

THE TWO “TWO AMERICAS” OF TRUMP AND ROMNEY

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I

INTRODUCTION

There are forty-seven percent of the people who . . . are dependent upon government, who believe that they are victims, who believe that government has a responsibility to care for them, who believe that they are entitled to health care, to food, to housing, to you name it. . . . These are people who pay no income tax. Forty-seven percent of Americans pay no income tax.¹

– Republican presidential candidate Mitt Romney, 2012

We really have arrived at, it appears, two irreconcilable Americas with their own information systems, their own facts, their own story, their own narrative.²

– Yale historian David Blight, 2021

In the aftermath of the 2020 presidential election, when we talk of two Americas, different people may have different ideas of the dividing line. Most simply, the two Americas might consist of Biden voters on the one hand, and Trump voters on the other. But every presidential election features two Americas in that sense. The more important dividing line in 2021 is the one suggested above by David Blight—between those Americans who acknowledge that Joe Biden legitimately won the election (regardless of whether they supported Biden), and those Americans who believe, or claim to believe, that Biden stole the election from Donald Trump through massive electoral fraud. Given the utter lack of evidence to support this claim of a stolen election, Trump and his to-the-bitter-end followers have either given up any commitment to objective reality, if they are sincere in their belief, or their commitment to democracy, if they are disingenuous. I will not attempt here to disentangle the anti-reality Trump followers from the anti-democracy Trump followers; certainly, the camp includes

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1. *Full Transcript of the Mitt Romney Secret Video*, MOTHER JONES (Sept. 19, 2012), <https://www.motherjones.com/politics/2012/09/full-transcript-mitt-romney-secret-video/> [<https://perma.cc/5CEJ-4X6R>].

2. Zack Stanton, *How Trumpism is Becoming America’s New ‘Lost Cause’*, POLITICO MAG. (Jan. 21, 2021), <https://www.politico.com/news/magazine/2021/01/21/trump-civil-war-reconstruction-biden-lost-cause-461161> [<https://perma.cc/88GP-KJ3P>].

both types, as well as individuals who are difficult to classify as either more anti-reality or more anti-democracy.

One of our current two Americas consists of adherents of what some call Trumpism; the other America is everyone else. Whether Trumpism is understood as primarily anti-reality, or primarily anti-democracy, as long as it thrives it poses an existential threat to the nation. By this standard, Mike Pence, Mitch McConnell, and Liz Cheney, for example, are all in the pro-reality, pro-democracy America, despite their enthusiastic pre-election support of Donald Trump.³

Who are the Trumpism adherents? Among members of Congress, the obvious place to look—not so much a proxy as a measure of the thing itself—is the January 6 voting on challenging or accepting the Electoral College results from Arizona and Pennsylvania. In the Senate, only eight of fifty-two Republican senators—and, of course, no Democratic senators—objected to the results from Arizona, Pennsylvania, or both.⁴ As a fraction of all senators, and even as a fraction of all Republican senators, the objectors might seem too few to worry about. Things were very different, however, in the House, where 139 out of 196 Republican members voted against the results from at least one of those two states.⁵ What about the general population? In a post-election national survey, the Pew Research Center asked respondents who they thought was the *legitimate* winner of the presidential election; overall, thirty-four percent replied definitely or probably Trump, while sixty-five percent replied definitely or probably Biden.⁶ Among respondents who had voted for Trump, seventy-five percent claimed Trump had definitely or probably won; only twenty-two percent accepted the

3. To be sure, many Republicans whom I have located in the pro-reality, pro-democracy camp can reasonably be viewed as anti-democracy in a different sense. In a recent essay, Yale historian Timothy Snyder distinguishes between “gamers” and “breakers” among Republican members of Congress. The gamers—of whom McConnell is perhaps the greatest example—are “concerned above all with gaming the system to maintain power, taking full advantage of constitutional obscurities, gerrymandering and dark money to win elections with a minority of motivated voters. They have no interest in the collapse of the peculiar form of representation that allows their minority party disproportionate control of government.” Timothy Snyder, *The American Abyss: Trump, the Mob, and What Comes Next*, N.Y. TIMES MAG. (Jan. 17, 2021), <https://www.nytimes.com/2021/01/09/magazine/trump-coup.html> [<https://perma.cc/T26A-QUAA>]. By contrast, the breakers—most prominently Senators Josh Hawley and Ted Cruz, but including most Republican members of the House—“saw the situation differently: They might actually break the system and have power without democracy.” *Id.* To be sure, any definition of pro-democracy that puts Mitch McConnell in the pro-democracy camp is a capacious definition, but that is where he belongs for purposes of this article.

4. Karen Yourish, Larry Buchanan & Denise Lu, *The 147 Republicans Who Voted to Overturn Election Results*, N.Y. TIMES (Jan. 8, 2021), <https://www.nytimes.com/interactive/2021/01/07/us/elections/electoral-college-biden-objectors.html> [<https://perma.cc/98RQ-WLBU>].

