THE RETURN OF DEREGULATION AND TRICKLE-DOWN ECONOMICS IN THE AGE OF TRUMP: WHY THE EFFICIENT MARKET HYPOTHESIS REFUSES TO DIE AND THE IMPLICATIONS FOR U.S. ECONOMIC POLICY AT LARGE

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Abstract

The 2008 market collapse created economic devastation not seen in the United States since the Great Depression. More than a decade later, the reappearance of a fiscal agenda rooted in deregulation and trickle-down economics risks a return to the boom and bust cycles that have unfailingly wrought great economic pain on the American people. The ever-increasing inequality gap between the rich and poor is particularly concerning.

I. Introduction

As more than a decade has passed since the height of the 2008 financial crisis, it seems many of the prevailing views that dominated Wall Street before the market's collapse are beginning to return in vogue, most notably, deregulation and trickle-down economics. At the heart of the belief that massive regulation is what ails the U.S. economy, there seems to be a recurrence of the hyperbolic rhetoric that mirrors the prior peaks of the Efficient Market Hypothesis ("EMH") gone awry.[1] Believing that highly efficient markets are great for a country's economy is far different from believing in "perfectly rational" markets. Time and time again, this philosophy has proven to be correlated with the massive financial crises in the United States and around the world.[2] Underlying this phenomenon is the crux of the issue—a blanket faith in wholly rational markets almost always is accompanied by a deregulation

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1. JUSTIN FOX, THE MYTH OF THE RATIONAL MARKET: A HISTORY OF RISK, REWARD, AND DELUSION ON WALL STREET 41, 201, 230, 298 (2009).

2. *See* Joe Nocera, *Poking Holes in a Theory on Markets*, N.Y. TIMES (June 5, 2009), http://www.nytimes.com/2009/06/06/business/06nocera.html?scp=1&sq=efficient%20market&st=cse; *see generally* Jeremy Grantham, *Bracing Yourself for a Possible Near-Term Melt-Up (A Very Personal View)*, GMO (Jan. 3, 2018), https://www.gmo.com/docs/default-source/research-and-commentary/strategies/asset-allocation/viewpoints---bracing-yourself-for-a-possible-near-term-melt-up.pdf.

agenda, which inevitably leaves the system exposed to crony capitalism and massive short-term speculation.[3] All of the prior factors leave the United States prone to the devastation so often accompanied by boom and bust economic cycles.[4] These market busts, unfortunately, have profound effects on not only the economy at large, but particularly on the least fortunate among us.[5]

II. A History of Laissez-faire and Keynesian Economics Within the United States

A. Black Tuesday: The Stock Market Crash of 1929

To understand the possible downsides of an economy whose orthodoxy is predicated on deregulation, a good place to start is with the rise and fall of the stock market during the Roaring Twenties.[6] The prevailing economic view in the United States during the 1920's was that a "Laissez-faire" approach was the best available policy in order to deliver ever increasing long-term prosperity and wealth to the United States.[7] Laissez-faire economics are predicated on the idea that governments should avoid interfering in the workings of the free market.[8] Yet, the failures of taking Laissez-faire economic policy to illogical extremes is evident during a study of the history of boom and bust economic cycles, which often accompany this type of deregulatory method.[9] For example, during and leading up to the 1929 market crash, the Federal Reserve's failure to properly oversee the markets played an enormous role in causing the collapse.[10] Additionally, the rigid stance that markets should never be interfered with exacerbated the damage of the downturn and intensified the conditions that led to the Great Depression.[11]

B. From the Great Depression to World War II

By the time the market crashed in 1929, increasing regulation was no longer something that would have been able to stop the impending economic collapse.[12] Of course, this is not to say that enacting robust financial market regulation was not

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3. *See generally* FOX, *supra* note 1, at 256, 293.
4. *See generally* Raghuram Rajan, *Cycle Proof Regulation*, ECONOMIST (Apr. 8, 2009), https://www.economist.com/finance-and-economics/2009/04/08/cycle-proof-regulation.
5. Annie Lowrey, *The Great Recession is Still With Us*, ATLANTIC (Dec. 1, 2017), https://www.theatlantic.com/business/archive/2017/12/great-recession-still-with-us/547268/.
6. *See generally* Neely Tucker, 1920: *Cranking Up the Roaring Twenties*, WASH. POST (May 12, 2015), https://www.washingtonpost.com/news/arts-and-entertainment/wp/2015/05/12/1920-cranking-up-the-roaring-twenties/?utm_term=.627c5f124e5f.
7. *See generally* Brett McDonnell, *Don't Panic! Defending Cowardly Interventions During and After a Financial Crisis*, 116 PENN ST. L. REV. 217 (2011) (citing Keynes, The End of Laissez-Faire (1926), reprinted in Essays in Persuasion 312 (W.W. Norton & Co. 1963)).
8. THOMAS PIKETY, CAPITAL IN THE TWENTY-FIRST CENTURY 169 (2014).
9. *See* McDonnell, *supra* note 7.
10. MILTON FRIEDMAN & ANNA JACOBSON SCHWARTZ, A MONETARY POLICY OF THE UNITED STATES, 1867-1960 10–11 (1971); *see also Missing Milton Friedman,* ECONOMIST (July 22, 2011), *available at* https://www.economist.com/democracy-in-america/2011/07/22/missing-milton-friedman.
11. *See* FOX, *supra* note 1, at 31.
12. *See generally* Rajan, *supra* 4.

necessary for laying the foundation that is essential in creating a more stable economy. Rather, prior to focusing on the enactment of long-term structural reforms, the most pressing issue in the immediate aftermath of Black Tuesday was stabilizing the financial markets and the economy through intelligent monetary and fiscal policy.

Unfortunately, in its greatest test to date, the Federal Reserve concocted a porous response for how to strengthen and stabilize the financial markets.[13] Ironically, none other than the father of modern day free market ideology, Milton Friedman, claimed in his book, A MONETARY HISTORY OF THE UNITED STATES, that the Fed should have pumped more liquidity into the system in order to fight the deflationary pressures that were taking hold of the economy.[14] Students of the Great Depression, like the former head of the Federal Reserve, Ben Bernanke, demonstrate quite persuasively throughout their academic and professional careers that when deflationary conditions are present, a more "dovish" monetary policy is needed in order to spur investment and assist with providing liquidity.[15]

The other key economic tenet during deflationary times is for fiscal policy to adopt a Keynesian response.[16] Keynesian economics support the notion that when there are deflationary conditions in the economy leaving the private sector to run below its optimal production capacity, the federal government should inject into the economy a sufficiently large level of fiscal spending capable of priming the economy out of deflation and back towards stable economic conditions.[17] In this regard, President Herbert Hoover, who was in office from 1929–33, failed to enact the proper response, significantly contributing to the further erosion of the economy.

Hoover is often unjustly associated as being someone who supported severe austerity measures, which is proven inaccurate by the historical record,[18] even though the contradictions in his economic policy did add uncertainty and inconsistency at a time when stability was greatly needed.[19] For example, upon entering office, one of the first pieces of legislation President Hoover signed into law came in 1930 with the enactment of the Smoot-Hawley Tariff, which increased the cost of imports at a time when consumers could not afford an upsurge in any

13. FRIEDMAN & SCHWARZ, *supra* note 10.

14. *Id.*

15. BEN S. BERNANKE, THE COURAGE TO ACT: A MEMOIR OF A CRISIS AND ITS AFTERMATH, location 6001–08 (Kindle) (2015).

16. *See generally A Keynes For All Seasons*, ECONOMIST (Nov. 26, 2013), https://www.economist.com/free-exchange/2013/11/26/a-keynes-for-all-seasons.

17. BERNANKE, *supra* note 15.

18. Megan McArdle, *Hoover Was No Budget Cutter*, ATLANTIC (July 8, 2011), https://www.theatlantic.com/business/archive/2011/07/hoover-was-no-budget-cutter/241665/. Although Hoover is often associated as being part of the Laissez-faire, limited government mindset that predicated the era leading up to the market crash, the truth is actually more nuanced than common lore often suggests. During his presidency, Hoover actually increased government spending. *Id.*

> According to the historical tables of the Office of Management and Budget, spending in 1929 was $3.1 billion, up from $2.9 billion the year before. Furthermore, in 1930 it was $3.3 billion, followed by 3.6 billion in 1931 and 4.7 billion in 1932. As a percentage of GDP, spending rose from 3.4% in 1930 to 8% in 1933--an increase larger than the increase under FDR, though of course thankfully under FDR, the denominator (GDP) had stopped shrinking.

Id.

19. *See generally id.*

consumer goods.[20] This policy also contributed to a global trade freeze and led to an era of protectionism around the world that only intensified the downturn.[21]

Additionally, President Hoover passed the Revenue Act of 1932 to increase the top rate for income taxes on personal earners from twenty-five percent to sixty-three percent.[22] The goal of this plan was to increase revenue in order to balance the deficit. Instead, these actions combined with other policy missteps greatly contributed to intensifying the downturn of the economy.[23] Unfortunately, as Keynesian Economic policy predicted, using austerity measures during a deflationary period merely leads to lower growth and therefore, causes tax revenue to decrease even with higher tax rates.[24] While raising rates on the highest earners makes great sense in boom times as one of the best ways to raise revenue in a progressive manner without crimping economic growth, almost any tax during a shock as severe as the Great Depression is imprudent since it has a deflationary effect on economic growth at precisely the wrong time. These lessons are important since they offer a blueprint for how to fight severe shocks to the economic system.

