

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

Making the Modern American Fiscal State

Law, Politics, and the Rise of Progressive Taxation, 1877–1929

At the turn of the twentieth century, the U.S. system of public finance underwent a dramatic transformation. The late nineteenth-century regime of indirect, hidden, partisan, and regressive taxes was eclipsed in the early twentieth century by a direct, transparent, professionally administered, and progressive tax system. This book uncovers the contested roots and paradoxical consequences of this fundamental shift in American tax law and policy. It argues that the move toward a regime of direct and graduated taxation marked the emergence of a new fiscal polity – a new form of statecraft that was guided not simply by the functional need for greater revenue but by broader social concerns about economic justice, civic identity, bureaucratic capacity, and public power. Between the end of Reconstruction and the onset of the Great Depression, the intellectual, legal, and administrative foundations of the modern fiscal state first took shape. This book explains how and why this new fiscal polity came to be.

Ajay K. Mehrotra teaches law and history at the Maurer School of Law at Indiana University, Bloomington. He is co-editor of *The New Fiscal Sociology: Comparative and Historical Approaches to Taxation* (Cambridge, 2009). Research for this book was supported by the American Academy of Arts & Sciences, the National Endowment for the Humanities, and the William Nelson Cromwell Foundation.

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

Cambridge Historical Studies in American Law and Society

Series Editor

Christopher Tomlins, *University of California, Irvine*

Previously published in the series:

Yvonne Pitts, *Family, Law, and Inheritance in America: A Social and Legal History of Nineteenth-Century Kentucky*

David M. Rabban, *Law's History*

Kunal M. Parker, *Common Law, History, and Democracy in America, 1790–1900*

Steven Wilf, *Law's Imagined Republic*

James D. Schmidt, *Industrial Violence and the Legal Origins of Child Labor*

Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941*

Tony A. Freyer, *Antitrust and Global Capitalism, 1930–2004*

Davison Douglas, *Jim Crow Moves North*

Andrew Wender Cohen, *The Racketeer's Progress*

Michael Willrich, *City of Courts, Socializing Justice in Progressive Era Chicago*

Barbara Young Welke, *Recasting American Liberty: Gender, Law and the Railroad Revolution, 1865–1920*

Michael Vorenberg, *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment*

Robert J. Steinfeld, *Coercion, Contract, and Free Labor in Nineteenth Century America*

David M. Rabban, *Free Speech in Its Forgotten Years*

Jenny Wahl, *The Bondsman's Burden: An Economic Analysis of the Common Law of Southern Slavery*

Michael Grossberg, *A Judgment for Solomon: The d'Hauteville Case and Legal Experience in the Antebellum South*

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

Making the Modern American Fiscal State

Law, Politics, and the Rise of Progressive Taxation, 1877–1929

AJAY K. MEHROTRA

Indiana University, Bloomington



Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

CAMBRIDGE
UNIVERSITY PRESS

32 Avenue of the Americas, New York, NY 10013-2473, USA

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107043923

© Ajay K. Mehrotra 2013

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2013

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication data

Mehrotra, Ajay K., 1969–

Making the modern American fiscal state : law, politics, and the rise of progressive taxation, 1877–1929 / Ajay K. Mehrotra, Indiana University.

pages cm

Includes index.

ISBN 978-1-107-04392-3 (hard covers : alk. paper)

1. Taxation – United States – History. 2. Fiscal policy – United States – History.

3. Taxation – Law and legislation – United States – History. I. Title.

HJ2373.M44 2014

336.200973-dc23 2013013590

ISBN 978-1-107-04392-3 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

For my parents, Neena and Vishnu

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

Contents

<i>List of Tables, Charts, and Illustrations</i>	page xi
<i>Acknowledgments</i>	xiii
Introduction	i
PART I: THE OLD FISCAL ORDER	
1 The Growing Social Antagonism: Partisan Taxation and the Early Resistance to Fiscal Reform	37
2 The Gradual Demise: Modern Forces, New Concepts, and Economic Crisis	86
PART II: THE RISE OF THE MODERN FISCAL STATE	
3 The Response to <i>Pollock</i> : Navigating an Intellectual Middle Ground	143
4 The Factories of Fiscal Innovation: Institutional Reform at the State and Local Level	185
5 Corporate Capitalism and Constitutional Change: The Legal Foundations of the Modern Fiscal State	242
PART III: CONSOLIDATING THE NEW FISCAL ORDER	
6 Lawyers, Guns, and Public Monies: The U.S. Treasury, World War I, and the Administration of the Modern Fiscal State	293
7 The Paradox of Retrenchment: Postwar Republican Ascendancy and the Resiliency of the Modern Fiscal State	349
Conclusion	409
<i>Index</i>	419

