

## THE CONSISTENCY OF CONSERVATIVE TAX POLICY

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**ABSTRACT**—Conservative tax arguments have been remarkably consistent in substance, style, and method for almost a century. Substantively, their tax policy consists of three claims: (1) an economic one that low taxes encourage economic growth and prosperity for all, (2) a legal–constitutional one that excessive federal spending and heavy taxes unbalance our federal form of government at best, and at worst unconstitutionally violate state rights, and (3) a patriotic claim that high tax-and-spend policies are un-American. This third, patriotic, claim is a major factor in conservatives’ remarkable success in selling their policy to the public and in the current political stalemate about taxation. The emotional aspect of patriotism inhibits rational discussion and limits the range of politically feasible solutions. This Article suggests that if conservatives would focus on their two substantive points, they would help create an atmosphere more conducive to the thoughtful tax discussion the country requires.

The Article illustrates conservatives’ consistency with an examination of the linked battles concerning income tax reduction and a veterans’ bonus that occurred between 1924 and 1936. This period had much in common with the present, including (1) the growth of government, (2) increased knowledge about human behavior, (3) the development of new mass media, (4) the use of the new media by organizations to disseminate their viewpoints to the public, (5) increased lobbying (at least partially due to the other factors), and (6) mounting concern that the lobbying was distorting the political process. Commentators, then and now, have noted that some organizations purporting to be broad-based civic groups providing neutral information are really vehicles through which small—sometimes wealthy—groups try to shape public opinion and thereby pressure Congress to adopt their self-interested viewpoint. This Article focuses on two groups—the National Economy League, a group active in the 1930s, and, to a lesser degree, the Citizens’ National Committee in the 1920s.

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INTRODUCTION

Although liberals and conservatives in the United States generally disagree about tax issues, they tend to be unanimous in their belief that federal taxation today is in an alarming state of disarray. Moreover, few (if any) see a quick or easy path out of the morass that now passes for tax policy. While both liberals and conservatives share the blame for the current situation, conservatives bear the heavier responsibility for the political stalemate because they have been more successful at articulating and selling their tax policy to the public. Their policy rests on three claims, which they have been asserting and disseminating with remarkable consistency for decades.

The first claim is an economic one. Low taxes—especially for the wealthy—encourage investment, which leads to economic growth and prosperity for all.<sup>1</sup> High taxes, in contrast, hamper economic growth by facilitating excessive and wasteful government spending. Although some people disagree with this conclusion about the results of high taxes, the claim does make an important connection between taxing and spending—a link that liberals often ignore.

The second claim is a legal and even a constitutional one. Excessive federal spending—fueled by heavy taxation—unbalances America’s federalist form of government by creating too strong a central government.<sup>2</sup> Indeed, such spending, they argue, is often unconstitutional because it exceeds the limited powers granted to the federal government and infringes upon states’ rights.

The legal–constitutional argument blends into conservatives’ third claim, which, simply put, asserts that high tax-and-spend policies are

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<sup>1</sup> For a discussion of this claim, see THOMAS L. HUNGERFORD, CONG. RESEARCH SERV., R42729, TAXES AND THE ECONOMY: AN ECONOMIC ANALYSIS OF THE TOP TAX RATES SINCE 1945 (2012); Eric Kroh, *CRS Faces Allegations of Bias*, 137 TAX NOTES 714 (2012); Rudy Takala & Salim Furth, *Scholars Agree: High Tax Rates Do Harm Growth*, FOUNDRY (Jan. 27, 2013, 9:27 AM), <http://blog.heritage.org/2013/01/27/scholars-agree-high-tax-rates-do-harm-growth/>; William McBride, *What Is the Evidence on Taxes and Growth?*, TAX FOUND. (Dec. 18, 2012), <http://taxfoundation.org/article/what-evidence-taxes-and-growth>.

<sup>2</sup> For a modern statement of this belief, see REPUBLICAN NAT’L CONVENTION, WE BELIEVE IN AMERICA: 2012 REPUBLICAN PLATFORM 10–11, 21–22 (2012), <http://www.gop.com/wp-content/uploads/2012/08/2012GOPPlatform.pdf>, which discusses “Federalism and The Tenth Amendment” and “Reforming Government to Serve the People.”

un-American. This patriotic tax appeal bears the heaviest responsibility for the tax morass for several reasons. First, American history and myth create a natural sympathy in many Americans for small federal government and low taxation. Second, patriotism's emotional appeal gains traction more easily with the public than rationally based appeals to theoretical ideas of distributive justice. Its effectiveness increases even more because conservatives have employed sophisticated emotional appeals to disseminate their tax position to the public. For decades they have used the most modern techniques of persuasion and the most modern mass media to sway public opinion. Conservatives' successful marriage of patriotism's emotionality to the "objectivity" of low taxation, however, raises a barrier to rational discussions about tax policy and limits the range of politically feasible solutions. Consequently, this argument bears the heaviest responsibility for the current tax morass.

The recent fight about the Affordable Care Act<sup>3</sup> illustrates the obstacle that conservatives' patriotic tax approach presents to rational debates. For example, many opponents assailed the Act as un-American—even socialistic—government spending and taxation, but at the same time opposed cuts in other government-run programs such as Medicare or Social Security.<sup>4</sup> Similarly, some people express outrage at the long delays veterans now face in obtaining promised benefits, and many note the role bureaucratic errors play in those delays; fewer note how increased funding—paid with tax dollars—could speed the transition to electronic databases, decrease errors, and facilitate faster benefits.<sup>5</sup>

Veterans' benefits and their relation to taxation was also a huge issue in the 1920s and 1930s<sup>6</sup>—a time in which conservatives used the same

<sup>3</sup> Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566 (2012).

<sup>4</sup> See, e.g., *Cruz Presses Ahead with Defunding ObamaCare, Says It Will Take a 'Tsunami' of Support*, FOX NEWS (Aug. 25, 2013), <http://www.foxnews.com/politics/2013/08/25/cruz-press-ahead-with-defunding-obamacare-but-says-it-will-take-national/>; Vanessa Williamson, Theda Skocpol & John Coggin, *The Tea Party and the Remaking of Republican Conservatism*, 9 PERSP. ON POL. 25, 26 (2011). Former South Carolina Senator and Heritage Foundation president Jim DeMint said that week: "I cannot think of anything that's more un-American than national government-run health care . . . . Those who believe in those principles of socialism and collectivism we've seen over the centuries, they see as their holy grail taking control of the health care system." Igor Volsky, *Jim DeMint: Providing Health Care for Seniors and Veterans is 'Un-American' and Grounded in 'Socialism'*, THINKPROGRESS (Aug. 30, 2013, 8:55 AM), <http://thinkprogress.org/health/2013/08/30/2555561/jim-demint-programs-like-medicare-veterans-health-care-american-grounded-socialism/>. See also Jackie Calmes, *Delicate Pivot as G.O.P. Blasts Rivals on Medicare*, N.Y. TIMES, July 7, 2012, at A9 (discussing Republican criticisms of Medicare cuts).

<sup>5</sup> E.g., Aaron Glantz, *Number of Veterans Who Die Waiting for Benefits Claims Skyrockets*, DAILY BEAST (Dec. 20, 2012, 4:45 AM), <http://www.thedailybeast.com/articles/2012/12/20/number-of-veterans-who-die-waiting-for-benefits-claims-skyrockets.html>; Randi Kaye & Scott Bronstein, *Hundreds of Thousands of War Vets Still Waiting for Health Benefits*, CNN (Oct. 29, 2012, 10:04 AM), <http://www.cnn.com/2012/09/29/health/delayed-veterans-benefits>.

<sup>6</sup> See discussion *infra* Parts I & II.

arguments they use today about taxing and spending. Immediately after World War I, pressure began building to both cut income taxes and to pay veterans “adjusted” compensation (popularly, the “soldiers’ bonus”)—a practice dating to the Revolutionary War. Both party platforms for the 1920 presidential election called for tax reform and supported aiding disabled veterans.<sup>7</sup> Neither, however, mentioned a bonus for the able-bodied, which was a politically contested issue. Although many Democrats, such as former presidential nominee William Jennings Bryan, argued that a war profits tax could fund a general bonus, the Democratic platform stated that veterans’ patriotism and “heroic conduct . . . constitute a sacred heritage of posterity, the worth of which can never be recompensed from the Treasury and the glory of which must not be diminished by any such expedients.”<sup>8</sup> Although the Republican platform was also silent on the issue, presidential candidate Warren Harding hinted he might favor a general bonus.<sup>9</sup> As president, however, he vigorously opposed it, stating that tax reduction was the top priority, and a bonus would prevent that.<sup>10</sup> In 1921, he and Secretary of the Treasury Andrew Mellon succeeded in getting Congress to table the bonus bill and enact tax reductions—although not large enough to satisfy him or Mellon.<sup>11</sup> In March 1922, Harding vetoed a bonus bill on both financial and patriotic grounds, stating that tax reduction would make America “a better country for which to fight, or to have fought, and affords a surer abiding place in which to live and attain.”<sup>12</sup>

Although the American Legion promptly announced it would continue fighting for a general soldiers’ compensation, other veterans organized to oppose a bonus for able-bodied veterans.<sup>13</sup> Groups such as the Ex-Service Men’s Anti-Bonus League contended that a general bonus would be an “unjust burden of taxation.”<sup>14</sup> Moreover, the League stressed the un-American nature of such a bonus. Others, including the 1920 Democratic platform, had opposed a bonus on the grounds that it might “diminish[]”

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<sup>7</sup> See PAUL DICKSON & THOMAS B. ALLEN, *THE BONUS ARMY: AN AMERICAN EPIC* 25 (2006). See also the party platforms: *Republican Party Platform of 1920*, AM. PRESIDENCY PROJECT (June 8, 1820), <http://www.presidency.ucsb.edu/ws/index.php?pid=29635>; *Democratic Party Platform of 1920*, AM. PRESIDENCY PROJECT (June 28, 1920), <http://www.presidency.ucsb.edu/ws/index.php?pid=29592> [hereinafter *Democratic Party Platform*]. For a contemporary history of the bonus in 1924, see, for example, 65 CONG. REC. 10761–63 (June 5, 1924) (statement of Rep. Fish (R-NY)).

<sup>8</sup> *Democratic Party Platform*, *supra* note 7.

<sup>9</sup> DICKSON & ALLEN, *supra* note 7, at 25–26.

<sup>10</sup> *Id.* at 26.

<sup>11</sup> *See id.*

<sup>12</sup> *Id.* at 26–27; “Bad Finance, Not Patriotic”; *Bonus Vetoed*, CHI. DAILY TRIB., Sept. 20, 1922, at 1. For a recent discussion of the bonus and taxation, see Anne L. Alstott & Ben Novick, *War, Taxes, and Income Redistribution in the Twenties: The 1924 Veterans’ Bonus and the Defeat of the Mellon Plan*, 59 TAX L. REV. 373 (2006).

<sup>13</sup> *See Legion Deadlocked on Bonus Question*, N.Y. TIMES, Oct. 18, 1923, at 3.

<sup>14</sup> *Veterans Organize Anti-Bonus League*, N.Y. TIMES, Sept. 26, 1922, at 9.

the “glory” of the veterans’ sacrifice.<sup>15</sup> The League, however, went much further: the “material reward” of a bonus was “repugnant to the spirit of true patriotism and a violation of the fundamental principles of American citizenship.”<sup>16</sup>

After Harding’s death in August 1923, President Calvin Coolidge continued to press for tax reductions instead of a bonus.<sup>17</sup> Nevertheless, in June 1924, Congress passed both; the latter over Coolidge’s veto.<sup>18</sup> Neither side was satisfied. Those who wanted the tax reduction believed the rates needed to decline further. Bonus supporters demanded immediate payment rather than the deferred ones promised under the 1924 Act. The linkage between a soldier’s bonus and taxation continued until 1936 when the bonus issue was finally resolved.

Although the issues crossed party lines, mainstream Republicans tended to oppose the bonus more frequently than Democrats. For example, progressive-leaning Republicans, such as Representative James Frear (R-WI) and presidential hopeful Senator Hiram Johnson (R-CA), favored it in the 1920s.<sup>19</sup> Some Democrats opposed it, including President Roosevelt, who after a prolonged silence on the issue vetoed a bonus compensation act in the 1930s.<sup>20</sup> Although both parties favored income tax reduction in the 1920s, big differences between the parties existed—ones that are familiar to Americans today: how much of a reduction and which class of taxpayers would get the bigger cuts. In general, Republicans (other than the progressive or “radical” ones) favored the Mellon Plan, which dramatically slashed rates on the wealthiest taxpayers. Democrats, on the other hand, generally favored reducing taxes more for lower income taxpayers than wealthy ones.<sup>21</sup> (Even “low” income taxpayers, it must be noted, were relatively well off because fewer than 10% of Americans paid income tax.)<sup>22</sup>

Generalizing again, those favoring the Mellon Plan in the 1920s were against the bonus. For conservatives, the two issues were two sides of the same coin: the bonus would cost so much that tax reduction would not be possible for years. In the 1930s, conservative groups such as the National Economy League not only opposed the bonus but also other New Deal

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<sup>15</sup> *Democratic Party Platform*, *supra* note 7.