Fortuitously in 1933, after the Hoover administration, President Franklin Delano Roosevelt introduced the New Deal to solve the ails of the depression. The New Deal was almost perfectly in line with what John Maynard Keynes was calling for at the time of the Depression.[25] Almost immediately upon entering office, FDR began implementing some of the most ambitious government projects in our nation's history. Within the first 100 days of the FDR administration, FDR teamed up with Congress and passed seventy-six bills into law.[26] Included in this legislative wave were major programs such as the Federal Emergency Relief Administration, The Civil Works Administration, and the Works Progress Administration.[27] These

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20. *See The Battle of Smoot-Hawley,* ECONOMIST (Dec. 18th, 2008), https://www.economist.com/node/12798595. The recent trade skirmishes between the United States, China, and other nations adds a new potential danger to the enduring health of the economy. Almost all economists believe trade wars risk chilling business investment, not to mention increasing the cost of consumer goods, which can be expected to occur if the protectionist policies being promised come to fruition. Even worse, there is also evidence illustrating how poor the timing of the backlash to globalization is from a U.S. perspective. *Id.*; *see also* Neil Irwin, *Globalization's Backlash is Here, At Just the Wrong Time*, N.Y. TIMES (Mar. 23, 2018), https://www.nytimes.com/2018/03/23/upshot/globalization-pain-and-promise-for-rich-nations.html?rref=collection%2Fbyline%2Fneilirwin&action=click&contentCollection=undefined&region=stream&module=stream_unit&version=latest&contentPlacement=5&pgtype=collection.

21. *See The Battle of Smoot-Hawley*, *supra* note 20; *see also* Tariff Act of 1930, 19 U.S.C. § 4 (1930).

22. Brian Domitrovic, *Panic Over the Deficit Put the Great in the Depression*, FORBES (Apr. 4, 2011), https://www.forbes.com/sites/briandomitrovic/2011/04/04/panic-over-the-deficit-put-the-great-in-the-depression/#36827d666d71; The Revenue Act of 1932, 26 U.S.C. § 1052 (1932).

23. *See generally* Larry Elliot, *Crash Course: What the Great Depression Reveals About Our Future*, GUARDIAN (Mar. 4, 2017), https://www.theguardian.com/society/2017/mar/04/crash-1929-wall-street-what-the-great-depression-reveals-about-our-future.

24. Paul Krugman, *Keynes was Right*, N.Y. TIMES (Dec. 29, 2011), http://www.nytimes.com/2011/12/30/opinion/keynes-was-right.html.

25. *Id.*

26. Julia Azari, *A President's First 100 Days Really do Matter but Don't Hold Trump to FDR's Standard*, FIVETHIRTYEIGHT (Jan. 17, 2017), https://fivethirtyeight.com/features/a-presidents-first-100-days-really-do-matter/.

27. Kenneth T. Walsh, *The First 100 Days: Franklin Roosevelt Pioneered the 100 Days Concept*, NEWSWEEK (Feb. 12, 2009), https://www.usnews.com/news/history/articles/2009/02/12/the-first-100-days-franklin-roosevelt-pioneered-the-100-day-concept.

projects vastly expanded the role of the federal government in providing work to people across the country that had been suffering through unemployment so high, that over 15 million people, equivalent to twenty percent of the entire U.S. population at the time, were without work.[28]

The early results that occurred over the course of FDR's first term provided evidence that well thought out government programs could provide a significant boost to the U.S. economy. From 1933 to 1937, the unemployment rate declined from a high of 24.9%, to just 14.3%.[29] Unfortunately, political pressure to reduce the debt led the Roosevelt administration to turn away from the Keynesian approach, which had proven so successful in reducing employment and spurring growth.[30] The results of this turn towards austerity were disastrous and instead, caused a double dip recession after the progress that had been made in the prior four years.[31] Auspiciously, FDR quickly began to reverse course in the face of weakening economic data by once again returning towards more expansionary government spending.[32]

While the bold actions of the New Deal provide potent support for the usefulness of Keynesian policies, by far the most powerful example that deficit spending can supercharge an economy suffering from deflation was U.S. spending during World War II.[33] Even though spending during the war caused the national debt to rise greatly, considering the unemployment rate reached a historic low of 1.6%, the increased spending was justified and more than offset by the economic boon it created.[34] The key takeaway is although keeping debt levels manageable is obviously important to the future health of a country, policy makers often overstate their significance in the short term.[35] Paradoxically, the decision to slash spending

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28. *See Great Depression*, HISTORY, http://www.history.com/topics/great-depression (last visited Aug. 1, 2019).

29. Kimberly Amadeo, *Unemployment Rate by Year Since 1929 Compared to Inflation and GDP*, THE BALANCE (Mar., 8, 2018), https://www.thebalance.com/unemployment-rate-by-year-3305506.

30. Krugman, *supra* note 24. To provide some additional context of just how staggering growth rebounded after the New Deal reforms had been given a little time to gain momentum, consider the GDP growth rates during Roosevelt's first term. After 1933, the recession technically ended with GDP growth of 10.8% in 1934, 8.9% in 1935, and a stunning 12.9% in 1936. *Id.*

31. *Id.*

32. PAUL KRUGMAN, END THIS DEPRESSION NOW! 38 (2012).

33. *Id.* at 38–39.

34. *Unemployment Under Presidencies Since Depression*, N.Y. TIMES (1982), https://www.nytimes.com/1982/10/09/us/unemployment-under-presidencies-since-depression.html.

35. KRUGMAN, *supra* note 32, at 131, 139, 140. Countries can maintain elevated deficits for much longer periods of time than commonly stated by many self-considered deficit experts. The false idea consistently peddled by many economists is predicated on the notion that interest rates will begin to spiral out of control in the face of ever-increasing deficits. Actually, the historical record is quite different. For one, both Japan and Great Britain have dealt with debt-to-GDP ratios far higher than any faced by the United States in its entire modern history. Japan has had a debt-to-GDP ratio over two hundred percent for much of the last decade and actually continues to suffer far more from deflationary pressures rather than the inflationary pressures falsely expected by so many politicians. These same politicians, like Paul Ryan and Mitch McConnell, repeatedly claimed deficits should be the top priority in the immediate aftermath of the Great Recession. However, considering that inflation since the 2008 crisis has consistently been below the Fed's two percent inflation mandate, it seems that precisely the antithesis of what deficit hawks actually predicted to occur over the last decade has taken place. For the sake of our economy moving forward, let us hope we do not follow this repeatedly flawed belief in the importance of deficits over all else. *Id.*; *see also* Scot Lehigh, *The GOP on Deficits, from Hawks to Doves*, BOSTON GLOBE (Oct. 19, 2017),

during deflationary times comes at the actual expense of what deficit hawks claim to be protecting, specifically, longer-term prosperity.[36] Since the era of the Great Depression, we have had many more financial calamities with similarities to the conditions of the 1930's and time and time again, those countries that have turned towards austerity have suffered from more prolonged economic slumps than those countries that implemented Keynesian policies.[37]

C. The Decline of Keynesian Economics and the Rise of the Efficient Market Hypothesis

In the decades following World War II, the United States experienced the most stable and prosperous periods of economic growth in the nation's history.[38] A large part of the credit is owed to the United States' choice to have a more vigorously regulated banking sector, which was subject to much stricter constraints.[39] Much of the restrictions were implemented in response to the severe aftershock caused by the market crash of 1929. Legislation such as The Securities Act of 1933 and The Securities Exchange Act of 1934 were designed to protect investors and implement important disclosure requirements to be followed by those in the business of issuing or selling securities.[40] Additionally, The Banking Act of 1933, which included the Glass-Steagall provision, required commercial banks to remain separated from investment banks.[41]

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https://www.bostonglobe.com/opinion/2017/10/19/the-gop-deficits-from-hawks-doves/AWzzC2qIx3gvKfTyA3CNtN/story.html.

36. KRUGMAN, *supra* note 32, at 131.

37. *Id.* at 138–40. Comparing the rate of growth since the Great Recession between the United States and Europe evidences many of the Keynesian-based ideas espoused by Krugman in 2012 and before. The United States, which took the more accommodative monetary and fiscal approach (even if it fell short of the stimulus levels most Keynesians like Krugman would have preferred) returned to faster levels of growth than almost all member countries of the European Union ("EU"). These nations were hampered by the weak initial monetary intervention conducted by the European Central Bank ("ECB"). Additionally, many of the smaller EU member countries like Greece, Spain and Portugal suffered depression-like economic conditions since they were unable to devalue their currencies individually like the United States (Eurozone countries share a single currency known as the Euro). Weaker economic countries such as Greece suffered most from the ECB's decision to actually raise rates twice in 2011, thereby spurring a double-dip recession at precisely the worst time possible. Finally, the over-emphasis on austerity measures and balanced budgets in the heart of the crisis did not do any favors for anyone. Disappointingly, the consequences are still felt across Europe where enduringly low levels of GDP growth continue to leave most EU countries with much lower growth rates than the United States. *Id.*; *see also* JOSEPH STIGLITZ, THE EURO: HOW A COMMON CURRENCY THREATENS THE FUTURE OF EUROPE 1–3 (2016).

38. *See* Jordan Weissmann, *60 Years of American History Told in One Graph*, ATLANTIC (Aug. 23, 2012), https://www.theatlantic.com/business/archive/2012/08/60-years-of-american-economic-history-told-in-1-graph/261503/.

39. *See generally* Matthew Johnston, *A Brief History of U.S. Banking Regulation*, INVESTOPEDIA (Jan. 19, 2016), https://www.investopedia.com/articles/investing/011916/brief-history-us-banking-regulation.asp.

40. *See A Brief History of the Securities and Exchange Commission*, FOX BUS. (Apr. 17, 2012), https://www.foxbusiness.com/markets/a-brief-history-of-the-securities-and-exchange-commission; *see* The Securities Act of 1933, 15 U.S.C. § 77 (1933); *see* The Securities Exchange Act of 1934, 15 U.S.C. § 78 (1934).

41. Gillian B. White & Bouree Lam, *Could Reviving a Defunct Banking Rule Prevent a Future Crisis*, ATLANTIC (Aug. 23, 2016), https://www.theatlantic.com/business/archive/2016/08/glass-steagall/496856/; *see* The Banking Act of 1933, 12 U.S.C. § 227 (1933).

During this era, the United States was not averse to large publicly funded government projects such as the GI Bill[42] or the creation of the Inter-State Highway System.[43] By partaking in a policy that insulated the financial sector from the wild speculation that ensued during the 1920's while also employing forward-thinking government financed programs to aid the common person, this era in U.S. history went a long way in exemplifying an economic blueprint for future generations to follow.