5. *Id.*

6. PEW RSCH. CTR., BIDEN BEGINS PRESIDENCY WITH POSITIVE RATINGS; TRUMP DEPARTS WITH LOWEST-EVER JOB MARK 30 (2021), https://www.pewresearch.org/politics/wp-content/uploads/sites/4/2021/01/PP_2021.01.15_biden-trump-views_REPORT.pdf [<https://perma.cc/3WLW-MAEY>].

legitimacy of the Biden victory.⁷ Although adherents of Trumpism are in the minority among Senate Republicans, they are a majority of House Republicans, and an even larger majority of the Republican electorate.

This is the version of two Americas bequeathed to the nation by the Trump presidency. It is strikingly different from the version of two Americas identified in 2012 by Mitt Romney, the Republican presidential nominee immediately preceding Trump. As set forth in the first epigraph above, Romney famously divided America into forty-seven percent of Americans who “pay no income tax” and who “believe that government has a responsibility to care for them,” and the slim majority who pay income tax to support both the government and the forty-seven percent.⁸ What is striking today is how utterly the Trump-created version of two Americas has obliterated the version offered by Romney just a few years ago. It is not merely that the two Americas of 2021 have become a much more urgent division than Romney’s income-taxpaying division; rather, Romney’s division has simply vanished as a topic of political interest. This is not a matter of conjecture. As described below, the story of departing President Trump, Congress, and the would-be \$2,000 recovery rebates indicates that today the income-taxpaying percentage of the population has zero political salience. If one believes that Romney’s two Americas was itself a pernicious idea, then its definitive demise can be viewed as a silver lining to the emergence of the Trumpian two Americas. This is of only limited consolation, given that the potential for harm from the Trumpian version greatly exceeds the potential for harm from Romney’s version, but one must take what consolation one can find.

Part II of this article describes and evaluates Romney’s forty-seven percent critique of the coverage of the income tax, and the reactions to it. Part III examines the December 2020 push—from the unusual combination of President Trump and House Democrats—for \$2,000 recovery rebates, and explains how the debate over the \$2,000 rebates definitively marks the demise of Romney’s two Americas.

II

ROMNEY’S TWO AMERICAS: THE FORTY-SEVEN PERCENTERS AND THE FIFTY-THREE PERCENTERS

During the 2012 presidential campaign, a video surfaced—on the website of Mother Jones magazine—of Republican nominee Mitt Romney complaining to a May 2012 gathering of wealthy donors about the forty-seven percent of the population not subject to federal income tax. Romney described this group as “believ[ing] that they are victims” and “that government has a responsibility to care for them.”⁹ The forty-seven percent figure originated with a short article by

7. *Id.*

8. *Full Transcript of the Mitt Romney Secret Video*, *supra* note 1.

9. *Id.*

Roberton Williams of the Tax Policy Center (TPC), published in Tax Notes in June 2009, reporting the TPC's estimate that forty-seven percent of U.S. households would owe no federal income tax for the recession year of 2009.¹⁰ The article attracted little attention at the time, but it went viral nine months later, when it furnished the lead for an Associated Press story of April 7, 2010: "Tax Day is a dreaded deadline for millions, but for nearly half of U.S. households it's simply somebody else's problem."¹¹ Discussions on Fox News Network that evening focused on the forty-seven percent figure, and the number quickly became "one of the most widely known statistics on the right."¹² As I wrote in my 2014 recounting of the history of the forty-seven percent figure:

Having been deeply immersed in the conservative world in which the 47% statistic was so often cited and decried—not least by his rivals for the Republican nomination, to whom he was exposed in a seemingly endless series of televised debates—Mitt Romney came to know the figure by heart and to know that invoking and lamenting the figure would always play well with his base. Hence the remarks captured on the video.¹³

Romney's two Americas might be understood as based on a simple factual distinction between Americans who paid income tax and those who did not; by that standard, fifty-three percent of Americans were in one camp and forty-seven percent in the other. But what Romney was really pursuing was not a *factual* division, but an *attitudinal* division. On one side were those who paid income tax and agreed with Romney that it was a very bad thing that so many others did not, along with some small number of persons who did not themselves pay income tax but thought that they should. On the other side were both those who did not pay income tax and who approved of that situation, and the members of the taxpaying fifty-three percent who thought it fine that so many others did not owe income tax.

Although the income taxpayers were narrowly in the majority of the factual division, it did not follow that a majority would be on Romney's side in the attitudinal division. Romney evidently thought that the majority would *not* be on his side attitudinally; thus, he limited his complaints about the forty-seven percent to private events with wealthy donors. Clearly the editors of Mother Jones shared Romney's view of how his forty-seven percent remarks would play with the general public; they released the video in the hope—soon to be fulfilled—that it would damage his campaign.

