

DEMOCRACY, INEQUALITY, AND THE NEED FOR A SOCIAL SOLIDARITY TAX

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I. INTRODUCTION

There is something rotten in the state of our world. On the one hand, many agree that people are hurting, but the underlying reasons for why and how we, as a society, should respond is where we differ. Whether we deny the causes—a pandemic, racism, inequality, and a rise in authoritarianism—or disagree about what to do, we know that things must change. When signing an Executive Order on Racial Equity on January 26, 2021, President Joseph Biden spoke of “today’s generation of young Americans” who are “forcing us to confront the huge gap in . . . economic inequity between those at the top and everyone else, forcing us to confront the existential crisis of climate; and, yes, forcing us to confront systemic racism and white supremacy.”¹ In the same statement, Biden referred to the need to restore the Voting Rights Act “to fight back against laws that many states are engaged in to suppress the right to vote, while expanding access to the ballot box for all eligible voters.”² Biden’s statement came less than a month after the nation witnessed a direct assault on the Capitol—the symbol and site of American democracy—which evinced the link between the growth of inequality, racism and the need to restore democracy. What is less certain is how to effectively address these challenges simultaneously. Because of the COVID-19 pandemic, the new administration quickly put forth a \$1.9 trillion spending package aimed at providing support for those in need. However, even if it does prevent people from becoming impoverished, it does not address the levels of inequality that are producing a system of near oligarchic power for the top one percent.

The dramatic rise in inequality, specifically in the distribution of wealth across the globe since 1980, has set the stage for the rising public interest in wealth taxes. While neo-liberal economists assumed that tax cuts, deregulation and higher growth rates would produce a trickle-down effect that would benefit everyone, inequality in the distribution of wealth has only grown. Sociologist Göran Therborn argued in *The Killing Fields*

¹ President Joseph Biden, Remarks at the Signing of an Executive Order on Racial Equity (Jan. 26, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/26/remarks-by-president-biden-at-signing-of-an-executive-order-on-racial-equity/> [https://perma.cc/RY8C-4H4L].

² *Id.*

of Inequality that inequality is not simply about income and wealth, but must also be measured in stunted lives, in inequalities of health, and in lifespan and death.³ In their book *The Triumph of Injustice*, economists Emmanuel Saez and Gabriel Zucman illuminate the relationship between inequality, political power and taxation, arguing that the wealthy in the United States have systematically undermined the progressive tax system created during the New Deal.⁴ The result is not only increasing inequality, but also an undermining of democracy. When viewed from these perspectives, the unequal distribution of wealth is not benign.

While this link between inequality and the failures of democratic participation has been at the core of political uprisings and social movements since the Great Recession of 2008,⁵ the COVID-19 pandemic, and the economic shutdown it provoked, has exposed the consequences of inequality in its many dimensions. COVID-19 is transforming the world, but we do not yet know to what extent. Across the globe, the pandemic has exposed and exacerbated social and economic inequities. From medical systems to livelihoods, COVID-19 has demonstrated both the degree of inequality that exists and its devastating impact—from the death toll and rising unemployment to the lack of access to education and proper housing. In many societies, including the United States, COVID-19 has also exposed how gross inequalities fall along racial and ethnic lines, with devastating impacts on marginalized individuals and communities. 2020 Democratic presidential candidates Bernie Sanders and Elizabeth Warren argued in the pre-COVID-19 presidential primary debates that it is necessary to address these extreme inequalities exposed in the aftermath of the Great Recession, and now, in the face of COVID-19, the need to address them seems even more urgent, even with a vaccine available and light visible at the end of the COVID-19 tunnel.

Despite renewed hope of a post-COVID era due to the vaccine, the need to rebuild and address the needs of this country has led to an increased debate over wealth taxes. This article seeks to draw on the comparative historical examples in which different nations have used wealth taxes to

³ GÖRAN THERBORN, *THE KILLING FIELDS OF INEQUALITY* 5–19 (2013).

⁴ See generally EMMANUEL SAEZ & GABRIEL ZUCMAN, *THE TRIUMPH OF INJUSTICE: HOW THE RICH DODGE TAXES AND HOW TO MAKE THEM PAY*, at viii (2019) (discussing how it has “become so natural that the affluent do not contribute to the public coffers[.] . . . Th[is] country’s tax system—the most important institution of any democratic society—ha[s] failed”).

⁵ See Larry M. Bartels, *Political Effects of the Great Recession*, 650 ANNALS AM. ACAD. POL. & SOC. SCI. 47, 47–75 (2013) (providing “an overview of American politics since the start of the Great Recession, focusing primarily on public opinion and electoral politics, but also touching more superficially on the political causes and consequences of significant shifts in public policy”).

greater or lesser degrees of success. To compare these different forms of wealth taxes and explain the concept of a social solidarity tax, it is necessary to first define the goal of these taxes and their modalities. The article will then compare historical examples to explore earlier iterations of wealth taxes from democratic societies around the globe. This comparative historical approach will allow us to identify some of the issues that need to be considered in developing a proposed social solidarity tax. While the comparative discussion will include both the difficulties experienced and the achievements of these historical examples, it will also consider how some of the issues surrounding these taxes have been previously addressed. Finally, this article will propose a social solidarity tax as an important means to build a better and more sustainable post-COVID political economy.

II. WHY CONSIDER A SOCIAL SOLIDARITY TAX?

Before the COVID-19 pandemic, the gap between the rich and poor in the United States had reached proportions not seen since the Gilded Age.⁶ In the throes of the Great Recession in 2008, the Obama administration recognized that the economy needed to be saved. Once the initial shock was over, political resistance to redistributive policies meant that while the economy rebounded, inequality only continued to grow. This reflected not only an economic but also a political crisis in which the government was unable to adequately address the needs of the population. There is “strong support among the American electorate for reducing economic inequality.”⁷ After four years of the Trump administration, a global pandemic, and a direct challenge to American democracy, it is urgent that we seek to both reduce inequality and secure democracy. It is in this context that discussion over wealth taxes has arisen again, yet there has been little discussion of what exactly they might entail or possibly achieve, except to raise the capital needed to fund government programs.

Some European states have imposed an annual net wealth tax on their citizens,⁸ but the abandonment of these taxes was viewed as inevitable in

⁶ Ethan Wolff-Mann, *Super Rich's Wealth Concentration Surpasses Gilded Age Levels*, YAHOO! (July 7, 2021), <https://news.yahoo.com/super-richs-wealth-concentration-surpasses-gilded-age-levels-210802327.html> [<https://perma.cc/Q6UK-4DVH>]; see also Facundo Alvaredo, Anthony B. Atkinson, Thomas Piketty & Emmanuel Saez, *The Top 1 Percent in International and Historical Perspective*, 27 J. ECON. PERSP. 3 (2013).

⁷ Dawn Johnsen & Walter Dellinger, *The Constitutionality of a National Wealth Tax*, 93 IND. L.J. 111, 113 (2018).

⁸ Moris Lehner, *The European Experience with a Wealth Tax: A Comparative Discussion*, 53 TAX L. REV. 615, 618 (2000); see Victor Thuronyi, *The European Experience with a Wealth Tax Problem*, 53 TAX L. REV. 693 (2000).

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the context of globalization and the free movement of capital.⁹ Globally, the race to the bottom in tax rates, especially taxes on capital, was justified as the only available response to “supposedly invincible foes—tax shelters, globalization, tax havens, financial opacity.”¹⁰ While the Warren and Sanders proposals for wealth taxes focused on raising revenue for social programs,¹¹ Bernie Sanders also introduced a bill in August 2020 proposing a pandemic wealth tax, entitled the Make Billionaires Pay Act. This bill would directly address health care inequalities by imposing a once-off capital levy to fund healthcare for all for one year.¹² Significantly, debates over this tax and similar proposals questioned their political feasibility and pointed to the demise of wealth taxes in Europe or raised issues about their constitutionality.¹³ However, opposition rarely focused on the specifics of their form and the goals they were aimed at achieving.

If we focus on the dual crises of inequality and democracy, it becomes possible to consider what a wealth tax, in the form of a social solidarity tax, could be designed to achieve. While this seems utopian, there are many historical examples of democratic societies where taxation has been used to address severe inequality and to rebuild democracy. To learn from comparative historical experiences, it is necessary to first distinguish the specific forms of wealth taxes being used, based on the goals and modalities

⁹ See Christophe Heckly, *Wealth Tax in Europe: Why the Decline?*, INSTITUT DE L’ENTREPRISE (June 2004), <http://www.hluthafar.is/assets/files/ExecSummaryHeckly.pdf> [<https://perma.cc/L793-UHRK>] (“In the current environment, where capital and individuals are both highly mobile, countries are working to implement active social policies, without sending capital and the wealthiest taxpayers on the run.”).

¹⁰ SAEZ & ZUCMAN, *supra* note 4, at x.

¹¹ See Press Release, Elizabeth Warren, U.S. Senator, Warren, Jayapal, Boyle Introduce Ultra-Millionaire Tax on Fortunes Over \$50 Million (Mar. 1, 2021), <https://www.warren.senate.gov/newsroom/press-releases/warren-jayapal-boyle-introduce-ultra-millionaire-tax-on-fortunes-over-50-million> [<https://perma.cc/97XM-TSAQ>] (“The Ultra-Millionaire Tax Act will help level the playing field, narrow the racial wealth gap . . . and invest trillions of dollars into our communities so we can make a real difference in the lives of people across America.”).

¹² Make Billionaires Pay Act, S. 4490, 116th Cong. (2020).

¹³ See, e.g., Ari Glogower, *A Constitutional Wealth Tax*, 118 MICH. L. REV. 717, 720 (2020); Calvin H. Johnson, *A Wealth Tax Is Constitutional*, ABA: TAX TIMES (Aug. 8, 2019), https://www.americanbar.org/groups/taxation/publications/abataximes_home/19aug/19aug-pp-johnson-a-wealth-tax-is-constitutional/ [<https://perma.cc/4927-2ZUS>]; Erik M. Jensen, *An Unapportioned Wealth Tax Has Constitutional Problems*, ABA: TAX TIMES (Nov. 5, 2019), https://www.americanbar.org/groups/taxation/publications/abataximes_home/19nov/19nov-counterpoint-jensen-unapportioned-wealth-tax/ [<https://perma.cc/8G93-R8WC>]; Calvin H. Johnson, *A Sur-Rebuttal to Professor Jensen on the Constitutionality of an Unapportioned Wealth Tax*, ABA: TAX TIMES (Nov. 5, 2019), https://www.americanbar.org/groups/taxation/publications/abataximes_home/19nov/19nov-counterpoint-johnson-surrebuttal/ [<https://perma.cc/7L8M-2YLH>].

of these taxes. While debate over wealth taxes and their effectiveness is not uncommon, the distinction between the two main forms of these taxes—an annual wealth tax and a once-off capital levy, or what I will define as a social solidarity tax—has not been thoroughly explored. Even Emmanuel Saez and Gabriel Zucman, whose economic research underpinned the Warren proposal, pay little attention to this alternative.¹⁴ Exploring this distinction provides a means to evaluate some of the concerns that have been articulated about wealth taxes, especially those that are more pertinent to legal concerns as opposed to purely economic claims about the effects these taxes may have on revenue, economic growth, or resource distribution.

A. GOALS AND MODALITIES

To conceptualize the parameters of any proposed social solidarity tax, it is useful to draw lessons from the comparative historical experience, beginning with identifying both the goals and modalities of a sustainable capital tax. To explore what such an approach may entail, it is necessary to identify the different economic conditions that have triggered the adoption of wealth taxes and the different goals wealth taxes and capital levies have sought to achieve. Once these goals are identified, it will be possible to analyze comparative cases to explore the significant legal issues that arose in the implementation of these different taxes and to consider the role the law played in their relative failure or effectiveness. Broadly speaking, both annual net wealth taxes and capital levies have been responses to periods of economic and social crisis and have typically been implemented with the purpose of raising revenue. In general, goals of these wealth taxes have included retiring national debt, addressing economic crises, sharing economic burdens, reducing inequality, achieving redistribution of land, and furthering democracy.

For most of twentieth-century Europe, the central goal of wealth taxes was to repay State debts, most commonly war debts. Alternatively, the goal was to address economic inequality or a specific economic, political, or social crisis.¹⁵ While taking different forms, such as annual wealth taxes or capital levies, these cases include post-World War I capital levies to reduce public debt, as well as the World War II and post-World War II cases of Finland and Germany in which the tax was designed to address displaced

¹⁴ See SAEZ & ZUCMAN, *supra* note 4.

¹⁵ See Stefan Bach, *Capital Levies—A Step Towards Improving Public Finances in Europe*, DIW ECON. BULL., Aug. 2012, at 3.

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war refugees and those who lost their property due to the war.¹⁶ In West Germany, the *lastenausgleich*, or the “sharing of the burdens” tax program, played a central role in the establishment of a stable liberal democracy post-World War II.¹⁷ By the early twenty-first century, many of these wealth taxes had either served their purpose or had been abandoned. Although, after the recession in 2008, wealth taxes were once again on the policy agenda.¹⁸

Wealth taxes in Japan, Korea, and Taiwan served different purposes. In Japan, the decision to impose a high capital levy on the *Zaibatsu*¹⁹ was justified both on economic grounds, and perhaps more significantly, as a means of securing democracy.²⁰ In Korea and Taiwan, the land-to-the-tiller reforms of the 1950s served to both redistribute wealth (granting opportunities to tenant farmers to own land) and to direct capital investment into industrialization and newly emerging urban industries (compensating landlords with bonds or shares in publicly owned industrial enterprises, which could be invested in new ventures).²¹

Despite these diverse histories, capital levies share common objectives: debt relief, distributing the burden of significant economic and social crises, reducing inequality, and securing democracy. Annual wealth taxes seem to be mostly geared towards raising revenue and reducing inequality more generally. Implicit in revenue-raising goals is the assumption that the expenditures of these revenues will benefit the less fortunate through the funding of social welfare programs. While this general assumption may have justified annual wealth taxes in European social democracies, the diffuse nature of these benefits meant that unless left-leaning political parties were in power and defended the program,

¹⁶ *Id.* at 6.

¹⁷ MICHAEL L. HUGHES, *SHOULDERING THE BURDENS OF DEFEAT: WEST GERMANY AND THE RECONSTRUCTION OF SOCIAL JUSTICE 2* (1999).

¹⁸ Jeevan Vasagar & Peter Spiegel, *Bundesbank Proposes Wealth Tax for EU States Facing Bankruptcy*, *FIN. TIMES* (Jan. 27, 2014), <https://www.ft.com/content/a3ebc206-876d-11e3-9c5c-00144feab7de> [<https://perma.cc/KX7B-F4DB>].

¹⁹ A Japanese term meaning “money clique” that refers to the vertically integrated industrial and financial conglomerates that dominated the Japanese economy from the 1860s until the end of World War II. T.A. BISSON, *ZAIBATSU DISSOLUTION IN JAPAN 1* (1954).

²⁰ See Barry Eichengreen, *The Capital Levy in Theory and Practice* 33–34 (Nat’l Bureau of Econ. Rsch., Working Paper No. 3096, 1989) (noting that “[a]n exception to the rule that 20th century capital levies have been unsuccessful is the Japanese levy following World War II” and that as one objective of the levy was to reduce income inequality, a levy on the *Zaibatsu* was expected to “contribute to the growth of peaceful and democratic forces”).

²¹ Cristóbal Kay, *Why East Asia Overtook Latin America: Agrarian Reform, Industrialisation and Development*, 23 *THIRD WORLD Q.* 1073, 1079–84 (2002).

governments found it relatively easy to abandon wealth taxes, especially if the annual revenue stream was rather modest. An alternative approach, more common in the case of capital levies, was to tie the income stream to specific expenditures or spending goals. The Finnish capital levy was directly tied to compensation for refugees,²² while the German *lastenausgleich* served to both provide aid to the war-damaged groups as well as create a significant fund for reconstruction, particularly for housing.²³ Thus, when considering the objectives of wealth taxes, it is important to distinguish between both the different revenue goals as well as the aims for the expenditure of the revenue.

While justification for many of the capital levies imposed in the early twentieth century was to address public debt, the revenue was often simply added to the government's general accounts. By comparison, the imposition of annual wealth taxes is often justified as an effort to balance the taxing of labor and capital for the purpose of constraining inequality as well as to obtain revenue. Significantly, the comparative history demonstrates that annual net wealth taxes do not manage to collect large amounts of revenue as compared by percentage to other taxes collected in the jurisdictions studied. Furthermore, annual wealth taxes do not seem to have any significant impact on the distribution of wealth. Rather, if wealth taxes were to continue over decades, there is some evidence that the degree of inequality may be moderated.²⁴ In comparison, the imposition of capital levies—once-off wealth taxes with much higher rates—does seem to have addressed some of the articulated goals, justifying the use of wealth taxes as opposed to other fiscal mechanisms.

