

THE PRICE OF CONFLICT: WAR, TAXES, AND THE POLITICS OF FISCAL CITIZENSHIP†

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WAR AND TAXES. By Steven A. Bank, Kirk J. Stark, and Joseph J. Thorndike. Washington, D.C.: Urban Institute Press. 2008. Pp. xix, 224. \$26.50.

INTRODUCTION

In the spring of 2003, Congress was in the midst of drafting a new tax bill. Two years earlier, the Bush Administration and congressional leaders had initiated a tax-cutting agenda by slashing individual income tax rates and reducing wealth-transfer taxes.¹ The 2003 bill was an attempt to continue the assault on the nation's progressive tax structure, just as the budget deficit was spiraling out of control.² Meanwhile, the "war on terror" was in full swing. By the end of April 2003, well over 135,000 U.S. troops were deployed in Afghanistan and Iraq, and military spending was escalating at an alarming rate.³ The continued commitment to tax cuts during wartime seemed incongruous. How could lawmakers consider tax cuts, aimed mainly at the wealthy, at a time when many ordinary Americans were sacrificing life and limb overseas? To explain the apparent dissonance, then-House Majority Leader Tom DeLay (R-TX) boldly declared that, "Nothing is more important in the face of a war than cutting taxes."⁴

DeLay's remark was not mere political rhetoric. Just one month later, he followed through by joining his fellow House Republicans in passing a package of tax cuts that the Congressional Budget Office estimated would

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1. Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38.

2. See David E. Rosenbaum, *White House Sees a \$455 Billion Gap in the '03 Budget: Would Be Biggest U.S. Deficit—Democrats Point to Tax Cuts*, N.Y. TIMES, July 16, 2003, at A1.

3. Vernon Loeb, *U.S. Military Will Leave Saudi Arabia This Year*, WASH. POST, Apr. 30, 2003, at A1.

4. Editorial, *The Budget Fight is Now*, N.Y. TIMES, Apr. 3, 2003, at A20.

drain nearly \$61 billion from the federal treasury in 2003 alone.⁵ But this was only the beginning. From 2004 through 2006, the Bush White House and its congressional allies enacted a series of additional tax cuts as part of several broader, economic measures.⁶ Though these cuts were more modest than those enacted in 2001 and 2003, they came as the human and financial costs from the war on terror continued to mount. Commentators and critics questioned how American politicians could consistently ignore the obvious links between foreign policy and domestic tax law: how could our ostensible leaders neglect the American tradition of shared wartime sacrifice?⁷

To be sure, lawmakers have not always been so oblivious to the price of conflict and the obligations of wartime fiscal citizenship. Throughout American history most political leaders have recognized that wars entail sacrifices on the home front as well as the battlefield. Indeed, just a few decades ago, DeLay's 2003 words and deeds would have been unimaginable. In the 1960s, back when military hawks were also deficit hawks, few leaders would have been able to justify tax cuts during wartime. As one Republican lawmaker succinctly explained during the height of the Vietnam conflict, "I just don't see how we can be hawks on the war and then vote against taxes to pay for it."⁸

The contrast between recent and historical wartime tax policy is the subject of *War and Taxes*, the provocative and fascinating new book by tax scholars Steven A. Bank,⁹ Kirk J. Stark,¹⁰ and Joseph J. Thorndike.¹¹ Using this contrast as their point of departure, the authors take on the important and timely question of whether there is any precedent in U.S. history for cutting taxes in the midst of war. Synthesizing earlier historical scholarship, the authors provide a rich and thorough reinterpretation of the varying social, political, and economic conditions that have animated fiscal policymaking during nearly every major U.S. conflict from the American

5. Jonathan Weisman, *\$400 Billion-Plus Deficit For Fiscal '03 Seen by CBO*, WASH. POST, June 11, 2003, at A4.

6. See, e.g., Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, 120 Stat. 2922; Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, 120 Stat. 345 (2006); American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418; Working Families Tax Relief Act of 2004, Pub. L. No. 108-311, 118 Stat. 1166. The tax-cutting trend did not go unnoticed by the popular press. Editorial, *Another year, another tax cut, and look who's cleaning up: Bush, Congress complicate IRS code, rewarding their favored interests*, USA TODAY, May 17, 2006, at 10A; David R. Francis, *Why the rich get the most tax goodies*, CHRISTIAN SCI. MONITOR, May 22, 2006, at 15.

7. ROBERT D. HORMATS, *THE PRICE OF LIBERTY: PAYING FOR AMERICA'S WARS* (2007); E.J. Dionne, Jr., Editorial, *A War Bush Wouldn't Pay For*, WASH. POST, Dec. 15, 2006, at A35; David M. Kennedy, *What Is Patriotism Without Sacrifice?* N.Y. TIMES, Feb. 16, 2003, at WK3; David E. Rosenbaum, *Tax Cuts and War Have Seldom Mixed*, N.Y. TIMES, Mar. 9, 2003, at N17.

8. Norman C. Miller, *Legislators Seem Likely To Back Johnson's Plan For 6% Income Tax Rise: But They May Bar Big Boost In Social Security Levies And Benefits; Delay Seen*, WALL ST. J., Jan. 12, 1967, at 1 (internal quotation marks omitted).

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Revolution to the two world wars and up to the present war on terror. Mining the lessons of the past, their goal is to make readers aware of the complex and challenging circumstances that have prompted wartime American leaders to enact tax hikes.

Although *War and Taxes* was written in the waning years of the Bush Administration, its research focus and historical findings remain salient. The recent economic downturn and the Obama Administration's differing approach to the conflicts in Iraq and Afghanistan have certainly changed the calculus of wartime tax policy, but the long-term effects of the Bush Administration's deficit-inducing tax cuts and war expenditures will be felt for many years to come.¹² Even more significant, the historical links between wartime taxation and fiscal citizenship have not only shaped the history of the modern American state; they are sure to influence future political and economic developments.

The authors of *War and Taxes*, of course, are not the first to investigate the historical relationship between wars and taxes. Scholars have long identified national conflicts as the crucial catalysts in the creation of effective tax laws, policies, and administration. From the macrolevel historical sociology of Charles Tilly,¹³ Margaret Levi,¹⁴ and Michael Mann;¹⁵ to the more microlevel analysis of British political development;¹⁶ to the recent accounts of twentieth-century American political and legal history;¹⁷ scholars have attended to the historical dynamics between wars, taxes, and the politics of fiscal citizenship. As the economic historian W. Elliot Brownlee has shown, wars frequently have been pivotal markers in American history, signaling the collapse of previous political and economic regimes, while ushering in the emergence of new fiscal orders.¹⁸ The authors recognize this undeniable

12. JOSEPH F. STIGLITZ & LINDA BILMES, *THE THREE BILLION DOLLAR WAR: THE TRUE COSTS OF THE IRAQ CONFLICT* (2008).

13. CHARLES TILLY, *COERCION, CAPITAL, AND EUROPEAN STATES, AD 990–1992* (rev. paperback ed. 1992); *THE FORMATION OF NATIONAL STATES IN WESTERN EUROPE* (Charles Tilly ed., 1975).

14. MARGARET LEVI, *OF RULE AND REVENUE* (1988).

15. MICHAEL MANN, *THE SOURCES OF SOCIAL POWER 486–90* (1986); Michael Mann, *State and Society, 1130–1815: An Analysis of English State Finances*, 1 *POL. POWER & SOC. THEORY* 165 (1980).

16. JOHN BREWER, *THE SINEWS OF POWER: WAR, MONEY AND THE ENGLISH STATE, 1688–1783* (1990); MARTIN DAUNTON, *TRUSTING LEVIATHAN: THE POLITICS OF TAXATION IN BRITAIN, 1799–1914* (2001); MARTIN DAUNTON, *JUST TAXES: THE POLITICS OF TAXATION IN BRITAIN, 1914–1979* (2002).

17. DAVID M. KENNEDY, *FREEDOM FROM FEAR: THE AMERICAN PEOPLE IN DEPRESSION AND WAR, 1929–1945* (1999); Mark H. Leff, *The Politics of Sacrifice on the American Home Front in World War II*, 77 *J. AM. HIST.* 1296 (1991). BARTHOLOMEW H. SPARROW, *FROM THE OUTSIDE IN: WORLD WAR II AND THE AMERICAN STATE* (1996).

18. W. ELLIOT BROWNLEE, *FEDERAL TAXATION IN AMERICA: A SHORT HISTORY* (1996); see also STEVEN R. WEISMAN, *THE GREAT TAX WARS: LINCOLN TO WILSON—THE FIERCE BATTLES OVER MONEY AND POWER THAT TRANSFORMED THE NATION* (2002); SHELDON D. POLLACK, *WAR, REVENUE, AND STATE BUILDING: FINANCING THE DEVELOPMENT OF THE AMERICAN STATE* (2009).

fact, acknowledging that “the history of America’s tax system can be written largely as a history of America’s wars.”¹⁹

Yet, what Bank, Stark, and Thorndike have to offer, beyond the lawyer’s and historian’s careful eye for the importance of legal doctrine and detail, is an emphasis on the fragile yet essential discourse of shared sacrifice that has motivated past wartime tax policymaking. Like other scholars writing about the history of fiscal policy,²⁰ the authors identify taxation as a fundamental part of the social contract between states and their citizens. Although they acknowledge that the sacrifices of war can be borne in many ways, the authors focus on the distribution of tax burdens during wartime as the primary means for measuring the fairness of shared sacrifice. With this metric, Bank, Stark, and Thorndike attempt to refrain from passing judgment on the recent Bush Administration’s wartime tax policies. Indeed, *War and Taxes* is not meant to be a partisan brief against the Republican Party’s recent penchant for tax cuts and deficit spending. Instead, the authors have set out to provide a judicious, yet ironic, account of the long history of wartime *opposition* to tax increases.