10. Roberton Williams, *Who Pays No Income Tax?*, 123 TAX NOTES 1583 (June 29, 2009), <https://www.taxpolicycenter.org/sites/default/files/alfresco/publication-pdfs/1001289-Who-Pays-No-Income-Tax-.PDF> [<https://perma.cc/RH67-GCBS>].

11. Stephen Ohlemacher, *Nearly Half in U.S. Escape Federal Income Taxes*, ASSOCIATED PRESS FIN. WIRE (Apr. 7, 2010), <https://www.post-gazette.com/news/nation/2010/04/08/Nearly-half-in-U-S-escape-federal-income-taxes/stories/201004080335> [<https://perma.cc/PU4A-2TXX>].

12. Ramesh Ponnuru, *The Freeloader Myth*, NAT'L REV. ONLINE (Nov. 28, 2011), <https://www.nationalreview.com/2011/11/freeloader-myth-ramesh-ponnuru/> [<https://perma.cc/JZ3H-7FHV>].

13. Lawrence Zelenak, *Mitt Romney, the 47 Percent, and the Future of the Mass Income Tax*, 67 TAX L. REV. 471, 477 (2014).

In my 2014 article, I described in some detail the reaction—from both commentators and the general public—to the release of the Romney video.¹⁴ For present purposes, it is enough to note that the reactions to Romney’s comments on the video were overwhelmingly negative. Not surprisingly, reactions from liberals and moderates were uniformly negative; perhaps surprisingly, even many conservatives disapproved of Romney’s remarks. Rather than doubling down, Romney eventually decided to cut his losses. After a few weeks spent defending his remarks, Romney appeared on Fox News to tell Sean Hannity that his comments in the video were “just completely wrong.”¹⁵

It remains unclear to what extent the negative reaction to the video was based on substantive disagreement with Romney’s implication that it was important that a large majority of Americans pay something in income tax, versus to what extent it was based on revulsion at Romney’s unveiled contempt for nearly half the population. In fact, the view that there are substantial benefits of broad coverage of the income tax, in terms of what might be called “fiscal citizenship,” has a strong political and intellectual history, going back at least to Franklin Delano Roosevelt and World War II.¹⁶ On the other hand, acceptance of that view means that the income tax becomes unavailable as a tool for delivering anti-poverty cash transfers, with the result that either such redistribution simply does not take place, or the advantages of tax-based administration (primarily in terms of efficiency and lack of stigma) are lost when equivalent transfers are effected outside of the tax system. Elsewhere I have weighed the arguments for and against a federal income tax imposed on a large majority of the population, concluding that extensive coverage of the income tax is not needed because persons who do not pay income tax can satisfy their duties of fiscal citizenship in other ways.¹⁷

On balance, I think it is a good thing that in the aftermath of the video, most Americans, including even Romney himself, rejected the forty-seven percent critique so resoundingly that it has yet to reemerge as a political issue. I have some regret, however, that the rejection of the critique seems to have been based at least as much on its association with Romney’s ugly contempt for half the population, as on tranquil reflections on the pros and cons of mass income taxation.

14. *Id.* at 478–86.

15. Philip Rucker, *Romney: ‘47%’ Remarks Were ‘Completely Wrong’*, WASH. POST (Oct. 5, 2012), https://www.washingtonpost.com/politics/decision2012/romney-47-percent-remarks-were-completely-wrong/2012/10/05/a346beaa-0ed8-11e2-a310-2363842b7057_story.html [<https://perma.cc/9ZMD-YHJ3>].

16. Zelenak, *supra* note 13, at 478; *see generally* LAWRENCE ZELENAK, LEARNING TO LOVE FORM 1040: TWO CHEERS FOR THE RETURN-BASED MASS INCOME TAX (2013) (arguing that the practice of filing taxes provides an opportunity to strengthen our sense of fiscal citizenship).

17. ZELENAK, LEARNING TO LOVE FORM 1040, *supra* note 16, at 55–70.

III

THE POST-TRUMP TWO AMERICAS AND ROMNEY'S TWO AMERICAS,
COMPARED

The post-Trump dividing line of the two Americas is between breakers (a term I borrow from Timothy Snyder, who uses it to indicate their willingness to break our democratic system if necessary to win¹⁸) who reject reality or democracy, or both, and everyone else. According to Pew Research polling, the everyone else outnumber the breakers almost two-to-one (sixty-five percent to thirty-four percent).¹⁹ People who voted for Trump, however, are alarmingly underrepresented among the everyone else; only twenty-two percent of Trump voters accept the legitimacy of Biden's victory.²⁰

How do Romney's two Americas map onto the post-Trump two Americas? Obviously, the dividing lines are different, and it is certainly possible for one to have been on Romney's side in his division—that is, hostile to the forty-seven percenters—but to be opposed to the breakers today. Mitt Romney himself is such a person.²¹ Nevertheless, one might reasonably expect that hostility to non-income-taxpaying “takers” would be widespread among pro-Trump breakers, so that the dividing lines between Romney's income-taxpaying-based two Americas in 2012 and the post-Trump breakers-versus-nonbreakers two Americas today would be similar. It might be a reasonable expectation, but it would be wrong. The crucial evidence for its wrongness comes from the December 2020 controversy over whether the second round of pandemic “recovery rebates” should be \$600 per person, as in the legislation passed by both houses of Congress, or \$2,000 per person. This latter approach was favored by the unusual combination of the vast majority of Democrats in Congress and Donald Trump.