B. WEALTH TAXES AS A RESPONSE TO ECONOMIC CRISES

In the aftermath of the Great Recession of 2008, there were calls to reimpose or introduce wealth taxes to address inequality in Europe. For example, Iceland increased capital and wealth taxes sharply between 2008 and 2011. In response to economic collapse during the Great Recession, Iceland adopted “[a] broad net wealth tax covering financial assets, business assets and real estate.”²⁵ Introduced as a four-year temporary wealth tax in

²² AXEL DE GADOLIN, *THE SOLUTION OF THE KARELIAN REFUGEE PROBLEM IN FINLAND* 34–36 (1952).

²³ HUGHES, *supra* note 17, at 158–59.

²⁴ See SAEZ & ZUCMAN, *supra* note 4, at 174–76.

²⁵ Philip Daniel, Ruud De Mooij, Thornton Matheson & Geerten Michiels, IMF, *Iceland: Advancing Tax Reform and the Taxation of Natural Resources*, ¶ 51, Country Report No. 11/138 (May 2011).

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2010 at a 1.25% rate, it was increased to 1.5% in 2011.²⁶ Furthermore, the threshold was lowered over this period from 90 million Icelandic Krona (“ISK”) to 75 million ISK (\$625,000) for single persons and from 120 to 100 million ISK (\$833,000) for couples.²⁷ While the IMF warned that heavy taxation of capital would be harmful to growth,²⁸ “Iceland has enjoyed a steady economic recovery [following] the economic crisis of 2008.”²⁹ As a result, “the government lifted the last remaining controls on capital outflows” in March 2017, as tourism was thriving and consumer spending was on the rise.³⁰

Thomas Piketty in his book, *Capital in the Twenty-First Century*, argued for an annual progressive global tax on capital.³¹ While he acknowledges that the idea is “utopian,” Piketty asserts that exploring the idea is worthwhile because it can serve as a reference point for what alternative options may be realistically implemented.³² One possibility, he argues, would be to implement this on a more regional scale, such as the European Union.³³ Piketty submits that the objective should be a “progressive annual tax on individual wealth—that is, on the net value of assets each person controls.”³⁴ The spirit of Piketty’s proposal is similar to what France, Switzerland, and Spain (and previously Germany and Sweden) have with their progressive taxes on total wealth, but without the many exemptions those countries offered.³⁵ According to Piketty, the tax would not be intended to replace the existing system of taxation, but would be an additional check on global inequality and the banking systems of the world.³⁶ A big benefit of the tax, aside from any actual revenue generated, would be the information that compulsory reporting would provide.³⁷ Discussion of global inequality is made difficult, it is argued, because there

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* ¶ 51.

²⁹ DELOITTE, TAXATION AND INVESTMENT IN ICELAND 2 (2018), <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-icelandguide-2018.pdf> [<https://perma.cc/F8RS-XLQL>].

³⁰ *Id.*

³¹ THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (Arthur Goldhammer trans., Harvard Univ. Press 2014), *contra* Tyler Cowen, *Capital Punishment: Why a Global Tax on Wealth Won’t End Inequality*, 93 FOREIGN AFF. 158 (2014).

³² PIKETTY, *supra* note 31, at 515.

³³ *Id.* at 515–16.

³⁴ *Id.* at 516.

³⁵ *Id.* at 517.

³⁶ *See id.* at 518.

³⁷ *Id.* at 519.

is so little information on the actual distribution of wealth.³⁸ This, Piketty argues, makes discussing realistic and scientifically-backed solutions problematic.³⁹

Another suggested response to the 2008 financial crisis was to impose taxes on the financial institutions that were at the root of the collapse.⁴⁰ This proposal considered the logistics of several methods of taxation of large financial institutions to help cover the costs of the 2008 global financial crisis. The proposal adopted the logic that the high risk and reward profits of the financial sector were to blame for the crisis, so requiring them to pay for it would be fitting and could help prevent future problems.⁴¹ A similar logic lies behind the Tobin Tax suggestion, which argues that even miniscule taxes applied to every international financial transaction could stabilize the extreme flows of global capital. Originally put forth by James Tobin in 1971, the idea proposes to place a very small levy on every currency conversion “to discourage short-term currency speculation,” and thus “make short-term purely financial movements uneconomical—without being a burden on trade.”⁴²

Compared to the 2008 financial crisis, the COVID-19 pandemic induced economic dislocation will, according to World Bank Chief Economists Carmen Reinhart and Vincent Reinhart, cast a “long and dark” shadow.⁴³ Noting that the “World Bank estimates that as many as 60 million people globally will be pushed into extreme poverty as a result of the pandemic[,]”⁴⁴ the Reinharts point to three indicators of global economic distress that suggest a long and difficult economic recovery. They first point to the collapse in demand for exports. Global trade has fallen such that 2020 is “the worst year for globalization since the early 1930s.”⁴⁵ A “second indicator pointing to a long and slow recovery is unemployment” and the resultant “dismantling [of] the most complicated piece of machinery in history, the modern market economy.”⁴⁶ Finally, a third “feature of this

³⁸ *Id.*

³⁹ *See id.* (noting that a “truly democratic debate cannot proceed without reliable statistics”).

⁴⁰ Giuseppina Cannas, Jessica Cariboni, Massimo Marchesi, Gaëtan Nicodème, Marco Petracco Giudici & Stefano Zedda, *Financial Activities Taxes, Bank Levies, and Systemic Risk, in* TAXATION AND REGULATION OF THE FINANCIAL SECTOR 203, 203 (Ruud de Mooij & Gaëtan Nicodème, eds., 2014).

⁴¹ *Id.* at 207.

⁴² Martin Sandbu, *The Tobin Tax Explained*, FIN. TIMES (Aug. 27, 2009), <https://www.ft.com/content/6210e49c-9307-11de-b146-00144feabdc0>.

⁴³ Carmen Reinhart & Vincent Reinhart, *The Pandemic Depression: The Global Economy Will Never Be the Same*, 99 FOREIGN AFF. 84, 93 (2020).

⁴⁴ *Id.* at 85.

⁴⁵ *Id.* at 87.

⁴⁶ *Id.*

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crisis is that it is highly regressive within countries and across countries. The ongoing economic dislocations are falling far more heavily on those with lower incomes.”⁴⁷

In this context, there have been suggestions that wealth taxes may be a solution to the global COVID-19 economic dislocation. In April 2020, Daniel Gros proposed that “a one-time EU-wide levy on financial assets could raise €300–400 billion, and thus finance a European Solidarity Fund” to address the economic costs of the pandemic.⁴⁸ Gros argued that instead “of a Corona wealth tax targeting only the richest 1% . . . requir[ing] the authorities to ascertain the net wealth of millions of individuals[,] . . . the financial levy [he proposed] could rely on a much smaller number of financial intermediaries to collect the revenue at source.”⁴⁹ Given the scale of global private debt even before COVID-19 struck, and the subsequent economic stoppage, some economists, including the Reinharts, argued that there will be an inevitable deleveraging of private debt that will trigger a global financial crisis.⁵⁰ In response to this threat, Sabri Öncü argues that apart from a short-term debt forgiveness program, such as that proposed by Steve Keen,⁵¹ there is going to be the need for “a globally coordinated deleveraging framework[,]” based in part on the experience of the German monetary reform and *lastenausgleich* (burden sharing tax) implemented at the end of World War II.⁵² Even the International Monetary Fund now argues that countries should consider raising taxes, including through wealth taxes, as a means to secure revenue in the context of the global pandemic and economic shut downs.⁵³

⁴⁷ *Id.* at 88.

⁴⁸ Daniel Gros, *A Corona Financial Solidarity Levy*, VOXEU (Apr. 22, 2020), <https://voxeu.org/article/corona-financial-solidarity-levy> [<https://perma.cc/K764-GMAL>].

⁴⁹ *Id.*

⁵⁰ See Reinhart & Reinhart, *supra* note 43.

⁵¹ See Bernard Hickey, *The Case for a Modern Debt Jubilee*, RADIO N.Z. (June 19, 2020, 2:00 PM), <https://www.rnz.co.nz/programmes/two-cents-worth/story/2018751387/the-case-for-a-modern-debt-jubilee> [<https://perma.cc/N5QJ-DPGG>] (“Economist Steve Keen has also studied the history of debt and he is the main proponent of a modern debt jubilee.”).

⁵² T. Sabri Öncü, *Triggering a Global Financial Crisis: Covid-19 as the Last Straw*, PRIME ECON. (Mar. 18, 2020), <http://www.primeeconomics.org/articles/triggering-a-global-financial-crisis-covid-19-as-the-last-straw> [<https://perma.cc/DNP9-SB4N>].

⁵³ RUUD DE MOOIJ, RICARDO FENOCHIETTO, SHAFIK HEBOUS, SÉBASTIEN LEDUC & CAROLINA OSORIO-BUITRON, IMF, TAX POLICY FOR INCLUSIVE GROWTH AFTER THE PANDEMIC 8–10 (2020).

III. THE COMPARATIVE HISTORICAL EXPERIENCE

To secure their goals, the legal frameworks for different wealth tax programs address a similar range of administrative and legal issues. The most ubiquitous issues facing the implementation of wealth taxes are defining the tax base, valuing wealth, and balancing the relationship to other forms of taxation. There are also concerns about the cost of administration and the likelihood of evasion or tax avoidance. Finally, there is a question, especially in the case of capital levies, of whether the tax revenue should be earmarked for specific purposes, such as creating a sovereign fund that would provide an ongoing resource for government, or whether it should be used to pay down public debt. By exploring comparative historical experiences, we can identify the issues and modalities that need to be considered in the construction and adoption of a proposed social solidarity tax.

A. WEALTH TAXES IN THE TWENTIETH CENTURY

Throughout the twentieth century, there were distinct periods in which wealth taxes were proposed and implemented in different countries.⁵⁴ The first period was around World War I, during which wealth taxes were primarily seen as a means of reducing public debt.⁵⁵ During that period, the most successful taxes were implemented in Italy and Czechoslovakia.⁵⁶ In Austria and Germany, the effects of the wealth taxes introduced in 1920 were erased by political conflict.⁵⁷ These taxes were subsequently converted into conventional property taxes as the burden of debt was erased by hyperinflation from 1923.⁵⁸ The second period occurred in the aftermath of World War II when wealth taxes of different forms were introduced in many countries including France, West Germany, and Japan.⁵⁹ Finland resorted to a capital levy in the 1940s to address the plight of Finnish citizens who were expelled from the Karelia Peninsula.⁶⁰ Finally, annual net-wealth taxes are a specific form of wealth tax and were implemented in

⁵⁴ See Eichengreen, *supra* note 20, at 17–18.

⁵⁵ *Id.* at 18–33.

⁵⁶ V.J. Singh, *Feasibility of a Capital Levy*, 5 *ECON. & POL. WKLY.* 479, 481 (1970).

⁵⁷ Eichengreen, *supra* note 20, at 22–23, 25–26.

⁵⁸ *Id.*

⁵⁹ *Id.* at 26–29, 33–36; P. Robson, *Capital Levies in Western Europe After the Second World War*, 27 *REV. ECON. STUD.* 23, 28–32 (1959).

⁶⁰ See DE GADOLIN, *supra* note 22, at 27.

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various European countries in the 1970s, and again after the global financial crisis in 2008.⁶¹

Though many of these annual net-wealth taxes stopped in the 1990s, some were reintroduced after 2008. However, others have faced constitutional and other challenges. The German Constitutional Court, for example, declared the application of the annual net-wealth tax unconstitutional in 1995 for violating the Basic Law's equality clause, due to the uneven process of property valuations.⁶² These annual net-wealth taxes, as well as the utopian idea of a global tax on capital suggested by Thomas Piketty in his book, *Capital in the 21st Century*,⁶³ are quite distinct from capital levies or once-off wealth taxes such as the German *lastenausgleich* or the equalization of burdens tax, and must be considered separately. To understand the significance of the different forms of wealth taxes—annual wealth taxes and capital levies—it is useful to begin with a survey of the comparative experience of each of these forms of taxes.

B. ANNUAL WEALTH TAXES

The United States does not have a specific wealth tax,⁶⁴ though various tax forms do impact wealth, such as inheritance, real estate, and property taxes. Europe has had the most experience with wealth taxes, including with annual wealth taxes.⁶⁵ It is thus useful to begin by exploring the history and debate over annual wealth taxes in Europe during the twentieth century. The comparative historical record, with regards to annual wealth taxes, includes both successful and failed attempts to adopt this form of tax as well as some longstanding examples. In the case of Ireland and the United Kingdom these are very short histories, while in Sweden and Germany annual wealth taxes were collected for over half a century. In the French case, an annual wealth tax was only introduced in the 1970s, and while it underwent significant change, it was abolished in 2017. Today, very few European countries continue to impose annual wealth taxes, but the

⁶¹ See, e.g., *supra* Part II(B); *see infra* Part III(B).

⁶² See Ruben Rehr, *Financing Covid-19 Costs in Germany: Is a Wealth Tax a Sensible Approach?* 3, 6 (Wealth Tax Comm'n, Working Paper No. 131, 2020).

⁶³ PIKETTY, *supra* note 31, at 515.

⁶⁴ Phyllis C. Taite, *Can the Wealth Tax Effectively Serve as a Backstop to Estate and Gift Taxes?*, JOTWELL: TRUSTS & ESTATES (May 25, 2020), <https://trustest.jotwell.com/can-the-wealth-tax-effectively-serve-as-a-backstop-to-estate-and-gift-taxes/> [<https://perma.cc/SVU6-8FQK>].

⁶⁵ See generally Julian Limberg & Laura Seelkopf, *The Historical Origins of Wealth Taxation*, J. EUR. PUB. POL'Y, Dec. 16, 2021 (investigating what has driven the initial introduction of net wealth taxes in the last 140 years).

historical experience is very important to understand the limits of this form of wealth tax.

The late 1960s and early 1970s were a period of tax reform in the United Kingdom.⁶⁶ As part of larger regulatory strategies and with the intent to generate revenue, the U.K. government implemented numerous new taxes such as a capital gains tax, a corporations tax, and a value added tax.⁶⁷ An annual wealth tax, with the primary goal of wealth redistribution, was discussed, but ultimately failed to pass.⁶⁸ The U.K. Labor Party had considered supporting a wealth tax since at least the 1950s, but it was not until the party took power in the election of 1974 that the proposal was actually included within the official party manifesto.⁶⁹ The following summer, the government published a Green Paper outlining its plans. Labor's primary objective with the wealth tax was to distribute wealth more equitably rather than to generate income for the state.⁷⁰ This contrasted with the Conservative Party's position that any wealth tax should be used to facilitate economic growth.⁷¹

This tax applied to the value of a person's net assets, including both capital holdings like stocks and bank balances as well as personal possessions like vehicles and jewelry.⁷² The tax never passed so the final measures are not known, but a scaling rate of between 2.5%–5%, regardless of one's business, was envisioned.⁷³ The £100,000 Great British Pound ("GBP") exemption was intended to ensure that only the rich would end up contributing to the new tax.⁷⁴ These proposals reflected a general shift to the left by the Labor Party throughout the 1970s.⁷⁵ The party's left wing had always been in favor of reducing wealth inequality, and the Labor victory of 1974 gave them the opportunity to introduce concrete measures.⁷⁶ However, the proposed tax was highly unpopular and attracted criticism from many segments of British society.⁷⁷ The Conservative Party cited a

⁶⁶ ANN ROBINSON & CEDRIC SANDFORD, *TAX POLICY-MAKING IN THE UNITED KINGDOM: A STUDY OF RATIONALITY, IDEOLOGY, AND POLITICS* 1 (1983) ("Between the years 1964 and 1976 an unprecedented number of new taxes were put on the statute book.").

⁶⁷ *Id.*

⁶⁸ *Id.* at 48–51.

⁶⁹ *Id.* at 48–49.

⁷⁰ *Id.* at 48.

⁷¹ *Id.* at 49.

⁷² *Id.* at 48.

⁷³ *Id.* at 49.

⁷⁴ *Id.*

⁷⁵ Keith G. Banting, *The Politics of Wealth Taxes*, 17 *CAN. PUB. POL'Y* 351, 357 (1991).

⁷⁶ *Id.*

⁷⁷ *Id.* at 358; see ROBINSON & SANDFORD, *supra* note 66, at 50.

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high cost to yield ratio as well as the potential harm to businesses and savers.⁷⁸ Additionally, a £100,000 GBP exemption was cited as likely to exempt so many people that the tax would do little to collect money in the first place.⁷⁹ The projected overall yield of between £200 and £350 million GBP was seen to be not worth the potential harm that the tax could do to the economy.⁸⁰ Business interests within the country, including the Confederation of British Industries (representing commercial enterprises) and the Country Landowners Association (representing farmers), also stood against the tax for similar reasons.⁸¹ Critically, popular support was lacking throughout the country, caused largely by negative media generated at the time.⁸² In the end, the proposed tax proved to be more of a hinderance to the Labor Party than a help, and the proposal was effectively dropped from the party platform by 1976.⁸³ The Conservative victory in the 1979 election removed the Labor Party from power, thus completely defeating any chance the tax had to be enacted.⁸⁴

Across the Irish Sea, the Irish Labor Party, which became part of a coalition government with the centrist Fine Gael Party in 1973, also examined the possibility of a wealth tax.⁸⁵ As part of a more general reorganization of the Irish tax system, Labor made a specific wealth tax key to their support of Fine Gael.⁸⁶ Unlike in the United Kingdom, during this period, a comprehensive wealth tax was successfully passed in 1975,⁸⁷ though it only lasted until shortly after the coalition government was defeated in 1977.⁸⁸ The wealth tax was originally intended to replace the “existing Estate duty.”⁸⁹ The Estate duty was applied to the estates of deceased persons valued at above £10,000 Irish Pounds (“IEP”).⁹⁰ “The

⁷⁸ ROBINSON & SANDFORD, *supra* note 66, at 50.