<sup>16</sup> *Legion Deadlocked on Bonus Question*, *supra* note 13.

<sup>17</sup> *See infra* Part I.

<sup>18</sup> *See infra* notes 107–09.

<sup>19</sup> *See, e.g.*, Parke Brown, “Mirage,” *Hiram Cries at Mellon Tax Cut Plans*, CHI. DAILY TRIB., Jan. 19, 1924, at 5.

<sup>20</sup> H.R. DOC. NO. 74-197, at 1 (1935).

<sup>21</sup> *See, e.g.*, 65 CONG. REC. 2585 (Feb. 16, 1924) (statement of Rep. Blanton); 65 CONG. REC. 2587 (Feb. 16, 1924) (statement of Rep. Garner).

<sup>22</sup> *See, e.g.*, MARK H. LEFF, *THE LIMITS OF SYMBOLIC REFORM: THE NEW DEAL AND TAXATION, 1933–1939*, at 4, 70 (1984).

taxing and spending programs.<sup>23</sup> Pro-bonus Democrats and progressive Republicans, on the other hand, tended to ignore the bonus's cost, think the cost was overblown, or believe new taxes could pay for it. In 1924, for example, Representative Frear (R-WI) claimed there could be both a bonus and a tax cut for every taxpayer if state and local securities were taxed, a "moderate" excess-profits tax and an undistributed profits tax existed, inheritance tax were increased, and a gift tax were enacted. Also, he believed publicizing tax records would increase tax collections.<sup>24</sup>

The long anti-bonus/pro-tax reduction battle illustrates the consistency of conservative tax policy and the marketing of that policy. This Article's focus on two intense portions of that campaign illuminates the policy's strength (the connection between taxing and spending) and its weakness (nonrational appeals to patriotism). It begins with the 1923–1924 presidential campaign and proceeds to describe the National Economy League campaign in the 1930s. Within these two campaigns, the Article concentrates on the key emotion-based patriotic aspect of the conservative position. Due to space limitations, it does not explore the rich theoretical and empirical evidence that explains how cognitive biases and emotion-based, often unconscious, concepts—such as framing, schema, and worldviews—bypass and/or influence rational thought. Rather, it concentrates on describing the methods conservatives used to link patriotism to their tax policy. One hundred years of such linkage, layered on top of a mythic strain of anti-tax sentiment dating back to the foundation of the nation, have contributed to today's heated but deeply unproductive tax debates.

#### I. 1923–1924 TAX REDUCTION/ANTI-BONUS CAMPAIGN

In November 1923, Secretary of the Treasury Andrew Mellon opened his campaign to further reduce taxes beyond what had been achieved in the Revenue Act of 1921 with a letter to House Ways and Means Chairman William R. Green (R-IA).<sup>25</sup> In the letter, sent while Congress was recessed, Mellon explicitly linked tax reduction and the bonus. The bonus, he said, would postpone tax reduction for many years.<sup>26</sup> Moreover, "[i]t would mean an increase rather than a decrease in taxes, for in the long run it could be paid only out of moneys collected."<sup>27</sup> Congress had to choose between tax reductions and a soldiers' bonus; there could not be both.

The twinned pro-tax reduction/anti-bonus campaigns appeared everywhere, in all types of media: in-the-flesh speeches, radio talks,

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<sup>23</sup> See *infra* Part II.

<sup>24</sup> 65 CONG. REC. 647–48 (Jan. 7, 1924) (statement of Rep. Frear).

<sup>25</sup> H.R. DOC. NO. 68-63, at 11 (1924).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

newspaper and magazine articles, and even “flash” promotions on movie screens. From the beginning, these campaigns urged adoption of the Mellon Plan without any changes, as if, opponents charged, it were the only way tax reform could occur. Mellon Plan supporters also promoted a letter-writing campaign, urging the public to write or telegram their congressmen, demanding they support the Plan and oppose the bonus.<sup>28</sup>

Mellon and his supporters alleged that their tax reduction plan was “scientific” and economically efficient, in contrast to the plans offered by Representatives Frear and Garner. Mellon Plan opponents, however, countered that Mellon’s plan was no more scientific than any other plan. They supplied several pieces of evidence of the political nature of Mellon’s plan. One was the timing of the letter. Sent while Congress was recessed, Congress would not even get a copy of the bill until almost a month later. Representative Frear alleged that the political nature was self-evident because Mellon himself would greatly benefit from his plan.<sup>29</sup> Others, such as Senator Royal Copeland (D-NY), said the linkage of tax reduction to a denial of a veterans’ bonus revealed the political motivation of the plan and “did much finally to discredit the claim for the Mellon plan that it was a ‘scientific’ bill, for the two proposals are essentially independent, although, of course, the passage of any law contemplating additional expenditures increases the cost of government.”<sup>30</sup> In other words, although conservatives clearly connected taxing and spending—something liberals often failed to do—then as now, they were making that connection only for certain spending programs.

The pro-reduction/anti-bonus campaign occurred on multiple levels. Mellon, for example, not only provided Congress with information, but also promoted his plan, even publishing a book aimed at the general public, *Taxation: The People’s Business*.<sup>31</sup> The Treasury also promoted the Plan in testimony and articles.<sup>32</sup> Additionally, Under Secretary of the Treasury Garrard Winston secretly collaborated with J.A. Arnold—a lobbyist with a shady reputation—who operated through allegedly nonpartisan interest groups he managed: the American Taxpayers’ League (formerly the American Bankers League) and the National Council of State Legislatures.<sup>33</sup>

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<sup>28</sup> See *infra* note 57.

<sup>29</sup> 65 CONG. REC. 2509 (Feb. 15, 1924) (statement of Rep. Frear).

<sup>30</sup> 65 CONG. REC. 10626 (June 5, 1924) (statement of Sen. Copeland).

<sup>31</sup> ANDREW W. MELLON, *TAXATION: THE PEOPLE’S BUSINESS* (1924). See also Andrew William Mellon, *The Business of Taxation*, 2 NAT’L INCOME TAX MAG. 105 (1924).

<sup>32</sup> See, e.g., Hon. Garrard B. Winston, *Principles Involved in Income Tax Reduction*, 2 NAT’L INCOME TAX MAG. 69 (1924).

<sup>33</sup> ISAAC WILLIAM MARTIN, *RICH PEOPLE’S MOVEMENTS: GRASSROOTS CAMPAIGNS TO UNTAX THE ONE PERCENT* 45–53, 59–61 (2013); M. Susan Murnane, *Selling Scientific Taxation: The Treasury Department’s Campaign for Tax Reform in the 1920s*, 29 LAW & SOC. INQUIRY 819, 843–44, 851 (2004).

James Couzens, the progressive Republican Senator from Michigan, among others, asserted that Mellon and the Treasury did not just provide information, but spread propaganda: “More dishonest statements, misstatements if not absolute falsehoods, have been handed out at the Treasury Department of the United States for the purpose of misleading the public than ever were issued by a public department in my recollection of government.”<sup>34</sup> Representative John Jones (D-TX) called Mellon “a magician in figures as well as in finance” who conveniently misstated figures.<sup>35</sup> Senator Thaddeus Caraway (D-AR) went so far as to allege that Mellon was linked to the anti-bonus propaganda through contributions to the Anti-Bonus League by officials of companies that Mellon had interests in—a link Mellon denied.<sup>36</sup>

Even President Coolidge linked tax reduction to the bonus. In a Lincoln Day Speech, his first post-election, nonofficial speech aimed at the entire country, Coolidge asserted that the Mellon Plan coupled with a rejection of the soldiers’ bonus would keep the nation prosperous.<sup>37</sup> Furthermore, he stated that although providing compensation to injured soldiers was appropriate, paying it to healthy veterans was morally reprehensible since they had not served for monetary gain.<sup>38</sup> Coolidge insisted, “[T]he people must understand this is their fight. They alone can win it. Unless they made their wishes known to the Congress without regard to party this bill will not pass. I urge them to renewed efforts [to write Congress].”<sup>39</sup> An estimated five million people listened to Coolidge’s speech on a radio network so new that the papers found it newsworthy enough to note, “[A]tmospheric conditions were splendid for broadcasting . . . .”<sup>40</sup>

Business interests, which sponsored most of the pro-Mellon/anti-bonus literature, began campaigning immediately after Mellon’s letter, and without even seeing his Plan.<sup>41</sup> The campaigns flooded the press—especially in big city papers and popular journals like the *Literary Digest* and the *Saturday Evening Post*.<sup>42</sup> The United States Chambers of

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<sup>34</sup> 65 CONG. REC. 1203 (Jan. 21, 1924) (statement of Sen. Couzens); see 65 CONG. REC. 3332 (Feb. 29, 1924) (statement of Rep. Crosser (D-OH)).

<sup>35</sup> 65 CONG. REC. 643–44 (Jan. 7, 1924) (statement of Rep. Jones).

<sup>36</sup> 65 CONG. REC. 3684–86 (Mar. 6, 1924); *Mellon Vigorously Denies He Assisted Anti-Bonus League*, CHI. DAILY TRIB., Mar. 6, 1924, at 11. See *infra* notes 102–05 and accompanying text.

<sup>37</sup> See *Will Permit No Politics*, N.Y. TIMES, Feb. 13, 1924, at 1.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *5,000,000 Hear Speech of Coolidge by Radio*, N.Y. TIMES, Feb. 13, 1924, at 2.

<sup>41</sup> E.g., 65 CONG. REC. 2590 (Feb. 16, 1924) (Rep. Tague (D-Mass.)); *Mellon Program Boon to Industry, Financiers Assert*, N.Y. TIMES, Nov. 13, 1923, at 1.

<sup>42</sup> See 65 CONG. REC. 10762–63 (June 5, 1924) (statement of Rep. Fish); 65 CONG. REC. 744 (Jan. 9, 1924) (statement of Sen. Ashurst) (referencing the *Saturday Evening Post*); 65 CONG. REC. 644 (Jan. 7, 1924) (statement of Rep. Jones (D-TX)) (referencing the *New York Herald*, the *New York*

Commerce had long been advocating against a bonus, in large measure because it would necessitate increased taxation.<sup>43</sup> Mellon's letter spurred many chambers of commerce and trade organizations to launch new, ambitious campaigns promoting the Mellon Plan.<sup>44</sup>

Like Mellon, Coolidge, and others, the campaigns by these organizations made economic and moral arguments. Paying a bonus to healthy veterans, they claimed, would not only be so costly as to prevent tax reduction and hinder economic prosperity, but also insult the "self-respect and memory of the American soldiers who served not for money but for love of their country."<sup>45</sup>

Ostensibly nonbusiness groups, such as the Ex-Service Men's Anti-Bonus League, also reinvigorated their anti-bonus campaigns. The League was organized in September 1922 by several prominent veterans such as Elihu Root Jr., a founding partner in what became the Dewey Ballantine law firm,<sup>46</sup> "to combat, as a matter of principle, all propaganda and attempted legislation to bonus or pension"<sup>47</sup> service men who were not injured at war.<sup>48</sup> Following Mellon's letter, however, the League rapidly expanded its membership and its activities.<sup>49</sup> While favoring all necessary support for disabled veterans, it opposed a general bonus for able-bodied ones on the now-familiar dual economic and moral grounds.<sup>50</sup> Such a bonus would increase taxation and demean soldiers' sacrifices for their country.<sup>51</sup> It would "obliterate" their "splendid" service, reducing it "to the level of the service rendered by the man who digs a ditch for a wage."<sup>52</sup>

There were, of course, some Democrats (typically more conservative ones) who also objected to a general bonus on patriotic grounds. Senator William Bruce (D-MD) for example, warned that pro-bonus soldiers ran the risk of turning their patriotism into selfish class behavior.<sup>53</sup> Generally,

*World*, and the *New York Times*); 65 CONG. REC. 645, 649 (Jan. 7, 1924) (statement of Rep. Frear) (referencing Philadelphia papers and "[m]etropolitan papers"); see also Murnane, *supra* note 33, at 836 (*Post* had at least one pro-Mellon article a month in 1924).

<sup>43</sup> E.g., *Calls for Support in Fighting Bonus*, N.Y. TIMES, Aug. 21, 1922, at 3; *Commerce Chamber Opposes Cash Bonus*, N.Y. TIMES, June 19, 1921, at 1.