After both the House and the Senate, on December 21, overwhelmingly passed the combined omnibus appropriations bill and COVID-19 relief package, featuring recovery rebates of \$600 per person—on top of the \$1,200-per-person rebates enacted earlier in the year—President Trump surprised everyone by calling the \$600 amount a disgrace, and threatening not to sign the legislation unless Congress increased the amount to \$2,000.²² After it became clear that Congress would not raise the amount to \$2,000—despite widespread enthusiasm for doing so among congressional Democrats—Trump reluctantly signed the bill into law.²³

18. Snyder, *supra* note 3, at 32.

19. PEW RSCH. CTR., *supra* note 6.

20. *Id.*

21. It is worth noting, however, that later in 2012 Romney unreservedly repudiated his 47% comments. See Rucker, *supra* note 15. Thus, the Mitt Romney of 2021, who is clearly not a breaker, may also not be on the side of the earlier Romney on the forty-seven percent issue.

22. Luke Broadwater & Alan Rappoport, *Trump Demands Changes to Coronavirus Relief Bill, Calling It a 'Disgrace'*, N.Y. TIMES (Dec. 22, 2020), <https://www.nytimes.com/2020/12/22/world/trump-demands-changes-to-coronavirus-relief-bill-calling-it-a-disgrace.html> [<https://perma.cc/EG2C-5ET3>].

23. Emily Cochrane, Nelson D. Schwartz, & Gillian Friedman, *Trump Signs Pandemic Relief Bill*

Although Trump’s push for \$2,000 rebates failed because of insufficient Republican support in Congress, public opinion polling indicated that almost three-quarters of *Trump voters* agreed with Trump that the rebates should be more than \$600; seventy percent of Trump voters thought the rebates should be \$1,000 or more, and thirty-three percent thought the rebates should be \$2,000 or more.²⁴ The same survey found even greater enthusiasm for larger rebates among Biden voters, eighty-six percent of whom favored rebates greater than \$600, and forty-nine percent of whom favored rebates of \$2,000 or more; overall, seventy-six percent of respondents (regardless of which candidate they had supported) favored rebates of \$1,000 or more.²⁵

The larger second-round rebate checks favored by Trump and by many of his voters would have increased the negative income tax liabilities of many return filers who already paid no income tax or received net transfers through the income tax system; larger rebates would also have transformed many others, who otherwise would have paid some income tax, into recipients of net transfers through the income tax system. Even with only the smaller rebates actually enacted, the Tax Policy Center has estimated that 60.6 percent of all individual income “tax units” had zero or negative federal income tax liabilities for 2020.²⁶ The 60.6 percent figure is disturbing enough from a 2012 Romneyian perspective; the figure would have been even higher and more disturbing had the larger Trump-favored rebates been enacted. In that case, something in the neighborhood of two-thirds of the Tax Policy Center’s “tax units” would have owed no 2020 income tax.

Despite the almost unanimous support of Democrats, the insistence of Trump, and the support of a large group of Trump supporters, in the end there were no \$2,000 December rebates because of the opposition of Senate Republicans. Was it the case, then, that even in late 2020, Senate Republicans still subscribed to Romney’s forty-seven percent critique, and had decided there should be no further depletion of the ranks of income taxpayers? Not at all, at least according to the Senate Republicans themselves. A subscriber to Romney’s critique might have said *non-refundable* rebates of \$2,000 to persons with pre-rebate tax liabilities of more than \$2,000 were acceptable, because rebates so

After Unemployment Aid Lapses, N.Y. TIMES (Dec. 27, 2020), <https://www.nytimes.com/2020/12/27/us/politics/trump-signs-pandemic-relief.html> [https://perma.cc/CV36-E5LB].

24. Madison Hall, *Insider Poll: A \$600 COVID-19 Stimulus Check is Too Small for 72% of Trump Voters*, BUS. INSIDER (Dec. 24, 2020), <https://www.businessinsider.in/politics/world/news/insider-poll-a-600-covid-19-stimulus-check-is-too-small-for-72-of-trump-voters/articleshow/79949072.cms> [https://perma.cc/MBA3-KYYW].