Inopportunely, the national mood began to change in the face of slowing economic growth following the turbulent 1960's.[44] As the economy faltered during parts of the 1970's,[45] the opportunity to challenge the old financial guard was seized by a bold group of economists and mathematicians. At the forefront of this change was the Chicago School of Economics, which had already begun to transform the fields of finance and economics forever.[46]

To be fair, many of these ideas offered brilliant insights into how markets worked and revolutionized many of the valuation practices employed on Wall Street. For example, even before their rise to fame, two of the most storied members of the Chicago school of thought were using their talents in impressive ways. Milton Friedman used numerous mathematical and economic based formulas on risk assessment to help design the most effective outcomes when deploying weapons during World War II.[47] It is often still underappreciated how much the contributions of mathematicians played in helping the allies achieve victory during the war.[48] Later on, Harry Markowitz's work dealing with Modern Portfolio Theory and the Capital Asset Pricing Model ("CAPM") became a game changer for investment management and principles of risk management, diversification, and asset allocation.[49]

Unfortunately, whether it was the intent of the aforementioned economists or not, many of these ideas have been widely used on Wall Street to justify extreme positions predicated on the myth of perfectly rational markets, without accounting for any behavioral effects.[50] If stock prices were truly perfectly rational, it seems odd

42. Mariano Ariel Corcilli, *The History of Veterans Benefits: From the Times of the Colonies to World War Two*, 5 U. MIAMI NAT'L SEC. & ARMED CONFLICT L. REV. 47, 51–54 (2015); *see* Servicemen Readjustment Act of 1944, 38 U.S.C. § 1531 (1944).

43. Roel Hammerschlag, *Legislating the Highway Act of 1956: Lessons for Climate Change Regulation*, 31 U.C. DAVIS ENVIRONS ENVTL. L. & POL'Y J. 59, 61–62 (2007).

44. *See generally* Kenneth T. Walsh, *1968: The Year That Changed America Forever*, U.S. NEWS (Dec. 31, 2017), https://www.usnews.com/news/national-news/articles/2017-12-31/1968-the-year-that-changed-america-forever.

45. Eric Rosenbaum, *Warren Buffet Explains How to Invest in Stocks When Inflation Hits the Markets*, CNBC (Feb. 12, 2018), https://www.cnbc.com/2018/02/12/warren-buffett-explains-how-to-invest-in-stocks-when-inflation-rises.html. The 1970's gave rise to the most severe threat to the U.S. economy since the Great Depression, namely, inflation. Inflation rose steadily throughout the decade and would not top out until 1980 at over 13.5%. Due to the incredibly high inflation rate and low levels of economic growth, the stock market also began to falter during this time period. Often, the 1970's are referred to as a lost decade for stocks. Eventually, the upward trajectory of inflation forced the Federal Reserve to drastically hike interest rates, causing a recession, but also setting the pre-conditions for growth to return anew in the future. *Id.*

46. FOX, *supra* note 1, at 156–57.

47. *Id.* at 45–46.

48. *Id.*

49. *Id.* at 102.

50. Nocera, *supra* note 2.

that a Graham-Dodd value investor like Warren Buffet would have been able to become one of the wealthiest people in history by employing a strategy predicated on purchasing "irrationally" undervalued stocks.[51]

By refusing to account for behavioral factors, some inflexible supporters of the Chicago school of thought have remained incapable of accepting a basic factor, namely, human emotions. Feelings of greed, excess, and fear have been known to frequently cloud investors' decision-making.[52] The common argument against behavioral economics is that it offers inferior predictability measures for making forecasts. The Chicago school of thought has a valid point.[53] However, conceding to the prior subject would not eliminate the *existence* of behavioral factors.[54]

To use a sport analogy, when the "Moneyball"[55] statistical revolution began to sweep through baseball in the early 2000's, data-driven tools were employed by general managers to determine the value of individual players. These metrics provided useful new predictive capabilities when attempting to measure a player's future value to be derived.[56] While incredible changes in how to measure a player's offense and pitching value were employed, the same was not available for defense.[57] Yet, this was not a reflection on the importance of defensive skills, but rather, a forced limitation because there were very few worthwhile valuation metrics associated with defense during the early 2000's.[58] The argument to be underscored is that the inferior forecasting and prediction tools behavioral economics offer in comparison to the rational expectation approach favored by the Chicago school of thought do not in and of themselves render moot the other important discoveries behavioral economics has brought to light. If anything, it seems far more prudent to implement cost-efficient policies designed to mitigate the risks associated with these findings, precisely because they cannot be easily predicted and therefore, can cause great devastation to the economy in the aggregate.

D. Reaganomics: The Beginning of Trickle-Down Economics and the Ascent of Deregulation

By the 1980's the notion that markets were infallible had officially taken over Wall Street. When paired with a massive deregulation agenda, a new era of bullish fervor and speculation began to spread like wildfire. Under the Reagan administration, the United States lessened regulations in greater numbers than in

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51. *See generally* BENJAMIN GRAHAM & DAVID DODD, SECURITIES ANALYSIS: SIXTH EDITION, FOREWORD BY WARREN BUFFET (2008).

52. *See generally* MICHAEL LEWIS, THE BIG SHORT: INSIDE THE DOOMSDAY MACHINE Preface (2008).

53 *See* FOX, *supra* note 1, at 296.

54. *Id.*

55. MICHAEL LEWIS, MONEYBALL: THE ART OF WINNING AN UNFAIR GAME 1 (2003).

56. *Id* at 71–73. Methods employed by baseball front offices during the rise of advanced analytics in the early 2000's was predicated on the work done by Bill James. Although his inaugural 1977 Baseball Abstract only sold seventy-five copies, later additions would forever increase the importance of analytics in sports. *Id.*

57. *See id.* at 97–98.

58. *Id.*

any other period since before the Great Depression.[59] This deregulation policy was also accompanied by a belief that drastically cutting taxes on the wealthiest individuals, in addition to corporations, would spur economic growth and hence, "trickle down" to the average American.[60] The theory was predicated on the notion that higher wages and rising asset prices should work its way down the income ladder.[61]

Although economic growth returned in strong fashion after the recession that took place in the beginning of the 1980's, the growth during this period was highly unequal in its allocation between rich and poor.[62] Most studies show that inequality really began to exacerbate during this decade as the free market zealously allowed more and more of the gains to flow towards Wall Street, instead of the average American.[63] The design of most economic plans under the Reagan administration inevitably increased inequality.[64] By reducing taxes on the wealthiest Americans, they had even more money to invest in assets like stocks, bonds, and real estate.[65] Since these are all assets that the typical person has much less of, it should come as no surprise that the greatest beneficiaries were the wealthiest Americans. The real tragedy however, was the beginning of a deceitful exercise that is central in today's politics; namely, drastically lowering taxes inevitably forces the need to reduce the social safety net because the result of such a policy is decreased tax revenue.[66] Further cutbacks on essential government programs, which reduce extreme levels of inequality in the United States, increase the likelihood that an individual's caste in life will be determined by the wealth of the family he is born into, rather than through hard work and merit.[67]

These concerns of inequality are especially relevant when looking at the rise of boom and bust cycles that have taken place in recent decades, since the poor and

59. Linda Qiu, *Trump Says "No President Has Ever Cut More Regulations." Not Quite*, N.Y. TIMES (Feb. 23, 2018), https://mobile.nytimes.com/2018/02/23/us/politics/trump-says-no-president-has-ever-cut-so-many-regulations-not-quite.html?referer.

60. *See generally* JOSEPH E. STIGLITZ, THE GREAT DIVIDE: UNEQUAL SOCIETIES AND WHAT WE CAN DO ABOUT THEM 420 (2015).

61. *See id.*

62. *Id.* at 302, 309, 315.

63. *See id.*

64. *See id.*

65. *See generally* Warren Buffet, *Stop Coddling the Super-Rich*, N.Y. TIMES (Aug. 14, 2011), http://www.nytimes.com/2011/08/15/opinion/stop-coddling-the-super-rich.html.

66. Paul Krugman, *The Political Failures of Trickle-Down Economics*, N.Y. TIMES (Aug. 20, 2017), https://krugman.blogs.nytimes.com/2017/08/20/the-political-failure-of-trickle-down-economics/.

67. *See* RAJ CHETTY, NATHANIEL HENDREN, MAGGIE R. JONES, & SONYA R. PORTER, RACE AND OPPORTUNITY IN THE UNITED STATES: AN INTERGENERATIONAL PERSPECTIVE 3 (Mar. 2018), http://www.equality-of-opportunity.org/assets/documents/race_paper.pdf. It is concerning how much race still plays a role in determining one's ability to succeed financially in today's society. Examining the persistent gaps between black and Native American men compared with white men in terms of income, wealth and economic mobility makes this all the more evident. *Id.* For example, recent research has shown that "even when black and Native American men are born into equally wealthy families and live in similar geographic areas, black children born to parents in the top quintile are roughly as likely to fall to the bottom family income quintile as he or she is to remain in the top quintile; in contrast, white children are nearly five times as likely to remain in the top quintile as they are to fall to the bottom quintile." *Id.* at 30 (illustrating the staggering inequality divide by race, which still remains woefully under addressed, thereby leaving widespread equality of opportunity for all members of society a distant dream).

working class is most damaged by economic collapse.[68] For example, in 1987, the stock market dropped over twenty-five percent in one day, which was the largest percentage drop in history.[69] Many retail investors panicked and sold their portfolios in fear of being entirely wiped out in a single day.[70] The Savings and Loan Crisis ("S&L Crisis") also caused a panic in the markets for a brief period of time during this decade.[71] After a small recession in the early 1990's under President George H.W. Bush, the United States began its most recent truly great period of economic growth during the Clinton years.

During Bill Clinton's presidency, real GDP growth averaged a brisk 3.8%.[72] Additionally, median wages increased and the unemployment rate reached a cycle low of 3.9%.[73] Part of the reason for this vigorous growth was the good fortune of having a large uptick in productivity gains due to the technological advancements of the time.[74] With that said, some of these gains should be credited to President Clinton and the Democratic-led Congress for choosing to raise taxes on the wealthy while simultaneously investing in public programs that could further the rates of productivity that often correspond with wage gains.[75] This strategy explains why Clinton left his successor with a budget surplus rather than the relatively large deficit left by the Reagan administration.[76]

Though Clinton deserves recognition for taking actions to increase wage growth across all income levels, his administration was as equally complicit as the two prior administrations in fostering an environment which allowed ever increasing levels of deregulation to completely fester through both Wall Street and Washington

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68. Lowrey, *supra* note 5.

