

How Tax Law Made America Modern

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Ajay K. Mehrotra, [Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877-1929](#) (2013).

[Ajay Mehrotra](#)'s new book, *Making the Modern American Fiscal State*, describes how the United States in the late nineteenth and early twentieth centuries transformed the way it taxed its citizens and thereby laid the foundation for new forms of governance and new sensibilities about the network of civic obligations that bound the nation together. This is a truly impressive work of legal historical scholarship—thoroughly researched, well written, and powerfully argued. Mehrotra also offers a masterful demonstration of scholarly synthesis, artfully weaving together an intricate tapestry of economics, politics, law, and social history.

At the heart of *Making the Modern American Fiscal State* is a revolution in American tax practices. Prior to the twentieth century, the national government raised revenue through a system of import duties and regressive excise taxes that were “indirect, hidden, disaggregated, and partisan.” (P. 6.) By the end of the story, in the wake of World War I and on the cusp of the New Deal, a much different taxing regime was in place. It was a progressive system that was “direct, transparent, centralized, and professionally administered.” (P. 6.) While prior forms of taxation drew on a premise of a quid pro quo exchange between citizen and government—citizens put money into the system and received certain benefits in return—the new form of taxation challenged this atomistic “benefits” theory and emphasized instead a thicker sense of national community and responsibility. Taxes were assessed on a principle of one’s “ability to pay.” This approach, Mehrotra explains, “promoted an active role for the positive state in the reallocation of fiscal burdens, the reconfiguration of civil identity, and the rise of administrative authority.” (P. 10.) The rise of the modern fiscal state, built on this transformation in taxing policy was, in Mehrotra’s account, a radical change in policy with lasting effects on American statecraft and society.

This is an ambitious book. Mehrotra crafts a richly textured history of the tax reform movement, with an ensemble cast of characters. There are populist social activists, whose calls for tax reform were a part of their larger challenge to the prevailing economic arrangements of industrial capitalism and the stark societal inequities that resulted. There are progressive political economists, such as Richard T. Ely, Henry Carter Adams, and Edwin R. A. Seligman—the “visionaries or architects of the modern American fiscal state.” (P. 87.) Their ideas “drove the intellectual transformation in tax law and policy, paving the groundwork for the subsequent legal and popular acceptance of a new fiscal order.” (P. 146.) There are the lawyers who crafted legal rationales to justify progressive taxation, a task that took on added urgency when, in 1895, the U.S. Supreme Court struck down the federal income tax. There are the lawyers in the Treasury Department who, during World War I, created the institutions that would administer the new tax system. And there are several generations of lawmakers and government officials who debated and eventually passed and then had to implement this novel approach to tax policy. The focus of the book is on national-level tax battles, but Mehrotra also gives considerable attention to the roughly parallel developments on the state level. It is a mark of Mehrotra’s skill as a historian and writer that he is able to pull all these strands together into a coherent, highly readable narrative.

In a book filled with well-crafted analyses of key turning points in the rise of progressive taxation, particularly fascinating is Mehrotra’s account of the background and aftermath of the Supreme Court’s 1895 decision in [Pollock v. Farmers’ Loan & Trust Company](#) striking down the federal income tax law. Ultimately, the ruling proved only a temporary setback for reformers. Indeed, it became powerful rallying point for the entire progressive tax movement. The year following the Court’s decision, the graduated income tax was in the Democratic Party’s platform. Although a

Republican victory in 1896 sapped some of the reform movement's momentum, it steadily gained strength in the opening decade of the twentieth century. Congress passed a corporate excise tax in 1909, the same year it approved the Sixteenth Amendment, which overturned *Pollock* and granted Congress the power to create an income tax. When it became part of the Constitution four years later, Congress quickly took advantage of its new power.

Another critical turning point in Mehrotra's story was World War I. It was during the war years that the federal government dramatically expanded its new tax regime. It was during the war that the modern American fiscal state took form. "Although the wartime tax system may not have gone as far as some activists had hoped," Mehrotra writes, "the unprecedented turn toward a system of steeply graduated taxes fundamentally altered the distribution of economic obligations, the meaning of fiscal citizenship, and perhaps most significantly the burgeoning powers of the administrative state." (P. 295.) The book includes a wonderfully crafted chapter on the lawyers who worked to create the new administrative apparatus of the modern fiscal state during World War I.

One of the lessons learned for reformers in *Pollock's* aftermath was that they had to do a better job of selling their agenda to the nation. Reformers increasingly advocated a more moderate version of progressive taxation, one that was "more about reallocating the burdens of financing a modern state, and less about radically redistributing income or wealth," one that aligned with "traditional American values and institutions." (P. 183.) Rather than a tool of redistribution, reformers promoted progressive taxation as a way to protect industrial capitalism, albeit in more humane, equitable form. The lawyers who designed the administrative structures that would effectuate the new tax system during the war years followed in their footsteps. The particular form of progressive taxation that took shape in the United States, Mehrotra concludes, both made possible the emergence of the modern fiscal polity and ultimately limited its redistributive potential.

This book serves as a model for legal historians who are looking to integrate fine-grained, nuanced analyses of historical events and actors with the kind of big-picture ideas that most readily engage our fellow legal scholars. This is a book that illuminates a fundamental transformation of the American state, a transformation in whose shadow we obviously live today. This is also a book that takes ideas quite seriously. (Mehrotra begins one of his chapters with John Maynard Keynes's quotation about "[p]ractical men" unknowingly being "the slaves of some defunct economist.") But this book is not, in the end, a work of intellectual history or political theory. It is history in which ideas are important because they moved the machinery of politics and law. Understanding the roots of the policy changes examined in this book requires careful attention to the larger ideas that made the policy seem so urgent and necessary. We are thus witnesses to the complex interplay of ideology, legal development, politics, and social activism. Out of all this, as this book so effectively and smartly demonstrates, arose a new set of legal norms, political expectations, and societal sensibilities.

One of the most important contributions of *Making the Modern American Fiscal State* is the way in which Mehrotra conceptualizes the very idea of taxes. Taxing, in Mehrotra's account, was not just a tool for raising revenues to fund whatever policy the government in power favored. It was not just a neutral means to a contested, ideological end. Taxing policy was itself a statement of substantive ideology; it was a discourse through which Americans could talk about their vision of government and civic responsibility. "Fiscal citizenship" is the nicely evocative label Mehrotra attaches to this idea. This is a rich, compelling, and convincing framework through which to think about taxing. And it is a perfect vehicle for telling the story of the rise of progressive taxation and thus the formation of the modern American state.

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