

THE EPOCH TIMES

AMERICAN CROSSROADS

A student at the Wyoming Seminary leafs through a reference volume in the library, circa 1955.

SOCIALISTS USED PUBLIC SCHOOLS TO DESTROY LITERACY IN AMERICA

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Elizabeth Warren's Wealth Tax Proposal Is Unconstitutional—and Why You Shouldn't Believe Law Professors' Claims to the Contrary

ROB NATELSON



Commentary
Democratic presidential candidate Sen. Elizabeth Warren's (D-Mass.) proposal for a federal wealth tax is flatly unconstitutional. This is despite two letters of support from 17 law professors, who apparently signed their names without fully investigating the subject.

The Constitution distinguishes between direct and indirect taxes. Indirect taxes must be uniform throughout the country. Congress must impose the same tax rates on citizens of all states.

But Congress must draft direct tax laws so their revenue is "apportioned" among states by population. Because wealth varies among the states, federal direct tax statutes must feature different rate schedules for each state. The 16th Amendment waived that requirement for income taxes, but not for other direct levies.

Warren's proposed wealth tax is a classic example of a direct tax. However, it would impose the same rates everywhere without regard to state boundaries, thereby violating the Constitution's "apportionment" mandate.

Why, then, would law professors sign letters certifying that her proposal is constitutional?

Taxation Myths

It's clear from their letters that the signers largely accept two myths about the Constitution's taxation clauses: (1) the founders didn't understand the difference between direct and indirect taxes; and (2) almost the only direct taxes are head taxes (which the Constitution calls "Capitations") and levies on real estate.

The first conclusion is commonly based on an incident at the Constitutional Convention. According to James Madison, Massachusetts delegate Rufus King asked the precise meaning of "direct taxation," and no one answered him.

But this silence didn't necessarily stem from ignorance, and Madison never says it did. Ignorance would be unlikely, because the founding-era

record shows very wide agreement on the differences between direct and indirect taxes.

References to direct and indirect taxes appear in founding-era newspapers and pamphlets, government documents, economics treatises, the debates over the Constitution's ratification, and British and American statutes.

The direct/indirect distinction was central to 18th-century tax statutes. Indirect tax statutes placed "duties" on certain luxury items, such as carriages, and on discrete events. The principal "duties" were levies on imports and exports, domestic excises (essentially sales taxes), and charges on legal transactions, such as Parliament's notorious 1765 Stamp Act.

In addition to indirect tax laws, most jurisdictions enacted separate statutes imposing direct tax schemes. People sometimes referred to a scheme of direct levies as "the land tax." That label may have confused some modern readers into thinking direct taxes were primarily those laid on real estate. In fact, direct tax or "land tax" statutes usually were levied on much more than land.

Specifically, these statutes typically imposed levies on some or all of the following: annuities, loan proceeds, and other income; livestock, tools, machinery, and other business property; listed trades and occupations ("faculties"); household items—and wealth. Direct tax statutes frequently required that revenue be apportioned among local governments, such as towns and counties.

The record of the constitutional debates shows a keen understanding of these facts. For example, John Marshall, the future chief justice, noted at the Virginia ratifying convention, "The objects of direct taxes are well understood," and then proceeded to enumerate several of them.

Oliver Ellsworth, a Constitutional Convention delegate and another future chief justice, emphasized the distinction when promoting the Constitution in Connecticut. Many of the Constitution's opponents also discussed the distinction between direct and indirect impositions.

The founding generation noted the vast number of items subject to direct

taxes. They addressed how direct taxes caused hardship and how politicians might use them to target unpopular minorities—just as Warren is seeking to do. Many argued that Congress shouldn't have the power to impose direct taxes at all. Ultimately, the framers added that power because it might be necessary to fund wartime revenue needs.

As noted above, apportionment among smaller units of government was common. That fact encouraged the Constitution's framers to require that federal direct taxes be apportioned among the states. They also hoped apportionment would protect minorities from being plundered by a ruling coalition. Further, the complexity of apportionment would discourage Congress from adopting direct levies when indirect ones were sufficient. (Some writers add that apportionment was designed partly to punish or accommodate slavery, but there is little evidence for this.)

