9, 2014), http://inequality.org/wealth-inequality (citing Economic Policy Institute, The State of Working America 2011).

Table 2. Distribution of income compared with distribution of wealth, 2010

	Distribution of	
	Household Income	*Wealth (net worth)*
Bottom 90%	55.5	23.3
90th–<99th percentile	27.3	41.3
Top 1%	17.2	35.4
All	100.0%	100.0%

Source: http://www.stateofworkingamerica.org/chart/swa-wealth-table-6-1-distribution-income/

III. Wealth Taxation

Wealth *per se* is not taxed by the federal tax system. Much of the income from wealth, however, is taxed under the income tax, and certain transfers of wealth are taxed by the estate, gift, and generation-skipping taxes.

Some analysts have suggested the adoption of a direct annual wealth tax, and some European countries already have annual wealth taxes. The typical European wealth tax is imposed on the value of assets less liabilities of an individual or family, but many assets are excluded from the tax base. High exemptions are provided to exclude taxpayers with few economic resources. The tax rates are graduated, but the maximum tax rates are 3 percent or less.

Wealth taxes can be powerful revenue raisers. For example, according to New York University Economics Professor Edward N. Wolff, even a very modest wealth tax system would have raised $45 billion in 1995. Wolff based his estimate on a wealth tax system like the Swiss have, with marginal tax rates of from 0.05 percent to 0.30 percent and an exclusion of about $50,000.

Moreover, because their burden falls heaviest on those with greater economic resources, wealth taxes might more accurately measure the ability to pay of taxpayers and so help achieve a more equal distribution of economic resources. After all, taxpayers with greater wealth have a greater ability to pay taxes. In that regard, the distribution of wealth is far more skewed than the distribution of income. Consequently, taxing wealth could be a powerful tool for promoting greater economic equality.

On the other hand, wealth taxes inevitably raise numerous valuation questions. Also, opponents of wealth taxation have expressed the concern that they would impose further burdens on capital and so might reduce savings and investment. There are also significant timing questions because people tend to accumulate wealth in their working years in order to support themselves in their retirement years. Moreover, there may also be constitutional problems with a direct annual federal wealth tax.

IV. BIBLIOGRAPHY

Jennifer Bird-Pollan, ***Death, Taxes, and Property (Rights): Nozick, Libertarianism, and the Estate Tax***, 66 MAINE L. REV. 1 (2013).

> Libertarian arguments have become standard fare in the United States, in particular with regard to debates around tax policy. However, the libertarian view is not always fully unpacked, and often assumptions regarding particular outcomes seem to hinge more on expectations of the libertarian view rather than rigorous arguments about the topic at hand. Libertarian arguments about the estate tax claim that this particular tax is economically inefficient and violates moral claims stemming from individual property rights. In this Article, I will examine the estate tax through a libertarian lens, and explain why a hefty estate tax is consistent with the traditional libertarian position. I will begin by articulating Robert Nozick's libertarian views on property rights, in particular the account he provides in his seminal work *Anarchy, State, and Utopia*. I will then defend two lines of argument against the notion that the libertarian view of property rights is violated by an estate tax. Finally, I will explain why a society can, unrestricted by moral constraints regarding the property rights of the deceased, set a default rule for post-death property rights that reflects that society's values.

Diana Furchgott-Roth, ***No, Professor Piketty, Capital and Wealth are Not Synonymous***, TAX NOTES, May 12, 2014, at 703.

Diana Furchgott-Roth, ***The Systematic Errors In Thomas Piketty's New Book*** (April 22, 2014), http://www.realclearmarkets.com/articles/2014/04/22/the_systematic_errors_in_thomas_pikettys_new_book_101016.html.

David Gamage, ***Analyzing the Optimal Choice of Tax Instruments: The Case for Levying (all of) Labor-Income Taxes, Value-Added Taxes, Capital-Income Taxes, and Wealth***

Taxes, 66 TAX LAW REVIEW (forthcoming),

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2465522.

Barry L. Isaacs, ***Do We Want a Wealth Tax in America?***, 32 UNIVERSITY OF MIAMI LAW REVIEW (1977-1978).

GABRIEL KOLKO, **WEALTH AND POWER IN AMERICA: AN ANALYSIS OF SOCIAL CLASS AND INCOME DISTRIBUTION** (N.Y. Praeger 1962).

Richard Lavoie, ***Dreaming the Impossible Dream: Is a Wealth Tax Now Possible in America?*** (University of Akron Legal Studies Research Paper No. 14-01, 2014),

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2402978.