69. James Stewart & Daniel Hertzberg, *How the Stock Market Almost Disintegrated After the* Crash, W.S.J. (Nov. 20, 1987), https://www.wsj.com/articles/SB119256599114260941.

70. Matt Maley, *The Real Reason for 1987 Crash, as Told by a Solomon Brothers Veteran*, CNBC (Oct. 16, 2017), https://www.cnbc.com/2017/10/16/cause-of-black-monday-in-1987-as-told-by-a-trader-who-lived-through-it.html.

71. *See generally Two Financial Crises Compared: The Savings and Loan Debacle and the Mortgage Mess*, N.Y. TIMES, (Apr. 13, 2011), http://www.nytimes.com/interactive/2011/04/14/business/20110414-prosecute.html.

72. Dylan Matthews, *The Clinton Economy in Charts*, WASH. POST (Sept. 5, 2012), https://www.washingtonpost.com/news/wonk/wp/2012/09/05/the-clinton-economy-in-charts/?utm_term=.b3eec408ad50.

73. *Id.*

74. ROBERT J. GORDON, THE RISE AND FALL OF AMERICAN GROWTH: THE U.S. STANDARD OF LIVING SINCE THE CIVIL WAR 567 (2016).

75. *See id.* at 645.

76. *See* Matthew Yglesias, *How Much Credit Does Bill Clinton Deserve for the 1990's Boom?*, VOX (May 16, 2016), *https*://www.vox.com/2016/4/14/11413352/clinton-economy-credit-90s. Many prominent economists and politicians on the left would argue that Clinton should have employed more Keynesian policies during his time in office instead of focusing so much effort on balancing the budget. While a slowing of national debt was certainly needed after the Reagan administration, with debt levels perfectly manageable towards the end of Clinton's two terms, an increase in government spending focused on spurring productivity accompanied with policies designed to promote upward mobility would have been better for growth in the long run. *See also* Karen Tumulty & William J. Eaton, *Clinton Budget Triumphs, 51-50: Gore Casts a Tie-Breaking Vote in the Senate: Deficit: President Says Congress "Laid the Foundation for the Renewal of the American Dream." Sen. Kerry's Decision to Back Plan in Last Hours Assured its Passage*, L.A. TIMES (Aug. 7, 1993), https://www.latimes.com/archives/la-xpm-1993-08-07-mn-21325-story.html.

D.C. by the end of the 1990's.[77] President Clinton's choice to keep Alan Greenspan as chair of the Federal Reserve for the entirety of his administration is indicative of his faith in the extreme free market approach favored by the "maestro".[78] Greenspan has become synonymous in many ways with the ardent belief in perfectly rational markets, which gripped Wall Street during this time. Alan Greenspan's time at the Fed was encompassed with an ever-greater push towards deregulation, based on the idea that markets perform at their finest when they are left uninterrupted.[79] This mentality is best illustrated by the dismissal of concerns raised by the Commodities Futures Trading Commission ("CFTC") under Brooksley Born, the chairperson of the agency from 1996 to 1999. Born warned of the impending doom risky and unregulated derivatives markets posed to the economy.[80] These warnings, which turned out to be prescient during the financial collapse of 2008, went unheeded by both Alan Greenspan and the then-servicing Treasury Secretary, Larry Summers.[81]

In addition to this massive regulatory failure, the last year of the Clinton administration ended with the passage of the 1999 Graham-Leech-Bliley Act, which effectively killed what was left of the 1933 Glass-Steagall Act.[82] This bill eliminated whatever separation remained between investment and commercial banks while paving the way for even grander speculation on Wall Street.[83] The bursting of the tech bubble in 1999–2000 was only a small taste of what was to come in 2008.

E. The Financial Crisis of 2008 and the Great Recession

The 2008 market crisis was the largest financial market collapse in this country since the stock market crash of 1929.[84] Making this event all the more frustrating from a historical perspective were the numerous policy errors made in the run-up and aftermath of the crisis, many of which bore similarities to policy mistakes made during the Great Depression. Now, this is not to say that there were no improvements in economic strategy implemented near the beginning of the Great Recession. For example, the $787 billion stimulus package passed early in the Obama presidency was largely in line with what Keynesian economics would have prescribed.[85] However, an obstructionist Republican party, which retook the majority

77. *See* Dan Roberts, *Wall Street Deregulation Pushed by Clinton Advisors, Documents Reveal*, GUARDIAN (Apr. 19, 2014), https://www.theguardian.com/world/2014/apr/19/wall-street-deregulation-clinton-advisers-obama; *see also 25 People to Blame for the Financial Crisis*, TIME, http://content.time.com/time/specials/packages/article/0,28804,1877351_1877350_1877322,00.html (last visited Aug. 1, 2019).

78. KRUGMAN, *supra* note 32, at 54.

79. *See id.*

80. Manuel Roig-Franzia, *More About Brooksley Born,* WASH. POST, https://www.pbs.org/wgbh/pages/frontline/warning/themes/born.html (last visited Aug. 1, 2019).

81. *Id.*

82. *See* Cyrus Sanati, *10 Years Later, Looking at Repeal of Glass-Steagall*, N.Y. TIMES (Nov. 12, 2009), https://dealbook.nytimes.com/2009/11/12/10-years-later-looking-at-repeal-of-glass-steagall/.

83. *Id.*

84. Matt Egan, *2008: Worse Than the Great Depression?*, CNN (Aug. 27, 2014), http://money.cnn.com/2014/08 /27/news/economy/ben-bernanke-great-depression/index.html.

85. KRUGMAN, *supra* note 32, at 108. Although Krugman, and other economists like Joseph Stiglitz and Christina Romer, lobbied for stimulus plans nearly twice as large as what was ultimately passed through Congress, the plan that passed was nonetheless significant. With that said, the following decade of below average

in the House of Representatives beginning in 2010, along with a more revenue neutral stance by the Democrats for the rest of Obama's first term (including Obama), caused the economy to stall at meager levels of growth.[86] By adopting a policy that was neither Keynesian nor so paltry to be described as austerity, for the entirety of the Obama years, GDP growth remained stable but muted.[87] While the Obama presidency never again dipped into recession, making it one of the longest bull markets on record, it also never achieved growth rates much above two percent.[88]

Even though economic growth may not have been as robust as desired, one area where the Obama presidency greatly improved matters was the regulatory front.[89] Dating back to the Reagan and Clinton presidencies, Republicans and Democrats shared one economic goal in common—the belief that markets should be less and less regulated. Yet, under the Obama administration, the Democratic-controlled Congress passed major financial reform known as the Dodd-Frank Act ("Dodd-Frank") in 2010.[90] The passage of Dodd-Frank created major improvements in a few significant areas and marked a key distinction between the future policy aims of the two political parties.[91]

Dodd-Frank added more stringent controls on the amounts of leverage banks could undertake and also raised capital requirements, especially for the largest financial institutions.[92] Additionally, the largest banks, such as JP Morgan Chase, Wells Fargo, and Bank of America, are now required to undergo "stress tests" to make sure they can withstand a severe economic shock.[93] These tests can influence how much capital a bank is allowed to return to shareholders in the forms of buybacks and dividends.[94] By creating a major incentive for banks to become more financially stable, the stress tests have proven to be a highly effective regulatory measure.[95] Another huge improvement in the bill was the increased regulations added to the

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long-term growth rates combined with the minimal levels of inflation which occurred after the crash indicate that the aforementioned proposals for larger amounts of stimulus would have been the better route for inducing higher levels of GDP growth. Injecting these greater levels of stimulus earlier into the recovery than actually occurred would have had profoundly positive impacts on increasing the recoveries overall growth trajectory. *Id.*

86. *See* Paul Krugman, *In Defense of Obama*, ROLLING STONE (Oct. 8, 2014), https://www.rollingstone.com/politics/news/in-defense-of-obama-20141008.

87. *See generally id.*

88. Nathan Vardi, *Inside the Obama Stock Market's 235% Return*, FORBES (Jan. 17, 2017), https://www.forbes.com/sites/nathanvardi/2017/01/17/inside-the-obama-stock-markets-235-rise/#66c1ec3416d1.

89. Krugman, *supra* note 86.

90. DAVID SKEEL & WILLIAM COHEN, THE NEW FINANCIAL DEAL: UNDERSTANDING THE DODD-FRANK ACT AND ITS (UNINTENDED) CONSEQUENCES 1–2 (2010); *see* Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 53 (2010).

91. *See generally* Brady Dennis, *Congress Passes Financial Reform,* WASH. POST (July 16, 2010), http://www.washingtonpost.com/wp-dyn/content/article/2010/07/15/AR2010071500464.html. The Dodd-Frank Act passed the Senate with the support of only three republican senators, evidencing the extreme partisan voting patterns, which have become more and more common over recent years. *Id.*

92. *See* Krugman *supra* note 85.

93. *See* SKEEL, *supra* note 90, at 5, 47, 48.

94. *See Fed's Yellen Defends "Stress Test" of Wall Street*, REUTERS (Feb. 14, 2017), https://www.reuters.com/article/us-usa-fed-yellen-stress/feds-yellen-defends-stress-test-of-wall-street-idUSKBN15T2X9.

