

ARTICLES

MORAL REFLECTIONS ON TWENTY-FIRST CENTURY TAX POLICY TRENDS

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ABSTRACT

*Fair Taxation, Whatever That Is, Is Hard to Achieve***

Focusing on individual taxpayers, this article offers moral reflections on state and local and federal tax policy trends during the first two decades of the twenty-first century. Although tax policy decisions are made by politicians (who often rely on economists), determining the best tax policy is ultimately an ethical issue and serves as a barometer revealing the true moral compass of any community.¹ I

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**MICHAEL KEEN & JOEL SLEMROD, *REBELLION, RASCALS AND REVENUE: TAX FOLLIES AND WISDOM THROUGH THE AGES* 379 (2021).

¹ JOEL SLEMROD & JON BAKIJA, *TAXING OURSELVES: A CITIZEN'S GUIDE TO THE DEBATE OVER TAXES* 89–90 (5th ed. 2017) (The fairness of tax policy is an ethical issue, not an

started thinking about ethical tax policy while studying theology at the Beeson Divinity School, a conservative evangelical seminary that is part of Samford University. At Beeson, I noticed for the first time the gap between “walk and talk” in my home state of Alabama—although more than 90% of Alabamians claimed to be Christians, its regressive state and local taxes and paltry K-12 funding harshly impacted the most vulnerable and powerless Alabamians. In 2002, I published my thesis that condemned this as biblically immoral and urged all Christians in Alabama, especially political and religious leaders, to support reforms.²

My article condemning Alabama’s tax policy under the moral principles of Judeo-Christian ethics generated nationwide press

economic issue. Although “in principle, any panel of economists offering their opinions on the best tax system should be followed by a panel of philosophers or ethicists who offer their views on tax equity[,] [i]n practice . . . we rely on the political system”); *see also infra* notes 38–42 and accompanying text (explaining how tax policy best identifies any community’s genuine moral compass).

² *See* Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 ALA. L. REV. 1 (2002) [hereinafter Hamill, *Alabama*]. This article was reprinted, along with selected editorials, press coverage, and chapters elaborating on the background of the project, in a paperback book. *See generally* SUSAN PACE HAMILL, *THE LEAST OF THESE: FAIR TAXES AND THE MORAL DUTY OF CHRISTIANS* (2003) [hereinafter HAMILL, *THE LEAST OF THESE*].

coverage.³ Internationally, the *London Times* also weighed in.⁴ This press coverage and numerous questions posed at hundreds of speaking engagements all over Alabama and in twenty-eight states inspired me to embark on a body of scholarship spanning a decade that morally evaluated federal tax policy and the state and local tax policy of all fifty states.⁵

³ A newspaper article started an intense reaction in Alabama and inspired enormous interest from the press all over the country. See Sam Hodges, *Tax Critic: Professor Blasts "Immoral" Structure: Hamill's 77-Page Paper Says State Hammers the Poor*, MOBILE REG., Aug. 11, 2002, at 1A; Shailagh Murray, *Divinity School Article Debates Morality of Alabama Tax-Code*, WALL ST. J. (Feb. 12, 2003), <https://www.wsj.com/articles/SB1045001360300692183> [<https://perma.cc/B75D-UKA9>]; Jay Reeves, *Law Professor Summons Jesus as a Witness for Tax Reform*, WASH. POST, Mar. 23, 2003, at A10; Adam Cohen, *What Would Jesus Do? Sock it to Alabama's Corporate Landowners*, N.Y. TIMES (June 10, 2003), <https://www.nytimes.com/2003/06/10/opinion/editorial-observer-what-would-jesus-do-sock-it-to-alabama-s-corporate-landowners.html> [<https://perma.cc/VZ9G-RLZP>]; Bonna de la Cruz, *Tax Systems Unjust, Alabama Professor Says*, TENNESSEAN, Aug. 1, 2003, at 4B; Kevin Horigan, Editorial, *Alabama Asks Itself WWJT? (What Would Jesus Tax?)*, ST. LOUIS-POST DISPATCH, Aug. 3, 2003, at B3; Christopher Spencer, *Practice Faith by Revising the Tax System, Advocate Says*, ARK. DEMOCRAT-GAZETTE, Aug. 28, 2003, at 15. My article influenced Governor Bob Riley's tax reform plan. See Phillip Rawls, *Riley Touts Biggest Tax Hike Ever*, TUSCALOOSA NEWS, May 20, 2003, at 1A. Even after Governor Riley's plan was defeated, my article continued to generate widespread interest. See David M. Halbfinger, *Alabama Voters Crush Tax Plan Sought by Governor*, N.Y. TIMES, Sept. 10, 2003, at A14; Collin Hansen, *'Jesus Tax' Plan Dies: Alabama Fiscal Debate Exposes a Divide Between Christians*, CHRISTIANITY TODAY, Nov. 1, 2003, at 25–26; Jason Zengerle, *The 3rd Annual Year in Ideas; Biblical Taxation*, N.Y. TIMES MAG. (Dec. 14, 2003), <https://www.nytimes.com/2003/12/14/magazine/2003-the-3rd-annual-year-in-ideas-biblical-taxation.html> [<https://perma.cc/RRW5-PJ7Y>]; Julie Polter, *The Lawyer, the Bible, and the Governor*, SOJOURNERS MAG., April 2004, at 12–17; Jeffrey Weiss, *Tax Reformer Cites Christian Theology*, DALLAS MORNING NEWS, May 1, 2004, at 5G; Christian Century, *Unjustly Taxed: The Bible and Politics in Alabama*, CHRISTIAN CENTURY, Sept. 21, 2004 at 28–33; Rhoda A. Pickett, *Professor Continues Tax Reform Crusade*, MOBILE REG., Mar. 5, 2005, at B3; Bob Kemper, *This Isn't Your Father's Moral Majority*, ATLANTA J. CONST., Jan. 22, 2006, at A7.

⁴ See Tony Allen-Mills, *Alabama Puts Bush Tax Cuts to Biblical Test*, LONDON TIMES (June 15, 2003, 1:00 AM) [hereinafter LONDON TIMES], <https://www.thetimes.co.uk/article/alabama-puts-bush-tax-cuts-to-biblical-test-sskd9n2kb7l> [<https://perma.cc/8C7R-VC6E>].

⁵ See Susan Pace Hamill, *A Moral Perspective on "Big Business" Fair Share of America's Tax Burden*, 1 U. ST. THOMAS L. J. 857 (2003) [hereinafter Hamill, *A Moral Perspective*]; Susan Pace Hamill, *An Evaluation of Federal Tax Policy Based on Judeo-Christian Ethics*, 25 VA. TAX. REV. 671 (2006) [hereinafter Hamill, *Federal Tax Policy*] (articles morally evaluating federal tax policy). My research documenting and morally evaluating the state and local tax policy and K-12 funding in all fifty states produced a book, see SUSAN PACE HAMILL, AS CERTAIN AS DEATH: A FIFTY-STATE SURVEY OF STATE AND LOCAL TAX LAWS (2007) [hereinafter HAMILL, FIFTY-STATE SURVEY], and a law review article, see Susan Pace Hamill, *The Vast Injustice Perpetuated by State and Local Tax Policy*, 37 HOFSTRA L. REV. 117 (2008) [hereinafter Hamill, *State and Local Tax*].

All tax policy issues ultimately boil down to answering two questions. The first defines the amount of revenues to be raised and for what purpose such revenues are to be spent. The second determines how the burden of paying the taxes needed to raise these revenues will be allocated among taxpayers enjoying different levels of income and wealth. Part I of this article briefly identifies fundamental concepts surrounding the discussion of these two questions and explains why economic theories cannot provide definitive answers.⁶

Part II illustrates that the moral principles of Judeo-Christian ethics require tax policy that raises an adequate level of revenues so that all persons have a reasonable opportunity to reach their potential with the tax burden allocated under a moderately progressive model.⁷ Part II then explains why several community-oriented secular theories come to similar tax policy conclusions as the Judeo-Christian approach, albeit for different reasons.⁸ Finally, this part contrasts these moral frameworks to objectivist ethics, a form of atheism that values individual self-interest over all else, which only condones tax policy that raises as little revenues as possible under a burden allocation model void of any progressive elements.⁹

After summarizing my 2002 article condemning Alabama's state and local tax policy as biblically immoral,¹⁰ Part III overviews empirical research conducted a few years later that provided a helicopter view of the state and local tax policy in all fifty states. This part then illustrates that most of the states had tax policies that were just as immoral, only slightly better, or even more immoral than Alabama's tax policy, while the others still failed to raise adequate revenues supporting reasonable opportunity under a moderately

Policy], and was also the subject of a feature story in the business section of the *New York Times*, see David Cay Johnston, *Professor Cites Bible in Faulting Tax Policies*, N.Y. TIMES (Dec. 25, 2007) <https://www.nytimes.com/2007/12/25/business/25tax.html> [<https://perma.cc/DB2B-QNW5>]. For additional publications applying the moral principles of Judeo-Christian ethics to tax policy, see Susan Pace Hamill, *They're a Moral Obligation: Religious and Ethical Arguments for Progressive Taxation*, in 10 EXCELLENT REASONS NOT TO HATE TAXES 22 (Stephanie Greenwood ed., 2007); Susan Pace Hamill, *The Potential of Applying Judeo-Christian Ethics to Tax Policy in Foreign Countries*, 34 J. EDUC. FIN. 139 (2008); Susan Pace Hamill, *A Moral Perspective on the Role of Education in Sustaining the Middle Class*, 24 NOTRE DAME J. L. ETHICS & PUB. POL'Y 309 (2010); and Susan Pace Hamill, *Tax Policy Inside the Two Kingdoms*, 14 J. ACCT., ETHICS & PUB. POL'Y 2 (2013).

⁶ See *infra* notes 19–37 and accompanying text.

⁷ See *infra* notes 43–68 and accompanying text.

⁸ See *infra* notes 71–84 and accompanying text.

⁹ See *infra* notes 85–94 and accompanying text.

¹⁰ See *infra* notes 95–109 and accompanying text.

progressive model.¹¹ Finally, Part III explores the most recent evidence that indicates some states have slightly improved their tax policies while others are even more unfair. Because our nation's state and local policy essentially has not changed, it is still as immoral as it was earlier in the twenty-first century.¹²

Part IV overviews and morally evaluates federal tax policy trends during the first two decades of the twenty-first century.¹³ President George W. Bush's first term tax cuts eroded progressivity while benefiting the wealthiest Americans, created substantial federal deficits jeopardizing programs uplifting the most vulnerable Americans, and moved towards eliminating the estate tax.¹⁴ The justifications behind the Bush tax cuts were not only void of Judeo-Christian or community-oriented secular principles but also reflected objectivist ethics values.¹⁵ Despite severe economic challenges and partisan gridlock, President Barack Obama reversed some of these income tax trends, and although his moral conversation more closely reflected Judeo-Christian and community-oriented secular values, his compromises further eroded the estate tax.¹⁶ This part then illustrates that the Tax Cuts and Jobs Act of 2017, which in addition to favoring the wealthiest Americans while threatening the nation's fiscal stability, is also driven by objectivist ethics.¹⁷ This article concludes that, overall, twenty-first century tax policy trends are headed in the wrong direction that are contrary to the values most Americans claim to adhere to. Although President Joseph R. Biden's ideas could start steering federal tax policy in the right direction, objectivist ethics influences poisoning tax policy remain a powerful force that, if allowed to continue, will eventually ruin the nation.¹⁸

PART I. TAX POLICY 101—AN INTRODUCTION

A tax is a compulsory payment imposed by a government to raise revenues to meet public needs.¹⁹ The definition of what constitutes

¹¹ See *infra* notes 110–125 and accompanying text.

¹² See *infra* notes 126–143 and accompanying text.

¹³ See *infra* notes 144–231 and accompanying text.

¹⁴ See *infra* notes 152–160 and accompanying text.

¹⁵ See *infra* notes 161–184 and accompanying text.

¹⁶ See *infra* notes 185–200 and accompanying text.

¹⁷ See *infra* notes 201–231 and accompanying text.

¹⁸ See *infra* notes 232–257 and accompanying text.

¹⁹ See *Tax*, BLACK'S LAW DICTIONARY (11th ed. 2019). The following quote by Senator Russell B. Long, who from 1966–1981 served as chairman of the Senate Finance Committee, sums up the widespread understanding that people will avoid their fair share of taxes whenever possible: “Don’t tax you, don’t tax me, tax that fellow behind the tree.”

public needs sets the level of revenues that must be raised. At one extreme, public needs can be narrowly defined to only include the barest essentials of the minimum state required to prevent anarchy, examples being the cost of law enforcement, national defense, and the courts.²⁰ Other options expand public needs to fund a number of areas including education as well as safety nets that support the most vulnerable among the population, such as food and nutrition supplements, housing subsidies, child welfare services, decent healthcare, and job training.²¹ As the notion of public needs becomes more encompassing, the level of necessary compulsory taxation commensurately grows.²²

Tax laws must also set forth how the burden of paying the taxes will be borne among taxpayers at different levels of income and wealth—a concept known as vertical equity.²³ Tax policy analysts and

See FRED R. SHAPIRO, *THE YALE BOOK OF QUOTATIONS* 470 (2006); *Long, Russell Billiu (1918-2003)*, BIOGRAPHICAL DICTIONARY OF THE U.S. CONG., <https://bioguideretro.congress.gov/Home/MemberDetails?memIndex=1000428> [<https://perma.cc/LPN4-95WN>].

²⁰ The “minimal state,” also referred to as the “nightwatchman state,” limits government functions to only what is necessary to protect each citizen’s right to life, liberty, and property. *See* JONATHAN WOLFF, ROBERT NOZICK: PROPERTY, JUSTICE AND THE MINIMAL STATE 10 (1991). Government functions that exceed this minimum purpose are viewed as infringing upon citizens’ rights. *See id.*

²¹ *See* Hamill, *Federal Tax Policy*, *supra* note 5, at 717–18 (explaining that approximately one-third of the federal budget covers Social Security and Medicare and just over one-third broadly can be classified as funding minimum state functions, while just under one-third covers areas clearly beyond the needs of the minimum state).

²² *See* MICHAEL J. GRAETZ, *THE U.S. INCOME TAX: WHAT IT IS, HOW IT GOT THAT WAY, AND WHERE WE GO FROM HERE* 244–45 (1999). In addition to defining the level of revenues to be raised, legislative and government accountability must ensure that tax revenues are used in an efficient manner that minimizes waste. *See id.* at 245 (stating that the American public wants “their tax dollars to be well spent[,]” which is one of the characteristics of a fair tax system, and that “[g]overnment waste feeds anti-tax frenzy”); SLEMROD & BAKIJA, *supra* note 1, at 161–62 (stating that the value of government functions must be evaluated in light of the cost of raising the necessary tax revenues, “[s]o when the government decides to spend a dollar on something like military hardware or a roads project, it had better produce social benefits worth *more* than a dollar”).

²³ *See* SLEMROD & BAKIJA, *supra* note 1, at 88 (discussing vertical equity). A related issue, horizontal equity, is the concept that similarly situated taxpayers should have the same tax liability. *Id.* at 134. The federal income tax structure has many horizontal equity issues because deductions and other tax benefits not directly tied to defining income result in taxpayers at similar income levels bearing different tax burdens. *Id.* at 133–36. Moreover, many horizontal equity issues also raise vertical equity issues because horizontally suspect deductions and other tax benefits disproportionately reduce tax burdens of taxpayers enjoying higher levels of income and wealth. *See* GRAETZ, *supra* note 22, at 133–34 (noting that horizontal equity is still a significant problem in achieving a fair allocation of the tax burden because the post-1986 tax law favors fringe benefits, homeownership, certain investments, and provides a variety of incentive provisions).

other tax professionals describe the different alternatives as regressive, proportional, or progressive.²⁴ Regressive models impose taxes inversely proportional to the taxpayer's income and wealth, meaning the tax burden as a percentage of available income and wealth grows larger at lower levels and becomes smaller at higher levels.²⁵ Proportional models impose roughly the same tax burden as a percentage of the taxpayer's available income and wealth at all levels.²⁶ Progressive models impose a greater tax burden as a percentage of the taxpayer's available income and wealth as those levels rise, which can vary significantly from relatively mild, different degrees of moderation, or reach steep levels.²⁷

All reasonable tax policy experts generally agree that regressive taxes are unwise and that those at and below the poverty line should be exempt from taxation.²⁸ However, a legitimate debate exists between those favoring proportional versus those supporting one or more of the

²⁴ See SLEMROD & BAKIJA, *supra* note 1, at 85–89 (providing an overview of regressive, progressive, and proportional tax burden allocation structures and noting that a “head” or “poll” tax, imposing “the same annual tax, *period*” is the only way to have a truly equal burden measured in absolute dollars, which is also universally recognized as unfair).

²⁵ See Hamill, *Alabama*, *supra* note 2, at 11–20 (discussing Alabama's regressive state and local tax structure); Hamill, *State and Local Tax Policy*, *supra* note 5, at 129–143; *infra* notes 110–133 and accompanying text (explaining that most of the fifty states allocate tax burdens at a high level of regressivity).

²⁶ See SLEMROD & BAKIJA, *supra* note 1, at 89–90, 381, 383–84 (discussing proportional tax models); see also Hamill, *A Moral Perspective*, *supra* note 5, at 872–75 (discussing flat/consumption tax proposal sponsored by Congressman Armey and Senator Shelby).

²⁷ See generally SLEMROD & BAKIJA, *supra* note 1, at 21–28 (documenting the substantial variation in degrees of progressivity since 1913 where some years the top rate exceeded fifty percent, whereas generous deductions in other years substantially narrowed the base rate); see also GRAETZ, *supra* note 22, at 16 (explaining that between 1921–1982, the top rate fluctuated between seventy-three, twenty-five, and sixty-three percent); SLEMROD & BAKIJA, *supra* note 1, at 49–56 (measuring whether or not a particular tax structure is regressive, proportional, or progressive, and if progressive the degree of progressivity cannot be determined by merely examining the tax rates); Tracey M. Roberts, *Brackets: A Historical Perspective*, 108 N.W. U. L. REV. 925 (2014) (using inflation-adjusted dollars, examines and connects one hundred years of changes in the graduated income tax rate structure to historical events, illustrates the rates have flattened over time, and discusses how economic data from earlier years can assist in debates over future changes).

²⁸ See, e.g., ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 777 (Edwin Cannan ed., 1937) (explaining that the maxim of equity, focusing on paying taxes in proportion to one's abilities, presumably would deem a regressive tax inequitable); Joseph Bankman & Thomas Griffith, *Social Welfare and the Rate Structure: A New Look at Progressive Taxation*, 75 CAL. L. REV. 1905, 1911 (1987) (“The theoretical case for a regressive tax . . . is thought so weak that it is rarely discussed.”); Nancy C. Staudt, *The Hidden Costs of the Progressivity Debate*, 50 VAND. L. REV. 919, 921 n.10 (1997) (explaining that numerous theorists on both sides of the progressive taxes debate agree that those living at or below subsistence levels of income should not bear taxes).

numerous degrees of progressive tax burden allocation models.²⁹ Moreover, there are concerns that steeply progressive models may adversely affect the economy.³⁰

The economic theory of marginal utility and the related ability-to-pay principle have been invoked to support progressive, sometimes highly progressive, models on the grounds that taxpayers derive less satisfaction from each additional dollar as their income and wealth increase and can better afford to bear higher tax burdens.³¹ While offering broad support generally favoring progressive tax models, these ideas offer no concrete evidence pinpointing the degree of an optionally progressive model. This is because neither the decrease in the value of the dollar nor the degree taxpayers at greater levels of income and wealth can afford to bear higher tax burdens can be accurately measured.³² Another economically based idea, the benefit principle,

²⁹ SLEMROD & BAKIJA, *supra* note 1, at 89–90 (discussing the elusive concept of fairness, in the context of general statements supporting progressive versus proportional structures); Hamill, *A Moral Perspective*, *supra* note 5, at 879–89 (outlining the basic framework of how secular moral theories speak to proportional versus progressive structures). *See generally*, Walter J. Blum & Harry Kalven, Jr., *The Uneasy Case for Progressive Taxation*, 19 U. CHI. L. REV. 417 (1952).

³⁰ SLEMROD & BAKIJA, *supra* note 1, at 88 (“Attempting to achieve a *very* progressive distribution of tax burdens (i.e., skewed towards high-income households) inevitably generates disincentives to earn income, which *may* inhibit economic growth.” (emphasis added)); *see also* Martin J. McMahon, Jr., *2018 Erwin N. Griswold Lecture Before the American College of Tax Counsel: Tax Policy Elegy*, 71 TAX LAW. 421, 425 (2018) (“Economists generally agree that the revenue maximizing top rate can be much higher than it is now.”).

³¹ *See* CHARLES O. GALVIN & BORIS I. BITTKER, *THE INCOME TAX: HOW PROGRESSIVE SHOULD IT BE?* 14–15 (1969) (describing the marginal utility argument); Bankman & Griffith, *supra* note 28, at 1947 (discussing, in the context of optimal tax models, assuming declining marginal utility); Reuven S. Avi-Yonah, *Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State*, 113 HARV. L. REV. 1573, 1649 (2000) (identifying declining marginal utility as a widely accepted justification for redistributive income taxation); Vada Waters Lindsey, *The Widening Gap Under the Internal Revenue Code: The Need for Renewed Progressivity*, 5 FLA. TAX REV. 1, 8 (2001) (arguing that progressive tax burdens are “fair because [they] implement[] the traditional ability-to-pay principle”); James R. Repetti, *Democracy and Opportunity: A New Paradigm in Tax Equity*, 61 VAND. L. REV. 1129, 1137–38 (2008) (identifying declining marginal utility as a justification for progressive rates).

³² HENRY C. SIMONS, *PERSONAL INCOME TAXATION: THE DEFINITION OF INCOME AS A PROBLEM OF FISCAL POLICY* 5–10 (1938) (noting that although equal sacrifice does factor in declining marginal utility, it is “exceedingly difficult” to interpret these doctrines in definite terms); *see* BORIS I. BITTKER, *The Income Tax: How Progressive Should it Be?*, in *COLLECTED LEGAL ESSAYS* 229, 234 (1989) (stating one cannot put an exact value on declining marginal utility while supporting progressive taxes); LIAM MURPHY & THOMAS NAGEL, *THE MYTH OF OWNERSHIP: TAXES AND JUSTICE* 17–18 (2002) (observing that supporters of progressive taxes do not know “how steeply [the] marginal utility [curve] . . . declines”); Sarah B. Lawsky, *On the Edge: Declining Marginal Utility and Tax Policy*, 95

which has been similarly invoked to support progressive models, also fails to definitively define the degree of progressivity.³³

Opponents of progressive tax structures often argue that, in general, proportional tax models and tax cuts that offer greater benefits to upper middle class and wealthy taxpayers will enhance economic growth and prosperity.³⁴ This theory—known as supply-side economics, which heavily relies on complicated and sophisticated simulation models—claims that reduction of taxes (especially for those at higher levels of income and wealth) causes greater work, savings, and investments that will benefit all even though there will be an increased tax burden for those in the middle classes.³⁵ However, due to major flaws in the models themselves, supply-side economics fails

MINN. L. REV. 904, 907–09, 929–939 (2011) (explaining how empirical evidence suggests that, at least for some people at some ranges of wealth, marginal utility rises as income rises). Despite the empirical evidence that some individuals experience an increase in marginal utility, those who remain committed to progressive redistributive taxation should recognize that declining marginal utility is ultimately a value judgement that “does not provide a scientific or unassailably true answer to the question of how a tax system should be structured.” *Id.* at 952. Further, while the ability-to-pay principle is a broad intuitive justification of the fact that tax burdens should be linked in some way to the taxpayer’s economic well-being, it has “nothing concrete to offer” on specific questions “such as whether millionaires should owe 70 percent, 50 percent, or 30 percent of their income in tax, or whether poor families should bear any tax burden at all[.]” SLEMROD & BAKIJA, *supra* note 1, at 95.

³³ The benefit principle, which assumes that each taxpayer’s tax burden should reflect the value of services received from the government, offers broad arguments justifying progressive tax burdens because taxpayers at higher levels of income and wealth have more to lose if government fails. See Leo P. Martinez, “*To Lay and Collect Taxes*”: *The Constitutional Case for Progressive Taxation*, 18 YALE L. & POL’Y REV. 111, 147 (1999); SLEMROD & BAKIJA, *supra* note 1, at 91–93. However, because it is impossible to measure the value of government benefits, the benefit principle cannot be invoked when structuring the degree of optional progressivity. See *id.* at 92. For further criticisms of the benefit principle, see WILLIAM H. ANDERSON, TAXATION AND THE AMERICAN ECONOMY: AN ECONOMIC, LEGAL, AND ADMINISTRATIVE ANALYSIS 55 (1951); Jeffrey A. Schoenblum, *Tax Fairness or Unfairness? A Consideration of the Philosophical Bases for Unequal Taxation of Individuals*, 12 AM. J. TAX POL’Y 221, 229 (1995).

³⁴ See SLEMROD & BAKIJA, *supra* note 1, at 145 (“The Republican presidential candidate in every general election from 1996 through 2012 ran on a platform that advocated . . . [for] significant across-the-board cuts in income tax rates . . . arguing each time that this would greatly benefit the economy.”); *id.* at 223 (describing claims of economist Arthur Laffer in the 1970s that tax cuts will generate revenue); see also *infra* notes 145, 205, 219 and accompanying text (discussing rhetoric surrounding President Bush’s and President’s Trumps tax cuts as claiming to benefit the economy).

³⁵ See ROBERT E. HALL & ALVIN RABUSHKA, THE FLAT TAX 83–88 (2d ed. 1995); Hamill, *A Moral Perspective*, *supra* note 5, at 875–76, 893–97 (summarizing the basic elements of supply-side theory).

to provide any reliable proof that this growth will occur.³⁶ Because the economic theories invoked to support progressive tax structures offer at most broad (but still unmeasurable) analysis and the evidence supporting supply-side economics is either totally absent or grossly exaggerated, the important ethical decisions defining the best tax policy must be made without the benefit of precise economic information.³⁷

PART II. BRIEF SUMMARY HOW MAJOR ETHICAL THEORIES EVALUATE TAX POLICY

The ethical standards charting any individual's moral compass is purely a matter of personal choice. Under the Supreme Court's consistently strong interpretations of the Free Exercise and Free Speech Clauses of the First Amendment, Americans have absolute constitutional rights to draw upon their personal moral values when expressing their political views in a law-abiding fashion and voting for

³⁶ These flaws can be boiled down to two insurmountable problems. First, at least given the currently available technology, it is impossible to quantify all the variables in the economy in a computer-style petri dish. See Hamill, *Federal Tax Policy*, *supra* note 5, at 732–33; see also SLEMROD & BAKIJA, *supra* note 1, at 171 (“[L]arge and persistent changes in tax rates have not had much effect on economic growth in the long run.”); *Id.* at 193 (“If empirical evidence showed a strong positive relationship between saving and its after-tax rate of return, the economic costs of our income tax and switching to a consumption tax could be quite large. However, the available evidence does not readily reveal any such relationship.”); *Id.* at 211 (arguing that “if the economy is functioning normally” claims that tax policy affects jobs are exaggerated); *Id.* at 223–24 (stating that most economists concede that claims that tax cuts will generate revenues and economic growth are not correct); Joe Barnes, *Politics and Ideology of Tax Reform*, in UNITED STATES TAX REFORM IN THE 21ST CENTURY 294, 307 (George R. Zodrow & Peter Mieszkowski eds., 2002) (“For whatever reasons – incommensurate theoretical assumptions, alternative models with different results, paucity of data, [and] different estimating techniques – we do not . . . have unambiguous answers . . . [to how tax reform] will affect the real growth of the American economy[.]”). Second, no simulation model can capture how individual people, no matter how objectively similar they are to each other, will respond to changes in tax policy. See Hamill, *Federal Tax Policy*, *supra* note 5, at 733–34 & nn.143–44; see also SLEMROD & BAKIJA, *supra* note 1, at 184–87 (arguing that the incentive to work impact on work-ethic characteristics is unrelated to the tax burden allocation structure, and that the best evidence suggests that increasing marginal rates will cause some, but not a very large, reduction to aggregate labor supply); McMahon, *supra* note 30, at 425 (citing numerous sources discrediting supply-side economics).

³⁷ See Hamill, *A Moral Perspective*, *supra* note 5, at 887–88 and *infra* notes 43–84 (arguing that even if supply-side economics offered reliable information supporting flat tax structures, the Judeo-Christian and community-oriented secular moral theories, as well as objectivist ethics, would reject that information); see also SLEMROD & BAKIJA, *supra* note 1, at 88, 228 (explaining that if a community “value[s] reducing inequality, [greater] economic cost[s] from progressivity should be accepted as a trade-off[.]” and—depending on one’s views about equity—it may be reasonable to reject economic gains if the cost of those gains is penalizing the poor and the middle class).

candidates running for public office.³⁸ Federal tax policy decisions are made by individuals elected to the United States House of Representatives, the United States Senate, and those elected as the President of the United States.³⁹ State and local tax policy decisions are similarly made by those elected to serve as state legislators, governors, certain local offices, and in some instances directly by the voters.⁴⁰ Defining the level of tax revenues to be raised and allocating

³⁸ U.S. CONST. amend. I (“Congress shall make no law . . . prohibiting the free exercise [of religion]; or abridging the freedom of speech . . .”). Government laws limiting the free exercise of religion must be neutral and address a compelling state interest. *See, e.g.*, *Reynolds v. United States*, 98 U.S. 145, 166 (1878) (holding that criminal laws prohibiting polygamy are constitutional, even where polygamy is part of religious expression); *Emp. Div., Dept. of Hum. Res. v. Smith*, 494 U.S. 872, 890 (1990) (holding that criminal laws prohibiting the use of recreational drugs are constitutional, even when such drugs are used as a form of religious expression). Government laws attempting to curb speech that expresses political views receive the highest level of scrutiny. *See, e.g.*, *Consol. Edison Co. v. Pub. Serv. Comm’n*, 447 U.S. 530, 540 (1980) (“Where a government restricts the speech of a private person, the state action may be sustained only if the government can show that the regulation is a precisely drawn means of serving a compelling state interest.”); *see also* MICHAEL J. PERRY, *UNDER GOD? RELIGIOUS FAITH AND LIBERAL DEMOCRACY* 38–43 (2003) (stating that no constitutional restrictions impede the rights of religious believers to bring their religiously grounded moral beliefs into the arena of public discussion and debates about the resolution of public policy issues, while also defending the use of “religiously grounded moral” principles in public policy arguments as desirable and conducive to the open testing of those principles).

³⁹ Under the United States Constitution, the legislative branch has the authority to create the federal tax laws and requires all tax legislation to originate in the House of Representatives. U.S. CONST. amend. XVI; U.S. CONST. art. I, § 7. Most tax policy recommendations are made directly to the House Ways and Means Committee by the President. *See* U.S. DEP’T OF THE TREASURY, *WRITING AND ENACTING LEGISLATION*, <https://www.treasury.gov/resource-center/faqs/taxes/pages/writing.aspx> [<https://perma.cc/Z5QB-G3NA>]. The Treasury Department assumes the primary responsibility of drafting the proposal while accepting advice from other government agencies, such as the Internal Revenue Service, as well as highly respected tax professionals. *Id.* The House Ways and Means and Committee introduces tax bills to the entire House of Representatives. *Id.* After the House passes its version, the Senate Finance Committee drafts its own version to be approved by the entire Senate. *Id.* Differences between these bills are then resolved by a Conference Committee composed of members from both the House and the Senate. *Id.* The final version they adopt is sent to the President for approval. *Id.*

⁴⁰ *See* U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”); *see also infra* note 235 (discussing why there is little or no chance federal influence over state and local taxation would be attempted or, if attempted, would succeed). *See generally*, Bruce P. Ely & Howard P. Walthall, Sr., *State Constitutional Limitations on Taxing and Spending: A Comparison of the Alabama Constitution of 1901 to Its Counterparts*, 33 CUMB. L. REV. 463 (2003) (discussing procedures for enacting laws in Alabama and other Southern states as involving the governor, the legislature, and in many instances a direct vote of the people).

the tax burden among those at different levels of income and wealth are moral issues of justice that all ethical standards address.⁴¹ An individual's views and voting patterns concerning tax policy serve as a marker identifying their moral values, and the tax policy ultimately adopted and perpetuated by political leaders not only reveals their genuine moral values, but also reflects the true moral compass of the community who elected them.⁴²

Well over a majority of Americans and their elected political leaders claim Christianity in some form.⁴³ For such Americans, the moral principles of Judeo-Christian ethics should guide their lives, including their political choices addressing tax policy.⁴⁴ Communities

⁴¹ Justice is defined as the “[t]he fair treatment of people [and] . . . [t]he fair and proper administration of laws.” *Justice*, BLACK’S LAW DICTIONARY (11th ed. 2019). Fairness is defined as “[t]he quality of treating people equally or in a reasonable way.” *Fairness*, BLACK’S LAW DICTIONARY (11th ed. 2019). Natural Justice is defined as “[j]ustice as defined in a moral, as opposed to a legal, sense.” *Natural Justice*, BLACK’S LAW DICTIONARY (11th ed. 2019).

⁴² See Hamill, *Federal Tax Policy*, *supra* note 5, at 749–52 (discussing moral obligations of the people and their leaders).

