Raising Revenue and Raising Hell

CHRISTOPHER CAPOZZOLA

It was a time of greenbacks, goldbugs, and grangers; milquetoast mugwumps; single-taxers, socialists, standpatters, and the Sugar Trust. Calls for more taxes filled the air. Populist Mary Lease urged Americans to "raise less corn and more hell," and even Andrew Carnegie piously endorsed an estate tax "by which the State marks its condemnation of the selfish millionaire's unworthy life." All that hell-raising pushed an income tax through Congress in 1894, but a year later, the Supreme Court granted relief to Charles Pollock, a ten-share stockholder in the Farmers' Loan and Trust Company, leaving Justice Henry Brown to moan in dissent that "the decision involve[d] nothing less than the surrender of the taxing power to the moneyed class." The Populist Party demanded that "[t]he power of government—in other words, of the people—should be expanded . . . to the end that oppression, injustice, and poverty shall eventually cease in the land." By the summer of 1914, oppression, injustice, and poverty were still around, but the Constitution had a Sixteenth Amendment, and the power to collect corporate excise and personal income taxes rested in the hands of the Treasury Department. But still, with all that hell-raising, I wouldn't wanted to work there.[1]

How different things looked by 1919. Historians have called the World War I era a fiscal revolution, and Ajay Mehrotra does not dissent, seeing the dawn of a "modern era of fiscal governance, one based primarily on

1. Andrew Carnegie, "The Gospel of Wealth" (1889), in *The Gospel of Wealth and Other Timely Essays*, ed. Edward C. Kirkland (Cambridge, Mass.: Harvard University Press, 1962), 22; Richard J. Joseph, *The Origins of the American Income Tax: The Revenue Act of 1894 and Its Aftermath* (Syracuse, N.Y.: Syracuse University Press, 2004), esp. 105–17; *Pollock v. Farmers' Loan and Trust Company*, 157 U.S. 429 (1895); Henry Brown, quoted in "Fears the Effect," *New York Times*, May 21, 1895, p. 3; "Populist Party Platform," in Richard D. Heffner, ed., *A Documentary History of the United States*, 7th ed. (New York: Signet, 2002), 237.

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the direct and progressive taxation of personal and corporate income." By focusing on second-tier executive branch authorities, Mehrotra also highlights the role of law and lawyers in a transformation that "demanded an unprecedented amount of bureaucratic capacity." Like many of the other warring powers, America's wartime tax system was inordinately complex and offered unparalleled opportunities for ambitious government lawyers. They were needed—they made themselves needed—to the proper functioning of a modern state as it mobilized for war. Lawyers, Mehrotra writes, "quickly became pivotal intermediaries between the burgeoning fiscal state and the business community."[2]

World War I was "the pivot upon which the early twentieth-century fiscal revolution turned," but Mehrotra argues that new regimes of public finance opened the way to the development of the modern administrative state more generally. For too long, even as historians have dutifully quoted Randolph Bourne's 1918 insight that "war is the health of the state," their accounts of the United States during World War I have dismissed wartime expansion as insignificant because so many of its institutions were temporary. But Mehrotra reminds us of the contingency, uncertainty, and ambivalence that surrounded the sudden U.S. experiment with state-building during its first world war, and he shows that the power of the state cannot simply be measured by counting federal employees (although he does that too). It also requires attention to new habits and modes of thought, new roles for legal experts, and a new familiarity with someone called the Tax Man—all of which persisted in peacetime.[3]

The coming of war brought panic at the New York Stock Exchange and a run on the banks; the collapse of international trade emptied the nation's tariff coffers. Americans debated neutrality, and in 1916, lest war seem like an overly enticing undertaking, Congress imposed new taxes on the profits of munitions makers. Still the war came. After April 1917, tax talk continued, but as Mehrotra's astonishing numbers show, the scope and scale of