⁷⁹ *Id.*

⁸⁰ *Id.* at 10.

⁸¹ Banting, *supra* note 75, at 358.

⁸² *See id.*

⁸³ ROBINSON & SANDFORD, *supra* note 66, at 51.

⁸⁴ Banting, *supra* note 75, at 358.

⁸⁵ *Id.*

⁸⁶ *See id.* (“Fine Gael is a centrist party that draws support particularly from the middle class and large, wealthy farmers. While the party did not have a carefully designed tax policy at that point, it was open to reform of wealth tax.”); *see also* CEDRIC SANDFORD & OLIVER MORRISSEY, *THE IRISH WEALTH TAX: A CASE STUDY IN ECONOMICS AND POLITICS* 44 (1985).

⁸⁷ Wealth Tax Act 1975 (Act No. 25/1975) (Ir.), <https://www.irishstatutebook.ie/eli/1975/act/25/enacted/en/html>.

⁸⁸ Banting, *supra* note 75, at 359.

⁸⁹ *Id.* at 358.

⁹⁰ SANDFORD & MORRISSEY, *supra* note 86, at 33.

rates of [estate duties] were highly graduated beginning (in 1973) at 4[%] chargeable on estates valued from £10,000 to £11,000 and rising progressively to a maximum of 55[%] on the value of estates over £200,000.”⁹¹ Rising land prices in the 1960s and 1970s caused a strong popular push for its abolition.⁹² As a replacement, the proposed wealth tax was quite liberal and seen as only punitive against the very wealthy.⁹³ One of the original forms of the wealth tax envisioned a sliding tax rate of between 1.5%–2.5% on net assets, with a low base threshold, no ceiling on total contributions, and few exemptions.⁹⁴ However, in response to a lack of public support, the coalition government and the Labor Party were forced to make significant concessions to the bill to secure its passage.⁹⁵

Like other Scandinavian countries, and unlike Ireland and the United Kingdom, Sweden has historically been supportive of a comprehensive wealth tax.⁹⁶ Sweden has maintained some form of a wealth tax since 1910.⁹⁷ This was separated into a normal wealth tax, like the Irish example, by 1947.⁹⁸ Sweden’s wealth tax rate was one of the highest in Europe “with a top rate of 2[.5]%,”⁹⁹ more than twice the short-lived Irish model.¹⁰⁰ This high rate was considered the model for the proposed U.K. system and perhaps was one of the reasons for its failure to pass.¹⁰¹

Germany, like Sweden, had a long history of employing wealth taxes that only ended in 1997.¹⁰² A net wealth tax existed from at least 1893, though it underwent major revisions in 1923.¹⁰³ The German Wealth tax was widely applicable and was levied against individuals, businesses, and

⁹¹ *Id.*

⁹² *See id.* at 34 (“Following the rise in land prices, abolition of [estate duties] was a significant issue in the 1973 election.”).

⁹³ *Id.* at 82 (“The central argument . . . was that the WT was part of a rational system of capital taxation and that the WT itself was a more equitable and less severe replacement for Estate Duty.”).

⁹⁴ *Id.* at 73 tbl.6.1.

⁹⁵ *Id.* at 73–75.

⁹⁶ *See* C.T. SANDFORD, DONALD J. IRONSIDE & JOSEPH ROBERT MCKENZIE WILLIS, AN ANNUAL WEALTH TAX 55 (1975) (“[W]ealth taxation has a long history in Sweden.”).

⁹⁷ *See id.*

⁹⁸ *See id.* (“In 1947, the tax acquired its present form, separate from income tax but accounted for in the same tax return.”).

⁹⁹ *Id.*

¹⁰⁰ SANDFORD & MORRISSEY, *supra* note 86, at 74.

¹⁰¹ ROBINSON & SANDFORD, *supra* note 66, at 55–56.

¹⁰² SANDFORD ET AL., *supra* note 96, at 75; Alena Bachleitner, Abolishing the Wealth Tax—A Case Study of Germany 1 (2017) (M.S. Thesis, University of Vienna).

¹⁰³ *See* Bachleitner, *supra* note 102, at 9.

professional associations.¹⁰⁴ In contrast to Germany, the French experience began nearly a century later in the 1970s when French Prime Minister Raymond Barre, a center right politician and economist, “appointed a commission of three experts—popularly known as the [T]hree Sages[.]” (“Commission”) to study the impact and feasibility of a wealth tax in France.¹⁰⁵ The *Rapport*¹⁰⁶ acknowledged the widespread belief in France that the existing tax laws favored the rich, based on the high proportion of tax revenue generated by indirect taxes.¹⁰⁷ The Commission argued that “these facts support the proposition that tax systems that do not tax wealth are deficient in horizontal equity” and since “[t]he Preamble to the Constitution incorporates article 13 of the Rights of Man which provides that taxes shall be divided equally among citizens by reason of their ability to pay[.]” this was contrary to the 1958 Constitution.¹⁰⁸

However, the Commission rejected an annual wealth tax for several reasons.¹⁰⁹ First, France already targeted the wealthy, with an annual real estate tax (the rich in France often invested their wealth in real estate) and second, they considered the negative experience of annual wealth taxes in other European states.¹¹⁰ They also pointed to the decisions by a number of countries across the globe that had considered and rejected proposals for wealth taxes in the post-war period.¹¹¹ These included the annual wealth tax in Japan between 1950 and 1953, the Carter Commission’s rejection of a wealth tax in Canada, the Asprey Committee rejecting a wealth tax for Australia in 1975, and the 1978 repeal of the Irish Wealth tax.¹¹² When Ireland abandoned its annual wealth tax after four years, the finance minister argued that it had “created a psychological climate in which investment and taking of risks was penalized.”¹¹³ Thus, from their review of annual wealth tax systems, the French concluded “that these taxes are retained primarily to compensate for the lack of a capital gains tax” and that

¹⁰⁴ SANDFORD ET AL., *supra* note 96, at 76.

¹⁰⁵ Gilbert Paul Verbit, *Taxing Wealth: Recent Proposals from the United States, France, and the United Kingdom*, 60 B.U. L. REV. 1, 6 (1980) [hereinafter *Taxing Wealth*].

¹⁰⁶ RAPPORT DE LA COMMISSION D’ÉTUDE D’UN PRÉLÈVEMENT SUR LES FORTUNES: RAPPORT [Report of the Commission for the Study of a Levy on Fortunes] (1979) (report by a commission appointed by Prime Minister Raymond Barre).

¹⁰⁷ *Taxing Wealth*, *supra* note 105, at 6–7.

¹⁰⁸ *Id.* at 7–8.

¹⁰⁹ *Id.* at 11.

¹¹⁰ *Id.* at 11–12.

¹¹¹ *See id.* at 12.

¹¹² *Id.*

¹¹³ *Id.*

“there was a fairly clear correlation between countries that have a wealth tax and those which have a weak system of transfer and real property taxes.”¹¹⁴ Finally, they felt that the problems of implementation would simply be too great, especially when it came to the valuation of property.¹¹⁵ They feared in particular that owners of quoted shares would be penalized and privately held companies would thus be deterred from going public.¹¹⁶ The Commission further noted that in West Germany there was supposed to be a re-evaluation of real property every six years, yet this rarely occurred.¹¹⁷

“The Commission also criticized the projected cost of administering the [proposed] wealth tax[,]” suggesting the required funds to hire new agents and enforce policies could be more efficiently allocated to “improve enforcement” of existing taxes.¹¹⁸ They also doubted the tax would aide in information gathering for enforcement of the income tax, noting that the French authorities already had sufficient means in place to detect fraud.¹¹⁹ The Commission instead suggested a more effective means of taxing the wealthy would be to reform the inheritance tax, arguing that the “focal point of tax reform should not be wealth[,]” but inherited wealth.¹²⁰ Thus, while “sensitive to public opinion, the Sages eschewed the politically popular wealth tax for an increase in a more effective inheritance tax.”¹²¹ However, despite this initial rejection France adopted a wealth tax that went into effect in 1982—the *impôt sur les grandes fortunes* or IGF, which was repealed in 1986,¹²² and replaced by another wealth tax, the *impôt de solidarité sur la fortune* or ISF, which went into effect in 1989 until it was repealed in 2017.¹²³

¹¹⁴ *Id.* at 14.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *See id.* at 14–15.

¹¹⁸ *Id.* at 16.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 17.

¹²¹ *Id.* at 27.

¹²² Gilbert Paul Verbit, *France Tries a Wealth Tax*, 12 U. PA. J. INT’L BUS. L. 181, 181 (1991) [hereinafter *France Tries a Wealth Tax*].

¹²³ *See id.* at 181–82; see also Noah Smith, *France Tried Soaking the Rich. It Didn’t Go Well*, BLOOMBERG NEWS (Nov. 14, 2019, 4:30 AM), <https://www.bloomberg.com/opinion/articles/2019-11-14/france-s-wealth-tax-should-be-a-warning-for-warren-and-sanders>.

C. CAPITAL LEVIES OR A ONCE-OFF WEALTH TAX

In comparison to the annual wealth tax, a capital levy may be “defined simply as an extraordinary tax which is assessed on capital owned at a given date.”¹²⁴ The modern form of a capital levy was first proposed in 1714 at the start of the public debt system in England, and was discussed again after the Napoleonic and Franco-Prussian wars.¹²⁵ Capital levies were considered again by many European countries after World War I to repay war debts. Czechoslovakia arguably implemented the most successful capital levy during this era.¹²⁶ After World War I, the government introduced the idea of the capital levy and ordered all notes in circulation be presented for stamping by a fixed date.¹²⁷ Half of the notes were retained by the government as a forced loan with 1% loan certificates issued.¹²⁸ Half of the deposits in banks were also subject to this forced loan.¹²⁹ In 1920, the government simultaneously enacted “a capital levy on total property and an increment[al] levy on war wealth.”¹³⁰ The rates started at 1% and gradually rose to a maximum of 30% for property over Czech coruna (“Kc”) 10 million,¹³¹ while rates for the increment reached 40%.¹³² Corporate property was levied between 3% and 20%.¹³³ To limit tax evasion, the head of each household was made responsible for the payment of the levy for the property of all household members.¹³⁴ Although relatively successful, a delay in payments resulted in a large outstanding amount after eight years, much longer than the anticipated three years.¹³⁵ The tax faced opposition, but raised significant revenue from 1922 to 1923.¹³⁶ The levy was effective because it mainly fell “on a small German ethnic minority” whose lack of political power prevented them from slowing the process down.¹³⁷ Further,

¹²⁴ Robson, *supra* note 59, at 23.

¹²⁵ Manuel Gottlieb, *The Capital Levy and Deadweight Debt in England—1815-40*, 8 J. FIN. 34, 34 (1953).

¹²⁶ Singh, *supra* note 56, at 481.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Eichengreen, *supra* note 20, at 20.

¹³³ Singh, *supra* note 56, at 481.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Eichengreen, *supra* note 20, at 20.

¹³⁷ *Id.* at 21.

financial relations with other countries were effectively severed at the time of the levy, thus preventing capital flight.¹³⁸ Rail and road transport also remained disrupted from the war,¹³⁹ and the allocation of the funds also encouraged compliance. The funds were explicitly used for the special costs of establishing a new nation and not for normal government expenditure.¹⁴⁰

In Austria, a capital levy was imposed on personal and corporate property in 1920, and the proceeds were used to pay down the country's war debt.¹⁴¹ Corporate property was taxed at a flat rate of 15%, and personal property was taxed on a progressive scale starting at 3% for the first 20,000 Austrian krone ("Kr") and 65% for property over Kr 10 million.¹⁴² Although it was based on the Czech model, the levy was largely ineffective due to political delay.¹⁴³ By the time asset assessment took place, people had over a year to prepare and move assets out of the country using the then rebuilt transportation and communication networks.¹⁴⁴ Anti-evasion legislation was put in place, which required a declaration of intent to move assets out of the country a month in advance and the imposition of a 30%–50% tax, but this proved largely ineffective.¹⁴⁵ As many of the wealthy were able to move their assets out of the country, many people objected to the levy based on equity grounds as they were unable to move their assets.¹⁴⁶ "Moreover, the authorities failed to segregate levy receipts from ordinary revenues and expenditures of the state," which led many to question whether the levy would truly be one-time only.¹⁴⁷ Capital flight led to instability and hyperinflation, which made property assessments useless as they became outdated as soon as they were completed.¹⁴⁸ By 1922, the levy was considered a failure and replaced with a "moderate recurring tax on property."¹⁴⁹

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 21–22 ("The government was prevented from using levy receipts to defray current state budget deficits.").

¹⁴¹ Singh, *supra* note 56, at 479.

¹⁴² *Id.*

¹⁴³ Eichengreen, *supra* note 20, at 22 ("But political wrangling over the levy and over the general question of who should defray the costs of postwar reconstruction and adjustment led to fatal delays in implementation.").

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 23.

¹⁴⁸ *Id.*

¹⁴⁹ Singh, *supra* note 56, at 479.

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Hungary attempted to impose a levy using the Czech approach to repay war debt, but implementation proved difficult because of post-war instability.¹⁵⁰ The Hungarian levy also taxed different assets at different rates, and while this was useful administratively, it created a perception of inequality.¹⁵¹ Levy receipts were initially kept separate from normal expenditures, but as the budget crisis worsened, the government decided to use the funds for normal expenditures.¹⁵² Landowners fiercely resisted the levy and caused delay in its implementation.¹⁵³ Ironically, their delay tactics benefited wealthy urbanites the most because they had time to move their liquid assets out of the country.¹⁵⁴ “The enforcement of the levy was hampered by inflation and political opposition of landed interests and it was replaced in 1924 by a recurrent tax on property.”¹⁵⁵

Italy also imposed “straightforward capital levy, or [an] ‘extraordinary tax on capital’” in 1920.¹⁵⁶ While World War I led to a “significant debt burden” for Italy, the country also implemented “ambitious spending programs [under] the postwar Socialist Government.”¹⁵⁷ The intent of the capital levy was to pay down war debt and provide for permanent social expenditures; “[t]his rendered less than credible assurances by the advocates of a levy that it would both eliminate the fiscal problem and be nonrecurrent.”¹⁵⁸ A new wheat subsidy was introduced in 1921, and the rates of the capital levy were doubled to pay for it.¹⁵⁹ The capital levy rates ranged from 4.5%–50%; however, payment could be spread over twenty years, which drastically reduced annual rates.¹⁶⁰ This effectively transformed the one-time capital levy into a permanent increase in the capital tax rate.¹⁶¹ While the revenue raised by these measures proved useful, Barry Eichengreen argues that “to call these policies a capital levy rather than capital income taxation would be misleading.”¹⁶²

¹⁵⁰ Eichengreen, *supra* note 20, at 23.

¹⁵¹ *Id.* at 24.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Singh, *supra* note 56, at 479.

¹⁵⁶ Eichengreen, *supra* note 20, at 19.

¹⁵⁷ *Id.* at 18.

¹⁵⁸ *Id.* at 19.

¹⁵⁹ Singh, *supra* note 56, at 481.

¹⁶⁰ Eichengreen, *supra* note 20, at 19–20.

¹⁶¹ *Id.* at 20.

¹⁶² *Id.*

Germany has a long history of wealth taxes,¹⁶³ and in the early twentieth century, between 1914 and 1919, the country imposed three separate levies.¹⁶⁴ The first was a defense levy set at a rate of 0.5% of total wealth.¹⁶⁵ In 1916, the second levy imposed was aimed at taxing those who grew wealthy from the war.¹⁶⁶ The yield from these was rather small. In 1919, the National Distress Levy was put in place to amortize the national debt.¹⁶⁷ The first 500 Marks an individual owed, with equal amounts for a spouse and each child, were exempted.¹⁶⁸ Furthermore, the levy was in part motivated by concerns over income inequality, which brought equity issues into the political debate and complicated its design.¹⁶⁹ Property values were assessed in 1919, however, delaying tactics used by property owners, and hyperinflation largely eroded the values by the time actual collection could be implemented.¹⁷⁰ To gain the needed support for passing the levy, a thirty-year payment schedule was put in place with only “5[%] interest charged on arrears.”¹⁷¹ Because the levy was unindexed, “it created a natural constituency for policies with an inflationary bias.”¹⁷² Thus, with rapid inflation, assessments that were originally rather high turned out to be only a small amount,¹⁷³ and in April 1922, the capital levy was converted to a low-rate property tax.¹⁷⁴

D. THE SPECIFIC CHARACTERISTICS OF ANNUAL WEALTH TAXES

When considering the design of any proposed wealth tax, it is useful to consider the comparative experience as a source for understanding the specific characteristics of the different wealth taxes and the issues they raise. Among the important issues to consider are questions of asset valuation, tax rates, and the forms of property and entities subject to the tax, as well as exemptions provided in different jurisdictions. If we consider the proposed British wealth tax, for example, its most interesting features included “a tax threshold of £100,000, a progressive rate structure ranging

¹⁶³ See Rehr, *supra* note 62, at 5–6.