⁴³ According to the United States Census Bureau, there are over 330,000,000 Americans. *U.S. and World Population Clock*, U.S. CENSUS BUREAU, www.census.gov/population/www/popclockus.html [https://perma.cc/5WAR-C6ZA]. According to a study conducted by the Pew Research Center, approximately 70.6% Americans practice some form of Christianity, the top seven denominations being Catholic (20.8%), Baptist (15.3%), Methodist (4.7%), Pentecostal (4.6%), Lutheran (3.6%), Presbyterian (2.2%), and Episcopalian/Anglican (1.5%), with the rest adhering to many other variations (e.g., the United Church of Christ, Latter Day Saints, and Disciples of Christ). *Religious Landscape Study*, PEW RSCH. CTR., <https://www.pewforum.org/religious-landscape-study/> [https://perma.cc/NXP2-KEAA] (last visited Oct. 16, 2021). Furthermore, 1.9% Americans practice Judaism, 4.1% practice a variety of other religions (the top three are Muslim (.9%), Buddhist (.7%) and Hindu (.7%)), and 23.4% are nonreligious or secular. *Id.* The percentage of members of the 117th U.S. Congress who practice some form of Christianity exceeds that of the general public, with 88.1% of Congress identifying as Christian (the top seven denominations are Catholic (29.8%), Baptist (12.4%), Methodist (6.6%), Episcopalian/Anglican (4.9%), Presbyterian (4.5%), Lutheran (4.1%), Restorationist (0.8%), with the rest adhering to many other variations (e.g., the United Church of Christ, Latter Day Saints, and Disciples of Christ)) 6.2% practicing Judaism, 2% practicing a variety of other religions (the top three are Muslim (.6%), Buddhist (.4%) and Hindu (.4%)), and only .2% identifying as unaffiliated. *Faith on the Hill: The Religious Composition of the 117th Congress*, PEW RSCH. CTR. (Jan. 4, 2021), <https://www.pewforum.org/2021/01/04/faith-on-the-hill-2021/> [https://perma.cc/ZS5V-SABZ].

⁴⁴ See *supra* note 38 and accompanying text; *infra* notes 70–71 and accompanying text (stating that religiously grounded moral principles constitutionally can guide moral decisions regarding tax policy); Hamill, *Federal Tax Policy*, *supra* note 5, at 705–06 & nn.75–76; Hamill, *Alabama*, *supra* note 2, at 59–61 & nn.210–215, 74 & nn.260–261 (arguing that individuals and political leaders who claim to practice Christianity have a moral obligation to follow Judeo-Christian moral principles when making tax policy decisions).

made up of people who genuinely reflect Judeo-Christian standards of justice must ensure that enough tax revenues are raised so that each individual enjoys a reasonable opportunity to reach their potential.⁴⁵ Although still an important element contributing to this goal, due to the presence of greed permeating the human condition, beneficence and charity cannot serve as a substitute for adequate revenues raised by compulsory taxation.⁴⁶

The core of the Judeo-Christian-based reasonable opportunity ethical principle starts with the creation account found in the Book of Genesis.⁴⁷ “[B]ecause each person is created in God’s image, with a unique potential to carry out God’s work on earth, all persons must have a meaningful chance to develop this divinely inspired potential”⁴⁸ Biblical texts in the Old Testament established safeguards that guaranteed everyone in that ancient community a reasonable chance “to achieve economic self-sufficiency . . . [and] reach their potential.”⁴⁹ This infrastructure also required significant personal responsibility and individual effort to take advantage of these opportunities.⁵⁰

Proper interpretation and application of biblical texts, a process that scholars call “hermeneutics,” discovers the broad ethical principles the biblical texts established for the first audience and then applies those principles to genuinely comparable specific life situations of

⁴⁵ See *infra* notes 46–53 and accompanying text (arguing that biblical exegesis and hermeneutics establish moral principles requiring reasonable opportunity).

⁴⁶ See Hamill, *Federal Tax Policy*, *supra* note 5, at 680–82 & nn.21–25 (stating that biblical exegesis and hermeneutics establishes that beneficence and charity cannot be a substitute for adequate tax revenues because such assumption denies the presence of greed as part of the human condition); *id.* at 727–28 & nn.128–130 (citing empirical and other sources indicating that cuts in federal funding affecting low-income Americans will not be mitigated by the nonprofit sector).

⁴⁷ See Hamill, *Federal Tax Policy*, *supra* note 5, at 683 n.27, 685–86, 686 n.35 (stating that biblical exegesis and hermeneutics establish that the creation account—the initial source of all biblically based ethical concerns—deems no person or class or humans serving God lesser than others, and recognizes this has broad implications regarding how society should be ordered encompassing rights, including the opportunity to become self-sufficient and to seek self-improvement established through enforceable legislation).

⁴⁸ Hamill, *Federal Tax Policy*, *supra* note 5, 686.

⁴⁹ *Id.* at 686–87, 687 nn.37–38 (explaining that biblical exegesis of *Exodus*, *Leviticus*, *Deuteronomy*, *Amos*, *Micah*, and *Isaiah* required former debtors and servants released after seven years to have a real chance to attain self-sufficiency, while denouncing violations of land tenure rights, which were designed to provide all families the basic right to land while preventing accumulation of vast estates).

⁵⁰ See *id.* at 688 (displaying that seven-year releases and land tenure rights did not guarantee the recipient would achieve economic self-sufficiency and growth); see also GENE A. GETZ, A BIBLICAL THEOLOGY OF MATERIAL POSSESSIONS 195 (1990) (discussing Paul’s message to the Thessalonians regarding the responsibility of all Christians to work and make a living with the opportunities and talents they are given).

contemporary ethical issues.⁵¹ Although the Old Testament's specific details mandating reasonable opportunity for the ancient first audience cannot be contemporarily applied, nevertheless those broad ethical principles call for tax revenue to fund reasonable opportunity standards that are relevant in the twenty-first century, which take the form of education as well as safety nets for the most vulnerable people, including food and nutrition supplements, housing subsidies, child welfare services, decent healthcare, and job training.⁵² However, for several reasons, at least a conservative interpretation of the Judeo-Christian reasonable opportunity standard has limits that, unlike classic liberal arguments, "do[] not even call for . . . tax revenues that . . . [create] equal opportunity in a numeric sense[.]"⁵³

Theologically, evaluating the burden for paying taxes among taxpayers at different levels of income and wealth also "must start with

⁵¹ See DUANE A. GARRETT & RICHARD R. MELICK, JR., *AUTHORITY AND INTERPRETATION: A BAPTIST PERSPECTIVE* 45–46 (1987); GORDON D. FEE & DOUGLAS STUART, *HOW TO READ THE BIBLE FOR ALL ITS WORTH* 25 (2d ed. 1993). Many Protestants, especially those in the evangelical tradition, believe that the Bible provides the only ethical authority relevant to contemporary issues. See GARRETT & MELICK, JR., *supra*, at 36–37. The process of hermeneutics starts with biblical exegesis, which determines what the text meant to the first audience. See FEE & STUART, *supra*, at 19. Sound biblical exegesis not only involves a study of the particular book's literary genre, but also must examine the historical and cultural context and consider nuances arising from translating an ancient text. *Id.* at 22. The process of hermeneutics discovers the broad ethical principles that the biblical text established for the specific life situation of the first audience and applies those principles to genuinely comparable situations of the contemporary ethical issue. *Id.* at 25; see also CHRISTOPHER J. H. WRIGHT, *WALKING IN THE WAYS OF THE LORD: THE ETHICAL AUTHORITY OF THE OLD TESTAMENT* 114–15, 144–45 (1995) (outlining process of hermeneutics for applying Old Testament Law to contemporary situations). In the Catholic Church, the Pope has the authority to interpret Scripture, and bishops also exercise authority in leading their assigned portion of believers "assisted by priests and deacons." CATECHISM OF THE CATHOLIC CHURCH 254–55 (1994). Likewise, the Jewish faith believes that moral principles are extrapolated from studying the Torah and the rabbinic literature. ELLIOT N. DORFF, *TO DO THE RIGHT AND THE GOOD: A JEWISH APPROACH TO MODERN SOCIAL ETHICS* 5–10 (2002).

⁵² See Hamill, *Federal Tax Policy*, *supra* note 5, at 690–91 & nn.46–47 (discussing biblical hermeneutics of the Old Testament establishing the moral requirement of reasonable opportunity, which includes access to education, legal assistance, and job opportunities as a matter of rights and responsibilities of a caring society that is strengthened by the New Testament).

⁵³ *Id.* at 692; see also STANLEY HAUERWAS, *A BETTER HOPE: RESOURCES FOR A CHURCH CONFRONTING CAPITALISM, DEMOCRACY, AND POSTMODERNITY* 23–24 (2000) (noting that society neither "can [n]or should be egalitarian"). This is because the Old Testament's standards of justice "do not contemplate any degree of utopian equality[.]" and "New Testament teachings are eschatological, meaning that the full extent of God's . . . justice will not materialize until Jesus comes again and completes his work." Hamill, *Federal Tax Policy*, *supra* note 5, at 691–92. Human efforts cannot accomplish this due to "humanity's fallen condition." *Id.* at 692.

the Book of Genesis, which reveals God as the sole creator and the ultimate owner of all earth's wealth and resources[.]”⁵⁴ Although individual rights and autonomy are “generally recognized and respected,” individuals own private property “as tenants and stewards” and are charged with using that property to serve “God's purposes.”⁵⁵ Under the moral principles of Judeo-Christian ethics, taxation cannot be viewed as “inconsistent with rights to private property and individual autonomy” because those rights “are not absolute and do not totally outweigh all other moral considerations.”⁵⁶

A proper interpretation and application of the biblical texts forbidding oppression deem taxation that burdens those at or below the poverty line as conclusively immoral.⁵⁷ Moreover, tax burden allocation models designed to be deliberately regressive or that have even unintentional regressive effects on those in the lower middle-class ranges are also a form of immoral biblical oppression.⁵⁸ However, if sufficient exemptions shield poverty and “prevent regressive effects in the lower middle class ranges[.]” proportional models do not constitute biblical oppression.⁵⁹

Although more commonly discussed in the context of charitable giving, the Judeo-Christian teachings on wealth broadly speak to whether well-designed proportional tax burdens and the numerous versions of progressive tax burdens are fair.⁶⁰ These biblical texts

⁵⁴ See Hamill, *Federal Tax Policy*, *supra* note 5, at 695; *see also id.* at 695–96, 696 n.57 (discussing the exegesis of creation account in *Genesis* addressing the earth's resources).

⁵⁵ *Id.* at 695–96.

⁵⁶ *Id.* at 696; *see also id.* at 696 & n.58 (explaining that the hermeneutics of texts from both the Old Testament and the New Testament establish the legitimacy of human governments and reasonable taxation to sustain those governments).

⁵⁷ *Id.* at 696 & n.59.

⁵⁸ See Hamill, *Federal Tax Policy*, *supra* note 5, at 684–85 & nn.31–32, 696 & n. 59 (explaining how the exegesis and hermeneutics of biblical texts forbidding oppression condemn regressive tax structures and taxes burdening the poor because those are contemporary examples of laws that cause the “already precarious [circumstances]” of economically vulnerable individuals to worsen, “foster economic exploitation and injustice,” and unreasonably block such individuals' progress).

⁵⁹ *Id.* at 697 & n.60 (explaining that despite increased tax burdens on middle and upper middle class taxpayers when compared to the wealthy, hermeneutics of biblical texts forbidding oppression do not condemn proportional models that shield the poor and “prevent regressive effects in the lower middle class ranges” because such models do not oppress those who cannot afford to pay the tax); *see also* Hamill, *A Moral Perspective*, *supra* note 5, at 873 & n. 45 (describing how “standard personal and dependent exemptions” in the Arney/Shelby flat tax proposal prevented “taxing individuals and families at the lowest income levels”).

⁶⁰ See Hamill, *Federal Tax Policy*, *supra* note 5, at 699 n.65, 700 n.66 (stating the exegesis and hermeneutics of numerous biblical texts establish that the greater financial sacrifices required of those enjoying greater levels of income and wealth, in addition to applying to

clearly indicate that “some extremes of wealth accumulation are unjust” under any circumstances, and an interpretation and application of such texts also support tax burden allocation structures that curb such extremes.⁶¹ Even for those whose wealth accumulation has not reached an unacceptably extreme level, broad moral principles still demand that those “enjoying higher levels of income and wealth” bear a significantly greater tax burden than those of more modest means.⁶²

Proportional models that shield those in poverty and prevent regressive effects to the lower middle class still enormously benefit the wealthiest taxpayers at significant expense to those in the upper-middle and middle-class ranges.⁶³ For this reason, the Judeo-Christian teachings on wealth morally condemn such models as well as mildly progressive models resembling them.⁶⁴ On balance, the moral principles of Judeo-Christian ethics identify moderately progressive models as achieving the greatest degree of fairness while condemning steep progressivity reaching confiscatory levels.⁶⁵

charitable giving also speaks to the public policy of legal structures, which includes tax policy).

⁶¹ *Id.* at 698–99 & nn.63–64 (stating that exegesis and hermeneutics of numerous biblical texts, especially in the New Testament, issue stern warnings that extreme accumulations of wealth are inconsistent with genuine faith, intolerably unjust and require checks and balances to economic systems leading to such extremes, which includes tax policy); NAT’L CONF. OF CATH. BISHOPS, ECONOMIC JUSTICE FOR ALL: PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY para. 189, at 43 (1986), https://www.usccb.org/upload/economic_justice_for_all.pdf [<https://perma.cc/43SJ-FYDR>] (explaining that in addition to private charity, the faithful must work must be done “collectively through government to establish just and effective public policies”); *see also id.* para. 202, at 45 (arguing that tax burdens should be progressive, while noting that progressive tax burdens are “an important means of reducing the severe inequalities of income and wealth”).

⁶² *See Hamill, Federal Tax Policy, supra* note 5, at 704 & nn.72–74 (stating that exegesis and hermeneutics of numerous biblical texts, especially in the New Testament, regarding imposing greater financial sacrifices on those enjoying higher levels of income and wealth in addition to commanding charitable giving also speak to working for more just policies, including tax policy).

⁶³ *See Hamill, Federal Tax Policy, supra* note 5, at 723–24 & nn.120–21; Hamill, *A Moral Perspective, supra* note 5, at 874–75 & nn.51–55. *See generally* SLEMROD & BAKIJA, *supra* note 1, at 291–93, 378–81 (discussing how various proportional proposals shift the tax burden from the wealthiest to the middle class).

⁶⁴ *See Hamill, Federal Tax Policy, supra* note 5, at 698 n.62, 701 n.67, 708 (describing the hermeneutics of the New Testament’s teachings on wealth as requiring significantly greater financial sacrifice from those enjoying higher levels of income and wealth morally condemn proportional models and mildly progressive models resembling them).

⁶⁵ *See Hamill, Federal Tax Policy, supra* note 5, at 708–09 & nn.80–81 (stating that the exegesis and hermeneutics of numerous biblical texts condemn steeply progressive models while identifying moderate progressivity as optional); *see also* SLEMROD & BAKIJA, *supra* note 1, at 115 (arguing that marginal rates reaching 90% is too high).

Judeo-Christian moral principles do not pinpoint exact details measuring the level of tax revenues needed to ensure reasonable opportunity nor define the precise morally superior formula for allocating the tax burden. Striking a balance between the common good and reasonable rights to enjoy private property, these principles provide general guidelines to steer the moral conversation during the debate. These general guidelines require that political leaders and others with power to influence tax policy “first ask whether the wealthiest and upper [middle-class] taxpayers are [paying] their fair share of taxes.”⁶⁶ If tax cuts benefiting wealthy and upper middle-class taxpayers are being contemplated, this obligation is even stronger because “Judeo-Christian teachings are [much] more suspicious of wealth than protective of private property[,]” and “those enjoying higher levels of income and wealth . . . tend to fight for the smallest tax burden possible[.]”⁶⁷ Although reasonable people adhering to Judeo-Christian values will disagree on the precise details, “if the moral conversation during the debate honestly and genuinely reflects . . . [these] values . . . [the] tax policy ultimately adopted has the greatest chance” of achieving a “morally acceptable” result.⁶⁸

Despite free exercise and free speech rights guaranteed by the First Amendment, the argument that Christian political leaders have a moral obligation to follow Judeo-Christian values when considering tax policy requires additional analysis. This is because the Establishment Clause forbids such leaders from passing laws or furthering policy or activity that forces, prefers, or endorses a particular religion.⁶⁹

⁶⁶ Hamill, *Federal Tax Policy*, *supra* note 5, at 709.

⁶⁷ *Id.* at 709–10.

⁶⁸ Hamill, *Federal Tax Policy*, *supra* note 5, at 710; *see also id.* at 709–10 & nn.82–85 (biblical hermeneutics discussing the moral conversation that must frame the general guidelines when designing a moderately progressive model).

⁶⁹ U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion . . .”); *see also* *Everson v. Bd. of Educ.*, 330 U.S. 1, 15–16 (1947) (holding that the Establishment Clause prevents the government from forcing a person to go to or remain away from religious services, forcing a person to profess a belief or disbelief in any religion, preferring one religion over another, or preferring religion to non-religion); *Engel v. Vitale*, 370 U.S. 421, 430–33 (1962) (holding prayer in school led by a school official is an unconstitutional endorsement of the Judeo-Christian religion); *PERRY*, *supra* note 38, at 6–7, 24 (noting that the Establishment Clause forbids the government from favoring a particular church as “*more authentically American*”). Examples of policymakers violating the Establishment Clause often involve religious symbols being placed in government buildings. *See, e.g., McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844 (2005) (holding that placement of framed copies of the Ten Commandments inside a Kentucky courtroom was unconstitutional); *Cnty. of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 599–600 (1989), *abrogated by* *Town of Greece v. Galloway*, 572 U.S. 565 (2014) (holding that placement of a creche on a courthouse staircase was unconstitutional); *see also* Hamill,

However, if secular moral theories also support their position, policymakers making decisions primarily motivated by their religious moral values do not violate the Establishment Clause.⁷⁰ Because the broad principles of virtue ethics, secular humanism, and the philosophy of John Rawls also support this result, no constitutional barriers forbid Christian policymakers from insisting that tax policy raise adequate revenues under a moderately progressive model.⁷¹

Virtue ethics, which started with ancient Greek philosophers articulating the virtues of temperance, courage, wisdom, and justice,⁷² has become an important resource to evaluate modern ethical concerns. When determining whether individuals are virtuous, the focus is not whether specific acts represent “doing good,” but whether such person overall is “being good,” which will naturally lead towards a predisposition to act in ways that are right as opposed to wrong.⁷³ In

Federal Tax Policy, *supra* note 5, at 761 n.210 (discussing the Eleventh Circuit’s decision that Chief Justice Roy Moore’s display of the Ten Commandments in the Alabama Judicial building was an unconstitutional endorsement of religion and Moore’s removal from office for refusing to follow the federal court order).

⁷⁰ See PERRY, *supra* note 38, at 24–42 (arguing that policy makers who make decisions guided by their religious beliefs are not unconstitutionally favoring their particular religion because virtually every public policy issue can be morally resolved on both religious and secular grounds, making it difficult to impossible to precisely locate the religious grounds as the major driving force).

⁷¹ See generally *infra* notes 72–84 and accompanying text (stating that virtue ethics, secular humanism, and the philosophy of John Rawls at the very least support tax policy raising adequate revenues under a moderately progressive model). Moreover, personal religious grounds are just as legitimate and appropriate as secular moral grounds because both affirm each person’s value as well as certain basic freedoms, and neither pose any greater problems regarding respect for different positions and cause no greater social costs from more divisiveness. See PERRY, *supra* note 38, at 45–51. Another secular theory, utilitarian ethics, offers no moral guidance in the debate between proportional and progressive tax burden models. Utilitarianism, which evaluates moral decisions based on whether such decisions produce the greatest good for the greatest number, evolved from the teachings of Jeremy Bentham and John Stuart Mill. See JOHN STUART MILL, UTILITARIANISM, LIBERTY AND REPRESENTATIVE GOVERNMENT 5–6 (1910). Simply focusing on each taxpayer’s tax burden (and determining which model imposes a smaller burden on more people) fails to indicate if the tax burden’s collective consequence promotes the greatest good for the greatest number. To make a utilitarian-based moral judgement, reliable information must be available that determines the best economic results for the greatest number of people. Because neither the economic theory of marginal utility nor supply-side economics offer any reliable information, utilitarian ethics provides no moral guidance in the debate over how the tax burden should be allocated among taxpayers at different levels of income and wealth. See Hamill, *A Moral Perspective*, *supra* note 5, at 880–82 & nn.77–85.

⁷² See generally STEVE WILKENS, BEYOND BUMPER STICKER ETHICS: AN INTRODUCTION TO THEORIES OF RIGHT AND WRONG 129–136 (2d ed. 2011) (summarizing the fundamental principles of virtue ethics).

⁷³ See *id.* at 129.

addition to applying at the individual level, virtue ethics can also be invoked to guide public policies adopted by the state.⁷⁴ Although virtue ethics provides no precise details, a state populated by virtuous individuals will embrace tax policy that raises adequate revenues supporting reasonable opportunity under a moderately progressive model.⁷⁵ In addition to furthering the virtue of justice, such tax policy also fosters temperance, courage, and wisdom because it discourages the extremes of unacceptable wealth concentration and absolute egalitarianism in a numeric sense.⁷⁶

⁷⁴ Since the origin of virtue ethics, justice has been recognized as a social virtue and is therefore highly relevant to morally evaluating social policy. *See* JUSTIN OAKLEY & DEAN COCKING, *VIRTUE ETHICS AND PROFESSIONAL ROLES* 20–23 (2001) (identifying the virtue of justice as agent neutral, which are the virtues generally considered to be the ones that apply to society as a whole); ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 150, 243 (3d ed. 2007) (explaining how Aristotle recognized that virtues find their place in the life of the city and virtue in public life depends on the virtue of justice). *See generally* PLATO, *THE REPUBLIC* (G. R. F. Ferrari ed., Tom Griffith trans., Cambridge U. Press 2000) (the state being just was an integral part of the social contract).

⁷⁵ *See* Mark Lebar, *Virtue and Politics*, in *THE CAMBRIDGE COMPANION TO VIRTUE ETHICS* 265–285 (Daniel C. Russell ed., 2014) (discussing several virtue ethicists’ analysis of political issues); *id.* at 268 (Aristotle maintained that a political community’s purpose is “to allow its citizens to live a good life”); *id.* at 269 (Michael Slote states a “society is just . . . to the extent that its people are self-sufficient or self-reliant”); *id.* at 271–72 (Martha Nussbaum claims that the purpose of the polity is to enable its citizens to make choices conducive to a good life, and this is concerned with distributing essential resources and opportunities in a manner so that all persons are able to develop the capacities they need to achieve a good human life); MACINTYRE, *supra* note 74, at 158–59 (describing Aristotle’s concept of a “city founded on justice and friendship” as “the kind of city [that] enables its citizens to enjoy the life of metaphysical contemplation” and fosters “political relationships [that] entail[] freedom from any position that is mere subjection”). Adequate tax revenues supporting reasonable opportunity are necessary to ensure that every person has a chance to meet these broad standards. *See supra* notes 45–46 and accompanying text (asserting that charitable giving, while important, cannot be a substitute for adequate tax revenues). Moderately progressive, as opposed to proportional or steeply progressive tax burdens, avoid extremes, *see* sources cited *infra* note 76, and are consistent with the spirit that virtuous behavior with money requires generosity and greater sacrifice. *See* ARISTOTLE, *NICOMACHEAN ETHICS*, BOOK 4 § 1, at 57 (W. D. Ross trans., 1999); *see also* MACINTYRE, *supra* note 74, at 244–251 (discussing hypothetical tax policy debates).

⁷⁶ *See supra* notes 20–22, 52–53 and accompanying text (explaining how tax policy that raises adequate revenues supporting reasonable opportunity under a moderately progressive model avoids the extremes of proportional models supporting only the minimum state and steeply progressive models creating a welfare state); *see also* WILKENS, *supra* note 72, at 131–32 (discussing the virtue of wisdom as taming the excesses of appetite (leading to temperance) and ambition (leading to courage) and the virtue of justice as “a harmonizing trait that applies to all three facets of life”); *id.* at 133 (describing Aristotle’s method to search for ideal virtue as seeking “the golden mean” because “[e]very virtue can be distinguished from the ‘not enough’ and ‘too much’ at the extremes”).

Secular humanism embraces human reason “without reference to God” as the moral compass guiding ethical decisions.⁷⁷ Among other fundamental concepts, secular humanism emphasizes both human freedom and autonomy as well as responsibilities to secure justice and fairness for everyone in the community.⁷⁸ This includes appropriate taxation as part of democracy-centered political action to support social benefits such as education.⁷⁹ Although humanists will disagree on the precise details, the core values of secular humanism embrace tax policy raising adequate revenues under a moderately progressive model because this supports the common good without unduly infringing on individual rights and autonomy.⁸⁰

⁷⁷ See James M. Ault Jr., *Secular Humanism*, in 2 THE ENCYCLOPEDIA OF POLITICS AND RELIGION 677 (Robert Wuthnow ed., 1998) (“By secular humanism, conservatives mean the belief they feel that some people hold that ultimate questions of human existence and morality are to be decided by human beings themselves without reference to God.”); PAUL KURTZ, WHAT IS SECULAR HUMANISM? 24 (2006) (arguing that although some secular humanists self-identify as atheists, secular humanists are basically “*nontheists*[,]” meaning that they believe there is insufficient evidence to support a belief in God. The difference is that atheists identify themselves “primarily by what they are against,” but nontheists see their nonbelief in God to be “part of a broader scientific-philosophical-ethical outlook.”); ROY SPECKHARDT, CREATING CHANGE THROUGH HUMANISM 3–4 (2015) (“Humanists affirm our ability and responsibility to lead ethical lives of personal fulfillment that aspire for the greater good of humanity. We ground that pursuit, not in theism or other supernatural beliefs, but in the best of modern knowledge determined from trial and error and the scientific process.”).

⁷⁸ See KURTZ, *supra* note 77, at 29 (stating that autonomy as a salient humanist virtue stands equal with “cultivating a general sense of goodwill towards others” which leads to “a concern for equality and social justice”); SPECKHARDT, *supra* note 77, at 90–93 (summarizing six principles identified in a document known as *Humanism and its Aspirations*); *id.* at 93 (“The sixth [principle], ‘Working to benefit society maximizes individual happiness,’ reminds us . . . the importance of building community on a global scale, doing what we can to raise the standards of living for all people. Part of this recognition that rampant inequality is cancerous to our world. Extremes of wealth and poverty, of cosmopolitanism and ignorance, are the seeds of conflict and instability. When the bulk of society has no hope of achieving the basic standards of life and happiness, it cultivates religious extremism and opens the door to violence as coping mechanisms for the disenfranchised.”).

⁷⁹ See KURTZ, *supra* note 77, at 31 (“[Humanist values embrace] some measure of economic democracy, in the sense at least that the working population can share in the goods produced by the economy, and that it can through government exercise some democratic control by such means as regulation and taxation.”).

⁸⁰ See *supra* note 46 and accompanying text (arguing that charitable giving, while important, cannot be a substitute for adequate tax revenues supporting reasonable opportunity raised under a moderate progressive model). The values of secular humanism can potentially be invoked to support tax policy that raises greater levels of revenues and allocates the tax burden under a steeply progressive model. See SPECKHARDT, *supra* note 77, at 94 (stating “very few humanists call themselves ‘conservative’” as shown by a survey of the American Humanist Association, which revealed that “less than three percent [of its members] claimed to be members of the Republican party”); KURTZ, *supra* note 77, at 35–

John Rawls has been widely recognized as one of the most important and influential philosophers of the twentieth century for his concept of social justice known as the “original position.”⁸¹ The original position imagines what a fair society would look like if people made ethical decisions behind a “veil of ignorance,” meaning they did not know in advance what advantages they would enjoy or which obstacles they would face.⁸² Rawls’s theory of justice, which assumes those who are currently less advantaged should be greatly elevated, requires the rearrangement of social and economic inequalities to ultimately promote equal opportunity.⁸³ For this reason, the philosophy of Rawls more than backs up the Judeo-Christian moral requirement for tax policy to raise adequate revenues to support reasonable opportunity under a moderately progressive model.⁸⁴

Objectivist ethics, sometimes called egoism, stands diametrically opposite from the moral principles of Judeo-Christian ethics and is in fact, as a moral compass, “dead on arrival” for any Christian.⁸⁵ It also

36 (the *Humanist Manifesto 2000*, which was endorsed by the International Academy of Humanism, “recommends an international system of taxation to assist the underdeveloped regions of the world” by supporting “universal education and healthcare for every person on the planet”).

⁸¹ See Douglas Martin, *John Rawls, Theorist on Justice, Is Dead at 82*, N.Y. TIMES (Nov. 26, 2002), <https://www.nytimes.com/2002/11/26/us/john-rawls-theorist-on-justice-is-dead-at-82.html> [https://perma.cc/9MFJ-VAQU]; see also CATHERINE H. ZUCKERT, POLITICAL PHILOSOPHY IN THE TWENTIETH CENTURY: AUTHORS AND ARGUMENTS 202–03 (2011). For more information on Rawls’s background and work, see *Philosopher John Rawls Dies*, WASH. POST, <https://www.washingtonpost.com/archive/local/2002/11/26/philosopher-john-rawls-dies/d82ad69f-f189-4e64-a209-e90d232c658f/> [https://perma.cc/V93J-K86V].

⁸² See sources cited *supra* note 81.

⁸³ See JOHN RAWLS, A THEORY OF JUSTICE 60–61 (1971).

⁸⁴ This is probably an understatement. Rawls’ requirement that “[a]ll social values—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage[.]” *Id.* at 62, could be invoked to potentially support tax policy that reaches steeply progressive ranges, even approaching confiscatory levels, while providing generous revenues that reach levels of a welfare state.

⁸⁵ See WILKENS, *supra* note 72, at 25 (egoism is among the systems contradicting a Christian worldview, making it “dead on arrival” for Christians); *id.* at 57–58 (identifying egoism as “a form of idolatry . . . [that] makes each individual his or her own god and leaves no place for God as our ultimate concern,” and criticizing egoism as depersonalizing “the value of each person[.]” which compromises the possibility of justice); see also AYN RAND, PHILOSOPHY: WHO NEEDS IT 66 (1982) [hereinafter RAND, PHILOSOPHY] (identifying “reason and freedom” reciprocally as the only causes of progress in the nineteenth century, while arguing “faith and force” thwart progress); AYN RAND, THE VOICE OF REASON: ESSAYS IN OBJECTIVIST THOUGHT 72 (Leonard Peikoff ed., 1989) [hereinafter RAND, REASON] (noting while the worth of the individual is a Christian idea, the idea was “historically impotent” by itself and that “[o]nly when the religious approach lost its

sharply conflicts with the secular values of virtue ethics, secular humanism, and the philosophy of John Rawls.⁸⁶ Objectivist ethics philosophy views individuals as independent agents and deems each person acting in their own long-term rational self-interest as the only avenue to reach moral correctness.⁸⁷ Objectivist ethics identifies individual effort as the source of all wealth, and it values above all other considerations the autonomous rights of each person to personally benefit from their efforts in the free market.⁸⁸ Indeed, persons adopting objectivist ethics as their moral compass owe no moral obligations to endure greater sacrifices for anyone's benefit because only each individual's own self-interest has any moral relevance.⁸⁹

power—only when the idea of individual value was able to break free from its Christian context and become integrated into a rational, secular philosophy—only then did this kind of idea bear practical fruit”).

⁸⁶ See *supra* notes 72–84 (stating the moral principles of virtue ethics, secular humanism, and the philosophy of John Rawls eschew extreme individualism at the core of objectivist ethics and require individuals to act compassionately towards others and to seek justice for everyone in the community; emphasizing that when evaluating social and economic structures under these moral principles, justice remains a fundamental concern over unrestrained capitalism and, at the very least, tax policy must raise adequate revenues under a moderately progressive model).

⁸⁷ See WILKENS, *supra* note 72, at 43–51 (summarizing the fundamental principles of egoism); see also AYN RAND, *THE VIRTUE OF SELFISHNESS: A NEW CONCEPT OF EGOISM* x–xi (1964) [hereinafter RAND, *SELFISHNESS*] (identifying “concern with [one’s] own interests [a]s the essence of a moral existence,” and clarifying that “self-interest cannot be determined by blind desires or random whims” but must be guided by rational principles).

⁸⁸ See AYN RAND, *CAPITALISM: THE UNKNOWN IDEAL* 18–20 (1966) [hereinafter RAND, *CAPITALISM*] (stating only a pure, capitalist free market where all property is privately owned can protect man’s right as a sovereign individual to exist rationally for his own sake); *id.* at 30 (arguing that all wealth belongs to the person who created it and that it is “morally obscene” to view wealth as owned to any degree by any common collective good); RAND, *SELFISHNESS*, *supra* note 87, at 37, 108–10 (indicating that individual rights under objectivist ethics require absolute private property rights and capitalism, meaning “a full, pure, uncontrolled, unregulated laissez-faire capitalism—with a separation of state and economics”); *id.* at 29 (describing the objectivist ethics virtue of productive work as a “road of man’s unlimited achievement” and the virtue of pride as “the recognition of the fact . . . ‘that as man is a being of self-made wealth, so he is a being of self-made soul’”); see also GEORGE REISMAN, *CAPITALISM: A TREATISE ON ECONOMICS* 27 (1996) (“Being secure in their possession of property from violent appropriation by others, and rational enough to act on the basis of long-run considerations, individuals save and accumulate capital, which increases their ability to produce and consume in the future . . .”); *id.* at 29 (“[The economic success] achieved in the United States was *the cumulative, aggregate result of tens of millions of people, generation after generation, each pursuing his individual self-interest . . .*”).