2. Ajay Mehrotra, "Lawyers, Guns, and Public Moneys: The U.S. Treasury, World War I, and the Administration of the Modern Fiscal State," 173, 174, 193 (in this volume). On the fiscal regimes of U.S. allies, see James E. Cronin, *The Politics of State Expansion: War, State and Society in Twentieth-Century Britain* (New York: Routledge, 1991), 49–64; M. J. Daunton, "How To Pay for the War: State, Society and Taxation in Britain, 1917–24," *English Historical Review* 111 (September 1996): 882–919; Harvey E. Fisk, *French Public Finance in the Great War and To-Day* (New York: Bankers Trust Co., 1922), 13–24; Martin Horn, *Britain, France, and the Financing of the First World War* (Montreal: McGill-Queen's University Press, 2002); R. C. Whiting, "Taxation and the Working Class, 1915–24," *Historical Journal* 33 (4) (1990): 895–916.

3. Mehrotra, "Lawyers, Guns, and Public Moneys," 187; Randolph S. Bourne, "The State," in *War and the Intellectuals: Collected Essays, 1915–1919*, ed. Carl Resek (New York: Harper and Row, 1964), 71.

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war finance far outran anyone's ability to comprehend, let alone control. Treasury secretary William Gibbs McAdoo announced the war would cost $3.5 billion, but by the summer of 1917, as a plan to raise $2 billion in revenue sat on his desk, he already knew the war would cost closer to $15 billion. "With each fresh calculation, the sum had grown larger and the figures were appalling," McAdoo later reflected.[4]

Ten times more expensive than the Civil War, the world war baffled politicians, tax lawyers, and economists alike. Not that there was any shortage of answers. Radicals urged the "conscription of wealth." Progressives emphasized taxes and the need to "pay as you fight"; President Woodrow Wilson argued that "so far as practicable the burden of the war should be borne by taxation of the present generation rather than loans." Business warned that high taxes would stifle investment in war industries and urged instead the sale of bonds, which would dampen inflation, create a wartime ownership society, and instill a lifelong culture of thrift among the working class. Everyone knew how much was at stake in this effort at what Mehrotra calls "striking the balance between justice and revenue." As progressive tax reformer Amos Pinchot noted, "If we ever get a big income tax on in war time, some of it—a lot of it—is going to stick." Hence the vicious battle that Mehrotra recounts over whether to tax the "war profits" or the "excess profits" of corporations. One of those taxes, by definition, would be repealed at the war's end; the other, just maybe, could be made to stick.[5]

In the end, Congress passed both a war profits tax and an excess profits tax. The *Wall Street Journal* denounced the excess profits tax as "hasty and ill-advised legislation . . . rushed through Washington by politicians desiring political favor with the many by taxing the capital of the few," which it was. But it helped, in part, to pay for the war—along with bonds, savings stamps, taxes on chewing gum and movie tickets, and willy-nilly currency creation that sparked rampant inflation that doubled the cost of living. Hardly a coherent vision of a balance between justice and revenue.[6]

Wartime state-building was thoroughly improvisational, based on political compromises and imperfect information, and it was conveyed to the public in rhetoric drawn from a sloppy hodgepodge of liberalism,

4. Hugh Rockoff, "Until It's Over, Over There: The US Economy in World War I," in *The Economics of World War I*, ed. Stephen Broadberry and Mark Harrison (New York: Cambridge University Press, 2005), 310; William Gibbs McAdoo, quoted in Mehrotra, "Lawyers, Guns, and Public Moneys," 184.

5. Mehrotra, "Lawyers, Guns, and Public Moneys," 223; Woodrow Wilson, quoted in Mehrotra, 184; Amos Pinchot, quoted in Mehrotra, 186. On Civil War financing, see Melinda Lawson, *Patriot Fires: Forging a New American Nationalism in the Civil War North* (Lawrence: University Press of Kansas, 2002), 40–64.

6. *Wall Street Journal*, quoted in Mehrotra, "Lawyers, Guns, and Public Moneys," 211.