25. *Id.*

26. *Table T21-0161 - Tax Units with Zero or Negative Income Tax Under Current Law, 2011-2031*, TAX POL’Y CTR. (Aug. 17, 2021), <https://www.taxpolicycenter.org/model-estimates/tax-units-zero-or-negative-income-tax-liability-august-2021/t21-0161-tax-units-zero> [https://perma.cc/3QCF-W976] (This estimate was not released until August 2021, but it is roughly consistent with what an informed observer would have expected in December 2020).

limited would not deplete the taxpaying ranks, but that refundable \$2,000 rebates were unacceptable. Strikingly, however, Senate Republicans instead said something close to the opposite. Senate majority leader Mitch McConnell argued that \$2,000 rebates were too generous *for higher earners*—precisely those taxpayers whose receipt of \$2,000 rebates would *not* be objectionable under the 2012 Romney critique. McConnell stated that the Senate would consider only “smart targeted aid, not another fire hose that encompasses people who are doing just fine.”²⁷ The next day, McConnell described \$2,000 checks, presumably to people who would have positive tax liabilities even after receiving \$2,000 transfer payments, as “socialism for rich people,” and argued that “[b]orrowing from our grandkids . . . is a terrible way to get help to families who actually need it.”²⁸ Similarly, Senator John Thune (R., S.D.) explained that \$2,000 rebates are “very inefficient and there will be a lot of assistance going to people that haven’t had any income loss during this time. There are probably people out there that are going to need more and we ought to figure out a way we can target it to people that need it the most.”²⁹

Not only did McConnell, Thune, and other Republican senators not express any concern about anyone’s income-taxpaying status or lack thereof; the “not targeted” critique of \$2,000 rebates is *the opposite* of what one would expect from a subscriber to Romney’s two-Americas critique. That is, McConnell and his colleagues implied that rebates of \$2,000—or, at least, of something more than \$600—might be appropriate for recipients for whom the rebates would create or increase a *net transfer* received through the tax system. But such rebates would not be appropriate for recipients who would still have net income tax liabilities after taking the rebates into account.

Three aspects of these developments in late 2020 are particularly noteworthy. One is the complete disappearance of the forty-seven percent critique. In late 2020 and early 2021, absolutely no one—not even the opponents of \$2,000 rebates—was claiming that the resulting reduction in the percentage of income-taxpaying Americans was a reason to oppose larger rebates. For that matter, I have been unable to find any mention in the media of the expected effect of rebates on the income-taxpaying percentage, let alone any discussion of whether that effect was a cause for concern. One might have expected some politicians or commentators at least to note that, in ordinary times, so low an income-taxpaying percentage would be unacceptable, but that an exception could be made for a temporary response to the pandemic. But I have found nothing of the sort.

The second notable aspect is the difference between the alliances on the question of the legitimacy of the 2020 presidential election, and the alliances on

27. Burgess Everett, *McConnell and GOP Reject House’s \$2,000 Stimulus Checks*, POLITICO (Dec. 30, 2020), <https://www.politico.com/news/2020/12/30/senate-stimulus-check-increase-452491> [<https://perma.cc/6TS3-KGP9>].

28. Burgess Everett & Quint Forgey, *McConnell: House’s \$2,000 Stimulus Checks are ‘Socialism for Rich’*, POLITICO (Dec. 31, 2020), <https://www.politico.com/news/2020/12/31/lindsey-graham-mcconnell-separate-vote-2-000-checks-453015> [<https://perma.cc/SY3L-R2XC>].

29. Everett, *supra* note 27.

the question of \$2,000 recovery rebates. For these purposes, the three crucial categories—among both politicians and the public—are Republican gamers (exemplified by Mitch McConnell), Republican breakers (exemplified by Trump himself), and Democrats. On the question of the legitimacy of the election, the gamers reluctantly aligned with the Democrats, leaving the breakers without allies. But on the question of the \$2,000 rebates, the breaker-in-chief and many—but by no means all—of his supporters aligned with the Democrats, with only the Republican gamers in the Senate opposing the rebates (albeit opposing successfully, at least in the short term).

The third aspect is the surprising support in 2020 among the “breakers”—Trump himself and many of his supporters—for \$2,000 rebates and the resulting depletion of the taxpaying rolls. It is surprising because, in 2012 and the immediately preceding few years, much of the invective against the “takers” in the non-income-taxpaying forty-seven percent came from people who sound very much like today’s “breakers.”

So what happened? Why do the breakers not include, among the many objects of their grievances, those Americans who do not pay federal income tax? Why is it that the breakers of today, despite sharing much of the *weltanschauung* of the anti-forty-seven-percenters of a decade ago, do not share the concern about the income-taxpaying percentage of the population?