<sup>44</sup> E.g., *Plans Nation-Wide Fight for Tax Cuts*, N.Y. TIMES, Nov. 23, 1923, at 2 (New York Chamber of Commerce); *Starts National Drive for Mellon Tax Plan*, N.Y. TIMES, Nov. 19, 1923, at 4 (Philadelphia Chamber of Commerce).

<sup>45</sup> *Birmingham for Tax Cut*, N.Y. TIMES, Nov. 19, 1923, at 4. See Barnes *Assails Bonus in Cash to Veterans*, N.Y. TIMES, Nov. 1, 1923, at 8; *Starts National Drive for Mellon Tax Plan*, *supra* note 44.

<sup>46</sup> *Elihu Root Jr., Lawyer, Is Dead; Statesman's Son a Civic Leader*, N.Y. TIMES, Aug. 28, 1967, at 31.

<sup>47</sup> *Veterans Organize Anti-Bonus League*, N.Y. TIMES, Sept. 26, 1922, at 9.

<sup>48</sup> *Id.*; *Ex-service Men Fight Bonus Plan*, N.Y. TIMES, Oct. 24, 1922, at 9.

<sup>49</sup> *Reports Activities in Anti-bonus Move*, BALT. SUN, Jan. 2, 1924, at 5.

<sup>50</sup> *Veterans Organize Anti-Bonus League*, *supra* note 47.

<sup>51</sup> *Id.*

<sup>52</sup> *Reports Activities in Anti-bonus Move*, *supra* note 49.

<sup>53</sup> See 65 CONG. REC. 2741-44 (Feb. 19, 1924) (statement of Sen. Bruce).

however, it was conservative Republicans and businessmen who raised the anti-patriotic claim. Sometimes, the charges were more serious. A letter to the Editor from the president of the Anti-Bonus League said bonus supporters were not really in favor of the bonus, but engaged in an “anti-capitalistic crusade.”<sup>54</sup>

Complaints against pro-Mellon reduction/anti-bonus supporters began as quickly as their campaign. Some critics even called it the largest propaganda campaign in the country’s history.<sup>55</sup> Even some Republicans criticized it. Representative Hamilton Fish (R-NY) noted that the campaign was built on the slogan “Bonus or tax reduction—which?”<sup>56</sup> As a result of businesses spending millions of dollars, congressmen received thousands of letters, telegrams, and petitions demanding that congressmen support the Mellon Plan and reject the bonus bill. On January 7, Representative James Frear (R-WI) declared Congress was “deluged” by letters from business interests supporting a Mellon bill that none of the writers had seen; the Ways and Means Committee, he said, was getting at least 300 letters daily “written at the instigation of leagues, boards, and clubs” who, in turn, were probably prompted by NYC-area bankers.<sup>57</sup> Moreover, he stated, every congressman who refused to support the Mellon Bill—a bill that would preclude a bonus bill—had been threatened with opposition at the next election.<sup>58</sup>

Some banks and corporations took out pro-reduction/anti-bonus ads in the newspapers; some urged readers, customers, and employees to send pro-reduction/anti-bonus letters. A large musical instrument company in New York City won the “blue ribbon” for “brazen effrontery,” according to Representative Lamar Jeffers (D-AL).<sup>59</sup> The company sent a memo to employees requesting that they write their senators and representatives because it was “of the utmost importance and a matter of vital interest to all of us” to pass the Mellon plan and reject the bonus bill.<sup>60</sup> It instructed employees to give their letters to the company’s executive office, which would forward them to the *Evening Mail*.<sup>61</sup> The newspaper would fill in the names of their congressional delegates. The company ended its memo saying: “We shall check up [sic] our pay roll within the next couple of weeks to find out those who have written and those who have not.”<sup>62</sup>

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<sup>54</sup> Letter to the Editor, *Red Fringe of the Bonus Agitation*, N.Y. TIMES, Mar. 10, 1924, at 14.

<sup>55</sup> See, e.g., 65 CONG. REC. 742 (Jan. 9, 1924) (statement of Sen. Simmons); 65 CONG. REC. 939 (Jan. 14, 1924) (statement of Sen. Harrison).

<sup>56</sup> 65 CONG. REC. 10763 (June 5, 1924) (statement of Rep. Fish).

<sup>57</sup> 65 CONG. REC. 645 (Jan. 7, 1924) (statement of Rep. Frear).

<sup>58</sup> See *id.*

<sup>59</sup> 65 CONG. REC. 2611 (Feb. 16, 1924) (statement of Rep. Jeffers).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*; 65 CONG. REC. 1185 (Feb. 16, 1924) (statement of Rep. Jeffers). See also 65 CONG. REC. 644–46 (Jan. 7, 1924) (statements of Reps. Jones and Frear); 65 CONG. REC. 744 (Jan. 9, 1924)

On January 5 Senator Kenneth McKellar (D-TN) read into the *Congressional Record* one of the many pro-reduction/anti-bonus letters he and other congressmen had received. He noted that the letter, written by Pierre S. du Pont, head of E.I. du Pont de Nemours Company and General Motors Corporation, shed a “very interesting” light on the views of the rich about both the bonus and taxation.<sup>63</sup> Like other statements on the issue, du Pont’s letter mixed economic and moral issues. After stating that high taxes discourage productive investment and encourage wasteful spending, du Pont then turned to the bonus, a topic “linked closely” to taxes.<sup>64</sup> Although he supported those who had “just claim[s]”—that is, those injured in the war—he opposed using the “national income” to pay additional compensation to the uninjured.<sup>65</sup> These able-bodied veterans did not need special attention because:

By fortune these men are the most favored of our citizens. They have youth, health, strength, opportunity, and, having served in one war, are practically secure against further call. Since the war these men have all had opportunity to find employment at almost the highest wage ever known, in purchasing power perhaps the highest.<sup>66</sup>

Moreover, he continued, their “lot” was far superior to that of orphans, women who lost jobs to returning men, the elderly poor, and “women who, having served the Nation in the highest degree through their motherhood, are left with their children unsupported through the death of their breadwinner.”<sup>67</sup> Finally, du Pont wrote, even if it were true that the bonus was merely to show gratitude, “[it] would . . . be pitifully insincere to tender to these defenders of the Nation a purse, not made up by the whole Nation but voted by a majority out of the pockets of a defenseless minority.”<sup>68</sup> (Presumably, he meant the rich, who were the small minority that actually paid income taxes.)

Senator McKellar replied scathingly to du Pont. Du Pont, he charged, displayed “unequaled selfishness” because he

profited probably as much as any one man in the United States by the war, and having secured your profits are now so ungenerous as to begrudge the payment of a just tax for the purpose of paying war debts, including a readjustment of pay so honestly due to the splendid soldiers that preserved

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(statement of Sen. Ashurst); 65 CONG. REC. 1185 (Jan. 21, 1924) (statement of Sen. Copeland); 65 CONG. REC. 4373 (Mar. 17, 1924) (statement of Rep. Jeffers).

<sup>63</sup> 65 CONG. REC. 1382 (Jan. 24, 1924) (statement of Sen. McKellar).

<sup>64</sup> *Id.* at 1383.

<sup>65</sup> *Id.* at 1382–83.

<sup>66</sup> *Id.* at 1383.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

your country and ours, your property and ours, and perhaps your life and ours.<sup>69</sup>

In this regard, McKellar was in line with other critics who also pointed out the hypocrisy of wealthy taxpayers who benefited from the war and would benefit from tax reductions but opposed a soldiers' bonus. This same accusation was frequently thrown at Mellon. Representative Frear, for example, commented that Mellon probably made more than \$15,000–\$20,000 every day during the war:

Why, then, begrudge \$1.25 a day bonus during service to the fellow who only got \$1 a day during the war to be shot at while living among the trenches, mud, and vermin, or why oppose giving a dollar a day to the boy who perchance lost his job when we seized him bodily and sent him to war?<sup>70</sup>

Mellon's opposition, Frear claimed, was especially miserly since Mellon would receive a 50% tax cut if his plan were passed.<sup>71</sup> Critics such as Senators Henry Ashurst (D-AZ) and Thaddeus Caraway (D-AR) also pointed out the irony of the *Saturday Evening Post* publishing an article, *Cut Yourself a Piece of Cake*, which, they claimed, basically said it was all right for profiteers to keep their gains, but soldiers should not get anything from the Treasury.<sup>72</sup>

Senator McKellar stressed du Pont's self-interest in another way. According to Senator McKellar, the purpose of the bonus was to "readjust" soldiers' pay to compensate them for the risks they took, not to show gratitude to soldiers, as du Pont had asserted.<sup>73</sup> Therefore, the soldiers' bonus, Senator McKellar continued, was no different from the Dent Act, which had compensated businesses after the war for terminated war contracts. Du Pont's two companies (and subsidiaries) received \$20,893,818 as readjustment compensation under the Dent Act. How, Senator McKellar wondered, could du Pont, who received so much compensation from the taxpayers, be against giving it to "the boys, by whose risk and services you were enabled so largely to increase your fortune, in exactly the same way that it treated you."<sup>74</sup>

Others agreed with Senator McKellar. Representative Mell Underwood (D-OH) said, "The Mellon bill would sandbag adjusted compensation and untax the rich."<sup>75</sup> The same group of "war profiteers and peace profiteers who made billions in profits" during the war and were

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<sup>69</sup> *Id.* at 1384.

<sup>70</sup> 65 CONG. REC. 647 (Jan. 7, 1924) (statement of Rep. Frear).

<sup>71</sup> *Id.* at 646.

<sup>72</sup> See 65 CONG. REC. 744 (Jan. 9, 1924) (statement of Sen. Ashurst); *id.* at 3683 (statement of Sen. Caraway).

<sup>73</sup> 65 CONG. REC. 1384 (Jan. 24, 1924) (statement of Sen. McKellar).

<sup>74</sup> *Id.*

<sup>75</sup> 65 CONG. REC. 2634 (Feb. 16, 1924) (statement of Rep. Underwood).

“overjoyed” when the railroads and war contractors received hundreds of millions in adjusted compensation now wanted to reduce their surtaxes.<sup>76</sup> They, whose “great fortunes were protected by our noble boys,” would deny a small compensation to those “who bared their breasts to the bullets of the enemy and slept in the vermin-infested trenches in France.”<sup>77</sup>

Some Republicans, like Senator George McLean (R-CT), agreed with this view of the bonus’s purpose. The idea being touted by bonus critics that patriotism would be commercialized by paying ex-soldiers an additional \$1 per day was not true, he said.<sup>78</sup> In earlier times when sons of the wealthy went into the army, it might have made sense to pay soldiers little or nothing.<sup>79</sup> This was no longer the case, however:

I see nothing but ingratitude and flagrant injustice in asking him to suffer the tortures of war and in addition bear a financial loss out of all proportion to that sustained by his shopmates who remained at home in peace and safety and had their wages doubled.<sup>80</sup>

Bonus opponents responded to the charge that unlike Du Pont and other companies, soldiers served out of patriotic duty and—unlike the defense-related contracts of corporations—soldiers did not have a contract with the government.<sup>81</sup> Soldiers did not sign up to get a salary, nor did they contract for indemnity against economic loss.<sup>82</sup> Rather, opponents alleged, soldiers joined out of a sense of patriotism that would be belittled should they get additional compensation.<sup>83</sup>

In late January 1924, the *Literary Digest* conducted an expensive and extensive pro-Mellon/anti-bonus campaign. At a cost of almost \$300,000 it sent out approximately 15 million letters, with attached surveys, which made no “adequate” mention of competing tax reduction plans.<sup>84</sup> Additionally, the *Digest* paid for full-page ads in various newspapers asking readers to vote.<sup>85</sup> Incensed critics claimed the letter was pure propaganda:

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> 65 CONG. REC. 1022 (Jan. 16, 1924) (statement of Sen. McLean).

<sup>79</sup> *See id.*

<sup>80</sup> *Id.*

<sup>81</sup> *E.g., Reports Activities in Anti-bonus Move, supra* note 49.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *See, e.g.,* 65 CONG. REC. 2363 (Feb. 13, 1924) (statement of Sen. Harris); 65 CONG. REC. 1905 (Feb. 2, 1924) (statement of Rep. Blanton (D-TX)); 65 CONG. REC. 2364 (Feb. 13, 1924) (statement of Sen. Swanson); 65 CONG. REC. 2535 (Feb. 16, 1924) (statement of Sen. Harris); *id.* at 2589 (statement of Rep. Tague); 65 CONG. REC. 2803–06 (Feb. 20, 1924) (statement of Sen. Harrison (D-MS)).

<sup>85</sup> 65 CONG. REC. 2363 (Feb. 13, 1924) (statement of Sen. Harris); 65 CONG. REC. 2535 (Feb. 16, 1924) (statement of Sen. Harris).