95. *Id.*

derivatives market.[96] Adding more transparency to the over the counter ("OTC") markets is very important so that regulators can better spot dangerous bubbles in financial markets before they contaminate the overall health of the economy.[97] The creation of the Consumer Financial Protection Bureau ("CFPB") was another milestone reform of Dodd-Frank.[98] The CFPB was created as a new watchdog agency to keep an eye on predatory practices undertaken by lenders.[99] For example, regulatory functions include keeping an eye out for excessive fees and fines charged by credit card companies and banks, monitoring for predatory interest rates, and seeking out fraudulent activities in consumer financial markets at large.[100]

While much of the response to the financial crisis of 2008 was imperfect, it was more progress than the response in the immediate aftermath of "Black Tuesday".[101] However, such progress was not permanent. The 2016 election of Donald Trump as the forty-fifth President of the United States has brought a return to policies centered around large-scale corporate tax cuts whose gains flow predominantly towards the wealthy, and a deregulatory agenda centered on the efficient market hypothesis taken to a frightening extreme, similar in kind to the Gordon Gecko's "Greed is Good" 1980's.[102]

III. The Election of Donald Trump: The Return of Voodoo Economics and the Myth of the Rational Market

A. The 2017 Tax Cut and the Jobs Act

Since the election of President Trump, the biggest legislative achievement was undoubtedly the $1.5 trillion dollar Tax Cut and Jobs Act, passed at the end of 2017.[103] The most consequential provision in the bill is believed to be the reduction in the corporate tax rate from thirty-five percent to twenty-one percent.[104] Additionally, the legislation provides a large deduction to all pass-through entities filing as partnerships, limited liability companies, S corporations, and other types of small businesses.[105] Although these entities are completely legal means of registering as small businesses, these vehicles nonetheless serve as invaluable tools for the wealthy

96. SKEEL, *supra* note 90, at 5, 14.
97. *Id.*
98. *Id.* at 14–15.
99. *Id.*
100. *See id.* at 99–100.
101. Clair Suddath, *The Crash of 1929*, TIME (Oct. 29, 2008), http://content.time.com/time/nation/article/0,8599,1854569,00.html (stating that the name Black Tuesday will forever be synonymous with the unprecedented terror and devastation that gripped Wall Street on October 29, 1929).
102. *See generally Is Greed Good?*, ECONOMIST (May 16, 2002), https://www.economist.com/node/1119945.
103. Thomas Kaplan, *House Gives Final Approval to Sweeping Tax Overhaul*, N.Y. TIMES (Dec. 20, 2017), https://www.nytimes.com/2017/12/20/us/politics/tax-bill-republicans.html.
104. Wilson Andrews & Alicia Parlapiano, *What's in the Final Republican Tax Bill*, N.Y. TIMES (Dec. 18, 2017), https://www.nytimes.com/interactive/2017/12/15/us/politics/final-republican-tax-bill-cuts.html.
105. *Id.* (noting that the deduction for small businesses is twenty percent, which does not start to phase out for a married couple until they reach $315,000 in income, providing just one more way for upper quintile Americans to shield large amounts of their income from higher tax rates).

to shelter their money from the higher tax rates to be paid on the individual side of the Internal Revenue Service tax code.[106]

It is anticipated that individuals will see reductions in the taxes they owe due to a doubling in the amount of the standard tax deduction.[107] Reasonable estimates project the tax plan to add about $870 a year to a family of four making between 50,000-$75,000.[108] While this will not be enough money to allow a family to "buy a new car" or "renovate the kitchen", as the former Chief Economic advisor Gary Cohn suggested, it is intended to help the middle class.[109] At first glance, this action seems to be a positive step toward helping people throughout the country. Unfortunately, closer inspection of the tax plan proves that anyone hoping for a policy with equitable principles will be disappointed when one looks behind the curtain and sees the sleight of hand being used. Analyzing the details of the bill, the corporate tax rate reduction is permanent, unlike the individual rate reductions.[110] Coincidently (or not) the individual rates are all set to expire within ten years, with many expiring much sooner than that.[111]

The tax bill evidences the legislative vision of the Trump administration. The Tax Cut and Jobs Act marks a clear return to the "trickle down" policies or better yet, "voodoo economics".[112] Shockingly, even as the rapid rise of inequality over the last several decades has confirmed the consequences of narrowing the progressivity of the tax rate, there remain many politicians and business leaders on the right who espouse views eerily similar to the old followers of the Efficient Market Hypothesis.[113] Believers in the Efficient Market Hypothesis often claim that leaving markets free from burdensome regulations allows the markets to allocate capital more efficiently.[114] It is precisely that mindset, which led this theory to take over corporate America beginning in the late 1970's.[115] Still, in the face of a decade's worth of economic evidence illustrating no correlation between deregulatory agenda and lessening inequality, it is quite disappointing to see this orthodoxy begin to take hold again. It seems many people today either have forgotten or choose not to remember a core justification for a progressive tax system—to avoid the type of wealth hoarding,

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106. Ari Glogower, *7 Ways Rich People Can Game the Republican Tax Plan, Explained by a Tax Expert*, Vox (Dec. 21, 2017), https://www.vox.com/the-big-idea/2017/12/20/16802134/republican-tax-plan-tricks-loopholes-inefficiency-accountants.

107. Danielle Kurtzleben, *Charts: See How Much of GOP Tax Cuts Will Go to the Middle Class*, NPR (Dec. 19, 2017), https://www.npr.org/2017/12/19/571754894/charts-see-how-much-of-gop-tax-cuts-will-go-to-the-middle-class.

108. *Id.*

109. Ester Bloom, *Gary Cohn Says with an Extra $1,000 in Tax Savings a Family Could Buy a New Car and Renovate a Kitchen*, CNBC (Sept. 28, 2018), https://www.cnbc.com/2017/09/28/gary-cohn-says-1000-in-tax-savings-can-buy-a-family-a-car-kitchen.html.

110. *See* Andrews & Parlapiano, *supra* note 104.

111. *See id.*

112. Paul Krugman, *Zombies of Voodoo Economics,* N.Y. TIMES (Apr. 24, 2017), https://www.nytimes.com/2017/04/24/opinion/zombies-of-voodoo-economics.html; *see* Tax Cut and Jobs Act, 26 U.S.C. § 1 (2017).

113. *See generally* PIKETY, *supra* note 8, 311–12.

114. *See generally* FOX, *supra* note 1, at 151.

115. *Id.*

which came to represent the grossly unequal society the United States had become during the Gilded Age.[116]

Even if one is not persuaded by moral arguments of redistribution, what should incentivize us all to act towards narrowing this gap is the affect it can have on the economy when looked at from a broader perspective. Psychologists have shown that mental anguish experienced by those at or near the poverty line in wealthy countries such as the United States, has profound effects on achievement and economic productivity in the aggregate.[117] Because people tend to compare themselves with others most geographically linked in proximity, the type of extreme inequality experienced in the United States has major effects on society's satisfaction.[118] Even though the United States may be wealthier than almost any other country in the world on a per capita basis, studies have indicated that countries slightly less prosperous but with more equitable redistributions of wealth experience have increased levels of happiness.[119] Since history has shown that an unattended free market does a poor job of creating an equitable society, it seems quite rational for the government to serve as a channel through which redistributive measures can flow to the common person. Programs such as Medicaid, food stamps, and unemployment insurance are reliant on a progressive tax system focused on edging out the unfairness of the birth lottery.[120] Why should the wealth of one's parents be the most relevant determining factor in whether a person succeeds in the modern world, especially considering the enormous amounts of wealth contained within the United States?[121]

B. Deregulation and the Unrelenting Grip of the Iron Triangle

Although the Trump administration has not "cut more regulations than any president", as President Trump has often claimed in the past, his administration certainly marks a major departure from the Obama administration.[122] Examining the significant number of deregulatory policies that have been implemented since Trump's inauguration day is strong evidence of the intended beneficiaries of the Trump agenda.[123] These tactics include changing the leadership within administrative agencies, implementing new deregulatory legislation, defunding

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116. *See generally* KRUGMAN, *supra* note 32, at 71–72.
117. Elizabeth Kolbert, *The Psychology of Inequality*, NEW YORKER (Jan. 15, 2018), https://www.newyorker.com/magazine/2018/01/15/the-psysenchology-of-inequality; *see* SENDHIL MULLAINATHAN & ELDAR SHAFIR, SCARCITY: WHY HAVING TOO LITTLE MEANS SO MUCH 147 (2013).
118. *Id.*
119. *See Why is Finland So Happy*, ECONOMIST (Mar. 26, 2018), https://www.economist.com/blogs/economist-explains/2018/03/economist-explains-20.
120. Ahiza Garcia, *The "Birth Lottery" and Economic Mobility*, CNN (Feb. 1, 2016), http://money.cnn.com/2016/02/01/news/economy/poverty-inequality-united-states/index.html.
121. *See generally id.*
122. Glenn Kessler, *Has Trump Cut More Regulations Than Any President in History?*, WASH. POST (Oct. 12, 2017), https://www.washingtonpost.com/news/fact-checker/wp/2017/10/12/has-trump-cut-more-regulations-than-any-president-in-history/?utm_term=.c183e1dabbdb.
123. *See* Eric Levitz, *The Trump Tax Cuts Just Got Even More Skewed to the Rich*, N.Y. MAG. (Dec. 17, 2017), http://nymag.com/daily/intelligencer/2017/12/the-trump-tax-cuts-just-got-even-more-skewed-to-the-rich.html.

agencies and issuing executive orders where possible.[124] Now, the aforementioned plan should not be automatically viewed negatively merely because it is subtracting a regulation. Instead, the key should be what the affects of the proposed legislation are likely to be and the groups of people who will be most positively and negatively benefited. Yet, even when looked at through this prism, the deregulatory actions being undertaken should cause us all great alarm.

There is perhaps no greater example to illuminate this point than the CFPB.[125] A key strategy being employed in the rush of deregulatory fervor sweeping through the Trump administration is the appointment of leaders to agencies with the aim of drastically reducing their regulatory capabilities.[126] By implementing a "starve the beast" mentality through inadequate funding requests, the goal of the CFPB has clearly been to lessen its role as a regulator through the sheer diminution of its operating capacity.[127] For example, in early 2018, the CFPB requested zero dollars in new funding.[128] To justify this request, the CFPB stated that it wants to spend its entire surplus, which it says will be sufficient for the most recent fiscal quarter, before requesting any new funds.[129] Being naïve of history, one could plausibly claim that this request might have been made as an attempt to show true fiscal prudence. But considering that the head of the CFPB, Mike Mulvaney, sponsored legislation while in Congress to abolish the agency altogether, it seems like a reasonably safe assumption that his motives may be slightly more sinister than that.[130] When also factoring in a recent Trump budget proposal which sought to cut funding for the CFPB by $150 million, being equal to one-fourth of its budget, it seems a total gutting of the CFPB is the administration's more likely game plan.[131]

Mulvaney's history also serves as a poignant example of the "Iron Triangle" at work. The iron triangle is a political science theory that demonstrates how agency capture often works in politics.[132] In the United States, the iron triangle can best be described as the interconnected relationships between Congress, the administrative agencies, and the lobbyists themselves who represent the special interest groups that have long exerted their influence over Washington D.C.[133] Mulvaney was a congressman who did the bidding of Wall Street's lobbyists. Now as an agency leader, Mulvaney has the ability to implement reductions in regulations that could easily

124. *An Assessment of the White House's Progress on Deregulation*, ECONOMIST (Oct. 14, 2017), https://www.economist.com/news/business/21730170-donald-trump-has-blocked-new-regulations-ease-repealing-old-ones-will-be-harder.