⁸⁹ See RAND, *PHILOSOPHY*, *supra* note 85, at 95–98 (defining duty as an obligation created by a higher authority that disregards individual personal self-interest, while identifying mysticism as the creator of duty, which destroys reason and values and “is a metaphysical and psychological killer,” before finally concluding that “[i]n reality and in the Objectivist ethics, there is no such thing as ‘duty’”); RAND, *SELFISHNESS*, *supra* note 87, at 27 (“The

When evaluating legal and economic structures, those adhering to objectivist ethics favor limiting government functions to only what is necessary to protect each individual's life, liberty, and private property.⁹⁰ Taxation violates individual personal autonomy and rights to enjoy the profits from their success, and, ideally, it would be completely voluntary.⁹¹ Opportunities, such as education, would only be available in the private free-market economy, and safety nets for the poor and elderly would only be covered by charitable contributions.⁹²

Objectivist ethics holds man's life as the *standard* of value—and *his own life* as the ethical *purpose* of every individual man.”); *id.* at 30 (“The basic *social* principle of the Objectivist ethics is that just as life is an end in itself, so every living human being is an end in himself, not the means to the ends or the welfare of others—and therefore, that man must live for his own sake . . .”).

⁹⁰ See WILKENS, *supra* note 72, at 44, 51 (stating that although the core concepts of egoism have been traced back to the third century B.C., this moral framework was not used to evaluate social and economic policies until Ayn Rand arrived in the United States in the 1920s to escape communist Russia and published her nonfiction philosophy books during the second half of the twentieth century); see sources cited *supra* notes 85–89 and *infra* notes 91–95 (Rand consistently refers to her philosophy as objectivist ethics); see also RAND, SELFISHNESS, *supra* note 87, at 128, 131 (asserting that the only moral purpose of government under objectivist ethics is to protect each person's life and private property rights, by limiting government functions to the police, courts, and national defense); *id.* at 79–80 (“There can be no compromise between freedom and government controls; to accept ‘just a few controls’ is to surrender the principle of inalienable individual rights and to substitute for it the principle of the government's unlimited, arbitrary power, thus delivering oneself into gradual enslavement.”); REISMAN, *supra* note 88, at 21 (“In a fully capitalist society, government does not go beyond the [] functions” of “police, courts, and national defense.”).

⁹¹ See RAND, SELFISHNESS, *supra* note 87, at 135–40 (stating that compulsory taxation is the imposition of force offending individual freedom and would be strictly voluntary under an ideal free society, through implementation of either a form of government lottery or a fee for services of the minimum state that rational people would be willing to pay); REISMAN, *supra* note 88, at 42–43 (explaining that unlike other philosophies and theologies that view wealth as of secondary importance, objectivist ethics principles state that “[m]an needs wealth without limit if he is to fulfill his limitless potential as a rational being in physical reality[.]” deeming taxation as an illegitimate imposition of force that offends the autonomy of the rational individual).

⁹² See RAND, CAPITALISM, *supra* note 88, at 89–91 (discussing the ideal free society as providing no public education and, rather, leaving education strictly a function of the private market); RAND, REASON, *supra* note 85, at 249, 293 (explaining that objectivists opposed Medicare and Medicaid programs because “[n]o man . . . has a right to medical care; if he cannot pay for what he needs, then he must depend on voluntary charity”); RAND, SELFISHNESS, *supra* note 87, at 93 (“Only individual men have the right to decide when or whether they wish to help others; society—as an organized political system—has no rights in the matter at all.”); *id.* at 113 (criticizing rights that “Franklin Roosevelt wrote into our national conscience,” such as opportunities to achieve a good education, job opportunities, adequate medical care, and protection from destitution in old age); see also REISMAN, *supra* note 88, at 29 (stating that individuals will help others in order “to achieve their [own] self-interests”).

Recognizing that completely voluntary taxation is not practical, objectivist ethics proponents politically advocate minimizing tax revenues to fund as little as possible any programs beyond the minimum state and deems all progressive models as immoral.⁹³ Objectivist ethics scholars have widely endorsed flat tax structures and have consistently favored tax proposals that reduce the tax burden of the wealthiest taxpayers.⁹⁴

PART III. MORAL REFLECTIONS ON TWENTY-FIRST CENTURY STATE AND LOCAL TAX POLICY TRENDS

When I started my Master of Theological Studies work at the Beeson Divinity School, my scholarship had exclusively focused on business organizations, especially both business and federal income tax issues surrounding limited liability companies. I had barely even thought about state and local tax law. At Beeson, for the first time in seven years, I noticed that something was terribly out of kilter about Alabama's taxes. A small newspaper article informed me that Alabama's income tax reached deep into poverty. Some quick math revealed that a family of four too poor to owe any federal income tax paid almost \$500 in Alabama state income taxes, which prompted me to look further and discover that punishing high sales taxes further contributed to overtaxing the poor while extremely low property taxes were primarily responsible for Alabama's per capita lowest-in-the-nation revenues. My Beeson faculty advisors said that I could make an ironclad case that Alabama's taxes were unbiblical and encouraged me to pursue this topic for my master's thesis.⁹⁵ Two years later, I

⁹³ See RAND, REASON, *supra* note 85, at 249 (recognizing that the objectivist ethics of an education system only provided by the free market are currently not achievable, and advocating tax credits for parents incurring expenditures to send their children to private schools); RAND, SELFISHNESS, *supra* note 87, at 137 (recognizing that a system of voluntary taxation would be the last—rather than the first—step towards creating a free society and that “[i]t would not work today”).

⁹⁴ See Hamill, *A Moral Perspective*, *supra* note 5, at 884 n.89 (citing numerous articles published in prominent objectivist sources that directly support flat or consumption models, cutting tax revenues to limit government expenditures, or criticizing progressive tax structures).

⁹⁵ See Francis Wilkinson, *Divine Right*, THE AMERICAN PROSPECT (Aug. 28, 2003), <https://prospect.org/article/divine-right/> [<https://perma.cc/7Q5H-D4YR>], and HAMILL, THE LEAST OF THESE, *supra* note 2, at xi–xiv, for a discussion on the circumstances leading to Beeson Divinity School studies and Alabama tax reform thesis topic. See also Hamill, *Alabama*, *supra* note 2, at 14 n.29 (discussing calculations of estimated Alabama state income tax for family of four).

published my thesis as a law review article spanning over one hundred pages, including thirty pages of empirical tables.⁹⁶

This article first documented how Alabama's income and sales tax structures overtaxed poor and lower middle-class Alabamians in the form of extremely regressive tax burdens. Three main features of the income tax structure caused it to be regressive: grossly insufficient exemptions failed to protect poverty level incomes; deductions, such as a deduction for federal taxes paid, that overwhelmingly benefited higher-income Alabamians; and the superficially mild progressive rate structure flattened out at low-income levels.⁹⁷ Sales taxes, which accounted for almost half of Alabama's revenues, greatly aggravated Alabama's overall regressivity.⁹⁸ When adding together the rates imposed by the state, counties, municipalities, and school districts, sales tax rates approached and sometimes exceeded double digits.⁹⁹ The lack of exemptions for basic necessities, such as groceries, over-the-counter medicine, and basic clothing items, added significantly to overtaxing the most economically vulnerable Alabamians.¹⁰⁰

To build a meaningful profile representing the endless examples of Alabama's underfunded government services, I chose to focus on K-12 education.¹⁰¹ The research revealed that, in Alabama, the funding

⁹⁶ Although my article was recognized as unique for its Judeo-Christian based moral analysis of Alabama's state and local taxes, see HAMILL, *THE LEAST OF THESE*, *supra* note 2, at 113–18 (stating that reprinted editorials in the *Tuscaloosa News*, *Anniston Star*, *Montgomery Advertiser*, and *Birmingham News* recognize uniqueness of the moral subtext of the article), the need to reform Alabama's state and local tax structure had been explored for years. See REPORT OF THE ALABAMA COMMISSION ON TAX AND FISCAL POLICY REFORM (1991), reprinted in 43 ALA. L. REV. 741 (1992) (providing an extensive report on tax reform options after the 1990 commission was established); see also James D. Bryce, *Tax Reform Issues in Alabama*, 43 ALA. L. REV. 541 (1992) (discussing the Report of the Alabama Commission on Tax and Fiscal Policy Reform). See generally Laura D. Chaney, *Alabama's Constitution—A Royal Pain in the Tax: The State's Constitutionally Defective Tax System*, 32 CUMB. L. REV. 233 (2001) (arguing passionately for tax reform and discussing the Alabama 1901 Constitution's role in perpetuating the inequities); PUB. AFFS. RSCH. COUNCIL OF ALA., *HOW ALABAMA'S TAXES COMPARE 1* (2002) (concluding Alabama's tax system is inequitable for low-income taxpayers and fails to sufficiently fund important services); Ron Casey, *The Cricket's Song*, BIRMINGHAM NEWS (Sept. 2, 1990), reprinted in FOR THE LOVE OF ALABAMA 35 (Sam Hodges ed., 2011) (editorial from the Pulitzer Prize winning series, "What They Won't Tell You About Your Taxes," notes that numerous studies, starting in 1918, spanning the twentieth century, recommended tax reform).

⁹⁷ See Hamill, *Alabama*, *supra* note 2, at 11–18 & nn.13–41.

⁹⁸ See *id.* at 18–20 & nn.42–43.

⁹⁹ *Id.* at 19 & nn.46–48.

¹⁰⁰ See *id.* at 18–19 & nn.42–49.

¹⁰¹ *Id.* at 34–36 & nn.102–106. An adequately funded public school system is arguably the most critical state and local function to ensure that children, the most vulnerable and

per student in the school districts was grossly inadequate, except for some of the wealthiest areas, and that inadequacy was especially pronounced in the rural areas.¹⁰² This picture was not surprising given Alabama's per capita lowest-in-the-nation property tax revenues at that time.¹⁰³ Although it was obvious that the details buried deep beneath the property tax structure held the keys to understanding this inequity, no readily available statistics pinpointed the culprit. A former student and fifth-generation Alabamian pointed me in the right direction: "Professor, it's big timber, they're robbing the state blind, everyone knows that."

My research team designed a computer program that microscopically examined the byzantine details of Alabama's property tax structure and empirically isolated the contributions to the property tax revenues made by the different classes of property. Commercial property accounted for more than half those revenues, which meant that the few areas of the state with significant concentrations of such property could raise a modicum of property tax revenues. Shattering the myth that residential low property taxes was more to blame for underfunded government services than low property taxes on timberland, this research also proved that the property taxes on homeowners accounted for well over a fourth of property tax revenues. Despite covering up over 70% of Alabama's land mass and ranking among the top states in forestry and logging, forestry support, and wood products industries, timber acres accounted for less than 2% of total property revenues and averaged less than \$1 per acre.¹⁰⁴

This disgraceful picture of timberland's puny property taxes resulted from elaborate restrictions anchored in Alabama's 1901 Constitution during the 1970s, which shrank its property tax base to a

voiceless segment of the population, have a chance to fulfill their potential. Moreover, children from low-income families suffer the greatest negative effects if the public schools fall short. *See id.* Having raised two children in Alabama's public schools, I also had a personal interest in further exploring Alabama's K-12 funding. *See* HAMILL, *THE LEAST OF THESE*, *supra* note 2, at xii ("I failed to notice certain signs that should have alerted me to Alabama's abysmally unfair taxes and their devastating effects on the poorest Alabamians [which included] . . . the public school my children attended (one of only a handful that gets barely minimum adequate funding) constantly begging for donations to cover school expenses that should have been covered by the budget.").

¹⁰² *See* Hamill, *Alabama*, *supra* note 2, at 37-41 & nn.107-126.

¹⁰³ *Id.* at 20 & n.50; *see also id.* at 40-42, 41-42 nn.128-132 (discussing the inadequacy of Alabama's property tax structure in providing sufficient funding for public schools).

¹⁰⁴ *See id.* at 20-35 & nn.50-101; *see also* Editorial, *Timberrrr! UA Professor Saws Through Property Tax Myths*, BIRMINGHAM NEWS, Aug. 18, 2002, *reprinted in* HAMILL, *THE LEAST OF THESE*, *supra* note 2, at 117-18 (property tax study "saw[] through [the] myth" that homeowners are more to blame than timber owners for Alabama's low property tax revenues).

tiny fraction of fair market value without distinguishing between small farmers and agribusiness.¹⁰⁵ In addition to causing the state to over rely on regressive sales taxes, this has had devastating consequences on K-12 funding in rural areas, especially across the Black Belt region. When compared to the state's few urban areas, valuable commercial and residential property is scarce and retail sales are low, which means this lopsided favoritism of timberland precludes the rural areas—especially those with heavy concentrations of poor, majority-black school districts—from raising even minimal revenues.¹⁰⁶

¹⁰⁵ This legislation, commonly referred to as the Lid Bill, occurred in two steps. See ALA. CONST. OF 1901 art. XI, § 217 amended by ALA. CONST. of 1901 amend. 325 (1972) and ALA. CONST. of 1901 amend. 373 (1978); see also Susan Pace Hamill, *Constitutional Reform in Alabama: A Necessary Step Towards Achieving a Fair and Efficient Tax Structure*, 33 CUMB. L. REV 437, 442–43 (2003) (discussing substantial hurdles created by Alabama's 1901 constitution in reforming fair state and local taxation); *id.* at 442–44 & nn.16–20 (discussing details of the Lid Bill).

¹⁰⁶ See Hamill, *Alabama*, *supra* note 2, at 42–45 & nn.133–144. The Lid Bill was challenged as unconstitutional on race-based Equal Protection grounds due to its racially discriminatory origins and continual racially discriminatory effects on education funding. In *Knight v. Alabama*, despite factual findings that Alabama's property tax structure (1) was a “vestige of discrimination[;]” (2) “Black Belt and urban industrial interests successfully used the argument that it is unfair for white property owners to pay for the education of blacks to produce all the state constitutional barriers to property taxes from 1875 to the present[;]” (3) additional factual findings that African Americans are disproportionately harmed by Alabama's woefully inadequate education funding; and (4) “the effect of low property tax revenues has had a crippling effect on poor, majority black school districts,” the courts refused to hold the Lid Bill unconstitutional, primarily because the case challenged higher education funding. *Knight v. Alabama*, 458 F. Supp. 2d 1273, 1297–313 (N.D. Ala. 2004), *aff'd*, 476 F.3d 1219 (11th Cir. 2007), *cert. denied*, 551 U.S. 1146 (2007); see also Susan Pace Hamill, *Knight v. State of Alabama*, ENCYCLOPEDIA OF ALABAMA, <http://encyclopediaofalabama.org/article/h-1480> [https://perma.cc/Q6QD-C2AQ] (Feb. 12, 2015); Brief of Amici Curiae Law Professors and Historian with Specialized Knowledge of Alabama's State and Local Tax Structure and Alabama's 1901 Constitution Urging Reversal in Support of Appellants, *Knight v. Alabama*, 476 F.3d 1219 (11th Cir. 2007) (No. 05-11527). In *Lynch v. Alabama* the race-based Equal Protection challenge to the Lid Bill's effect on K-12 funding failed despite the racially stained history of the property tax structure and the 1901 Constitution. *Lynch v. Alabama*, No. 08-S-450-NE, 2011 WL 13186739 (N.D. Ala. Nov. 7, 2011), *aff'd in part, vacated in part sub nom.* I.L. v. Alabama, 739 F.3d 1273 (11th Cir. 2014), *cert. denied*, 574 U.S. 814 (2014). In analyzing whether there was a racially discriminatory disparate impact in K-12 education funding, the district court focused on K-12 school districts in the entire state, including majority-white areas with far less timber property. *Id.* at *334–37 (“When analyzing discriminatory impact, the relevant geographic area is that which is coterminous with the scope of the law's application. The State Constitutional provisions challenged by plaintiffs apply to the State as a whole. Thus, the analysis must be of their statewide effect.”). The district court also concluded that rural poor white students, although a minority in the timber-dominated Black Belt county school districts, were affected in a similar negative way as the African American students. *Id.* at 337. For additional commentary on *Lynch v. Alabama*, see William R. Weaver, Comment, *Pointing a Way Toward a Brighter Future*

Armed with this empirical research and using detailed biblical hermeneutical analysis, my article morally condemned Alabama's regressive tax burdens foisted on poor and lower middle-class Alabamians as a form of biblical oppression.¹⁰⁷ My article also condemned the grossly inadequate funding of K-12 education as immorally denying children from low-income families a minimum opportunity, later described as "reasonable opportunity," to fulfill their potential.¹⁰⁸ My article harshly criticized big timber's miniscule property taxes and those protecting this status quo and finally challenged all of Alabama's Christians, especially members of Alabama's legislature, to meet their moral obligations and work towards tax reforms, which must require upper middle-class and wealthy Alabamians to pay more taxes.¹⁰⁹

At out-of-state speaking engagements, audiences always asked me how their state compared to Alabama. I started documenting state and local tax policy and K-12 funding in all fifty states because I grew tired of not being able to adequately respond to those questions. Realizing it was impossible to examine each state in the excruciating detail of my Alabama state and local tax study, over a two-year period I created a "helicopter view" of each state with the help of seventeen research assistants—more than a one-page summary, but far less than a treatise.¹¹⁰ In order to facilitate morally evaluating the states in groups,

for Public Education: A Comment on Lynch v. Alabama, 69 VAND. L. REV. EN BANC 123, 147 (2016) (arguing that state laws passed where racial animus is a substantially motivating factor should be struck down even if the law affects other races, observing, "[j]ust because a law with a racially discriminatory purpose negatively affects those outside of the racial class is not an adequate reason to allow that type of provision to withstand scrutiny under the Equal Protection Clause") and Zachary L. Guyse, Comment, *Alabama's Original Sin: Property Taxes, Racism, and Constitutional Reform in Alabama*, 65 ALA. L. REV. 519, 537–38 (2013) (arguing that "*Lynch v. Alabama* is just one illustration of the shortcomings of using racial politics and suspicion in achieving meaningful reform[.]" and arguing that property tax reform would have been an uphill climb even if those laws had been declared unconstitutional because "the people of Alabama . . . have an undeniable dislike of higher taxes and federal courts meddling in state affairs").

¹⁰⁷ See Hamill, *Alabama*, *supra* note 2, at 52–56 & nn.177–95, 61–64 & nn.215–26, 67–68 & nn.236–40.

¹⁰⁸ *Id.* at 56–59 & nn.196–209, 64–66 & nn.241–35, 68–70 & nn.241–47. After additional research, especially on the New Testament's teachings on wealth and further reflecting on interpretations of conservative evangelical, mainline Protestant, Catholic and Jewish perspectives, I changed the description of this standard to "reasonable opportunity," which requires a somewhat higher level of tax revenues than the minimum opportunity standard. See Hamill, *Federal Tax Policy*, *supra* note 5, at 685 & n.34.

¹⁰⁹ See Hamill, *Alabama*, *supra* note 2, at 70–71 & nn.248–264.

¹¹⁰ HAMILL, FIFTY-STATE SURVEY, *supra* note 5, at xxiii–xxvi (describing the data for each state as "helicopter view" and identifying the research of Alabama's state and local tax structure "foot soldier" range).

“the research team fit carefully selected information into five categories,” which included the state’s tax structure, K-12 funding (including high poverty districts), and other information, such as race and poverty statistics and dominate religious affiliations.¹¹¹ The subsequent law review article determined each state’s degree of immorality and morally evaluated the entire nation’s state and local tax policy by weighing two factors—the tax burden allocation scheme and K-12 funding—at 50% each.¹¹²

This research found that no state allocated its tax burden in a moderately progressive fashion and that all the states except for two had regressive tax burdens.¹¹³ The article established parameters measuring and grouping the states’ degree of regressivity and described the states in each group from worst to better as “grossly regressive,” “extremely regressive,” “very regressive,” “slightly regressive,” and the two which were not regressive as “almost flat.”¹¹⁴ The research

¹¹¹ *Id.* at xxvii–xxxi (stating that the five categories are: “General Information” (which included “racial composition[s] and religious affiliations of each state’s population” as well as “family income and poverty indicators”), “Public Elementary-Secondary School System” (including “overall spending and performance”, equity issues with “high-poverty school districts” and the “availability of publicly funded prekindergarten programs”), “Where Does the State Get its Revenue” (including detailed breakdown of revenue share from state income, property, sales and other sources as well as per capita and federal funding statistics), “Legal Structures of Major Tax Sources” (details concerning structure of state income tax, property tax, sales tax, and other sources of revenue) and “Burden Analysis” (containing extensive analysis of the overall state and local tax burden of households in the five quintiles as well as a breakdown of the relative tax burdens from the state’s income, property, sales and other tax revenue sources)). For each state, the information in these five categories averaged around ten pages out of this five-hundred-page book. *See id.*

¹¹² Hamill, *State and Local Tax Policy*, *supra* note 5, at 118–19; *see also* HAMILL, FIFTY-STATE SURVEY, *supra* note 5, at xxxi–xxxii (describing the plans for this law review article).

¹¹³ *See* Hamill, *State and Local Tax Policy*, *supra* note 5, at 126–29.

¹¹⁴ *See* Hamill, *State and Local Tax Policy*, *supra* note 5, at 126–29 & nn.34–44. When measuring the degree of regressivity of each state’s overall tax burden, the research team compared the spread between the overall tax burden borne by the state’s poorest and wealthiest households and considered the overall tax burden imposed on the poorest households as a percentage of their income. *Id.* at 126–27. The poorest twenty percent, households in the first “quintile,” almost always had income levels below the poverty line. *Id.* Households in the second and third quintiles, reasonably classified as lower middle class, had income above the poverty line but significantly less than \$50,000 a year. *Id.* at 127. Income of middle-class households, those in the fourth quintile, typically exceeded \$50,000 but was less than \$100,000. *Id.* The lower ranges of the fifth quintile, the upper middle class, enjoyed income levels well into the six figures, while the wealthiest households, the top one percent, had income “approaching one million dollars or more.” *Id.* Montana and New York were the two states with tax burden allocation schemes that were almost flat. Hamill, *State and Local Tax Policy*, *supra* note 5, at 126–27.

determined that most states failed to meet a rebuttable presumption of adequate overall K-12 funding, and that no state adequately funded all of its poor school districts.¹¹⁵ The article also measured the degree that each state fell short in both.¹¹⁶

Factoring in the 50% weight of each state's K-12 funding and the tax burden allocation pictures, the article grouped the states into five categories broadly defining their degree of immorality.¹¹⁷ My seven research assistants injected dark humor into the dry statistics, labeling the worst the "Foul Fifteen" and the "Shameful Sixteen," and the others the "Shoddy Seven," the "Endeavoring Eight," and the "Front-Running Four."¹¹⁸ The states in the Foul Fifteen, which included Alabama, spent significantly less on K-12 education than most other states, and the inadequate funding of high poverty districts was even worse.¹¹⁹ In addition, these states were among the most regressive in the country, with four states more regressive than Alabama and Washington state being the most regressive in the country.¹²⁰ Although the Shameful Sixteen still "grossly violate[d] the moral principles" in both factors, they were "slightly less immoral as a group than . . . the Foul Fifteen."¹²¹

Although none of the remaining nineteen states met the moral principles, their picture was more complex than the thirty-one worst states in the country. With overall K-12 education at least approaching

¹¹⁵ *Id.* at 124–25, 129–30, 135–36, 138–39, 140–41, 143–44.

¹¹⁶ *Id.* at 123–26 & nn.25–33. K-12 funding served as the barometer determining whether each state's tax revenues adequately met the "reasonable opportunity [moral] requirement." *Id.* at 123. Using "numerous education cost-out studies and the opinion of two prominent experts, th[e] [a]rticle establishe[d] . . . [a] benchmark" creating a rebuttable presumption of adequacy both for overall K-12 funding and K-12 funding in high-poverty districts. *Id.* at 124.

¹¹⁷ See Hamill, *State and Local Tax Policy*, *supra* note 5, at 124 n.29.

¹¹⁸ *Id.* at 129, 133, 138, 143.

¹¹⁹ *Id.* at 129–30.

¹²⁰ *Id.* at 130 & nn.49–50. The fifteen states with the most immoral state and local tax policy, listed alphabetically, were: Alabama, Arizona, Arkansas, Colorado, Florida, Idaho, Mississippi, Nevada, North Carolina, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Washington. *Id.* at 129. My earlier predictions that the stygian distinction of being the most regressive in the country would go to Alabama, or at least another deep South state, illustrates that all assumptions must be tested by research. Washington "pulveriz[ed] the poor with state and local burdens reaching almost nineteen percent of their income[.]" showing a spread of over "fifteen percentage points between the [tax] burden on the poor[est] and the . . . wealthiest households." *Id.* at 130.

¹²¹ Hamill, *State and Local Tax Policy*, *supra* note 5, at 133. "The states classified as the 'Shameful Sixteen,' listed alphabetically, [were]: California, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, Nebraska, New Mexico, North Dakota, Pennsylvania, and Wyoming." *Id.*

the rebuttable presumption of adequacy, due to the substantial inadequacy plaguing high-poverty districts, the Shoddy Seven “superficially appear[ed] to be far better than they actually [were]” and “allocate[d] the tax burden in a very regressive fashion[.]”¹²² The states classified as the Endeavoring Eight came closer than most of the other states to meeting the moral requirements in one area while falling far short in the other factor.¹²³ The Front-Running Four came the closest to meeting the moral requirements of both factors.¹²⁴ In addition to showing the least degree of regressivity when compared to the other states, for the most part these states “greatly exceed[ed] the . . . rebuttable presumption for adequacy in overall K-12 funding[.]” and although their funding of high-poverty districts fell short, it was still better than most in the country.¹²⁵

There has been little change during the decade following my publication of the law review article morally condemning how the nation’s state and local tax policy allocated the tax burden among taxpayers at different levels of income and wealth.¹²⁶ The most recent

¹²² *Id.* at 138–39 (internal quotation marks omitted). The seven states described as the “Shoddy Seven,” listed in alphabetical order, were: Maryland, Minnesota, New Hampshire, Ohio, Rhode Island, Virginia, and Wisconsin. *Id.* at 138.

¹²³ *Id.* at 140. The eight states described as the “Endeavoring Eight,” listed in alphabetical order, were: Alaska, Connecticut, Massachusetts, Montana, New Jersey, Oregon, South Carolina, and West Virginia. *Id.* at 140, 142.

¹²⁴ Hamill, *State and Local Tax Policy*, *supra* note 5, at 143.

¹²⁵ *Id.* at 143–44. The “Front-Running Four,” listed alphabetically, were: Delaware, Maine, New York, and Vermont. *Id.* at 143.

¹²⁶ The most recent study providing extensive empirical data detailing the nation’s state and local tax structures made several “improvements impacting both income estimation and tax modeling. For this reason, [the authors] discourage direct comparisons of th[is] report’s results with prior editions.” See MEG WIEHE ET AL., INST. ON TAX’N & ECON. POL’Y, WHO PAYS? A DISTRIBUTIONAL ANALYSIS OF THE TAX SYSTEMS IN ALL 50 STATES 1, 139 (6th ed. 2018), <https://itep.sfo2.digitaloceanspaces.com/whopays-ITEP-2018.pdf> [<https://perma.cc/RR95-8QE9>]. However, because “the methodology used [for] this [report] is broadly similar to . . . previous editions,” *see id.*, an “airplane view” or “indirect comparison” of this report to earlier reports supports the global assertion that from a moral perspective the picture has not changed. At the time the research for the 2008 article morally condemning the state and local tax structures of all fifty states was being conducted, *see* Hamill, *State and Local Tax Policy*, *supra* note 5, the second edition was the most recent published edition available. See ROBERT S. MCINTYRE ET AL., INST. ON TAX’N & ECON. POL’Y, WHO PAYS? A DISTRIBUTIONAL ANALYSIS OF THE TAX SYSTEMS IN ALL 50 STATES (2d ed. 2003). However, Matthew Gardner (who was among the co-authors of the second edition) shared (and prepared especially for the author in contemplation of the 2008 law review article) unpublished information updating state and local tax burdens in all fifty states using 2006 income levels and 2008 tax laws. See Matthew Gardner, Inst. on Tax’n & Pol’y, Update on 2006 Income Levels and 2008 Tax Law (Apr. 2008) (unpublished data analysis) (on file with the Hofstra Law Review), *cited in* Hamill, *State and Local Tax Policy*, *supra* note 5, at 127 n.34. In 2009, the third edition was published.

study states that “[f]orty-five states have regressive tax systems that exacerbate income inequality.”¹²⁷ None of the remaining five states allocate the tax burden in a manner that even approaches a moderately progressive model.¹²⁸

Recognizing that this represents only a big-picture comparison, between the first two decades of the twenty-first century, twenty-five states became more regressive.¹²⁹ The other twenty-five states are

See CARL DAVIS ET AL., INST. ON TAX’N & ECON. POL’Y, WHO PAYS? A DISTRIBUTIONAL ANALYSIS OF THE TAX SYSTEMS IN ALL 50 STATES (3d ed. 2009). Although the precise numbers from the third edition vary slightly from the unpublished data in the Gardner report used in the 2008 article, for purposes of establishing that, from the broadest perspective, little has changed regarding the allocations of tax burdens in the nation’s state and local policy structures, this article will examine the published 2009 third edition and the latest figures in the 2018 sixth edition.

¹²⁷ *See* WIEHE ET AL., *supra* note 126, at 5. For these forty-five states, the difference between tax burden of the poorest twenty percent of households and the top one percent is, in order of rank from the least equitable to more equitable: Washington (17.8%, 3.0% (14.8)); Texas (13.0%, 3.1% (9.9)); Florida (12.7%, 2.3% (10.4)); South Dakota (11.2%, 2.5% (8.7)); Nevada (10.2%, 1.9% (8.3)); Tennessee (10.5%, 2.8% (7.7)); Pennsylvania (13.8%, 6.0% (7.8)); Illinois (14.4%, 7.4% (7.0)); Oklahoma (13.2%, 6.2% (7.0)); Wyoming (9.6%, 2.6% (7.0)); Arizona (13.0%, 5.9% (7.1)); Indiana (12.8%, 6.8% (6.0)); Ohio (12.3%, 6.5% (5.8)); Louisiana (11.9%, 6.2% (5.7)); Hawaii (15.0%, 8.9% (6.1)); New Hampshire (9.1%, 3.0% (6.1)); North Dakota (10.3%, 4.5% (5.8)); Alabama (9.9%, 5.0% (4.9)); New Mexico (10.6%, 6.0% (4.6)); Arkansas (11.3%, 6.9% (4.4)); Iowa (12.4%, 7.7% (4.7)); Michigan (10.4%, 6.2% (4.2)); Kansas (11.4%, 7.4% (4.0)); Mississippi (10.2%, 6.7% (3.5)); Kentucky (9.5%, 6.7% (2.8)); Alaska (7.0%, 2.5% (4.5)); Georgia (10.7%, 7.0% (3.7)); Missouri (9.9%, 6.2% (3.7)); Connecticut (11.5%, 8.1% (3.4)); Massachusetts (10.0%, 6.5% (3.5)); North Carolina (9.5%, 6.4% (3.1)); Rhode Island (12.1%, 7.9% (4.2)); Virginia (9.8%, 7.0% (2.8)); Wisconsin (10.1%, 7.7% (2.4)); Colorado (8.7%, 6.5% (2.2)); Nebraska (11.1%, 8.7% (2.4)); West Virginia (9.4%, 7.4% (2.0)); Idaho (9.2%, 7.2% (2.0)); South Carolina (8.3%, 6.8% (1.5)); Utah (7.5%, 6.7% (.8)); Oregon (10.1%, 8.1% (2.0)); Maryland (9.8%, 9.0% (.8)); Montana (7.9%, 6.5% (1.4)); New York (11.4%, 11.3% (.1)); and Maine (8.7%, 8.6% (.1)). *Id.* at 26–27.

¹²⁸ In the five states—which are not regressive but still do not allocate their state and local tax burden under a moderately progressive structure—the difference between the tax burden of the poorest twenty percent of households and the top one percent, listed in order of rank from more to less equitable are: California (10.5%, 12.4% (-1.9)); Vermont (8.7%, 10.4% (-1.7)); Delaware (5.5%, 6.5% (-1.0)); Minnesota (8.7%, 10.1% (-1.4)); and New Jersey (8.7%, 9.8% (-1.1)). *Id.* at 40, 46, 78, 92, 122.