[N]othing more nor less than an argument, very misleading and unfair, for the Mellon plan, together with a warning or threat that you will get no reduction in your income tax unless you send in at once your vote for this plan and let your Senators and Congressmen know you favor it.<sup>86</sup>

The poll's intention, critics continued, was to convince the public, including laborers and others who would actually benefit more from the other plans (not mentioned by the *Digest*), to support the Mellon plan as the only way to tax reduction.<sup>87</sup> The letter highlighted cuts for the common man, but not for the wealthy. Not only did the letter leave the impression that tax reduction had to be done the Mellon way or no way, but it also said that there could be no tax reduction if there were a bonus. Consequently, as Representative Thomas Lilly (D-WV) asserted, a vote *for* the Mellon Plan in the *Digest* poll would be interpreted as a vote *against* a bonus.<sup>88</sup>

Critics were so worried about the campaign's propaganda machine that on January 21, Senator James Reed (D-MO) announced that the newly formed Senate "Special Committee on Propaganda" would investigate the "twin propaganda" that businesses and wealthy individuals were spreading about the Mellon Plan and the soldiers' bonus.<sup>89</sup> The anti-bonus/pro-Mellon Plan issues were coupled, he said, because the wealthy did not want to pay their proportionally larger share of taxes needed to fund a bonus.<sup>90</sup> In February, Senator Claude Swanson (D-VA) requested that the Committee pay particular attention to the *Literary Digest* letter and accompanying poll.<sup>91</sup> A few days later, Senator William Harris (D-GA) said he had requested it.<sup>92</sup> Unfortunately, one week later, the Committee indefinitely postponed its activities (along with its tax investigation) because one of its members had been hospitalized after being hit "by a stray bullet from a battle between prohibition agents and bootleggers."<sup>93</sup> The Committee apparently never resumed its activities.

The Citizens' National Committee (sometimes called the Citizens' National Committee in Support of the Mellon Tax Reduction Proposal), formed in mid-January 1924 as a nonpartisan organization to support the "scientific" Mellon Plan, did not initially seem to be the sort of organization to worry critics. Chaired by the war hero Major General John F. O'Ryan, its membership included economists and tax experts such as E.R.A. Seligman and Frank Taussig, as well as other nationally prominent figures such as Yale president James Angell, businessman Roger Babson,

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<sup>86</sup> 65 CONG. REC. 2363 (Feb. 13, 1924) (statement of Sen. Harris).

<sup>87</sup> See sources cited *supra* note 85.

<sup>88</sup> 65 CONG. REC. 2590 (Feb. 16, 1924) (statement of Rep. Tague).

<sup>89</sup> 65 CONG. REC. 1187-88 (Jan. 21, 1924).

<sup>90</sup> *Id.*

<sup>91</sup> 65 CONG. REC. 2364 (Feb. 13, 1924).

<sup>92</sup> 65 CONG. REC. 2535 (Feb. 16, 1924).

<sup>93</sup> See *Delay in Probe of Propaganda for Mellon Plan*, ATLANTA CONST., Feb. 23, 1924, at 8.

former Harvard president Dr. C.W. Eliot, financier Otto Kahn, and statesman Henry Stimson.<sup>94</sup> Its biggest event was a “Tax Reduction Week” in April which it actively promoted, as well as tax reduction generally. Members spoke at lunches and on the radio; the Committee even planned “flashes” on movie screens to “work up enthusiasm” for tax reduction on behalf of the general public and to signal to Congress that the country supported the Mellon Plan.<sup>95</sup> College debates were arranged; large advertisers mentioned Tax Reduction Week in their newspaper ads, and “[h]undreds” of amateur wireless operators planned to “flash their tax views over the country.”<sup>96</sup> The Committee claimed that tax reduction week resulted in a “barrage” of letters and telegrams to Congress, with 27,000 being mailed from Los Angeles alone.<sup>97</sup>

Despite the apparently golden reputations of Committee members, some critics were concerned about the Committee’s relationship to the bonus issue. One source of unease was the chair himself. O’Ryan became chair just days after completing his work as counsel for a special Senate Committee investigating inefficiency at the Veterans’ Bureau.<sup>98</sup> In that capacity, his function had been to help veterans. Now, Senator Joseph Robinson (D-AR) and others alleged he was acting against their interests and using information he had gained as special counsel to do so. O’Ryan, they argued, was trying to influence people he had first organized in his capacity as counsel into “a bureau of propaganda” to defeat adjusted compensation legislation and enact the Mellon tax reduction plan.<sup>99</sup> Although Robinson acknowledged that O’Ryan had not done anything illegal, he stated that O’Ryan’s actions were neither “ethical” nor “fair.”<sup>100</sup> O’Ryan, Robinson said, illustrated “a feeling widespread and growing that ingratitude has sown itself in the hearts of the American people and that in order to lighten the burden of taxation” they can disregard their duty to those who fought in the war.<sup>101</sup>

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<sup>94</sup> See, e.g., *Citizens’ Committee to Back Mellon Plan*, BALTIMORE SUN, Jan. 18, 1924, at 1; *Committee Named to Push Tax Plan*, N.Y. TIMES, Jan. 19, 1924, at 15; *O’Ryan Heads Committee to Urge Tax Reduction*, WASH. POST, Jan. 19, 1924, at 1; *Urges Harder Tax Fight*, N.Y. TIMES, April 13, 1924, at 16.

<sup>95</sup> *Open Week’s Drive for Tax Reduction*, N.Y. TIMES, Apr. 6, 1924, at E1.

<sup>96</sup> *Id.*; *Tax Reduction Week*, ATLANTA CONST., Apr. 8, 1924, at 8.

<sup>97</sup> *Tax-Cut Drive Continues*, N.Y. TIMES, Apr. 20, 1924, at E1. See also *Tax Reduction Week Arranged*, L.A. TIMES, Mar. 24, 1924, at 2; *Tax Reduction Week*, *supra* note 96.

<sup>98</sup> See *O’Ryan Ends Senate Work*, N.Y. TIMES, Jan. 12, 1924, at 2; *Veteran Assails O’Ryan*, N.Y. TIMES, Aug. 1, 1924, at 2 (N.Y. state American Legion criticizing O’Ryan because he received \$25,000 as counsel for an investigation that “was practically a failure so far as relief for the disabled was concerned” and now supported the Mellon tax plan but opposed the bonus).

<sup>99</sup> 65 CONG. REC. 2766 (Feb. 19, 1924) (statement of Sen. Robinson).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 2765–66.

Others attacked the funding of the Citizens' National Committee. In March 1924, for example, Representative Lamar Jeffers charged that some of the vast amount of money with which businesses—"Mellon interests"—were funding the "two-ply" anti-bonus/pro-Mellon campaigns went to the Committee.<sup>102</sup> Claiming that one of the Committee's purposes was to tie the two issues together, he quoted from an affidavit by Edward L. Allen, a founder and former executive director of the Anti-Bonus League.<sup>103</sup> Allen, who resigned from the League in late January in protest of its methods, claimed that it had helped form the Citizens' National Tax Reduction Committee in order to kill the bonus bill.<sup>104</sup> Moreover, he alleged that a slush fund existed to both fight the bonus and to further the work of the Committee. Allen also maintained that a Mr. Bronson Batchelor, the "man and propagandist for the Anti-Bonus League," had secured O'Ryan as the Committee's chair.<sup>105</sup>

For the rest of the spring, the pro-Mellon/anti-bonus campaigns continued apace, with the Senate receiving both bills at approximately the same time.<sup>106</sup> Congress passed the bonus bill first, in May 1924.<sup>107</sup> When President Coolidge vetoed it, administration officials hinted that he might have to veto the revenue bill, too, if Congress re-passed the bonus bill.<sup>108</sup> Although Congress overrode his veto in order to enact the Adjusted Compensation Act, President Coolidge did not veto the Revenue Act of 1924, which Congress passed in June.<sup>109</sup> Neither law, however, gave supporters all they desired. The vast majority of veterans received only a certificate redeemable in 1945 rather than immediate cash, and the Revenue Act of 1924 did not lower taxes enough to satisfy tax reduction proponents.<sup>110</sup> The battle for both continued.

## II. 1930S NATIONAL ECONOMY LEAGUE ANTI-BONUS CAMPAIGN

The issue of soldiers' bonuses heated up again in 1932. By that year, bread riots and protests were occurring throughout the country, including the deadly Ford Hunger March by unemployed workers at the River Rouge

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<sup>102</sup> 65 CONG. REC. 4373–75 (Mar. 17, 1924).

<sup>103</sup> *Id.* at 4374–75.

<sup>104</sup> *Id.* at 4375.

<sup>105</sup> *Id.* at 4374–75; see Oliver McKee Jr., *Lobbying for Good or Evil*, 227 N. AM. REV. 343 (1929); *Quinn Says People Favor the Bonus*, N.Y. TIMES, Jan. 28, 1924, at 8.

<sup>106</sup> *Senate Gets Bonus and Tax Cut Bills at the Same Time*, N.Y. TIMES, Apr. 13, 1924, at 1.

<sup>107</sup> *House Adopts Bonus Bill by Viva Voce Vote; Sends It to Coolidge, Expecting a Veto*, N.Y. TIMES, May 3, 1924, at 17.

<sup>108</sup> *Prospect in Senate for Veto Is Called a "Hopeful Chance,"* WASH. POST, May 19, 1924, at 3.

<sup>109</sup> Revenue Act of 1924, 43 Stat. 253.

<sup>110</sup> The World War Adjusted Compensation Act, 43 Stat. 121 (1924), credited each veteran who served in the war between April 5, 1917, and July 1, 1919, \$1 per day for each day served (\$1.25 for each day abroad). *Id.* § 201. Those entitled to \$50 or less received payment immediately. *Id.* § 301.

Michigan Ford plant in March 1932.<sup>111</sup> Many World War I veterans were also feeling the economic pinch of the Depression and wanted Congress to immediately redeem the certificates they had received in 1924. In early 1932, a veteran named Walter Waters began organizing a veterans' march to Washington.<sup>112</sup> By May, this "bonus expeditionary force" was on the move and Congress was reconsidering the bonus issue.<sup>113</sup>

On May 4, at the same time that veterans were marching, the newly formed National Economy Committee sent Congress and President Hoover a petition demanding that the federal government cut approximately \$450 million of the \$1 billion it spent on veterans by eliminating payments to veterans who had no war-related injuries and therefore were not "morally entitled to such relief."<sup>114</sup> Although the Committee stressed that this was not an attack on the bonus then being advocated, it also stated that they opposed the bonus.<sup>115</sup> Signed by numerous military veterans after a meeting at the Harvard Club, the petition claimed that "the subservience of our government authorities to the minority group receiving this subsidy" severely impaired efforts to reduce the federal deficit, stabilize the dollar, and restore a sense of confidence in the federal government.<sup>116</sup> The noted journalist Walter Lippmann called the petition "by all odds the most impressive move yet made toward a real reduction in Federal expenditure."<sup>117</sup> The Committee announced plans to attend both the Democratic and Republican nominating conventions that summer to persuade them to adopt a plank against benefits to veterans without war-related injuries.<sup>118</sup>

July 1932 was a momentous time in the history of the bonus. At the end of the month, the U.S. army, led by General Douglas MacArthur and under orders from President Hoover, forcibly evicted the marchers from the Washington campsite they had occupied over the summer.<sup>119</sup> Meanwhile, business groups such as the United States Chamber of Commerce launched new campaigns to reduce government spending and taxation.<sup>120</sup> At the same time, the National Economy Committee announced the formation of a

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<sup>111</sup> DICKSON & ALLEN, *supra* note 7, at 52–53; 4 *Die, Many Hurt in Jobless Clash at Ford Factory*, WASH. POST, Mar. 8, 1932, at 1.

<sup>112</sup> *See Bonus Army's Commander Is a 'Natural Born' Leader*, WASH. POST, June 9, 1932, at 3.

<sup>113</sup> *Row in Capital over Marchers*, DAILY BOS. GLOBE, May 31, 1932, at 3.

<sup>114</sup> *Cut in Veterans' Aid of \$450,000,000 Asked to Abolish 'Racket'*, N.Y. TIMES, May 5, 1932, at 1.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Walter Lippmann, *Today and Tomorrow: A Standard Is Raised*, HARTFORD COURANT, May 6, 1932, at 26.

<sup>118</sup> *Plank Writers Invade Chicago*, DAILY BOS. GLOBE, June 5, 1932, at A19.

<sup>119</sup> *E.g., J.F. Essary, Move to Block New Siege Seen as Hoover Aim*, BALT. SUN, July 31, 1932, at 2.