In contrast to the conventional wisdom that presumes that wartime patriotism has always and everywhere trumped self-interest, the authors contend that “America’s history of wartime taxation is not quite the heroic tale that many Bush critics seem to imply” (p. xiii). *War and Taxes* seeks to remind readers that many previous lawmakers also resisted spreading the burden and costs of conflict on to the American people. Some of our most celebrated historical leaders have sought, as the authors put it, “to delay, deny, and obscure the trade-off between guns and butter” (p. xiii). In the past, even during popular wars, “elected representatives have often made room for self-indulgence, easing burdens for some constituents while raising them for others” (p. xiii).

Although Bank, Stark, and Thorndike do not claim that America’s tradition of wartime sacrifice is a myth, they maintain that the reality of past wartime tax policymaking has been complex and contested. Conventional criticism “misses much of the complexity of American history. Indeed, as a nation, our commitment to wartime fiscal sacrifice has always been uneasy—and more than a little ambiguous” (p. xiii).

In their careful efforts to provide a balanced and measured history, however, the authors inevitably draw attention to the ultimately unprecedented fiscal policies pursued by American leaders from 2000 to 2006. And herein lies the irony: *War and Taxes* provides a valuable and necessary corrective to the overly romanticized history of wartime sacrifice, but despite its attempts to bracket the highly partisan and ideological aspects of our recent wartime

19. P. xii. Though *War and Taxes* uses the end of particular conflicts to frame certain historical periods, the authors seem cognizant of the constructed nature of wartime. For more on the temporal aspects of twentieth-century American wars and the contingent effects on legal historiography, see Mary L. Dudziak, *Law, War, and the History of Time* (Univ. S. Cal. Law Sch., Legal Studies Research Paper No. 09-6, 2009), available at <http://ssrn.com/abstracts=1374454>.

20. See, for example, the essays collected in *THE NEW FISCAL SOCIOLOGY: TAXATION IN COMPARATIVE AND HISTORICAL PERSPECTIVE* (Isaac William Martin et. al. eds., 2009).

tax policies, the book can also be read as a damning indictment of recent Republican tax policy. Past leaders may have contested and cloaked the need for wartime tax hikes, fearing the political consequences or biding time for more opportune moments. Eventually, however, they all gave in. Only the Bush Administration and its congressional allies resolutely failed to accept fiscal responsibilities. Other analysts have been more explicit in their condemnation of the Bush Administration and ideologically driven tax cuts,²¹ but Bank, Stark, and Thorndike provide a subtle, indirect—and perhaps even more effective—critique of recent Republican wartime tax policies.

Undergirding the ideas of shared wartime sacrifice, which are at the heart of *War and Taxes*, are even more profound questions about the precise meaning of the obligations and responsibilities of belonging to a political community. The vast and rich historical and legal scholarship on civic engagement and national identity has rigorously documented how the obligations of citizenship,²² especially during wartime,²³ entail heightened sacrifices among members of a liberal democracy,²⁴ and how those sacrifices illustrate the greater trust that citizens place in their political leaders during national emergencies.²⁵ Much less attention, however, has been paid to the other side of citizenship—the increased responsibilities of political leaders and policymakers to maintain such trust. If civic responsibilities require citizens to forgo certain activities and at times even surrender life and liberty, then surely public officials must have a reciprocal duty to ensure that such sacrifice is shared by all members of a political community. The politics of fiscal citizenship thus requires the state, as a relatively autonomous actor, to exercise the discipline and authority to ensure that the price of conflict is spread evenly across class, region, and even generation.

21. See, e.g., LARRY M. BARTELS, *UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GILDED AGE* (2008); PAUL KRUGMAN, *THE CONSCIENCE OF A LIBERAL* (2007); STIGLITZ AND BILMES, *supra* note 12.

22. See, e.g., LINDA K. KERBER, *NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP* (1998); ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000). Tax scholars have similarly identified the salience of paying taxes to fiscal citizenship. See Dennis J. Ventry Jr., *Equity versus Efficiency and the U.S. Tax System in Historical Perspective*, in *TAX JUSTICE: THE ONGOING DEBATE* 25 (Joseph J. Thorndike & Dennis J. Ventry Jr. eds., 2002); Reuven S. Avi-Yonah, *The Three Goals of Taxation*, 60 *TAX L. REV.* 1 (2006); Assaf Likhovski, “Training in Citizenship”: *Tax Compliance and Modernity*, 32 *LAW & SOC. INQUIRY* 665 (2007); Lawrence Zelenak, *Justice Holmes, Ralph Kramden, and the Civic Virtues of a Tax Return Filing Requirement*, 61 *TAX L. REV.* 53 (2007).

23. See, e.g., CHRISTOPHER CAPOZZOLA, *UNCLE SAM WANTS YOU: WORLD WAR I AND THE MAKING OF THE MODERN AMERICAN CITIZEN* (2008); ROBERT B. WESTBROOK, *WHY WE FOUGHT: FORGING AMERICAN OBLIGATIONS IN WORLD WAR II* (2004); Leff, *supra* note 17; James T. Sparrow, “Buying Our Boys Back”: *The Mass Foundations of Fiscal Citizenship in World War II*, 20 *J. POL’Y HIST.* 263 (2008).

24. Precisely measuring individual sacrifice, in the sense of who is worse off because of a war, is difficult to do, but as *War and Taxes* shows, American politicians have regularly resorted to the trope of “shared wartime sacrifice” to marshal support for their policies. See p. 172.

25. On the importance of trust for the functioning of modern political institutions, see generally *TRUST AND GOVERNANCE* (Valerie Braithwaite & Margaret Levi eds., 1998).

This Review proceeds in four parts, paralleling the chronological organization of *War and Taxes*. It focuses mainly on the book's analysis of the leading modern American wars, from the Civil War through the global conflicts of the twentieth century, up to the recent war on terror. Part I contrasts the tax policies of the Union and Confederacy during the Civil War to show how the Lincoln Administration was able to overcome Yankee resistance to wartime tax hikes to wage a war against a Southern Confederacy that resolutely resisted any type of centralized taxation until, of course, it was too late.

Part II investigates the two world wars, which together may arguably represent the "golden age" of shared wartime sacrifice. During both of these conflicts, Americans seemed willing to embrace the need for greater fiscal and other sacrifices. They appeared to trust their political leaders, who exercised newly coercive powers, to try to spread the price of conflict evenly across the populace. Consequently, the two world wars were critical to the development of the modern American tax regime and the idealized meanings of fiscal citizenship. With the world war experiences as a pivotal background, Part III turns to an examination of the early Cold War. The contrast between the Korean and Vietnam conflicts illustrates the importance of timing and how acute political leadership, attuned to contemporary social conditions, can be vital for the making of effective wartime tax policy.

Part IV explores the more recent war on terror, and how it became subsumed by the Republican Party's ideological commitment to tax cuts and supply-side economics. As the authors of *War and Taxes* duly note, the immediate post-9/11 period remains too close to our own experiences to permit objective, detached historical judgment. Still, the recent inability of our political leaders, on both sides of the aisle, to reconcile the price of conflict with the need for shared sacrifice demonstrates the sea change in thinking about tax policy that has occurred over the course of the twentieth century. This essay concludes with some closing observations about the main scholarly contributions of *War and Taxes*, including how the Bush Administration may have permanently transformed American thinking about wartime tax policy and the meaning of fiscal citizenship.

I. THE CIVIL WAR AND A TELLING CONTRAST

The importance of wartime fiscal discipline was perhaps most evident during the Civil War. Indeed, as the authors show, the contrast between how the Union and the Confederacy financed the war is instructive of the profound and consequential difference between exercising and abdicating the responsibilities of fiscal citizenship. Whereas the South stubbornly maintained its resistance to spreading the sacrifices of the war, Northern leaders eventually recognized the need to enact significant tax hikes and other exacting wartime measures.

Initially, both Northern and Southern leaders dodged and disavowed the need for painful fiscal sacrifices. Each side believed that the conflict would be short and painless, and such optimism permeated social commentators

and political leaders alike. At the start of the war, leading Northern newspaper editors prematurely suggested that business elites throughout the country would soon come to their senses and help unite the divided nation. The Lincoln Administration's first Treasury Secretary, Salmon P. Chase, similarly contended that "the great body of the citizens, now involved in the calamities of insurrection, will, ere long, become satisfied that order and peace, and security for all personal and political rights, in the Union and the under the Constitution, are preferable to disorder and conflict" (p. 35). In his efforts to achieve peace and order, President Lincoln relied originally on traditional sources of federal revenue to finance what he and his aides believed would be a short conflict. The tariff, excise taxes, sales of public land, and the issuance of federal debt remained the main sources of Union receipts at the beginning of the Civil War.²⁶

Southern leaders, for their part, believed that the righteousness of their cause would quickly convince the North to end the conflict. Confederate President Jefferson Davis frequently claimed that the South, like the Founding Fathers, was fighting for the "sacred right of self-government"; nothing short of the preservation of republican liberty was at stake.²⁷ "[T]he people of the North are deluded to believe," wrote one Southern periodical, "that it is in their power to subjugate us and force us back into political union with them" (pp. 26–27). This "strange infatuation," the editors concluded, "cannot endure very long" (pp. 26–27). The Confederacy's military leaders initially seemed to agree, but it did not take long before both sides realized that the war's duration would be long and its costs steep.