The answer is a trio of reasons. First, as described above, the exposure of the forty-seven percent critique to sunlight during the 2012 presidential campaign greatly weakened its political force. Once the critique received the attention of the entire nation—rather than merely the attention of those in the right-wing echo chamber in which it had been developed—it turned out that a clear majority of pundits and the general public rejected it. Its widespread rejection was based largely on views of its merits, but also partly on its association with the contempt Romney displayed in the video for forty-seven percent of the population. In the end, of course, even Romney rejected his own critique, telling Sean Hannity, “I said something that’s just completely wrong.”³⁰ All of this was enough for me to predict in 2014—despite not having the least inkling that a Trump presidency was on the horizon—that “the population coverage of the federal income tax is dead as a political issue for the foreseeable future.”³¹

Second, Trump’s personal federal income tax situation meant that he was never in a position to make the coverage of the income tax a political issue. During one of the 2016 debates with Hillary Clinton, while commenting on reports that he had paid no federal income tax during the late 1970s, Trump explained, “That makes me smart.”³² More detail on Trump’s income tax history

30. Rucker, *supra* note 15.

31. Zelenak, *supra* note 13, at 472.

32. David Barstow, Susanne Craig, Russ Beuttner & Megan Twohey, *Donald Trump Tax Records Show He Could Have Avoided Taxes for Nearly Two Decades, the Times Found*, N.Y. TIMES (Oct. 1, 2016), <https://www.nytimes.com/2016/10/02/us/politics/donald-trump-taxes.html>

emerged in 2020, when *The New York Times* reported it had been able to review many of Trump's returns, finding that he had paid no federal income tax in ten of the fifteen previous years, as well as paying only \$750 of federal income tax in 2016, and again in 2017.³³ Trump was simply in no position to insist that a majority of the population should pay federal income tax.

But beyond Trump's personal inability to raise the issue, there is a third and deeper reason why political consideration of recovery rebates did not raise concerns about the decreasing coverage of the income tax. Romney's forty-seven percent critique implicitly embraced—indeed, was founded on—an understanding of taxpaying as an exercise in fiscal citizenship.³⁴ Romney's view recognized the importance of many of the functions of the federal government financed by income tax revenues (with the obvious exception of redistribution to the forty-seven percent through refundable credits under the income tax³⁵). Precisely because of the importance of those functions, he thought it important that the substantial majority of the population contribute to their financing. In his view, a crisis of democracy lurked in the fact that almost half the population had been removed from the ranks of fiscal citizens.

In sharp contrast, under the Trumpian view many—perhaps most—functions of the federal government are illegitimate (with a few exceptions for things such as border walls and presidential events at Trump-owned resorts), and federal income tax revenues are devoted primarily to financing the “deep state” so reviled by Trump and his supporters. Under the Trumpian view, far from being a commendable exercise in fiscal citizenship, paying federal income tax serves to support a deep state which it would be better to starve. Accordingly, there is more reason to applaud than to condemn any legislative changes that reduce the income-taxpaying percentage of the population.

There are, of course, much narrower rationales for supporting larger recovery rebates despite the resulting reduction in the coverage of the income tax. One narrower rationale would take the position that broad coverage of the federal income tax is *generally* important—that it was important in the past, and will again be important in the future—but that this is a once-in-a-century emergency, and that addressing the emergency is more important than maintaining the coverage of the income tax. More recent developments suggest, however, that

[<https://perma.cc/TNR7-FRHY>].

33. Russ Beuttner, Susanne Craig & Mike McIntyre, *Long-Concealed Records Show Trump's Chronic Losses and Years of Tax Avoidance*, N.Y. TIMES (Sept. 27, 2020), <https://www.nytimes.com/interactive/2020/09/27/us/donald-trump-taxes.html> [<https://perma.cc/YN4C-JZZT>]. The story quoted a rebuttal of sorts from Trump Organization lawyer Alan Garten, who claimed that over past decades Trump had “paid tens of millions of dollars in personal taxes to the federal government,” but the story suggested Garten “appears to be conflating income taxes with other federal taxes Mr. Trump has paid—Social Security, Medicare and taxes for his household employees.” *Id.*

34. See *generally* ZELENAK, LEARNING TO LOVE FORM 1040, *supra* note 16 (describing taxpaying and tax return preparation as exercises in fiscal citizenship).

35. The Romneyian view did not, however, rule out redistribution to the forty-seven percent as long as something other than the income tax was the vehicle for delivering the benefits of redistribution.

the disappearance of concern about the income-taxpaying percentage of the population is not limited to pandemic times. As I have explained elsewhere, enactment of President Biden’s American Families Plan—especially its proposed continuation of a larger and fully refundable child tax credit beyond the pandemic’s end—would threaten the long-term status of the federal income tax as a tax imposed on a clear majority of the population; yet this consequence of Biden’s proposals provoked almost no criticism from conservative commentators.³⁶

A second, closely related, rationale would take a broader view of taxpaying status than just federal income tax in 2020, and would note that many people taken off the 2020 federal income tax rolls by the rebates would remain taxpayers if (a) all federal taxes, especially payroll taxes, were taken into account, rather than only the income tax, (b) we adopt a multi-year perspective, considering years before and after 2020, as well as 2020 itself, or (c) both. Strikingly, however, as far as I have been able to determine no one—neither Trump and his supporters nor Democrats—made any such arguments. They did not make such arguments because there was no need. The arguments would have been in response to critiques of larger rebates based on Romney’s forty-seven percent concern. But no one was offering such critiques, so there was nothing to which to respond.