¹⁶⁴ Singh, *supra* note 56, at 479.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 479–80.

¹⁶⁹ See Eichengreen, *supra* note 20, at 25.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* at 26.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

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from [1%–5%], and a base which would have included owner-occupied houses and works of art.”¹⁷⁵ By comparison, the final version of the Irish wealth tax had a flat 1% rate of the value of a person’s total wealth above a threshold.¹⁷⁶ Taxable “persons” included individuals, family units, private companies, and assets held in trust.¹⁷⁷ Single individuals were granted a threshold exemption of £70,000 IEP while married couples were granted a £200,000 IEP exemption plus £2,500 IEP exemption per minor child.¹⁷⁸ Threshold exemptions were not granted to companies or trusts.¹⁷⁹ When it came to asset valuation, in the Irish case, it was done according to current market value, but agricultural land assessment was reduced by 50% up to £100,000 IEP.¹⁸⁰ Furthermore, “[t]here was a ceiling provision such that the combined burden of income tax . . . plus [the wealth tax] could not exceed 80[%] of total (pre-tax) income[.]”¹⁸¹ Finally, in the case of Ireland, exemptions were put in place for a variety of assets including an individual’s principal private residence, farm livestock, pension rights, and household effects.¹⁸²

Tax treatment in Sweden was then, and is now, largely focused on encouraging the use of capital for reinvestment purposes rather than for personal use.¹⁸³ This is reflected in the treatment of corporations under the wealth and income tax regimes. While having some of the highest individual taxes in the world, Sweden also maintained some of the lowest taxes on corporations.¹⁸⁴ During the time the wealth tax was in effect, its top tax rate of 2.5% applied to fortunes of 1 million Swedish krona (“Skr”).¹⁸⁵ The top ordinary income tax rate of 54%, however, applied to incomes of just 150,000 Skr.¹⁸⁶ This suggests that the Swedish government neither intended nor desired the wealth tax to be a significant method of revenue collection. Indeed, its application largely on individuals suggests

¹⁷⁵ *Taxing Wealth*, *supra* note 105, at 27.

¹⁷⁶ SANDFORD & MORRISSEY, *supra* note 86, at 20 tbl.2.2.

¹⁷⁷ *Id.* at 20–21.

¹⁷⁸ *Id.* at 21.

¹⁷⁹ *See id.*

¹⁸⁰ *Id.* at 22.

¹⁸¹ *Id.* at 23.

¹⁸² *Id.* at 22.

¹⁸³ Sven Steinmo, *Political Institutions and Tax Policy in the United States, Sweden, and Britain*, 41 *WORLD POL.* 500, 518 (1989).

¹⁸⁴ *See id.* at 507.

¹⁸⁵ SANDFORD ET AL., *supra* note 96, at 58.

¹⁸⁶ *Id.* at 67.

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that the intent was to encourage corporate reinvestment.¹⁸⁷ This is further evidenced by the complete lack of a capital gains tax,¹⁸⁸ the relatively low corporate profits tax,¹⁸⁹ and the relatively high estate tax.¹⁹⁰

In the case of the German annual wealth tax, non-residents were subject to taxes on only their real property and business assets, but residents were taxed on other tangible assets.¹⁹¹ Exemptions to the German tax were relatively similar to those of the other European cases. Non-luxury movable assets were fully exempt as were individual rights to pensions and annuities.¹⁹² Luxuries such as jewelry and art were exempt up to set amounts as were the first 10,000 German Deutsche Mark (“DM”) of bank accounts and life insurance.¹⁹³ Interestingly, the exemptions for these various assets were granted for each member of a household so that a married couple with a minor child would have the first 30,000 DM of their bank accounts exempt.¹⁹⁴ The assets of businesses as well as the value of their outstanding shares, which was “widely regarded in Germany as double taxation.”¹⁹⁵ The value of a share in a corporation was determined by either its current market price in the case of public companies, or in the case of private companies, through a complex formula taking into account the companies’ prior sales and tangible assets.¹⁹⁶ Lawmakers argued over this provision as it created double taxation for shareholders; however, it was decided that exempting corporations would put them at an unfair advantage over “sole owners and partnerships.”¹⁹⁷ One of its largest differences from the Swedish system came in its taxation of resident corporations.¹⁹⁸ Where resident companies were exempted from the Swedish tax,¹⁹⁹ German companies were initially taxed at a rate of 0.7%, which increased to 1% in 1975; individual taxpayers were subject to “a flat rate of 0.7%.”²⁰⁰

¹⁸⁷ Steinmo, *supra* note 183, at 507 (“Swedish authorities have constructed a tax system that generates huge revenues while at the same time attempting to encourage the concentration of domestic productive investment.”).

¹⁸⁸ SANDFORD ET AL., *supra* note 96, at 69.

¹⁸⁹ Steinmo, *supra* note 183, at 504.

¹⁹⁰ SANDFORD ET AL., *supra* note 96, at 56.

¹⁹¹ *Id.* at 76.

¹⁹² *Id.* at 77–78.

¹⁹³ *Id.* at 78.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 76.

¹⁹⁶ *See id.* at 79–80.

¹⁹⁷ *Id.* at 76.

¹⁹⁸ *Id.* at 75.

¹⁹⁹ *Id.* at 57–58.

²⁰⁰ *Id.* at 76–77.

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An unusual feature of the French wealth tax (“IGF” and “ISF”) was the designation of the family, comprised of husband, wife, and minor children, as the taxable unit.²⁰¹ The tax applied to the property, wherever located, of families domiciled in France and to the property of non-residents that were located in France.²⁰² The property subject to the tax was defined broadly, and included property defined as belonging to taxpayers under the following conditions: “[a]ssets [appearing] to belong to the taxpayer from a third party’s point of view” and “assets in the taxpayer’s possession, other than temporarily.”²⁰³ Furthermore, “property attached or clearly related to an asset that belongs to the taxpayer; and . . . assets that the taxpayer is presumed to own by a special provision of the French Tax Code” were also included.²⁰⁴

The valuation of property for wealth tax purposes is complex and the French case is a fine example. Under French law, exemptions under the IGF included objects of art, which included: “antiques over 100 years old, rugs, tapestries, hand-drawn paintings, drawings and sketches, original engravings, prints and lithographs, original statuary and sculpture, stamp collections, zoological, biological, mineralogical, and anatomical specimens and collections of objects having historical, archeological, paleontological, orthological or numismatic interest.”²⁰⁵ “Jewelry over 100 years old was not exempt unless its value was derived from age and workmanship rather than from the value of the stones and precious metals.”²⁰⁶ “[R]ural property subject to long term lease[,] and stocks of wine and brandy” were also excluded.²⁰⁷ Up to three quarters of the value of agricultural land and forests were also excluded.²⁰⁸ “Finally, but most importantly, there was in the IGF an exemption for Fr 2 million of business property, *biens professionnel*.”²⁰⁹ Every taxpayer was also given an exemption of Fr 3 million (worth about \$500,000 at the time).²¹⁰ A “rich” family was thus defined as one whose property exceeded that amount.²¹¹

²⁰¹ *France Tries a Wealth Tax*, *supra* note 122, at 182.

²⁰² *Id.*

²⁰³ *Id.* at 183.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 184–85.

²⁰⁶ *Id.* at 185.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 185–86.

²⁰⁹ *Id.* at 186.

²¹⁰ *Id.*

²¹¹ *Id.*

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Valuation of property incorporated existing rules regarding taxation on death. There were “three instances in which individuals [were] required to report the full value of the property as part of their personal wealth: (1) holders of life estates[;] . . . (2) holders of rights of use[;] . . . and (3) holders of occupancy.”²¹² As the general rule, tangible personal property values were “determined by the values established at public sales of the property within two years of the valuation date.”²¹³ When no such sale had occurred, “the value [was] based on assessments made for inheritance tax purposes.”²¹⁴ “For IGF purposes, an appraisal could be made, notarized, and sworn to be true by the taxpayer . . . [and] would be considered good for three years.”²¹⁵ If these methods did not work, the taxpayer would use the 5% method, which “mandated that the taxpayer total the net value of all [their] assets excluding tangible personal property and property exempt from the IGF. . . . [and] [5%] of this total was used as the value of the tangible personal property.”²¹⁶ Jewelry had special rules and “could not be valued at less than 60[%] of the value at which the jewelry was insured within the period of ten years preceding the valuation date.”²¹⁷ “[P]enalties for undervaluation [were] similar to those utilized in regard to death taxes[,] . . . [f]or undervaluation that exceeded 10[%] of the tax base the penalty was 10[%] for the first month and 1[%] for each month thereafter.”²¹⁸

While the assessments were largely copied from the death tax, this annual tax required some rather complex modifications.

In particular, where the existence of a debt was known on January 1, but the exact amount was in question (i.e. income taxes or property taxes), the taxpayer on his IGF return filed in June was permitted to substitute the actual taxes due for the January 1 estimated values. Nonetheless, since the income tax is not due until July 15 of each year, a bookkeeping problem was created. Thus, a taxpayer was allowed to deduct the income tax paid in 1982 on his 1983 IGF return because the 1983 income tax amount was not

²¹² *Id.* at 186–87.

²¹³ *Id.* at 187.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

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fixed until after the June 15 IGF return filing date for 1983.²¹⁹

In addition to the difficulty of evaluating assets on an annual basis, the comparative experience also reveals other significant problems that have undermined the use of annual wealth taxes, including capital flight, avoidance tactics, and a poor cost-to-yield ratio. For example, after the 2008 recession, Stefan Bach suggested that high wealth individuals could be enlisted to help European nations out of the crisis via tax levies or forced loans.²²⁰ Bach points to the historical precedent of German capital levies,²²¹ but also raises concerns about the problem of capital flight in the face of levies and forced loans.²²² He notes that levies on real estate have the advantage of being difficult to avoid due to the illiquidity of land and argues that to ensure a fair tax burden, the valuation would need to be accurate.²²³ Bach argues that this poses a challenge in many European countries where property tax values are rarely updated; for example, standard German property tax values are from 1964.²²⁴ Furthermore, liabilities on the property would also need to be considered, or there would be the risk of forcing those with high credit burdens into insolvency.²²⁵ Financial assets are easier to identify and value, but run the risk of capital flight. However, Bach argues that the problem of capital flight might be prevented by having treasuries take accountings of the values of assets immediately after the plans for a levy are announced.²²⁶

The Irish case is a good example of the problem of cost-to-yield that reduces the impact of annual wealth tax regimes. The network of exemptions and thresholds in the Irish wealth tax resulted in a relatively low effective tax rate of 0.4% for individuals and 0.87% for trusts and corporations.²²⁷ Corporations, because most exemptions were inapplicable to them, ended up contributing around 50% of the total tax receipts despite

²¹⁹ *Id.* at 188.

²²⁰ Bach, *supra* note 15, at 3.

²²¹ *See generally id.* at 5 (“Since the end of the nineteenth century, modern taxes on income, wealth and inheritance were introduced in Germany which laid the foundation for these emergency fiscal instruments. After the two World Wars, Germany resorted to capital levies and forced loans, with some success.”).

²²² *Id.* at 9.

²²³ *See id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ SANDFORD & MORRISSEY, *supra* note 86, at 26.

controlling less than 30% of the nation's wealth.²²⁸ Individuals who contributed to the wealth tax had an average net worth of £300,000 IEP and contributed an average of £1,161 IEP every year the tax was enforced.²²⁹ This is in comparison to corporations and trusts which contributed on average around £1,200 IEP and £950 IEP respectively.²³⁰ The average yearly yield of the wealth tax amounted to about £5 million IEP, totaling just over £15 million IEP for the life of the tax.²³¹ Interest payments and late fees accounted for a quarter of the total tax receipts for the life of the wealth tax bringing the final total to about £20 million IEP.²³² This was a result of common and significant delays in collections of many expected receipts.²³³

By comparison, the Swedish wealth tax applied to an individual's net assets with only a few exemptions.²³⁴ This included exemptions for assets like life insurance policies, pension payments, and household goods.²³⁵ While trusts and estates were taxed equally to individuals, resident corporations were not taxed at all.²³⁶ The shareholders of non-Swedish corporations operating in Sweden were required to pay the tax on the value of the corporation's assets.²³⁷ This was applied even if the shareholders were themselves Swedish residents and thus already liable for their own assets.²³⁸ The idea behind this was to encourage companies to set up Swedish subsidiaries that would have a more direct effect on the overall economy.²³⁹ The sliding scale tax rate of 1%–2.5% was applied equally to individuals, trusts, estates, and non-resident companies.²⁴⁰ "Relief is given where the aggregate amount of national and local income tax and wealth tax exceeds 80% of the first Skr 200,000 (£19,048) of taxable income[.]"²⁴¹ This is quite low when compared to the proposed £100,000 GBP threshold

²²⁸ *See id.*

²²⁹ *Id.*

²³⁰ *Id.* at 27 tbl.2.3.

²³¹ *Id.* at 24–26.

²³² *Id.* at 26.

²³³ *Id.*

²³⁴ SANDFORD ET AL., *supra* note 96, at 60–61; *see* ROBINSON & SANDFORD, *supra* note 66, at 48.

²³⁵ SANDFORD ET AL., *supra* note 96, at 60–63.

²³⁶ *See id.* at 56–57.

²³⁷ *Id.* at 57–58.

²³⁸ *Id.* at 57.

²³⁹ *See id.*

²⁴⁰ *Id.* at 58.

²⁴¹ *Id.* at 59.

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under the U.K. plan.²⁴² However, the Swedish system applied a similar relief exemption for income as the Irish wealth tax.²⁴³ A taxpayer's liability under the wealth tax was significantly reduced if the aggregate liability of national and local income tax and wealth tax would exceed 80% of their yearly income.²⁴⁴

The total yield of the German annual wealth tax was similar to Sweden's.²⁴⁵ In 1988, the wealth tax made up just 0.31% of the total German tax revenue for that year.²⁴⁶ Between the 1970s and 1990s, the yield of the tax decreased largely due to a failure of the German government to update real estate valuations over time.²⁴⁷ The yield in the mid-1990s fell to 0.2% of the German GDP, as compared to being 0.5% in the late 1920s.²⁴⁸ A notable difference between the German and Swedish tax is in their threshold exemptions. The threshold exemption in Sweden in 1975 was £19,048 (the equivalent of Skr 200,000).²⁴⁹ This is similar to the contemporaneous German threshold of £11,447 (the equivalent of DM 70,000).²⁵⁰ However, like the luxury goods exemption, each member of a German household was taken in the aggregate.²⁵¹ A family of four could exempt £45,788 of total assets prior to paying any taxes.²⁵² The exemption was also increased slightly if members of a household were over retirement age or disabled.²⁵³ Lastly, unlike the Swedish tax, which would grant relief if the tax exceeded 80% of the first Skr 200,000 of an individual's income,²⁵⁴ the German system applied no upper limit to the amount that a household could contribute.²⁵⁵

In France, tax rates were initially set at 0.5% "for taxable property between Fr 3 million and Fr 5 million" with progressive increases up to

²⁴² ROBINSON & SANDFORD, *supra* note 66, at 49.

²⁴³ See SANDFORD & MORRISSEY, *supra* note 86, at 22–23.

²⁴⁴ SANDFORD ET AL., *supra* note 96, at 59.

²⁴⁵ See Richard M. Bird, *The Taxation of Personal Wealth in International Perspective*, 17 CAN. PUB. POL'Y 322, 325 tbl.2 (1991).

²⁴⁶ *Id.*

²⁴⁷ Bachleitner, *supra* note 102, at 9–10 ("Throughout the decades in which the net wealth tax was collected the revenues decreased heavily.").

²⁴⁸ *Id.* at 10.

²⁴⁹ SANDFORD ET AL., *supra* note 96, at 59.

²⁵⁰ *Id.* at 77.

²⁵¹ *Id.*

²⁵² See *id.*

²⁵³ *Id.*

²⁵⁴ See *id.* at 59.

²⁵⁵ *Id.* at 77.