Yet, as the price of the conflict escalated and budget deficits soared on each side of the Mason-Dixon Line, only Northern leaders were able to marshal the political will to spread the burdens of wartime sacrifice equitably. Soon after the Confederate victory at Manassas—the seminal July 1861 battle that tested the Union's military and psychological resolve—President Lincoln authorized the enlistment of a million men.²⁸ Congressional leaders, prompted by the call for greater military service and the need for increased revenue, responded by raising import duties and enacting a national levy on land, the first U.S. income tax, and an excise tax on all manufactured goods. Ensuing resistance to the property tax and the manufacturers' tax underscored how even some Yankees contested the calls for shared sacrifice.²⁹ With Lincoln's leadership, however, Union officials were able to dissipate such protest. In the process, they helped establish not only the economic

26. SHELDON D. POLLACK, *THE FAILURE OF U.S. TAX POLICY: REVENUE AND POLITICS* 39 (1996); ROBERT STANLEY, *DIMENSIONS OF LAW IN THE SERVICE OF ORDER: ORIGINS OF THE FEDERAL INCOME TAX, 1861–1913*, at 30–32 (1993).

27. JAMES M. MCPHERSON, *BATTLE CRY OF FREEDOM: THE CIVIL WAR ERA* 310 (1988).

28. *Id.* at 348. The North referred to the battle of Manassas as Bull Run. Yet, regardless of the name, the battle tested the mettle of Northern leaders and citizens. *Id.* at 346–48.

29. Though *War and Taxes* analyzes the resistance to the manufacturer's tax, the book only briefly mentions the opposition to the 1861 property tax, perhaps because the measure proved ineffective in raising revenue, or perhaps because the constitutional obstacles to its effectiveness may have rendered it more symbolic than substantive. See HORMATS, *supra* note 7, at 63–68.

foundations for the successful financing of the war, but also a model for subsequent American wartime tax policy.

Eventually, the lack of national administrative capacity to assess and collect the new Union taxes limited their effectiveness. Little revenue was collected from the 1861 property or income taxes. Still, Northern leaders remained resolute in their attention to the distributional impact of wartime policies. As Union expenditures continued to mount, and as the conscription of the country's young—and often least well-off—men began, the social demands for greater financial sacrifice from the affluent became more strident. Policymakers understood that conscription was a form of sacrifice, a kind of tax on human capital.³⁰ The Union responded with a series of revenue acts in 1862 and 1864 that dramatically altered the federal fiscal landscape. These new tax laws, as Bank, Stark, and Thorndike note, became a watershed for Civil War financing: “the percentage of tax revenues derived from internal taxes increased substantially, with income tax receipts more than tripling. These acts marked the culmination of a radical shift in the system of federal financing over a short period” (p. 43).

To be sure, the Civil War tax hikes did not come without resistance. And *War and Taxes* provides sufficient evidence—from the protests against the manufacturers' taxes to the gory violence against the draft—to show the limits of Yankee patriotism, and thus support the book's thesis about the ambiguity of wartime sacrifice. Nonetheless, Northern leaders did not abandon their responsibilities under the social contract. While many Northern citizens fulfilled their obligations to the Union as soldiers, taxpayers, and bondholders, government officials in Washington did their part to hew to the ideals of shared wartime sacrifice. They may not have extracted as much tax revenue or fiscal sacrifice as government actors in subsequent American wars, but they went a long way toward maintaining the faith and trust of most citizens by spreading the price of conflict among a wider cross-section of the Northern population.³¹

The striking contrast between Northern and Southern tax policy provides an even stronger case for the significance of aspiring to an ideal of shared wartime sacrifice. With its mix of regressive consumption taxes and graduated income levies, President Lincoln's Republican Party was able to project the image—if not the reality—that all Northern citizens were supporting the war equally. Although the combination of excise and income taxes served the dual strategic purposes of raising revenues while containing inflation, Republican lawmakers were able to employ the rhetoric of patriot-

30. Union conscription was particularly unequal because it permitted the hiring of substitutes and exemptions for those who were willing to pay \$300. For more on how conscription resembled taxation, see RICHARD FRANKLIN BENSEL, *YANKEE LEVIATHAN: THE ORIGINS OF CENTRAL STATE AUTHORITY IN AMERICA, 1859–1877*, at 138 (1990).

31. In fact, the northeast industrial states, led by New York, paid the vast bulk of the Civil War income taxes. New York alone paid roughly one-third of the tax collected, and seven northeastern states plus California collectively paid about 70 percent of income-tax revenues. STANLEY, *supra* note 26, at 40–42; JOHN F. WITTE, *THE POLITICS AND DEVELOPMENT OF THE FEDERAL INCOME TAX* 70 (1985).

ism and shared sacrifice to frame the paying of new robust taxes as a form of loyalty to the Union. Even Confederate leaders were left astonished by the extent of Northern commitments. “The most sagacious foresight could not have predicted,” Jefferson Davis bemoaned during the war, “that the passions of the Northern people would lead them blindly to the sacrifice of life, treasure, and liberty.”³²

By contrast, the Confederacy—buoyed by its misplaced military confidence and burdened by its antidemocratic political culture—continued to resist nearly any form of centralized taxation until it was too late.³³ Jefferson Davis succinctly explained how the early decisions to forgo fiscal sacrifice created the institutional inertia that eventually crippled the South’s wartime tax policy. “A long exemption from direct taxation by the General Government had created an aversion to its raising revenue by any other means than by duties on imports,” wrote Davis, “and it was supposed that these duties would be ample for current peace expenditure, while the means for conducting the war could be raised almost exclusively by the use of the public credit.”³⁴ The South did, ultimately, turn to a combination of income and profits taxes, along with levies on a whole host of businesses and commercial transactions, but with little time to create the administrative capacity needed to collect these taxes, they proved to be more symbolic than substantive.

In the end, the Civil War experience resoundingly illustrates the incongruity that undergirds the main argument of *War and Taxes*. Though the authors seek to emphasize that “the commitment among Northern taxpayers to the ideal of shared sacrifice was just as uneasy as in the South” (p. 39), the historical record appears to belie that claim. At the start, Abraham Lincoln and his Republican allies may have resisted tax hikes, relying instead on traditional sources of revenue, but unlike Jefferson Davis, Lincoln and other Union officials eventually prevailed in raising taxes. They marshaled the political will to challenge opponents of tax increases and to advance not only the country’s first progressive income taxes, but also the notion that the politics of fiscal citizenship required the state to spread the costs of war evenly across class and region.

II. THE TWO WORLD WARS AND THE “GOLDEN AGE” OF SHARED WARTIME SACRIFICE

If the Civil War provides some mixed evidence in support of *War and Taxes*’ primary thesis, the two world wars seem to challenge the contention that American leaders and citizens have been reluctant to embrace a tradition of wartime sacrifice. Indeed, as the authors acknowledge, World War II

32. 8 THE REBELLION RECORD: A DIARY OF AMERICAN EVENTS 271 (Frank Moore ed., 1865).

33. On how antebellum Southern taxation cultivated an antidemocratic political culture, see ROBIN L. EINHORN, *AMERICAN TAXATION, AMERICAN SLAVERY* (2006).

34. P. 27. There were other differences, too: while the North relied on a variety of broad-based taxes to underwrite the war, the South’s main reliance on printed money and unsupported public debt led to disastrous inflation. *Id.*

provides the “most compelling example of wartime fiscal sacrifice” (p. xiv). In fact, if one considers the two world wars as a continuation of one major global conflagration, as some historians have suggested,³⁵ then the first half of the twentieth century may appear to be the “golden age” of shared wartime sacrifice, when a war to make the world “safe for democracy”³⁶ was followed by the quintessential “Good War.”³⁷

A. *World War I Fiscal Policy as a Tale of Unintended Consequences*

Although Americans were initially divided over U.S. entry into World War I, once the country officially entered the fray in April 1917 most citizens seemed willing to sacrifice on behalf of the war effort. Public officials, for their part, did not hesitate to harness wartime patriotism. As part of the war mobilization effort, lawmakers pushed through a tremendous amount of unprecedented government intervention into American private life, including a new and highly robust wartime tax regime. Still, while state actors attempted to spread the costs of the conflict among nearly all sectors of society, broader economic and political forces often undermined their objectives.

From the start, national leaders were well aware of the opportunity that the Great War afforded for stoking nationalistic fervor, or what Herbert Hoover, the wartime head of the Federal Food Administration, referred to as “the spirit of self-sacrifice.”³⁸ With his calls for “meatless” Tuesdays, and “wheatless” Wednesdays, President Woodrow Wilson relied heavily on patriotic sentiment and cooperation to encourage food conservation and other wartime sacrifices.³⁹

Yet, although conservation measures were backed by patriotic cooperation, political pressure was hardly absent during WWI. From conscription to the limits on free speech to the rise of vigilantism, public and private coercion were central components in enforcing wartime obligations.⁴⁰ In the area of fiscal policy, government compulsion was more subtle. Americans were convinced through a sophisticated form of government propaganda that they

35. ERIC HOBSBAWM, *THE AGE OF EXTREMES: A HISTORY OF THE WORLD, 1914–1991*, at 21–54 (1996) (1994); *c.f.* Dudziak, *supra* note 19, at 13–19 (discussing the difficulty of determining the temporal limits of World War II). *But see* GERHARD L. WEINBERG, *A WORLD AT ARMS: A GLOBAL HISTORY OF WORLD WAR II 1* (2d ed. 2005) (arguing that the two world wars were distinct). Other scholars have gone further in depicting the continuities of twentieth-century conflicts into one “Long War.” *See, e.g.*, PHILIP BOBBITT, *THE SHIELD OF ACHILLES* 24 (2003).