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

Tables, Charts, and Illustrations

Tables

1.1	Federal Government Receipts by Source, 1880–1930	<i>page</i> 7
1.1	Alcohol Excise and Federal Government Revenue, Internal and Total, 1880–1913	72
1.2	Nineteenth-Century Independent Parties Favoring an Income Tax	81
4.1	State and Local Government Receipts by Source, 1890–1932	193
4.2	State and Local Government Debt Levels, 1880–1927	199
6.1	Maximum Marginal Tax Rates and Tax Revenues by Source, Fiscal Years 1913–1921	300
6.2	Increases in Corporate Profits of Select U.S. Corporations, 1914–1916	333
7.1	Top Personal Income Tax Rates, and Sources of Tax Revenue, 1916–1929	352
7.2	Sources of Individual Income, 1916–1930	403

Charts

2.1	Industrializing Nations: Real GDP per Capita, 1870–1930	90
6.1	Growth of Bureau of Internal Revenue, 1915–1925	306

Illustrations

1.1	“Difference Between Trimming a Hedge and Cutting it Down”	48
1.2	“How the Tariff Robs the Farmer and Every Workingman”	52
2.1	The Progressive Public Finance Economists	102
3.1	“The Latest Unfortunate Experience of an Unfortunate Animal”	145
5.1	The Lawmakers	265
5.2	“The New Man on the Job”	279
6.1	The Treasury Lawyers	309
7.1	1920 Taxpayers Lined Up To Pay Their Income Taxes	357

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

Acknowledgments

It is only fitting that a book about the importance of social obligations and collective responsibilities – as embodied in changing conceptions of taxation – should begin by acknowledging the many people and institutions that helped make this book possible. This book began, more years ago than I care to recall, as a doctoral thesis in the history department at the University of Chicago. There a committee of dedicated historians consisting of Bill Novak, Kathy Conzen, and Amy Stanley helped guide my initial interests in taxation and American state building. At U of C, I also benefited from an interdisciplinary intellectual environment developed by scholars such as Andy Abbott, David Galenson, and Gary Herrigel, and sustained by fellow graduate students Amy Amoon, Doug Bradburn, Cathleen Cahill, Joanna Grisinger, Scott Lien, Matt Lindsay, Rebecca Mergenthal, Kim Reilly, Andrew Sandoval-Strausz, Tracy Steffes, and Mark Wilson.

Before graduate school, my interests in taxation and legal history began at the Georgetown University Law Center. There, Dan Halperin first demonstrated to me how tax law and policy affected nearly every aspect of daily life. Indeed, my interest in taxation can be traced back to the many lessons I learned working with Dan. Similarly, Dan Ernst, Mark Tushnet, and Norman Birnbaum cultivated my interests in American legal history and encouraged me to pursue that interest in graduate school. Dan Ernst in particular has been instrumental in shaping this book and my development as a scholar and teacher.

The process of transforming the dissertation into this book took place at Indiana University, Bloomington. At IU, I have been fortunate to have a generous and thoughtful group of colleagues – at the Maurer School of Law and elsewhere – who have encouraged, critiqued, and supported my scholarship. Many of these colleagues read early draft portions of this book, often multiple times, and provided me with outstanding comments: thanks to Jeannine Bell, Dan Conkle, Ken Dau-Schmidt, Charlie Geyh,

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

xiv

Acknowledgments

Alex Lichtenstein, Leandra Lederman, Mike McGerr, John Mikesell, Carl Weinberg, Susan and David Williams, Elisabeth Zoller, and especially Mike Grossberg and Bill Popkin who have been consistent and generous mentors throughout my career. The students in my legal history seminar and my many research assistants over the years read and discussed a great deal about the rise of the American fiscal state. I am indebted to many of these students, particularly Charles Persons, Collin McCready, James Motter, Ryan Guillory, Joel Koerner, Dustin Plummer, Lisa Fahey, Ken Burleson, Charles Gray, Scott Ritter, and especially Megan McMahon who more than any other research assistant helped see this book to completion. Deans Lauren Robel and Hannah Buxbaum provided a valuable sabbatical and summer funding to complete this project. The staff and librarians at the law library, especially Keith Buckley, Jennifer Bryan Morgan, and Rebecca Bertoloni-Meli, provided critical research assistance. And my friends and colleagues Luis Fuentes-Rohwer, Jay Krishnan, Ethan Michelson, Christy Ochoa, and Tim Waters have read and commented on more of my scholarship than they care to admit, and in the process they've reminded me of the true meaning of a scholarly community of friends.