“1.5[%] on taxable property above Fr 10 million.”²⁵⁶ This seems relatively low, but when compared to the revenues generated by the assets taxed, it could actually be quite burdensome, especially for non-income producing assets like jewelry and agricultural land (which typically only yields 1%–2% on market value).²⁵⁷ The IGF originally exempted Fr 2 million of business property, so a major tax avoidance method was having property classified as business property.²⁵⁸ However, since the term “business property” was “a concept unique to the wealth tax[,] . . . the draftsmen could not incorporate by reference existing jurisprudence from other parts of the tax law or the Civil Code.”²⁵⁹ Article 4 of the IGF attempted to define business property with a number of broad categories.²⁶⁰ “The first and broadest category was property necessary for the practice of the principal occupation of the owner and his spouse[.]”²⁶¹ “Four conditions were required for property to be considered ‘business property.’”²⁶² These conditions are as follows: (1) “that the occupation could be classified as an industrial, commercial, artisanal or agricultural activity, or a liberal profession[;]” (2) “property [must] be used in a business actively managed by the owner of the business property or the owner’s spouse” (a requirement designed to exclude property rented out to others who use it for business); (3) “the property [must] be part of the principle business activity of the taxpayer” (an attempt to distinguish between business activity and the management of personal property); and (4) “the property [must] be *essential* for the conduct of the business” (a design to keep homes and vacation homes out of the category of “business assets”).²⁶³

Some assets were presumed to be business property “by their very nature,” such as “factories, working farms, [and] patents.”²⁶⁴ The tax authorities also “sought to include the value of doctors’ and lawyers’ client base[s].”²⁶⁵ Cash and cash equivalent assets of an enterprise were considered business assets “only to the extent of the normal needs of the enterprise.”²⁶⁶ “[A]ssets of an enterprise [were] presumed business assets if

²⁵⁶ *France Tries a Wealth Tax*, *supra* note 122, at 188.

²⁵⁷ *Id.* at 188–89.

²⁵⁸ *Id.* at 196–97.

²⁵⁹ *Id.* at 197.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.* at 197–200.

²⁶⁴ *Id.* at 200.

²⁶⁵ *Id.*

²⁶⁶ *Id.* (quotations omitted).

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current assets [were] less than current liabilities.”²⁶⁷ Shares of stock received special rules designed to distinguish shares held for portfolio investment and shares related to the taxpayer’s occupation. “Shares in closely-held companies were considered ‘business property’ if the family owned at least 25[%] of the capital *and* actively managed the company.”²⁶⁸ Family could include spouse, ascendants, descendants, and siblings, along with their ascendants and descendants.²⁶⁹ Further, the taxpayer’s management position must have been their principal occupation.²⁷⁰ The company was also required to be pursuing an “industrial, commercial, artisanal, agricultural, or . . . a liberal profession.”²⁷¹ “Article 7 of the statute creating the IGF provided a deduction from the total of business property for net investment in business property for the taxable year.”²⁷²

Under the ISF, business property was excluded from the tax base, and reclassified into three parts under the new regulations. The first part was “property necessary for a sole proprietor to pursue an occupation categorized as industrial, commercial, artisanal, agricultural, or as a liberal profession.” The second was “shares of companies of which the taxpayer is an owner and/or employee” and the third, “special categories of property, mainly agricultural land.”²⁷³

The IGF’s shareholding requirement created a lot of problems for “closely-held corporations[,]” so the ISF adopted a different requirement.²⁷⁴ “If the shareholding does not attain the 25[%] level, it is exempt, if the stock represents at least 75[%] of the executive’s gross assets subject to the ISF.”²⁷⁵ Unlike the IGF rule, “there is no family attribution, except in the case of holdings by the taxpayer’s spouse and minor children” who are part of the same taxable unit.²⁷⁶ Neither exemption was of much assistance to the modern corporate executive, “since a significant part of such executive’s net worth may consist of her employer’s stock (though not 75%) and such executive is unlikely to own a significant percentage of

²⁶⁷ *Id.* at 201.

²⁶⁸ *Id.* at 202.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.* at 204.

²⁷³ *Id.* at 213–14.

²⁷⁴ *Id.* at 214 (“In the IGF, the 25 percent shareholding had to be held by someone who actually exercised management functions.”).

²⁷⁵ *Id.* at 215.

²⁷⁶ *Id.*

outstanding shares of the company.”²⁷⁷ As a result, she would have been “heavily penalized by the tax.”²⁷⁸ The ISF also introduced “an exemption of Fr 1 million for the shares of salaried employees participating in an employee buyout of the company.”²⁷⁹

Another new feature of the ISF was the introduction of a ceiling of “70[%] of taxable income for the combined income tax and ISF. If this level is exceeded, the ISF is reduced.”²⁸⁰ The purpose of the ceiling was “ostensibly to discourage taxpayers from ‘divesting capital to avoid payment[.]’”²⁸¹ “The top rate was between 1.5% and 1.8%, with the total tax rate on fortunes larger than 13 million euros (\$14.3 million) hovering at about 1.4%.”²⁸² Furthermore, unlike the IGF, revenues from the new ISF were earmarked to fund a minimum income for the poorest households.²⁸³ In his critical analysis of the French wealth tax, Noah Smith argued that “[t]he wealth tax might have generated social solidarity, but as a practical matter it was a disappointment.”²⁸⁴ Even at its peak, the revenue raised “was rather paltry; only a few billion euros . . . or about 1% of France’s total revenue from all taxes.”²⁸⁵ “When [France’s] President Emmanuel Macron ended the wealth tax in 2017, it was viewed mostly as a symbolic move.”²⁸⁶

E. THE CRITIQUE OF ANNUAL WEALTH TAXES IN EUROPE

Despite being relatively prevalent across continental Europe during the late nineteenth and twentieth centuries,²⁸⁷ the annual net wealth tax began to be systematically abolished toward the start of the twenty-first century.²⁸⁸ By 2017, only four European countries continued to maintain an effective annual net wealth tax, Norway, Spain, France, and Switzerland.²⁸⁹ France

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.* at 216.

²⁸¹ *Id.* (citation omitted).

²⁸² Smith, *supra* note 123.

²⁸³ *France Tries a Wealth Tax*, *supra* note 122, at 212.

²⁸⁴ Smith, *supra* note 123.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ See Banting, *supra* note 75, at 351–52 (“[W]ealth taxes seem to be a fading force in the revenue systems of western governments. Most of the taxes now in place are old, established in the late 19th or early 20th centuries, and the proportion of total tax revenues derived from them has declined steadily . . .”).

²⁸⁸ See OECD, *THE ROLE AND DESIGN OF NET WEALTH TAXES IN THE OECD 17* (2018).

²⁸⁹ *Id.* at 16.

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abolished its tax at the end of 2017.²⁹⁰ Wealth taxes have been viewed as a means to reduce wealth inequality,²⁹¹ or encourage investment in domestic industry.²⁹² Over time however, wealth taxes have received criticism because of their poor cost to yield ratio and encouragement of capital flight to countries with more favorable tax treatment.²⁹³ Abolishing taxes of even little consequence is almost always popular, even more so when a tax is viewed as ineffective.²⁹⁴ This makes the annual wealth tax an easy target for political parties seeking support and largely, though not universally, leads to their demise.²⁹⁵

The concerns of a wealth taxes' cost to yield are quite easy to see. Sweden's wealth tax rate was among the highest in Europe²⁹⁶ during a time when wealth taxes were quite common. However, in Sweden, the wealth tax accounted for only about 0.5% of the total tax revenue.²⁹⁷ Germany's wealth tax made up about 0.3% of its annual tax revenue,²⁹⁸ and 0.2% of its GDP "in the mid-90's."²⁹⁹ Other European countries follow this pattern, with Switzerland being the only outlier whose wealth tax represented 3.7% of its total tax revenue.³⁰⁰ Looking outside of Europe further demonstrates the problem; only eight countries worldwide have had a wealth tax generate more than 1% of the national GDP.³⁰¹ In spite of a general increase of wealth concentration, the European wealth taxes failed to meaningfully contribute to the overall tax base of European nations.³⁰²

²⁹⁰ Chris Edwards, *Why Europe Axed Its Wealth Taxes*, CATO INST. (Mar. 27, 2019), <https://www.cato.org/publications/commentary/why-europe-axed-its-wealth-taxes> [<https://perma.cc/SL6T-V7KK>].

²⁹¹ Banting, *supra* note 75, at 356.

²⁹² See Steinmo, *supra* note 183, at 507.

²⁹³ OECD, *supra* note 288, at 17 ("Many factors have been put forward to justify the repeal of net wealth taxes. The main arguments relate to their efficiency costs and the risks of capital flight . . . [and] their limited revenues (i.e. high cost-yield ratio).").

²⁹⁴ See, e.g., Bird, *supra* note 245, at 325–26 ("[I]t became increasingly difficult . . . to withstand the pressure to abolish their taxes . . . because they are more vulnerable to . . . pressure from the potentially mobile wealthy in general and more particularly because they are more readily reached by such local 'influentials' as small businessmen and farmers.").

²⁹⁵ *Id.*

²⁹⁶ SANDFORD ET AL., *supra* note 96, at 55.

²⁹⁷ Bird, *supra* note 245, at 325 tbl.2.

²⁹⁸ *Id.*

²⁹⁹ Bachleitner, *supra* note 102, at 10.

³⁰⁰ OECD, *supra* note 288, at 18.

³⁰¹ Bird, *supra* note 245, at 323.

³⁰² See OECD, *supra* note 288, at 19, 21 ("[M]ost of the countries that have or have had net wealth taxes experienced either stable or declining revenues from these taxes.").

With such low yields, the cost of maintaining an effective wealth tax system must be kept low for it to have any effect at all. Correct valuation is a constant concern as it directly effects the overall liability a given individual has.³⁰³ Public companies publish their net assets making their value easy to find, but private businesses and individual net worth on the other hand can be difficult to determine and be subject to change year to year.³⁰⁴ Unless valuation of assets is regularly updated, a costly prospect, the total yield of a tax could be reduced or individuals may be treated unfairly.³⁰⁵ “Regularly updating asset values” tended to burden the administrative systems of the various tax regimes more than other forms of value tax, like property tax.³⁰⁶ This sort of problem is not particularly visible to the common citizen, but would stand out to fiscally conservative members of a government and others searching for a reason to abolish it.³⁰⁷

Beyond administrative costs, some of the largest criticisms of wealth taxes came from concerns over capital flight. This can involve both the hiding of assets offshore or simply the relocation of a high net worth individual to another country without the tax.³⁰⁸ Indeed, this argument was one commonly made against the introduction of the Irish wealth tax in the 1970s.³⁰⁹ There have been limited “[e]mpirical studies on the effects of wealth taxes on capital flight and fiscal expatriation[;]”³¹⁰ however, some evidence has shown tax-induced movement.³¹¹ Anecdotal situations also make it easy for opponents to criticize wealth taxes to the mass of voters. Opponents of the wealth tax in France pointed to a total €200 billion in capital flight over its life as a potential, though not proven, effect of the tax.³¹² Arguments like this seem to be especially effective where the stated purpose of a wealth tax is to encourage the reinvestment of capital rather than the unproductive hoarding of wealth, such as in Sweden.³¹³

³⁰³ See *id.* at 69.

³⁰⁴ See *id.*

³⁰⁵ See *id.* (“Regularly updating asset values is an additional difficulty. Indeed, there is a trade-off between regularly updating asset values, which is costly both in terms of tax compliance and administration, and updating them less frequently, which may increase distortions and reduce fairness.”).

³⁰⁶ See *id.*

³⁰⁷ See Sarah Perret, *Why Were Most Wealth Taxes Abandoned and Is This Time Different?*, 42 *FISCAL STUD.* 539, 554–56 (2021); Banting, *supra* note 75, at 354.

³⁰⁸ OECD, *supra* note 288, at 66–67.

³⁰⁹ Banting, *supra* note 75, at 358.

³¹⁰ OECD, *supra* note 288, at 66.

³¹¹ *Id.*

³¹² Eric Pichet, *The Economic Consequences of the French Wealth Tax*, 14 *LA REVUE DE DROIT FISCAL* 5, 5 (2007).

³¹³ Steinmo, *supra* note 183, at 518.

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While perhaps not driving physical relocation, wealth taxes are vulnerable to ordinary tax avoidance strategies like using international tax havens,³¹⁴ establishing trusts,³¹⁵ or through exemption exploitation.³¹⁶ The increased simplicity of moving capital electronically has made it trivial for resourceful individuals to conceal wealth without ever declaring it.³¹⁷ The persistently low yields of wealth taxes as described above can likely be attributed to the success of tax avoidance strategies.³¹⁸ Indeed, despite having base wealth tax rates increase over time,³¹⁹ countries saw little variation in the overall yields of their taxes.³²⁰ The OECD found strong empirical and statistical support that tax avoidance strategies were implemented in many wealth tax countries.³²¹ As much as 8% of worldwide wealth was suspected of being hidden in tax havens for avoidance purposes.³²² The potential that abolishing wealth taxes would lead to a broad repatriation of wealth proved to be one of the main drivers of the European policy change.³²³ Aggravating the situation is the fact that while high net worth individuals can hide capital assets abroad, lower net worth individuals whose wealth may be more immovable do not have the same ability to avoid the tax, creating the same kind of inequality a wealth tax is meant to address.³²⁴

As a result, the European annual net wealth tax suffered from both actual and perceived shortfalls which made the prospect of its abolition more politically expedient than its retention. The tax was persistently inconsequential to a given nation's overall revenue, often less than 1% of a year's receipts despite repeated increases in tax rates.³²⁵ It required significant administrative oversight, which further reduced net income.³²⁶ Lastly, it was a magnet for difficult to track tax avoidance measures, and

³¹⁴ OECD, *supra* note 288, at 67.

³¹⁵ *Id.* at 68–69.

³¹⁶ *Id.* at 68.

³¹⁷ *See id.* at 67.

³¹⁸ Magnus Henrekson & Gunner Du Rietz, *The Rise and Fall of Swedish Wealth Taxation*, NORDIC TAX J., May 2014, at 31.

³¹⁹ *See* Limberg & Seelkopf, *supra* note 65, at 14–15; *see also* Bird, *supra* note 245, at 325 tbl.2; SANDFORD ET AL., *supra* note 96, at 58 (discussing Swedish tax rates).

³²⁰ Bird, *supra* note 245, at 323.

³²¹ OECD, *supra* note 288, at 67–69.

³²² *Id.* at 68.

³²³ *See* Henrekson & Du Rietz, *supra* note 318, at 31–32.

³²⁴ *See* OECD, *supra* note 288, at 67.

³²⁵ Bird, *supra* note 245, at 323.

³²⁶ *See id.*

presumed, if not actual, capital flight. These problems combine to illustrate that the wealth tax does not produce the kind of wealth equality that most systems were intended to create. In that situation, it is easy for a fiscally conservative government to successfully lobby for abolition. However, increased inequality and coinciding decreases in top income tax levels have begun to revive discussions of the wealth tax as a measure to address wealth inequality.³²⁷

IV. THE HISTORY OF CAPITAL LEVIES

If we turn our focus to the examples of once-off wealth taxes, or capital levies, which sought to achieve more than debt relief, we encounter a few historical cases from the post-World War II period. The three examples are France, Germany, and Japan. The overall goals of these forms of capital levies or wealth taxes was reconstruction, equalization, and democratization. In the case of France, the maximum levy was 20% on capital as of 1945 plus 100% on additions to capital during the Nazi occupation (1940–1945).³²⁸ The German case was initiated by the process of financial reform imposed by the occupying powers in 1949 and was incorporated into the sharing of burdens law or *lastenausgleich* (Equalization Law of 1951) in 1952. In the case of Japan, the occupying forces imposed a 90% capital levy on the top 3% of the population who were considered beneficiaries of Japanese militarization and aggression.³²⁹ In addition, Finland, South Korea, and Taiwan introduced programs linked to land redistributions that effectively served as forms of once-off wealth taxes.

A. SHARING THE BURDENS OF RECONSTRUCTION: THE GERMAN EQUALIZATION TAX

One of the more significant and ambitious capital levies in history came out of West Germany immediately following the end of World War II. Most post-war levies were intended to combat inflation, “equali[z]e the burden of the war,” or supplement ordinary public spending.³³⁰ The German levy was intended to distribute the harms of war as equitably as possible.³³¹

³²⁷ See, e.g., Edwards, *supra* note 290.

³²⁸ Mitchell B. Carroll, *Outline of War Profit Taxes and Capital Levies in Liberated European Countries*, 1 TAX L. REV. 409, 409–10, 412 (1946).

³²⁹ Henry Shavell, *Taxation Reform in Occupied Japan*, 1 NAT’L TAX J. 127, 132 (1948) [hereinafter *Taxation Reform in Occupied Japan*].

³³⁰ Robson, *supra* note 59, at 28–32.

³³¹ *Id.* at 30.

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Hitler's regime intentionally ran up war debt during the war "that the German state and people would somehow have to repay."³³² The defeat of the Nazi's left the nation, like most of Europe, physically and economically destroyed.³³³ German cities suffered extensive destruction. Hamburg alone took more damage than all the cities bombed in Britain.³³⁴ In Düsseldorf, 93% of the homes were uninhabitable, in Frankfurt, it was 75%, and in Cologne 66%.³³⁵ "In Hanover only 1% of the buildings were undamaged."³³⁶ Of the 16 million houses in Potsdam, 2.34 million had been destroyed, and 4 million had sustained 25% or more in damage.³³⁷ In Western Germany over 20 million people were homeless at war's end.³³⁸

The destruction was not, however, uniform across Germany. Where some were left completely destitute with homes and businesses destroyed, others escaped largely uninjured.³³⁹ While all war-damaged countries implemented some level of post-war aid to citizens, Germany is largely unique in its attempt to distribute wealth so that pre-war levels of property ownership were restored.³⁴⁰ However, the money for this rebuilding could not come from everyone equally as many had nothing to give.³⁴¹ The solution became known as a *lastenausgleich*, or "equalizing burdens."³⁴² The burden of rebuilding the state would fall upon each German proportional to their own needs and surviving property.³⁴³ "[T]he predominant note in German thinking [was] equalization. Those least hit by war, postwar dislocations, and monetary reform should be levied upon to compensate those hardest hit."³⁴⁴

³³² HUGHES, *supra* note 17, at 1.