IV

CONCLUSION

If until recently there had been any doubt as to whether Romney’s 2012 view of two Americas—divided almost evenly between commendable payers of the federal income tax and regrettable takers who did not pay tax—retained any political significance, that doubt has been put to rest by recent political debates over the size of recovery rebates. Absolutely no one cares about Romney’s issue today. To one who believes, as I do, that the forty-seven percent critique was misguided, the overwhelming evidence of its demise is certainly welcome. But the Trump-inspired version of two Americas is orders of magnitude more dangerous and more pernicious than Romney’s version ever was or could be, so it is scant consolation for the rise of the Trumpian two Americas that it has coincided with the definitive demise of the Romneyian version. But in difficult times any silver lining, however thin, is better than none.

EPILOGUE

In late February, as this article was wending its way through this journal’s editorial processes, Sen. Rick Scott of Florida—chair of the National Republican Senatorial Committee, and a likely 2024 presidential candidate—released “An

36. See generally Lawrence Zelenak, *The American Families Plan and the Future of the Mass Income Tax*, 172 TAX NOTES 1277 (2021), <https://www.taxnotes.com/featured-analysis/american-families-plan-and-future-mass-income-tax/2021/08/20/76zbz> [<https://perma.cc/4Q5X-KVX3>].

11 Point Plan to Rescue America.”³⁷ Buried on page thirty-five, as one of thirteen bullet items under Point 5 (“We will grow America’s economy, starve Washington’s economy, and stop Socialism”) were two brief sentences on the coverage of the income tax: “All Americans should pay some income tax to have skin in the game, even if a small amount. Currently over half of Americans pay no income tax.”³⁸ The “11 Point Plan” offered no details as to how the income tax laws should be revised in pursuit of that goal.

From one perspective, the fact that a leading Republican politician would make such a proposal in 2022 undermines this article’s conclusion above, that “[a]bsolutely no one cares about Romney’s issue today.” Rick Scott, at least, still cares. From another perspective, however, the uniformly negative—and bipartisan—reaction to Scott’s income tax proposal is powerful evidence in support of the slightly less dramatic assertion that *almost* no one cares about Romney’s issue today.

The reaction to Scott’s plan from Democrats and the left was swift and utterly predictable. Aaron Blake of the *Washington Post* described Scott as “rekindling the same issue that led Mitt Romney to stumble into his ‘47 percent’ gaffe,” and commented, “[t]he political ads almost write themselves: The leader of the effort to elect a Senate majority wants to use that to raise taxes on as much as half the country, however modestly.”³⁹ On cue, White House Press Secretary Jen Psaki tweeted that Scott “wants to raise taxes on half of Americans – including on seniors and working families. Seriously, that’s their plan.”⁴⁰

If Republicans were less eager to dramatically reject Scott’s plan, they nevertheless passed up every opportunity to embrace it. Contacted by *Politico* for reactions to Scott’s tax proposal, “Privately, officials from some top Republican Senate campaigns mocked the plan, questioning why the Florida Republican senator released it in the first place—and why the GOP would ever suggest raising taxes at all during a midterm year featuring record-high inflation and unpopular Democratic control.”⁴¹ Not one of the twenty-seven campaigns contacted by *Politico* expressed support for Scott’s tax plan.

37. Rick Scott, *An 11 Point Plan to Rescue America: What Americans Must Do to Save This Country* (2022), <https://www.rescueamerica.com/11-point-plan/>.

38. Rick Scott, *An 11 Point Plan to Rescue America: What Americans Must Do to Save This Country*, POLITICO (2022), <https://www.politico.com/f/?id=0000017f-1cf5-d281-a7ff-3ffd5f4a0000> [<https://perma.cc/2F8H-BL5M>].

39. Aaron Blake, *Rick Scott Thrusts the GOP Back Into Romney- ‘47 Percent’ Territory*, WASH. POST (Feb. 23, 2022), <https://www.washingtonpost.com/politics/2022/02/22/rick-scott-thrusts-gop-back-into-romney-47-percent-territory/> [<https://perma.cc/S5LF-VVAT>].

40. Jen Psaki, (@PressSec), TWITTER, (Feb. 22, 2022, 3:55 PM), twitter.com/PressSec/status/1496227216400732168 [<https://perma.cc/A3VB-WP29>]. See also Joseph J. Thorndike, *Tax History: Do Taxpayers Make Better Citizens? Rick Scott Thinks So*, 174 TAX NOTES FED. 1199 (Feb. 28, 2022), <https://www.taxnotes.com/featured-analysis/tax-history-do-taxpayers-make-better-citizens-rick-scott-thinks-so/2022/02/25/7d6zg> [<https://perma.cc/GM8J-XCUU>] (discussing a selection of early partisan reactions to Scott’s plan, along with a historically-informed analysis of both the politics and the merits of the issue).