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republicanism, and coercion. But reconciling the excess profits tax's populist notions of a just economy with the bureaucratic workings of the modern administrative state—while paying the bill for an ever more expensive war—proved too much to ask. Before the ink was dry on Woodrow Wilson's pen, the revenue acts were already causing headaches; as economist E. R. A. Seligman complained, the excess profits tax introduced "deplorable uncertainty in administration."[7]

And that's where the lawyers come in.

All states, of course, are imperfect compromises and hodgepodgey improvisations, but they cannot appear that way to the citizens they tax. And so the Treasury Department's staff—from its phlegmatic secretary to its lowliest clerk—launched a remarkable effort to perform its own reliability. Treasury's public relations campaign sought to foster "public consciousness of the partnership relation" that Treasury lawyer Daniel Roper thought was necessary "to achieve cooperation between the Government and the taxpayers in administering the law with justice and equity." As Mehrotra puts it, Treasury staff offered "the perceived legal transparency, stability, and predictability that were critical to broadcasting the impression of an organized and coherent executive agency." Perception and impression, I think, were just as important as stability and predictability. It was one thing to come up with a "fair" policy of war finance that meshed with popular understandings of wartime political obligation. Treasury also had to administer and enforce the system at a time when fiscal citizenship included not only citizens' duty to pay taxes but also their authority to help collect them.[8]

Most wartime Americans encountered the financial obligations of citizenship through bonds, not taxes. They were told that a Liberty Bond was a "certificate of citizenship," and there were times when it actually operated as such. In 1918, when C. A. Darmer, a German American from Tacoma, Washington, refused to buy a bond on the ground that it "would be like kicking [my] own mother," a federal court rescinded his naturalization. Darmer was not the only American who resisted purchase, nor the only one who faced coercion. Bosses sold bonds to employees on the shop floor, preachers sold them in the pews of their churches, policemen and judges issued them as alternatives to punishment. Bonds could even be actual punishments, as in April 1918, when a group of shop clerks in Canton, Ohio, wrapped one of their coworkers in the

7. E. R. A. Seligman, quoted in Mehrotra, "Lawyers, Guns, and Public Moneys," 211 n100.

8. Mehrotra, "Lawyers, Guns, and Public Moneys," 197; Daniel Roper, quoted in Mehrotra, 193.

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American flag, dragged her to the bank, and forced her to purchase a $50 bond.[9]

Some federal courts ruled during the war that refusal to purchase a bond constituted disloyalty. When a certain Mr. Pape—described in court records as "a prominent citizen of Quincy, Illinois, well educated, a member of the bar, and stands well among his neighbors"—did not appear on Quincy's bond sale lists, a group of townspeople appointed "a special committee to . . . ask him his reasons for his omission of patriotic duty." Pape's explanation did not suffice, and he was convicted under the Espionage Act.[10]

Popular revenue collection was neither mindless wartime hysteria nor an atavistic remnant; it was one of the modes of governance that the administrative state sought to displace. That appears to have happened remarkably easily, especially compared to other arenas of state action, such as home front policing, Selective Service enforcement, or food conservation. "The tax payments were made without a ruffle," notes Mehrotra. "The immense financial transaction was consummated almost without being noticed." And in the end, even Pape overturned his conviction in the federal district court of southern Illinois. Judge Louis FitzHenry reasoned that even though Congress had the power to "take such portions of the property of the defendant . . . as may be necessary to promote the common defense," it shouldn't have to use it. "[T]he citizen's love of the republic has frequently driven him to subscribe and contribute, not the criminal laws."[11]

An all-powerful state that never needed to test its limits was precisely what the administrative state needed—but was exactly *not* what the Wilson administration said it was going to do. Progressive tax reformers and populist congressmen wanted taxes to be noticeable, visible, felt—in order to be sure their terms would be democratically deliberated. "[T]he ease of borrowing is one of the arguments against borrowing," observed the *New York Times*. As progressive impulses ran up against the prerogatives of the administrative state, policymakers learned (perhaps without

9. *United States v. Darmer*, 249 F. 989 (1918), at 989; Robert H. Ferrell, *Woodrow Wilson and World War I, 1917–1921* (New York: Harper and Row, 1985), 204. See also Christopher C. Gibbs, *The Great Silent Majority: Missouri's Resistance to World War I* (Columbia: University of Missouri Press, 1988), 74–92; Jeanette Keith, *Rich Man's War, Poor Man's Fight: Race, Class, and Power in the Rural South during the First World War* (Chapel Hill: University of North Carolina Press, 2004).

