INTRODUCTION

On Valentine's Day, 2001, a front-page article in the *New York Times* sent a tremor through America's political elite. A prominent group of millionaires and billionaires had publicly launched a petition in opposition to wholesale repeal of the estate tax, our nation's only tax on accumulated wealth.

The initial supporters included financier George Soros, actor Paul Newman, art patron Agnes Gund, several members of the Rockefeller family, and other business leaders. Investor Warren Buffett chose not to sign the statement because he felt it did not go far enough in defending the estate tax—but went publicly on the record opposing repeal.

The effort, organized by the Boston-based Responsible Wealth, caught people's imagination and interest. Within weeks, over one thousand high-net-worth individuals, business leaders, and entrepreneurs, all of whom would someday pay estate taxes, added their names to support the cause.[1]

It is not surprising that the "billionaire backlash," as *Newsweek* called it, captured widespread attention, not only in the United States but around the world. If there were ever a "man bites dog" news story, this was it. An organized backlash of wealthy people, combined with the newsworthy and eternal themes of death, loss, legacy, taxation, wealth, and power, made for an irresistible story.

Responsible Wealth had spent six weeks preparing its Call to Preserve the Estate Tax. The statement's release had just the impact the group had hoped. At the eleventh hour, as estate tax repeal was about to be steamrolled through Congress, Responsible Wealth had hit the pause button. For the next several months, there was greater scrutiny of the shaky case for repeal. A movement to preserve the tax came together and began to frame a defense for reforming the tax, not abolishing it. This effort also contributed to a long overdue conversation about the dangers of concentrated wealth and power in a democratic society.

Why devote an entire book to a single provision of the tax code? The estate tax doesn't just raise revenue. The estate tax issue raises questions central to our democracy and our very identity as Americans. We agree with the sentiments of former IRS commissioner Sheldon Cohen: "People think taxation is a terribly mundane subject. But what makes it fascinating is that taxation, in reality, is life. If you know the position a person takes on taxes, you can tell their whole philosophy. The tax code, once you get to know it, embodies all the essence of life: greed, politics, power, goodness, charity. Everything's in there."[2]

The estate tax has it all: life and death, our beliefs about success, our attitudes about government, and our struggles over the character of American civic and economic life. It also includes an implicit assumption about society's claim on accumulated wealth.

Just what is the estate tax? The estate tax is a transfer tax imposed on large accumulations of wealth when someone dies. Its exemptions are so high that it falls on the heirs of fewer than 2 percent of estates every year. It contains provisions that encourage charitable giving—and favor the transfer of businesses and farms if they remain family-owned and -operated.

The estate tax helps make America great. The estate tax distinguishes this country from Europe and other countries with vestiges of aristocracies. There is something fundamentally American about the notion that what people do with their lives is more important than the station of birth. Don't we glory in the economic mobility that exists in America, as imperfect as it is? Don't we treasure the stepping stones we have built toward the ideal of equality of opportunity? Haven't we a collective distaste for the trappings of monarchy, and a healthy distrust of inherited wealth and privilege? The estate tax is no marginal issue. The estate tax connects us to our country's most fundamental values.

THE ESTATE TAX: IS IT GONE?

On June 7, 2001, President George W. Bush signed into law the Economic Growth and Tax Relief Reconciliation Act of 2001. Included in this tax bill was a reduction of income tax rates, a doubling of the child exemption, and—eventually—repeal of the estate tax that was instituted in 1916.

The overall tax bill, with its ten-year price tag of $1.35 trillion, was hastily pushed through both branches of Congress as the president's top domestic policy priority. Its proponents understood that for a number of reasons there was a brief political and economic window of opportunity.

This 2001 tax bill almost didn't happen. In the spring of 2001, with each passing day, the folly of this tax package was coming to light. The more the public understood how the tax cuts were tilted to benefit the wealthy and how they mortgaged the future, the less they liked them. Opposition was mounting and eroding support for the legislation. In retrospect, had Vermont senator James Jeffords defected from the Republican Party a week earlier, this tax bill might never have become law.[3]

The 2001 tax cut was marketed as an economic stimulus in the face of an optimistic ten-year $5.6 trillion budget surplus projection. We could do it all, we were told: cut taxes, protect Social Security, maintain national spending priorities, and reduce the deficit. But as the clouds of recession gathered on the horizon, the rosy assessment shifted and federal budget surplus estimates started to plummet. Within weeks of the tax cut's passage, congressional and administration budget counters dramatically reduced their surplus estimates.[4]