¹²⁹ Measuring the difference in tax burdens of the poorest twenty percent of households and the top one percent, the twenty-five states that became more regressive are: Oklahoma, *compare* WIEHE ET AL., *supra* note 126, at 104 (13.2%, 6.2% (7.0)), *with* DAVIS ET AL., *supra* note 126, at 88 (9.9%, 5.6% (4.3)); Kansas, *compare* WIEHE ET AL., *supra* note 126, at 64 (11.4%, 7.4% (4.0)), *with* DAVIS ET AL., *supra* note 126, at 48 (9.2%, 7.1% (2.1)); Michigan, *compare* WIEHE ET AL., *supra* note 126, at 76 (10.4%, 6.2% (4.2)), *with* DAVIS ET AL., *supra* note 126, at 60 (8.9%, 6.4% (2.5)); North Carolina, *compare* WIEHE ET AL., *supra* note 126, at 98 (9.5%, 6.4% (3.1)), *with* DAVIS ET AL., *supra* note 126, at 82 (9.5%, 8.1% (1.4)); Ohio, *compare* WIEHE ET AL., *supra* note 126, at 102 (12.3%, 6.5% (5.8)), *with* DAVIS ET AL., *supra* note 126, at 86 (12.0%, 7.8% (4.2)); Pennsylvania, *compare* WIEHE ET AL., *supra* note 126, at 108 (13.8%, 6.0% (7.8)), *with* DAVIS ET AL., *supra* note 126, at 92

either almost flat, became less regressive, or showed no change.¹³⁰ Moreover, the most regressive states in the nation are almost the same

(11.3%, 5.0% (6.3)); Nevada, *compare* WIEHE ET AL., *supra* note 126, at 88 (10.2%, 1.9% (8.3)), *with* DAVIS ET AL., *supra* note 126, at 72 (8.9%, 2.0% (6.9)); North Dakota, *compare* WIEHE ET AL., *supra* note 126, at 100 (10.3%, 4.5% (5.8)), *with* DAVIS ET AL., *supra* note 126, at 84 (9.5%, 5.1% (4.4)); Oregon, *compare* WIEHE ET AL., *supra* note 126, at 106 (10.1%, 8.1% (2.0)), *with* DAVIS ET AL., *supra* note 126, at 90 (8.7%, 7.9% (0.8)); Wisconsin, *compare* WIEHE ET AL., *supra* note 126, at 130 (10.1%, 7.7% (2.4)), *with* DAVIS ET AL., *supra* note 126, at 114 (9.2%, 8.0% (1.2)); Hawaii, *compare* WIEHE ET AL., *supra* note 126, at 54 (15.0%, 8.9% (6.1)), *with* DAVIS ET AL., *supra* note 126, at 38 (12.2%, 7.3% (4.9)); Iowa, *compare* WIEHE ET AL., *supra* note 126, at 62 (12.4%, 7.7% (4.7)), *with* DAVIS ET AL., *supra* note 126, at 46 (11.0%, 7.4% (3.6)); Texas, *compare* WIEHE ET AL., *supra* note 126, at 118 (13.0%, 3.1% (9.9)), *with* DAVIS ET AL., *supra* note 126, at 102 (12.2%, 3.3% (8.9)); Louisiana, *compare* WIEHE ET AL., *supra* note 126, at 68 (11.9%, 6.2% (5.7)), *with* DAVIS ET AL., *supra* note 126, at 52 (10.4%, 5.7% (4.7)); South Carolina, *compare* WIEHE ET AL., *supra* note 126, at 112 (8.3%, 6.8% (1.5)), *with* DAVIS ET AL., *supra* note 126, at 96 (7.1%, 6.4% (0.7)); Montana, *compare* WIEHE ET AL., *supra* note 126, at 84 (7.9%, 6.5% (1.4)), *with* DAVIS ET AL., *supra* note 126, at 68 (6.1%, 5.5% (0.6)); Missouri, *compare* WIEHE ET AL., *supra* note 126, at 82 (9.9%, 6.2% (3.7)), *with* DAVIS ET AL., *supra* note 126, at 66 (9.6%, 6.6% (3.0)); Wyoming, *compare* WIEHE ET AL., *supra* note 126, at 132 (9.6%, 2.6% (7.0)), *with* DAVIS ET AL., *supra* note 126, at 116 (8.3%, 1.9% (6.4)); Indiana, *compare* WIEHE ET AL., *supra* note 126, at 60 (12.8%, 6.8% (6.0)), *with* DAVIS ET AL., *supra* note 126, at 44 (11.9%, 6.4% (5.5)); Idaho, *compare* WIEHE ET AL., *supra* note 126, at 56 (9.2%, 7.2% (2.0)), *with* DAVIS ET AL., *supra* note 126, at 40 (8.6%, 7.1% (1.5)); Kentucky, *compare* WIEHE ET AL., *supra* note 126, at 66 (9.5%, 6.7% (2.8)), *with* DAVIS ET AL., *supra* note 126, at 50 (9.4%, 7.1% (2.3)); Washington, *compare* WIEHE ET AL., *supra* note 126, at 126 (17.8%, 3.0% (14.8)), *with* DAVIS ET AL., *supra* note 126, at 110 (17.3%, 2.9% (14.4)); Virginia, *compare* WIEHE ET AL., *supra* note 126, at 124 (9.8%, 7.0% (2.8)), *with* DAVIS ET AL., *supra* note 126, at 108 (8.9%, 6.3% (2.6)); Arizona, *compare* WIEHE ET AL., *supra* note 126, at 36 (13.0%, 5.9% (7.1)), *with* DAVIS ET AL., *supra* note 126, at 20 (12.5%, 5.6% (6.9)); and New Hampshire, *compare* WIEHE ET AL., *supra* note 126, at 90 (9.1%, 3.0% (6.1)), *with* DAVIS ET AL., *supra* note 126, at 74 (8.4%, 2.5% (5.9)).

¹³⁰ Measuring the difference in tax burdens of the poorest twenty percent of households and the top one percent, the twenty-five states that are almost flat, became less regressive or showed no change (listing the five almost flat states, then those that became less regressive and finally the one state that showed no change) are: California, *compare* WIEHE ET AL., *supra* note 126, at 40 (10.5%, 12.4% (-1.9)), *with* DAVIS ET AL., *supra* note 126, at 24 (10.2%, 9.8% (0.4)); Vermont, *compare* WIEHE ET AL., *supra* note 126, at 122 (8.7%, 10.4% (-1.7)), *with* DAVIS ET AL., *supra* note 126, at 106 (8.2%, 8.4% (-0.2)); Minnesota, *compare* WIEHE ET AL., *supra* note 126, at 78 (8.7%, 10.1% (-1.4)) *with* DAVIS ET AL., *supra* note 126, at 62 (9.2%, 7.7% (1.5)); New Jersey, *compare* WIEHE ET AL., *supra* note 126, at 92 (8.7%, 9.6% (-.9)), *with* DAVIS ET AL., *supra* note 126, at 76 (10.8%, 9.5% (1.3)); and Delaware, *WIEHE ET AL.*, *supra* note 126, at 46 (5.5%, 6.5% (-1.0)), *with* DAVIS ET AL., *supra* note 126, at 30 (6.0%, 5.6% (0.4)). The states that are still regressive but became less regressive (listed in order of those decreasing regressivity the most) are: Utah, *compare* WIEHE ET AL., *supra* note 126, at 120 (7.5%, 6.7% (.8)), *with* DAVIS ET AL., *supra* note 126, at 104 (9.3%, 5.7% (3.6)); Connecticut, *compare* WIEHE ET AL., *supra* note 126, at 44 (11.5%, 8.1% (3.4)), *with* DAVIS ET AL., *supra* note 126, at 28 (12.0%, 6.5% (5.5)); Nebraska, *compare* WIEHE ET AL., *supra* note 126, at 86 (11.1%, 8.7% (2.4)) *with* DAVIS ET AL., *supra* note 126, at 70 (11.1%, 7.1% (4.0)); Maryland, *compare* WIEHE ET AL., *supra* note 126, at 72 (9.8%, 9.0% (.8)) *with* DAVIS ET AL., *supra* note 126, at 56 (10.0%, 7.7%

cluster of states.¹³¹ At the risk of overusing a tired idiom, from a nationwide perspective, the small improvements some states have made to

(2.3)); Maine, *compare* WIEHE ET AL., *supra* note 126, at 70 (8.7%, 8.6% (.1)) *with* DAVIS ET AL., *supra* note 126, at 54 (9.5%, 8.0% (1.5)); Georgia, *compare* WIEHE ET AL., *supra* note 126, at 52 (10.7%, 7.0% (3.7)) *with* DAVIS ET AL., *supra* note 126, at 36 (11.7%, 6.9% (4.8)); Illinois, *compare* WIEHE ET AL., *supra* note 126, at 58 (14.4%, 7.4% (7.0)), *with* DAVIS ET AL., *supra* note 126, at 42 (13.0%, 4.9% (8.1)); Mississippi, *compare* WIEHE ET AL., *supra* note 126, at 80 (10.2%, 6.7% (3.5)) *with* DAVIS ET AL., *supra* note 126, at 64 (10.8%, 6.3% (4.5)); New Mexico, *compare* WIEHE ET AL., *supra* note 126, at 94 (10.6%, 6.0% (4.6)), *with* DAVIS ET AL., *supra* note 126, at 78 (10.8%, 5.2% (5.6)); Arkansas, *compare* WIEHE ET AL., *supra* note 126, at 38 (11.3%, 6.9% (4.4)) *with* DAVIS ET AL., *supra* note 126, at 22 (12.1%, 6.8% (5.3)); Tennessee, *compare* WIEHE ET AL., *supra* note 126, at 116 (10.5%, 2.8% (7.7)), *with* DAVIS ET AL., *supra* note 126, at 100 (11.7%, 3.3% (8.4)); Rhode Island, *compare* WIEHE ET AL., *supra* note 126, at 110 (12.1%, 7.9% (4.2)) *with* DAVIS ET AL., *supra* note 126, at 94 (11.9%, 7.0% (4.9)); Massachusetts, *compare* WIEHE ET AL., *supra* note 126, at 74 (10.0%, 6.5% (3.5)) *with* DAVIS ET AL., *supra* note 126, at 58 (10.1%, 6.0% (4.1)); Florida, *compare* WIEHE ET AL., *supra* note 126, at 50 (12.7%, 2.3% (10.4)) *with* DAVIS ET AL., *supra* note 126, at 34 (13.5%, 2.6% (10.9)); Colorado, *compare* WIEHE ET AL., *supra* note 126, at 42 (8.7%, 6.5% (2.2)) *with* DAVIS ET AL., *supra* note 126, at 26 (9.0%, 5.3% (3.7)); Alabama, *compare* WIEHE ET AL., *supra* note 126, at 32 (9.9%, 5.0% (4.9)) *with* DAVIS ET AL., *supra* note 126, at 16 (10.2%, 4.8% (5.4)); South Dakota, *compare* WIEHE ET AL., *supra* note 126, at 114 (11.2%, 2.5% (8.7)) *with* DAVIS ET AL., *supra* note 126, at 98 (11.0%, 2.1% (8.9)); West Virginia, *compare* WIEHE ET AL., *supra* note 126, at 128 (9.4%, 7.4% (2.0)) *with* DAVIS ET AL., *supra* note 126, at 112 (9.7%, 7.6% (2.1)); and New York, *compare* WIEHE ET AL., *supra* note 126, at 96 (11.4%, 11.3% (.1)) *with* DAVIS ET AL., *supra* note 126, at 80 (9.6%, 9.4% (0.2)). Alaska was the only state showing no change. *Compare* WIEHE ET AL., *supra* note 126, at 34 (7.0%, 2.5% (4.5)) *with* DAVIS ET AL., *supra* note 126, at 18 (7.0%, 2.5% (4.5)).

¹³¹ Measuring the difference in tax burdens of the poorest twenty percent of households and the top one percent, in 2007 the ten most regressive states in the country were, listed from most to least regressive: Washington (17.3%, 2.9% (14.4)), Florida (13.5%, 2.6% (10.9)), South Dakota (11.0%, 2.1% (8.9)), Tennessee (11.7%, 3.3% (8.4)), Texas (12.2%, 3.3% (8.9)), Illinois (13.0%, 4.9% (8.1)), Arizona (12.5%, 5.6% (6.9)), Nevada (8.9%, 2.0% (6.9)), Pennsylvania (11.3%, 5.0% (6.3)), Alabama (10.2%, 4.8% (5.4)). DAVIS ET AL., *supra* note 126, at 2. Measuring the difference in tax burdens of the poorest twenty percent of households and the top one percent, in 2018 the ten most regressive states in the country are, listed from most to least regressive: Washington (17.8%, 3.0% (14.8)), Texas (13.0%, 3.1% (9.9)), Florida (12.7%, 2.3% (10.4)), South Dakota (11.2%, 2.5% (8.7)), Nevada (10.2%, 1.9% (8.3)), Tennessee (10.5%, 2.8% (7.7)), Pennsylvania (13.8%, 6.0% (7.8)), Illinois (11.4%, 7.4% (4)), Oklahoma (13.2%, 6.2% (7.0)), and Wyoming (9.6%, 2.6% (7.0)). WIEHE ET AL., *supra* note 126, at 7. Between 2007 and 2018, Oklahoma's degree of regressivity went from being the twenty-fourth most regressive state to the ninth most regressive state. *Compare* DAVIS ET AL., *supra* note 126, at 88 (Oklahoma (9.9%, 5.6% (4.3)), *with* WIEHE ET AL., *supra* note 126, at 104 (Oklahoma (13.2%, 6.2% (7.0)). Between 2007 and 2018, Illinois dropped from being the sixth most regressive state to being the eighth most regressive state. *Compare* DAVIS ET AL., *supra* note 126, at 2 (Illinois (13.0%, 4.9% (8.1)), *with* WIEHE ET AL., *supra* note 126, at 7 (Illinois (14.4%, 7.4% (7.0)).

their state and local tax structures while others became more regressive can be viewed as “rearranging the deck chairs on the Titanic.”¹³²

There has also been little change in the big picture of the nation’s funding of K-12 education.¹³³ The broadest evidence, derived exclusively from secondary sources and education commentators, indicate that, except for the wealthiest school districts, overall K-12 funding is still inadequate.¹³⁴ Moreover, K-12 funding in high poverty

¹³² An idiom is “an expression in the usage of language that is peculiar to itself either grammatically . . . or in having a meaning that cannot be derived from the conjoined meanings of its elements . . .” MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 616 (11th ed. 2009). The idiomatic phrase, “rearrange the deck chairs on the Titanic” means “[t]o do something pointless or insignificant . . . that contributes nothing to the solution of a current problem.” *Rearrange the Deck Chairs on the Titanic*, WIKTIONARY, https://en.wiktionary.org/wiki/rearrange_the_deck_chairs_on_the_Titanic [<https://perma.cc/QC9S-JUZE>] (last modified Nov. 13, 2020). The phrase also means a “course of action that will ultimately prove trivial or futile in its possible effect or outcome.” *Be Like Rearranging (the) Deck Chairs on the Titanic*, THE FREE DICTIONARY, <https://idioms.thefreedictionary.com/be+like+rearranging+the+deckchairs+on+the+Titanic> [<https://perma.cc/KLR4-V2A5>] (last visited Oct. 8, 2021).

¹³³ See generally *infra* notes 134–135 and accompanying text. A fifty-state survey of the overall K-12 funding and K-12 funding in high poverty districts in each of the fifty states is beyond the scope of this article. Although in the last decade of the twentieth century experts disagreed whether increased levels of K-12 funding resulted in better academic performance, see Hamill, *Alabama*, *supra* note 2, at 35 n.102, during the twenty-first century experts arrived at a strong consensus that increased K-12 funding, if used appropriately to improve academic performance (for example decreasing teacher student ratios and hiring more qualified teachers), had a material impact on student outcomes. See Hamill, *State and Local Tax Policy*, *supra* note 5, at 122 n.19; see also BRUCE D. BAKER ET AL., THE ADEQUACY AND FAIRNESS OF STATE SCHOOL FINANCE SYSTEMS, ALBERT SHANKER INST. & RUTGERS GRADUATE SCH. OF EDUC. (1st ed. 2019) [hereinafter SHANKER INSTITUTE REPORT], <https://files.eric.ed.gov/fulltext/ED596199.pdf> [<https://perma.cc/DDP4-XUEV>]. “There is a large and growing body of high-quality empirical research showing that the amount and distribution of school funding has a profound effect on student outcomes . . . the centrality of funding to improving outcomes is slowly gaining political consensus in all but the most extreme ideological camps. The idea that ‘money doesn’t matter’ is no longer defensible.” *Id.* at 25; see also BRUCE D. BAKER, HOW MONEY MATTERS FOR SCHOOLS, LEARNING POL’Y INST. (2017), https://learningpolicyinstitute.org/sites/default/files/product-files/How_Money_Matters_REPORT.pdf [<https://perma.cc/BSN5-2EWM>] (stating that recent studies with improved techniques have concluded that money does matter in education).

¹³⁴ See generally SHANKER INSTITUTE REPORT, *supra* note 133 (fifty-state study of school funding concluding that most of the states are underfunding their schools); THE CENTURY FOUND., *Closing America’s Education Funding Gaps* (July 22, 2020) [hereinafter CENTURY FOUND. STUDY], <https://tcf.org/content/report/closing-americas-education-funding/> [<https://perma.cc/CK77-JCDL>] (explaining how a study concluded school districts attended by two-thirds of the nation’s students are underfunded and it would cost \$150 billion more annually to fund all the school districts in the nation adequately); Linda Darling-Hammond, *America’s School Funding Struggle: How We’re Robbing Our Future by Under-Investing in Our Children*, FORBES (Aug. 5, 2019, 1:43 PM),

districts is much worse, lagging far behind a level that even remotely approaches what the nation's most vulnerable children need to have a meaningful chance of improving their lives.¹³⁵

Under the moral principles of Judeo-Christian ethics and the community-oriented secular ethical theories, the nation's state and local tax policy is just as disgracefully immoral at the close of the second decade of the twenty-first century as it was at the close of the first decade of the twenty-first century.¹³⁶ The forty-five states with

<https://www.forbes.com/sites/lindadarlinghammond/2019/08/05/americas-school-funding-struggle-how-were-robbing-our-future-by-under-investing-in-our-children/?sh=4a36fe9c5eaf> [<https://perma.cc/Y5VQ-3W3V>] (stating that, despite increases in the last several years, in 2019 the National Conferences of State Legislators identified school funding, which is still not adequate in many areas, as their top priority).

¹³⁵ See SHANKER INSTITUTE REPORT, *supra* note 133, at 25 (study concluding most states spend only a fraction of what they need to help their higher poverty school districts achieve adequacy and also finds most K-12 school districts are funded in a non-progressive manner—"high- and low- poverty districts receive similar funding"—or funded in a regressive manner—"low- poverty districts receive less funding"); CENTURY FOUND. STUDY, *supra* note 134 (study examining each school district in the nation, factoring in levels of poverty in each district finds school districts with high rates of poverty are "more than [two times] as likely to have a funding gap" as districts with low levels of poverty, concluding, "[t]he United States is underfunding our public schools by nearly \$150 billion annually, robbing millions of children—predominantly minority and low-income children—of the opportunity to succeed"); Darling-Hammond, *supra* note 134 (stating that, despite indisputable evidence students in poverty need more resources to receive an adequate education, in "many states, the wealthiest districts spend two to three times what the poorest districts can spend per pupil"); see also Letter from Catherine E. Lhamon to President Donald J. Trump, in U.S. COMM'N ON C.R., PUBLIC EDUCATION FUNDING INEQUITY IN AN ERA OF INCREASING CONCENTRATION OF POVERTY AND RESEGREGATION (2018)

<https://www.usccr.gov/pubs/2018/2018-01-10-Education-Inequity.pdf> [<https://perma.cc/M8XU-8Q5W>] ("The Commission majority also found that vast funding inequities in our state public education systems factor significantly in rendering the education available to millions of American public-school students profoundly unequal. The Commission majority found that many students in the U.S. living in segregated neighborhoods and concentrations of poverty do not have access to high-quality schools simply because of where they live, and that there is potential for housing policy to help provide better educational opportunities for these students. Low-income students and students of color are often relegated to low-quality school facilities that lack equitable access to teachers, instructional materials, technology and technology support, critical facilities, and physical maintenance. These absences can negatively impact a student's health and ability to be attentive and can exacerbate existing inequities in student outcomes."); DANIELLE FARRIE & DAVID G. SCIARRA, MAKING THE GRADE 2020: HOW FAIR IS SCHOOL FUNDING IN YOUR STATE?, EDUC. L. CTR. (2021) [hereinafter FAIR SCHOOL FUNDING],

<https://edlawcenter.org/assets/MTG%202020/Making%20the%20Grade%202020.pdf> [<https://perma.cc/U5RU-W66T>] (providing a detailed study of overall K-12 funding and K-12 funding in high poverty districts that compares the states to each other finds that most states "fail to meet the needs of their most vulnerable students").

¹³⁶ See *supra* notes 107–108 and accompanying text (discussing Alabama's state and local tax structure and K-12 funding immoral under Judeo-Christian ethical principles); *supra*

regressive tax burdens are oppressing their poor and lower middle-class citizens.¹³⁷ The remaining five “almost flat” states fail to even come close to approaching a moderately progressive model, thus violating the New Testament’s teachings on wealth and similar general principles of the community-oriented secular theories.¹³⁸ The twenty-first century picture of how the nation’s state and local tax burdens are allocated reflects the values of objectivist ethics, which prominently supports flat structures and shows no concern for oppression inflicted by regressive models.¹³⁹

Objectivist ethics, which does not recognize a general moral obligation to adequately fund public education, also dominates public policy regarding the nation’s funding of K-12 education, in which revenues raised from state and local taxes plays a dominant role.¹⁴⁰ The current objectivist ethics-oriented values implicitly driving the funding of the nation’s K-12 schools is disgustingly immoral under Judeo-Christian ethical principles and the community-oriented secular models.¹⁴¹ Other than upper middle class and wealthy children,

notes 114–125 and accompanying text (stating that, although the degrees of immorality varied among the states, no state allocated the burden for paying state and local taxes and funded K-12 education, especially high poverty school districts consistent with Judeo-Christian principles); *see also supra* notes 73–84 and accompanying text (displaying that state and local tax burdens and K-12 funding also failed to meet community-oriented secular values); *infra* notes 137–143 and accompanying text (stating that state and local tax burdens and K-12 funding just as immoral as it was earlier in the twenty-first century).

¹³⁷ *See supra* notes 54–65 and accompanying text (explaining how Judeo-Christian moral principles deem regressive taxes as an immoral form of biblical oppression and the New Testament’s teachings on wealth morally condemn flat and mildly progressive models as failing to impose greater sacrifice on those enjoying higher levels of income and wealth); *supra* notes 73–84 and accompanying text (describing how the community-oriented secular values of virtue ethics, secular humanism and the philosophy of John Rawls reach similar conclusions regarding tax policy).

¹³⁸ *See supra* note 137.

¹³⁹ *See supra* notes 88–94 and accompanying text (stating that objectivist ethics principles view taxation as a violation of individual personal autonomy and the right to enjoy private property, deem all progressive models immoral, widely endorse flat tax structures and consistently favor proposals that reduce the tax burden of the wealthiest taxpayers).

¹⁴⁰ *See supra* notes 92–94 and accompanying text (discussing how objectivist ethics values only support raising a level of tax revenues to fund the minimum state with education opportunities only being available in the private free-market economy); FAIR SCHOOL FUNDING, *supra* note 135 (“State and local revenue account for, on average, approximately 92% of total funding for public education.”).

¹⁴¹ *See supra* notes 48–52, 75, 78–79, 83–84 (explaining that moral principles of Judeo-Christian ethics and community-oriented secular values require adequate tax revenues to be raised to support reasonable opportunity, which includes education); *see also* Hamill, *Alabama*, *supra* note 2, at 35–36, 80 (discussing the harm suffered by children denied an adequate education and identifying children from low-income families as among the most vulnerable and powerless); Hamill, *State and Local Tax Policy*, *supra* note 5, at 121–22

reasonable opportunity is at best spotty and in too many parts of the country nonexistent.¹⁴² Moreover, the situation is far worse in the nation's high poverty districts. Other than extremely rare exceptions, children from poor and lower middle-class families have no opportunity to develop their potential.¹⁴³

PART IV. MORAL REFLECTIONS ON TWENTY-FIRST CENTURY FEDERAL TAX POLICY TRENDS

During many of the speaking engagements generated by my Alabama tax policy work, audiences also inquired how the moral principles of Judeo-Christian ethics would apply to federal tax policy. The relative stability of the federal income tax laws following the Tax Reform Act of 1986 was coming to an end.¹⁴⁴ At that time, President Bush's first term tax cuts were being thrashed out in Congress. President Bush's passionate commitment to secure tax cuts primarily benefiting the wealthiest Americans seemed incongruous with his unabashed public display of his Christian faith, and journalists noticed this irony.¹⁴⁵ A June 2003 symposium invitation inspired me to expand

(conducting a fifty-state survey of the adequacy of state and local tax revenues that focuses on the funding of public education because, “[e]specially for poor and lower middle-class children, an adequately funded public school system is arguably one of the most important items on the state and local budgets”).

¹⁴² See *supra* note 134 and accompanying text (explaining how recent studies conducted after article published in 2008 detailing K-12 funding patterns in all fifty states conclude that, although some school districts are adequately funded—especially in the wealthiest and upper middle-class areas—the nationwide picture of K-12 funding is still inadequate and requires billions of dollars more).

¹⁴³ See *supra* note 135 and accompanying text (explaining how recent studies conducted after the article published in 2008 detailing K-12 funding patterns of high poverty districts in all fifty states conclude that nationwide the K-12 funding of high poverty districts is even more grossly inadequate than overall K-12 funding).

¹⁴⁴ See Jennifer Bird-Pollan, *Revising the Tax Law: The TCJA and Its Place in the History of Tax Reform*, 45 OHIO N. U. L. REV. 501, 502–05 (2019) (providing a brief overview of the history of the federal income tax, noting the bipartisan spirit surrounding the enactment of the Tax Reform Act of 1986 and the relative stability following its enactment that ended with George W. Bush's election); see also SLEMROD & BAKIJA, *supra* note 1, at 68–69 (noting the “pronounced instability and unpredictability” of tax policy that started in 2001 was restored to “some degree” in 2013 and 2015); *id.* at 392–95 (discussing the general thrust of the Tax Reform Act of 1986 as broadening the base, lowering the rates, and making the tax treatment of different kinds of income more uniform).

¹⁴⁵ See, e.g., LONDON TIMES, *supra* note 4 (Alabama's faith-inspired tax reform “sparked an improbable debate . . . whether Bush's enthusiasm for reducing taxes on the rich is compatible with his claim to be a compassionate conservative”); Jim Wallis, *Bring It On*, SOJOURNERS MAG., Apr. 2004, at 5–6 (criticizing the Bush tax cuts benefitting the rich and spending cuts uplifting vulnerable Americans as inconsistent with his faith and identifying Alabama's story as an example for the national debate about policies); see also JIM WALLIS, GOD'S POLITICS 139 (2005) (noting that President Bush was raised an Episcopalian and

my scholarship towards morally evaluating federal tax policy. This effort resulted in two law review articles that documented the initial effects of the Bush tax cuts, expanded the Judeo-Christian moral analysis of tax policy to include the New Testament's teachings on wealth, and applied secular-based moral theories to tax policy.¹⁴⁶

In 2000, when George W. Bush was elected to his first term as President of the United States, the budget surplus stood at well over \$200 billion—the largest surplus in history—and the revenues of which were primarily raised by the federal income tax.¹⁴⁷ The individual federal income tax structure on its face was moderately progressive, with the highest ordinary income rate at 39.6% and the top capital gains rate at 20%.¹⁴⁸ Analysis of the federal tax burden in the year 2000 among households enjoying different levels of income and wealth also painted a picture within a range of moderate progressivity.¹⁴⁹ The

joined the United Methodist Church after “a life-changing conversion, around the age of forty, from being a nominal Christian to a born-again believer”).

¹⁴⁶ See HAMILL, FIFTY-STATE SURVEY, *supra* note 5, at xxiv (describing the symposium invitation as precipitating the shift in scholarship to first focus on morally evaluating federal tax policy before addressing the tax policy of all fifty states). See generally Hamill, *A Moral Perspective*, *supra* note 5, at 858–59; Hamill, *Federal Tax Policy*, *supra* note 5, at 679 n.16.

¹⁴⁷ See OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, HISTORICAL TABLES: BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2020 24–25 tbl.1.1 (2019) [hereinafter 2020 HISTORICAL TABLES] (after factoring inflation, the 1992 budget deficit of \$290.3 billion—approximately 4.7% of gross domestic product—disappeared during President Bill Clinton's two terms and showed a surplus of \$236.2 billion); SLEMROD & BAKIJA, *supra* note 1, at 15–16 (explaining that personal income tax is the largest source of federal revenues followed by corporate income tax revenues, together accounting for well over half of federal revenues). A moral evaluation of the federal tax policy trends during the twentieth century is beyond the scope of this article. Despite achieving a surplus, according to at least one author, “[d]uring Clinton's tenure as president, the share of income going to the top 400 more than doubled But the portion of [their] income going to federal income taxes fell by 16 percent. . . while rising for everyone else by 18 percent. Clearly, favoritism for the rich is bipartisan.” DAVID CAY JOHNSTON, PERFECTLY LEGAL: THE COVERT CAMPAIGN TO RIG OUR TAX SYSTEM TO BENEFIT THE SUPER RICH—AND CHEAT EVERYBODY ELSE 308 (2003).

¹⁴⁸ I.R.C. § 1 (2000); Rev. Proc. 99-42, 1992-2 C.B. 568 (showing marginal rates of 15%, 28%, 31%, and 36% applied to income exceeding the previous bracket with the top marginal rate of 39.6% applying to income exceeding \$288,350). Gain realized from a sale or exchange of a capital asset held for more than one year qualifies for capital gain treatment (ordinary income rates apply if the capital asset has been held for one year or less). I.R.C. §§ 1221–1222.

¹⁴⁹ The rate structure alone does not determine the degree of progressivity. See Hamill, *Federal Tax Policy*, *supra* note 5, at 713 & nn.93–95, 714 & nn.96–99 (discussing the five quintiles and supporting this rough picture of the socioeconomic differences among Americans). To measure how the tax burden is allocated among taxpayers at different levels of income and wealth, “economists divid[e] taxpayers into five standard income groups or ‘quintiles.’” *Id.* at 713. They then determine “each group's percentage share of

exemption from estate taxes was \$675,000 and graduated rates topped out at 55%.¹⁵⁰ Although at the close of the twentieth century the estate tax raised almost twenty-five billion dollars, it accounted for a small portion of federal revenues and only applied to the wealthiest Americans, representing just over 2% of all estates.¹⁵¹

During his first term, President Bush and Congress enacted a series of tax cuts.¹⁵² The income tax cuts included lowering the highest

the tax burden and average effective tax rate[.]” *Id.* The first quintile represents the poorest households. *Id.* at 713–14 & n.96. The second, third and fourth quintiles broadly represent the lower middle class and ranges of the middle class. *Id.* at 714 & nn.96–97. The fifth quintile encompasses the upper middle class, while the top 1% within the fifth quintile are the wealthiest households. *Id.* at 714 & n.98–99. For 2000, the year before President Bush began his first term, the fifth quintile accounted for 66.7% and the top 1% accounted for 25.6% of the overall federal tax liability. *See* CONG. BUDGET OFF., EFFECTIVE FEDERAL TAX RATES: 1979–2001, at 1B (Apr. 2004) [hereinafter APRIL 2004 CBO]. The proportional shares of the federal tax liability for the fourth, third, second, and first quintiles were 17.8%, 10.2%, 5.2%, and 1.1%, respectively. *Id.* The effective tax rate for the fifth quintile was 28.0%, and for the top 1% within the fifth quintile was 33.2%. *Id.* at tbl.1A. The effective tax rate for fourth, third, second and first quintiles was 20.5%, 16.7%, 13.0%, and 6.4%, respectively. *Id.*

¹⁵⁰ I.R.C. §§ 2010(c), 2503(b), 2001(c), 2505(a) (2000); Rev. Proc. 99-42, 1999-2 C.B. 568 (explaining estate tax rates of 37% are applied to estates exceeding \$675,000 with rates topping out at 55% for taxable estates over \$3 million). In addition to the exempt amount, qualified lifetime gifts and an unlimited deduction for charitable contributions further reduce the taxable estate. Stated more plainly, wealthy individuals can substantially mitigate or even completely avoid estate taxes by carefully planning lifetime gifts and then donating their excess estate above the exempt amount to charity. *See* SLEMROD & BAKIJA, *supra* note 1, at 68 (outlining the basic structure of estate and gift tax structure).

¹⁵¹ *See* MICHAEL J. GRAETZ & IAN SHAPIRO, DEATH BY A THOUSAND CUTS: THE FIGHT OVER TAXING INHERITED WEALTH 6 (2005) (explaining that in 1999, only 2.3% of all estates (averaging \$2.5 million with more than two-thirds of those estates’ assets publicly traded securities and other liquid assets, not family businesses or farms) paid any estate tax at all and the average tax of \$469,000 per estate raised \$24.4 billion; more than half of these revenues came from the richest 7% of estates, those valued at \$5 million or more, representing the wealthiest 1% of all Americans; and finally nearly a quarter of this total revenue—\$5.7 billion—came from 550 estates with more than \$20 million of wealth); *see also* *Distribution of Estate Tax*, TAX POL’Y CTR. (Mar. 5, 2021), <https://www.taxpolicycenter.org/statistics/distribution-estate-tax> [<https://perma.cc/8T9Z-ZWL9>] (stating that in 2000, 99.2% of estate taxes were paid by those in the top economic quintile and approximately two-thirds were paid by the wealthiest 1% within the top quintile).