<sup>120</sup> *New Economy Drive by Commerce Body*, N.Y. TIMES, July 27, 1932, at 5.

permanent national organization, the National Economy League.<sup>121</sup> At its first meeting, the League declared a broad purpose: to restore “the American principle that government shall be ‘for the benefit of the whole people.’”<sup>122</sup> The League aimed to reduce “all wasteful and unnecessary governmental expenditures, which have risen to the point where they threaten the public credit and sap the resources of the people—and thus to compel the reduction of the taxes which these rising expenditures ultimately exact from all the people.”<sup>123</sup>

Major newspapers covered the League’s formation, including a long front-page article in the *New York Times*. The coverage continued, partially—as that article wrote—because of the timeliness of the issue, but undoubtedly also because of the prominence of the League’s members. President Hoover and then-New York Governor Franklin Roosevelt endorsed its formation.<sup>124</sup> Many notables had signed the Committee’s original petition in May, including Archibald Roosevelt, son of former President Theodore Roosevelt and a founder of the group; John W. Davis, 1924 Democratic presidential candidate and founder of the law firm Davis, Polk, and Wardwell; and Colonel D.W. MacCormack, Commissioner of Immigration.<sup>125</sup> Successful businessmen, such as former RCA president Major General James G. Harbord, were involved with the League, and some—like Marshall Field and John D. Rockefeller—contributed \$1000 or more to the organization.<sup>126</sup> Henry Curran, the League’s director from 1932–1936, had previously been director of the Association Against the Prohibition Amendment, which was instrumental in achieving the repeal of the Eighteenth Amendment in December 1933; he later served as deputy mayor and chief magistrate of New York City.<sup>127</sup> The League’s national advisory board included more notables, such as Calvin Coolidge, Alfred E. Smith, Elihu Root, Newton D. Baker, and General John Pershing.<sup>128</sup> Organizers solicited other prominent individuals and launched major

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<sup>121</sup> See *Crusade Planned on Veterans’ Cost*, WASH. POST, July 26, 1932 at 3; *Leaders in Nation Organize Campaign for Public Economy*, N.Y. TIMES, July 27, 1932, at 1; *New Economy Group to Organize Today*, N.Y. TIMES, July 26, 1932, at 17.

<sup>122</sup> *Leaders in Nation Organize Campaign for Public Economy*, *supra* note 121.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Cut in Veterans’ Aid*, *supra* note 114; *A Guide to the John W. Davis Collection, 1888–1953*, Lewis F. Powell, Jr. Archives, WASH. & LEE U., available at <http://ead.lib.virginia.edu/vivaxtf/view?docId=wl-law/vilxwl00010.xml;query=John%20W.%20Davis;brand=default>.

<sup>126</sup> 77 CONG. REC. 274 (1933) (statement of Sen. Long (D-LA)); *Leaders in Nation Organize Campaign for Public Economy*, *supra* note 121.

<sup>127</sup> *Henry H. Curran Is Dead at 88; City’s Former Chief Magistrate*, N.Y. TIMES, Apr. 9, 1966, at 25.

<sup>128</sup> *Leaders in Nation Organize Campaign for Public Economy*, *supra* note 121.

enrollment campaigns, including on college campuses such as Harvard.<sup>129</sup> Within months, at least two other anti-bonus groups merged with the League.<sup>130</sup>

The late July election of Rear Admiral Richard Byrd as chair of the newly expanded National Economy League also helped assure continued press coverage. He stated that he delayed his next polar expedition in order to accept the position because he believed, as had Mellon in 1923, that taxation was the biggest issue facing the nation.<sup>131</sup> Whatever the causes of the Depression, he said in his acceptance speech, it is “our inordinate taxation more than anything else that keeps it chronic.”<sup>132</sup> Every single person bore this tax burden, he stated, because there were not enough rich people to pay all the taxes needed.<sup>133</sup> Everybody paid taxes, even wage earners who did not pay income taxes but paid indirectly through higher prices and lower wages.

The League’s first project was the elimination of wasteful spending on veterans.<sup>134</sup> This campaign illustrated conservatives’ interrelation of taxing, spending, and form of government. In so doing, it echoed Mellon’s 1920s arguments that from an economic standpoint, the country could not have both tax reduction and soldiers’ bonuses.<sup>135</sup> The League’s patriotic arguments also mirrored those of the 1920s. In a September League-sponsored radio address, Major General O’Ryan, the Citizens National Committee chair in the mid-20s, not only argued that payment of an immediate cash bonus was unfair to people already heavily burdened with taxes, but he also used the same moral and patriotic appeals against the bonus used in the 1920s.<sup>136</sup> The bonus was unjustified because it changed the concept of patriotism. Yes, he said, the bonus caused financial instability, but “[a]bove all, let it be made clear that honorable service in war at the call of country is more precious than gold . . . [and] should not be sullied. It should not be bartered.”<sup>137</sup>

In November 1932, following the presidential election, National Economy League Chair Byrd said “[u]nfair” taxation confiscated property,

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<sup>129</sup> See, e.g., *Economy League Holds Drive for Enrollment*, HARV. CRIMSON, Oct. 24, 1932, available at <http://www.thecrimson.com/article/1932/10/24/economy-league-holds-drive-for-enrollment/>.

<sup>130</sup> *Anti-bonus Group Joins Byrd League*, N.Y. TIMES, Oct. 7, 1932, at 13; *Anti-bonus Group in Economy League*, N.Y. TIMES, Jan. 28, 1933, at 7; *New Economy Drive*, *supra* note 120.

<sup>131</sup> See *Leaders in Nation Organize Campaign for Public Economy*, *supra* note 121.

<sup>132</sup> *Id.*

<sup>133</sup> See *id.*

<sup>134</sup> *Id.*

<sup>135</sup> See *supra* note 27 and accompanying text.

<sup>136</sup> See *Bonus Demand Called Unjust*, L.A. TIMES, Sept. 11, 1932, at 4; *Legion Bonus Stand Assailed by O’Ryan*, N.Y. TIMES, Sept. 11, 1932, at 22.

<sup>137</sup> *Legion Bonus Stand Assailed by O’Ryan*, *supra* note 136.

and taxes at all levels of government must be cut.<sup>138</sup> As in July, Byrd noted the heavy burden of paying for government fell on the common man, who was often unaware that he was paying these taxes because they were hidden in the price of goods and services they bought (such as bread or electricity).<sup>139</sup> He reiterated this again in a December radio speech in which he stated that every person who heard or read his speech paid “at least three months of labor” per year in hidden taxes that could tax people to “destruction.”<sup>140</sup> Conservatives would stress this theme of hidden taxes later in the 1930s, especially in the 1936 election campaign, when hidden taxes were a major issue in the Republican effort to defeat Roosevelt.<sup>141</sup>

Other League supporters argued that a cash bonus and other extravagant veterans’ benefits were not only wasteful but harmed American democracy because of the process that created them. These programs, the League argued, were the result of an organized minority that pressured Congress through strategic lobbying to enact legislation that only benefited special interests. Thus, the League “unequivocally” opposed an immediate cash bonus for veterans not just because it placed “an intolerable financial burden” on the country, or because it was a demand “without fair basis or merit,” but because its passage would be caving in “to the dictation of an organized minority.”<sup>142</sup> “All our American principles are opposed to it. There is no moral justification for it.”<sup>143</sup> These “laws for the special few” cost \$15 billion, which must be paid for by everyone: “For the first time since 1776 there is need for a second declaration of independence to break the servitude to organized minorities of the great majority of our people.”<sup>144</sup> Ironically, the only way to fight this was for “the great majority also to organize, for masses of people cannot act in unison without organizing.”<sup>145</sup>

Special interest lobbying, of which Byrd and other League supporters spoke, was an important issue of the day. Both academics and politicians were worried about it. Congress had already investigated the issue several times, including the 1929 Senate Judiciary Lobby Investigation chaired by Caraway, who in the mid-1920s had spoken out about the Mellon/bonus lobbying.<sup>146</sup> President Hoover’s letter supporting the League on its formation had also expressed concern about lobbying. The country, he wrote, needed a national nonpartisan organization like the League to help

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<sup>138</sup> *Byrd Says Tax Load Is Enslaving Nation*, N.Y. TIMES, Nov. 11, 1932, at 20.

<sup>139</sup> *Id.*; see *supra* note 133.

<sup>140</sup> *Byrd Welcomed Home by 500 at Economy League Reception*, DAILY BOS. GLOBE, Dec. 6, 1932, at 4.

<sup>141</sup> Marjorie E. Kornhauser, *Remembering the ‘Forgotten Man’ (and Woman): Hidden Taxes and the 1936 Election*, in 4 STUDIES IN THE HISTORY OF TAX LAW 327, 327–40 (John Tiley ed., 2010).

<sup>142</sup> *Fights Surrender to Bonus ‘Minority’*, N.Y. TIMES, Sept. 17, 1932, at 2.

<sup>143</sup> *Id.*

<sup>144</sup> *Bonus Payment Plan Denounced by Byrd*, ATLANTA CONST., Oct. 4, 1932, at 2.

<sup>145</sup> *Id.*

<sup>146</sup> See S. REP. NO. 71-43, at 1–3 (1929).

Congress “defend” against the constant pressure of lobbyists to increase governmental spending and trim expenditures.<sup>147</sup>

The League’s view that an organized minority was lobbying Congress to support the bonus had some truth to it, but as the well-organized, pro-bonus American Legion and others quickly pointed out, the National Economy League was also an organized minority engaged in lobbying. In fact, at a joint House and Senate hearing on veteran affairs during December 1932–January 1933, League critics claimed the League violated the Corrupt Practices Act of 1925, which required political organizations to submit their contributions and expenses to the Clerk of the House of Representatives.<sup>148</sup> The Act, Representative Wright Patman (D-TX) said, defined a “political” committee as one that accepts contributions and/or makes expenditures “for the purpose of influencing or attempting to influence the election of a candidate” for Congress or President.<sup>149</sup> Yet, Patman continued, the League filed no reports even though it was spending large amounts of money to do just that.<sup>150</sup> He quoted statements made by the League prior to the November 1932 election, such as one by the League organizer Archibald Roosevelt: “When any Congressman votes against something of sound economy, we expect to have the local chief of the National Economy League in his district know about it and raise hell if he can.”<sup>151</sup>

Representative Patman then elaborated on the political aspect of the League. For example, the League was organized according to congressional districts and members were asked to state the congressional district in which they lived.<sup>152</sup> Although some Representatives agreed that the League violated the Act, others, such as Representative Joseph Hooper (R-MI), said the League should not be singled out; other organizations should also be investigated for violations.<sup>153</sup>

League Director Henry Curran admitted that the League had not filed any report but claimed that such failure did not violate the Corrupt Practices Act because the League did not lobby.<sup>154</sup> Its purpose, he said, was to be “a bureau of information” to provide facts and arguments to the American people; it was the people themselves, using those facts, who will

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<sup>147</sup> Letter from Herbert Hoover, U.S. President, to Grenville Clark, Chairman, Org. Comm., Nat’l Econ. League (July 22, 1932), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=23183>.

<sup>148</sup> *Veterans’ Affairs: Hearings Before the J. Cong. Comm. on Veterans’ Affairs*, Vol. 2, 72nd Cong. 511–13, 529–30 (1933) [hereinafter *Hearings*]; 76 CONG. REC. 1232–33 (Jan. 3, 1933); *Law Violation Laid to Economy League*, N.Y. TIMES, Dec. 12, 1932, at 10.

<sup>149</sup> 76 CONG. REC. 1232 (Jan. 3, 1933).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 1231–32 (statement of Rep. Patman). See *Plans National Fight on Veterans’ ‘Racket,’* N.Y. TIMES, May 23, 1932, at 2.

<sup>153</sup> 76 CONG. REC. 1237 (Jan. 3, 1933).

<sup>154</sup> *Hearings*, *supra* note 148, at 512–13.

act to influence legislation in Congress, not the League.<sup>155</sup> Newspapers did not file reports even though they distributed facts and arguments, he noted, and neither should the League.<sup>156</sup>

At the hearing, League critics made two other charges—both of which had been made against bonus supporters in the 1920s. First, they claimed that many of the League’s leading members were “inconsistent.”<sup>157</sup> Members such as Byrd, General Pershing, and Major General James Harbord wanted to eliminate pensions for injured veterans even though they themselves were receiving large retirement pensions from the federal government.<sup>158</sup> Other members, critics noted, received different government subsidies. Representative Patman observed, for example, that League founder Archibald Roosevelt’s company provided ocean mail steamship service for the post office.<sup>159</sup>

Harbord resigned in early 1933, shortly after these charges appeared, and later stated that he thought the purpose of the League was to recommend cuts in all branches of government and its focus on veterans’ benefits had become “very embarrassing to me as a retired Army officer.”<sup>160</sup> In April, Byrd resigned as League chair, but he remained on the executive committee.<sup>161</sup> His stated reason for resigning was his need to attend to his personal affairs;<sup>162</sup> one wonders, however, whether all the negative publicity about his receipts from the government while he urged the elimination of some veterans’ benefits played a role in his decision.