³³³ *See id.* at 1–2.

³³⁴ DOUGLAS BOTTING, FROM THE RUINS OF THE REICH: GERMANY 1945–1949 123 (1985).

³³⁵ *Id.* at 123–24.

³³⁶ *Id.* at 124.

³³⁷ *Id.*

³³⁸ *Id.* at 125.

³³⁹ HUGHES, *supra* note 17, at 2–4.

³⁴⁰ *Id.*

³⁴¹ Volker Berghahn & Uta Poiger, *Occupation and the Emergence of Two States (1945–1961)*, GERMAN HIST. DOCUMENTS & IMAGES, http://germanhistorydocs.ghdc.org/section.cfm?section_id=14 [https://perma.cc/7ZQY-SW3R] ("The Equalization of Burdens Law, which was ratified in 1951, represented an attempt to redistribute wealth from those fortunate enough to have retained property and other assets to those who had lost everything.").

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ Walter W. Heller, *Tax and Monetary Reform in Occupied Germany*, 2 NAT'L TAX J. 215, 227 (1949).

The *lastenausgleich* represented not only a shift away from Nazism,³⁴⁵ but also a break from the pre-war German republic. The program sought both to balance out the harms of the war and assist the nation in becoming more prosperous for all.³⁴⁶ Article 20 of the newly adopted Basic Law mandated that German society maintain itself as a “democratic and social federal state.”³⁴⁷ Beyond the immediate social benefits of the program, there were also geo-political concerns. The perceived threat of the Soviet Union in East Germany³⁴⁸ pressured the Western Allies to ensure a quickly rebuilt Germany could play a part in its own defense, especially in the emerging ideological struggle of the Cold War.

Taking the asset base of 1948, the Equalization Law set a 50% tax rate on surviving post-war assets and spread the tax debt over the next thirty years, which saw the tax being collected quarterly until 1979—raising approximately 42 billion DM.³⁴⁹ The Equalization Tax was mainly levied on property and business assets (including state owned enterprises), while financial assets were granted a relatively high exemption of 150,000 DM.³⁵⁰ In addition, “[a] tax allowance of 5,000 DM was granted for natural persons[.]”³⁵¹ To place these numbers in context and demonstrate their nominal value, “the average annual pensionable income in” post-war Germany in 1952 was 3,850 DM.³⁵² As Stefan Bach notes, “[d]ue to the high growth rates of national product and income, [the] economic significance and burden gradually decreased in subsequent decades.”³⁵³ However, he also points out that “[a]t the same time, it was possible to mobilize significant resources for reconstruction and the integration of displaced persons and refugees.”³⁵⁴ Bach thus concludes that “burden sharing was a financial, economic, and sociopolitical success.”³⁵⁵ In its implementation, the *Lande* (German States or provinces) were directed to “devote 85[%] of the income for *lastenausgleich* purposes, such as housing construction for war damaged individuals” and the *Lande* were required to

³⁴⁵ Berghahn & Poiger, *supra* note 341.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ Bach, *supra* note 15, at 6.

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

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transfer 15% of the income to the central authorities for “supra-regional balancing out.”³⁵⁶

The war left three distinct groups of people harmed and with a high “magnitude of claims” for compensation.³⁵⁷ “The first is the group whose real property ha[d] suffered war damage.”³⁵⁸ “[B]y the end of 1944,” German citizens had submitted compensation claims totaling over 90 billion marks.³⁵⁹ The second group consisted of the millions of wartime refugees who had been forced to abandon their homes.³⁶⁰ Another group were those whose foreign assets had been confiscated by the belligerent powers.³⁶¹ No system of taxation could possibly address all these claims, but the German government proceeded with the intent of addressing those harmed as equitably as possible.

The *lastenausgleich* continued in two distinct phases. Recognizing that a comprehensive levy and distribution would take years, the German government first rushed out a smaller levy intended to provide more immediate aid to those facing imminent harm due to the destruction.³⁶² Taking effect in 1949, this levy imposed a 2% tax on the value of real property “where total value [did] not exceed DM 15,000.”³⁶³ The levy increased to 3% for real estate with a value exceeding DM 15,000.³⁶⁴ This levy also made a distinction between “necessary” and “excessive” assets, taxing the former at 4% and the latter at 15%.³⁶⁵

The proceeds of DM 2.75 billion were used to great effect as a welfare-like entitlement.³⁶⁶ Those who were expelled from their homes, who had homes destroyed, who lost their money in the currency revaluation, and who were politically persecuted were eligible for payments if they could demonstrate a relatively low level of loss.³⁶⁷ For example, a person expelled from their home could get monthly aid for showing a loss of DM 300 in

³⁵⁶ HUGHES, *supra* note 17, at 74.

³⁵⁷ Heller, *supra* note 344, at 227.

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ *Id.* at 227–28.

³⁶¹ *Id.* at 228.

³⁶² HUGHES, *supra* note 17, at 73. For example, 13,000 refugees in Düsseldorf lacked beds to sleep in. *Id.*

³⁶³ Heller, *supra* note 344, at 229.

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *See id.*

³⁶⁷ HUGHES, *supra* note 17, at 77.

assets.³⁶⁸ This levy also provided support aid for those who could not work due to disability or age as well as supplements for the worker's dependents.³⁶⁹ Most importantly, this levy established that future levies would be calculated using the value of a person's property on June 21, 1948.³⁷⁰

The second phase was major levy of assets meant to assist in the rebuilding of German society and its economy. At its core, the levy was a one-time tax on the value of intact property. The *lastenausgleich* law imposed the tax at a rate of 50% on real property.³⁷¹ "The payments to discharge this levy [would] be made over a period of 30 years."³⁷² This number came from an analysis done in 1950, which concluded that the German economy could afford levying no more than DM 1.5 billion a year.³⁷³ The government decided to apply the 50% rate on the theory that it would demonstrate the equal nature of the levy.³⁷⁴ Amortizing payments over thirty years would result in a yearly revenue of about DM 1.5 billion.³⁷⁵ Further exemptions for the first DM 5,000 of leviable assets ensured that lower and middle class German citizens would not be overburdened.³⁷⁶

Of consequence to the total potential amount to be raised by the levy was the question of whether foreign nationals were subject to the new tax. Significant foreign investment by the Allied Powers took hold in Germany as its economy began to turn following the immediate post-war period.³⁷⁷ However, the levy was "amortized over a period of 30 years," being assessed from April 1949 through March 1979.³⁷⁸ Businesses that entered Germany after the end of the war could therefore be subject to a levy of 50%, on top of already existing taxes.³⁷⁹ This was in clear conflict with the positions of the Allied powers who argued that the assets of foreign nationals should not be subject to seizure or tax solely to ameliorate the

³⁶⁸ *Id.*

³⁶⁹ *Id.* (noting that the bill provided 70 DM a month for persons unable to work, as well as 30 DM a month for married persons and 20 DM a month for each dependent child).

³⁷⁰ *Id.* at 78.

³⁷¹ Robson, *supra* note 59, at 31.

³⁷² *Id.*

³⁷³ HUGHES, *supra* note 17, at 151.

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 153.

³⁷⁷ See Benjamin B. Ferencz, *Germany: Taxation of United Nations Nationals Under the German Equalization of Burdens Law*, 9 AM. J. COMP. L. 262, 263 (1960).

³⁷⁸ *Id.* at 264.

³⁷⁹ *See id.*

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financial burdens of the war.³⁸⁰ This is especially true in the case of those in formerly occupied Europe who had been deprived of the enjoyment of their property as a result of the war, and by the Germans in particular.³⁸¹ A levy on foreigners was also in conflict with the basic intention of the *lastenausgleich*, that the German people, rather than foreigners, must be expected to equalize the material losses from the war.³⁸² On the other hand, it could be argued that fairness demanded that foreigners who entered Germany and profited off the reconstruction should be partially responsible for assisting it.³⁸³

In what was likely a face-saving gesture, the Allies agreed that foreign nationals could be subject to the capital levy.³⁸⁴ However, all foreigners would be exempted from the amortized payments for a period of six years beginning in 1949.³⁸⁵ This resulted in a 20% exemption from the total levy.³⁸⁶ Further inequalities arose from the date at which the levy applied. The only persons subject to the levy were those who owned property as of June 21, 1948, the date of the currency reform.³⁸⁷ “Thus, anyone who acquired property after 21 June 1948, would not be required to pay, regardless of the extent of his fortune.”³⁸⁸ Foreigners would otherwise end up paying more than German nationals, the supposed object of the *lastenausgleich*, simply because they were in a position to purchase property before June of 1948.

This situation could be further exacerbated by exemptions for German victims of the Nazis that did not apply to foreigners. “[E]xemptions on the first 150,000 DM were available to Nazi victims whose property had been restored” after the Allied victory.³⁸⁹ Complete exemptions were available for property given to successor organizations when the true heirs could not be found.³⁹⁰ This was clearly in the interest of not taxing the victims of war for the costs of those defeated. Though once again, outside investors might end up paying a larger share than perhaps was contemplated simply because

³⁸⁰ *Id.* at 263.

³⁸¹ *See id.* at 263–64.

³⁸² *See* HUGHES, *supra* note 17, at 2–3.

³⁸³ *See* Ferencz, *supra* note 377, at 264 (stating that the *lastenausgleich* was also focused on the more general “removal of social injustice” from the German state).

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ *Id.*

³⁸⁷ *Id.* at 265.

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ *Id.*

they came to Germany too soon after the war. Despite the potential for disparate treatment, foreign businesses by and large accepted the levy as simply the cost of doing business in the post-war market.³⁹¹

The second capital levy raised a total of 42 billion DM, around twenty times the amount raised with the first (about 60% of the nation's 1952 GDP).³⁹² Expenditures from the money raised were twofold. First, those with recognized legal claims for things such as property loss and damage were given compensation.³⁹³ Others without legal claims were allowed to make use of generous loans to support economic reintegration.³⁹⁴ Those who had lost goods rather than real estate were also entitled to payments.³⁹⁵ Persons who lost at least 50% of their household goods were entitled to graduated yearly sums of at least 800 DM for twelve years based on the amount of income they had at the time of the payment.³⁹⁶ Importantly, the claims of those who had lost money in the currency reform were not recognized during the second levy; this was on the theory that the other forms of compensation would be available to them anyway.³⁹⁷ Lastly, the final law placed no maximum on the amount of compensation a single person could get, though the amount they received was proportionally reduced the more their claims rose.³⁹⁸

One of the most surprising aspects of the entire program was the relatively few barriers to implementation it faced. The elites of Germany had stood firmly against similar attempts at reform following World War I.³⁹⁹ The disaster of the Second War, however, seemed to leave a bad taste toward any kind of war or post-war profiteering.⁴⁰⁰ Simply being rich in post-war Germany might indicate a failure to make or at least appreciate the sacrifices made by the regular citizen. The *lastenausgleich* was seen to be a part of the general denazification of the state where the immoral profits of the past would be collected and used for the public good.⁴⁰¹ The result

³⁹¹ *Id.* at 266.

³⁹² Bach, *supra* note 15, at 6.

³⁹³ HUGHES, *supra* note 17, at 155–56.

³⁹⁴ *Id.* at 156.

³⁹⁵ *Id.* at 157.

³⁹⁶ *Id.*

³⁹⁷ *See id.* at 163. More direct compensation for these people could come in 1953. *Id.* at 164.

³⁹⁸ *Id.* at 163.

³⁹⁹ *Id.* at 112 (“Although German elites in the 1920s had rejected capital levies to finance debt revaluation, their 1940s counterparts quite willingly contemplated such levies for the *Lastenausgleich*.”).

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*; Berghahn & Poiger, *supra* note 341.

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was mass popular support by most sections of West German Society and eventual acceptance by the western Allies.⁴⁰²

B. BUILDING DEMOCRACY: CAPITAL LEVIES IN POST-WAR JAPAN

The Japanese case involved a once-off capital levy imposed in 1946 to 1947 as one component of a sweeping political and economic overhaul which included tax reform, land reform, and constitutional reform. The levy's first objective was to reduce the internal debt burden inherited from wartime. The second objective was to provide finance for the recovery program and the third objective was to reduce income inequality. The goal of this last objective was to reduce the wealth holdings of a small minority of exceptionally rich individuals—the *Zaibatsu*—and owners of the great holding companies who were considered responsible for promoting the war and who had profited from it. The wealth tax was imposed on families whose property was worth at least ¥100,000 as of March 3, 1946.⁴⁰³ The rates of the tax rose from 10% on the lowest bracket to 90% on estates worth more than ¥15 million.⁴⁰⁴ As a result of the existing inequality, the levy was only imposed on 2%–3% percent of the richest families.⁴⁰⁵

The destruction of World War II left many countries physically and economically destroyed. The Japanese government had insured nearly every private war enterprise and guaranteed numerous loans from private banks.⁴⁰⁶ Indeed, some 80% of the total expenditure for the war came from borrowing.⁴⁰⁷ By the end of the war, Japan had accrued over ¥200 billion in debt.⁴⁰⁸ Many capital levies in the post-war world were intended to address these staggering kinds of debt. Like other nations, Japan's economy underwent extreme restructuring at the behest of the Allied Powers.⁴⁰⁹ A capital levy was but one part of this post war reform. Simple economic improvement was not the primary justification for the levy itself. Imperial Japan was a stratified society with massive wealth inequality and an

⁴⁰² HUGHES, *supra* note 17, at 81, 113.

⁴⁰³ *Taxation Reform in Occupied Japan*, *supra* note 329, at 131–32.

⁴⁰⁴ *Id.* at 132.

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.* at 133.

⁴⁰⁷ Kenneth K. Kurihara, *Post-War Inflation and Fiscal-Monetary Policy in Japan*, 36 AM. ECON. REV. 843, 844 (1946).

⁴⁰⁸ *Id.*

⁴⁰⁹ See BISSON, *supra* note 19, at 1.

engrained aristocracy.⁴¹⁰ This old guard of moneyed interest stood in the way of the American occupiers who sought to rebuild Japan into a peaceful and democratic partner in Asia.⁴¹¹ To accomplish this, the occupiers made it their primary objective to widely distribute the concentrated Japanese wealth among the population.⁴¹² The primary design of Japan's capital levy was therefore not a means to pay for government expenses (though this was an element), but a targeted attack on the richest and most powerful in Japanese society.⁴¹³

The *Zaibatsu*, literally "money clique," was the chief target of the occupiers.⁴¹⁴ The "clique" was an interrelated cartel of family businesses that represented just the top 3% of Japanese society, but which controlled the majority of commercial and financial interests of the nation.⁴¹⁵ Made up primarily of four large organizations, the *Zaibatsu* exerted almost plutocratic power over Japan and were even occasionally delegated some governmental functions like tax collection and currency distribution.⁴¹⁶ For example, the Mitsubishi corporation, one of the largest of the *Zaibatsu* organizations, employed nearly three million people within Japan and East Asia in 1945.⁴¹⁷ Naturally, this kind of power led to extreme concentrations of personal wealth for the families that controlled them. Nineteen families in 1930 had yearly incomes of at least ¥1 million, as compared to 84.3% of the population who made less than ¥800 per annum.⁴¹⁸ Only the imperial household itself had personal wealth comparable to these families.⁴¹⁹

Even after the war, the distribution of economic resources had worsened. By the time the valuation of leviable assets was completed, only 319 households had sufficient assets to fall within the levy's top two tax brackets.⁴²⁰ However, these households had combined taxable assets of ¥6.9 billion, well above the 58,000 households who made up the lowest taxable bracket.⁴²¹ The interrelated nature of this clique, representing the executives of practically every major company in the country, drew the

⁴¹⁰ See Henry Shavell, *Postwar Taxation in Japan*, 56 J. POL. ECON. 124, 131 (1948) [hereinafter *Postwar Taxation in Japan*]; see also BISSON, *supra* note 19, at 11–13.

⁴¹¹ *Postwar Taxation in Japan*, *supra* note 410, at 131.

⁴¹² See *id.* at 127, 128 tbl.4.

⁴¹³ *Id.* at 131.

⁴¹⁴ BISSON, *supra* note 19, at 1.

⁴¹⁵ *Postwar Taxation in Japan*, *supra* note 410, at 131.

⁴¹⁶ BISSON, *supra* note 19, at 7.

⁴¹⁷ *Id.* at 11.

⁴¹⁸ *Id.* at 19.

⁴¹⁹ *Id.* at 21.

⁴²⁰ See *Postwar Taxation in Japan*, *supra* note 410, at 132 tbl.5.