¹⁵² In addition to the tax cuts aimed at individual taxpayers, the Bush tax cuts also created various incentives such as bonus depreciation to reduce the effective tax burden on businesses. *See* Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, §§ 101–102, 116 Stat. 21, 22–26 (providing an additional depreciation deduction of 30% (on top of any depreciation deduction for which that property already qualified) for property purchased after September 11, 2001, and before September 11, 2004, and placed in service before January 5, 2005, and extending the net operating loss carrybacks from two to five years); Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27, §§ 201–202, 117 Stat. 752, 756–58 (increasing bonus depreciation and increasing

ordinary income tax rate to 35% and the highest capital gains rate to 15%.¹⁵³ Starting in 2002, estate tax exemptions were gradually increased, eventually reaching \$3.5 million, and the top rate was gradually decreased to 45%.¹⁵⁴ The estate tax cuts predictably reduced the number of estates subject to the estates taxes and resulted in revenues from estate taxes falling.¹⁵⁵

the section 179 deduction to \$100,000 for property placed in service after 2002 but before 2006).

¹⁵³ The 2001 Bush tax cuts lowered the rates in the top four brackets, reducing the top rate to 35%, while adding a new 10% bracket at lower income levels. *See* Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, §§ 101–03, 901, 115 Stat. 38, 4141–45; Jobs and Growth Tax Relief Reconciliation Act §§ 105, 303, 117 Stat. at 755–756, 764 (detailing sunset dates in 2008 and 2010). The 2003 Bush tax cuts lowered the tax rates on both capital gains and dividends. *See id.* §§ 301–302, 117 Stat. at 758–64; I.R.C. §§ 1(h)(1), 301–302 (lowering the top rate on capital gains from 20% to 15% and including “qualified dividend income” in the definition of net capital gain and allowing dividend income to be taxed at the 15% capital gains rate instead of the 35% rate for ordinary income); *see also* SLEMROD & BAKIJA, *supra* note 1, at 60–72 (briefly describing Bush tax cuts, sunset provisions, and 2008 stimulus packages).

¹⁵⁴ *See* Economic Growth and Tax Relief Act, §§ 501, 511, 521, 901, 115 Stat. at 69–72, 150 (increasing estate tax exemptions to \$1 million in 2002 and 2003, \$1.5 million in 2004 and 2005, \$2 million in 2006, 2007, and 2008, and \$3.5 million in 2009; decreasing the top rates to 50% in 2002, 49% in 2003, 48% in 2004, 47% in 2005, 46% in 2006, and 45% in 2007, 2008, and 2009; and illustrating the law’s sunset provision eliminated all estate and gift taxes in 2010 and in 2011 reinstated estate and gift taxes to the 2001 levels).

¹⁵⁵ In the years 2000 through 2009, the number of estate returns filed showed a downward trend. In 2000, 2004, 2007, and 2009, respectively, there were 108,332, 65,039, 38,000, and 33,515 estate returns filed. INTERNAL REVENUE SERV., ESTATE TAX RETURNS FILED IN 2000: GROSS ESTATE BY TYPE OF PROPERTY, DEDUCTIONS, TAXABLE ESTATE, ESTATE TAX AND TAX CREDITS, BY SIZE OF GROSS ESTATE tbl.1c (2002) [hereinafter 2000 ESTATE TAX RETURNS], [<https://www.irs.gov/statistics/soi-tax-stats-estate-tax-statistics-filing-year-table-1>] [<https://perma.cc/PVY3-NCNS>]; INTERNAL REVENUE SERV., ESTATE TAX RETURNS FILED IN 2004, BY TAX STATUS AND SIZE OF GROSS ESTATE (2007) [hereinafter 2004 ESTATE TAX RETURNS], [<https://www.irs.gov/statistics/soi-tax-stats-estate-tax-statistics-filing-year-table-1>] [<https://perma.cc/PVY3-NCNS>]; INTERNAL REVENUE SERV., ESTATE TAX RETURNS FILED IN 2007, BY TAX STATUS AND SIZE OF GROSS ESTATE (2011) [hereinafter 2007 ESTATE TAX RETURNS], [<https://www.irs.gov/statistics/soi-tax-stats-estate-tax-statistics-filing-year-table-1>] [<https://perma.cc/PVY3-NCNS>]; INTERNAL REVENUE SERV., ESTATE TAX RETURNS FILED IN 2009, BY TAX STATUS AND SIZE OF GROSS ESTATE (2010) [hereinafter 2009 ESTATE TAX RETURNS], [<https://www.irs.gov/statistics/soi-tax-stats-estate-tax-statistics-filing-year-table-1>] [<https://perma.cc/PVY3-NCNS>]. The number of returns filed in 2009 represents a 69% decrease from the number of returns filed in 2001. *Compare* 2000 ESTATE TAX RETURNS, *supra*, with 2009 ESTATE TAX RETURNS, *supra*. In accordance with the decreasing numbers of returns, the same years confirm a decrease in estate tax revenue, with the Internal Revenue Service collecting in 2000, 2004, 2007, and 2009, respectively, \$24,398,622,000, \$21,611,904,000, \$22,485,475,000, and \$20,643,664,000. *See* 2000 ESTATE TAX RETURNS, *supra*; 2004 ESTATE TAX RETURNS, *supra*; 2007 ESTATE TAX RETURNS, *supra*; 2009 ESTATE TAX RETURNS, *supra*. These estate tax revenues accounted for 1.20%, 1.15%, 0.88%, and 0.98% of the total federal revenue in 2000, 2004, 2007, and 2009, respectively. *Compare* 2000 ESTATE TAX RETURNS, *supra*, 2004 ESTATE TAX

The Bush tax cuts eroded the progressivity of the federal tax burden.¹⁵⁶ Moreover, in terms of tax dollars saved, the Bush tax cuts

RETURNS, *supra*, 2007 ESTATE TAX RETURNS, *supra*, and 2009 ESTATE TAX RETURNS, *supra*, with FINANCIAL MGMT. SERV., DEP'T OF THE TREASURY, FINAL MONTHLY TREASURY STATEMENT OF RECEIPTS AND OUTLAYS OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2000 THROUGH SEPTEMBER 30, 2000, AND OTHER PERIODS 2 (2000), <https://www.fiscal.treasury.gov/files/reports-statements/mts/mts0900.pdf> [<https://perma.cc/78TS-8F69>], FINANCIAL MGMT. SERV., DEP'T OF THE TREASURY, FINAL MONTHLY TREASURY STATEMENT OF RECEIPTS AND OUTLAYS OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2004 THROUGH SEPTEMBER 30, 2004, AND OTHER PERIODS 2 (2004), <https://www.fiscal.treasury.gov/files/reports-statements/mts/mts0904.pdf> [<https://perma.cc/AG2H-J6DF>], FINANCIAL MGMT. SERV., DEP'T OF THE TREASURY, FINAL MONTHLY TREASURY STATEMENT OF RECEIPTS AND OUTLAYS OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2007 THROUGH SEPTEMBER 30, 2007, AND OTHER PERIODS 2 (2007), <https://www.fiscal.treasury.gov/files/reports-statements/mts/mts0907.pdf> [<https://perma.cc/6JW8-8999>], and FINANCIAL MGMT. SERV., DEP'T OF THE TREASURY, FINAL MONTHLY TREASURY STATEMENT OF RECEIPTS AND OUTLAYS OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2009 THROUGH SEPTEMBER 30, 2009, AND OTHER PERIODS 2 (2009), <https://www.fiscal.treasury.gov/files/reports-statements/mts/mts0909.pdf>. [<https://perma.cc/JF84-R6S2>].

¹⁵⁶ In 2001, the fifth quintile's percentage share of the tax burden declined from 65.6% in 2000 to 64.5%, and the tax burden share of the top 1% materially declined by almost three percentage points from 24.5% in 2000 to 21.7%. CONG. BUDGET OFF., THE DISTRIBUTION OF HOUSEHOLD INCOME, 2017: SUPPLEMENTAL DATA (EXCEL FILE), tbl.12 (2020) [hereinafter CBO 2017], <https://www.cbo.gov/publication/56575> [<https://perma.cc/B9QL-G9G8>]. The proportional shares of the fourth and third quintiles increased by 1% and 0.2%, respectively (from 17.8% and 10.2% to 18.8% and 10.4%, respectively). *Id.* The second quintile's share dropped from 5.2% to 5.0%, and the lowest quintile's proportional share remained constant at 1.1%. *Id.* In 2002 this trend continued (the fifth quintile's share declined to 64.1%, the share borne by the top 1% declined to 20.5%, the fourth and third quintile's shares rose to 19.0% and 10.6%, respectively, while the second and first quintile's shares remained constant at 5.0% and 1.1%, respectively). *Id.* For the remaining years President Bush was in office the percentage shares of the tax burden fluctuated. In each of the years 2003–2008, respectively, the shares of the fifth quintile and the top 1% were 64.8%/21.4%, 66.0%/23.7%, 67.4%/25.9%, 67.8%/25.26.5%, 67.5%/26.4%, and 69.0%/24.8%. *Id.* In each of the years 2003–2008, respectively, the shares of the tax burden borne by the fourth, third, and second quintiles were 18.9%/10.3%/4.7%, 18.2%/10.0%/4.6%, 17.4%/9.6%/4.4%, 17.2%/9.5%/4.3%, 17.1%/9.6%/4.6%, and 17.6%/9.2%/3.8%. *Id.* Except for 2008, when the first quintile's share dramatically dropped to 0.2%, for each of the years 2003–2007 the first quintile's share remained constant at either 1.1% or 1%. *Id.* During President Bush's eight years in office the effective tax rates of the fifth, fourth, third, second, and first quintiles also fluctuated. In each of the years 2001–2008, respectively, the effective tax rates of each quintile were: Fifth (26.6%, 25.9%, 24.8%, 25.1%, 25.5%, 25.5%, 24.8%, 23.7%); Fourth (19.3%, 18.5%, 17.8%, 18.0%, 18.3%, 18.3%, 18.1%, 16.0%); Third (15.7%, 15.1%, 14.3%, 14.6%, 14.8%, 14.9%, 14.8% 12.2%); Second (11.7%, 11.0%, 10.1%, 10.3%, 10.5%, 10.6%, 11.0%, 7.8%); First (6.1%, 5.6%, 5.7%, 5.3%, 5.5%, 5.9%, 5.3%, .9%). CBO 2017, *supra*, at tbl.9. However, unlike all the other quintiles, the top 1%, representing the wealthiest Americans enjoyed a consistent decline in their effective tax rate. In 2000, the effective tax rate of the top 1% was 32.3%. *Id.* In each of the years 2001–2008,

also overwhelmingly benefited the wealthiest Americans.¹⁵⁷ The Bush tax cuts had dramatic negative consequences to the federal budget. In 2001, the first year after the Bush tax cuts were enacted, the budget surplus substantially shrank.¹⁵⁸ Starting in 2002, and for each of the remaining years President Bush was in office, there were persistent and

respectively, the effective tax rates of the top 1% were: 32.0%, 31.9%, 30.3%, 30.0%, 30.2%, 29.8%, 28.2%, 28.1%. *Id.*

¹⁵⁷ See generally JOHNSTON, *supra* note 147, at 93–104, 113; David Cay Johnston, *Richest Are Leaving Even the Rich Far Behind*, N.Y. TIMES, June 5, 2005, at A1; David Cay Johnston, *Big Gain for Rich Seen in Tax Cuts for Investments*, N.Y. TIMES, Apr. 5, 2006, at A1. A comparison of the average federal tax paid by each household in each quintile (and the wealthiest Americans in the top 1% within the fifth quintile), calculated by averaging the actual federal tax paid by all the households in that group for the year 2000 (the year immediately before the Bush tax cuts became effective) to the average federal tax paid by each household in each quintile (and the wealthiest Americans in the top 1% within the fifth quintile) in each of the years 2001–2008 (and then aggregating those years) also backs up the observation that the wealthiest Americans overwhelmingly enjoyed the greatest tax savings from the Bush tax cuts. See CBO 2017, *supra* note 156, at tbl.3, 7 & 9 (documenting each of the years, 2000–2008, for the first, second, third, fourth, and fifth quintiles (and the top 1% within the fifth quintile) the average effective federal tax rate, the average household income, and a calculation of the average federal tax paid by each household (by applying the average effective federal tax rate to the average household income); and for each of the years, 2001–2008, also providing the average tax savings (or increase in taxes) by calculating the difference between the average federal tax paid by each household in that quintile for that particular year and the average federal tax paid by each household in that particular year in 2000). In 2000 the average federal tax paid by each household in the first, second, third, fourth, and fifth quintiles (and top 1% within the fifth quintile) was, respectively: \$1,294, \$6,011, \$11,868, \$20,762, \$73,531, and \$556,464. See *id.* at tbl.3 & 9. Although when comparing the average federal taxes paid in the year 2000 to each of the years 2001–2008, in most years households in each group, on average, paid less federal taxes overall, and when aggregating the tax savings (and factoring in years when federal taxes on average in real dollars rose), the top 1% by far enjoyed the greatest tax savings. See *id.* (illustrating that the average total federal tax savings aggregated in 2001–2008 for each household in the first, second, third, fourth, and fifth quintiles (and top 1% within the fifth quintile), respectively, was: \$2,359, \$11,712, \$14,015, \$18,209, \$54,584, and \$502,801 (calculated by determining the tax savings (or increase) for each group in each of the years 2001–2008 by first determining the average federal taxes tax paid by each household in that quintile for that particular year, then comparing that amount to the average federal tax paid in 2000 and then aggregating the taxes saved (or increase) in the years 2001–2008)).

¹⁵⁸ See OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, HISTORICAL TABLES: BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2005 26 tbl.1.3 (2004) [hereinafter 2005 HISTORICAL TABLES] (illustrating that in fiscal year 2001 there was a \$127.4 billion surplus); see also SLEMROD & BAKIJA, *supra* note 1, at 158–59 (explaining that a budget deficit or surplus is the difference between tax collections and government spending in a particular year and there is consensus that large budget deficits should be avoided unless there is a recession).

substantial federal deficits.¹⁵⁹ By the time President Bush left office, the national debt had grown to well over one trillion dollars.¹⁶⁰

Despite public professions that his faith guides all his decisions, President Bush never considered if his first term tax cuts survived moral scrutiny under Judeo-Christian ethical principles.¹⁶¹ Although ultimately unsuccessful, President Bush's efforts and goals to eliminate the estate tax conclusively violated these principles.¹⁶² This is because

¹⁵⁹ See 2005 HISTORICAL TABLES, *supra* note 158, at 25–26 tbl.1.3 (illustrating that in fiscal year 2001 there was a \$127.4 billion surplus, and in fiscal years 2002 and 2003 the federal deficits were \$157.8 billion and \$375.3 billion, respectively); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, HISTORICAL TABLES, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2006, 21–22 tbl.1.1 (2005) [hereinafter 2006 HISTORICAL TABLES] (illustrating that in fiscal year 2004 the federal deficit was \$412.1 billion); OFF. OF MGMT. AND BUDGET, EXEC. OFF. OF THE PRESIDENT, HISTORICAL TABLES, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2007, 21–22 tbl.1.1 (2006) [hereinafter 2007 HISTORICAL TABLES] (illustrating that in fiscal year 2005 the federal deficit was \$318.3 billion); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, HISTORICAL TABLES, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2010, 22 tbl.1.1 (2009) [hereinafter 2010 HISTORICAL TABLES] (illustrating that in fiscal years 2006, 2007, and 2008 the federal deficits were \$248.2 billion, \$160.7 billion, and \$458.6 billion, respectively).

¹⁶⁰ The national debt is the unpaid federal deficits cumulated from previous years. Although by the turn of the millennium, budget projections looked so positive that Alan Greenspan, who was then the Chair of the Federal Reserve, believed that the entire national debt could be paid off as soon as 2012. See SLEMROD & BAKIJA, *supra* note 1, at 69–70. In 2008 when President Bush left office, the national debt was \$10.7 trillion. See U.S. DEP'T OF THE TREASURY, MONTHLY STATEMENT OF THE PUBLIC DEBT OF THE UNITED STATES tbl.1 (2008), <https://www.treasurydirect.gov/govt/reports/pd/mspd/2008/opds122008.pdf>. [<https://perma.cc/8LKT-7RHL>]; see also SLEMROD & BAKIJA, *supra* note 1, at 20 (explaining that by 2009 the cumulative federal budget deficit was approximately \$1.5 trillion, 10.2 percent of Gross Domestic Product, the highest deficit relative to Gross Domestic Product since World War II).

¹⁶¹ See WALLIS, *supra* note 145, at 57, 78 (describing President Bush “as public and expressive about his faith as any recent occupant of the White House” and noting that during the 2000 presidential campaign Bush had said that “Jesus was his favorite philosopher”); James G. Lakely, *President Outlines Role of His Faith*, WASH. TIMES, Jan. 12, 2005, at A1 (quoting President Bush as saying he does not “see how you can be president without a relationship with the Lord”); *The Third Bush-Kerry Presidential Debate*, COMM'N ON PRESIDENTIAL DEBATES (Oct. 13, 2004), <https://www.debates.org/voter-education/debate-transcripts/october-13-2004-debate-transcript/> [<https://perma.cc/ML4D-M3H9>] (quoting President Bush, when asked how much faith influences his policy decisions as answering, “my faith plays a lot—a big part of my life. . . . [W]hen I make decisions, I stand on principle, and the principles are derived from who I am. I believe we ought to love our neighbor like we love ourselves, as manifested in public policy”).

¹⁶² See *The President's Agenda for Tax Relief*, THE WHITE HOUSE (July 10, 2001), <https://georgewbush-whitehouse.archives.gov/news/reports/taxplan.html> [<https://perma.cc/A86N-P8BH>] (illustrating that President Bush pushed to immediately eliminate the estate tax); see also GRAETZ & SHAPIRO, *supra* note 151, at 136 (quoting George W. Bush's presidential nomination acceptance speech at the Republican

persons claiming to follow the moral principles of Judeo-Christian ethics “must support some form of estate taxes.”¹⁶³ “Totally eliminating estate taxes would allow donors, even those with estates reaching billions of dollars[,] to transfer their wealth to heirs without limit,” which would “lead to unchecked accumulations of family dynasty fortunes.”¹⁶⁴ By geometrically and unacceptably favoring Americans already among the super wealthiest, an outright repeal of the estate tax violates Judeo-Christian principles that “some extremes of wealth accumulation are *per se* unjust in any circumstances.”¹⁶⁵

President Bush’s reasons to repeal the estate tax indicates that he believes those who earn wealth or receive wealth by virtue of their family status have unlimited ownership rights with no corresponding

convention in July 2000: “On principle, everyone should be free to pass on their life’s work to those they love. So, we will abolish the death tax.” (internal quotation marks omitted); *id.* at 152 (quoting George W. Bush from a February 2001 joint session of Congress—“It is not fair to tax the same earnings twice—once when you earn them and again when you die—so we must repeal the death tax”—and noting from that point on, Bush included his goal of repealing the estate tax in many speeches and emphasized the burden on small businesses, farmers, and ranchers, even though the impact of estate taxes on farm and small businesses is substantially less than liquid portfolio wealth such as publicly traded stocks and bonds, *see id.* at 215).

¹⁶³ Susan Pace Hamill, *Religiously Based Ethical Arguments Favoring Estate Taxes*, CANOPY FORUM (Apr. 13, 2021) [hereinafter CANOPY], <http://canopyforum.org/2021/04/13/religiously-based-ethical-arguments-favoring-estate-taxes> [<https://perma.cc/7PMD-EE5K>] (illustrating that despite their steeply progressive nature, estate taxes do not violate Judeo-Christian principles prohibiting taxes that are confiscatory or reasonable rights to enjoy private property because donors are free to transfer the exempt amount to their heirs without paying any estate tax); *see infra* notes 165–170 and accompanying text (discussing Judeo-Christian moral principles requiring a reasonable amount to be exempt from the estate tax and broad guidelines to steer this moral conversation); *see also supra* notes 73–84 and accompanying text (noting community-oriented secular values similarly also require estate taxes in some form and reasonable exemptions).

¹⁶⁴ *See* CANOPY, *supra* note 163; *see also* GRAETZ & SHAPIRO, *supra* note 151, at 7–8 (explaining that failure to tax large fortunes promotes idle aristocracy and stifles equal opportunity); *id.* at 170–71 (discussing positions of William Gates and other billionaires defending the estate tax as necessary to inhibit large fortunes from being passed from generation-to-generation and to avoid discouraging charitable contributions).

¹⁶⁵ *See supra* note 61 and accompanying text (arguing extreme accumulation of wealth is *per se* immoral). Other biblical principles back up the statement that some form of estate taxes is morally required. *See* CANOPY, *supra* note 163. General principles require those enjoying greater levels of income and wealth to bear greater tax burdens, and those with fortunes large enough to exceed reasonable estate tax exemptions should bear significantly greater tax burdens. *Id.* The estate tax also inhibits the temptations of those with an abundance of wealth to “center their lives around their wealth rather than God” and “encourages individuals with large estates to make charitable donations consistent with biblical commands that those with excess wealth should give generously.” *Id.*; *see also* Hamill, *Federal Tax Policy*, *supra* note 5, at 709–10 & nn.83–84.

tax burden to the society that provided the underlying support that made this wealth possible.¹⁶⁶ From a Judeo-Christian perspective, this implicitly denies God as the sole creator and owner of all the earth's wealth and resources and the divine source of every person's innate talents, and instead assumes that the person's own efforts or family status, rather than God's grace, produced the wealth.¹⁶⁷ President Bush's position on repealing the estate tax reflects objectivist ethics, an extreme form of individualism that is unacceptable for any Christian.¹⁶⁸

The moral principles of Judeo-Christian ethics require some level of estate tax exemptions permitting a reasonable transfer of wealth to heirs without having to pay estate taxes or donate the excess to charity, and also would favor a graduated rate structure to progressively distinguish between large estates, very large estates (for example, those worth millions in triple digits), and the largest estates reaching billions of dollars.¹⁶⁹ Although these principles do not precisely define a morally superior estate tax model, general guidelines that must steer the moral conversation include scrutinizing whether the wealthiest are paying their fair share.¹⁷⁰ The Bush estate tax cuts that were adopted

¹⁶⁶ See sources cited *supra* note 162.

¹⁶⁷ See *supra* notes 54–56, 61 and accompanying text; Hamill, *Federal Tax Policy*, *supra* note 5, at 696 & nn.57–58, 710 & nn.83–84; CANOPY, *supra* note 163.

¹⁶⁸ See *supra* notes 85–94 and accompanying text; CANOPY, *supra* note 163 (arguing extreme individualism renders objectivist ethics values hostile to taxation with any progressive elements that raises revenues beyond the minimum state and as a moral compass is “dead on arrival” for any Christian because objectivism renders everyone individually his or her own god, leaving no room for God); see also *supra* notes 73–84 and accompanying text (pointing out that arguments for total repeal of the estate tax also violate the moral principles of virtue ethics, secular humanism, and the philosophy of John Rawls).

¹⁶⁹ See *supra* notes 56, 62 and accompanying text; *infra* note 205 and accompanying text; Hamill, *Federal Tax Policy*, *supra* note 5, at 692–93 & nn.50–52, 698–99 & nn.63–64; CANOPY, *supra* note 163 (discussing Judeo-Christian ethical principles balancing reasonable rights to own private property with the teachings on wealth and the role of the estate tax that has sufficient exemptions to ensure that middle class families can leave their children the modest savings they have accumulated over a lifetime of hard work, and reasonable progressive tax rates to ensure greater sacrifice by those with greater fortunes, in helping to achieve that balance); see also *supra* notes 73–84 and accompanying text. Although the community-based secular models would engage in a similar balance, how that balance would compare to a conservative evangelical Judeo-Christian approach is beyond the scope of this article; of the three community-based secular models, it is likely the philosophy of John Rawls would arrive at lower exemptions and utilize a graduated rate structure that would be considerably steeper for the largest estates in the hundreds of millions and billions of dollars than would result from a Judeo-Christian, virtue ethics or secular humanism analysis.

¹⁷⁰ See *supra* note 68 and accompanying text; Hamill, *Federal Tax Policy*, *supra* note 5, at 704 & nn.72–74, 710 & nn.83, 85; CANOPY, *supra* note 163 (discussing Judeo-Christian moral principles that should guide the conversation when debating tax policy). This article offers no comment as to whether the Bush estate tax cuts would have withstood moral

did not receive any moral scrutiny, and for that reason they violated the moral principles of Judeo-Christian ethics as well as community-oriented secular values.¹⁷¹ Moreover, at least one prominent scholar has presented substantial evidence backing up his claim that this movement to substantially reduce and eliminate estate taxes is part of a larger strategy to gut the progressivity of the federal income tax, an effort which also violates the moral principles of Judeo-Christian ethics.¹⁷²

President Bush's moral conversation regarding his first term income tax cuts was no better than his goals to repeal the estate tax. President Bush and his advisors justified the first term income tax cuts under the discredited theory of supply-side economics.¹⁷³ They also

scrutiny if in 2001 the legislation had simply increased the estate tax exemption to \$3.5 million, or some lesser amount but still greater than the \$675,000 exemption at the close of the twentieth century (as opposed to engaging in efforts to repeal the estate tax and eventually adopting the unstable gradual increase of the exemptions until 2009, with the elimination of the estate tax in 2010, followed by a reversion to the 2001 structure). *But see supra* note 169; *infra* note 205 (arguing that by failing to distinguish between large estates worth millions in double digits, super large estates worth millions in triple digits and estates worth billions of dollars, the flat 45% rate still would have raised significant moral concerns even if the exempt amount withstood moral scrutiny).

¹⁷¹ See generally Michael J. Graetz, "Death Tax" Politics, 57 B.C. L. REV. 801 (2016) [hereinafter Graetz, *Death Tax Politics*] (describing compelling narratives created by the movement to repeal the estate tax that obscured facts and well-supported counter arguments); *id.* at 809 ("And from 2001 until the end of George W. Bush's presidency, the coalition held out for permanent repeal—something it was unable to get."); *id.* at 810 (discussing the repeal-the-death-tax movement as believing that abolishing the estate for one year, in 2010, was still a victory while providing gruesome examples of deaths being timed in 2010 in hope of avoiding the estate tax, rendering 2010, "the year to throw mama from the train—or at least from her private jet"). See also SLEMROD & BAKIJA, *supra* note 1, at 75–77 (describing the Bush estate tax cuts as "a rather curious pattern of changes over time" and the 2010 elimination of the estate tax followed by a reversion to 2001 levels as creating "some macabre incentives regarding the timing of death" and the solution ultimately adopted during President Barack Obama's first term, the fielder's choice offered to executors in 2010 (described in *infra* note 200), as saving heirs of some wealthy individuals a great deal of money).

¹⁷² See generally GRAETZ & SHAPIRO, *supra* note 151. See also *id.* at 10–11, 266; Graetz, *Death Tax Politics*, *supra* note 171 (presenting compelling evidence that the movement to repeal the estate tax is part of largely plan to minimize or eliminate the fundamental principle of progressive taxation); *supra* notes 54–56, 63–64 and accompanying text (noting Judeo-Christian moral principles condemn flat tax structures and mildly progressive structures that resemble them).

¹⁷³ President George W. Bush, *Radio Address by the President to the Nation*, THE WHITE HOUSE (Mar. 10, 2001), <https://georgewbush-whitehouse.archives.gov/news/releases/2001/03/20010310.html> [<https://perma.cc/6FBC-J9Z2>] ("Tax relief is good for our economy . . . [I]t helps kick-start our economic growth."); President George W. Bush, *President's Radio Address*, THE WHITE HOUSE (Jan. 18, 2003), <https://georgewbush->

brushed off concerns that the wealthiest Americans would primarily benefit.¹⁷⁴ While the proposal was being discussed, President Bush wanted to reduce the top income tax rate even more than was eventually adopted, and he also pushed to eliminate the tax on dividends.¹⁷⁵ Credible evidence also suggests that the Bush tax cuts were part of a movement to gravitate towards a flat income or consumption tax structure that would even further reduce revenues and the tax burden borne by the wealthiest Americans.¹⁷⁶ President Bush and his advisors

whitehouse.archives.gov/news/releases/2003/01/20030118.html [https://perma.cc/E6EY-SPAX] (“By reducing taxes, encouraging investment and removing obstacles to growth, we will create a platform for future prosperity . . .”); President George W. Bush, *President’s Radio Address*, THE WHITE HOUSE (Apr. 26, 2003), https://georgewbush-whitehouse.archives.gov/news/releases/2003/04/20030426.html [https://perma.cc/2W5U-XUXL] (“We also know that the right policies in Washington can . . . create . . . growth and prosperity.”); President George W. Bush, *President’s Radio Address*, THE WHITE HOUSE (Dec. 18, 2004), https://georgewbush-whitehouse.archives.gov/news/releases/2004/12/20041218.html [https://perma.cc/YK89-SHGV] (“The tax relief . . . has been critical to our economic recovery, and Congress needs to make that tax relief permanent.”); see also sources cited *supra* note 36 (showing numerous authorities that dispute the validity of supply-side economics).

¹⁷⁴ President George W. Bush, *Radio Address by the President to the Nation*, THE WHITE HOUSE (Feb. 17, 2001), https://georgewbush-whitehouse.archives.gov/news/releases/2001/02/20010217.html [https://perma.cc/QUX5-SXEQ] (claiming the tax cuts would be fair to all Americans because “the greatest benefits, [and] the largest percentage reductions, will go to those who need them most”); see also Joseph Curl, *Bush Refuses to Deny ‘Wrong People’ Relief; Says Democrats Use Class Warfare on Taxes*, WASH. TIMES, Jan. 10, 2003, at A04 (quoting President Bush rebutting accusations that his tax policy disproportionately benefits the wealthy: “All people who pay taxes should get tax relief . . . This is a fair plan.”); Naftali Bendavid & Jill Zuckman, *Bush Sends Tax Plan to Congress; But Some Economists Dispute Its Benefits*, CHI. TRIB., Feb. 9, 2001, at N1 (quoting Ari Fleischer, President Bush’s White House spokesman: “There is always an endeavor in this town to deny tax relief to people because they accuse some people of being rich or successful and therefore they’re not entitled to tax relief . . . That’s just not a view that President Bush holds.”).

¹⁷⁵ See *The President’s Agenda for Tax Relief*, *supra* note 162 (President Bush proposed a top income tax rate of 33% instead of the 36% rate adopted); President George W. Bush, *Radio Address by the President to the Nation*, THE WHITE HOUSE (Feb. 3, 2001), https://georgewbush-whitehouse.archives.gov/news/radio/20010203.html [https://perma.cc/UP8J-E2EP] (defending the proposed 33% rate and stating he “believe[s] no one should pay more than a third of their income to the federal government”). President Bush also pushed to eliminate the tax on dividends. See *The President’s Jobs and Growth Plan: The Dividend Exclusion Is Not Complex*, THE WHITE HOUSE, https://georgewbush-whitehouse.archives.gov/infocus/economy/complexity.html [https://perma.cc/4QNT-EY8E] (last visited Dec. 29, 2021).

¹⁷⁶ See Edmund L. Andrews, *Bush Remark Touches Off New Debate on Income Tax*, N.Y. TIMES, Aug. 12, 2004, at A20 (quoting President Bush’s response to a question about replacing the income tax with a national retail sales tax: “It’s kind of an interesting idea that we ought to explore seriously . . .”); Hamill, *Federal Tax Policy*, *supra* note 5, at 735 & nn.146–53 (discussing strong ties between President Bush and his advisors to

also intended to address any resulting federal deficits with spending cuts to programs uplifting poor and middle-class Americans.¹⁷⁷

Under the moral principles of Judeo-Christian ethics, the Bush income tax cuts and their potential effects on the federal budget should have received rigorous and heightened moral scrutiny.¹⁷⁸ No such scrutiny occurred. Neither President Bush, his advisors, nor members of Congress that supported the tax cuts ever contemplated whether after the tax cuts the wealthiest and upper income Americans would pay their fair share of the federal income tax burden. The lack of such scrutiny combined with their enthusiastic embracing of the tax benefits primarily benefiting the wealthiest Americans violated Judeo-Christian moral principles found in the New Testament's teachings on wealth requiring greater sacrifice from those enjoying greater levels of wealth.¹⁷⁹ Additionally, the lack of this scrutiny combined with their

Grover Norquist, who advocated a long-term tax policy plan to reduce revenues to a bare minimum while essentially taxing wages at a flat rate to be accomplished in multiple steps with the Bush tax cuts being the first step); *id.* at 746 & nn.172–77 (discussing President Bush's strong ties with certain conservative religious leaders all of whom support flat taxes); *see also* GRAETZ & SHAPIRO, *supra* note 151, at 270–71, 273–77 (describing the flat tax campaign along with estate tax repeal as a part of the three-decade effort to eliminate all taxes on wealth and on income from wealth). The founders of the flat tax concept themselves recognize such a structure will provide substantial tax cuts to wealthier taxpayers with the burden being shifted to the middle classes. *See* ROBERT E. HALL & ALVIN RABUSHKA, *LOW TAX, SIMPLE TAX, FLAT TAX* 67 (1983) (“[The flat tax] will be a tremendous boon to the economic elite . . .”); *id.* at 58 (“[I]t is an obvious mathematical law that lower taxes on the successful will have to made up by higher taxes on average people.”).

¹⁷⁷ *See* Hamill, *Federal Tax Policy*, *supra* note 5, at 718 & nn.109–15 (citing numerous sources illustrating that President Bush intended to cut the deficit in half by the end of his second term, while making his tax cuts permanent by cutting federal funding in many programs, including Medicaid, food and nutrition supplements, child welfare services, and education and job training).