The second charge made at the joint hearings was that the League represented, and was funded primarily by, businesses and wealthy taxpayers in order to lessen their own tax burdens. This was a long-standing accusation. Indeed, days after the League’s formation, Representative William Connery Jr. (D-MA) had called the League the “new-born favorite child of big business” and of large income taxpayers who see “no percentage of profit in [the bonus] for the Wall Street interests.”<sup>163</sup> The fact that many large, pro-business newspapers endorsed the League lent some weight to this allegation.<sup>164</sup>

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<sup>155</sup> *Id.* at 512.

<sup>156</sup> *Id.* at 513.

<sup>157</sup> *See id.* at 131; 76 CONG. REC. 1156 (Jan. 3, 1933) (statement of Sen. Robinson).

<sup>158</sup> 76 CONG. REC. 1232 (Jan. 3, 1933); *Hearings*, *supra* note 148, at 131.

<sup>159</sup> 76 CONG. REC. 1232 (Jan. 3, 1933).

<sup>160</sup> 77 CONG. REC. 178 (Mar. 11, 1933).

<sup>161</sup> *Byrd Resigns as Chairman of Economy League*, CHI. DAILY TRIB., Apr. 26, 1933, at 7.

<sup>162</sup> *Id.*

<sup>163</sup> *Calls Economy League Big Business Child*, N.Y. TIMES, Aug. 10, 1932, at 2.

<sup>164</sup> *National Economy League Purposes Heartily Endorsed by World-Telegram*, HARTFORD COURANT, Dec. 5, 1932, at 2.

Representative Patman also had charged that the Mellon and Morgan “group” had helped fund the League.<sup>165</sup> At the January hearings, Curran provided information that supported these charges. The list of contributors he provided showed that by the end of 1932, about six months after its founding, the League had received approximately \$200,000 in contributions from 25,000 individuals, with an average contribution of \$8.<sup>166</sup> Seventeen individuals, however, had given \$1000 or more, with the sum total of those contributions (\$35,100) comprising slightly more than 17% of the total.<sup>167</sup> The list of names included wealthy industrialists, bankers (including names of Morgan-connected individuals), and others whose names are still recognizable today, such as Marshall Field and John D. Rockefeller, Jr.<sup>168</sup>

Wealthy individuals and groups certainly contributed to the League. In fact, the League had greater support in states that paid the most in income taxes, such as Massachusetts.<sup>169</sup> Moreover, as Representative Charles Gifford (R-MA) pointed out, there was an inverse relationship between the (implicitly shiftless) tax-eating individuals on benefits and taxpayers: there were fewer veterans on government benefits in these higher paying states than in states like Mississippi that contributed little to federal revenues.<sup>170</sup> Some League critics charged that the League’s real purpose was not government economy but reducing taxes on “large income taxpayers.”<sup>171</sup> These critics noted that if the federal government stopped paying veterans’ benefits, state and local governments would be the sole providers of the benefits.<sup>172</sup> Since these governments were funded primarily by property taxes, the tax burden would shift to already overburdened average citizens. In contrast, using federal funds to pay veterans’ benefits comported with the ability-to-pay doctrine, because these funds were derived largely from income and estate taxes paid by the wealthy.

In March 1933, Congress passed the Economy Act of 1933, which among other things, reduced payments to veterans.<sup>173</sup> Accordingly, on April 1, 1933, President Roosevelt signed an executive order that cut approximately \$400 million per year from the federal budget partially by eliminating disability pensions to veterans whose injuries were not war

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<sup>165</sup> *Economy League Broke Law, Patman Charges*, L.A. TIMES, Nov. 30, 1932, at 4. Cf. *Law Violation Laid to Economy League*, N.Y. TIMES, Dec. 12, 1932, at 10 (reporting that Rep. Patman wrote a letter alleging that the League had violated the Federal Corrupt Practices Act).

<sup>166</sup> *Hearings*, *supra* note 148, at 508–10.

<sup>167</sup> *Id.*

<sup>168</sup> 77 CONG. REC. 274 (Mar. 13, 1933) (statement of Sen. Long, inserting lists of supporters).

<sup>169</sup> See 76 CONG. REC. 1237–38 (Jan. 3, 1933) (statement of Rep. Gifford).

<sup>170</sup> *Id.*; 77 CONG. REC. 274 (Mar. 13, 1933) (statement of Sen. Long).

<sup>171</sup> 76 CONG. REC. 1156 (Jan. 3, 1933) (statement of Sen. Robinson). See also *id.* at 1235–36 (statement of Rep. Kvale).

<sup>172</sup> See *supra* note 171.

<sup>173</sup> See Act of Mar. 20, 1933, ch. 3, § 5, 48 Stat. 8.

related.<sup>174</sup> Veterans responded with a second, smaller bonus march on Washington. Roosevelt avoided Hoover's forced eviction and attempted to deflect the marchers by offering them jobs in the Citizens' Conservation Corps (CCC).<sup>175</sup>

This offer did not entirely placate veterans, and the battle over veterans' benefits persisted. The League, still in its anti-bonus leadership position, continued opposing the benefits not just on economic grounds but also because benefits to able-bodied veterans were "in clear defiance of principle and self-respect."<sup>176</sup> Bonus proponents once again continued to highlight the hypocrisy of the League's attack because, as Representative Patman charged, some League members "have received more from the Federal government than any disabled veteran. These favors, through the Federal Reserve printing of their bank notes at ridiculously low prices, income tax refunds and war contract settlements made the money given to veterans seem absurdly small."<sup>177</sup>

While bonus proponents continued to allege that the League and other bonus opponents engaged in unfair lobbying by using "the daily press, the radio and the screen and stage to disseminate their subversive propaganda,"<sup>178</sup> the League argued that bonus proponents unfairly pressed their views. In April 1934, for example, League Director Henry Curran sent Senators a letter asserting that the veterans lobby threatened to defeat the reelection of any Senator opposing the then-current House bill for an immediate cash payment—the exact opposite of the political threats bonus supporters claimed bonus opponents made.<sup>179</sup> In actuality, lobbying about the bonus was so heated on both sides that there were (unsuccessful) calls for an investigation of all veterans' organizations in 1934.<sup>180</sup> In 1936, there were also calls for the ongoing Senate Lobbying Investigation Committee to investigate the League,<sup>181</sup> but it never did.

The bonus bill battle continued throughout 1934 and 1935. After debating various bills during the spring of 1935, Congress finally passed one in May, but President Roosevelt vetoed it for reasons familiar to

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<sup>174</sup> *Thousands Lose All Pay: Veterans Put Number at 406,000, While 29,000 Will Get But \$20*, N.Y. TIMES, Apr. 2, 1933, at 1.

<sup>175</sup> *See Bonus Group's Leader Favors Jobs in Forest*, WASH. POST, May 19, 1933, at 1; *Roosevelt Blocks Paying Cash Bonus; Aids Idle Veterans*, N.Y. TIMES, May 12, 1933, at 1.

<sup>176</sup> *Veterans' Aid Cost Declared Too High*, N.Y. TIMES, May 14, 1934, at 2. *See also Roosevelt Warned Our Debt Will Rise 4 Billion in Year*, N.Y. TIMES, Dec. 18, 1933, at 1 (noting that the League was a leader of the 1933 fight against veterans' benefits).

<sup>177</sup> *Economy League Hit by Patman*, L.A. TIMES, July 6, 1934, at 9.

<sup>178</sup> *Id.*; *Press Challenged by Legion Leader*, N.Y. TIMES, Apr. 3, 1934, at 17 (claiming the League was the nation's "greatest lobbyist").

<sup>179</sup> *See Veterans' Lobby Warning Given*, L.A. TIMES, Apr. 30, 1934, at 5.

<sup>180</sup> *See Fight on Legion Grows*, N.Y. TIMES, Apr. 4, 1934, at 13.

<sup>181</sup> *See Arthur Sears Henning, Terror Spread Among Enemies by New Dealers*, CHI. DAILY TRIB., Feb. 9, 1936, at 1.

conservatives.<sup>182</sup> From an economic standpoint, he stated, the boost in spending power veterans received would not have lasting effects for recovery.<sup>183</sup> This was especially true because the bill's inflationary effects—since it provided for no new taxes to fund the payment—would more than cancel out any positive effects. Even without such results, Roosevelt claimed he opposed the bill because it went against American principles of not allowing “political coercion by minorities.”<sup>184</sup> Not surprisingly, the League praised Roosevelt, claiming the veto was “good insurance against bad inflation.”<sup>185</sup>

Part of Roosevelt's opposition to the bonus undoubtedly stemmed from his own, different, political priorities. He wanted tax revenues to fund programs designed to aid economic recovery and cushion the effects of the Depression. His recommendations to Congress the next month for higher taxes on large incomes and inheritances demonstrated his willingness to enact, at least symbolically, “soak-the-rich” legislation to do so—or so his critics charged.<sup>186</sup>

In January 1936, Congress passed yet another bonus bill which Roosevelt vetoed yet again for the same reasons.<sup>187</sup> However, greater tax issues may have played a role in his decision to veto the bill a second time: just weeks earlier, the Supreme Court in *United States v. Butler* had punched a multi-million dollar hole in federal revenues by invalidating the processing tax in the Agricultural Adjustment Act of 1933.<sup>188</sup> Within days (hours in the House), Congress overrode the veto and replaced the 1924 bonus certificates with interest-bearing Treasury bonds that could be redeemed as early as June 15, 1936<sup>189</sup>—accelerating the veterans' bonus by almost a decade. Once the bonus issue was resolved, the League continued its push for thriftiness in government, but press coverage declined, and by 1943, the League basically disappeared from the public eye.

Conservatives generally, however, continued to link the broader issues of taxing, spending, and the nature of American democracy. Indeed, some prominent League participants were active in other conservative grassroots

<sup>182</sup> See H.R. DOC. NO. 74-197, at 1 (1935).

<sup>183</sup> *Id.* at 4.

<sup>184</sup> *Id.* at 7.

<sup>185</sup> *National Economy League Gives Thanks for Veto*, DAILY BOS. GLOBE, May 20, 1935, at 13.

<sup>186</sup> See, e.g., *Editorial Extracts on Tax Message of Roosevelt*, BALT. SUN, June 21, 1935, at 2; Bernard Kilgore, Op-Ed., *Revenue and Reform*, WALL ST. J., June 21, 1935, at 3. For a short current commentary, see Joseph J. Thorndike, *Four Things that Everyone Should Know About New Deal Taxation*, 121 TAX NOTES 973 (2008).

<sup>187</sup> H.R. DOC. NO. 74-398, at 1 (1936).

<sup>188</sup> 297 U.S. 1, 78 (1936). See Turner Catledge, *Plan for Big Tax Program Discussed at White House to Offset Budget Losses*, N.Y. TIMES, Jan. 31, 1936, at 1 (*Butler* was estimated to “knock[] \$547,000,000 from the anticipated revenue for” FY 1936–1937 and require \$200,000,000 to “protesting processors”). The estimated cost for the bonus act Congress ultimately passed was over \$2 billion. *Id.*

<sup>189</sup> Adjusted Compensation Payment Act, ch. 32, § 4, 49 Stat. 1099, 1101 (1936).

organizations, such as the American Liberty League. These groups also draped their arguments in the American flag and used modern media and marketing techniques in their attempts to sway legislators and the public to defeat Roosevelt and his tax-and-spend “socialist” agenda.<sup>190</sup>

### III. THEN AND NOW

Conservative tax policy still rests on the same three arguments that conservative pro-tax reduction/anti-bonus campaigns used in the 1920s and 1930s. The first argument is an economic one designed to appeal to the “common” (i.e., middle class) voter. It asserts that reducing taxes on the wealthy benefits everyone in two ways. Lower taxes are economically efficient because they increase investments, the benefits of which “trickle down” to the masses by expanding jobs, increasing wages, and lowering prices.<sup>191</sup> Lower taxation, they also state, is economically efficient because it curbs wasteful government spending, which also depresses economic growth.<sup>192</sup>

Conservatives also continue to articulate, as the National Economy League did so succinctly in its 1934 letter to Congress, the connection between taxing and spending: “Will you take this [money for the bonus] out of us in taxes all at once or try to borrow it from somebody else, or run it off the printing presses in inflated money?”<sup>193</sup> Although conservatives do a public service today by continuing to highlight the connection between taxing and spending, their economic rationales and conclusions are inextricably intertwined with political ideology. Not only do recent statistics on increased wealth and income disparity show the limits of “trickle-down” theory,<sup>194</sup> but also all government spending is not wasteful.