10. *United States v. Pape*, 253 F. 270 (1918), at 271.

11. Ibid., at 272; Mehrotra, "Lawyers, Guns, and Public Moneys," 200; Christopher Capozzola, *Uncle Sam Wants You: World War I and the Making of the Modern American Citizen* (New York: Oxford University Press, 2008), esp. 7–17 and 117–43.

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knowing it) that Judge FitzHenry's state was easier to administer than Mary Lease's.[12]

The new fiscal citizenship that Mehrotra describes was ultimately less about making taxation visible than making it invisible, transforming Americans into obedient tax-paying citizens who understood themselves as such. The massive expansion of the tax system in World War II would complete the transformation, but the pivot turned in 1918. Not entirely by design—it was all too contentious and too fast for that—but not by accident either, as the Treasury lawyers understood. They "were not simply passive scientific engineers," Mehrotra notes; "they were also policy and political entrepreneurs." As the Armistice came and the dollar-a-year men resigned their jobs to head for new positions on Wall Street, they had succeeded in making themselves indispensable. "[T]his tax business," quipped Roper, "is likely to develop into quite a thing for lawyers."[13]

Mehrotra argues that the World War I era cannot be understood as "an abrupt end to wholesale progressive tax reform," nor to progressivism generally. The outcome represented "a complex continuation of the conceptual shift in public finance advanced by prewar progressive intellectuals and political leaders, and a constraint on the social-democratic ambitions of some populist tax reformers." Like women's suffrage and prohibition, tax policy culminated decades of political contest, rarely to anyone's liking. Moreover, the new tax regime endured, despite the efforts of Calvin Coolidge and Andrew Mellon to kill it. Congress repealed the excess profits tax, but the fiscal power of the U.S. federal government never returned to its paltry prewar levels.[14]

Mehrotra views this story "ironically." Treasury lawyers such as Russell Leffingwell and Arthur Ballantine, he argues, "viewed the rise of the

12. "Bonds or Taxes?" *New York Times*, August 16, 1917, 10.

13. Mehrotra, "Lawyers, Guns, and Public Moneys," 210; Daniel Roper, quoted in Mehrotra, 192. Corporate leaders—who appear in Mehrotra's account as rather static figures—were equally improvisational and entrepreneurial, seeing in the war an opportunity to consolidate U.S. dominance of the postwar global economy. For one chapter of that story, see Harry N. Scheiber, "World War I as Entrepreneurial Opportunity: Willard Straight and the American International Corporation," *Political Science Quarterly* 84 (September 1969): 486–511. On World War II, see Carolyn C. Jones, "Mass-Based Income Taxation: Creating a Taxpaying Culture, 1940–1952," in *Funding the Modern American State, 1941–1995: The Rise and Fall of the Era of Easy Finance*, ed. W. Elliot Brownlee (New York: Cambridge University Press, 1996), 107–147; James T. Sparrow, "'Buying Our Boys Back': The Mass Foundations of Fiscal Citizenship in World War II," *Journal of Policy History* 20 (2) (2008): 263–86.