¹⁷⁸ When President Bush first assumed office, the federal tax burden did not remotely come close to a steeply progressive model approaching a confiscatory regime that punished wealth. *See supra* notes 148–150 and accompanying text (discussing that federal income tax was within ranges of a moderately progressive model); *supra* note 68 and accompanying text; Hamill, *Federal Tax Policy*, *supra* note 5, at 709–10 (describing two reasons for the heightened moral scrutiny required by Judeo-Christian ethical principles for proposed tax changes primarily benefitting the wealthy as “Judeo-Christian teachings are far more suspicious of wealth than protective of private property . . . and . . . those enjoying higher levels of income and wealth are far more vulnerable to succumbing to the sin of greed and therefore will tend to fight for the smallest tax burden possible without considering the moral obligations demanded of their faith.”); *see also supra* notes 73–84 (noting that community-oriented secular values would also require this heightened moral scrutiny).

¹⁷⁹ *See supra* notes 152–154, 156–157 and accompanying text (describing the Bush tax cuts and illustrating that the Bush tax cuts primarily benefitted the wealthiest Americans); *supra* notes 173–175 and accompanying text (describing justification for the Bush tax cuts

callous indifference to the threat that federal deficits potentially caused to the programs uplifting the poor and middle-class Americans violated the Judeo-Christian moral principle requiring adequate tax revenues supporting reasonable opportunity.¹⁸⁰

A careful study of the circumstances surrounding and the reasons for the first term Bush income tax cuts reveals that, as in the estate tax arena, for at least three reasons objectivist ethics represented the real values behind these tax policy trends.¹⁸¹ First, President Bush and his advisors invoked the discredited theory of supply-side economics, which camouflaged their hidden objectivist ethics values.¹⁸² Second, consistent with objectivist ethics values, they showed no concern that the wealthiest Americans would primarily benefit, proposed even greater tax cuts benefiting the wealthiest Americans, and seemed to be participating in a broader effort to move towards flat or consumption tax models, all of which aggravated federal deficits and threatened the funding of programs uplifting the most vulnerable Americans.¹⁸³

as resorting to the discredited theory of supply-side economics and proposals that if adopted would have pushed the tax cuts to even further benefitting the wealthiest Americans); *supra* notes 60–71 and accompanying text (describing Judeo-Christian teachings on wealth requiring moderately progressive income tax structures and heightened moral scrutiny of tax changes that will make a moderately progressive income tax structure less so).

¹⁸⁰ See *supra* notes 46–53 and accompanying text (discussing how moral principles of Judeo-Christian ethics require adequate tax revenues to be raised that ensure each person has a reasonable opportunity to develop their potential); *supra* notes 158–160, 177 and accompanying text (discussing that the Bush tax cuts caused exploding deficits and national debt and statements by President Bush and his advisors that they intended to contain these deficits with spending cuts uplifting the most vulnerable Americans); see also GRAETZ & SHAPIRO, *supra* note 151, at 277 (“[I]f progressive taxes and progressive tax rates are purged from the tax system, the amount of taxes the government can raise becomes limited.”).

¹⁸¹ See *supra* notes 74–85 and accompanying text (describing objectivist ethics based values as identifying the long term best interest of the individual as the path to moral correctness and objectivist ethics based tax policy as raising only enough revenues to fund the minimum state under a structure void of progressive elements while strongly supporting flat/consumption tax models and proposals to reduce the taxes of the wealthiest taxpayers because wealth confers unlimited rights to whoever earned or received it).

¹⁸² See *supra* notes 36, 173 (describing President Bush justifying his first term cuts on the discredited theory of supply-side economics); see also GRAETZ, *supra* note 22, at 177–78 (noting that “[i]n the political process, economic predictions routinely serve to justify, and sometimes mask, ideological battles” while criticizing political leaders for using supply-side economics in this way, referring to President Reagan’s tax cuts in the 1980s as an example).

¹⁸³ See *supra* notes 174–180 and accompanying text; see also WALLIS, *supra* note 145, at 82, 126 (referring to the Bush tax cuts for the rich as a “blatant hypocris[y]” and stating, in the context of discussing President Bush’s vague calls for more sacrifice regarding the war in Iraq: “[I]f the White House’s calls for sacrifice are to have any moral credibility, the

Finally, due to strong ties between Grover Norquist, who indisputably fights for objectivist ethics-based tax policy, and President Bush's top policy advisor Karl Rove, it is reasonable to assume objectivist ethics philosophy was motivating President Bush himself.¹⁸⁴

During his presidential campaigns, Barack Obama stated that the federal income tax structure was not progressive enough.¹⁸⁵ He promised to reduce the income tax burden on lower and middle-income taxpayers while raising income taxes on upper middle class and wealthy Americans.¹⁸⁶ Obama also stated the estate tax structure

administration's tax cuts to the wealthiest Americans must be immediately rescinded"); *id.* at 234 ("Budgets with billions of dollars of increases for the military and massive tax cuts for the wealthiest—while cutting funding for overcoming poverty—should be named as *morally unacceptable*."); *id.* at 250 ("The government's budgets are a disaster for the poor . . . and thus directly conflict with biblical priorities.")

¹⁸⁴ See Hamill, *Federal Tax Policy*, *supra* note 5, at 735–39 & nn.146–56 (citing numerous sources documenting the tax policy goals of Grover Norquist, his connections to President Bush's top advisors, and his integral involvement with the first term Bush tax cuts as strong evidence identifying objectivist ethics as the real values behind the first term Bush tax cuts).

¹⁸⁵ See Rea Hederman et al., *The Obama and McCain Tax Plans: How Do They Compare?*, THE HERITAGE FOUND. (Oct. 15, 2008), <https://www.heritage.org/taxes/report/the-obama-and-mccain-tax-plans-how-do-they-compare> [<https://perma.cc/C2LG-3V4W>] ("Obama believes that the current tax system is not progressive enough and that higher taxes on the rich should be used to give money to low-income individuals"); David Leonhardt, *Obamanomics*, N. Y. TIMES MAG. (Aug. 20, 2008), <https://www.nytimes.com/2008/08/24/magazine/24Obamanomics-t.html> [<https://perma.cc/9J2N-PRJR>] ("If there is a theme to the Obama tax philosophy, it's that the tax code is not quite as progressive as you think it is."); Howard Gleckman, *What is Obama's Tax Plan?*, FORBES (Oct. 29, 2012, 6:01 PM), <https://www.forbes.com/sites/beltway/2012/10/29/what-is-barack-obamas-tax-plan/?sh=33f4607c7d6a> [<https://perma.cc/4DXD-K2SD>] (Obama stated during his second presidential campaign that "no household making more than \$1 million should pay a smaller share of their income in taxes than a middle-class family"); Jeanne Sahadi, *What Obama Means by Tax The Wealthy*, CNN MONEY (June 28, 2008, 9:52 AM), https://money.cnn.com/2008/06/27/news/economy/obama_wealthy_taxes/index.html [<https://perma.cc/8JLV-2B4T>] ("Most voters are aware that Barack Obama wants to raise taxes on high-income taxpayers if he's elected president in November.").

¹⁸⁶ See LEN BURMAN ET AL., TAX POLICY CENTER: URBAN INSTITUTE AND BROOKINGS INSTITUTION, AN UPDATED ANALYSIS OF THE 2008 PRESIDENTIAL CANDIDATES' TAX PLANS: REVISED AUGUST 15, 2008, UPDATED SEPTEMBER 12, 2008, at 13 (2008) [hereinafter BURMAN] (describing Obama's plan to restore the 36% and 39.6% ordinary income rates on the highest income taxpayers and raise the rate on capital gains back to 20%, up from 15%, while making the Bush tax cuts permanent for taxpayers making less than \$250,000 a year, and to offer much larger tax breaks to low and middle-income taxpayers, with the largest cuts for taxpayers at the lowest income levels, while taxpayers with the highest incomes will see their taxes rise significantly); *see also* Jason Furman & Austan Goolsbee, *The Obama Tax Plan*, WALL ST. J., Aug. 14, 2008, at A13 ("Overall, Sen. Obama's middle-class tax cuts are larger than [the tax increases on] families earning over \$250,000, making the proposal as a whole a net tax cut and reducing revenues"); Stephen Braun, *Wealth*

should be the same as it was in 2009 (the exemption set at \$3.5 million and a top rate of 45%) while Obama's opponent, Senator John McCain, would have further eroded the estate tax.¹⁸⁷

By the time President Obama started his first term in January of 2009, the country was headed towards a major recession.¹⁸⁸ In addition

Is Key in Candidates' Tax Platforms, L.A. TIMES, Aug. 21, 2008, at A1 ("The Obama campaign contended that the overwhelming majority of Americans would not see a tax increase under his plan, only the wealthiest 5% or so."); SLEMROD & BAKIJA, *supra* note 1, at 72 (describing Obama's tax policy campaign platform as targeting additional credits and deductions to low and middle-income Americans, making the Bush tax cuts permanent for them while ending those tax cuts early for Americans with adjusted gross income exceeding \$250,000).

¹⁸⁷ See BURMAN, *supra* note 186, at 11 (Obama's plan was to make the estate tax permanent with a \$3.5 million exemption with estates exceeding that taxed at 45% while McCain's plan was to make the estate tax permanent with a \$5 million exemption with estates exceeding that taxed as 15%).

¹⁸⁸ See ALAN S. BLINDER, *AFTER THE MUSIC STOPPED: THE FINANCIAL CRISIS, THE RESPONSE, AND THE WORK AHEAD* 5 (2013) ("The U.S. financial system, which had grown far too complex and far too fragile for its own good—and had far too little regulation for the public good—experienced a perfect storm during the years 2007–2009. Things started unraveling when the much-chronicled housing bubble burst, but the ensuing implosion of what I call the 'bond bubble' was probably larger and more devastating. The stock market also collapsed under the strain Ruin spread to every part of the bloated financial sector. Few institutions or markets were spared, and the worst-affected ones either perished (as in the case of Lehman Brothers) or went on life support (as in the case of Citigroup). We came perilously close to what Federal Reserve Chairman Ben Bernanke called 'a global financial meltdown.'"); see also ALAN S. BLINDER & MARK ZANDI, *CTR. ON BUDGET AND POL'Y PRIORITIES, THE FINANCIAL CRISIS: LESSONS FOR THE NEXT ONE* 5 (2015), <https://www.cbpp.org/sites/default/files/atoms/files/10-15-15pf.pdf>**Error! Hyperlink reference not valid.** [<https://perma.cc/8CK4-PBMH>] ("When the housing and bond bubbles burst at about the same time, asset holders suffered huge capital losses. . . . [M]any investors had leveraged their positions Mountains of derivatives . . . had been built upon the shaky foundations of dubious mortgages, inflated house prices, and compressed risk spreads This . . . under-regulated house of cards began to shake, gently at first, in July 2007 when Bear Stearns told investors that there was 'effectively no value left' in one of its mortgage-related funds. Market jitters got even worse in August, when BNP Paribas halted withdrawals on three funds based on U.S. subprime mortgages, telling its investors that 'the complete evaporation of liquidity' in these markets 'made it impossible to value [these] assets fairly.' HSBC quickly followed, closing its U.S. subprime mortgage lending business in September 2007. The financial system was under mounting pressure thereafter, with markets experiencing a frightening roller-coaster ride, moving up and down as the ebb and flow of news varied from merely bad to truly horrible. But the world's financial system might not have collapsed as it subsequently did were it not for the inconsistent handling of a pair of stumbling investment banks: Bear Stearns and Lehman Brothers."). See also Christian E. Weller & Brendan Duke, *Obama's Legacy on the Economy Is Anything But a Mess*, *CTR. FOR AM. PROGRESS* (June 1, 2017, 9:03 AM) <https://www.americanprogress.org/issues/economy/reports/2017/06/01/432923/obamas-legacy-economy-anything-mess/> [<https://perma.cc/TLG2-A88D>] ("The labor market was shrinking at a rate of around 700,000 to 800,000 jobs per month, economic growth had already declined in three out of four quarters of 2008, and the economy was still shrinking.

to the worsening economic crisis, President Obama also had to address the sunset provisions built into the Bush tax cuts.¹⁸⁹ The precarious economy and Republican control over the House of Representatives after the midterm elections prevented Obama from raising taxes.¹⁹⁰ The Bush tax cuts were extended for all taxpayers; numerous credits, stimulus funds, and a payroll tax cut targeted lower and middle-income Americans while built-in future mandatory spending cuts responded to the approaching federal statutory debt ceiling.¹⁹¹ During President

Entire communities were decimated by a massive spike in unemployment and a wave of foreclosures, following the financial and economic crisis that started in late 2007.” (footnote omitted)); SLEMROD & BAKIJA, *supra* note 1, at 72 (explaining how the collapse of Lehman Brothers in 2008 marked the beginning of a massive global crisis and foreshadowed a substantially more severe economic downturn than had been predicted).

¹⁸⁹ See *supra* notes 158–160 (documenting federal deficits created by the Bush tax cuts); *supra* notes 153–154 (describing sunset provisions in the Bush tax cuts).

¹⁹⁰ See SLEMROD & BAKIJA, *supra* note 1, at 72 (“By the time Obama took office in January of 2009, any tax increase seemed ill-timed due to the severe recession, and the focus was instead on further economic stimulus.”). After the 2010 midterm elections “the emergence of the ‘Tea Party’ movement and public disappointment with the pace of economic recovery re-energized Republicans, helping them take control of the House and gain some seats in the Senate[.]” *id.* at 73–74, which thwarted Obama from achieving his campaign tax policy goals. See Liz Halloran, *Obama Humbled by Election ‘Shellacking’*, NPR (Nov. 3, 2010, 5:23 PM), <https://www.npr.org/templates/story/story.php?storyId=131046118> [<https://perma.cc/7LMP-HFP5>] (“Obama took responsibility for Tuesday’s losses, expressed sadness for Democratic lawmakers who lost while standing by the administration’s policies, and defended his more controversial efforts. Pronouncing himself humbled, he pledged to negotiate with Republicans on a much less aggressive agenda.”); Roya Wolverson, *Midterm Elections 2010: Spending Wars*, COUNCIL ON FOREIGN RELS. (Oct. 18, 2010, 4:06 PM), <https://www.cfr.org/background/midterm-elections-2010-spending-wars> [<https://perma.cc/8VWL-2V3P>] (“After losing control of the House of Representatives to Republicans and six Senate seats, the Democratic minority will be challenged to pursue its plans for stimulus-led growth combined with rules to offset new spending.”); David M. Herszenhorn & Jackie Calmes, *Tax Deal Suggests New Path for Obama*, N.Y. TIMES (Dec. 6, 2010), <https://www.nytimes.com/2010/12/07/us/politics/07cong.html> [<https://perma.cc/GU59-K8E8>] (“President Obama announced a tentative deal with Congressional Republicans on Monday to extend the Bush-era tax cuts at all income levels for two years as part of a package that would also keep benefits flowing to the long-term unemployed, cut payroll taxes for all workers for a year and take other steps to bolster the economy. The deal appeared to resolve the first major standoff since the midterm elections between the White House and newly empowered Republicans on Capitol Hill. But it also highlighted the strains Mr. Obama faces in his own party as he navigates between a desire to get things done and a retreat from his own positions and the principles of many liberals.”).

¹⁹¹ During President Obama’s first term, Congress passed three major pieces of tax legislation. See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, §§ 3, 1001, 1003–04, 1006, 1121, 1141, 123 Stat. 115, 116, 310, 313, 316, 322, 326 (providing \$800 billion stimulus that included largely temporary major tax incentives (ending after 2010), a refundable tax credit up to \$400 per worker, an expansion of the child tax credit, increased AMT exemption amounts, first-time homebuyer credits, more generous tuition

Obama's first term, federal deficits exceeding one trillion dollars each year continued to mount, and overall the Bush tax cuts cost almost as twice as much than had previously been predicted.¹⁹²

During his second term, President Obama partially achieved his campaign income tax policy goals.¹⁹³ The American Taxpayer Relief Act of 2012, signed by President Obama on January 2, 2013, reinstated the 39.6% highest ordinary income rate at income levels starting at \$400,000 and the 20% top capital gains rate.¹⁹⁴ During President

credits, and tax incentives for investments made in energy efficient home upgrades and automobiles); Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111-312, §§ 1, 103, 201–202, 601, 124 Stat. 3296, 3296–97, 3299, 3309 (granting \$858 billion package that extended the Bush tax cuts at all income levels for two years, extended unemployment benefits, reduced the FICA payroll tax for one year, temporarily extended refundability of the child tax credit, the earned income tax credit for families with three or more children, credits for tuition and related expenses, and increased AMT exemption amounts); Budget Control Act of 2011, Pub. L. No. 112-25, §§ 301–02, 125 Stat. 240, 251, 256–57 (responding to fiscal crisis precipitated by the federal government approaching \$14.3 trillion statutory debt ceiling, and major provisions included \$400 billion debt ceiling increase, \$917 billion in mandatory discretionary spending cuts over 10 years, and requiring the approval of a new \$1.2 trillion deficit reducing plan in order to prevent a series of automatically triggered budget cuts, starting on January 1, 2013); *see also* SLEMROD & BAKIJA, *supra* note 1, at 2, 74, 75, 77, 81 (briefly summarizing this legislation).

¹⁹² In each year of President Obama's first term, the federal deficit exceeded one trillion dollars. *See* 2020 HISTORICAL TABLES, *supra* note 147, at 25 tbl.1.1. In 2009, the federal deficit of \$1.41 trillion hit an all-time high—annual spending exceeded annual revenues by more in that year than any other year in history. *Id.* The federal deficits in 2010, 2011, and 2012 totaled \$1.29 trillion, \$1.30 trillion, and \$1.08 trillion, respectively. *Id.* *See generally* COUNCIL OF ECON. ADVISORS, ECONOMIC REPORT OF THE PRESIDENT 83 (2012) (showing lost revenue and increased interest costs from the Bush tax cuts totaled nearly \$3 trillion); SLEMROD & BAKIJA, *supra* note 1, at 77 (noting Bush tax cuts and extensions cost approximately three trillion dollars, over two percent of gross national product); Michael J. Graetz, *Foreword – The 2017 Tax Cuts: How Polarized Politics Produced Precarious Policy*, 128 YALE L. J. F. 315, 323 (2018) [hereinafter Graetz, *2017 Tax Cuts*] (noting the initial \$1.3 trillion estimated cost of the Bush tax cuts turned out to have actual cost of far closer to \$3 trillion because “the bill was festooned with so many phase-ins and phase-outs”).

¹⁹³ *See supra* notes 185–187 (discussing Obama's tax policy goals during his first presidential campaign); *infra* notes 194–200 (discussing tax policy implemented during Obama's second term).

¹⁹⁴ American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, §§ 101–02, 126 Stat. 2313, 2316, 2318 (2013); *see also* SLEMROD & BAKIJA, *supra* note 1, at 80–81 (briefly describing the most important details of this legislation and the partisan drama surrounding its enactment); Jennifer Steinhauer, *Under Pressure, House Approves Senate Tax Deal*, N. Y. TIMES, Jan. 2, 2013, at A1 (quoting President Obama in the White House briefing room shortly after the vote: “The one thing that I think, hopefully, the new year will focus on . . . is seeing if we can put a package like this together with a little bit less drama, a little less brinkmanship, and not scare the heck out of folks quite as much.”). Later in 2013, automatic spending cuts and rancor between Democrats and Republicans culminated in a

Obama's two terms, to some degree, the progressivity of the federal tax structure was enhanced.¹⁹⁵ The federal deficit picture also materially improved, declining to well under one trillion dollars each year and even dipped below five hundred billion in two of those years.¹⁹⁶

government shutdown and a series of negotiations as to whether the looming statutory federal debt ceiling should be addressed with spending cuts or tax increases. *See* David M. Herszenhorn & Julie Hirschfeld Davis, *With Possible Shutdown Nearing, Obama Looks to Take Budget Fight to G.O.P.*, N. Y. TIMES (Sept. 16, 2015), <https://www.nytimes.com/2015/09/16/us/with-possible-shutdown-nearing-obama-looks-to-take-budget-fight-to-gop.html> [<https://perma.cc/EPG8-C4NH>] (“Congress hurtled toward a government shutdown on Tuesday, with Republicans threatening to block a budget deal if it includes financing for Planned Parenthood, as President Obama prepared to join the fight by pushing Republicans to scrap a multibillion-dollar tax advantage for private equity managers.”); *see also* SLEMROD & BAKIJA, *supra* note 1, at 81–83 (describing partisan conflict, especially among conservative Republicans over the federal statutory debt ceiling). In 2015, a compromise extended or made permanent many of the expiring provisions enacted since the beginning of the twenty-first century. *See* Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, 129 Stat. 3040; *see also* SLEMROD & BAKIJA, *supra* note 1, at 3, 83 (briefly describing this legislation).

¹⁹⁵ In 2009 when President Obama first took office, the shares of the federal tax burden borne by the fifth quintile, the top 1%, the fourth quintile, the third quintile, second quintile, and first quintile, respectively were: 67.8%, 22.0%, 18.5%, 9.6%, 3.8% and -0.1%. *See* CBO 2017, *supra* note 156, at tbl.12. During Obama's presidency, the shares of the tax burden borne by the fifth quintile and the top 1% were significantly higher each year relative to the shares of these groups in 2009, when he assumed office. *Id.* (showing in each of the years 2010–2016, respectively, the shares of the tax burden borne by the fifth quintile and top 1% were: 68.9%/24.1%, 68.6%/24.0%, 70.4%/26.9%, 68.8%/25.1%, 69.8%/26.6%, 69.5%/26.2%, 68.9%/25.0%). The trends of the share of the tax burdens borne by the other quintiles fluctuated, but (except for the first quintile) in many years was lower than the share in 2009. *Id.* (showing in each of the years 2010–2016, respectively, the shares of the tax burden borne by the fourth, third, second, and first quintiles were: 17.9%/9.2%/3.7%/0.0%, 17.9%/9.2%/3.8%/0.1%, 17.0%/8.7%/3.5%/0.2%, 17.4%/9.2%/3.9%/0.4%, 17.1%/8.9%/3.7%/0.3%, 17.2%/9.0%/3.8%/0.3%, 17.5%/9.1%/4.0%/0.3%). In 2009 when President Obama first took office, the effective tax rates of the fifth quintile, the top 1%, the fourth quintile, the third quintile, second quintile and first quintile, respectively were: 23.2%, 28.7%, 15.5%, 11.8%, 7.2%, and -0.3%. *Id.* at tbl.9. Especially in the years of Obama's second term, the effective tax rates of all quintiles rose. In each of the years 2010–2016, respectively, the effective tax rate of the fifth quintile and the top 1% was: 24.0%/29.3%, 23.5%/29.0%, 24.0%/28.6%, 26.3%/33.6%, 26.7%/33.6%, 26.7%/33.3%, 26.4%/33.1%. *Id.* In each of the years 2010–2016, respectively, the effective tax rate of the fourth and third quintiles were: 15.9%/12.1%, 15.7%/12.0%, 15.9%/12.2%, 17.4%/13.7%, 17.8%/14.0%, 17.9%/14.0%, 17.8%/13.9%. *Id.* In each of the years 2010–2016, respectively, the effective tax rate of the second and first quintiles were: 7.6%/0.0%, 7.7%/0.6%, 7.7%/0.9%, 9.1%/2.3%, 9.0%/1.9%, 9.2%/1.5%, 9.3%/1.6%. *Id.*

¹⁹⁶ In 2013, the federal deficit decreased significantly to \$680 billion. *See* 2020 HISTORICAL TABLES, *supra* note 147. This downward trend continued in 2014 and 2015, each of those years showing a federal deficit of approximately \$485 billion and \$442 billion, respectively. *Id.* In 2016 the federal deficit was \$585 billion. *Id.*

President Obama's federal income tax goals broadly centered on reinstating the income tax structure for higher income taxpayers that existed at the turn of the twenty-first century while further reducing the tax burden for the poor and middle classes.¹⁹⁷ Obama's moral reasoning veered away from objectivist ethics and inched towards the moral principles of Judeo-Christian ethics and the community-oriented secular values.¹⁹⁸ However, despite Obama's campaign goals of containing Bush estate tax cuts, compromises with Republicans resulted in the estate tax being further eroded with the estate tax exemption permanently set at \$5.25 million (indexed for inflation) with

¹⁹⁷ See Braun, *supra* note 186 ("Obama's . . . plan would restore the Clinton-era rates for the two highest tax brackets to 36% and 39.6% . . . And he would make the Bush cuts permanent for poor and middle-class Americans, adding tax breaks such as a refundable credit for wage earners and a higher-education credit for students who agree to perform 100 hours of community service."); see also Janet Novack, *Obama's Tax Choices*, FORBES (Nov. 28, 2008, 6:00 AM), <https://www.forbes.com/2008/11/26/intelligent-investing-taxes-obama-stimulus-panelNov28.html?sh=458153c16544> [<https://perma.cc/E6F6-AN8V>] ("Obama pledged to raise the top rate for couples earning more than \$250,000 back to their levels at the end of the Clinton administration. . . . Since the big tax cuts President George W. Bush pushed through were temporary, if the Obama Administration does nothing, the tax rates will revert to their Clinton level eras in 2011 anyway."); Gleckman, *supra* note 185 (noting Obama's tax policy remained largely unchanged during his second campaign: "Obama would let the two top tax rates revert to their 2000 levels—36 and 39.6 percent. He'd raise rates on capital gain from 15 percent to 20 percent for high-income households . . . His estate tax rate would be 45 percent.").

¹⁹⁸ See *supra* notes 68, 75–76, 79–80, 84 and accompanying text (discussing Judeo-Christian and community-oriented secular principles guiding the moral conversation regarding tax policy). One might reasonably speculate that had Obama not faced a severe economic crisis in his first term and partisan gridlock in his second, he might have achieved more than merely partially restoring the federal income tax structure back to where it was immediately before President Bush first assumed office. See *supra* notes 185–186 and accompanying text (discussing Obama's income tax policy goals during his first presidential campaign).

a 40% flat rate.¹⁹⁹ Predictably, the number of estates paying estate taxes continued to decline.²⁰⁰

¹⁹⁹ See BURMAN, *supra* note 186, at 11 (indicating Obama's estate tax policy goals during his first presidential campaign were to make the 2009 \$3.5 million exemption and 45% rate permanent). During his 2012 re-election campaign, President Obama advocated returning the estate tax back to the \$3.5 million exemption and 45% rate in effect in 2009, while his opponent, Senator Mitt Romney, advocated eliminating estate taxes entirely. See Mark Koba, *Obama-Romney: Where They Stand on Taxes*, CNBC, <https://www.cnbc.com/2012/11/06/obamaromney-where-they-stand-on-taxes.html> [https://perma.cc/ER6U-GE5B] (Sept. 13, 2013, 4:33 PM) ("As for the estate tax, Romney says he would eliminate it once and for all."); Jeanne Sahadi, *Tax Battle: Obama vs. Romney*, CNN MONEY (Sept. 7, 2012, 7:09 AM), <https://money.cnn.com/2012/09/07/news/economy/tax-obama-romney/index.html> [https://perma.cc/PNZ8-K7GT]; SLEMRD & BAKIJA, *supra* note 1, at 78 (noting that eliminating the estate tax was one of Romney's campaign goals); Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, §§ 301-03, 124 Stat. 3296, 3300-02 (providing legislation enacted during Obama's first term which thwarted eliminating the estate tax in 2010; for 2010 only, executors could choose to pay a flat 35% estate tax rate with a \$5 million exemption or pass the decedent's assets free of estate tax, but with a carry-over rather than fair market value basis; for 2011 and 2012 the law continued the \$5 million exemption (indexed for inflation) and flat 35% rate). During Obama's second term, a \$5.25 million exemption (indexed in the future for inflation) became permanent and the flat rate was increased to forty percent. See American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 101, 126 Stat. 2313, 2317-18 (2013); see also SLEMRD & BAKIJA, *supra* note 1, at 80-81 (briefly describing this legislation). Although an argument can be made that by 2013 the estate tax exemptions put in place, while generous, still fit within the outer parameters of Judeo-Christian principles, see CANOPY, *supra* note 163, and that President Obama's campaign goals arguably contained some moral scrutiny, see *supra* note 187, this article takes no formal position whether the estate tax exemptions in place immediately before the Tax Cuts and Jobs Act would have withstood heightened moral scrutiny. But see *infra* note 205 (arguing that by failing to distinguish between large estates worth millions in double digits, super large estates worth millions in triple digits and estates worth billions of dollars flat 40% rate raises significant moral concerns.).

²⁰⁰ Between 2010 and 2017, the downward trends largely continued. Cf. discussion *supra* note 155. In 2010, 2012, 2014, and 2017, respectively, there were 15,191; 9,412; 11,931; and 12,711 estate returns filed. INTERNAL REVENUE SERV., ESTATE TAX RETURNS FILED IN 2010, BY TAX STATUS AND SIZE OF GROSS ESTATE (2011) [hereinafter 2010 ESTATE TAX RETURNS], <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.irs.gov%2Fpub%2Firs-soi%2F10es01fy.xls&wdOrigin=BROWSELINK> [https://perma.cc/6EQS-PG7Q]; INTERNAL REVENUE SERV., ESTATE TAX RETURNS FILED IN 2012, BY TAX STATUS AND SIZE OF GROSS ESTATE (2013) [hereinafter 2012 ESTATE TAX RETURNS], <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.irs.gov%2Fpub%2Firs-soi%2F12es01fy.xls&wdOrigin=BROWSELINK> [https://perma.cc/533Y-3FHD]; INTERNAL REVENUE SERV., ESTATE TAX RETURNS FILED IN 2014, BY TAX STATUS AND SIZE OF GROSS ESTATE (2015) [hereinafter 2014 ESTATE TAX RETURNS], <https://www.irs.gov/statistics/soi-tax-stats-estate-tax-statistics-filing-year-table-1> [https://perma.cc/3WNB-EDFG]; INTERNAL REVENUE SERV., ESTATE TAX RETURNS FILED IN 2017, BY TAX STATUS AND SIZE OF GROSS ESTATE (2018) [hereinafter 2017 ESTATE TAX RETURNS],

On December 22, 2017, President Donald J. Trump signed the Tax Cuts and Jobs Act of 2017, which became effective on January 1, 2018.²⁰¹ The initial goals of President Trump and key Republican leaders to repeal the estate tax was just as immoral as President Bush's efforts were in the early twenty-first century.²⁰² The final legislation

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.irs.gov%2Fpub%2Firs-soi%2F14es01fy.xls&wdOrigin=BROWSELINK> [https://perma.cc/P7HD-CQE3]. In 2010, 2012, 2014, and 2017, respectively, the Internal Revenue Service collected \$13,216,723,000; \$8,497,115,000; \$16,390,024,000; and \$19,939,525,000 estate tax revenue. 2010 ESTATE TAX RETURNS, *supra*; 2012 ESTATE TAX RETURNS, *supra*; 2014 ESTATE TAX RETURNS, *supra*; 2017 ESTATE TAX RETURNS, *supra*. In 2010, 2012, 2014, and 2017, respectively, revenues from the Federal estate tax accounted for only 0.61%, 0.35%, 0.54%, and 0.60% of the total federal revenue. *Compare* 2010 ESTATE TAX RETURNS, *supra*, with FINANCIAL MGMT. SERV., DEP'T OF THE TREASURY, FINAL MONTHLY TREASURY STATEMENT OF RECEIPTS AND OUTLAYS OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2010 THROUGH SEPTEMBER 30, 2010, AND OTHER PERIODS 2 (2010), <https://www.fiscal.treasury.gov/files/reports-statements/mts/mts0910.pdf> [https://perma.cc/R3T7-T8G8]; *compare* 2012 ESTATE TAX RETURNS, *supra*, with FINANCIAL MGMT. SERV., DEP'T OF THE TREASURY, FINAL MONTHLY TREASURY STATEMENT OF RECEIPTS AND OUTLAYS OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2012 THROUGH SEPTEMBER 30, 2012, AND OTHER PERIODS 2 (2012), <https://www.fiscal.treasury.gov/files/reports-statements/mts/mts0912.pdf> [https://perma.cc/NN74-GWCX]; *compare* 2014 ESTATE TAX RETURNS, *supra*, with FINANCIAL MGMT. SERV., DEP'T OF THE TREASURY, FINAL MONTHLY TREASURY STATEMENT OF RECEIPTS AND OUTLAYS OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2014 THROUGH SEPTEMBER 30, 2014, AND OTHER PERIODS 2 (2014), <https://www.fiscal.treasury.gov/files/reports-statements/mts/mts0914.pdf> [https://perma.cc/T3JB-NTTZ]; *compare* 2017 ESTATE TAX RETURNS, *supra*, with FINANCIAL MGMT. SERV., DEP'T OF THE TREASURY, FINAL MONTHLY TREASURY STATEMENT OF RECEIPTS AND OUTLAYS OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2017 THROUGH SEPTEMBER 30, 2017, AND OTHER PERIODS 2 (2017), <https://fiscaldata.treasury.gov/datasets/monthly-treasury-statement/summary-of-receipts-outlays-and-the-deficit-surplus-of-the-u-s-government> [https://perma.cc/ARN8-6528].

²⁰¹ See Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (codified in scattered sections of 26 U.S.C.). Like the strategy used with Bush tax cuts, most of these provisions have a sunset date. See STAFF OF JOINT COMM. ON TAX'N, 114TH CONG., LIST OF EXPIRING TAX PROVISIONS, 2016–2025 (2016) (showing that, unless extended or otherwise changed, twenty-three of the Tax Cuts and Jobs Act's provisions will expire in 2025 and two will expire in 2026.).