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<sup>190</sup> See, e.g., GEORGE WOLFSKILL, *THE REVOLT OF THE CONSERVATIVES* 65–72 (1962) (detailing the American Liberty League’s methods to achieve their agenda). See generally Marjorie E. Kornhauser, *Shaping Public Opinion and the Law*, 73 L. & CONTEMP. PROBS. 123 (2010); Kornhauser, *supra* note 141.

<sup>191</sup> See *supra* note 1.

<sup>192</sup> See Takala, *supra* note 1.

<sup>193</sup> Compare *Congress Urged to Resist Bonus*, N.Y. TIMES, Dec. 17, 1934, at 4, and *Van Zandt Hits U.S. Chamber*, DAILY BOS. GLOBE, May 5, 1935, at A34, with REPUBLICAN NAT’L CONVENTION, 2008 REPUBLICAN PLATFORM 15 (2008), <http://www.gop.com/wp-content/uploads/2012/06/2008platform.pdf> (“Republicans will uphold and defend our party’s core principles: Constrain the federal government to its legitimate constitutional functions. Unleash the power of enterprise, innovation, civic energy, and the American spirit—and never pretend that government is a substitute for family or community.”), and Bruce Bartlett, *Norquist Holds the Deficit Hostage to ‘Starve the Beast’ Theory*, 130 TAX NOTES 1491 (2011).

<sup>194</sup> See CHAD STONE ET AL., *A GUIDE TO STATISTICS ON HISTORICAL TRENDS IN INCOME INEQUALITY I* (2013), available at <http://www.cbpp.org/files/11-28-11pov.pdf>; Anthony B. Atkinson et al., *Top Incomes in the Long Run of History*, 49 J. ECON. LITERATURE 3, 5 (2011) (noting that “the increase in top income shares in recent decades has been quite concentrated with most of the gains accruing to the top percentile”).

Many believe that properly devised spending on infrastructure, especially early childhood education for example, can stimulate economic growth.<sup>195</sup>

Conservatives often display curious blind spots about government spending. For instance, their examples of excessive spending usually focus on “entitlement” benefits for large masses of people—veterans’ benefits, social security, and healthcare.<sup>196</sup> Conservatives often tend to ignore, however, the large amount of government spending that benefits the wealthy. This spending can be through the tax system by means of tax preferences (or loopholes, depending on one’s viewpoint) for wealthy individuals and corporations. The spending also can be via direct expenditures. Recently, conservatives in Congress voted to cut back food stamps while at the same time continue agricultural subsidies that go largely to the wealthy.<sup>197</sup> Direct spending that benefits the wealthy also frequently occurs in the context of defense (a part of the budget conservatives generally do not want to cut). Although President Eisenhower warned against the wealth and power accruing to the “military-industrial complex” in his 1961 farewell address,<sup>198</sup> bonus supporters in the 1920s and 1930s had already noted these dangers and commented on the sizeable military pensions and defense contracts wealthy anti-bonus individuals and corporations received. Today, the country’s current huge national defense budget, increasing tax expenditures, and privatization of many functions continue—if not enlarge—the concentration of such material benefits and power. A recent report found that not only is the federal government spending more on service contractors than on federal employees, but that the cost of those contractors on average is almost twice that it would be if federal employees performed the services.<sup>199</sup>

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<sup>195</sup> See, e.g., WILLIAM T. DICKENS ET AL., THE EFFECTS OF INVESTING IN EARLY EDUCATION ON ECONOMIC GROWTH 1 (2006), available at <http://www.brookings.edu/~media/research/files/papers/2006/4/education%20dickens/200604dickensawhill.pdf>.

<sup>196</sup> The GOP 2012 party platform states: “For much of the last century . . . we have witnessed the expansion, centralization, and bureaucracy in an entitlement society.” REPUBLICAN NAT’L CONVENTION, *supra* note 2, at 21. This Article has discussed the battle against veterans’ benefits in the 1920s and 1930s. The 2012 platform specifically mentions three large entitlement programs today: Medicare, Medicaid, and Social Security (a program conservatives opposed in the 1930s). See *id.* Regarding healthcare, some conservatives oppose the Patient Protection and Affordable Care Act (“Obamacare”) so much that, as this Article was being edited, they were willing to shut down the federal government to defund the Act.

<sup>197</sup> See, e.g., James B. Stewart, *Richer Farmers, Bigger Subsidies*, N.Y. TIMES, July 20, 2013, at B1.

<sup>198</sup> President Dwight D. Eisenhower, Farewell Address (Jan. 17, 1961), available at <http://www.ourdocuments.gov/doc.php?flash=true&doc=90&page=transcript> (warning against its political and economic influence).

<sup>199</sup> *Contractors: How Much Are They Costing the Government?: Hearing Before the Ad Hoc Subcomm. on Contracting Oversight, S. Comm. on Homeland Sec. & Gov’t Affairs*, 112th Cong. 2 (2012) (statement of Sen. McCaskill, Chairwoman, Ad Hoc Subcomm. on Contracting Oversight).

The second conservative argument, then and now, is a legal and constitutional one: heavy taxing and spending destroy fundamental aspects of American democracy. High taxes support an enlarged government whose programs sometimes violate Tenth Amendment limitations on the federal government. Moreover, the high taxation needed to fund such spending restricts individual freedom and may even be considered an illegal confiscation of property, as Byrd alleged in 1932.<sup>200</sup> President Reagan, for example, when proposing his tax reduction plan in 1985, said:

I believe that in both spirit and substance our tax system has come to be un-American. . . . The first American Revolution was sparked by an unshakable conviction: Taxation without representation is tyranny. Two centuries later a second American Revolution for hope and opportunity is gathering force again, a peaceful revolution but born of popular resentment against a tax system that is unwise, unwanted and unfair.<sup>201</sup>

Others have gone even further. Herman Cain, campaigning for the Republican 2012 presidential nomination, for example, called the tax code a “21st-century version of slavery.”<sup>202</sup> Conservatives also argue that income taxes, especially if progressive, can easily become a tyranny of the majority in which the low (or no) tax majority shift the burden of taxation to a minority—the rich.<sup>203</sup>

The conservative constitutional argument, coupled with a moral component in its economic argument, easily—and consistently—merges into a patriotic argument. Moral appeals contrast the growth-creating entrepreneur (the taxpayer) with the lazy, benefit-seeking tax eater who saps economic vitality from the nation by relying on the government for food, housing, and medical care. This morally inferior tax taker also undermines the American character and ultimately the American way of life. The tax eater lacks independence, self-reliance, and the entrepreneurial spirit. These traits are not only the ones by which Americans define themselves, but the ones that stereotypically lie at the heart of American progress and exceptionalism. Mitt Romney’s (in)famous comment during the 2012 presidential campaign characterizing the 47% of Americans who pay no taxes as freeloaders who were “dependent upon government” exemplifies this.<sup>204</sup> Although his comments were meant to be private, they

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<sup>200</sup> Byrd Says Tax Load Is Enslaving Nation, *supra* note 138.

<sup>201</sup> Transcript of President’s Speech on Revising the Tax System, N.Y. TIMES, May 29, 1985, at A18.

<sup>202</sup> Sandhya Somashekhar, Cain Plays the Race Card and Plays It His Way, WASH. POST, Oct. 22, 2011, at A1.

<sup>203</sup> See, e.g., Richard W. Rahn, Opinion, *American Income Tax Tyranny: Our Forebears Rebelled over Fewer Insults than We Must Bear Today*, WASH. TIMES, Apr. 10, 2012, at B3.

<sup>204</sup> Editorial, *Mitt Romney, Class Warrior*, N.Y. TIMES, Sept. 19, 2012, at A28. Liberals are complicit because they also place many benefits to the rich and poor in the tax code, which make them less visible. See generally Marjorie E. Kornhauser, *Cognitive Theory and the Delivery of Welfare Benefits*, 40 LOY. U. CHI. L.J. 253, 270–75, 291–92 (2009). Moreover, they are enablers in that they talk

echo modern public rhetoric about dependent welfare queens. They also echo earlier claims that a bonus to able-bodied veterans was not only wasteful spending but also went against American traits of self-respect and independence.<sup>205</sup>

Despite the existence of alternative notions of economics, patriotism, and democracy, conservatives have successfully wedded their conceptions, especially of patriotism, to low taxation. Perhaps the most prominent example of this is their appropriation of the American Revolution, as illustrated by President Reagan's comments in 1985. Back in the 1930s, Admiral Byrd of the National Economy League stated that "citizens must develop the same spirit our forefathers had in the days of the Boston tea party" to save the country from the "crushing" burden of taxation.<sup>206</sup> In modern times, actual reenactments of the Boston Tea Party and the formation of a political movement called the Tea Party have used its potent symbolism to link low or no taxation to the essence of American democracy. In short, whether "mainstream" Republicans or "tea partiers," conservatives have by and large "captured" patriotism and use it to promote their tax positions.<sup>207</sup>

Conservatives have accomplished this feat through adroitly using rhetoric and media to influence the public. Politicians, of course, have always used these tools to sell their agenda to the masses. However, the origins of the methods and means used today reached their first fruition during the period of the anti-bonus/pro-reduction campaigns. It was then that professionals expanded new knowledge about persuasion gained through government efforts to encourage support for World War I. Post war, research continued to rapidly expand in fields such as psychology, statistics, and marketing; professionals quickly used the newly gained knowledge in the political sphere to sell candidates and policies, just as they applied them to sell toothpaste in the commercial sphere.<sup>208</sup> In that

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about tax increases only for the rich. *See, e.g.*, MOLLY MICHELMORE, *TAX AND SPEND: THE WELFARE STATE, TAX POLITICS, AND THE LIMITS OF AMERICAN LIBERALISM* 10 (2012).

<sup>205</sup> *See Anti-bonus Group Joins Byrd League, supra* note 130; *Byrd Ready to Quit Navy for Economy*, N.Y. TIMES, Jan. 4, 1933, at 6.

<sup>206</sup> *Admiral Byrd Pleads for War on Tax Monster*, CHI. DAILY TRIB., Oct. 14, 1932, at 10 (internal quotation marks omitted).

<sup>207</sup> Which political party "owns" a word has great consequences. *See generally* DANIEL T. RODGERS, *CONTESTED TRUTHS: KEYWORDS IN AMERICAN POLITICAL POLITICS SINCE INDEPENDENCE* (First Harvard Univ. Press 1998) (1987).

<sup>208</sup> George Creel, the head of the Committee on Public Information during the war, published a book on the war effort. *See generally* GEORGE CREEL, *HOW WE ADVERTISED AMERICA* (Arno Press 1972) (1920). As knowledge expanded, books and articles about public opinion, marketing, and psychology, as well as ones about the political usage of marketing and propaganda experts and expertise, appeared in the 1920s and 1930s. Edward Bernays, often called the "father of public relations," wrote several. *See, e.g.*, EDWARD L. BERNAYS, *CRYSTALLIZING PUBLIC OPINION* (Ig Publ'g 2011) (1923). So did the noted political commentator Walter Lippmann. *See, e.g.*, WALTER LIPPMANN, *PUBLIC OPINION* (Wilder Publ'n 2010) (1922). Numerous others appeared. There was even a special

same period, technology created and expanded new mass media—most notably the radio, which gave professionals and politicians easy access to millions of people.

Both liberals and conservatives, of course, used this knowledge and technology. President Roosevelt’s popular fireside chats may be the best example of Democratic usage during this period. Republicans, however, generally caught on more quickly. For example, the 1920 Republican presidential campaign, under the guidance of advertising pioneer Albert D. Lasker, was the first modern media-driven sell-the-candidate campaign.<sup>209</sup> In 1928, when the radio came of political age, the Republicans dedicated a significant amount of their funds to the radio, as well as using film in their campaigns.<sup>210</sup> In 1936, the Republicans turned the entire campaign over to the professionals—publicity agents, journalists, and advertising experts—to use modern advertising techniques, propaganda, and the media in an attempt to “sell” Alf Landon, just as they would sell any product.<sup>211</sup> Conservative groups in this period also used the same modern methods to oppose Roosevelt and the New Deal.<sup>212</sup>

The 21st century is a similar period of rapid growth in new methods of mass communication and in new knowledge about human behavior (e.g., behavioral economics, behavioral psychology, and cognitive theory generally). Both conservatives and liberals have made effective use of this knowledge and media. Conservatives even complain about the liberal media bias. Nevertheless, as the success of Fox News, Rush Limbaugh, and the Tea Party movement indicate, conservatives have been remarkably adept at putting modern psychology and technology at their service.<sup>213</sup>

In 1924 the Citizens’ National Committee’s tax campaign, probably the first modern tax lobbying campaign,<sup>214</sup> used techniques still employed

supplement about the use of propaganda and pressure groups in a prominent political and social science journal. See generally Harwood L. Childs, *Foreword*, 179 ANNALS AM. ACAD. POL. & SOC. SCI. xi, xi (1935) (“The purpose of the present volume is to portray the background of group pressures . . . [and] to indicate the significance of pressure groups and propaganda . . .”).