> It is often thought that a direct tax on individual wealth is a political nonstarter in the United States. Not only is such a tax arguably unconstitutional, but as a psychological matter it goes against the American psyche. That is, each of us hold out hope that someday we might become rich too, so we will not support any tax perceived as a "soak the rich" ploy. But has wealth inequality in the United States now reached the breaking point? Might recent public attention to the issue of economic inequality indicate that it might be possible to make a wealth tax a reality? This article will examine the utility and political viability of adopting a wealth tax in the United States.

Linda Levine, ***An Analysis of the Distribution of Wealth Across Households***, 1989-2010 (Congressional Research Service Report No. RL33433, July 17, 2012),

http://www.fas.org/sgp/crs/misc/RL33433.pdf.

> The distribution of wealth (net worth) across households has been an underlying consideration in congressional deliberations on various issues, including taxation and social welfare. This report analyzes the change over time in the concentration of net worth (assets minus liabilities) to help inform those policy deliberations.
>
> According to data from the Federal Reserve's latest Survey of Consumer Finances (SCF), mean household net worth was $498,800 and median household net worth was $77,300 in 2010. The median is the value at which one-half of wealth-owners have lower values and one-half have higher values of wealth. It is a better indication of the wealth of the "typical" household than is the mean which, because of the way in which it is calculated, is greatly affected by the small number of households with high values of wealth. A mean

over six times a median suggests substantial concentration of wealth among households at the upper end of the wealth distribution.

The change over time in the relationship between the mean and median provides an indication of how the distribution of wealth has changed across households. Both mean and median net worth increased from 1989 to 2007, with the mean typically increasing to a greater extent than the median. This suggests that in recent decades wealth became more concentrated among households at the upper end of the distribution. Both measures fell between 2007 (the outset of the December 2007-June 2009 recession) and 2010 (the first full year of recovery). The relatively greater decline in the median than in the mean between 2007 and 2010 suggests that the recession and slow recovery more adversely affected the households in the bottom half of the wealth distribution than those further up the distribution.

According to a June 2012 article in the Federal Reserve Bulletin, which presents data from the 2010 SCF, "a broad collapse in house prices" was the main reason for the overall decrease in median household wealth between 2007 and 2010. A decline in the value of financial assets (e.g., stocks) played a considerable but lesser role. Unlike house prices, the prices of stocks (which are less widely owned than principal residences) have broadly recovered from their lows.

GEO MARCUS, **LIVES IN TRUST: THE FORTUNES OF DYNASTIC FAMILIES IN LATE TWENTIETH-CENTURY AMERICA** (Boulder, Westview Press 1992).

Ann Mumford, ***Inheritance Taxation, Notions of Legitimacy, and Bourdieu***, in INHERITED WEALTH, JUSTICE AND EQUALITY 173-89 (Guido Erreygers & John Cunliffe, eds., London, Routledge 2012).

Nicholas A. Paleveda, ***Optimal Marginal Tax Rates -- A Solution to Wealth Disparity*** (2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2460996.

Optimal Marginal Tax rates may be used to lower the potential for wealth disparity and increase productivity at the same time. The author reviews the correlation of the optimal marginal tax rates by historical data.

THOMAS PIKETTY, **CAPITAL IN THE TWENTY-FIRST CENTURY** (2014).

Commentary includes:

Neil H. Buchanan (George Washington), ***Thomas Piketty's Book Is Masterful and Important, But Ultimately a Sideshow*** (July 8, 2014)

Alan Reynolds, ***Why Piketty's Wealth Data Are Worthless***, WALL STREET JOURNAL, July 9, 2014, http://online.wsj.com/articles/alan-reynolds-why-pikettys-wealth-data-are-worthless-1404945590.

Kent D. Schenkel (New England), ***Trusts and Estates and the Question of Wealth Distribution*** (July 8, 2014).

Daniel N. Shaviro (NYU), ***The Return of Capital*** (July 8, 2014)

Robert M. Solow (MIT), ***Thomas Piketty Is Right***, THE NEW REPUBLIC (April 22, 2014).

C. Eugene Steuerle, ***Piketty, Poverty, Political Pooh***, http://blog.governmentwedeserve.org/2014/07/14/piketty-poverty-political-pooh.

Mark J. Warshawsky, *Capital in The 21st Century?*, 143(13) TAX NOTES 1547 (June 30, 2014), http://www.aei.org/article/economics/capital-taxation-in-the-21st-century/.

Michael J. Zimmer (Loyola-Chicago), ***(Re)booting the Dismal Science***.