After the terrorist attacks on September 11, 2001, the country began spending significant amounts of money to address new defense needs. In addition to the rising expenditures of a global war against terrorism, our nation also made greater commitments to domestic law enforcement and security, airline bailouts, and the rebuilding of New York City. Congress debated an expensive economic stimulus package to address the recession, and red ink started to accumulate at a dizzying pace. By November 2001, the ten-year $5.6 trillion budget surplus that had been forecast had vanished and was replaced with government projections predicting four years of budget deficits. If the vote had taken place later, the 2001 tax cut would not have been enacted—and the estate tax would not have been earmarked for elimination.

Under the new law, complete repeal of the estate tax doesn't happen until January 1, 2010. Over the intervening years, the top rate drops from 55 percent to 45 percent and the amount of wealth exempted from the tax increases from $675,000 to $3.5 million. In one of the most amazing provisions of this law (or any other law) the entire 2001 tax bill is rescinded on January 1, 2011, and reverts back to the way it was in May 2001.[5] As a result, the estate tax is repealed for only one year, from January 1, 2010, to January 1, 2011, posing interesting planning questions and macabre family situations. One commentator speculated on the number of elder relations that will either be kept on life support until 2010 or suffer mysterious accidents during the 2010 calendar year.[6]

The 2001 tax bill was structured in this bizarre manner in order to wedge all of its expensive provisions into a congressionally mandated budget framework. In other words, Congress needed to shoehorn what would be a $1.776 trillion plus tax cut once it was fully phased in over ten years into a $1.35 trillion framework.[7] Like a magician's act, the tax bill deploys a curious assortment of phase-ins, phaseouts, and delayed activation dates and culminates with the ultimate disappearing act. Naturally, this was not a satisfying remedy for proponents of abolishing the estate tax, nor was it for those who support retention of some form of the tax.

Several times during 2002, the proponents of repeal put forward legislation to make the repeal permanent. On June 12, 2002, after easily passing the House, the permanent repeal provision fell short of the sixty votes required in the Senate. As this book goes to press, there may be other efforts to push the repeal provision in the fall of 2002.

The most troubling aspect of the passage of the 2001 tax bill was the lack of honest debate about the implications of repealing the estate tax. The proponents of repeal perpetuated a number of false assertions. They spent millions of dollars on advertising spin, constructing a mythology about the estate tax that went largely unchallenged in the media and the public square.

Why are we having this debate in the first place? Who shoved estate tax repeal onto our nation's already crowded political agenda? Not the American public. The most recent polling shows that tax cuts are among the lowest priorities for the vast majority of voters. In terms of tax cuts, repealing the estate tax is the least popular.[8] Estate tax repeal is on the agenda only because the estate tax offends the sensibilities of some very wealthy individuals and hefty campaign contributors.

We need an estate tax precisely for the reason that estate tax repeal has become a political issue in the first place. In a self-governing democracy, we should be alarmed when the power of concentrated wealth attempts to shape the terms of policy debate and dictate the rules of our society.

A more robust deliberation would discuss questions such as these:

- How much revenue would repeal of the estate tax lose in the future? What would be the trade-offs from losing $850 billion in revenue over the next twenty years? Couldn't this money be used to shore up Social Security over the longer term?
- At a time when state governments are cutting budgets, what would be the fiscal impact of estate tax repeal on states?
- What would be the impact on private charity? How would repeal affect the independent nonprofit sector, such as local hospitals, universities, land conservancies, and scientific research?

There are also broader social questions that are central to our understanding of the origins and importance of the estate tax.

- How might repeal contribute to further aggregations of wealth and power? What impact would increased inequality have on our democracy?
- What social harms might arise from the concentration of wealth in the same family for successive generations? When

does the concentration of wealth in a few hands begin to distort democratic institutions and undermine the common good?

- What is the role of society and our communities in creating and maintaining institutions that enable individuals to amass wealth? What role does public investment play in the creation of wealth? What return on society's investment is justified?
- What responsibility does our country have to correct gross inequities that potentially undermine equality of opportunity?
- What is the responsibility of wealthy individuals to their communities and country? What should be their attitude about taxation?

Our country urgently needs to foster and deepen a rigorous debate about these questions, similar to the debate our nation had one hundred years ago that led to the establishment of an estate tax.