<sup>209</sup> See JOHN A. MORELLO, *SELLING THE PRESIDENT, 1920: ALBERT D. LASKER, ADVERTISING, AND THE ELECTION OF WARREN G. HARDING 2* (2001).

<sup>210</sup> See LIETTE GIDLOW, *THE BIG VOTE: GENDER, CONSUMER CULTURE, AND THE POLITICS OF EXCLUSION, 1890S–1920S*, at 179–80 (2007); KATHLEEN HALL JAMIESON, *PACKAGING THE PRESIDENCY: A HISTORY AND CRITICISM OF PRESIDENTIAL CAMPAIGN ADVERTISING 20* (3d ed. 1996); R.L. Duffus, *Our Radio Battle for the Presidency*, N.Y. TIMES, Oct. 28, 1928, at 139.

<sup>211</sup> See, e.g., Turner Catledge, *Landon’s ‘Idea’ Men Map Tax Campaign*, N.Y. TIMES, Aug. 12, 1936, at 10.

<sup>212</sup> See *supra* note 190.

<sup>213</sup> See, e.g., Jim Rutenberg, *Outflanked Democrats Look for Ways to Play Catch-Up in Media Battles*, N.Y. TIMES, Jan. 1, 2003, at A12; Williamson et al., *supra* note 4, at 29–30. See generally KATHLEEN HALL JAMIESON & JOSEPH N. CAPPELLA, *ECHO CHAMBER: RUSH LIMBAUGH AND THE CONSERVATIVE MEDIA ESTABLISHMENT* (2008).

<sup>214</sup> See *Simmons Promises Democratic Aid in Cutting Taxes*, N.Y. TIMES, Dec. 21, 1923, at 1. See also 65 CONG. REC. 2490 (Feb. 15, 1924) (Rep. Collier stating that although he had seen many

today. Then, for example, there was Tax Reduction Week; now, there is “Tax Freedom Day,” theoretically the day in the year a person has worked long enough to pay all his or her taxes.<sup>215</sup> Ninety years ago the radio and the movies were the media the modern media politicians and political groups used to convey their messages; today it is the Internet, especially social networks such as Twitter and Facebook. Organizations using civic-minded names compile and disseminate information as objective facts. In reality, however, the groups’ neutral sounding names often mask an ideological bias that goes undetected. Back then the organizations had names like the Citizens’ National Committee and the National Economy League. Today organizations use names such as Americans for Tax Reform.<sup>216</sup> They widely disseminate their views, often disguised as news and “facts.” They even created “news” through “Tax Reduction Weeks” in the 1920s and tea party reenactments in the modern era.

Whether these groups’ pronouncements are facts or propaganda, of course, depends on the definition of propaganda. Identifying propaganda, however, is a difficult enterprise. Like pornography, its definition frequently depends on the perspective of the recipient. Nevertheless, it is harder to differentiate propaganda from objective fact (leaving aside the philosophical question of whether objective facts exist) when the recipient does not know the source of the information. This phenomenon underlies much of the current uneasiness about anonymous donors and advertisements in the political context. This concern also existed in the decades between the world wars. An “organized propagandist,” Representative John Jones (D-TX) said in 1924, is worse than a “crack-brained agitator[.]” because the latter operates openly.<sup>217</sup> Consequently, “[v]ery few are convinced by them. But the propagandist sometimes operates through a mask of deception.”<sup>218</sup>

Patriotism is a frequent handmaiden of propaganda because it evokes emotional responses that often unconsciously influence our perceptions and interpretations of information and actions. Psychologists, sociologists, and economists explain why this is so, using concepts such as framing, cognitive biases, schemas, and worldviews, all of which explain how people perceive, filter, and organize the huge amount of data they

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nationwide attempts to influence legislation, he had never before seen propaganda “conducted on so large a scale”).

<sup>215</sup> The conservative Tax Foundation, which has trademarked this, gives this day a lot of attention. *Tax Freedom Day*, TAX FOUND., <http://taxfoundation.org/tax-topics/tax-freedom-day> (last visited June 12, 2014). Several websites provide calculators so individuals can determine their personal freedom day. *See, e.g.*, [www.mytaxfreedomday.com/](http://www.mytaxfreedomday.com/).

<sup>216</sup> *See About*, AM. FOR TAX REFORM, <http://www.atr.org/> (last visited May 15, 2014).

<sup>217</sup> 65 CONG. REC. 644 (Jan. 7, 1924).

<sup>218</sup> *Id.*

encounter daily.<sup>219</sup> Modern research in behavioral economics and psychology has enhanced experts' understanding of these concepts, which lawyers, politicians, marketers, and others have utilized.<sup>220</sup> Neither the knowledge nor its applications is entirely new, however. While critiquing Mellon Plan supporters, for example, Representative Jones noted the deleterious effect of those emotional appeals: "Facts are prosaic things, and what are facts when the circus is on . . . Reason simply stacks arms and leaves the field under those circumstances."<sup>221</sup>

Mellon Plan supporters similarly criticized their opponents. In April 1924, for example, Major General O'Ryan, bonus opponent and chair of the Citizens' National Committee in Support of the Mellon Tax Reduction Proposal, spoke of the need for tax and spending cuts.<sup>222</sup> Politicians, he said, "befog and befuddle" issues with "clap-trap" phrases to which the public is "susceptible" because such appeals were easier to listen to and less "tiresome" than "to examine critically into a matter that concerns them only as it concerns the public generally."<sup>223</sup> The Mellon Plan, he and other supporters asserted, was scientific, not claptrap.<sup>224</sup>

Whether their plan was claptrap was and is debatable, of course. What is not debatable is that, despite their assertions to the contrary, conservative anti-bonus/Mellon Plan supporters used claptrap, just as their opponents did. Then—as now—patriotism is conservatives' claptrap, their circus that causes reason to leave the field. It is also the portion of the conservative tax argument that has the greatest mass appeal.

Because they are based in emotion, patriotic appeals are susceptible to cognitive biases.<sup>225</sup> In America, the linkage of low taxation with patriotism provides particularly rich ground for emotive, often subconscious, reactions. After all, schoolchildren learn that the country itself sprang from

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<sup>219</sup> See generally Dan M. Kahan & Donald Braman, *Cultural Cognition and Public Policy*, 24 YALE L. & POL'Y REV. 149, 150–51, 163 (2006) (cultural cognitions and worldviews); Marjorie E. Kornhauser, *Legitimacy and the Right of Revolution*, 50 BUFF. L. REV. 819, 835 n.32 (2002) (schema); Richard H. Thaler & Sendhil Mullainathan, *Behavioral Economics: How Behavioral Economics Differs from Traditional Economics*, LIBR. ECON. & LIBERTY (2008), <http://www.econlib.org/library/Enc/BehavioralEconomics.html> (behavioral economics).

<sup>220</sup> An example of current research is the Cultural Cognition Project at Yale Law School. *The Cultural Cognition Project at Yale Law School*, CULTURAL COGNITION, <http://www.culturalcognition.net/> (last visited June 12, 2014). The public, too, is increasingly aware as experts disseminate their findings through popular books or journals. See, e.g., DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011); Dan Ariely, *What to Do Tonight? Don't Overthink It*, WALL ST. J., Sept. 28, 2013, at C12. Nonexperts have also further popularized the power of cognitive processes. See, e.g., MALCOLM GLADWELL, BLINK: THE POWER OF THINKING WITHOUT THINKING (2005); MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE (2000).

<sup>221</sup> 65 CONG. REC. 643 (Jan. 7, 1924) (statement of Rep. Jones).

<sup>222</sup> *Open Week's Drive for Tax Reduction*, *supra* note 96.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> See *supra* notes 219–20.

a tax protest and national icons like President Reagan constantly remind us that heavy taxation is a constraint upon freedom.<sup>226</sup>

It is not surprising, then, that conservatism's linkage of low taxation to patriotism has been so successful. It has not been a complete victory; after all, the income tax still exists despite decades of conservative attempts to abolish it.<sup>227</sup> The conservative patriotic tax appeal has succeeded, however, to the extent that Americans currently pay (despite recent increases) relatively low income taxes historically and lower rates compared to some countries.<sup>228</sup> Indeed, many Americans pay no income taxes (though they probably pay social security taxes).<sup>229</sup>

### CONCLUSION

The linkage of tax reduction to the soldiers' bonus in the 1920s and 1930s described in this Article illustrates conservatives' long standing tripartite stand on tax policy. Although both liberals and conservatives bear responsibility for the chaotic state of tax and tax policy today, this Article asserts that conservatives bear more responsibility because they have conveyed their policy more successfully. This, the Article alleges, has occurred primarily because they have linked their conception of patriotism to low taxation. Unfortunately, this linkage limits the realm of politically possible solutions to many of today's most pressing issues, including taxation. This is not just because it enables emotion to trump rationality, but also because the conservative vision of patriotism is incomplete. American democracy is not founded solely on the principle of liberty, but also on the principle of equality. Liberty itself has a positive side, not just a negative one. Conservatives emphasize the negative, "freedom from" side in their exaltation of individualism, small government, and low taxation.

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<sup>226</sup> President Ronald Reagan, Remarks on Signing the Tax Reform Act of 1986 (Oct. 22, 1986), available at <http://www.reagan.utexas.edu/archives/speeches/1986/102286a.htm>.

<sup>227</sup> See, e.g., 65 CONG. REC. 2511 (Feb. 15, 1924); 65 CONG. REC. 901 (Jan. 12, 1924).

<sup>228</sup> Figuring out tax rates is difficult, comparisons even more so. See, e.g., James Nunn, *Top Individual Income Tax Rates: How Does the U.S. Compare?*, 138 TAX NOTES 1369, 1369 (2013) (including countries' rates); *Table I.7: Top Statutory Personal Income Tax Rate and Top Marginal Tax Rates for Employees*, OECD STATEXTRACTS, [http://stats.oecd.org/index.aspx?DataSetCode=TABLE\\_17](http://stats.oecd.org/index.aspx?DataSetCode=TABLE_17) (last visited June 13, 2014). A clear, accessible discussion can be found in Derek Thompson, *How Low Are U.S. Taxes Compared to Other Countries?*, ATLANTIC (Jan. 14, 2013, 12:15 PM), <http://www.theatlantic.com/business/archive/2013/01/how-low-are-us-taxes-compared-to-other-countries/267148>. In 2010, the average (effective) income tax rate for all tax returns in the U.S. was only 11.8% or 10.4%, depending on how the IRS calculated it. Justin Bryan, *Individual Income Tax Returns, 2010*, 32 STAT. INCOME BULL. 5, 11 (2012), available at <http://www.irs.gov/PUP/taxstats/productsandpubs/12infallbulincome.pdf>. Even though the highest bracket was 35%, the highest effective rate any taxpayers paid was only 25.1%. *Id.* at 12. Those were taxpayers with an adjusted gross income (AGI) between \$1.5 and \$2 million; taxpayers with an AGI of \$10 million or more had an effective rate of only 20.7%. *Id.*

<sup>229</sup> See William G. Gale & Donald B. Marron, *Five Myths About the 47 Percent*, WASH. POST, Sept. 23, 2012, at B2.

The Preamble to the Constitution, however, also provides for the promotion of the general welfare—which involves positive liberty. Positive liberty means that the government has a duty not just to protect negative liberty but also to assist positive liberty. Positive liberty encompasses people's basic human rights to such things as food, health, and education—which are, in fact, preconditions to negative liberty.<sup>230</sup>

The patriotism–tax linkage also hinders debate about general issues such as healthcare because it obscures real understanding of—and debate about—conservatives' two substantive points: the necessary connection between taxing and spending and the desirable size of government. It encourages fuzzy thinking that allows people to claim they want lower taxes, less government spending, and smaller government while at the same time insist government programs (such as Medicare or Social Security) remain uncut, and even demand more from the government (whether it is more gun control, immigration control, or food-and-drug inspections). In this era of huge deficits and incoherent tax policy, these two substantive aspects of conservatives' tax position are the very ones that need critical attention. Separating them from the emotion of patriotism would help create an atmosphere more conducive to the thoughtful tax discussion the country requires. Dropping their strong patriotic appeals and focusing on substance would be the most patriotic action conservatives could take.

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<sup>230</sup> See, e.g., Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948); Marjorie E. Kornhauser, *Choosing a Tax Rate Structure in the Face of Disagreement*, 52 UCLA L. REV. 1697, 1735–36 (2005).