14. Mehrotra, "Lawyers, Guns, and Public Moneys," 174–75.

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wartime fiscal state and their role in its emergence with a combination of pride and consternation." Progressive officials in the Treasury tried to distribute the fiscal burdens of the war equitably, and the war "fundamentally altered the distribution of economic obligations and the meaning of fiscal citizenship," but Treasury officials "impos[ed] a sense of rationality onto war financing without challenging the dominant structure of U.S. corporate capitalism." True enough, but another irony inheres in the triumph of legal expertise that accompanied the administrative state. Nearly everyone's vision of a stable postwar political economy imagined revenue collection that was substantially insulated from public scrutiny and the raising of hell.[15]

"Now more than ever we need to make the people feel that the great machine is running smoothly," Leffingwell wrote to McAdoo in September 1918. The great machine ran smoothly, during the war and after; Mehrotra rightly observes that "the new fiscal polity proved remarkably resilient." A generation later, in the early days of the Roosevelt administration, when the New Deal lawyers went to work—many of them veterans of the Great War's mobilization of legal expertise—they carried with them the belief that the wartime experiment had "worked"—and that in a time of crisis the Supreme Court would defer to their assertions of necessity.[16]

But Mehrotra goes too far when he concludes that "the lawyers helped build the trust between citizens and their government that was essential to the success of a liberal democracy engaged in global war." True, confidence in the Treasury Department spanned from Wall Street to Main Street, but it did not reach every corner of the republic. By 1934, in books and articles, barrooms and barbershops, Americans learned that inscrutable financial arrangements had dragged the United States into the world war in the interests of munitions makers and bankers—and they worried it might happen again. Senator Gerald Nye's Special Committee Investigating the Munitions Industry reexamined wartime tax policies with none of the "trust between citizens and their government" that Mehrotra describes. If the New Deal lawyers took away one lesson, populist congressmen learned another. Senator Nye would not have failed to

15. Ibid., 178, 179, 175, 176–77.

16. Russell Leffingwell, quoted in the Mehrotra, "Lawyers, Guns, and Public Moneys," 198; ibid., 224. Mehrotra details the rise of a "distinctively legal administrative state," providing an account less focused on judges and courtrooms than previous histories. Rightly so: The Supreme Court validated nearly every single wartime legislative intervention, from the draft to the functional dismantling of the state militias to the income tax, and, of course, the excess-profits tax as well. See *Arver v. United States*, 245 U.S. 366 (1918); *Cox v. Wood*, 247 U.S. 3 (1918); *LaBelle Iron Works v. United States*, 256 U.S. 277 (1921).

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notice that Russell Leffingwell now worked for none other than the House of Morgan.[17]

On the eve of war in 1916, the *New York Sun* editorialized that "[t]here is such a thing as raising revenue and there is such a thing as raising hell." In our own time, as U.S. citizens muddle through a three trillion dollar war in Iraq without raising either revenue or hell, we benefit greatly from Ajay Mehrotra's historical account of this pivotal moment in the history of the American state.[18]

17. Mehrotra, "Lawyers, Guns, and Public Moneys," 223; United States Senate, *Hearings before the Special Committee Investigating the Munitions Industry* (Washington, D.C.: Government Printing Office, 1935), esp. pt. 22, 6183–90; Robert James Leonard, "The Nye Committee: Legislating against War," *North Dakota History* 41 (Fall 1974): 20–28; Kathryn S. Olmsted, *Real Enemies: Conspiracy Theories and American Democracy, World War I to 9/11* (New York: Oxford University Press, 2009), 13–43; John Edward Wiltz, "The Nye Committee Revisited," *The Historian* 33 (February 1961): 211–33.

18. *New York Sun*, July 28, 1916, quoted in Alex Mathews Arnett, *Claude Kitchin and the Wilson War Policies* (Boston: Little, Brown, 1937), 276. On the cost and financing of current wars in Iraq and Afghanistan, see Steven A. Bank, Kirk J. Stark, and Joseph J. Thorndike, *War and Taxes* (Washington, D.C.: Urban Institute Press, 2008), 145–65; Robert D. Hormats, *The Price of Liberty: Paying for America's Wars* (New York: Times Books, 2007), 261–76, 280–99; Joseph E. Stiglitz and Linda J. Bilmes, *The Three Trillion Dollar War: The True Cost of the Iraq Conflict* (New York: Norton, 2008).

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