36. MARTIN GILBERT, *THE FIRST WORLD WAR: A COMPLETE HISTORY* 317 (1994).

37. MICHAEL C. C. ADAMS, *THE BEST WAR EVER: AMERICA AND WORLD WAR II 2* (1994).

38. DAVID M. KENNEDY, *OVER HERE: THE FIRST WORLD WAR AND AMERICAN SOCIETY 119* (25th anniversary ed. 2004).

39. *Id.* at 118; *see also* CAPOZZOLA, *supra* note 23, at 53–54.

40. CAPOZZOLA, *supra* note 23, at 21–54. Unsurprisingly, legal historians have focused considerable attention on the WWI limits to free speech, and the repercussions of these limits on modern constitutional law. *See, e.g.*, RICHARD POLENBERG, *FIGHTING FAITHS: THE ABRAMS CASE, THE SUPREME COURT, AND FREE SPEECH* (1987); DAVID M. RABBAN, *FREE SPEECH IN ITS FORGOTTEN YEARS* (1997).

had a patriotic duty to buy government bonds and other public debt. Likewise, wartime lawmakers felt pressure to solidify the quasi-voluntary compliance that undergirded nearly all modern tax systems.⁴¹ Treasury officials did this by trying to build public trust and assuring taxpayers that all citizens were paying their fair share of war costs.⁴² Not only did politicians sense that they could raise taxes during the height of war patriotism, taxing authorities realized that the compliance costs of collecting taxes could be lower when taxpayers—citizens were more likely to pay to support the war effort.⁴³ Consequently, the political and economic debates over the mix of taxes and debt financing became increasingly significant.

At the start of the conflict, the Wilson Administration firmly sought to divide the costs of the war evenly between current taxes and government borrowing. In his 1917 war message to Congress, Wilson stated, “so far as practicable the burden of the war should be borne by taxation of the present generation rather than by loans.”⁴⁴ Treasury Secretary William G. McAdoo confirmed that “fifty per cent of the cost of the War should be financed by” taxation, contending that “one of the most fatal mistakes that governments have made in all countries has been the failure to impose fearlessly and promptly upon the existing generation a fair burden of the cost of war.”⁴⁵ This early desire to balance the war costs was motivated by concerns about intergenerational and socioeconomic equity.⁴⁶ The Wilson Administration thus appeared to be cognizant of its social and ethical obligations to monitor the distributional effects of war financing.

The steeply progressive tax laws enacted during the war further supported the notion that political leaders were maintaining their end of the social contract; that they were attempting to adhere to the ideal of shared wartime sacrifice. Though the first permanent income tax was in place before U.S. entry into the war, traditional sources of revenue, namely, import duties and excise taxes, dominated federal receipts—that is until the war hastened the arrival of a new fiscal order. By synthesizing previous historical scholarship, Bank, Stark, and Thorndike remind us that “[d]espite the

41. On the historical importance of “quasi-voluntary compliance,” see generally LEVI, *supra* note 14.

42. KENNEDY, *supra* note 38, at 99–101; Ajay K. Mehrotra, *Lawyers, Guns & Public Monies: The U.S. Treasury, World War One, and the Administration of the Modern Fiscal State*, 28 *LAW & HIST. REV.* 173 (2010).

43. For more on the economic connections between wartime patriotism and lower tax-compliance costs, see Naomi Feldman & Joel Slemrod, *War and Taxation: When Does Patriotism Overcome the Free-Rider Impulse*, in *THE NEW FISCAL SOCIOLOGY*, *supra* note 20, at 138.

44. CHARLES GILBERT, *AMERICAN FINANCING OF WORLD WAR I* 84 (1970).

45. *Id.*; see also WILLIAM G. MCADOO, *CROWDED YEARS: THE REMINISCENCES OF WILLIAM G. MCADOO 389–90* (1931); DALE N. SHOOK, *WILLIAM G. MCADOO AND THE DEVELOPMENT OF NATIONAL ECONOMIC POLICY, 1913–1918*, at 263–64 (1987); *McAdoo Talks Over Loan at Lunch with Bankers*, *WALL ST. J.*, May 5, 1917, at 8.

46. The issue of fiscal policy and intergenerational equity has become increasingly relevant for present tax scholars and policymakers. See, e.g., Symposium, *What Does Our Legal System Owe Future Generations? New Analyses of Intergenerational Justice for a New Century*, 77 *GEO. WASH. L. REV.* 1135 (2009).

speed with which the system converted to reliance on ‘soak-the-rich’ taxation, the compulsory prong of the fiscal sacrifice campaign was an unparalleled success” (p. 50).

Indeed, as the war costs escalated, the federal government assiduously exercised its newfound taxing powers. Top individual marginal income tax rates soared from a prewar level of 7% to 77% at the height of the conflict; the percentage of the labor force paying income taxes increased from roughly 2% to nearly 17%, and monies generated from income and profits taxes mushroomed from less than 10% of total federal revenues in 1914 to nearly 60% by the end of the war.⁴⁷ The tax system that took shape during the war, thus, had a distinctively redistributive edge.⁴⁸ In fact, the effective tax rate of the nation’s wealthiest 1% of households soared from roughly 3% in 1916 to 15% within two years.⁴⁹ Accordingly, WWI tax laws occasioned, as the historian David Kennedy has documented, “a fiscal revolution in the United States.”⁵⁰ Rates would drop dramatically after the war, but the use of direct and graduated taxes to fund the treasury became a permanent part of the modern American fiscal state well after the conflict ended.

One reason why lawmakers were able to make such radical changes to the existing tax system was because of the incredible prevalence of wartime profiteering. During the war years (1914–1919), American industries involved in military production saw their bottom lines and their stock prices soar to new heights. The price of Bethlehem Steel stock, for instance, increased seventeenfold, and in 1917 the company paid its shareholders a 200 percent dividend. U.S. Steel and General Motors enjoyed similar gains. And the Du Pont Company, known colloquially as the “Powder Trust” because of its monopoly on the military-powder business, saw its already-prosperous business skyrocket during the war with profits increasing more than tenfold.⁵¹

Although *War and Taxes* acknowledges the importance of profiteering to the enactment of a munitions tax and then later a more general excess-profits levy,⁵² the book underestimates the pivotal role that populist and pro-

47. See Mehrotra, *supra* note 42, at 182, Tble 1.

48. It was redistributive in the sense that it relied mainly on the wealthy for tax revenue, while the entire country benefited from greater military spending.

49. W. Elliot Brownlee, *Historical Perspective on U.S. Tax Policy Toward the Rich*, in DOES ATLAS SHRUG? THE ECONOMIC CONSEQUENCES OF TAXING THE RICH, 29, 45 (Joel B. Slemrod ed., 2000); see also *Series Ea 758–772, Federal income tax rates by income group-average rates: 1913–1960*, in HISTORICAL STATISTICS OF THE UNITED STATES: MILLENNIUM EDITION (Susan B. Carter et al. eds., 2006) (showing federal income tax rates by income and year). Effective tax rates refer to the ratio of a taxpayer’s tax liability to income.

50. KENNEDY, *supra* note 38, at 112.

51. STUART D. BRANDES, WARHOGS: A HISTORY OF WAR PROFITS IN AMERICA 133–34 (1997). While profits and return on equity were increasing rapidly for specific war-related industries, equity markets as a whole were slumping in real terms, thus fueling the public outcry in favor of taxing these highly-profitable businesses and their owners and managers. *Id.* at 136.

52. Pp. 56–57. The 1916 munitions tax was, in fact, a rifle-shot provision aimed squarely at the Du Pont Company, which was responsible for 90 percent of the revenues generated from this new levy. BRANDES, *supra* note 51, at 134–35.

gressive lawmakers played in exploiting the public outrage over war profiteering.⁵³ The book places much greater emphasis, instead, on the functional aspects of wartime tax policy. It seems to suggest that the muscular WWI tax system that took shape was the result almost solely of the forces of supply and demand. The decline in tariff revenue, due to the instability of international trade, limited the supply of traditional sources of funds, and the obvious demand for more revenue certainly drove lawmakers to search for new sources of public monies.

Yet, by focusing on the purely instrumental motives of lawmakers, the authors seem to ascribe a certain degree of inevitability to the decisions of contemporaries. In the process, they obscure the historical contingency and plasticity of the war period. The war emergency, of course, provided the critical context for building a new fiscal order, but the precise parameters of that new regime had been hotly contested for decades. Thus during the war crisis the future of American tax policy was open to multiple possible paths of development.⁵⁴ Populist agrarian groups in the late nineteenth century, for example, had consistently been demanding steeply progressive income and wealth taxes,⁵⁵ and several progressive lawmakers from the West and South attempted to use the war emergency and the wartime tax regime to curb the growth of corporate capitalism and establish a seemingly more egalitarian distribution of wealth.⁵⁶ At the same time, business interests, as *War and Taxes* shows, resisted the wartime tax hikes, and numerous conservative policy analysts argued that steeply progressive income and profits taxes would hinder war mobilization.⁵⁷ None of these social groups and political leaders ultimately triumphed, but each in its own way helped shape the outcome of WWI tax policy, suggesting that the functional demand for revenue was far from the only determinant of wartime fiscal policy.