John T. Plecnik, ***The New Flat Tax: A Modest Proposal for a Constitutionally Apportioned Wealth Tax***, 41 HASTINGS CONSTITUTIONAL LAW QUARTERLY (2014).

> This Article's modest proposal for the New Flat Tax is a fiscally responsible solution. And it is truly modest. This Article does not propose eating the rich with draconically high taxes. It merely proposes a tax system that distinguishes between the rich, middle class, and poor, and taxes them according to their societal benefit and ability to pay. Specifically, this Article outlines a constitutional method for imposing a simple, flat rate wealth tax as a supplement to the income tax.

Gunnar Du Rietz & Magnus Henrekson, ***Swedish Wealth Taxation, 1911-2007*** (January 2, 2014), http://ssrn.com/abstract=2374507.

> This paper studies the evolution of modern Swedish wealth taxation since its introduction in 1911 until it was abolished in 2007. It offers a thorough description of the rules concerning valuation of assets, deductions/exemptions and tax schedules to characterize effective wealth tax schedules for the period 1911-2006. These rules and schedules are used to calculate marginal and average wealth tax rates for the whole period for a number of differently endowed owners of family firms and individual fortunes. The overall trend in the direct wealth tax was rising until 1971 for owners of large and middle-sized firms and for individuals of similar wealth consisting of non-corporate assets. Average direct wealth tax rates were low until 1934, except for 1913 when a temporary extra progressive defense tax was levied. There were three major tax hikes: in 1934, when the wealth tax was more than doubled, in 1948 when tax rates doubled again and in 1971 for owners of large firms and similarly sized non-corporate fortunes. Effective tax rates peaked in 1973 for owners of large firms and in 1983 for individuals with large non-corporate wealth. Reduction rules limited the wealth tax rates from 1934 for fortunes with high wealth/income ratios. The wealth tax on unlisted net business equity was abolished in 1991. Tax rates for wealthy individuals were decreased in 1991 and in 1992 and then remained at 0.5-1 percent until 2006, depending on whether the reduction rule was applicable. Tax rates for small-firm owners and small individual fortunes were substantially lower, but the tax difference was much smaller when owners of large fortunes could benefit from the reduction rules. The effective wealth tax was much greater if firm owners had to finance wealth tax payments through additional dividend payouts. In such cases the effective total wealth taxes were affected by high marginal income tax rates and peaked at extremely high levels in the 1970s and 1980s. Towards the end of the wealth tax regime, aggregate wealth tax revenues were relatively small: it never exceeded 0.4 percent of GDP in the postwar period and amounted to 0.16 percent of GDP in 2006.

Emmanuel Saez, ***Direct or Indirect Tax Instruments for Redistribution: Short-Run vs. Long-Run***, 88 JOURNAL OF PUBLIC ECONOMICS. 503 (2004).

TAX LAW REVIEW *Symposium on Wealth Taxes*, Part I

Foreword, 53(3) TAX LAW REVIEW 257 (2000)

Eric Rakowski, ***Can Wealth Taxes Be Justified?***, 53(3) TAX LAW REVIEW 263 (2000).

> A wealth tax is a tax levied periodically on the value of a taxpayer's possessions (excluding opportunities to work or loaf and personal attributes, such as

marketable skills, mental capacities, a healthy constitution, or a comely appearance). Could a wealth tax figure in a just, ongoing tax scheme, regardless of whether it might be justified as an extraordinary corrective to an unjust distribution of resources or opportunities? I argue that it almost certainly could not, if one assumes the correctness of one of a wide range of non-utilitarian, liberal egalitarian accounts of justice. It would have no place in a just tax system, not because a wealth tax would be impracticable (though its administration would pose well-known difficulties), but because it would be morally offensive. This paper assesses and finds wanting numerous rationales that have been suggested for taxing wealth, such as protecting democratic politics, maintaining the efficiency of labor and product markets, and spurring productive investment. I also argue at length that a wealth tax probably would have no role in funding government services under various benefit or fair-sacrifice principles for allocating the costs of collective projects. Nor would wealth taxes of the sort common in Western Europe serve as workable proxies for the rents that Left Libertarian theories of justice would charge for the use of natural resources, even if one endorses (though I offer reasons not to do so) some version of Left Libertarianism. A wealth tax might be justified as one component of an unusual tax on gratuitous transfers which I sketch--a tax that takes inspiration from, though it modifies significantly, the Meade Committee's Progressive Annual Wealth and Accessions Tax. Its role, however, would be very limited, and it would look nothing like wealth taxes now in use because it would apply only to a narrow class of assets. Finally, I consider arguments for adding a wealth tax first to a consumption tax, on the assumption that consumption taxation is justified, and then for adding a wealth tax to an income tax, this time on the assumption that an income tax is justified. In both cases, I contend, a wealth tax is inconsistent with the best arguments offered for both consumption and income as tax bases and with liberal egalitarian ideals of fairness.