125. SKEEL, *supra* note 90, at 14.

126. *See* Chris Arnold, *Trump Administration's Latest Strike on CFPB: Budget Cuts*, NPR (Feb. 18, 2017), https://www.npr.org/2018/02/18/586493309/trump-administrations-latest-strike-on-cfpb-budget-cuts.

127. *Id.*

128. Kevin McCoy, *Trump Appointee Seeks $0 Funding for Consumer Financial Protection Bureau*, USA TODAY (Jan. 19, 2018), https://www.usatoday.com/story/money/business/2018/01/19/trump-appointee-seeks-0-funding-consumer-watchdog/1047642001/.

129. *Id.*

130. Arnold, *supra* note 126.

131. *Id.*

132. *See Sanjiv* Ahuja, *Lost in D.C.'s "Iron Triangle"*, POLITICO (Jan. 12, 2012), https://www.politico.com/story/2012/01/lost-in-dcs-iron-triangle-072005.

133. *Id.*

save the banks billions of dollars in spared compliance and legal fees.[134] Interconnected relationships such as the aforementioned example also seem to exemplify an important contradiction; often those arguing for freer market capitalism and deregulation agendas are actually practicing a policy of crony capitalism themselves.[135] Is a free market really supposed to create massive advantages for some of the largest corporations in the world at the expense of the everyday person?

Studying the actions taken by the Environmental Protection Agency ("EPA") during the tenure of Scott Pruitt highlights another example of the dangers posed by agency capture.[136] As head of the EPA, Pruitt set out to drastically reduce enforcement of existing laws while also seeking far-reaching cuts to its budget.[137] At regulatory agencies such as the EPA, slowing the agency to a standstill can have devastating consequences. Because the EPA's primary job is to constantly monitor environmental issues (i.e., measuring toxic chemicals or hazardous waste), an agency at a standstill puts the health of the American people at heightened risk.[138] Also, since the head of the agency does not have the power to just repeal all the rules he may not like, the most effective tactic is often to halt the pace of progress.[139] An illustration of this strategy is the agency's delay in the implementation of the 2015 Clean Water Rule, which defines the waterways that are regulated by the agency under the Clean Water Act.[140] Further proof of the sweeping changes that were undertaken during Pruitt's reign at the EPA can be seen both from the thirty percent reduction in environmental cases taken by the agency and in the sixty percent reduction of fines compared to similar periods in time under the Obama Presidency.[141]

Although the aforementioned acts exemplified arrangements clearly designed to make the EPA a drastically less effective agency, the actions of Scott Pruitt in his personal capacity as the head of the EPA offer precisely the sort of evidence that makes the revolving triangle so frustrating to the average American. For example, numerous times, Mr. Pruitt used both a private plane and a military jet totaling over $60,000 to fly home on personal trips.[142] Besides proof of many similar trips at the taxpayer's expense, he also used the power he held as administrator of the EPA to force much of his staff to be his personal errand runners.[143] Instead of being assigned tasks related to their agency functions, many staff members (including assigned

134. *See generally* Arnold, *supra* note 126.

135. CRONY CAPITALISM: UNHEALTHY RELATIONS BETWEEN BUSINESS AND GOVERNMENT, COMM. FOR ECON. DEV. OF THE CONFERENCE BD. (Oct. 2015). Now to be fair, both parties have a long history of being corrupted by special interests. If there is any issue, which seems to have been truly bipartisan over the last few decades, the problem of the revolving door seems to be one of our few "bright" spots. *Id.*

136. *See generally* Umair Irfan, *Scott Pruitt is Slowly* Strangling, VOX (Mar. 8, 2018), https://www.vox.com/energy-and-environment/2018/1/29/16684952/epa-scott-pruitt-director-regulations.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *See* Eli Watkins & Clare Foran, *EPA Chief Scott Pruitt's Long List of Controversies*, CNN (July 5, 2018), https://www.cnn.com/2018/04/06/politics/scott-pruitt-controversies-list/index.html.

143. *See id.*

security details) were ordered to go shopping for personal items like snacks or hand sanitizer.[144] Moreover, there was also widespread evidence of Mr. Pruitt attempting to leverage his position of power to secure favorable business deals for his wife in the private sector, not to mention other abuses of power, which led Scott Pruitt to resign from his role as the administrator of the EPA on July 5, 2018.[145]

While fossil fuel and chemical companies are undoubtedly thrilled about the direct benefits a weakened EPA will provide, the rest of the United States will not be so fortunate.[146] Considering environmental issues are the ultimate collective action problem, it seems like an illogical decision to ravage public oversight just so that a handful of major corporations in the private sector can extract slightly more riches in the near term.[147] Sadly, this all seems to be following a continued pattern of catering to corporate interests at the expense of the common person.

C. Crony Capitalism and the Continued Magnification of Inequality

It is easy to find numerous examples of extreme deregulation being combined with policies designed to favor specific industries over others, serving as the perfect recipe for the continuous festering of crony capitalism.[148] There is perhaps no bigger crony capitalism problem to address than the "too big to fail" financial firms on Wall Street.[149] While Dodd-Frank undoubtedly made the largest financial institutions much safer, it also further cemented the inevitability of the U.S taxpayers having to bail out the largest banks if they are ever at the precipice again.[150] These institutions, known as Systematically Important Financial Institutions ("SIFI") are subject to tougher regulations because of their size, but since the years of the crash, their market share has actually reached levels larger than before the Great Recession.[151] Since anti-trust enforcement has been nearly non-existent over the last half century, the option of breaking up the banks seems unrealistic at this moment in history.[152] Regrettably, this status quo leaves the masses ever more susceptible to the will of corporate interests.[153]

However, even though the challenges of today remain great, it must not cause us to lose sight of the incredible amounts of progress made worldwide within an

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144. *See id.*
145. *See id.*
146. *See generally* Alex Guillen & Emily Holden, *What EPA Chief Scott Pruitt Promised and What He's Done*, POLITICO (Nov. 19, 2017), https://www.politico.com/interactives/2017/scott-pruitt-promises/.
147. *See id.*
148. CRONY CAPITALISM, *supra* note 135.
149. SKEEL, *supra* note 90.
150. *Id.*
151. Jeff Cox, *5 Biggest Banks Now Own Almost Half the Industry*, CNBC (Apr. 15, 2015), https://www.cnbc.com/2015/04/15/5-biggest-banks-now-own-almost-half-the-industry.html.
152. James Stewart, *With AT&T and Time Warner, Battle Lines Form for an Epic Antitrust Case*, N.Y. TIMES (Nov. 16, 2017), https://www.nytimes.com/2017/11/16/business/att-time-warner.html.
153. *See generally* Barry C. Lynn, *America's Monopolies are Holding Back the Economy*, ATLANTIC (Feb. 22, 2017), https://www.theatlantic.com/business/archive/2017/02/antimonopoly-big-business/514358/.

expansive swath of highly relevant categories.[154] Viewed from this perspective, things do not seem quite as bad. When looked at in the aggregate, there is still no better time to be alive than today.[155] Levels of violence, disease, poverty, and many other measurable data points have all improved rapidly, not just in the United States, but throughout much of the world over the preceding decades.[156]

Nevertheless, when one considers such encouraging news, it begs the question, why do most of the polls show people to be less optimistic than in prior periods of time?[157] The answer to this question lies in the rising levels of inequality, which has left the average person worse off on a relative basis than during prior generations.[158] As crony capitalism has cemented its grip over the American economy even further in the years since *Citizens United v. Federal Election Commission*,[159] the chances of reducing the power of these special interests groups has been even further diminished. Whether one looks at rising student loan debt levels,[160] or stagnating median income levels[161] compared with prior generations, the still increasing global pie seems to not be allocating its resources in a very just manner. From one extremely important criterion, it appears that today's workers really are worse off. Namely, this generation may be the first in modern history to experience no relative inflation adjusted improvement in income and wealth levels compared to prior periods in time.[162] This should concern all of us since it strikes directly at the heart of the American dream and the symbol of opportunity it has historically represented for so many people around the world.[163]

IV. Studying the Past in Order to Progress Forward: Analyzing Where Fiscal and Monetary Policy Verves from Here

One of the many fortunate advantages of living in an era with a ubiquity of accessible scholarly research is the capability to study prior periods in history and enact meaningful reforms to continuously improve our future trajectory as a nation. By having this competency, the United States has a great opportunity to pivot away from any mistakes of its monetary and fiscal past and implement policies that will support the whole of society in a more equitable fashion. One important place to start

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154. *See generally* STEVEN PINKER, THE BETTER ANGELS OF OUR NATURE, WHY VIOLENCE HAS DECLINED 1–2 (2011).
155. *See id.*
156. *See generally id.*
157. *See* Rakesh Kochhar & Anthony Cilluffo, *How Wealth Inequality Has Changed Since the Great Recession, by Race, Ethnicity, and Income*, PEW (Nov. 1, 2017), http://www.pewresearch.org/fact-tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income/.
158. *Id.*
159. Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).
160. Jessica Dickler, *Student Loan Balances Jump 150 Percent in a Decade*, CNBC (Aug. 29, 2017), https://www.cnbc.com/2017/08/29/student-loan-balances-jump-nearly-150-percent-in-a-decade.html.
161. Ben Casselman, *The American Middle Class hasn't Gotten a Raise in 15 Years,* FIVETHIRTYEIGHT (Sept. 22, 2014), https://fivethirtyeight.com/features/the-american-middle-class-hasnt-gotten-a-raise-in-15-years/.
162. *See Millennial's Earn 20% Less Than Boomers Did at the Same Stage of Life*, USA TODAY (Jan. 13, 2017), https://www.usatoday.com/story/money/2017/01/13/millennials-falling-behind-boomer-parents/96530338/.
163. Martha Bayles, *How the World Perceives the New American Dream*, ATLANTIC (Oct. 10, 2015), https://www.theatlantic.com/international/archive/2015/10/american-dream-world-diplomacy/410080/.