The authors, to their credit, do not minimize the contestation that accompanied the new wartime tax regime. Uncovering wartime tax protest, after all, is essential to their main argument. And thus they persuasively document how Du Pont opposed the munitions tax, and how broader business coalitions fought the enactment of the excess-profits levy (p. 55). This is no small contribution given that many current commentators have more often assumed than demonstrated that patriotism always muffles tax protests.⁵⁸

53. KENNEDY, *supra* note 38, at 109–10.

54. *War and Taxes* follows the traditional historiography by contending that WWI was the culmination of the Progressive Era. P. 49. More recent accounts of Progressivism, however, have begun to call this periodization into question. *See, e.g.*, MAUREEN A. FLANAGAN, *AMERICA REFORMED: PROGRESSIVES AND PROGRESSIVISM, 1890–1920s* (2006).

55. ELIZABETH SANDERS, *THE ROOTS OF REFORM: FARMERS, WORKERS, AND THE AMERICAN STATE, 1877–1917*, at 226–30 (1999); CHARLES POSTEL, *THE POPULIST VISION 159–61* (2007).

56. KENNEDY, *supra* note 38, at 108; Witte, *supra* note 31, at 81–84.

57. Pp. 54–55; *see also* Kennedy *supra* note 37, at 106–13.

58. *See* sources cited *supra* note 7.

War and Taxes makes an equally important contribution to the reinterpretation of the success of the government's wartime bond drives. The Wilson Administration soon realized that military spending would overwhelm the initial promise of using progressive taxes to finance half the war. To underwrite the war effort, Treasury Secretary McAdoo turned to a propaganda blitzkrieg promoting the sale of "Liberty Loans," a variety of below-market government debt. McAdoo easily resorted to the hyperbole of conflict and shared sacrifice to mobilize support for Liberty Loans.⁵⁹ He also enlisted the services of national celebrities and leading political figures to mobilize support for Liberty Loans (p. 59).

As a result of McAdoo's actions, scholars have presumed that the WWI bond drives were an overwhelming success, signifying the tremendous extent of ordinary Americans' willingness to share in wartime sacrifice.⁶⁰ But, as Bank, Stark, and Thorndike show, investing in these submarket bonds was hardly a sacrifice when one considers that the interest from these government securities was frequently tax-exempt, and that the appeal of these tax-exempt investments was heightened by the steeply graduated marginal tax rates in effect at the time.⁶¹ Of course, not all bond investors were members of the highest tax brackets, and the "success" of the mass bond drives may have had more to do with the creation of a new class of American investors,⁶² than with reinforcing a sense of civic identity. Ultimately, though, the combination of steep marginal rates and tax-exempt securities, as *War and Taxes* suggests, inured to the benefit of the nation's most affluent owners of capital.

Despite these important scholarly contributions, the Great War proves to be a difficult example to sustain the book's central claim that "the sentiment for fiscal sacrifice was strained and contested" (p. 50). Business groups, to be sure, kept their self-interest in mind as they made "pleas for exemptions or protests against provisions targeted at them" (p. 50). But American political leaders held fast to their wartime responsibilities. They may have sent mixed signals by simultaneously enacting steeply progressive taxes and

59. MCADOO, *supra* note 45, at 374–79. Reflecting back on his success, McAdoo explained that "[a]ny great war must necessarily be a popular movement. It is a kind of crusade; and, like all crusades, it sweeps along on a powerful stream of romanticism." *Id.* at 374. McAdoo claimed success in his financing efforts because he was able to harness—critics would say manipulate—the emotional potency of war. "We went direct to the people; and that means to everybody—to business men, workmen, farmers, bankers, millionaires, school-teachers, laborers," McAdoo boasted in his memoirs. *Id.* at 378. "We capitalized the profound impulse called patriotism. It is the quality of coherence that holds a nation together; it is one of the deepest and most powerful of human motives." *Id.* at 378–79.

60. Weisman, *supra* note 18, at 324–25; Gilbert, *supra* note 44.

61. P. 60. Economic historians have recently documented more precisely the limits of sacrifice associated with tax-advantaged liberty loans. Sung Won Kang & Hugh Rockoff, *Capitalizing Patriotism: The Liberty Loans of World War I* 12–13 (Nat'l Bureau of Econ. Research, Working Paper No. 11919, 2006).

62. LAWRENCE E. MITCHELL, *THE SPECULATION ECONOMY: HOW FINANCE TRIUMPHED OVER INDUSTRY 192–208* (2007); Julia C. Ott, "The Free and Open People's Market": *Political Ideology and Retail Brokerage at the New York Stock Exchange, 1913–1933*, 96 J. AMER. HIST. 44 (June 2009).

issuing tax-favored government debt, but the most adverse aspects of WWI financing were frequently the result of unintended consequences, rather than any deliberate attempt by policymakers to conceal or deny the true costs of the war.⁶³

Consider, for example, the way in which Treasury officials inadvertently fueled wartime inflation. In its eagerness to sell war bonds, the Treasury Department encouraged individual investors to use borrowed funds to buy government securities; it also permitted banks to buy such debt directly. These actions, together with changes to the nascent Federal Reserve System, exacerbated inflationary pressures by encouraging private consumption while at the same time increasing the money supply.⁶⁴ As a result, public borrowing and monetary policy became significant sources of WWI financing.⁶⁵ Thus, notwithstanding McAdoo's claims to have learned from the past, the policies and actions of the WWI Treasury Department were remarkably similar to the Civil War era. The ease with which political leaders could employ patriotism to issue government debt was mixed with the unanticipated results that came from a resort to easy money.

In this sense, World War I seems both to support and undermine the main argument in *War and Taxes*. The authors persuasively demonstrate that not all citizens embraced the American tradition of shared wartime sacrifice. Yet, political leaders cannot be faulted for trying "to delay, deny, and obscure the trade-off between guns and butter" (p. xiii). Rather than purposefully abdicating their fiscal responsibilities, WWI lawmakers pursued seemingly rational policies that ultimately frustrated their true intentions to spread the costs of the war.

B. World War II and the Sustained Commitment to Shared Wartime Sacrifice

Broader economic and social forces may have undermined the intentions of WWI policymakers, but many of these public officials learned a great deal from their experiences in the wartime Wilson Administration. Arthur A. Ballantine, the Solicitor of Internal Revenue during World War I,⁶⁶ helped defend the constitutionality of the WWI excess-profits tax.⁶⁷ After the war, he became a leading member of the New York tax bar,⁶⁸ but he did not lose

63. KENNEDY, *supra* note 38, at 99–103; *see* Mehrotra, *supra* note 42, at 207–212.

64. KENNEDY, *supra* note 38, at 102–03.

65. The economic historian Hugh Rockoff has estimated that WWI was financed with roughly 20% from taxes, 20% from money creation, and the remaining 60% from public borrowing. Hugh Rockoff, *Until its Over, Over There: The U.S. Economy in World War I*, in *THE ECONOMICS OF WORLD WAR I* 310, 316 (Stephen Broadberry & Mark Harrison eds., 2005).

66. Melvin I. Urofsky, *Ballantine, Arthur Atwood*, in *DICTIONARY OF AMERICAN BIOGRAPHY* 33–34 (John A. Garraty ed., Supp. VI 1980); Mehrotra, *supra* note 42, at 189.

67. Arthur A. Ballantine, *Some Constitutional Aspects of the Excess Profits Tax*, 29 *YALE L.J.* 625, 627 (1920).

68. Mehrotra, *supra* note 42, at 220.

sight of the important work he did during the war to build the administrative infrastructure of the modern American fiscal state.⁶⁹

In fact, in 1931, when Ballantine was Assistant Secretary of the Treasury, he reflected on his role at the Bureau of Internal Revenue to argue that some kind of war-profits tax was an ideal way to raise revenue and temper the financial appetites of American capitalists. Testifying before the War Policies Commission, Ballantine maintained that “any plan of war revenue legislation should include a war profits tax designed to bring into Treasury, so far as practical, the entire amount of profits due to war.”⁷⁰ As a longtime corporate lawyer, Ballantine had expressed his disdain for excessive taxation, but a war emergency necessitated a different kind of relationship between citizen–taxpayers and their government. “The need of the government for funds to support the war and the general desire,” Ballantine testified, “to eliminate profit from war would both be furthered by” the enactment of wartime profits taxes.⁷¹

Although Ballantine did not serve in the WWII Treasury Department, his sentiments were shared by many officials in Franklin D. Roosevelt’s administration. In what is perhaps the book’s most compelling account, the authors show how the sense of civic engagement triggered by the attacks on Pearl Harbor spurred a second fiscal revolution (p. 93). Indeed, FDR took the politics of fiscal citizenship to new heights. He not only forcefully spoke about the need for shared sacrifice; he went so far as to implement a mass-based income-tax system that has become the bedrock of the modern American fiscal regime (p. 93). Like their predecessors, Roosevelt aides understood, especially after the immediate post–Pearl Harbor panic had subsided, that they needed to bring the pains of a remote wartime battlefield closer to home. They needed citizens to understand why self-sacrifice was crucial to the self-preservation of the political community (p. 97).