Commentary

Barbara H. Fried, ***Compared to What? Taxing Brute Luck and Other Second-Best Problems***, 53(3) TAX LAW REVIEW 377 (2000).

Daniel N. Shaviro, ***Inequality, Wealth, and Endowment***, 53(3) TAX LAW REVIEW 397 (2000).

Deborah H. Schenk, ***Saving the Income Tax with a Wealth Tax***, 53(3) TAX LAW REVIEW 423 (2000)

The income tax has been under assault for several decades. It has been attacked on its theoretical flank by those who favor a consumption tax as a more efficient and equitable means of raising revenue. It has been attacked on its practical flank by those who argue that it is a failure because it does not reach income from capital. A review of recent literature would lead one to believe that the income tax is about to be buried. Before the last few shovels of dirt are thrown on the casket, it is worthwhile to ponder whether there is anything about an income tax that should and can be preserved or whether a consumption tax is superior as the primary vehicle to raise revenue.

Commentary

Joseph Bankman, ***What Can We Say About a Wealth Tax?***, 53(3) TAX LAW REVIEW 477 (2000).

Noel B. Cunningham, ***Observations on Retrospective Taxation***, 53(3) TAX LAW REVIEW 489 (2000).

TAX LAW REVIEW *Symposium on Wealth Taxes,* Part II

David Shakow, Reed Shuldiner, ***A Comprehensive Wealth Tax***, 53(4) TAX LAW REVIEW 499 (2000).

We find that the wealth tax leads to a distribution of taxes over most of the income range that is roughly the same as the current income tax. Based on the data we have analyzed so far, the combined taxes produce a significantly greater burden than does the income tax on very low income individuals and produce a significantly lesser burden on very high income individuals. We find the lower burden on higher income individuals a disturbing feature of the tax. We view the results so far, however, as only preliminary. We strongly suspect that the data we used omits substantial amounts of wealth owned by upper income individuals. Thus, we expect future work is likely to show increased taxes would be paid by upper income individuals under a properly structured wealth tax.

Commentary

Michael S. Knoll, ***Of Fruit and Trees: The Relationship Between Income and Wealth Taxes***, 53(4) TAX LAW REVIEW 587 (2000).

James R. Repetti, ***It's All About Valuation***, 53(4) TAX LAW REVIEW 607 (2000).

Moris Lehner, ***The European Experience with a Wealth Tax: A Comparative Discussion***, 53(4) TAX LAW REVIEW 615 (2000)

Commentary

> Victor Thuronyi, ***The European Experience with a Wealth Tax***, 53(4) TAX LAW REVIEW 693 (2000).

Too Much (An online weekly on excess and inequality) (May 26, 2014) ("Thomas Piketty hasn't just produced a book. He has produced a phenomenon — and we're devoting this week's entire *Too Much* to his new *Capital in the Twenty-First Century*. How could we not?"), http://toomuchonline.org/weeklies2014/may262014.html.

THORSTEIN VEBLEN, **THE THEORY OF THE LEISURE CLASS: AN ECONOMIC STUDY OF INSTITUTIONS** (N.Y. New Amer. Library 1953 [1899]).

EDWARD N. WOLFF, **TOP HEAVY: THE INCREASING INEQUALITY OF WEALTH IN AMERICA AND WHAT CAN BE DONE ABOUT IT** (New Press 1999).

> Even a very modest annual wealth tax system would have raised $45 billion in 1995. Wolff based his estimate on a wealth tax system like the Swiss have, with marginal tax rates of from 0.05 percent to 0.30 percent and an exclusion of about $50,000.

Gabriel Zucman, ***The Missing Wealth of Nations: Are Europe and the U.S. net Debtors or net Creditors?***, 128 (3) QUARTERLY JOURNAL OF ECONOMICS 1321 (2013), http://gabriel-zucman.eu/files/Zucman2013QJE.pdf (estimating that $7.6 trillion [8% of the world's personal financial wealth] is stashed in tax havens).

V. OTHER RESOURCES

http://inequality.org (last visited June 10, 2014) (e.g., *Wealth Inequality* [http://inequality.org/wealth-inequality] & *Resources* [http://inequality.org/resources, e.g., Quotes on Inequality, Books on Inequality, Organizations]).