²⁰² See generally *Unified Framework For Fixing Our Broken Tax Code*, S. COMM. ON FIN. (Sept. 27, 2017), <https://www.finance.senate.gov/imo/media/doc/9.27.17%20Unified%20Tax%20Framework.pdf> [https://perma.cc/Z4AP-EYB9]. This nine-page document released in September 2017 by Congressional Republicans and the Trump Administration describes tax reform goals that would have repealed “the death tax,” which was referring to federal estate tax and noting this reference is “a political move that has long been supported by the anti-tax activist Grover Norquist and others.” See Bird-Pollan, *supra* note 144, at 507 n. 50; *Unified Framework For Fixing Our Broken Tax Code*, *supra*; see also *supra* notes 162–168 (discussing moral principles of Judeo-Christian ethics and community-oriented secular values requires some form of estate taxes).

more than doubled the estate tax exemptions—for 2021, the indexed for inflation estate tax exemptions are \$11.7 million (\$23.4 million for married couples) and a flat forty percent rate is applied to taxable estates above those amounts,²⁰³ which will undoubtedly reap gigantic tax savings for the super wealthiest Americans.²⁰⁴ A strong argument can be made that the estate tax structure as it currently stands violates the moral principles of Judeo-Christian ethics and community-oriented secular values. This is because the previous exemptions were quite generous, no heightened moral scrutiny occurred before substantially increasing those exemptions, and the flat 40 % rate fails to distinguish between estates worth millions in the double digits, hundreds of

²⁰³ See Tax Cuts and Jobs Act § 11061 (amending I.R.C. §§ 2010(c), 2503(b), 2001(c), 2505(a) (2017)). Scholars had been criticizing the erosion of estate taxes that started with President Bush at the beginning of the twenty-first century and advocated strengthening it by reducing exemptions, increasing rates, or eliminating estate tax planning techniques. See, e.g., Paul L. Caron & James R. Repetti, *Occupy the Tax Code: Using the Estate Tax to Reduce Economic Inequality and Spur Economic Growth*, 40 PEPP. L. REV. 1255 (2013); Karen C. Burke & Grayson M. P. McCouch, *The Moving Target of Tax Reform*, 93 N.C. L. REV. 649 (2015); Graetz, *Death Tax Politics*, *supra* note 171; Jay A. Soled, *The Federal Estate Tax Exemption and the Need for its Reduction*, 47 FLA. ST. U. L. REV. 649 (2020). See David G. Duff, *Alternatives to the Gift and Estate Tax*, 57 B.C. L. REV. 893 (2016) and David J. Herzog, *The Income Equality Case for Eliminating the Estate Tax*, 90 S. CAL. L. REV. 1143 (2017) for scholars advocating other solutions such as making death itself a realization event.

²⁰⁴ The number of federal estate tax returns filed sharply declined from 2018 to 2019, with 13,526 returns filed in 2018 and only 6,409 returns filed in 2019. Compare INTERNAL REVENUE SERV., ESTATE TAX RETURNS FILED IN 2018, BY TAX STATUS AND SIZE OF GROSS ESTATE (2020) [hereinafter 2018 ESTATE TAX RETURNS], <https://www.irs.gov/statistics/soi-tax-stats-estate-tax-statistics-filing-year-table-1> [https://perma.cc/YCM5-E2RM], with INTERNAL REVENUE SERV., ESTATE TAX RETURNS FILED IN 2019, BY TAX STATUS AND SIZE OF GROSS ESTATE (2021) [hereinafter 2019 ESTATE TAX RETURNS], <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.irs.gov%2Fpub%2Firs-soi%2F19es01fy.xlsx&wdOrigin=BROWSELINK> [https://perma.cc/8DZJ-DLKX]. Federal estate tax revenue likewise declined from \$20,179,613,000 in 2018 to \$13,214,991,000 in 2019, with the revenue collected in 2019 accounting for only 0.38% of the total federal revenue. 2018 ESTATE TAX RETURNS, *supra*; 2019 ESTATE TAX RETURNS, *supra*; compare 2019 ESTATE TAX RETURNS, *supra*, with FINANCIAL MGMT. SERV., DEP'T OF THE TREASURY, FINAL MONTHLY TREASURY STATEMENT OF RECEIPTS AND OUTLAYS OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2019 THROUGH SEPTEMBER 30, 2019, AND OTHER PERIODS 5, tbl.1 (2019), <https://fiscal.treasury.gov/files/reports-statements/mts/mts0919.pdf> [https://perma.cc/T6JG-EYNF]. Projections estimate that doubling the estate tax exemption will continue to diminish collection of Federal estate tax revenue, subjecting a mere 0.06% of decedents to the estate tax and costing the government \$72 billion over the next decade. CONG. RSCH. SERV., OVERVIEW OF THE FEDERAL TAX SYSTEM 16 (2020), <https://sgp.fas.org/crs/misc/R45145.pdf> [https://perma.cc/5DV6-WTJJ]; TAX FOUND., PRELIMINARY DETAILS AND ANALYSIS OF THE TAX CUTS AND JOBS ACT 7 (2017), <https://files.taxfoundation.org/20171220113959/TaxFoundation-SR241-TCJA-3.pdf> [https://perma.cc/G266-X2GE].

millions in the triple digits, and those estates with values climbing into billions of dollars.²⁰⁵

The Tax Cuts and Jobs Act also cut the top rate on ordinary income to 37%, capped, repealed, or changed the structure of certain deductions, significantly increased the standard deduction while eliminating personal exemptions, and increased the Alternative Minimum Tax exemption.²⁰⁶ The Tax Cuts and Jobs Act also added a 20% deduction of the business income earned from pass-through entities, such as partnerships and limited liability companies, which creates significant disparities between wage earners and business owners.²⁰⁷ In the corporate tax arena, the law also reduced the corporate tax rate to a flat 21%.²⁰⁸

²⁰⁵ See *supra* notes 169–172 (explaining that a heightened moral scrutiny of increasing estate tax exemptions is required). Moreover, given the magnitude that the Tax Cuts and Jobs Act increased the exemptions and the initial goals to repeal the estate tax—which line up with the motives behind the Bush tax cuts—it is reasonable to treat this part of the Tax Cuts and Jobs Act as part of larger effort to eliminate the tax on wealth and minimize the progressivity of the tax structure. See *supra* notes 162–172 and accompanying text; see also CANOPY, *supra* note 163 (noting that increasing the exemption amount in the estate tax “helps the super-rich in bolstering shortcomings in the progressive income tax structure”); *supra* notes 60–62, 164–165, 170 and accompanying text (stating that a graduated rate structure for the estate tax would meaningfully distinguish between large, larger, and the largest estates which would be consistent with Judeo-Christian moral principles requiring greater sacrifice for those enjoying higher levels of wealth and would better further the important goal of the estate tax to curb vast dynastic family fortunes being perpetuated excessively benefiting those who did not earn the wealth).

²⁰⁶ See Tax Cuts and Jobs Act § 11001(a) (codified as amended at I.R.C. § 1) (stating that a 37% rate applies at income levels starting at \$500,000); *id.* § 11021(a) (codified as amended at I.R.C. § 63) (substantially increasing the standard deduction to \$12,000 for single filers and \$24,000 for joint filers); *id.* § 11041(a) (codified as amended at I.R.C. § 151) (suspending deductions for personal exemptions); *id.* § 11051(a)–(b) (codified as amended at I.R.C. § 215) (repealing the deduction for alimony payments and repealing provision requiring inclusion of such payments in recipient’s gross income); *id.* § 11042(a) (codified as amended at I.R.C. § 164) (reducing aggregate deduction for state and local taxes to \$10,000); *id.* § 11043(a) (codified as amended at I.R.C. § 163) (reducing the home mortgage deduction to interest on \$750,000 debt); *id.* § 11023(a) (codified as amended at I.R.C. § 170) (increasing allowable charitable deductions for those itemizing deductions from fifty percent to sixty percent of adjusted gross income).

²⁰⁷ See Tax Cuts and Jobs Act §§ 11011–12 (codified as amended at I.R.C. § 199A); see also sources cited *infra* note 215 (explaining that, although technically a business provision, the twenty percent deduction of income from a pass-through entity creates inequities between employee wage-earners and individuals owning a business as a sole proprietor or with others through a pass-through entity such as partnership or LLC and individuals who are employees).

²⁰⁸ See Tax Cuts and Jobs Act § 13001 (codified as amended at I.R.C. § 11); see also Graetz, *2017 Tax Cuts*, *supra* note 192, at 315 (noting that “lowering the corporate rate from 35% to 21%” brought the corporate tax rate closer to rates in other OECD countries thereby decreasing incentives of corporations “to locate their deductions in the United

The Tax Cuts and Jobs Act has been criticized by tax policy experts for a variety of reasons.²⁰⁹ Scholars have noted that the process of enacting this legislation was highly flawed.²¹⁰ Scholars also have complained that the Tax Cuts and Jobs Act negatively impacts the working poor, penalizes some taxpayers with a lesser ability to pay, and hinders the ability of students from poor and moderate-income families to achieve a college education.²¹¹ Others point out the effects of this legislation violate tax neutrality generally and further gender bias.²¹² Finally, significant scholarship also supports claims that the tax law generally and the Tax Cuts and Jobs Act specifically

States and their income abroad”); *id.* at 320 (stating that the appropriate response to disproportionate benefits flowing to higher income taxpayers from lowering the corporate tax rate is “to increase taxes at the shareholder level, not to increase corporate tax rates”); Bird-Pollan, *supra* note 144, at 517 (“[S]ome commentators believe the reduction in the [corporate tax] rate makes the United States corporate tax law more competitive in the international arena . . .”).

²⁰⁹ At least one scholar has presented extensive evidence that the “Tax Cuts and Jobs Act of 2017 further diminished the already inadequate tax relief available for the damage or destruction of personal use property caused by casualty events.” See Christine Manolakas, *The Tax Law and Policy of Natural Disasters*, 71 BAYLOR L. REV. 1, 1 (2019).

²¹⁰ See Graetz, *2017 Tax Cuts*, *supra* note 192, at 316–18 (describing the highly partisan and exclusive process of creating this legislation over a less than three-month period with no public hearings and input mostly from lobbyists); Bird-Pollan, *supra* note 144, at 504, 506–09 (describing the process of enacting the Tax Cuts and Jobs Act and noting that “[b]y contrast with the TCJA, the [Tax Reform Act of 1986] was a true exercise in bipartisanship”); see also JEFFREY H. BIRNBAUM & ALAN S. MURRAY, SHOWDOWN AT GUCCI GULCH 3–6, 18, 21 (1987) (noting that the Tax Reform Act of 1986 had bipartisan support in both houses of Congress).

²¹¹ See Bertrall L. Ross II, *A Constitutional Path to Fair Representation for the Poor*, 66 KAN. L. REV. 921, 922–23 (2018) (presenting credible evidence that the working poor are especially hurt by the Tax Cuts and Jobs Act, regardless of whether the sunset provisions are allowed to expire); Alice G. Abreu, *Tax 2018: Requiem for Ability to Pay*, 51 LOY. L.A. L. REV. 61, 64–66 (2018) (criticizing the Tax Cuts and Jobs Act for removing support obligations from the base as inequitably ignoring ability to pay); Melanie McCoskey & Doron Narotzki, *Education Has Been “Dumbed Down” in Tax Reform*, 22 FLA. TAX REV. 677, 680–81 (2019) (noting that the Tax Cuts and Jobs Act will reduce the ability of students from low- and moderate-income families to achieve a college education by having the effect of reducing scholarships from elite schools).

²¹² The Tax Cuts and Jobs Act has been criticized as being generally biased. See generally Linda Sugin, *The Social Meaning of the Tax Cuts and Jobs Act*, 128 YALE L. J. F. 403 (2018) (criticizing the Tax Cuts and Jobs Act for favoring traditional families (married couple with children and one working parent) and capital over labor, and for subsidizing only charity given by the rich). It has also been criticized as perpetuating gender bias. See Anne Bryson Bauer, *We Can Do It? How the Tax Cuts and Jobs Act Perpetuates Implicit Gender Bias in the Code*, 43 HARV. J. L. & GENDER 1, 4, 6–7 (2020).

perpetuates racial bias.²¹³ All of these concerns raise ethical issues under broad concepts of justice.²¹⁴

Tax policy experts claim that the Tax Cuts and Jobs Act primarily benefits the wealthiest taxpayers both generally²¹⁵ and focusing specifically on the tax cuts on income from passthrough entities such as partnerships and limited liability companies.²¹⁶ Tax policy experts

²¹³ See DOROTHY A. BROWN, *THE WHITENESS OF WEALTH* 48–59 (2021) (criticizing the marriage and singles penalties after the Tax Cuts and Jobs Act as still disproportionately affecting black taxpayers); *id.* at 182–83 (criticizing the increased estate tax exemptions of the Tax Cuts and Jobs Act as overwhelmingly benefitting white families); *id.* at 73–74, 91–92 (criticizing changes made in the Tax Cuts and Jobs Act to home mortgage deductions as more advantageous to white families and, because black families are disproportionately renters, arguing that race neutrality cannot be achieved until the tax law levels the playing field between homeowners and renters); see also Palma Joy Strand & Nicholas A. Mirkay, *Racialized Tax Inequity: Wealth, Racism, and the U.S. System of Taxation*, 15 *NW. J. L. & SOC. POL'Y* 265, 274, 278 (2020) (stating that the Tax Cuts and Jobs Act amplifies racist effects that have always existed in the tax structure); Victoria J. Haneman, *Contemplating Homeownership Tax Subsidies and Structural Racism*, 54 *WAKE FOREST L. REV.* 363, 367, 377–79 (2019) (criticizing homeownership subsidies of the Tax Cuts and Jobs Act as aggravating structural racism); Bre Jordan, *Denouncing the Myth of Place-Based Subsidies as the Solution for Economically Distressed Communities: An Analysis of Opportunity Zones as a Subsidy for Low-Income Displacement*, 10 *COLUM. J. RACE & L.* 65, 85–87 (2020) (criticizing the opportunity zones created by the Tax Cuts and Jobs Act as more likely to benefit wealthy investors and large corporations at the expense of low-income, minority residents, who risk being pushed out of their homes).

²¹⁴ See *supra* notes 48, 73–84 and accompanying text; Hamill, *Federal Tax Policy*, *supra* note 5, at 684 & n.30 (discussing the broad concept of justice within Judeo-Christian and community-oriented secular values); see also *Justice*, *BLACK'S LAW DICTIONARY* (11th ed. 2019) (defining “justice” as “[t]he fair treatment of people” and “[t]he fair and proper administration of laws”).

²¹⁵ See McMahan, *supra* note 30, at 430 (criticizing the disproportionate benefits to “individuals at the top of the income pyramid” and preferences for unincorporated business owners over wage earners as violating “horizontal and vertical equity”); Bird-Pollan, *supra* note 144, at 523–24 (noting most commentators agree that most of the benefits from the Tax Cuts and Jobs Act “will accrue to higher-income and wealthy taxpayers”); Edward J. McCaffery, *The Death of the Income Tax (or, The Rise of America's Universal Wage Tax)*, 95 *IND. L. J.* 1233, 1278–79 (2000) (noting that the Tax Cuts and Jobs Act has moved the income tax closer to being a wage tax, which overwhelmingly benefits the wealthiest taxpayers and corporations). See generally Chye-Ching Huang, *Fundamentally Flawed 2017 Tax Law Largely Leaves Low- and Moderate-Income Americans Behind*, *CTR. ON BUDGET AND POL'Y PRIORITIES* (Feb. 27, 2019), <https://www.cbpp.org/research/federal-tax/fundamentally-flawed-2017-tax-law-largely-leaves-low-and-moderate-income> [<https://perma.cc/5F7R-GCX7>]; Josh Bivens & Hunter Blair, *The Likely Economic Effects of the Tax Cuts and Jobs Act (TCJA): Higher Incomes for the Top, No Discernable Effect on Wage Growth for Typical American Workers*, *ECON. POL'Y INST.* (June 1, 2018), <https://www.epi.org/publication/the-likely-economic-effects-of-the-tax-cuts-and-jobs-act-tcja-higher-incomes-for-the-top-no-discernible-effect-on-wage-growth-for-typical-american-workers/> [<https://perma.cc/6VKU-L9GE>].

²¹⁶ See Graetz, *2017 Tax Cuts*, *supra* note 192, at 331–34 (discussing inequitable features in the Tax Cuts and Jobs Act that allow a deduction of 20% of the business income a

and economists have also expressed grave concerns the Tax Cuts and Job Act will substantially exacerbate budget deficits and ultimately threaten the nation's fiscal stability, especially if the tax cuts are continued after the sunset provisions.²¹⁷ The data strongly supports the experts' dire warnings regarding out-of-control federal deficits and the nation's fiscal stability.²¹⁸

Like President Bush, President Trump and his advisors similarly invoked the discredited theory of supply-side economics while they

taxpayer earns from a pass-through entity and noting that “many enormous businesses clearly qualify for the twenty percent deduction”); Bird-Pollan, *supra* note 144, at 518–19 (discussing the provision in the Tax Cuts and Jobs Acts that allows a deduction of twenty percent of the business income a taxpayer earns from a pass-through entity and noting that “the largest share of [this] benefit . . . will accrue to high-income taxpayers”); Ari Glogower & David Kamin, *The Progressivity Ratchet*, 104 MINN. L. REV. 1499, 1568–70 (2020) (discussing the deduction of twenty percent of the income from pass-through entities as significantly benefitting wealthy taxpayers at the expense of wage earners).

²¹⁷ See Graetz, *2017 Tax Cuts*, *supra* note 192, at 322 (identifying the effect on federal deficits and debt as “the most important shortcoming” of the Tax Cuts and Jobs Act); *id.* at 323–24 (describing the federal debt of seventy-five percent of GDP as larger than it has been since the end of World War II, with the national debt headed towards \$20 trillion, costing more than \$1 trillion in interest a year, which will “increase[] the risk[] of substantially higher interest rates, inflation, and even another financial crisis,” threatening the living standards of Americans and jeopardizing promises made to the retiring Baby Boom generation and funding the War on Terror, and finally concluding that “[w]e have never in modern times faced such a dangerous imbalance between the levels of federal spending and revenues. . . [W]e simply cannot afford the 2017 tax cuts”); see also Bird-Pollan, *supra* note 144, at 523 (discussing estimates of revenue losses from the Tax Cuts and Jobs Act as costing approximately \$1.5 trillion over the next ten years, which will balloon to \$2 trillion if the sunset provisions are extended); Graetz, *2017 Tax Cuts*, *supra* note 192, at 324–25 (noting that if sunset provisions of the Tax Cuts and Jobs Act are extended cost will increase from \$1.5 trillion to nearly \$3 trillion and the federal debt will rise to more than ninety-six percent of GDP by 2028, possibly exceeding 200% of GDP by 2048 with interest on the debt becoming the largest federal spending program by 2050). Even before the Tax Cuts and Jobs Act was passed, at least one prominent tax policy expert presented solid evidence backing up his warning that “the United States is currently on an unsustainable long-term fiscal path.” Daniel Shaviro, *Tax Reform Implications of the Risk of a U.S. Budget Catastrophe*, 50 U. LOUISVILLE L. REV. 577, 577–80 (2012); Daniel Shaviro, *The Long-Term U.S. Fiscal Gap: Is the Main Problem Generational Inequity*, 77 GEO. WASH. L. REV. 1298, 1298 (2009).

²¹⁸ See OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, HISTORICAL TABLES: BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2021 25, tbl.1.1 (2020). In fiscal year 2017, prior to the implementation of the Tax Cuts and Jobs Act's tax provisions, the federal deficit was \$665 billion. *Id.* In fiscal year 2018, the year over year deficit increased to \$779 billion. *Id.* In 2019, the deficit again increased, year over year, to \$984 billion. *Id.* The Office of Management and Budget projects the deficit for fiscal years 2020–2025 to be \$1.1 trillion, \$966 billion, \$920 billion, \$746 billion, \$552 billion, and \$527 billion, respectively. *Id.*

urged Congress and the public to support the Tax Cuts and Jobs Act.²¹⁹ Trump also exaggerated the scope of the tax relief that would be experienced by the middle classes and downplayed the primary benefits to the wealthiest Americans.²²⁰ Astoundingly, Trump seemed indifferent, perhaps to the point of being clueless, that this legislation would set the nation back on an unstable path of uncontrolled deficits and fiscal instability.²²¹

²¹⁹ See Sam Fleming, *Trump Tax Cuts: A Wage Rise For All Or Wealth Boost For the Rich?*, FIN. TIMES (Nov. 27, 2017), <https://www.ft.com/content/8b5233a6-d142-11e7-9dbb-291a884dd8c6> (noting that during the debate over the Tax Cuts and Jobs Act, Republicans described bill as “a game changer that will create sustainable growth”); Joseph Lawler, *Trump, GOP Prepare for Tax Code Bonfire*, WASH. EXAM’R (May 15, 2017), <https://www.washingtonexaminer.com/tag/donald-trump?source=%2Ftrump-gop-prepare-for-tax-code-bonfire%2Farticle%2F2622938> [<https://perma.cc/SE5J-9BUZ>] (“The theory behind Trump’s tax plan is that lower tax rates for individuals and businesses will lead to more work and investment.”).

²²⁰ In his State of the Union Address immediately after the Tax Cuts and Jobs became effective, President Trump stated that the cuts “provide tremendous relief for the middle class and small businesses.” President Donald J. Trump, Address Before a Joint Session of the Congress on the State of the Union (Jan. 30, 2018); see also Mike Pence, Editorial, *Look at Your Paycheck. Tax Cuts Are Working for Arizona*, ARIZ. REPUBLIC (Apr. 30, 2018, 4:15 PM), <https://www.azcentral.com/story/opinion/op-ed/2018/04/30/mike-pence-federal-tax-cuts-working-arizona/565017002/> [<https://perma.cc/G5V3-ENT7>] (“Our tax cuts give unprecedented relief to working families and job creators large and small, putting more money in the pockets of people across the Grand Canyon State.”); Fleming, *supra* note 219 (noting Republican claims that the bill will be a “boon for the middle class[] are being savaged by many economists” and that “[i]ndependent analysis suggests the benefits will be skewed to the richest in society”); Lawler, *supra* note 219 (describing the packaging of the special pass-through tax rate as a “small business” tax cut as obscuring that “much of the benefit would accrue to large businesses and wealthy individuals”); Lori Robertson et. al., *GOP, Democrats Spin Tax Plan*, FACTCHECK.ORG, <https://www.factcheck.org/2017/11/gop-democrats-spin-tax-plan/> [<https://perma.cc/6E9S-G7RQ>] (Dec. 6, 2017) (quoting Trump as touting the plan as a “very big” tax cut for the “middle income” while discussing arguments from both sides revealing that this claim is substantially exaggerated); Editorial, *House’s Massive Tax Cuts Are Not Tax Reform*, TAMPA BAY TIMES (Nov. 10, 2017) [hereinafter TAMPA BAY TIMES], https://www.tampabay.com/opinion/editorials/Editorial-House-s-massive-tax-cuts-are-not-tax-reform_162445717/ [<https://perma.cc/MK56-4LFB>] (“To hear U.S. House Republicans tell it, their new tax bill would fatten the savings accounts of average Americans and make paying for college a breeze. According to President Donald Trump, rich folks like him would hardly benefit at all. Of course, that’s all a fairy tale.”).

²²¹ See Fleming, *supra* note 219 (describing claims that Trump’s tax cuts “will more than pay for themselves” as “widely lambasted” while noting “[a]cademic models including one at the University of Pennsylvania’s Wharton School suggest the package will pile on trillions of additional dollars in public debt as tax revenues sinks, sapping positive growth effects over time”); Editorial, *The Trump Administration’s Latest Tax Scheme Is Its Worst Yet*, L.A. TIMES (Aug. 2, 2018, 4:05 AM), <https://www.latimes.com/opinion/editorials/la-ed-trump-capital-gains-20180802-story.html> [<https://perma.cc/F8DR-PTG9>] (criticizing Trump Administration contemplating unilaterally cutting capital taxes using questionable regulatory authority “even as the annual federal budget deficit – not just the accumulated

Commenting on the Tax Cuts and Jobs Act, one of the nation's most prominent and respected tax policy experts stated: "Our current tax system is unstable. The sad truth is that the 2017 legislation moved us far away from the economically advantageous, fiscally responsible, and simplified tax reform that our nation so badly needs."²²² The justifications and the effects of the Tax Cuts and Jobs Act are also void of even a shred of Judeo-Christian or community-oriented ethical values. The focus on saving taxes that disguises the primary benefits to wealthier Americans, with the same callous fiscal irresponsibility reminiscent of the Bush tax cuts era, is squarely in line with objectivist ethics values.²²³

President Trump's statements and actions have earned him the dubious distinction of being, at best, the most reckless president in recent memory²²⁴ and void of any moral principles, other than perhaps

debt – surges well past \$ 1 trillion," noting "[i]f the enormous and growing budget deficit won't deter the president from showering wealthy Americans with more tax breaks, let's hope that the law will"; TAMPA BAY TIMES, *supra* note 220 ("[The tax cuts] would add at least \$1.5 trillion to the federal debt over the next decade. That bloat would surely come back to haunt us all in the form of cuts to Medicare and Social Security, once Republicans remember they used to be against exploding deficits.").

²²² See Graetz, *2017 Tax Cuts*, *supra* note 192, at 337.

²²³ See *supra* notes 45–94, 162–164, 201–221 and accompanying text.

²²⁴ A complete list of Trump's extremely poor handling of public policy issues is too long to cover completely. Two examples include the COVID-19 pandemic and climate change. See e.g., Alexander Burns, *Trump's Closing Argument on Virus Clashes With Science, and Voters' Lives*, N.Y. TIMES (Oct. 28, 2020), <https://www.nytimes.com/2020/10/28/us/politics/trump-coronavirus.html> [<https://perma.cc/43G3-S8FG>] (describing Trump badly dealing with the pandemic, clashing with medical professionals at every level of government, falsely telling a crowd the spike in cases was due to increased testing, continuing to hold large rallies, all of this essentially taking an approach that "amounts to an Obi-Wan-like attempt to wave his hand before the electorate and tell voters that they are not experiencing a pandemic that is tearing through their neighborhoods and filling hospitals"); Paul Krugman, *Trump's Coronavirus Response Was Beyond Incompetent*, N.Y. TIMES (Sep. 10, 2020), <https://www.nytimes.com/2020/09/10/opinion/donald-trump-coronavirus.html> [<https://perma.cc/E7RJ-AYAN>] (describing Trump's downplay of the pandemic as deliberate and "immoral, bordering on criminal" because Trump feared bad news might negatively impact the stock market, and "he felt that he needed to sacrifice thousands of American lives to prop up the Dow"); Amy Harder & Peter Nicholas, *Donald Trump Taps Oklahoma Attorney General Scott Pruitt to Lead EPA*, WALL ST. J., <https://www.wsj.com/articles/donald-trump-taps-oklahoma-attorney-general-scott-pruitt-to-lead-epa-1481143068> (Dec. 7, 2016, 4:43 PM) (describing Trump's choice to lead the Environmental Protection Agency, Scott Pruitt, as a climate change skeptic with heavy ties to and influence in the oil and gas industry who as Oklahoma's attorney general fought EPA regulations during the Obama administration); Eli Stokols, *Donald Trump Withdraws From Paris Climate Deal Despite Allies' Opposition*, WALL ST. J., <https://www.wsj.com/articles/donald-trump-to-exit-paris-climate-deal-officials-say-1496343854> (June 2, 2017, 12:44 AM) (describing Trump withdrawing the U.S. from Paris

an obscenely warped form of objectivist ethics.²²⁵ Unlike President Bush, who more than twenty years before his first presidential campaign transformed from being a nominal Christian into a “born-again again believer,”²²⁶ President Trump never openly claimed to be a Christian until he decided to run for president.²²⁷ Astoundingly,

Climate Accord to gain economic advantages, spawning widespread rebuke among world leaders and CEOs of publicly traded U.S. corporations, as well the Secretary of State and Defense Secretary, “who have long viewed combating climate change as a matter of national security”); Lisa Friedman, *‘I Don’t Know That It’s Man-Made,’ Trump Says of Climate Change. It Is.*, N.Y. TIMES (Oct. 15, 2018), <https://www.nytimes.com/2018/10/15/climate/trump-climate-change-fact-check.html> [<https://perma.cc/D7TG-4F99>] (fact-checking and illustrating Trump’s false statements regarding climate change); see also David Leonhardt, *The People vs. Donald J. Trump*, N.Y. TIMES (Jan. 5, 2019), <https://www.nytimes.com/2019/01/05/opinion/sunday/trump-impeachment.html> [<https://perma.cc/C4JT-4MV6>] (pleading passionately for impeachment for reasons beyond Trump’s ideology or “his lazy approach to the job, like his refusal to read briefing books or the many empty hours on his schedule” but rather for the “demonstrable ways that he has broken the law or violated his constitutional oath” and then listing and discussing in detail four offenses: (1) “Trump has used the presidency for personal enrichment”, (2) “Trump has violated campaign finance law”, (3) “Trump has obstructed justice”, and (4) “Trump has subverted democracy”); Michael Dimock & John Gramlich, *How America Changed During Donald Trump’s Presidency*, PEW RSCH. CTR. (Jan. 29, 2021), <https://www.pewresearch.org/2021/01/29/how-america-changed-during-donald-trumps-presidency> [<https://perma.cc/6T6Q-WQ79>] (discussing various negative effects of Trump’s presidency including stoking partisan divisions, aggravating racial tension, using twitter and media to make numerous false statements, promoting conspiracy theories, undermining public health during the pandemic, harming U.S. reputation abroad, undermining democracy by refusing to concede the election by falsely claiming it was stolen, and encouraging the January 6, 2021 insurrection riot on the capital).

²²⁵ Although there are no explicit constraints on selfish behavior, when pursuing long term self-interest objectivist ethics values still require law abiding behavior. See RAND, SELFISHNESS, *supra* note 87, at 128, 131 (implicitly assuming, by asserting that government functions are limited to the minimum state—the police, the courts and national defense—that objectivist ethics values deem breaking the law inconsistent with long term self-interest and is therefore immoral). Although this article does not claim to offer proof that President Trump violated the law, scholarly evidence suggests there is a strong possibility, both before and after he assumed office, that Trump did break the law and at a minimum has little regard for the rule of law. See generally DAVID CAY JOHNSTON, THE MAKING OF DONALD TRUMP (2016); DAVID CAY JOHNSTON, IT’S EVEN WORSE THANK YOU THINK: WHAT THE TRUMP ADMINISTRATION IS DOING TO AMERICA (2018); DAVID CAY JOHNSTON, THE BIG CHEAT: HOW DONALD TRUMP FLEECE AMERICA AND ENRICHED HIMSELF AND HIS FAMILY (2021).

²²⁶ See WALLIS, *supra* note 145, at 139 (discussing that President Bush was raised an Episcopalian and joined the United Methodist Church after “a life-changing conversion, around the age of forty, from being a nominal Christian to a born-again believer”).

²²⁷ See Daniel Burke, *The Guilt-Free Gospel of Donald Trump*, CNN <https://www.cnn.com/2016/10/21/politics/trump-religion-gospel/index.html> [<https://perma.cc/5GDH-JX24>] (Oct. 24, 2016, 4:30) (quoting Paula White, who had known Trump for 14 years at the time, as saying: “If [Trump] suddenly came out all religious that would seem staged to me. . . . Donald has never been public about his

despite his glaring character defects and the obvious political expediency of his recent conversion, many of Trump's staunchest supporters, even during his failed re-election campaign, were evangelical and other Christians.²²⁸ This is beyond shameful. By

faith . . ."); Maggie Haberman & Thomas Kaplan, *Evangelicals See Donald Trump as Man of Conviction, if Not Faith*, N.Y. TIMES (Jan. 18, 2016), <https://www.nytimes.com/2016/01/19/us/politics/evangelicals-see-donald-trump-as-man-of-conviction-if-not-faith.html> [<https://perma.cc/F4VX-YX2N>] (noting early in the primary Trump identified himself as a Presbyterian); Jeremy W. Peters, *Social Conservatives, However Reluctant, Are Warming to the Idea of Trump*, N.Y. TIMES (May 15, 2016), <https://www.nytimes.com/2016/05/16/us/politics/donald-trump-conservatives.html> [<https://perma.cc/JD66-G2C5>] (describing Trump's "irreverence in referring to Holy Communion as having 'my little cracker'" and his "inability to ask God for forgiveness, which he said he had never done"); Robert P. Jones, *The Evangelicals and the Great Trump Hope*, N.Y. TIMES (July 11, 2016), <https://www.nytimes.com/2016/07/11/opinion/campaign-stops/the-evangelicals-and-the-great-trump-hope.html> [<https://perma.cc/9S6E-4LS2>] (quoting James C. Dobson, founder of Focus on the Family and highly influential in conservative evangelical circles, as claiming he has "second-hand knowledge that Mr. Trump had recently come 'to accept a relationship with Christ' and that Mr. Trump should be 'cut some slack' as 'a baby Christian'").