There was perhaps no better way for lawmakers to convey the significance of self-sacrifice than through the fiscal policies that underwrote the WWII mobilization effort. Having learned from the WWI experience, New Deal officials attempted to uphold the government’s commitment to realizing the ideal of shared wartime sacrifice. Treasury Secretary Henry Morgenthau, Jr. conducted a wartime bond campaign that would have made McAdoo proud. Treasury’s War Finance Committee supervised eight major bond drives that raised more than \$157 billion, with roughly 85 million Americans investing in war bonds.⁷² Though the WWII bonds helped pay for the war and curb inflation, Morgenthau conceded that “60 percent of the

69. *Id.* at 189.

70. Arthur A. Ballantine, War Policies in Taxation: Statement Before the War Policies Commission (May 20, 1931) (transcript available at the National Archives and Record Administration II, College Park, MD). An abridged version of Ballantine’s testimony was published in *The Tax Magazine*, July 1931. *War Policies in Taxation*, 9 TAX MAG. 250 (1931).

71. Ballantine, *supra* note 70.

72. KENNEDY, *supra* note 17, at 626; Sparrow, *supra* note 23, at 266.

reason” for the bond drive was “to give the people an opportunity to do something,” and “make the country war-minded.” He used the bond drives to “sell the war, rather than vice versa.”⁷³

The WWII bond drives may have used the same script as the WWI campaign for Liberty Loans, but when it came to tax policy New Dealers wrote their own drama. Indeed, the Roosevelt Administration’s enthusiasm for the political use of bonds was surpassed vastly by the incremental manipulation of tax policy. Even before the United States entered the war, Roosevelt had asked the American people to put “patriotism ahead of pocketbooks,” as he reminded Congress: “I have called for personal sacrifice,” and “[a] part of the sacrifice means the payment of more money in taxes” (pp. 90–91). FDR and congressional Democrats backed up this rhetoric with the reinstatement of a “steeply graduated” excess-profits tax in 1940 (p. 88). Enacted soon after the adoption of a draft, the excess-profits levy expressed Roosevelt’s desire to fulfill the state’s obligations under fiscal citizenship. “We are asking even our humblest citizens to contribute their mite,” FDR declared as part of his request for the excess-profits tax (p. 88). “It is our duty to see that the burden is equitably distributed according to ability to pay so that a few do not gain from the sacrifices of the many” (p. 88).

Once the United States entered the war in 1941, certain political leaders focused on the need to use broad-based taxes to fund the war in a way that highlighted the notion of shared sacrifice. Some policymakers, for instance, argued for a general sales tax, but FDR adamantly opposed what he deemed to be a regressive method of public financing.⁷⁴ With the President’s leadership, Congress settled, instead, on broad-based, graduated income taxes as the centerpiece of wartime finance. The Revenue Act of 1942, in fact, marked the start of a new era of fiscal policy, as the dramatic increase in rates, the decrease in exemption levels, and the reintroduction of tax withholding, transformed the early class-based income tax into a mass-based income-tax system.⁷⁵ As legal scholar Carolyn Jones has shown, the Treasury Department facilitated this historic transformation by using nearly every form of popular media—from radio to newspapers to films—to cultivate a taxpaying culture.⁷⁶

What was perhaps most significant about the 1942 tax law was how it sought to balance the war costs between both middle-class and well-off Americans. The law dramatically cut exemption levels and thus widened the

73. JOHN MORTON BLUM, *V WAS FOR VICTORY: POLITICS AND AMERICAN CULTURE DURING WORLD WAR TWO* 17 (1976).

74. Joseph J. Thorndike, “*The Unfair Advantage of the Few*”: *The New Deal Origins of “Soak-the-Rich” Taxation*, in *THE NEW FISCAL SOCIOLOGY*, *supra* note 20, at 29.

75. BROWNLEE, *supra* note 18, at 93–94. For more on the wartime political debates over federal taxation and the postwar consequences of FDR’s opposition to sales taxes, see Lawrence Zelenak, *The Federal Retail Sales Tax That Wasn’t: An Actual History and an Alternative History*, in *73 LAW & CONTEMPORARY PROBLEMS* (forthcoming 2010) (copy of manuscript on file with the author).

76. Carolyn C. Jones, *Class Tax to Mass Tax: The Role of Propaganda in the Expansion of the Income Tax During World War II*, 37 *BUFF. L. REV.* 685, 688 (1989).

circle of taxpayers, but as Bank, Stark, and Thorndike recount, the changes were even more profound at the peak of the income scale, where the top graduated rate climbed to 94 percent, surpassing even the top level of WWI (p. 97). “Clearly, rich Americans were being asked to pay handsomely,” the authors write, “even as middle-class Americans were struggling to complete their first round of income tax returns” (p. 98).

FDR relished the “soak-the-rich” aspects of the new tax law. During the height of the Great Depression, he had singled out the country’s wealthiest citizens as “economic royalists,” blaming them for the continued economic troubles.⁷⁷ The war emergency provided Roosevelt with an opportunity to strike back at these critics in the process of funding the war. FDR himself later aptly, and perhaps self-servingly, described the 1942 law as “the greatest tax bill in American history” (p. 96).

It didn’t take long, however, for political interests to intrude on the war-time-tax legislative process. Political dynamics, as historian Mark Leff has illustrated, quickly allowed certain groups to “domesticate and delimit the meaning of sacrifice—to define it in terms that reinforced the validity of their own political interests and claims.”⁷⁸ No sooner had the ink on the 1942 Revenue Act dried, than Congress returned the following session with another tax bill—one that provided only a fraction of the revenue that FDR had requested, but was loaded with tax benefits targeted at special interests. As part of his stinging veto of the 1943 Revenue Act, Roosevelt condemned the proposed legislation “as not a tax bill but a tax relief bill, providing relief not for the needy but for the greedy” (p. 106). Congress overrode the president’s veto, marking the first time in American history that a revenue law was enacted without presidential approval.

As *War and Taxes* notes, the enactment of the 1943 tax law signified a victory for self-indulgence over shared sacrifice. Yet, taken as a whole, the WWII tax regime is perhaps the “most compelling example of wartime fiscal sacrifice” (p. xiv). For it was during those pivotal years that the United States not only established the modern mass-based income tax, but also relied more on taxation to extract fiscal sacrifice and fund the war than in any previous American conflict.⁷⁹ Part of the reason for this success was FDR’s leadership in opposing seemingly regressive sales taxes and his insistence on balancing a mass income tax with steeply graduated rates for the wealthy. This lesson would not be lost on future lawmakers, even as American military entanglements became more uncertain in the second half of the twentieth century.

77. ERIC RAUCHWAY, *THE GREAT DEPRESSION & THE NEW DEAL: A VERY SHORT INTRODUCTION* 106 (2008).

78. Leff, *supra* note 17, at 1298.

79. Hugh Rockoff has estimated that taxation accounted for nearly half of American wartime spending, with public borrowing and money creation accounting evenly for the remainder. Hugh Rockoff, *The United States: From Plowshares to Swords* 108 in *THE ECONOMICS OF WORLD WAR II: SIX GREAT POWERS IN INTERNATIONAL COMPARISON* 81, 108 (Mark Harrison ed., 1998).

III. THE COLD WAR AND THE IMPORTANCE OF TIMING

Unlike the two total global wars, the conflicts emerging from the Cold War precipitated a different kind of political dynamic for fiscal policymaking. Whereas earlier conflicts were generally wars officially waged by Congress, many of the battles of the Cold War were more ambiguous, executive-ordered police actions. As a result, straightforward appeals to patriotism were often not enough; the timing of wartime tax hikes thus became pivotal. In this sense, catalytic events during the Cold War could prompt a crisis or emergency mentality, but that sentiment did not always persist throughout a given conflict or time period.⁸⁰ By contrasting Cold War fiscal policies, the authors make a convincing case for the importance of bold, initial actions, or “strik[ing] while the iron is hot” (p. 141). Indeed, some of *War and Taxes*’ most instructive historical lessons come from comparing American tax policymaking during the Korean and Vietnam conflicts.

The Korean conflict, in particular, was built on the legacy created by the monumental transformations of World War II. Between the end of World War II in 1945 and the start of the Korean conflict in 1950, the American tax system went through a modest period of retrenchment. Yet, like nearly all past conflicts, WWII had a significant “ratchet effect” on government spending and tax revenues.⁸¹ Thus, though top individual rates declined from a wartime high of 94 percent in 1945 to 82 percent by 1948, they did not return to their prewar levels, nor did the tax base resort to an exclusive focus on the wealthiest citizens.⁸² With real wages rising, most Americans seemed to be content with the new tax system, and politicians had little reason to foment antitax sentiments.⁸³

The new postwar plateau of high taxes and the vivid and indelible memories of WWII obligations facilitated the calls for a return to patriotic self-sacrifice and fiscal discipline during the Korean conflict. Waged during the height of McCarthyism and in the wake of the Chinese Communist Revolution, the Korean conflict came at a time when bipartisan support for containing communism led both political parties and most Americans to support a military presence in East Asia. The early support for containing communism translated into a greater willingness to share in wartime sacrifices.⁸⁴

80. See Dudziak, *supra* note 19, at 3, 7.

81. SPARROW, *supra* note 17, at 24–25. For more on the “ratchet effect” with regard to wars and government spending, see ALAN T. PEACOCK & JACK WISEMAN, *THE GROWTH OF PUBLIC EXPENDITURE IN THE UNITED KINGDOM* 52 (rev. 2d ed. 1967); TILLY, *supra* note 13, at 89.