Many other scholars and friends also took on the social obligation to review and provide comments on various portions of this book and in many cases the entire manuscript. I am grateful to Mark Aldrich, Reuven Avi-Yonah, Steve Bank, Gerry Berk, Michael Bernstein, Cheryl Block, Dorothy Brown, Richard Bensel, Andrea Campbell, Chris Capazolla, Lawrence Friedman, David Galenson, Dan Halperin, Richard John, Marianne Johnson, Robert Johnston, Carolyn Jones, Marjorie Kornhauser, Mark Leff, Shu-Yi Oei, Julia Ott, Sheldon Pollack, Gautham Rao, Adam Rosenzweig, Bruce Schulman, Steve Sheffrin, David Tannenhaus, Jon Teaford, Mark Tushnet, Dennis Ventry, Jr., Michael Willrich, Vicky Woeste, and Julian Zelizer. A special group of friends and colleagues read the entire manuscript, provided trenchant comments, and have been discussing our mutual interest in fiscal history for many years: I am deeply indebted for all that I have learned from Elliot Brownlee, Robin Einhorn, Isaac Martin, Monica Prasad, and Joe Thorndike.

Numerous institutions and the individuals associated with them have also assisted me with this project. Generous funding support from the William Nelson Cromwell Foundation, the National Endowment for the Humanities, and the American Academy of Arts & Sciences helped launch the writing of this book. In fact, the first draft of the book began when I was a Visiting Scholar at the American Academy. There Leslie Berlowitz

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)*Acknowledgments*

xv

and Patricia Spacks created a welcoming environment for junior scholars, and an energetic group of fellow visiting scholars consisting of Victoria Cain, Taylor Fravel, Tony Mora, Bethany Moreton, Laura Scales, and Anne Stiles made the year in Cambridge productive and enjoyable.

After a brief hiatus to work on other research, I was able to return to this project during a sabbatical semester at the IU Institute for Advanced Study, where John Bodnar and Ivona Hedin provided me with the space and time to re-engage with the manuscript. During that time and afterwards, I had the opportunity to present portions of the book at the annual meetings of the Law & Society Association, the Social Science History Association, the Midwest Political Science Association, and the American Society for Legal History, as well as at workshops at Emory University, Washington University in St. Louis, Tulane University, and the IU Ostrom Workshop in Political Theory and Policy Analysis. I am grateful for the comments I received at these venues. All of the above individuals helped me clarify my arguments and avoid mistakes. Any remaining errors are, of course, my own.

Much of the research contained in this book would not have been possible without the assistance of librarians, archivists, and staff at numerous libraries. Among the many libraries and archives that I consulted, I am especially thankful for the assistance I received at the Library of Congress, the National Archives and Record Administration (both in Washington, D.C., and in College Park, Md.), Columbia University's Butler Library, the University of Michigan's Bentley Library, the University of Chicago's Regenstein Library, the Harvard University Libraries, the Hebert Hoover Presidential Library, the Newberry Library, the Wisconsin State Historical Society, and the Yale University Libraries.

Back when this book was merely an idea, Chris Tomlins believed in this project and its author. His patience and assistance as an editor, mentor, and friend have been invaluable. The two anonymous referees also provided useful guidance. One of them (Brian Balogh) disclosed his identity and generously provided continued assistance. Indeed, Brian, like Chris, has been molding my research and scholarship from the start of my career. I am deeply indebted to both of them. Debbie Gershenowitz and her colleagues at Cambridge University Press have skillfully managed the production process. Debbie inherited this project at a late date, but her support has been unwavering.

Certain portions of this book were previously published in journals. Parts of Chapter 1 appeared as "More Mighty than the Waves of the Sea": Toilers, Tariffs, and the Income Tax Movement, 1880–1913," *Labor*

Cambridge University Press

978-1-107-04392-3 - Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877–1929

Ajay K. Mehrotra

Frontmatter

[More information](#)

xvi

Acknowledgments

History 45:2 (May 2004), 165–98. Portions of Chapter 4 appeared as “Forging Fiscal Reform: Constitutional Change, Public Policy, and the Creation of Administrative Capacity in Wisconsin, 1880–1920,” *Journal of Policy History* 20:1 (Winter 2008), 94–112. And an extended version of Chapter 6 appeared as “Lawyers, Guns & Public Monies: The U.S. Treasury, World War One, and the Administration of the Modern Fiscal State,” *Law & History Review* 28:1 (February 2010), 173–225. I thank these journals for allowing me to reprint portions of my work.

My most significant gratitude is to my family. My parents, Neena and Vishnu, to whom this book is dedicated, have always supported my dreams and ambitions, even when they didn’t always agree with them. My uncle Biren has always been among the first to ask about and spur my writing, as he has shared his own work with me. My brother Amit and his wife Parul have welcomed me on many a research trip to New York and have continued to encourage my research and writing. And most important of all, my wife Yamini and our two boys, Nikesh and Siddhartha, have given me the emotional sustenance to complete this project. Nik and Sid have literally grown up with this book, and together with Yamini they’ve reminded me of the collective obligations and responsibilities worth having in life.