⁴²¹ See *id.*

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attention of the Allied authorities who demanded its dissolution.⁴²² Indeed, the *Zaibatsu* were one of the main drivers of the overall Japanese economy. Just four *Zaibatsu* banks, for example, lent out ¥6.7 billion in 1944 or 74.9% of all private money lending.⁴²³ Changing this system would be necessary if the Allies wanted to succeed in rebuilding Japan as a democratic nation.

To that end, the levy attacked those with only the highest levels of personal wealth in Japan. This strategy meant that the *Zaibatsu* alone would end up paying most of the levy. Real and intangible property starting at a value of ¥100,000 was subject to the capital levy.⁴²⁴ “Tax rates were graduated from 10[%] on the first 10,000 yen of taxable net property in excess of the 100,000 yen exemption, to 90[%] on that part of taxable property exceeding 15,000,000 yen.”⁴²⁵ For perspective, “the average monthly income per head” in 1956, well after economic recovery began, “was 6,885 yen.”⁴²⁶ “Household furnishings, clothing, and minor necessities were excluded”⁴²⁷ from the levy, meaning that only genuinely wealthy landowners ended up truly contributing to the overall levy. Indeed, over half the total levy was eventually collected from the value of real estate.⁴²⁸ Critically, however, the final levy excluded taxation of corporate assets on the grounds that this would result in an unfair double taxation of those already subject to the highest levels of taxation.⁴²⁹ Despite their exemption, the old corporate structures were faced with significant regulations by the occupiers who intended to break the power of the companies themselves.⁴³⁰

The greatest problem faced by the levy was from the immediate post-war inflation of the yen,⁴³¹ which occurred while the government was still attempting to establish the total property value to be collected. The massive borrowing of the Japanese government during the war created an economic

⁴²² See *id.* at 131.

⁴²³ Kozo Yamamura, *Zaibatsu, Prewar and Zaibatsu, Postwar*, 23 J. ASIAN STUD. 539, 541 (1964) [hereinafter *Zaibatsu, Prewar and Zaibatsu, Postwar*].

⁴²⁴ *Postwar Taxation in Japan*, *supra* note 410, at 131.

⁴²⁵ *Taxation Reform in Occupied Japan*, *supra* note 329, at 132.

⁴²⁶ Kozo Yamamura, *Wage Structure and Economic Growth in Postwar Japan*, 19 INDUS. & LAB. REL. REV. 58, 64 n.21 (1965) [hereinafter *Wage Structure and Economic Growth in Postwar Japan*].

⁴²⁷ See *Taxation Reform in Occupied Japan*, *supra* note 329, at 132.

⁴²⁸ *Id.*

⁴²⁹ *Id.*

⁴³⁰ See BISSON, *supra* note 19, at 120–21.

⁴³¹ *Postwar Taxation in Japan*, *supra* note 410, at 129–32.

disaster.⁴³² Even before the surrender, runaway inflation had already begun. “[T]he general cost of living in Japan was twenty times as high at the end of the war as it was” in 1941.⁴³³ Overall, “general prices increased more than sixteen times” between 1941 and 1945.⁴³⁴ This inflation continued after the end of the war. “Between the surrender in August, 1945, and May, 1946, the average cost of living rose 850[%].”⁴³⁵ By 1946, when talks of the levy first began, “‘take-home’ earnings” of the average worker had increased over 300% since 1937.⁴³⁶ The inflation was not truly controlled until 1949, by which time prices in Tokyo were over 200 times their 1934–1936 level.⁴³⁷ The government originally intended that the levy take place in mid-1946.⁴³⁸ However, despite the massive increase in prices happening at the same time, it was not until November of that year “that the capital levy was enacted.”⁴³⁹ In total, there was a “one-year interim” between the time that taxable assets were valued and the time of actual collection.⁴⁴⁰ This delay resulted in a significant loss to the potential amount of revenue that could have been collected.⁴⁴¹ However, the levy was recognized as having had a greater deflationary effect on the Japanese economy.⁴⁴²

The levy was an overall success as represented by the absence of significant attempts to dodge the tax, the total amount generated, and the resulting economic system. Those subject to the levy voluntarily declared ¥36 billion in total liability by the original deadline.⁴⁴³ The success of the levy was attributed by the finance ministry to one particular method of enforcement.⁴⁴⁴ The government retained the option to mandate the sale of any piece of land at the value originally assessed if it determined that the valuation was inadequate.⁴⁴⁵ The final amount raised was just below the target yield of ¥43.5 billion, or 120% of total 1946 to 1947 tax revenues, and roughly 9% of Japan's total private national wealth in March, 1946.⁴⁴⁶

⁴³² See Kurihara, *supra* note 407, at 844.

⁴³³ *Id.* at 846.

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ *Id.*

⁴³⁷ BISSON, *supra* note 19, at 94.

⁴³⁸ *Postwar Taxation in Japan*, *supra* note 410, at 132–33.

⁴³⁹ *Id.* at 133 n.17.

⁴⁴⁰ *Id.* at 132.

⁴⁴¹ *See id.*

⁴⁴² *See id.* at 137.

⁴⁴³ *Taxation Reform in Occupied Japan*, *supra* note 329, at 133.

⁴⁴⁴ *Postwar Taxation in Japan*, *supra* note 410, at 132.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.* at 131.

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The *Zaibatsu* continued to exist and shared in the overall economic recovery, but the strict concentration of wealth in only a few companies was largely replaced with a much more open and competitive economy.⁴⁴⁷ The top family members saw their personal wealth greatly reduced and were largely excluded from the operational control of their companies.⁴⁴⁸ Indeed, some families saw their personal assets decrease by as much as 95%.⁴⁴⁹ Most importantly, the control structure of the firms had changed dramatically with many shareholders controlling small portions of the firms rather than one family dominating an entire industry.⁴⁵⁰

C. COMPENSATION FOR DISPOSSESSION: FINLAND'S USE OF CAPITAL
LEVIES TO COMPENSATE REFUGEES

Finland lost significant land holdings in the peace agreement with the Soviet Union in 1944. A major part of the agreement was the transfer of the Karelian isthmus, which housed important industrial and energy resources for Finland, as well as 450,000 people—about 12% of Finland's population.⁴⁵¹ Estimates of Finland's losses vary since they lost Karelia in 1940, got it back and resettled, then lost it again in 1944.⁴⁵² Unlike traditional land transfers between states where the people of the territory became citizens of the new land holder, the Soviet Union gave Finland thirteen days in 1940 and seventeen days in 1944 to remove the entire population from the area and settle them in areas remaining under Finnish control.⁴⁵³ The evacuated population was permitted to take transportable property, but most valuables were lost. Indemnities were offered for lost land, standing forests, buildings, crops, cattle, and the like, but nothing was offered for lost luxury items such as precious metals, securities, or cash.⁴⁵⁴

Finland had a history of land redistribution before the resettlements of 1940 and 1944. On October 25, 1918, the Tenant Farmers Law was passed, which forced private landowners to sell land to their tenants that they had worked at pre-war prices.⁴⁵⁵ Prices had inflated 800% since then, leading

⁴⁴⁷ See *Zaibatsu, Prewar and Zaibatsu, Postwar*, *supra* note 423, at 552–53; Eugene Rotwein, *Economic Concentration and Monopoly in Japan*, 72 J. POL. ECON. 262, 263 (1964).

⁴⁴⁸ BISSON, *supra* note 19, at 201–02.

⁴⁴⁹ *Id.* at 93.

⁴⁵⁰ See Rotwein, *supra* note 447, at 266; see also BISSON, *supra* note 19, at 201.

⁴⁵¹ DE GADOLIN, *supra* note 22, at vii.

⁴⁵² See *id.* at 3, 4 tbl.1.

⁴⁵³ *Id.* at 12.

⁴⁵⁴ *Id.* at 5.

⁴⁵⁵ *Id.* at 14.

to large losses by property owners.⁴⁵⁶ The state provided long term credit to workers to purchase the land.⁴⁵⁷ The state colonization office distributed plots to small farmers. The Finnish state-owned large areas of land due to centuries of planned colonization efforts of the wilderness, and part of that land was to be used.⁴⁵⁸ Additionally, 1,100 large estates were broken up between 1918 and 1940.⁴⁵⁹

Refugees from Karelia in 1940 were temporarily housed in schools, public buildings, and churches, with the state providing lodging and food.⁴⁶⁰ Local homes were investigated, and anyone found to have extra room was forced to take in refugees.⁴⁶¹ Refugees were required to work if work was available, and the cost of their care was deducted from their wages.⁴⁶² Business was good and the labor market absorbed many of the workers.⁴⁶³ Between April 30 and June 30 of 1940, the number of refugees receiving public assistance dropped from 346,000 to 235,000.⁴⁶⁴ By 1943, that number fell to 12,000.⁴⁶⁵ Since the settlement efforts took place very rapidly, many had to be moved a second time.⁴⁶⁶

The question of indemnities arose shortly after the hostilities ended. The Emergency Resettlement Law was passed June 28, 1940. This law sought to create 40,000 new farms to replace those that had been lost and offer them to the property owners from Karelia.⁴⁶⁷ New farms were to be taken from land in the following order: (1) state-owned, (2) church owned, (3) municipality-owned, (4) owned by corporations or associations, and (5) owned by individuals.⁴⁶⁸ The colonization office was instructed to first try to buy land, then sequester it when necessary.⁴⁶⁹ Privately-owned land was drawn first from land that had been neglected, then from land held for speculation, and lastly, land used for the owner's subsistence.⁴⁷⁰ The authorities were empowered to use their own discretion with little

⁴⁵⁶ *Id.* at 15.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.* at 11.

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.* at 14.

⁴⁶⁸ *Id.* at 16.

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*

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oversight.⁴⁷¹ Compensation for farms lost to the Soviet Union was based on 1934–1938 prices.⁴⁷² Full restitution was paid up to 320,000 Finnish Markka (“Fmk”), before a sharply graduated scale went into effect.⁴⁷³ The absolute maximum to be compensated was 2 million Fmk for individuals and 10 million Fmk for legal entities.⁴⁷⁴ Townships, churches, and other public institutions would be entitled to benefits only after special investigation.⁴⁷⁵ Losses in furniture and clothing offered a maximum 50,000 Fmk payment.⁴⁷⁶ Everyone entitled to an indemnity received 10,000 Fmk cash, and the remainder in two types of bonds with different terms and interest rates.⁴⁷⁷

To pay the bonds, a capital levy was enacted by Finland on August 9, 1940, and the bonds were to be paid semi-annually over five years.⁴⁷⁸ The levy was set at 2.5% of property value, up to 40,000 Fmk, with an increasing scale capping at 15% for individuals owning 6.4 million Fmk or more and 20% for legal entities owning 50 million Fmk or more.⁴⁷⁹ If paid in a lump sum, the total amount would be reduced by 13.5%.⁴⁸⁰ The law never went into full effect because by 1941, a new war with Russia had begun and the Karelians began returning to the now-abandoned Karelia.⁴⁸¹ The few Russians who had moved there had been evacuated quickly, leaving most buildings intact and, in some cases, crops in the field.⁴⁸² Since most land was returned to its original owners, only the payments for war damages remained to be settled.⁴⁸³

When the Karelians were forced to abandon their lands again in 1944, the process was smoother, as a larger share of the population was self-dependent when compared to the 1940 evacuation.⁴⁸⁴ Most evacuees did not want to be transferred to a colder region of the country, so resettlement

⁴⁷¹ *Id.*

⁴⁷² *Id.* at 27.

⁴⁷³ *Id.*

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.* at 27–28.

⁴⁸⁰ *Id.* at 28.

⁴⁸¹ *Id.* at 18.

⁴⁸² *Id.*

⁴⁸³ *See id.* at 30 tbl.6.

⁴⁸⁴ *Id.* at 12.

was mostly limited to the densely populated South.⁴⁸⁵ However, this did cause some tension with the Swedish-speaking minority communities who feared for the legal protections of their communities because of the large waves of Finnish people arriving.⁴⁸⁶ Only evacuees who had been wholly or mainly dependent on agriculture were entitled to land, whereas those who had lost their dwellings were entitled only to replacement.⁴⁸⁷ The average size of a new farm was fifteen hectares of arable land in addition to wood for household use.⁴⁸⁸ Those with supplemental work were entitled to six hectares of arable land when the farm was located within a good market for agricultural goods, and supplemental work was available nearby.⁴⁸⁹

The land was taken through a similar process to that which occurred under the 1940 laws. Property was taken following the same order; first from the state, followed by the municipality, church, neglected personal property, land held for speculation, farmland not used for agriculture, and land held by corporations or associations.⁴⁹⁰ If more land was needed after those sources were exhausted, large estates would be divided.⁴⁹¹ However, the local committees in charge of implementation were given wide authority and often took land from the large estates before the first category was exhausted.⁴⁹² The program included groups other than evacuees, but the evacuees were given preference.⁴⁹³ During the first year, from mid-1945 to mid-1946, 34% of the land was taken from the state and municipalities, 39% from the first category of private landowners, and 27% from large estates.⁴⁹⁴ Land had to be sequestered from the large estates only about 40% of the time, but the threat of sequestration impacted the “voluntariness” of the sales.⁴⁹⁵ The state had a sliding scale for the maximum percent of land subject to forced sale, with just 10% of estates between twenty-five and thirty-five hectares to 75% of estates over 800 hectares.⁴⁹⁶ After the Tenant Farmers Act of 1918 and the Resettlement Act of 1940, there were very few

⁴⁸⁵ *Id.* at 13.

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.* at 19.

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.* at 19–20.

⁴⁹¹ *Id.* at 20.

⁴⁹² *Id.*

⁴⁹³ *Id.* at 21.

⁴⁹⁴ *Id.* at 21–22.

⁴⁹⁵ *Id.* at 22.

⁴⁹⁶ *Id.* (showing charts indicating forced sales and sources of land for redistribution).

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large estates left in Finland.⁴⁹⁷ By the end of 1950, 99% of the evacuees were working in agriculture or other occupations.

The owners of the sequestered land were paid in 1944 prices which, because of the inflation between 1945 and 1947, were set at only about one-third of market value.⁴⁹⁸ Indemnities used to purchase the land were also set at 1944 prices, as well as the price of the new farms for plots.⁴⁹⁹ When evacuees chose to receive their indemnities in bonds, however, the amount was increased according to inflation.⁵⁰⁰

The indemnity set up was like the one employed in 1940. The categories remained the same because most purchases and buildings erected had been lost when Karelia was again handed over to the Soviet Union.⁵⁰¹ This loss, however, was more difficult for Finland, as they were required to pay reparations of some \$300 million at 1938 prices.⁵⁰² This placed a massive burden on the state, which was concerned about the growing popularity of the Communist Party.⁵⁰³ The indemnities offered were arranged similarly, but due to these budget concerns, the payments were graded more sharply.⁵⁰⁴ Claims had to be filed by the end of 1945 to be paid in 1944 wholesale prices.⁵⁰⁵ Claims up to 20,000 Fmk were paid in cash, the next 200,000 Fmk were paid in 4% state bonds payable over ten years, with an adjustment for interest payments to avoid interest being paid on a sliding scale.⁵⁰⁶ Claims over 220,000 Fmk were paid half in bonds and half in shares in a holding company and payments maxed out at 3 million Fmk.⁵⁰⁷ The bonds and the holding company stock was listed on the stock exchange and increased in value rapidly.⁵⁰⁸

A new capital levy was implemented on May 5, 1945.⁵⁰⁹ All property owners had to pay for rehabilitation of the refugees, but landowners had to sell land at pre-inflation prices, which meant a loss of about half its value in

⁴⁹⁷ *Id.*

⁴⁹⁸ *Id.* at 24.

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.* at 31.

⁵⁰² *Id.*

⁵⁰³ *Id.*

⁵⁰⁴ *Id.* at 32 tbl.8.

⁵⁰⁵ *Id.* at 31.

⁵⁰⁶ *Id.* at 32.

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.* at 33.

⁵⁰⁹ *Id.* at 34.

addition to the capital transfer tax others had to pay.⁵¹⁰ Under the 1945 law, property was reassessed each year so that the amount to be paid increased as inflation developed.⁵¹¹ Corporations with more than 10 million Fmk in capital shares paid their tax in a lump sum.⁵¹² The new device of the Holding Company was introduced through a special law.⁵¹³ Corporations with more than 10 million Fmk were required to issue stock shares equivalent to “20% of the worth of their property in 1944 . . . [and] to turn these over to the holding company.”⁵¹⁴ In turn, shares in the holding company were then distributed to evacuees.⁵¹⁵ Starting in 1947, corporations were required to buy back one-tenth of the shares they had issued to the holding company, thus providing capital for the holding company to redeem its own shares for the purpose of indemnifying the refugees for the losses they had incurred.⁵¹⁶ In this way the burden of providing relief to the refugees was borne by Finnish society as a whole.⁵¹⁷

D. FUNDING LAND REFORM AND INDUSTRIALIZATION: A CAPITAL LEVY IN SOUTH KOREA

Where most taxes on wealth are intended to raise money for extraordinary spending, the South Korean Land Reform Bill of 1950 sought to change property ownership in Korea from its historical, semi-feudal, tenant economy in order “to remove the factors of political instability.”⁵¹⁸ The withdrawal of the Japanese military following World War II resulted in a class of tenant farmers being abused by their wealthy landlords.⁵¹⁹ At the end of the war about 70% of farmers in South Korea were tenant farmers, some paying over half of their overall crop to aristocratic landlords.⁵²⁰ The American occupiers and the newly installed government, like their counterparts in Japan and Europe, feared the growing threat of the Soviet

⁵¹⁰ *Id.* at 35.