82. See STATISTICS OF INCOME DIV., INTERNAL REVENUE SERV., *STATISTICS OF INCOME BULLETIN* tabl.23, <http://www.irs.gov/pub/irs-soi/histab23.xls>; see also W. ELLIOT BROWNLEE, *HISTORICAL PERSPECTIVE ON U.S. TAX POLICY TOWARD THE RICH* 60–61 (Joel Slemrod ed., 2000).

83. Andrea Louise Campbell, *What Americans Think of Taxes*, in *THE NEW FISCAL SOCIOLOGY: TAXATION IN COMPARATIVE AND HISTORICAL PERSPECTIVE*, *supra* note 20, at 48.

84. WILLIAM STUECK, *RETHINKING THE KOREAN WAR: A NEW DIPLOMATIC AND STRATEGIC HISTORY* (2002).

Political leaders led the way in reminding Americans about the inextricable link between foreign policy and domestic tax law. Soon after American troops reached Korea in 1950, the statesman John Foster Dulles, who at the time was serving as a special advisor to the State Department, declared that “the time for sacrifice and discipline is here” (p. 113). Emphasizing the need to spread the costs of war, Dulles warned that “[m]any now will risk their lives before the hard battle of Korea is won” (p. 113). As a result, he continued, “We shall all have to give up some material enjoyments and be more frugal in our living. There will be fewer automobiles, television sets, and gadgets to buy and there will be bigger tax bills to pay” (p. 113).

Dulles’s words proved to be prescient. Congress responded to the start of the Korean conflict by reversing the post-WWII reduction in taxes. Taking advantage of the combination of general prosperity, the political pressures of McCarthyism, and bipartisan congressional support for the military intervention in Korea, the Truman Administration swiftly transformed a preconflict tax-relief bill into a major wartime tax increase, the largest in nearly a decade (pp. 112–16). With top marginal rates soaring to 45 percent for corporations and over 90 percent for individuals, the 1950 Revenue Act was quickly enacted—within forty-five days of being introduced—with overwhelming bipartisan support (p. 115). Lawmakers followed this substantive show of shared sacrifice with an excess-profits tax, modeled on similar levies used during the two world wars.

The concern for equitably spreading the price of conflict dominated congressional discussions. As one lawmaker aptly put it in 1951, “I think the boys in Korea would appreciate it more if we in this country were to pay our own way instead of leaving it for them to pay when they get back” (p. 125). Committed to not passing the buck to the next generation or even to returning GIs, American leaders forged a tax policy that Bank, Stark, and Thorndike persuasively depict as becoming “the closest the country has ever come to a pure ‘pay as you go’ approach to war financing” (p. 110).

War and Taxes concedes that fiscal policy during the Korean conflict benefited from some unique historical circumstances. The fear over the growing spread of communism, which became increasingly frantic with the demagoguery of McCarthyism, fueled a unique “rally ‘round the flag’ atmosphere” (p. 115). Yet, during the early 1950s, economic and material prosperity may have trumped politics and foreign policy. American leaders were able to place the costs of the Korean intervention on to a wide swath of the current generation not only because they had near unanimous political support, but also because of flush economic times. The Korean conflict commenced during the uptick of post-WWII economic growth, during the early years of the so-called “golden age of American capitalism.”⁸⁵ With annual real GDP growth averaging more than 3 percent from 1946–74,

85. EDWARD C. ROYCE, *POVERTY AND POWER: THE PROBLEM OF STRUCTURAL INEQUALITY* 93 (2008); R.C. MASCARENHAS, *A COMPARATIVE POLITICAL ECONOMY OF INDUSTRIAL CAPITALISM* 9 (2002). For a critique of this view of America’s postwar period, see generally *THE GOLDEN AGE OF CAPITALISM: REINTERPRETING THE POSTWAR EXPERIENCE* (Stephen A. Marglin & Juliet B. Schor eds., 1990).

lawmakers believed that they did not have to choose between guns and butter.⁸⁶ The start of what tax scholars have dubbed the “Era of Easy Finance” allowed American politicians to finance the war and other domestic spending with a minimum of home-front sacrifice.⁸⁷

Economic prosperity may have made it easier for American leaders to demand greater wartime sacrifice, but the timing of the tax increases, as the authors show, proved to be a crucial trigger. “[A]cting quickly and decisively to raise capital and labor income taxes” was essential for Truman’s success (p. 141). Other wars were equally popular during their earlier phases, but few politicians demonstrated the steadfast fiscal leadership displayed by Truman and his congressional allies.

Whereas President Truman was quick to exploit bipartisan support for the Korean conflict to pass tax hikes, Presidents Kennedy and Johnson belabored and dodged the moments of financial reckoning. Of course, Vietnam began as a much more gradual and ambiguous conflict. In fact, during Kennedy’s tenure, Vietnam remained in the background as policymakers focused on tax cuts as a way to stimulate economic growth and create jobs.⁸⁸ This conventional Keynesian thinking continued into the Johnson Administration, leading to the 1964 tax cut, which was enacted as part of a compromise with fiscal conservatives like Wilbur Mills, the powerful chair of the House Ways & Means Committee, who insisted on spending cuts.⁸⁹

By the mid-1960s, with the war in Vietnam and the recently initiated war on poverty both in full swing, President Johnson claimed that the nation could continue its spending spree without increasing taxes. “[T]his nation is mighty enough, its society is healthy enough, its people are strong enough, to pursue our goals in the rest of the world while still building a Great Society here at home,” he announced during his 1966 State of the Union Address (p. 130). “Time may require further sacrifices. And if it does, then we will make them. But we will not heed those who wring it from the hopes of the unfortunate here in a land of plenty” (p. 130). For LBJ, choosing between guns and butter was a false choice.

Reality, however, soon caught up with Johnson—within a year, time did require further sacrifices. In 1967, Johnson requested an income-tax “surcharge” of 6 percent linked to the increased spending for Vietnam.⁹⁰ Because of the social turmoil of the late 1960s, the tax increase, which escalated to 10 percent, was not enacted until eighteen months after Johnson first requested it, and only after he announced that he would not seek re-election. By then it was apparent that LBJ’s misplaced optimism of being able simultaneously to provide guns and butter had taken a toll on the budget, as well

86. C. EUGENE STEUERLE, *CONTEMPORARY U.S. TAX POLICY* 68 (2004).

87. *Id.* at 68–70; *see also* BROWNEE, *supra* note 18, at 107.

88. HERBERT STEIN, *THE FISCAL REVOLUTION IN AMERICA* (1969); STEUERLE, *supra* note 86, at 70–71.

89. JULIAN E. ZELIZER, *TAXING AMERICA: WILBUR D. MILLS, CONGRESS, AND THE STATE, 1945–1975*, at 201–03 (1998).

90. HORMATS, *supra* note 7, at 220–23.

as the president. Near the end of his life, Johnson bitterly recalled how “[t]hat bitch of a war” had “killed the lady I really loved—the Great Society.”⁹¹

Johnson’s critical error, the authors of *War and Taxes* argue, was his failure to channel the American public’s initial support for the Vietnam War into shared sacrifice, as Truman had done in Korea. “In the final analysis,” they write, “Johnson simply placed a greater value on his domestic spending priorities than he did on the war in Vietnam. Not surprisingly, therefore, he exhibited extreme reluctance to ask for the wartime sacrifices so common in previous conflicts” (pp. 142–43). From this acute observation, the authors conclude that Johnson’s “decisions established a historical precedent for relegating war taxes to the back burner,” and thus “by the end of the war in Vietnam,” the traditional American value of shared wartime sacrifice “had plainly suffered a setback” (p. 143).

War and Taxes’ depiction of Johnson’s fiscal mishandling of Vietnam is perhaps the strongest evidence in support of the book’s thesis and its attempts to question the recent criticism of the Bush Administration. But if Johnson’s initial reluctance was a mistake, it was a mistake repeated by George W. Bush, who told Americans after 9/11 to go shopping instead of asking them to buy bonds or pay higher taxes. And it was a mistake repeated by Republican lawmakers like Tom DeLay who boldly claimed that tax cuts were essential to wartime patriotism.⁹²

In the end, though, the comparison between Vietnam and the war on terror is only half right. Unlike our recent leaders, Johnson ultimately signed off, albeit grudgingly, on a major tax hike and domestic spending cuts shortly after he announced his decision not to seek reelection. By contrast, the Bush Administration initiated a war on terror but continued to resist accounting for the escalating military costs. To make fiscal matters even worse, the Republican Party enacted a series of tax cuts, aimed primarily at the wealthy, that exacerbated the growing federal deficit. In this sense, President Bush may, in fact, be the one setting a historical precedent for not only relegating war taxes to the back burner, but for having eliminated them completely from the kitchen of wartime fiscal policymaking.

IV. THE WAR ON TERROR AND THE RELENTLESS ALLEGIANCE TO TAX CUTS

With the end of the Cold War and the subsequent geopolitical dominance of the United States, American military excursions have become even more complex and ambiguous. But, as Bank, Stark, and Thorndike remind us, the post-9/11 war on terror remains too close to our own consciousness for any deep and detached historical perspective. Instead, in the book’s final substantive chapter, the authors briefly chronicle the background, development, and legacy of the Bush wartime tax cuts.