Facts and Politics
The facts about direct and indirect taxes are now readily available. They are laid out in a series of studies published over the past two decades, including one I authored. So why would 17 law professors sign letters claiming wealth taxes are indirect?

Some people are tempted by political considerations—and in my long academic career, I learned that many law professors are among them. The fact that many of America's law schools are one-sided political hothouses further encourages leftist passion at the expense of curiosity and care.

When you are passionate, you prefer to expound before you investigate, and apparently, that occurred in this instance. The law professors' letters show no familiarity with any of the major studies of the Constitution's financial provisions. To the extent they contain any analysis, the letters merely extrapolate from some Supreme Court cases issued before those studies were published.

Even the treatment of the cases is flawed. For example, one letter deduces that wealth taxes are indirect from the Supreme Court's holding that estate taxes are indirect. But wealth and estate taxes are different, and a

primary factor behind the court's estate tax conclusion is missing from wealth taxes.

One of the two letters does cite a short, recent article defending the constitutionality of wealth taxes. But that article largely ignores the founding-era record, other than to repeat the discredited claim that the meaning of direct tax "was unclear to the Framers themselves."

My experience in legal academia taught me that most law professors don't perform high-quality constitutional analysis. The political bias prevailing on law faculties discourages independent thinking. Moreover, most law professors don't have the necessary skills: Most are hired with little experience beyond law school and are ignorant of historical method, and of the language, customs, ideas, and jurisprudence of the founding era.

Not surprisingly, they have produced a great deal of nonsense. I have written elsewhere about how law professors promulgated misinformation about the Constitution's amendment process and many other constitutional provisions—and even about such non-political topics such as the origins of condominium ownership. Their pronouncements about Warren's wealth tax comprise yet another example.

Whatever the Supreme Court has said in the past, the evidence is now compelling that wealth taxes are "direct" as the Constitution uses the term. Today's Supreme Court justices all show considerable respect for the Constitution's original meaning. Before this court, Warren's wealth tax would be unlikely to survive.

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Views expressed in this article are the opinions of the author and do not necessarily reflect the views of The Epoch Times.

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Hoeseung Lee (C), chair of the Intergovernmental Panel for Climate Change, speaks during a press conference at Songdo Convensia in Incheon, South Korea, on Oct. 8, 2018.

Climate Change: Who Are the Ideologues?

MARK HENDRICKSON



Commentary
Disagreements often lead to insults.

When I was a kid, when one of us thought another was "all wet" (wrong), the favored insult was, "Your mother wears army boots."

Silly, wasn't it?

The equivalent barb for adult (not necessarily grown-up) intellectuals is to call someone with whom they disagree an "ideologue." While ideologue has a non-emotive meaning ("a person who believes very strongly in particular principles"), when used as an epithet, it's an insult. It brands one's opponent as dogmatic, impervious to reason, closed-minded, and unwilling to reconsider one's beliefs in light of facts and evidence.

The United Nations' most famous climate change bureaucracy, the Intergovernmental Panel on Climate Change (IPCC), and its media allies deride and denounce dissenters from their official orthodoxy as "ideologues." But is it possible that the IPCC clique includes its share of ideologues? Let's see.

Climate Models and Flawed Predictions

First, consider climate change models. There's a methodological split, if not an ideological schism, here. The IPCC and journalists who predict climate-related catastrophes cite climate change computer models. I don't know the current count of such models, but a few years ago, there were 102.

Those models share a common problem: When scientists back-test those models by entering known data from recent decades, it turns out that actual global temperature rises far more slowly than the models say it should. (The one model that predicts the least warming is a Russian model, in which CO2 is modeled to have much less influence on temperature than the other models assign to it.)

By contrast, the many scientists who for years have been disputing the models' dire predictions, joined over the past few months by Belgian, Japanese, Finnish, Dutch (representing 500 scientists), and Italian scientists (more than 90 of them), denounce the computer models for gross arbitrariness, the neglect of critical factors, and sheer uselessness. These scientists rely on hard data—actual measurements.

So, who are the ideologues—the scientists who cite facts and real-world evidence, or the scientists who insist that we base our public policies on models that aren't validated by observed facts?

Second, look at the track record of those predicting climate catastrophes. Such alarming predictions have been

They're force-feeding us a green version of Mao's 'Little Red Book.'

going on for the past 50 years. Dozens of supposed deadlines have passed without one of the catastrophist predictions yet coming close to happening.