²²⁸ See Haberman & Kaplan, *supra* note 227 (noting that Trump, "[b]rash, thrice-married, cosseted in a gilded tower high above Fifth Avenue and fond of swearing from the stage of his rallies . . . who has spent his career in pursuit, and praise, of wealth, would seem an odd fit for voters who place greater value on faith, hope and charity[.]" and documenting Trump's garnering Republican primary front-runner support among white, conservative evangelical voters, ahead of other Republicans such as Ted Cruz, whose father is an evangelical pastor); Peters, *supra* note 227 (describing social conservatives embracing Trump's candidacy despite his previous support of Planned Parenthood, abortion rights and liberal views on gays and lesbians); Gregory A. Smith, *Among White Evangelicals, Regular Churchgoers Are the Most Supportive of Trump*, PEW RSCH. CTR. (Apr. 26, 2017), <https://www.pewresearch.org/fact-tank/2017/04/26/among-white-evangelicals-regular-churchgoers-are-the-most-supportive-of-trump/> [<https://perma.cc/56U9-EQL2>] (observing that white evangelicals overwhelmingly voted for Trump in 2016 and continue to support him as his presidency nears the 100-day milestone); Philip Schwadel & Gregory A. Smith, *Evangelical Approval of Trump Remains High, but Other Religious Groups Are Less Supportive*, PEW RSCH. CTR. (Mar. 18, 2019), <https://www.pewresearch.org/fact-tank/2019/03/18/evangelical-approval-of-trump-remains-high-but-other-religious-groups-are-less-supportive/> [<https://perma.cc/4WUL-67TT>] (noting that white evangelical Protestants continue to overwhelmingly support Trump more than two years into his presidency). Moreover, white evangelicals overwhelmingly supported and voted for Trump during his re-election campaign. See Michael Lipka & Gregory A. Smith, *White Evangelical Approval of Trump Slips, but Eight-in-Ten Say They Would Vote for Him*, PEW RES. CTR. (July 1, 2020), <https://www.pewresearch.org/fact-tank/2020/07/01/white-evangelical-approval-of-trump-slips-but-eight-in-ten-say-they-would-vote-for-him/> [<https://perma.cc/M8Y5-J34X>]; Gregory A. Smith, *White Christians Continue to Favor Trump Over Biden, but Support Has Slipped*, PEW RSCH. CTR. (Oct. 13, 2020), <https://www.pewresearch.org/fact-tank/2020/10/13/white-christians-continue-to-favor-trump-over-biden-but-support-has-slipped/> [<https://perma.cc/ZW27-33JU>]; Justin Nortey, *Most White Americans Who Regularly Attend Worship Services Voted for Trump in 2020*, PEW RES. CTR. (Aug. 30, 2021), <https://www.pewresearch.org/fact-tank/2021/08/30/most->

supporting Trump, these Christians made a Faustian Bargain²²⁹ that not only grossly violated the moral principles of Judeo-Christian ethics but also is a disgraceful embarrassment to—and a terrible witness for—the church.²³⁰ The fact that so many Christians gave in to the sin of idolatry by blindly following such a repugnant person is a sign that the Christian religion as a viable and authentic conviction with a principled moral compass is in deep trouble.²³¹

white-americans-who-regularly-attend-worship-services-voted-for-trump-in-2020/
[<https://perma.cc/PG62-W9AU>].

²²⁹ A Faustian Bargain is “a pact where a person trades something of supreme moral or spiritual importance, such as personal values or the soul, for some worldly or material benefit, such as knowledge, power, or riches. The term refers to the legend of Faust . . . a character in German folklore and literature, who agrees to surrender his soul to an evil spirit . . . in exchange for . . . access to the world’s pleasures.” *Faustian Bargain*, ENCYC. BRITANNICA (Mar. 12, 2020), <https://www.britannica.com/topic/Faustian-bargain>. Like all Faustian Bargains, the Faustian Bargain conservative evangelicals made when they ignored their own moral principles and supported Trump is tragic and self-defeating because what they surrendered (credibility as true representatives of Jesus Christ, which has been permanently tarnished) is ultimately far more valuable than what they obtained (power for a limited number of years to have more influence over desired public policy goals).

²³⁰ See sources cited *supra* notes 225–229 (blatant hypocrisy in supporting such an obvious fraud who expediently used religion as a manipulative tool to garner political power will likely drive people away from the church and discourage people from becoming part of the church); see also Haberman & Kaplan, *supra* note 227 (quoting Trump supporter Larry Ryman, a 74-year-old street preacher, who admitted he did not know if Trump was truly a man of God but, “[i]f he isn’t, he’s talking like it” (internal quotation marks omitted)); Jones, *supra* note 227 (in the context of discussing the utilitarian motive for conservative evangelicals supporting Trump—a desire to reclaim cultural dominance and power—quoting the Reverend Robert Jeffress, the influential senior pastor of the First Baptist Church in Dallas and a prominent member of Trump’s evangelical advisory committee: “I want the meanest, toughest, son-of-a-you-know-what I can find in that role . . .”); Michael Tackett, *Trump Fulfills His Promises on Abortion, and to Evangelicals*, N.Y. TIMES (May 16, 2019), <https://www.nytimes.com/2019/05/16/us/politics/trump-abortion-evangelicals-2020.html> [<https://perma.cc/Q3DN-C5LJ>] (quoting Richard Land, a prominent evangelical Christian leader as admitting “[t]he relationship that evangelicals have with President Trump is a very transactional one” and discussing Land’s identifying Trump’s use of graphic imagery when he attacked abortion during the third presidential debate as the moment Trump secured the election (internal quotation marks omitted)); Pam Belluck, *What Is Late-Term Abortion? Trump Got It Wrong*, N.Y. TIMES (Feb. 6, 2019), <https://www.nytimes.com/2019/02/06/health/late-term-abortion-trump.html> [<https://perma.cc/CJ3R-9439>] (noting “[t]here are inaccuracies and gray areas in Mr. Trump’s assertions Contrary to Mr. Trump’s claim, late-term abortions do not allow ‘a baby to be ripped from the mother’s womb moments before birth’” and Trump’s goal to protect “children who can feel pain in the mother’s womb” ignores scientific evidence showing most neuroscientists have concluded the fetus cannot experience pain prior to twenty-four weeks).

²³¹ The general message of both the Old and New Testament warns that idolatry is a formidable stumbling block to authentically embracing Christianity. CRAIG L. BLOMBERG, *THE NEW AMERICAN COMMENTARY: MATTHEW 78*, 132–33 (1992) (discussing Jesus’s message in *Matthew* to wolves in sheep’s clothing as representing individuals

CONCLUDING THOUGHTS, HOPEFUL POSSIBILITIES, AND WARNINGS

The twenty-first century tax policy trends are mostly headed in the wrong moral direction. At the state and local level, the picture of vast injustice is just as disgraceful as it was when I completed my scholarship morally condemning first Alabama's and then the state and local tax structures and K-12 funding in all fifty states. The state and local tax structures trap most of the poorest and lower middle-class families as a permanent underclass. The regressive tax burdens (and in a handful of states the almost flat structures) take an unacceptably large portion of the scarce resources these families need to meet basic needs and try to improve their lives. The inadequate funding of public schools, especially in the high poverty school districts, denies the children of these families any reasonable opportunity to break out of this underclass. This situation is not only grossly unethical under community-based secular moral theories but also violates the moral principles of Judeo-Christian ethics.²³²

To remedy the vast injustice poisoning state and local tax policy, upper-middle class and the wealthiest taxpayers in all states must pay more and, in most states, varying degrees of substantially more state and local taxes. Due to the lopsided power enjoyed by those of higher levels of income and wealth, the natural dislike of paying taxes and tendency to succumb to greed, this goal for each individual state will

masquerading as Christians); BILLY K. SMITH & FRANK S. PAGE, *THE NEW AMERICAN COMMENTARY: AMOS, OBADIAH, JONAH 111–13* (1995) (interpreting the message of *Amos* 5:21–24 as a strong condemnation of hollow worship that indicates the following: “Religious activity is no substitute for national or personal righteousness. It may even sometimes be a hindrance.”); *See* CRAIG S. KEENER, *MATTHEW 335* (Grant R. Osborne et al. eds., 1997) (drawing parallels between religious leaders Jesus denounced in his day with “many popular preachers and people who [are] . . . practicing human religion rather than serving God with purified hearts” and issuing this chilling indictment of Christianity, which applies to the conservative evangelicals who supported Trump: “I suspect that much of what passes for Christianity today is little more than human religion with the name Jesus tacked on to it . . . When religion becomes a veneer of holiness to conceal unholy character, it makes bearers less receptive to God’s transforming grace.”); KENNETH MATHEWS, *AMOS: REPENTANCE OR RUIN 91* (1995) (“[Christians] must never so closely identify with a political faction that we cease to speak for God independently of what any political movement may require.”); F.B. HUEY, JR., *THE NEW AMERICAN COMMENTARY: JEREMIAH, LAMENTATIONS 126–27* (1993) (discussing the temptation of idolatry as resulting from a desire of people to see what they are worshipping, rather than following the difficult course of worshipping God in spirit); JOHN R.W. STOTT, *THE MESSAGE OF ACTS 42, 291* (1990) (arguing the message of *Acts* cannot “be identified with any political ideology or programme” while also defining an idol as a “god-substitute” that can be “[a]ny person or thing that occupies the place which God should occupy[,]” which can take the form of “church, religion and Christian service”).

²³² *See supra* notes 95–143 and accompanying text.

be politically difficult and at least is probably politically impossible on a nation-wide basis.²³³ Similar to many areas of the law, federal law may be the only plausible solution to address the worst injustices perpetuated by state and local taxation.²³⁴ Unfortunately, there is little or no chance federal law will even make such an attempt or that an attempt would successfully accomplish this. For example, a federal proposal legally prohibiting the states from imposing regressive tax burdens reaching into poverty, in addition to having little or no chance of being passed by Congress, would have to survive an inevitable constitutional challenge.²³⁵ Proponents of public education have tried with virtually no success to convince federal courts that every child has a constitutional right to an adequate public education.²³⁶

²³³ See Hamill, *Federal Tax Policy*, *supra* note 5, at 762–63 & nn.211–13 (discussing Governor Bob Riley’s—a conservative evangelical Christian Republican governor—2003 tax reform proposal in Alabama failing by a two-to-one margin, even though more than half of the voters would have received a tax cut while K-12 education funding would have received a significant boost, especially among high poverty districts).

²³⁴ While there are numerous examples where federal law has been needed to address a variety of abuses and injustices perpetuated by state law, I am the most familiar with federal law regulating securities and other aspects of business organizations to protect investors and other elements of the public good. See Susan Pace Hamill, *From Special Privilege to General Utility: A Continuation of Willard Hurst’s Study of Corporations*, 49 AM. U. L. REV. 81, 121, 168–69 (1999) [hereinafter Hamill, *Special Privilege*] (discussing the federal securities laws and other federal statutes enacted to regulate corporations when state law proved to be inadequate); Susan Pace Hamill, *Some Musings as LLCs Approach the Fifty-Year Milestone*, 51 CUMB. L. REV. 1, 32–34 (2020) (discussing the federal Corporate Transparency Act that became necessary to curb state law allowing the abusive use of limited liability companies and corporations to obscure the true owner of real estate); see also sources cited *supra* note 106 (discussing the race-based equal protection challenges made to Alabama’s property tax structure and its effect on the grossly inadequate funding of higher education and K-12 public education as failing in the federal courts).

²³⁵ See U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”). Although Congress has broad powers under the Commerce Clause to regulate intrastate activities that affect interstate commerce, see Hamill, *Special Privilege*, *supra* note 234, at 120–21 & n.161, an argument could be made that the regressive taxes in forty-five states negatively impact the nation’s overall economy (by exacerbating poverty regressive taxes drag down the national economy and increase those states’ need for federal aid), state and local tax policy (unless it discriminates against interstate commerce or violates the Equal Protection Clause) would probably be interpreted as a quintessential function within the realm of the Tenth Amendment, and, therefore would probably be left under state law control to be determined by the majority within that state, regardless how inadequate, unfair, or poorly designed. See also, ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 345–52 (6th ed. 2019) (pointing out that although for most of the twentieth century, the Tenth Amendment was of little significance, in the 1990s the Supreme Court revived the Tenth Amendment as a limit on Congressional power).

²³⁶ The Supreme Court has consistently refused to treat education as a fundamental constitutional right. See *Kadrmas v. Dickinson Pub. Schs.*, 487 U.S. 450, 458 (1988);

The best chance of morally improving twenty-first century tax policy trends is in the federal tax laws. President Joe Biden's first-term tax policy proposals may steer the country back away from the worst features of the objectivist-ethics-influenced tax policy of the Bush and Trump years. Fulfilling a central campaign promise, Biden introduced the American Families Plan, a proposal that increases tax credits, fights poverty, and makes education accessible to all Americans.²³⁷ To fund these initiatives and address federal deficits, the American Families Plan levies higher taxes on wealthier Americans, effectively reversing

Papasan v. Allain, 478 U.S. 265, 284–86 (1986); *Plyler v. Doe*, 457 U.S. 202, 223 (1982); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35, 37 (1973). Noting that the Supreme Court specifically distinguished and left open “whether a minimally adequate education is a fundamental right,” the Sixth Circuit reversed a district court’s dismissal of a constitutional challenge to several of Detroit’s worst public schools and allowed the question to proceed as to whether the plaintiffs’ constitutional rights to a basic minimum education had been violated. *Gary B. v. Whitmer*, 957 F.3d 616, 644 (6th Cir. 2020) (first quoting *Papasan*, 478 U.S. at 285, and then citing *Rodriguez*, 411 U.S. at 36–37), *reh’g en banc granted, vacated*, 958 F.3d 1216 (mem); *Id.* at 662. Although widely praised, education proponents realistically predicted that this case would not have much impact. See Aaron Tang, Ethan Hutt & Daniel Klasik, *A Constitutional Right to Literacy for Detroit’s Kids?*, N.Y. TIMES (Apr. 26, 2020), <https://www.nytimes.com/2020/04/26/opinion/gary-whitmer-detroit.html> [<https://perma.cc/3NAB-PT67>] (“[T]here is almost no chance the Sixth Circuit’s ruling will ever be enforced. . . . Even if it [survives a review by the entire Sixth Circuit], the conservative majority on the Supreme Court is exceedingly unlikely to let it stand.”). On May 14, 2020, led by Governor Gretchen Whitmer, the State of Michigan settled the case, thus starting the process of remedying the deplorable public education in the public schools that were part of this lawsuit. See Tawnell D. Hobbs, *Settlement Reached in Landmark Detroit Public-School Lawsuit*, WALL ST. J. (May 14, 2020, 6:26 PM), <https://www.wsj.com/articles/settlement-reached-in-landmark-detroit-public-school-lawsuit-11589495193> [<https://perma.cc/VL3Z-4L78>]; Valerie Strauss, *Michigan Settles Historic Lawsuit After Court Rules Students Have a Constitutional Right to a ‘Basic’ Education, Including Literacy*, WASH. POST (May 14, 2020), <https://www.washingtonpost.com/education/2020/05/14/michigan-settles-historic-lawsuit-after-court-rules-students-have-constitutional-right-basic-education-including-literacy/> [<https://perma.cc/VL3Z-4L78>]. By settling the case before the hostile majority of the entire Sixth Circuit and the Supreme Court had a chance to reverse it, Governor Whitmer not only responded to the plight of the students in these Detroit public schools, but she also kept alive a glimmer of hope that a constitutional right to at least a basic minimum education could become a reality in the future. See also *supra* note 106 (discussing that a race-based equal protection challenge to Alabama’s property tax structure and its effects on grossly inadequate public education funding failed in the federal courts).

²³⁷ Jim Tankersley, *Biden Will Seek Tax Increase on Rich to Fund Child Care and Education*, N.Y. TIMES (Apr. 22, 2021), <https://www.nytimes.com/2021/04/22/business/economy/biden-taxes.html> [<https://perma.cc/Y269-43HL>] (“The proposals are in line with Mr. Biden’s campaign promises to raise taxes on the wealthy but not on households earning less than \$400,000.”).

several features Tax Cuts and Jobs Act of 2017.²³⁸ The White House expects the proposed tax increases for high-income Americans to raise \$1.5 trillion over the next decade without increasing the tax burden for persons earning less than \$400,000 per year, thus fulfilling Biden's promise to "make the average multimillionaire pay just a fair share."²³⁹

Biden proposes to boost federal tax revenue by increasing the top marginal income tax rate from 37% to 39.6%, starting at income levels of just over \$450,000 for single household filers.²⁴⁰ Biden also proposes to expand the reach of the Internal Revenue Service by increasing funding to combat tax evasion perpetuated by some of the wealthiest individuals and corporations.²⁴¹ Additionally, Biden proposes to increase the tax on capital gains for taxpayers with an adjusted gross income of over one million dollars, at which point the

²³⁸ See Jim Tankersley & Dana Goldstein, *Biden Details \$1.8 Trillion Plan for Workers, Students and Families*, N. Y. TIMES (Apr. 28, 2021), <https://www.nytimes.com/2021/04/28/us/politics/biden-american-families-plan.html> [<https://perma.cc/XJ6X-KQXM>] ("The president is proposing an increase in the marginal income tax rate for the top 1 percent of American income earners . . . And he would eliminate a provision in the tax code that reduces capital gains on some inherited assets, like vacation homes, that largely benefits the wealthy."); see also Joe Wilson, *The Biden Administration Proposes Far-reaching Tax Overhaul*, CBM (May 7, 2021), <https://www.cbmcpa.com/2021/05/07/american-families-plan-biden-administration/> [<https://perma.cc/6URK-CLBZ>] ("The American Families Plan would reverse many of the provisions in 2017's Tax Cuts and Jobs Act and other parts of the tax code that benefit higher-income taxpayers.").

²³⁹ Rachel Siegel, *Details of Biden's \$1.8 Trillion American Families Plan*, WASH. POST., Apr. 29, 2021, at A21; Jim Tankersley & Annie Karni, *Biden Leans Into Plans to Tax the Rich*, N.Y. TIMES (May 5, 2021) (internal quotation marks omitted), <https://www.nytimes.com/2021/05/05/business/biden-tax-increases-wealthy.html> [<https://perma.cc/QEP7-NT5R>]; Sawyer Click & Joe Murphy, *Inside the \$40-Billion-a-Year Tax 'Loophole' Biden's Plan Would Eliminate*, NBC NEWS (May 15, 2021), <https://www.nbcnews.com/politics/politics-news/inside-40-billion-year-tax-loophole-biden-s-plan-would-n1267481> [<https://perma.cc/84SR-7QBW>].

²⁴⁰ Garrett Watson et al., *Details and Analysis of Tax Proposals in President Biden's American Families Plan*, TAX FOUND. (May 6, 2021), <https://taxfoundation.org/american-families-plan/> [<https://perma.cc/Y9AG-MR8W>].

²⁴¹ U.S. DEP'T OF THE TREASURY, THE AMERICAN FAMILIES PLAN TAX COMPLIANCE AGENDA 1 (2021) ("While roughly 99% of taxes due on wages are paid to the Internal Revenue Service (IRS), compliance on less visible sources of income is estimated to be just 45%. The tax gap disproportionately benefits high earners who accrue more of their income from non-labor sources where misreporting is common."); Jeff Stein, *White House Seeks to Make Massive Boost to IRS Enforcement Centerpiece of New Spending Plan*, WASH. POST. (Apr. 27, 2021), <https://www.washingtonpost.com/us-policy/2021/04/27/irs-biden-american-families-plan/> [<https://perma.cc/4HSP-LGWV>] ("White House officials have eyed raising as much as \$700 billion from toughening IRS enforcement and auditing over 10 years . . . Enforcement will be focused on the wealthy . . .").

tax on capital gains will equal the top marginal ordinary income tax rate.²⁴²

Although Biden's proposal does not change the estate tax scheme ushered in by the Tax Cuts and Jobs Act, the boldest part of Biden's proposal will substantially alter tax consequences surrounding inheritance.²⁴³ Under current law, for income tax purposes, death is not realization event, and the property passes to the decedent's heirs with a usually financially more advantageous fair market value basis rather than a carryover basis from the decedent. This results in all unrealized gain in the inherited property permanently avoiding the income tax.²⁴⁴ Under Biden's proposal, regardless of whether the estate is large enough to be subject to the estate tax, all heirs receive property with the decedent's carryover basis, and the heir also realizes gross income equal to the fair market of the property. This results in the heir immediately paying income tax on the built-in gain from receiving the property, and, if the heir's income climbs above one million dollars (even if only from receiving the property), the top ordinary income rate, rather than then lower capital gains rates, apply.²⁴⁵

²⁴² Greg Iacurci, *Biden's Top Tax Rate on Capital Gains, Dividends Would be Among Highest in Developed World*, CNBC, <https://www.cnn.com/2021/06/21/biden-tax-plan-raises-top-capital-gains-dividend-tax-rate-to-among-highest-in-world.html> [https://perma.cc/7LLB-LWT2] (June 21, 2021, 1:35 PM) ("Biden's proposal would raise the top federal rate on long-term capital gains and qualified dividends to 39.6%, from 20%, for taxpayers with annual income over \$1 million; observing that under current law, a 3.8% net investment income tax also applies to taxpayers with more than \$200,000 of income and married couples with more than \$250,000; and noting most states also impose a separate tax on capital gains and dividends — the average top state rate is 5.2%, according to the Tax Foundation — where combined, that yields a top rate of 48.6%").

²⁴³ See Leon LaBrecque, *The New Death Tax in The Biden Tax Proposal: Major Tax Change*, FORBES (July 15, 2021) <https://www.forbes.com/sites/leonlabrecque/2021/07/15/the-new-death-tax-in-the-biden-tax-proposal-major-tax-change/?sh=e8368f01e35c> [https://perma.cc/L7AT-VL24].

²⁴⁴ See I.R.C. § 1014. Under current law, if the property is gifted while the donor is still alive, the recipient takes the property with a carryover basis equal to donor's basis immediately before the gift. See I.R.C. § 1015. The current law, which permits a fair market value step up in the basis if the gift occurs after the donor dies while limiting the basis to a carryover if the gift occurs while the donor is still alive, in addition to exempting monumental amounts of unrealized gain from income tax to anyone when property is gifted after death, it also encourages donors to delay the gifting of property until after death. Biden's proposal to eliminate the fair market value step up in basis at death and trigger income tax to the recipient equal to the fair market value of the property minus the donor's basis is bold because it fundamentally changes the income tax structure in this area that evolved in 1921 completely for historical reasons (not due to well-thought-out policy). See JOSEPH M. DODGE ET AL., *FEDERAL INCOME TAX: DOCTRINE, STRUCTURE, AND POLICY* 375 (5th ed. 2019).

²⁴⁵ The proposed rule requires heirs to carry over the basis of the decedent, shifting from the current scheme of step-up basis. LaBrecque, *supra* note 243. The proposed rule would

There is no guarantee any of President's Biden's proposals will become law, and it is highly unlikely that all these proposals will succeed.²⁴⁶ The increased polarization between the political parties and the insatiable desire of too many Republicans to minimize the federal tax burden of the wealthiest Americans creates a real risk that President Biden's efforts, like President Obama's, will fail to reverse or even slow down the objectivist ethics influence that has poisoned federal tax policy trends since the beginning of the twenty-first century.²⁴⁷ Regardless of a person's religious faith or other values, the values of objectivist ethics are destructive to any society for at least two reasons, and therefore do not constitute a legitimate moral compass for anyone. First, objectivist ethics cannot be universalized—if everyone always acts selfishly, nobody's long-term best interest is ultimately served.²⁴⁸ Even more troubling, justice is not possible.²⁴⁹ As the twenty-first

also treat death as a transaction, requiring heirs to pay capital gains taxes. *Id.* In addition, if the gain makes their adjusted gross income greater than one million, they would be required to pay ordinary income rates on the gain and net investment income tax. *Id.* The cumulative effect of the heightened capital gains tax and the estate tax is immense. *See* Scott A. Hodge & Garrett Watson, *Joe Biden's 61 Percent Tax on Wealth*, TAX FOUND. (Apr. 29, 2021) <https://taxfoundation.org/joe-biden-estate-tax-wealth-tax/> [<https://perma.cc/7YAN-S6AV>] (“[For example], an asset worth \$100 million (all of which is a capital gain for the sake of simplicity), the two changes would mean an immediate capital gains tax liability of \$42.9 million at the time of death. Upon paying the capital gains tax at death, the value of the \$100 million asset falls to \$57 million for the purposes of the estate tax. After subtracting the \$11.7 million exemption, the 40 percent estate tax rate is levied on the remaining \$45.3 million in assets to produce an estate tax bill of about \$18.1 million. . . . Combining both taxes results in a total tax liability of \$61.1 million on the original \$100 million asset, for an effective tax rate of 61 percent.”).

²⁴⁶ *See supra* notes 162, 175, 185–187, 193–194, 202 (noting neither President Bush, President Obama, nor President Trump were able to achieve all their initial tax policy goals).

²⁴⁷ *See supra* notes 185–200 (discussing President Obama's tax policy goals and his inability to achieve those goals due to partisan gridlock with relentless and aggressive efforts by Republicans to minimize the tax burden of the wealthiest Americans); *see also* SLEMROD & BAKIJA, *supra* note 1, at 69 (“The looming imbalance between revenue and spending, together with increasing political polarization, makes it harder to separate discussion of tax reform (or indeed, practically any other issue) from fundamental disagreements between parties about the desirable size and scope of government.”).

²⁴⁸ *See* WILKENS, *supra* note 7, at 55–58 (explaining that objectivist ethics cannot be universalized because it is contradictory—it demands that each person act in his or her long term self-interest, but at the same time it is not to that person's advantage if everyone else also acts in their long term self-interest and it sanctions conduct that is consistent with one person's long term self-interest but still results in long term harm to many more, thus it is self-defeating).

²⁴⁹ *Id.* at 57–58 (arguing that objectivist ethics values demanding each person to act in his or her long-term self-interest undermines the functions of those serving as judges, doctors, and other professionals by sanctioning decisions made without regard to the standards of

century approaches the halfway point, the direction of federal tax policy will define the character of the nation—will the nation get back on track towards preserving basic safety nets and work towards enhancing reasonable opportunity for all, or will the nation succumb to objectivist ethics and “become two Americas: one quite well-to-do, the other impoverished . . . [like] Brazil[?]”²⁵⁰

Given that most Americans claim Christianity or Judaism, why are tax policies at the state, local, and federal levels still threatened by objectivist ethics values? In my initial study of tax policy trends earlier in the twenty-first century, I concluded that faith-based ethics, especially the practice of Christianity, has become obsessed with low-sacrifice decoys distracting from the broader message that real faith in the form of tax policy must involve high sacrifice and especially even higher sacrifice among wealthier Americans. The follow-up research for this article has convinced me nothing has changed this conclusion. If anything, the hypocrisy of people claiming to be of faith while pushing objectivist ethics driven tax policy has become even worse.²⁵¹

Tax scholars and tax experts, who are the “keepers of the keys,” have heightened moral obligations to reveal the truth about this complicated and easily misrepresented yet extremely important area protecting the public good.²⁵² Since the early twenty-first century, many tax scholars have criticized various aspects of tax policy that need reform, especially the Tax Cuts and Jobs Act.²⁵³ In his sharp criticism of the shallow tax policy discourse among many Republican political leaders, one scholar passionately insists that conservative principles mandate that “those who gain the most from a society have a moral

the profession, the well-being of those such professionals serve in a fiduciary capacity and society as a whole).

²⁵⁰ See GRAETZ & SHAPIRO, *supra* note 151, at 282; see also SLEMRD & BAKJA, *supra* note 1, at 69 (“[T]ax policy in the United States is currently at a crossroads, with the two political parties wanting to take different roads leading to very different destinations.”).

²⁵¹ See Hamill, *Federal Tax Policy*, *supra* note 5, at 752–58 & nn.188–200; Hamill, *State and Local Tax Policy*, *supra* note 5, at 148–56 & nn.122–46; see also *supra* notes 126–231 and accompanying text.

²⁵² This metaphor captures the heightened moral obligations of tax scholars and experts who claim to be of faith. See *Matthew* 16:16–19 (New Int’l Version) (explaining that on the Day of Pentecost, St. Peter received the keys to the Kingdom of Heaven to usher in the Kingdom of God); Hamill, *Federal Tax Policy*, *supra* note 5, at 750 & n.183 (discussing the moral obligations of Judeo-Christian tax experts). This metaphor also captures the heightened moral obligations of tax scholars and experts deriving their moral compass from community-oriented secular values. See J.K. ROWLING, *HARRY POTTER AND THE SORCERER’S STONE* 46 (1997) (naming the fourth chapter for Rubeus Hagrid, who was the keeper of the keys at Hogwarts School); *supra* notes 73–84 and accompanying text (discussing virtue ethics, secular humanism, and the philosophy of John Rawls).

²⁵³ See sources cited *supra* notes 144, 171, 203, 209–213, 215, 217, 222, & 242.

duty to bear the greatest burden of maintaining that society” and then warns that “[w]ithout a principled tax system America will wither. . . . Let us work to ensure as best we can that students will never read a history text that begins with the words ‘The United States of America was . . . ’”²⁵⁴

The biblical message also sternly warns that if immoral objectivist ethics driven tax policy that so far has dominated twenty-first century tax policy trends continues and worsens, the nation will decline and eventually fail.²⁵⁵ Conservative evangelical Republicans, especially political and religious leaders, who are guilty of relentlessly pushing tax policy that is diametrically opposite of genuine faith-based values have a moral obligation to “turn from evil and do good” in the form of

²⁵⁴ David Cay Johnston, *Introduction to 10 EXCELLENT REASONS NOT TO HATE TAXES 1, 8–9* (Stephanie Greenwood ed., 2007). In addition to his many articles and PERFECTLY LEGAL, *see generally* JOHNSTON, *supra* note 147, David Cay Johnston, a *New York Times* reporter, won the Pulitzer Prize in 2001 for investigative reporting of tax policy issues, and has written or edited three books criticizing injustice caused by growing inequality, unfair tax policy, and unfair business practices. *See generally* DIVIDED: THE PERILS OF OUR GROWING INEQUALITY (David Cay Johnston ed., 2015); DAVID CAY JOHNSTON, THE FINE PRINT: HOW BIG COMPANIES USE “PLAIN ENGLISH” TO ROB YOU BLIND (2012); DAVID CAY JOHNSTON, FREE LUNCH: HOW THE WEALTHIEST AMERICANS ENRICH THEMSELVES AT GOVERNMENT EXPENSE (AND STICK YOU WITH THE BILL) (2008).

²⁵⁵ The path when large numbers of people and their political and spiritual leaders succumb to the temptations of greed and idolatry and use low-sacrifice issues to cover up injustice is well worn with disastrous consequences. *See* HUEY, *supra* note 231, at 446 (discussing the message of *Lamentations* warning that “the wickedness of any people will eventually result in the disintegration of that society”); BLOMBERG, *supra* note 231, at 27, 219, 301, 375–80 (discussing the message of judgment in numerous places throughout *Matthew* as especially hitting hard purportedly faithful, powerful, influential, and wealthy people who fail to serve Jesus); KEENER, *supra* note 231, at 73 (discussing Herod, noting “[e]very unjust empire in history has ultimately fallen”); *Id.* at 360–62 (discussing the message of the sheep and the goats as indicating “[t]he nation’s will be judged according to how they respond to the gospel and its messengers”); CRAIG S. KEENER, A COMMENTARY ON THE GOSPEL OF MATTHEW 345 (1999) (discussing Jesus’s message to cities, warning that “[w]hen entire cultures perpetrate a hardness against God for generation after generation, judgment may be God’s primary means of getting people’s attention”); MATHEWS, *supra* note 231, at 5 (“History testifies that nations that build on the bones of innocent people collapse under the weight of their own corruption. While most . . . would point to political or economic factors for the fall of a nation, the Bible explains that a society stands or falls on moral grounds.”); FRANK THIELMAN, THE NIV APPLICATION COMMENTARY: PHILIPPIANS 129 (1995) (discussing the need for “laws in any larger society . . . to restrain and channel the human desire to dominate others” because the human desire for domination “is so strong and so universal that the community that does not effectively accomplish [its regulation] self-destructs”); FRANK THIELMAN, THEOLOGY OF THE NEW TESTAMENT 84, 103, 107, 213–15 (2005) (stating that the message of *Matthew* warns inauthentic Christians who confess Jesus as Lord but neglect matters of justice and sacrifice face certain eschatological judgment); *see also* WALLIS, *supra* note 145, at 151, 189 (analogizing the “Pax Americana” to the “Pax Romana” and stating that the Word of God will survive the “Pax Americana” as it survived the “Pax Romana[.]” referring to the fall of ancient Rome).

fighting for a more just tax policy, even though this will require higher personal sacrifice from them as well as from their largest campaign and church donors.²⁵⁶ They should start by supporting President Joe Biden's proposals. The Book of Deuteronomy offers a particularly direct, personal, and chilling prophesy if these conservative evangelical Republicans and our nation in general fails to repent and heed this warning:

Be careful that you do not forget the Lord your God, failing to observe his commands, his laws and decrees Otherwise . . . when you build fine houses and settle down . . . and all you have is multiplied, then your heart will become proud You may say to yourself, "My power and the strength of my hands have produced this wealth for me." But remember the Lord your God . . . gives you the ability to produce wealth, and so confirms his covenant. . . . If you ever forget the Lord your God . . . I testify against you . . . that you will surely be destroyed.²⁵⁷

²⁵⁶ See Hamill, *Federal Tax Policy*, *supra* note 5, at 744–52 & nn.169–87 (discussing moral obligations of conservative evangelical political and religious leaders); *see also 1 Peter* 3:11–12 (New Int'l Version) ("They must turn from evil and do good For the eyes of the Lord are on the righteous . . . but the face of the Lord is against those who do evil.").

²⁵⁷ *Deuteronomy* 8:11–19 (New Int'l Version).