⁵¹¹ *Id.*

⁵¹² *Id.* tbl.9.

⁵¹³ *Id.* at 36.

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ *Id.* at 36–37.

⁵¹⁸ ROBERT MORROW & KENNETH H. SHERPER, U.S. AGENCY INT’L DEV. SPRING REV., LAND REFORM IN SOUTH KOREA 25 (1970).

⁵¹⁹ *Id.*

⁵²⁰ Ki Hyuk Pak, *Outcome of Land Reform in the Republic of Korea*, 38 J. FARM ECON. 1015, 1015 (1956).

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Union and its influence on the working classes.⁵²¹ Ending widespread tenant farming was believed to be necessary to curb class conflict and improve the nation as a whole. By pursuing this aggressive policy of land distribution, the U.S.-allied South Korean government sought to retain the support of the tenant class.⁵²² Reform was thus mandated by the new Korean constitution to improve the condition of the farmers and increase overall agricultural productivity.⁵²³

In addition, the program sought to benefit both the agricultural and industrial economies by the transfer of and compensation for land.⁵²⁴ A farmer who merely rented the land had little incentive to invest his savings in its improvement. More productive land would likely only be met with increased rent. By giving the tenant direct ownership, clear incentives for land improvement would be created.⁵²⁵ Ideally, this would result in an overall increase in nationwide agricultural output. By compensating former landlords for the loss of their tenants, the Korean government hoped that the new capital would be invested in the industrial sphere.⁵²⁶ In this way, the agricultural and industrial sectors would see “[a] balanced economic growth.”⁵²⁷

The Agricultural Land Reform Amendment Act (“ALRAA”) was passed in March of 1950 and contained three main features.⁵²⁸ First, owners of agricultural land were required to cultivate the land themselves.⁵²⁹ Second, the amount of land a single person could own was “three *jungbo*⁵³⁰ of land at maximum.”⁵³¹ Third, tenancy and land-renting activities of agricultural land were permanently prohibited.⁵³² The Land Reform Act itself was relatively simple. After completing a nationwide survey of agricultural land in June 1949, land was purchased from the landlords with

⁵²¹ See MORROW & SHERPER, *supra* note 518, at 25.

⁵²² See *id.*

⁵²³ Pak, *supra* note 520, at 1015.

⁵²⁴ MORROW & SHERPER, *supra* note 518, at 25–26.

⁵²⁵ See *id.* at 26.

⁵²⁶ *Id.*

⁵²⁷ *Id.*

⁵²⁸ See Richard Cho, *The Korean Advancement*, ARCGIS STORYMAPS (Apr. 8, 2021), <https://storymaps.arcgis.com/stories/7a171d963f5c494c8115f4547866e094>.

⁵²⁹ Yoong-Deok Jeon & Young-Yong Kim, *Land Reform, Income Redistribution, and Agricultural Production in Korea*, 48 *ECON. DEV. & CULTURAL CHANGE* 253, 254 (2000).

⁵³⁰ A *jungbo* is equal to .992 hectares or approximately 2.45 acres of land. Cho, *supra* note 528.

⁵³¹ Jeon & Kim, *supra* note 529, at 254 (emphasis in original).

⁵³² *Id.*

redeemable bonds and sold back to the cultivating tenants.⁵³³ The “survey” was completed in less than a year as the size and value of most pieces of land were taken from the records of the Japanese colonial government.⁵³⁴ The final price of the land was determined by the average of the land’s annual crop yields discounted by 40% to account for decreases in productivity since the Japanese occupation.⁵³⁵

Those selected to receive land under the program were chosen following a specific order of priority.⁵³⁶ The first to receive land were those who were cultivating it at the time the law was enacted.⁵³⁷ They were followed by holders of small land plots, then “bereaved families of patriots” with agricultural experience.⁵³⁸ In practice, the vast majority of land ended up simply being given to those who were currently working it.⁵³⁹ The new freeholders themselves paid for the land with a percentage of the “annual crop yield[].”⁵⁴⁰ In just the first two years, a total of 331,766 hectares of farmland, which accounted for 918,548 households, was redistributed.⁵⁴¹ Generally, redistribution of land was completed by the 1960s, and most “of the compensation for landlords was completed by the end of 1961.”⁵⁴² The final bond payment took place in 1969, about twenty years after the land reform process began.⁵⁴³

Perhaps the largest difference between the Korean experience and other countries surveyed was the immediate influence of the Cold War. The nationwide survey of landholdings for redistribution began in mid-1949 with the official budget being passed on April 27, 1950.⁵⁴⁴ Less than two months later, the North Korean army invaded the South, beginning the Korean War.⁵⁴⁵ However, the loss of the capital city of Seoul forced a postponement of the program that only lasted until its recovery in

⁵³³ *Id.*

⁵³⁴ See MORROW & SHERPER, *supra* note 518, at 27.

⁵³⁵ See *id.* at 28.

⁵³⁶ Yong-Ha Shin, *Land Reform in Korea, 1950*, 5 BULL. POPULATION & DEV. STUD. CTR. 14, 21 (1976).

⁵³⁷ *Id.*

⁵³⁸ *Id.*

⁵³⁹ *Id.* at 22 (“In practice, since average scale of operation of tenant-farmers was very small, the ownership right was transferred, in most cases, to the tenant-farmer who was actually cultivating the land.”).

⁵⁴⁰ Jeon & Kim, *supra* note 529, at 254.

⁵⁴¹ MORROW & SHERPER, *supra* note 518, at 29.

⁵⁴² Jeon & Kim, *supra* note 529, at 254.

⁵⁴³ MORROW & SHERPER, *supra* note 518, at 30.

⁵⁴⁴ *Id.* at 27.

⁵⁴⁵ See *id.* at 28.

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September of 1950.⁵⁴⁶ The program was carried out nonstop during the conflict and may have affected the outcome.⁵⁴⁷ Buyers of the redistributed land were required to pay the government back, with “foodgrains [accepted] as repayment in kind for land throughout the nation.”⁵⁴⁸ “As of February 1952,” repayment from the new landowners “amounted to 1,158,780 metric tons of unhulled rice[,]” a time when the new Korean government was fighting for its life against the North Korean military.⁵⁴⁹

The Korean land reform program resulted in the redistribution, in total, of 577,000 hectares, “about one-third of all arable farmland.”⁵⁵⁰ The number of freeholding farmers (“owner-cultivating households”) increased from 349,000 in 1949 to 1,812,000 in 1950, with farm tenancy becoming virtually nonexistent.⁵⁵¹ The nation benefited from the sale of the land, with the bulk of repayments being made by 1960.⁵⁵² Rice production on the redistributed land increased, and “the difference between the market price and the regulated price of rice was transferred from landlords to tenants.”⁵⁵³ While successful in terms of its political objectives, it was less so from the perspective of many beneficiaries. Despite requiring freeholders to make payments on their new land with every harvest, the government failed to set up adequate systems of credit for improvement of the land.⁵⁵⁴ It became common for the new owners to seek private loans, quickly falling into unpayable debt, and being forced to resell their newly acquired lands to more successful freeholders.⁵⁵⁵

“[F]arms larger than medium size could get some operating capital from local financial associations, small farmers generally were not able to get operating loans.”⁵⁵⁶ The other half of the program’s economic goals—reinvestment by the former landlords into the industrial sector—also largely failed to take hold.⁵⁵⁷ While the outbreak of the war was surely one cause, the overall low level of compensation, about one-third of the 1936 market

⁵⁴⁶ *Id.*

⁵⁴⁷ *See id.*

⁵⁴⁸ *Id.* at 28–29.

⁵⁴⁹ *Id.* at 29.

⁵⁵⁰ *Id.* at 30.

⁵⁵¹ Jeon & Kim, *supra* note 529, at 255.

⁵⁵² *Id.* at 258–59.

⁵⁵³ *Id.* at 259.

⁵⁵⁴ MORROW & SHERPER, *supra* note 518, at 32.

⁵⁵⁵ *See id.* at 42 (“It is apparent that an adequate credit program would have helped avoid many distress land sales.”); *see also* Pak, *supra* note 520, at 1017.

⁵⁵⁶ *See* Pak, *supra* note 520, at 1017.

⁵⁵⁷ *See* MORROW & SHERPER, *supra* note 518, at 43–44.

value payable over five years, meant that there was not much left for landlords to invest with even if they were inclined to do so.⁵⁵⁸ As a result, more than half of the former landlords were bankrupt by 1956.⁵⁵⁹ However, a few very large landlords were “exceptionally successful in transforming themselves into industrial capitalists.”⁵⁶⁰ It is this relationship between land reform and the transformation of rural capital into industrial capital that is credited with the economic development of South Korea.⁵⁶¹

V. LESSONS TO BE LEARNED IN PROPOSING A SOCIAL SOLIDARY TAX

How may we use the comparative experience of wealth taxes over the last century to best design a tax that addresses both the problem of inequality and democracy while also addressing the concerns of those who argue that wealth taxes are not effective? Comparing the experience of the annual net wealth taxes with those situations in which a significant capital levy was imposed demonstrates that the once-off capital levy is significantly more effective in both raising revenue, breaking concentrations of wealth, and promoting democratic goals. There is, however, the important caveat that significant capital levies have only been imposed in circumstances in which the political opposition to such an intervention is either covered by a crisis or a foreign force, as in the case of Allied occupations in Japan and West Germany or the presence of U.S. forces in Korea. Lacking such circumstances, the only means of securing a significant capital levy, even if there is real democratic support, will be for billionaires and the very wealthy to accept that solidarity in the face of social and economic catastrophe will be the best means of maintaining their futures as well as the community more broadly. COVID-19 and the threat of climate change may fortunately or unfortunately, like the collapse of the Icelandic economy in 2010, provide such a circumstance.

If this is the case, what are the modalities of a social solidarity tax that will produce an effective capital tax—one that can be used for the reconstruction of the physical and social infrastructure and economy, and that is necessary to get beyond the COVID-19 pandemic and climate change crisis? From a review of the comparative historical cases, there seems to be six crucial design elements. First, any social solidarity tax will need to define the tax base to include all forms of wealth measured globally, in the

⁵⁵⁸ *Id.*

⁵⁵⁹ See Pak, *supra* note 520, at 1021.

⁵⁶⁰ Shin, *supra* note 536, at 26.

⁵⁶¹ Cho, *supra* note 528.

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same way the present U.S. tax system includes all income, whether domestic or from outside the borders of the country. Second, while the social solidarity tax should set a high exclusion amount (for example, over fifty million dollars), it should not create categorical exclusions as to forms of wealth. Third, when it comes to valuation, the great benefit of the once-off capital levy is that there is no need to conduct continuing processes of evaluation since the law can designate a date—for example, January 1 of 2020 or the year of COVID—and use the market value as of that date. To ensure honesty and prevent the hiding of wealth, there are two interesting legal mechanisms that can be utilized from past experiences. One is that any property not declared, if subsequently discovered, would be forfeited to the state. The other is that if the owner of property declares a value that is later discovered to be significantly below market value, the state would be free to purchase the property at the declared value.

Fourth, to ensure the two central goals of the social solidarity tax, the creation of a significant revenue stream and the liberating of democratic politics from the influence of wealth, the tax rate will also need to be high. In the case of the German *lastenausgleich*, it was set at 50%, while in Japan the rate was set in relation to overall wealth and reached as high as 90% for the top bracket. In Finland, where the tax was indeed an act of solidarity, it was set at 40%. Under present conditions of extreme inequality, it seems that a graduated scale would be most effective since the top 0.001% now hold extreme amounts of wealth and concomitant power. Fifth, another benefit of applying a once-off capital levy for the social solidarity tax, compared to using an annual net wealth tax, is that there is little opportunity for either tax avoidance or evasion. Capital flight is less likely in a situation in which the amount owed has already been defined, and the only question is how it will be collected. Some economists have argued that the threat of repeated once-off capital levies will mean that there is a decline in savings, and thus, a threat to future economic prosperity; however, there is little evidence of this in the historical record.

Finally, any design of a social solidarity tax will need to consider whether the revenue generated will simply flow into government coffers or whether it will be effectively earmarked for specific needs.⁵⁶² Whether through Senator Bernie Sanders' 2020 Healthcare for All plan to address COVID-19, or for the creation of a sovereign wealth fund limited to funding specific social needs (including education, health, low-income housing,

⁵⁶² For a discussion on the earmarking of taxes, see generally Susannah Camic, *Earmarking: The Potential Benefits*, 4 PITT. TAX. REV. 55 (2006); Susannah Camic Tahk, *Making Impossible Tax Reform Possible*, 81 FORDHAM L. REV. 2683 (2013).

reparations for past discrimination), a social solidarity tax must designate how these resources will be allocated. Regardless of whether they should be used as no interest loans or grants, all options must be considered. While treasury departments across the globe argue that earmarking limits government expenditure choices and are thus to some degree undemocratic, it is important to consider two aspects of this debate. On the one hand, the social solidarity tax will not be the only source of government funding since it will not replace regular forms of taxation that need to be progressive to prevent a reoccurrence of the gross inequalities the social solidarity tax is designed, in part, to address. To this extent, regular government expenditures will remain subject to regular democratic and constitutional procedures. On the other hand, the legitimacy of a social solidarity tax and the renewed social compact it seeks to establish rests on the fact that expenditures will address the social and economic conditions that justified the imposition of the tax in the first place.

VI. CONCLUSION

In the United States, the combined effects of the COVID-19 pandemic and an already skewed economy are driving the debate over a wealth tax. The debate, among those who accept the need for a wealth tax, seems to be on either raising funds for a dedicated purpose, as in Senator Sanders' proposal for a health care tax, or for an annual wealth tax as proposed by Senator Warren. Political support for a wealth tax remains limited at this time, not only among those who oppose any tax increases but also among many centrists in both political parties in Congress. The goal of this paper, however, is to inform the debates amongst those who see the need to both fund government and to protect our democracy from oligarchic power. It is for this purpose that we can most usefully look to the comparative historical experience of the twentieth century so that we can make informed decisions about the likely consequences of adopting different forms of wealth taxes. This record also allows us to distinguish between wealth taxes and alternative tax strategies, such as inheritance taxes, regular property taxes or other means of taxing wealth. This is particularly important in understanding the different goals a wealth tax might address, including the revitalization of democracy.

While there is no doubt that economic inequality and other challenges, especially from climate change, will continue to build political pressure to raise government expenditures, this need will eventually require the state to raise tax revenues to pay for these expenditures. At the same time, the challenges to American democracy and the relationship between our democratic deficits and the unequal power that wealth brings means that we

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need a wealth tax that not only raises revenue, but also addresses the inequality undermining democratic institutions. To do so, a wealth tax will need to target the emerging oligarchy, the 0.001% of the population that is able to transform its economic power directly into political power. So long as a small group of individuals has nearly unlimited capacity to finance political activity, whether through political campaigns, political action committees, or by more long-term strategies of funding civil society organizations designed to advance their specific perspectives, our democracy will be compromised. This has produced a real deficit in the political process in which the voices of many are easily drowned out by the views of a small minority.

The comparative history and the existing economic and political crisis suggests that a new social compact, in the form of a social solidarity tax, could provide a path to addressing the coming challenges. These challenges cannot be addressed with increased revenue alone since the allocation of these additional resources will require a reinvigorated democratic process to ensure these problems are in fact addressed. A social solidarity tax holds the promise of both raising the resources needed and of balancing the political process to ensure that there is greater legitimacy and trust in the necessary government interventions.

If we consider the comparative historical experience with wealth taxes, it seems clear that more attention needs to be paid to the possibility of adopting a capital levy or once-off wealth tax, which will provide the best chance of addressing the combined challenge of economic inequality and democratic deficit. A social solidarity tax, with rates of between 20% and 50% of wealth, on a range upwards from \$50 million, and based on assets measured as of the end of the 2020 tax year would represent a symbolic and real social commitment from those who have not suffered significantly from the impacts of the COVID-economy. As far as implementation is concerned, this proposal will ensure that there is no need to engage in repeated evaluations of wealth, nor will there be enough time for those who wish to disperse or hide their assets. Once the tax is levied on a particular tax entity, whether individual or corporate, there would be adequate time to negotiate both the modality and timing of payments, whether in the form of cash or shares in the sources of wealth held by the entity. Payment over time could also be negotiated, as it was in the German case; however, the need to pay interest on the amount owed will encourage a swift resolution of the tax debt. Finally, introducing an option for the government to either purchase undervalued properties at the declared value or to confiscate hidden resources once discovered should limit the willingness of some to engage in tax avoidance. While there will be many administrative and other

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details to consider, the need for a social solidarity tax and the benefits it promises will surely bring it to the forefront in coming debates over how to address the social, political, and economic crises facing the nation.