One IPCC report unequivocally stated that "long-term prediction of future climate states is not possible" because "the climate system is a coupled non-linear chaotic system."

The Competitive Enterprise Institute gathered more than 30 news reports of egregiously failed predictions in past years. It's sobering to see how "the most advanced scientific knowledge" repeatedly led to spectacularly wrong predictions—predictions that weren't even in the ballpark. See also Mark J. Perry's "18 Spectacularly Wrong Predictions ...". Well, as I've written before, nobody is an expert about the future.

Again, though, this raises the question: Who are the ideologues? Is it those who have repeatedly been spectacularly wrong, but who insist that this time they're so right that anyone who disagrees with their speculative conclusions is a denier of reality? Or is it those who look at the comically awful track record of environmentalist predictions and conclude that some skepticism is warranted?

Pre-Selected Agenda

If an "ideologue" is someone who pursues a pre-selected agenda under false pretenses, then consider the following statements by some of the powerful climate change movers and shakers:

Ottmar Edenhofer, an IPCC senior official, said in 2010: "One has to free oneself from the illusion that international climate policy is environmental policy. ... [One] must say clearly that we redistribute de facto the world's wealth by climate policy."

Christine Stewart, former Canadian minister of the environment, said in 1988: "No matter if the science of global warming is all phony ... climate change [provides] the greatest opportunity to bring about justice and equality in the world."

Christiana Figueres, executive secretary of the United Nations Framework Convention on Climate Change, said in 2015: "[We] are setting ourselves the task of intentionally ... [changing] the economic development model that has been reigning for at least 150 years ..."

Saikat Chakrabarti, Rep. Alexandria Ocasio Cortez's (D-N.Y.) then-chief of staff, said in May 2019: "The interesting thing about the Green New Deal is it wasn't originally a climate thing at all. ... [We] really think of it as a how-do-you-change-the-entire-economy thing."

The March 2009 U.N. Global Green New Deal report stated: "We must not miss this chance to fundamentally shift the trajectory of human civilization."

Despite the obvious priority that key players in the climate change movement place on political and economic

objectives over scientific concerns, fellow-traveling journalists have insisted vehemently that "deniers" must not only concede a need for a massive top-down restructuring of nations' economies, but also accept as indisputable truth the unproven "scientific" theories and opinions adopted by the IPCC.

This reeks of totalitarianism. They want everyone to submit to the elite's grand plans and dutifully and unquestioningly recite their official catechism. They demand that we think what they tell us to think. They're force-feeding us a green version of Mao's "Little Red Book."

Indeed, the quasi-religious totalitarian nature of the IPCC's official party line is that there is now a movement encouraging citizens to "confess" to climate sins. When will the show trials begin?

Leftist ideology is the only reasonable explanation for why the IPCC repeatedly criticizes the United States while treating the People's Republic of China with kid gloves.

By way of comparison, the United States has about the same amount of CO2 emissions today as five years ago and a capacity of 107.1 gigawatts of energy from CO2-heavy coal, while China has, since 2011, burned more coal than the rest of the world combined and has current plans to increase its coal-based energy output domestically by more than 20 percent, while also "building hundreds of coal-fired power plants in other countries," according to NPR.

How ironic—no, cynical—that the Chinese regime had the brazenness to tell September's U.N. climate change summit that they are "entitled" to monetary support for addressing climate change.

The evidence that a leftist political ideology permeates the climate change movement is abundant. While the ability to forecast future climate conditions will continue to elude us (as the IPCC has stated), it's safe to predict that life for the common man will take a radical turn for the worse if the peoples of the world let political elites amass the power they crave to restructure economies and redesign human society.

Power-hungry elitist ideologues pose a clear and present danger to human beings.

Mark Hendrickson, an economist, recently retired from the faculty of Grove City College, where he remains a fellow for economic and social policy at the Institute for Faith and Freedom.

Views expressed in this article are the opinions of the author and do not necessarily reflect the views of The Epoch Times.



Democratic presidential candidate, Sen. Elizabeth Warren (D-MA) addresses a crowd outside of the Francis Marion University Performing Arts Center in Florence, S.C., on Oct. 26, 2019.

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Stephen Gregory
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