is by putting to rest the notion that robust economic growth and stringent regulations are incapable of being implemented concurrently.[164] Furthermore, the impression that sharing the profits of the wealthiest society in human history more broadly would cause the economy to suffer is also not well supported by the historical record.[165] For example, the period in this country with both the most stable and equitable distributions of the economic pie was from World War II through the 1960's.[166] This era also had enormous levels of GDP growth, median wage gains, and increasing homeownership.[167] Considering the litany of statistical proof suggesting prior economic periods enjoyed greater success than now with income inequality at significantly lower overall levels, it is quite frustrating that we do not implement a more equitable economic framework similar to this era, but tailored toward the contemporary world.[168]

A. Fiscal Policy

Auspiciously, history provides us with an entire catalogue of fiscal based policy initiatives to choose from in order to bring about the return of a more just American society. For instance, a modern version of the GI Bill fitted to make education and homeownership more affordable would illicit tremendous positive externalities not only for the individuals whose lives would be made better, but also for the U.S. economy as a whole.[169] By extending attributes of the GI Bill such as free or reduced public tuition to more of the populace at large, the United States would go a long way in becoming a more economically prosperous nation.[170] Additionally, an enormous investment in infrastructure would greatly assist in spurring economic growth.[171] Doing so would help deliver well-paying jobs to the middle class and aid capital

164. STIGLITZ, *supra* note 60, at 130.
165. *Id.*
166. *Id.*
167. Weissmann, *supra* note 38.
168. *See id.*
169. Richard Fry & Anna Brown, *In a Recovering Market, Homeownership Rates are Down Sharply for Blacks, Young Adults*, PEW (Dec. 15, 2016), http://www.pewsocialtrends.org/2016/12/15/in-a-recovering-market-homeownership-rates-are-down-sharply-for-blacks-young-adults/.
170. *See generally* Josh Freedman, *Why American Colleges are Becoming a Force for Inequality*, ATLANTIC (May 16, 2013), https://www.theatlantic.com/business/archive/2013/05/why-american-colleges-are-becoming-a-force-for-inequality/275923/; *see also* Katie Lobosco, *Americans are Moving to Europe for Free College Degrees*, CNN (Feb. 23, 2016), https://money.cnn.com/2016/02/23/pf/college/free-college-europe/index.html.
171. Evan Horowitz, *America May Finally Be Ready to Fix Its Infrastructure. Too Bad the Timing Stinks*, FIVETHIRTYEIGHT (Feb. 5, 2018), https://fivethirtyeight.com/features/america-may-finally-be-ready-to-fix-its-infrastructure-too-bad-the-timing-stinks/. The frustrating aspect of the discussion centered on infrastructure revolves around the timing of the plan. By first passing a $1.5 trillion dollar deficit financed tax cut over the next decade, the decision to push ahead with infrastructure now comes with greater risk, namely, adding even more to our national debt. Considering that interest rates are beginning to rise, the debt servicing costs will also be much higher than if we had passed such legislation in the immediate years after the economic crisis. Even with the timing not being ideal, the need for an infrastructure bill is still enormous. Fortuitously, interest rates also remain low from a historical standpoint making the debt concerns more palatable. Also, considering the U.S. infrastructure ranking relative to other OECD countries has begun to fall, the need for such a bill is greater. Regardless, the chances of passing any infrastructure bill, let alone one accompanied by tax increases, seems unlikely until there is a leadership shuffle in both Congress and the Oval Office. *Id.*

investment by large and small corporations across the board since they would be able to plan for the future with more clarity.[172] At a minimum, these investments would be much more likely to kindle the type of increased productivity growth that leads to sustainable wage gains for workers.[173] Why is there so much resistance towards implementing this legislation, which was previously considered bipartisan in a bygone era?[174]

Sadly, looking at recent congressional voting patterns illustrates that over the last decade, there is a major distinction to be made between the legislative priorities of the two parties.[175] Take the recent $1.5 trillion deficit funded tax cut as an example. Considering that interest rates are unlikely to stay near historic lows forever, it is inevitable that higher interest payments on the national debt will be required.[176] This is precisely why it is paramount that a future Congress reverses the recently passed tax cuts on the wealthy. The tax revenue both collected and saved would go a long way in staving off long-term fiscal anxieties while still allowing the investments needed for the United States to avoid a forced turn towards austerity.[177] Enacting the aforementioned polices would aid in returning the United States to the days of more stable and equitable growth.

While tax cuts and deregulation are likely to extend one of the longest bull markets on record even further in the short to medium term, unfortunately, it also increases the odds of another large scale financial crisis in future years.[178] Inconsistently, many of the same people who believe with true orthodoxy in the power of the free market, seem to have little faith in its ability to stand on its own considering the hypocritical deficit-funded nature of the plan. However, not all "Keynesian" based plans are designed equally.[179] What will make this fiscal

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172. *See generally* Dennis Jacobe, *Sales, Certainty Key to U.S. Small Business Capital Spending*, GALLOP (Aug. 21, 2012), https://news.gallup.com/poll/156815/sales-certainty-key-small-business-capital-spending.aspx.

173. *See generally* GORDON, *supra* note 74.

174. Andrew Glass, *Federal-Aid Highway Act, June 26, 1956,* POLITICO (June 26, 2012), https://www.politico.com/story/2012/06/this-day-in-politics-077803 (illustrating the prior levels of bipartisan support for large-scale infrastructure projects in previous eras). The voting record in the Senate where the bill passed 89-1. This bill was not of inconsequential heft. For example, "the legislation allocated $24.8 billion—about $164 billion in today's dollars—to build some 41,000 miles of interstate highways over the next 13 years, with the federal government paying for 90 percent." *Id.*

175. *See generally* Josh Kraushaar, *The Most Polarized Congress Ever: 2013 Congressional Vote Ratings*, ATLANTIC (Feb. 6, 2014), https://www.theatlantic.com/politics/archive/2014/02/the-most-polarized-congress-ever-2013-congressional-vote-ratings/283635/.

176. John W. Schoen, *Interest Payments Could Become One of the Federal Govt.'s Biggest Line Items*, CNBC (Dec. 19, 2016), https://www.cnbc.com/2016/12/19/interest-payments-could-become-one-of-the-federal-govts-biggest-line-items.html.

177. Neil Irwin, *Can the Fed Engineer the Best Economy Since the 1960's? Chairman Powell is Going to Try*, N.Y. TIMES (Mar. 21, 2018), *https://www.nytimes.com/2018/03/21/upshot/can-the-fed-engineer-the-best-economy-since-the-1960s-chairman-powell-is-going-to-try.html*.

178. *See generally* Grantham, *supra* note 2.

179. Paul Krugman, *How Big a Bang for Trump's Buck? (Wonkish)*, N.Y. TIMES (Feb. 10, 2018), https://www.nytimes.com/2018/02/10/opinion/how-big-a-bang-for-trumps-buck-wonkish.html?rref=collection%2Fcolumn%2Fpaul-krugman&action=click&contentCollection=opinion&region=stream&module=stream_unit&version=latest&contentPlacement=19&pgtype=collection. Although many on the political right consider the plan to be in the family of supply-side economics, it is difficult to overcome the deficit-financed nature of the plan. It is also hard to justify the supply side rationale since it is grounded on the idea that robust productivity gains will occur, thereby spurring growth while simultaneously quelling any possible inflation outbreaks that would be

experiment unique compared with prior moments in history are two crucial factors that are nearly unprecedented. First, it is rare for a country to implement such an enormous deficit funded stimulus plan when the unemployment rate is below four percent.[180] Although some slack in the labor pool exists and unjust levels of inequality across society remain, few people consider this a frail economy.[181] By using the majority of the available fiscal punch before an impending recession strikes, this raises the risk that a future Congress would not have adequate available stimulus to combat the next recession.[182]

There is a realistic best-case scenario that makes the current fiscal experiment so fascinating from an analytical perspective. By injecting fiscal stimulus towards the end of the business cycle, it may elongate the current bull market; thereby providing the Federal Reserve with the flexibility to raise the federal funds rate to a sufficiently high level before the next recession strikes.[183] The importance of achieving this outcome should not be downplayed because just as fiscal policy has never quite been in this position before, neither has monetary policy.[184]

B. Monetary Policy

Due to the severe nature of the market downturn during 2008, the Federal Reserve conducted an unprecedented monetary policy experiment, which not only

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likely to arise over the medium term in lieu of the assumed increases in worker productivity. Yet, for productivity gains to materialize, there will likely need to be a massive boom in CapEx spending, which based on recent history, seems dubious. For example, many economists estimate that in 2005 when corporations repatriated more than $300 billion back into the United States after recently passed tax relief, almost ninety-two percent of the money was actually paid out to shareholders in the form of buybacks and stock dividends. Looking at today, "American companies have already announced buybacks upward of $178 billion — the largest amount ever unveiled in a single quarter, according to Birinyi Associates, a market research firm". Sadly, both the historical record and the early evidence of the plan suggests the predictions of robust CapEx seem unsupported by the proof at hand. *Id.*; *see also* Matt Philips, *Trump's Tax Cut's in Hand, Companies Spend More on Themselves Than on Wages*, N.Y. TIMES (Feb. 26, 2018), https://www.nytimes.com/2018/02/26/business/tax-cuts-share-buybacks-corporate.html.

180. *See* Martin Neil Bailey, Jason Furman, Alan B. Krueger, Laura D'Andrea Tyson, & Janet Yellen, *A Debt Crisis is Coming, But Don't Blame Entitlements*, WASH. POST (Apr. 8, 2018), https://www.washingtonpost.com/opinions/a-debt-crisis-is-coming-but-dont-blame-entitlements/2018/04/08/968df5c2-38fb-11e8-9c0a-85d477d9a226_story.html?utm_term=.cf72484d06b9.