41. Natalie Allison, *Scott’s ‘Rescue America’ Plan Falls Flat*, POLITICO (Feb. 23, 2022),

The nonpartisan Tax Policy Center (TPC) soon chimed in to point out that, for millions of Americans not currently paying income tax, Scott’s proposal would not cost merely a few dollars—as would be the case if the proposal raised one’s tax bill from zero to, say, \$5. Rather, for all those with *negative* income tax liabilities under current law as a result of refundable credits—primarily the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC)—implementation of the proposal would require elimination of the refundable credits to raise tax bills from negative amounts to zero, followed by a modest additional tax to create a positive tax bill. For a taxpayer currently receiving a \$5,000 net transfer through the income tax, the cost of raising her tax liability from *minus* \$5,000 to *plus* \$5 would be \$5,005, not merely \$5. Taking this into account, the TPC estimated that “achieving Scott’s goal could increase federal income taxes by more than \$100 billion in 2022 alone,” and that “the lowest-income households—those making less than about \$27,000 annually—would pay an average of nearly \$1,000 more in taxes in 2022.”⁴²

If the coffin needed a final nail, it was hammered in by Senate Majority Leader Mitch McConnell on March 1, when he told reporters, “[w]e will not have as part of our agenda a bill that raises taxes on half the American people . . . [t]hat will not be part of the Republican Senate majority agenda.”⁴³

Although the pre-epilogue portion of this article, written before the release of Scott’s “Plan to Rescue America,” failed to predict that a nationally prominent politician would propose a major increase in the income-tax-paying percentage of the population, the overwhelmingly negative bipartisan reaction to the proposal confirms the article’s conclusions on the politics of the issue today.

Scott himself has now seen the light on this issue. As of early August 2022, if one searches for Scott’s “11 Point Plan” one finds instead a “12 Point Plan.”⁴⁴ Immediately under “12. CUTTING TAXES,” one finds, in a very large font, a

<https://www.politico.com/news/2022/02/23/scotts-rescue-america-plan-falls-flat-00011004>
[<https://perma.cc/Y8XM-2TAC>].

42. Howard Gleckman, *Scott’s ‘Skin in the Game’ Plan Could Raise Taxes by \$100 Billion in 2022, Mostly on Low- and Moderate-Income Households*, TAX POL’Y CTR. (Feb. 24, 2022), <https://www.taxpolicycenter.org/taxvox/scotts-skin-game-plan-could-raise-taxes-100-billion-2022-mostly-low-and-moderate-income> [<https://perma.cc/C8FM-JCNK>]. The Institute on Taxation and Economic Policy (ITEP) followed with a similar analysis and similar results, but expanded to include state-by-state analyses of the impact of Scott’s proposal. Steve Wamhoff, *State-by-State Estimates of Sen. Rick Scott’s ‘Skin in the Game’ Proposal*, INST. ON TAX’N & ECON. POL’Y (Mar. 7, 2022), <https://itep.org/state-by-state-estimates-of-sen-rick-scotts-skin-in-the-game-proposal/> [<https://perma.cc/J8VY-WDN9>]. The bottom line of ITEP’s analysis: “The states most affected, where more than 40 percent of residents would face tax increases, are located mostly in the south: Mississippi, West Virginia, Arkansas, Louisiana, Alabama, Kentucky, Oklahoma, Georgia, New Mexico, South Carolina and Sen. Scott’s home state of Florida.” *Id.*

43. Lindsay Wise & Alex Leary, *Mitch McConnell Rebukes Rick Scott for Tax Proposal*, WALL ST. J. (Mar. 1, 2022), <https://www.wsj.com/articles/mitch-mcconnell-rebukes-rick-scott-for-tax-proposal-11646173769> [<https://perma.cc/PEG4-AJZM>].

44. Rick Scott, *Rescue America: 12 Point Plan*, <https://rescueamerica.com/12-point-plan/> [<https://perma.cc/4555-PVYL>] (last visited August 9, 2022).

“NOTE FOR PRESIDENT BIDEN,” informing the President that “This plan cuts taxes. Nothing in this plan has ever, or will ever, advocate or propose, any tax increases, at all.”⁴⁵ Concern about every American having “skin in the game” is conspicuously absent from Scott’s discussion of Point 12. Romney learned his lesson; Scott has now learned his.

45. Rick Scott, *Rescue America: 12. CUTTING TAXES*, <https://rescueamerica.com/steps/12-cutting-taxes/> [<https://perma.cc/8AAC-M6VU>] (last visited August 9, 2022).