91. P. 135; A HISTORY OF OUR TIME: READINGS ON POSTWAR AMERICA 112 (William H. Chafe et al. eds., 7th ed. 2008).

92. See text accompanying *supra* note 4.

The authors begin by tracing the origins of the Republican Party's ideological commitment to tax cuts back to the 1994 Contract with America—a time of relative peace and prosperity. It was then that Newt Gingrich and other congressional leaders used the run up to the 1994 midterm election to campaign, as the authors recount, for “various tax cuts designed to ‘create jobs,’ ‘enhance wages,’ and ‘restore the American dream’” (p. 146). Employing the supply-side economics that had become popular during the 1980s, conservative Republicans argued that tax cuts and limited government were the secrets to economic growth (p. 155).

After taking control of Congress, GOP politicians attempted to follow through on their promises by enacting dramatic tax relief legislation. President Clinton rejected the Republican demands for across-the-board tax cuts, but enacted some targeted middle-class tax relief measures. Robust economic growth, relatively high tax rates, and the benefits of a post-Cold War “peace dividend” eventually led to a growing budget surplus in the last years of the twentieth century.⁹³ All of this occurred, of course, absent the imperatives of war.

Although the Republican demands for tax cuts were kept at bay during the Clinton years, a growing surplus soon provided GOP lawmakers with an easy target. Thus, during the 2000 presidential election, the calls for returning tax dollars to those who earned them became an early and integral part of the Republican Party's tax-cutting agenda. George W. Bush exploited this sentiment not only on the campaign trail, but in office: among the first pieces of legislation he signed as president was the Economic Growth and Tax Relief Reconciliation Act of 2001,⁹⁴ a tax cut that was estimated to cost \$1.35 trillion over a ten-year period (p. 149). The era of Bush tax cuts had begun.

The first Bush tax cut could be attributed to reasonable beliefs about the proper use of fiscal policy and limited government. Yet, after the terrorist attacks of September 11, 2001, when the nation seemed primed to accept the sacrifices of war, most observers anticipated an end to the Republican tax-cutting zeal. Indeed, if the past was any guide, the patriotic and nationalistic fervor that followed 9/11 should have occasioned a reversal in Republican thinking about tax policy. “Unlike Pearl Harbor, however, there was almost no talk in the wake of the September 11th attacks of a need to increase taxes to mobilize for war,” write the authors (p. 151).

Instead, the Bush Administration responded by relying on American consumerism to lift the economy out of a recent recession that appeared to be getting worse after the 9/11 attacks. As Bank, Stark, and Thorndike show, there were good reasons why the anticipated military response to 9/11 would be different from Pearl Harbor or other previous wars. The continued—though shrinking—surplus and the unconventional aspects of a war on terror suggested “that U.S. lawmakers simply did not face the same sense of

93. ROBERT POLLIN, *CONTOURS OF DESCENT: U.S. ECONOMIC FRACTURES AND THE LANDSCAPE OF GLOBAL AUSTERITY* 73–75 (2003).

94. Pub. L. No. 107-16, 115 Stat. 38.

fiscal urgency following the September 11th attacks as they did in previous conflicts” (p. 151). This optimism continued even after U.S. troops were deployed to Afghanistan as part of Operation Enduring Freedom in November 2001.

Yet, any faith that the Bush Administration was sincerely concerned about its wartime fiscal obligations was completely shattered in the spring of 2003. Within a span of a few months, the administration and its congressional allies launched Operation Iraqi Freedom *and* enacted additional tax cuts⁹⁵ that would cost \$350 billion over ten years.⁹⁶ It was during the debates over this tax bill that Tom DeLay uttered his now infamous comment about the importance of tax cuts in the face of war.⁹⁷ Political leaders were able not only to fold their actions in Iraq dubiously into their rhetoric about a “war on terror,” they also convinced ordinary Americans of the righteousness of tax cuts.⁹⁸ Throughout the remainder of its tenure, the Bush White House continued to maintain its focus simultaneously on tax cuts and military spending for the war on terror, despite the tenuous link between 9/11 and the invasion of Iraq. The traditional trade-off between guns and butter no longer seemed to apply.

The Republican Party’s relentless allegiance to tax cuts, even after the deployment of troops in two distant lands, is exceedingly difficult to reconcile with the historical record—and is just one reason why many people continue to contest the coherence of a “war on terror.” Past leaders such as Presidents Lincoln and Johnson, as *War and Taxes* persuasively illustrates, did initially dodge and disavow the need for fiscal discipline in the midst of war, but they eventually conceded their early errors and took responsibility for the mounting wartime costs. They ultimately agreed that fiscal citizenship meant that the state had a reciprocal obligation to its constituents—an obligation to ensure that the total price of conflict was distributed fairly among all citizens.

CONCLUSION

War and Taxes makes an important contribution to the literature on the history of American tax policy. By uncovering the complex and contested circumstances surrounding past wartime fiscal policy, the book provides a badly needed corrective to an overly romantic view of U.S. history. The standard narratives of American wartime tax policy—and the recent social commentary that has relied on these conventional accounts—have presumed too frequently that patriotism has naturally and inexorably always triumphed

95. Weisman, *supra* note 5.

96. *Business Digest*, N.Y. TIMES, May 24, 2003, at C1.

97. See *The Budget Fight is Now*, *supra* note 4 and accompanying text.

98. For more on how ordinary Americans were convinced about the need for tax cuts, see generally Larry M. Bartels, *Homer Gets a Tax Cut: Inequality and Public Policy in the American Mind*, 3 PERSP. ON POL. 15 (2005); Jacob S. Hacker & Paul Pierson, *Abandoning the Middle: The Bush Tax Cuts and the Limits of Democratic Control*, 3 PERSP. ON POL. 33 (2005).

over self-interest; that American citizens and their leaders have been ready and willing to embrace a tradition of wartime shared sacrifice. In some ways, this perspective is, indeed, an idealistic picture of the past. The authors, therefore, are correct to caution against contrasting recent policy with a “cardboard cutout version of an imagined past” (p. xiii).

Received wisdom is often overly simplified. But it is also sometimes accurate. Although the history of wartime taxation has been complex and contested, there has undeniably been a strong tradition of exacting shared sacrifices during wartime. Recent and current tax policy seems to deny the significance of this tradition. The Bush Administration not only squandered opportunities to harness American patriotism for the sake of wartime sacrifice, it also abdicated any sense of fiscal accountability throughout its leadership. The Obama Administration, for its part, has been confronted by a historic financial crisis, a deep recession, and material changes to the wartime conditions in Iraq and Afghanistan—all this has altered the priorities of wartime fiscal policymaking.

Nonetheless, even President Obama has made only limited gestures toward the American tradition of shared wartime sacrifice. The Democratic Party’s penchant for targeted “middle-class” tax cuts and the Obama Administration’s pledge to soak only the rich with new tax hikes have replaced the Republican commitment to across-the-board tax reduction.⁹⁹ Likewise, discussions of moving the focus of American military might from Iraq to Afghanistan have only solidified the seeming permanence of the war on terror.¹⁰⁰ Consequently, foreign policy and domestic tax law are still often treated as mutually exclusive areas of policymaking. It appears as if the Bush years not only have been an historical anomaly, but that they have also operated as a critical juncture or transformative moment in American political and economic development, creating a new mindset about wartime taxation and the politics of fiscal citizenship.

Bank, Stark, and Thorndike recognize that the Bush-era tax cuts “plainly constitute an extraordinary episode in the history of American war finance” (p. 164). Veering from their initial thesis, the authors to their credit acknowledge the “inescapable fact” that “the idea of consciously and aggressively reducing federal tax revenues while simultaneously pursuing a war abroad is new to the American experience” (pp. 164–65). Faced with this challenge, the authors are forced to explain the apparent gestalt shift in wartime tax policy. The concluding chapter of *War and Taxes* thus serves as something of a *deus ex machina*, summoned to help resolve the difficulty of reconciling the Bush Administration’s actions with the historical record. The authors suggest that the recent inversion in the politics of wartime taxation and fiscal citizenship may be explained by broader, structural

99. Jackie Calmes, *Obama’s Pledge to Tax Only the Rich Can’t Pay for Everything*, *Analysts Say*, N.Y. TIMES, Aug. 1, 2009, at A10.

100. ANDREW BACEVICH, *THE LIMITS OF POWER: THE END OF AMERICAN EXCEPTIONALISM* 187–89 (2009); Elisabeth Bumiller, *With Boots in Iraq, Minds Drift to Afghanistan*, N.Y. TIMES, Aug. 1, 2009, at A1; Yochi J. Dreazen and Naftali Bendavid, *Gates Gives Obama Afghan Troop Request*, WALL. ST. J. Oct. 8, 2009.

transformations in economic, political, and social conditions; namely, the growing insignificance of inflation, the marginalization of deficit concerns, and the end of the draft (pp. 168–74).

Despite these incongruous yet highly plausible explanations, it is difficult to come away from *War and Taxes*' balanced, thorough, and ostensibly nonpartisan account without thinking that the Bush Administration has thrust us into a new era of wartime tax policymaking. Earlier administrations and Congresses may have had momentary lapses of resolve, but today we seem to have entered a new age of sustained fiscal irresponsibility—a new age when too many political leaders cling to the dubious claim that “nothing is more important in the face of war than cutting taxes” (p. 155).