181. *See generally id.*

182. Neil Irwin, *The Era of Fiscal Austerity is Over. Here's What Big Deficits Mean for The Economy*, N.Y. TIMES (Feb. 9, 2018), https://www.nytimes.com/2018/02/09/upshot/the-era-of-fiscal-austerity-is-over-heres-what-big-deficits-mean-for-the-economy.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=a-lede-package-region&region=top-news&WT.nav=top-news.

183. *See generally* Danielle Kurtzleben, *The GOP's New Tax Plan Will Affect Everyone, But Will it Grow the Economy?*, NPR (Jan. 14, 2018), https://www.npr.org/2018/01/14/577359530/the-gops-new-tax-plan-will-affect-everyone-but-will-it-grow-the-economy (muting the impact of fiscal stimulus has been the trade war between the United States and China, which shows little signs of slowing). The Federal Reserve has been forced to reverse its rate hiking cycle from previous years and instead; it has cut rates twice already in 2019. Increased protectionism around the world and the slowing global growth trajectory make it likely the Fed will be cutting interest rates before it raises them again. This marks an abrupt change from the global synchronized growth story of prior years, leading some market participants to worry the Fed will not have enough ammunition to adequately fight the next recession. *Id.*; *see also* Yin Li, *Chances of an October Fed Rate Cut Increase After Survey Shows a Slump in Manufacturing*, CNBC (Oct. 1, 2019), https://www.cnbc.com/2019/10/01/chances-of-an-october-fed-rate-cut-increase.html.

184. Irwin, *supra* note 177.

pushed interest rates to zero but also led them to embark on a series of programs known as quantitative easing.[185] The purpose of these policies was to help improve the flow of capital and ease lending conditions since at the height of the crisis, nearly the entire world's financial markets were unable or unwilling to lend. Now, there were certainly some flaws in the response, most especially, the lack of focus placed on main street.[186] Nonetheless, in retrospect, most esteemed economists feel the unprecedented policy enactment during Ben Bernanke's term as Fed chair and continuing under his successor Janet Yellen played an enormous role in preventing the recession from becoming a depression.[187] Ideally, if Congress had provided ample fiscal support in the years immediately following the crisis, then the Fed would have been able to begin reducing its balance sheet and raising interest rates far sooner.[188] Also, this would have been the better Keynesian plan since deflation was the concern of the day, not to mention the fact that interest rates were lower and therefore, the debt servicing costs would have been lesser.[189]

Still, whether the current Trump economic plan is the ideal solution to the problem, it is most important at this stage to do everything conceivable to ensure a smooth landing as the Federal Reserve continues to embark on its path towards rate normalization. Considering it is almost always the poor and working class who suffer the most during a recession, these trepidations merit heightened concern.[190] One source of good news for the Federal Reserve is while inflation has begun to pick up steam, it has not been meaningfully above their two percent inflation target in years, providing the opportunity for the current Chairman Jay Powell to set monetary policy at a level unlikely to crimp economic growth prematurely.[191] If the Federal Reserve is able to extend the cycle long enough to eventually begin increasing the Federal funds rate towards more typical historical levels, the next recession will be far less painful since the Federal Reserve would once again possess ample room to reduce the Federal funds rate enough to reinvigorate the economy.[192]

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185. BERNANKE, *supra* note 15, at location 6086.

186. *See generally* Neil M. Barofsky, *Where the Bailout Went Wrong,* N.Y TIMES (Mar. 29, 2011), https://www.nytimes.com/2011/03/30/opinion/30barofsky.html.

187. Paul Krugman, *Will Trump Trumpify the Fed*, N.Y. TIMES (Oct. 6, 2017), https://www.nytimes.com/2017/10/06/opinion/trump-federal-reserve.html.

188. *See generally* Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).

189. Schoen, *supra* note 176.

190. Jana Kasperkevic, *The 1% are Recovering from 2008 Recession While 99% Are Still Waiting*, GUARDIAN (July 6, 2016), https://www.theguardian.com/business/2016/jul/06/one-percent-2008-recession-recovery-income.

191. Howard Schneider & Jason Lange, *Fed's Powell Nods to Stronger Economy, Backs Gradual Rate Hike Path*, REUTERS (Feb. 27, 2018), https://www.reuters.com/article/us-usa-fed-powell/feds-powell-nods-to-stronger-economy-backs-gradual-rate-hike-path-idUSKCN1GB1QU.

192. *See generally* Irwin, *supra* note 182. Since the United States has longer-term debt issues that are only projected to grow worse in light of the recently passed Trump tax cuts, the risks of raising interest rates too fast places the United States in a tough bind. For example, if the Fed raises rates in a rapid manor and induces a recession, it actually would be likely to make the debt crises worse since long-term growth would likely be reduced, thereby, leading to less future tax revenue. The current situation would have no doubt been easier if the expansion of fiscal spending would have occurred nearer to the crisis. But even leaving the prior point to the side, the gravest mistake of the recent tax bill is the poor cost benefit analysis, which was made by the Trump administration and the Republican Congress. Frontloading fiscal stimulus in good times will thereby leave fewer resources to use in the next moment of economic crisis. Even if the plan stimulates some economic growth, it is unlikely to generate

Conversely, Jay Powell and the rest of the Federal Open Market Committee ("FOMC") must also be careful to avoid postponing rate normalization too long since an abrupt change in the inflation story leaves the door open to its own unique set of predicaments.[193] First of all, a spike in inflation would most likely force the Fed to prompt a recession through rapid rate hikes in an attempt to return inflation back down towards its two percent target. An extreme version of this scenario is precisely what Fed Chair Paul Volcker faced during his tenure in the late 1970's and early 1980's.[194] At the present time, the inflation fears seem far less worrisome, at least judging by the current level of interest rates. For instance, as of close of business on October 1, 2019 the current 10-year Treasury note yielded 1.65%, well below its historical average.[195] In comparison, the interest rate on a 10-year Treasury note reached peak levels as high as 15.6% in 1981.[196] Considering this context, it seems that erring on the side of dovish leaning policy measures is the most sensible course of action for now.

V. Conclusion

Looking forward, the key in determining the success of the Trump tax plan and ensuing deregulatory agenda is whether or not it injects the necessary stimulus into the economy to lengthen the current business cycle well past any other business cycle in history.[197] Successfully achieving this outcome will provide enough cover to allow the Fed to sufficiently normalize monetary policy. Although the difficulty of the current era lies in the underlying dangers faced from both dovish and hawkish policies, contemplating the current situation in light of the historical record implies that the risks of raising interest rates too swiftly continues to be the greater challenge to economic growth in the short term. This is not to argue against any rate hikes in the future but rather, to emphasize how much more leeway the Fed has in its tool kit to facilitate rates upward rather than downward. Considering that many respected economists view increased inflation pressures as being much more of a medium term risk, it seems hasty for the Fed to rush the pace of rate normalization.[198] All in all,

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enough growth to pay for itself, and therefore, granting a gigantic tax break to the wealthiest Americans is likely to be viewed as a poor allocation of resources from a longer-term fiscal perspective.

193. Irwin, *supra* note 177; *see also* Nicholas Casey, *Venezuela Inflation Could Reach One Million Percent By Years End*, N.Y. TIMES (July 23, 2018), https://www.nytimes.com/2018/07/23/world/americas/venezuela-inflation-crisis.html.

194. Pradnya Joshi & Binyamin Appelbaum, *A History of Fed Leaders and Interest Rate Hikes*, N.Y. TIMES (Dec. 16, 2015), https://www.nytimes.com/interactive/2015/12/11/business/economy/fed-interest-rates-history.html.

195. *See generally Here's What the Major Interest Rate Cycles Since the 1970's Have Looked Like,* BUS. INSIDER (Dec. 19, 2015), http://www.businessinsider.com/every-interest-rate-cycle-since-1970s-2015-12; *see also U.S. 10 Year Treasury Note*, W.S.J., https://quotes.wsj.com/bond/BX/TMUBMUSD10Y (last visited Aug. 8, 2018).

196. Andrew Osterland, *Where the Bonds Are: The Outlook for Fixed Income*, CNBC (Apr. 9, 2018), https://www.cnbc.com/2018/04/09/where-the-bonds-are-the-outlook-for-fixed-income.html.

197. Chris Isidore, *Where the Current Economic Boon Ranks in American History*, CNN (Jan. 30, 2018), https://money.cnn.com/2018/01/30/news/economy/us-economy-boom-history/index.html (noting that the current record holder for the longest ever U.S. economic expansion without a recession occurred from 1991–2001).

198. *See* Neil Irwin, *The Stock Market is Worried About Inflation. Should it be?*, N.Y. TIMES (Feb. 7, 2018), https://www.nytimes.com/2018/02/07/upshot/the-stock-market-is-worried-about-inflation-should-it-be.html.

the prudent path of maintaining a dovish tilt toward future interest rate decisions seems like the best way to balance all the potential policy risks over the coming years.

Yet, even if the Fed sticks a perfect landing over the ensuing years with regard to monetary policy, the failure of our fiscal policy to implement policies with an emphasis on durable prosperity for all instead of enormous tax giveaways to the wealthiest Americans should not be overlooked. Underlying the importance of both fiscal and monetary policy are the immense stakes ahead. With inequality at levels unseen since just before the Great Depression,[199] as the wealth gap between whites and minorities remain entrenched at astronomical levels,[200] and as women continue to earn less than their male peers for similar work,[201] it begs asking how we can reverse these trends and both continue ahead with increased economic growth while lowering inequality overall? A great place to start would be in judging the actions of our current policy makers through a long-term prism. If we do so in the context of prior economic history, we are likely to look back at the return of deregulation and trickle-down economics in the "Age of Trump", as an imprudent era that placed short-term largess in front of lasting economic stability for the American people, particularly, the most economically vulnerable amongst us.

199. Drew Desilver, *U.S. Income Inequality, on Rise for Decades, is Now Highest Since 1928*, PEW (Dec. 5, 2013), http://www.pewresearch.org/fact-tank/2013/12/05/u-s-income-inequality-on-rise-for-decades-is-now-highest-since-1928/.

200. *See* Kochhar & Cilluffo, *supra* note 157.

201. Nikki Graf, Anna Brown, & Eileen Patten, *The Narrowing, but Persistent, Gender Pay Gap*, PEW (Apr. 9, 2018), http://www.pewresearch.org/fact-tank/2018/04/09/gender-pay-gap-facts/.