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## GROWTH OF THE EXTENDED COMMERCIAL REPUBLIC, AND ITS GOVERNMENT

Amy Bridges

NOAM MAGGOR, *BRAHMIN CAPITALISM: FRONTIERS OF WEALTH AND POPULISM IN AMERICA'S FIRST GILDED AGE* (HARVARD UNIVERSITY PRESS 2017). PP. 304. HARDCOVER \$39.95.

AJAY K. MEHROTRA, *MAKING THE MODERN AMERICAN FISCAL STATE: LAW, POLITICS, AND THE RISE OF PROGRESSIVE TAXATION, 1877–1929* (CAMBRIDGE UNIVERSITY PRESS 2014). PP. 432. PAPERBACK \$90.00.

Academic curiosity about the Gilded Age and Progressive Era is unending, and for good reason. Despite the many volumes that have been written about the years between 1877 and 1929, there is more to be discovered and explained, as evidenced by the contributions of the two volumes reviewed here. Noam Maggor presents a case study of the budding extended commercial republic; Ajay Mehrotra shows the reader how financing the federal government was turned upside down between 1877 and 1913.

The Framers of the U.S. Constitution worked to chart an extended commercial republic, uniting states across great diversity and distance, and without internal barriers to trade. Beyond those general expectations, little was said in their deliberations. Noam Maggor's *Brahmin Capitalism*, exploring the ambitions and actions of Boston's investors, is a case study of how our extended commercial republic came to be.<sup>1</sup> It is a splendid book. In chapters alternating between Boston's residents and the miners, farmers, and politicians of the west, Maggor provides a narrative of the development of the expanding economy and settlement of the United States.

Maggor does not rehearse the familiar tale of Astor, Rockefeller, and other robber barons. The story here is about Boston's industrialists and investors, who, having recognized that their textile-based economy had largely run its course, turned to new opportunities. Maggor reports, "[t]he success of the new industries out west in the aftermath of the Civil War infused upper-class Boston with an exhilarating sense of

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1. NOAM MAGGOR, *BRAHMIN CAPITALISM: FRONTIERS OF WEALTH AND POPULISM IN AMERICA'S FIRST GILDED AGE* (2017).

endless possibilities”;<sup>2</sup> “they embraced continental economic integration as a project of monumental magnitude, fitt[ed] to their own . . . abilities and skills.”<sup>3</sup> The Boston Stock Exchange grew as investors moved from “the Merrimack Manufacturing Company, the Connecticut Railroad, and the Vermont Central Railroad . . . to the Atchison, Topeka, and Santa Fe Railroad, . . . and the Calumet and Hecla Copper Mining Company.”<sup>4</sup> Not only the Stock Exchange but also the banking community in Boston grew apace, as Boston “became one of the preeminent centers of banking and finance in North America.”<sup>5</sup> This was important, because “[c]apital flows were controlled not by countless independent economic actors but by . . . investment bankers and securities brokers. . . . The ability to effectively wed eastern capital markets to western ventures gave [those] intermediaries vast power in promoting and managing economic development throughout the continent.”<sup>6</sup>

In this transformation Henry Davis Minot’s activity was critical. The incipient, ne’er do well of a Brahmin family, Minot briefly attended Harvard College, withdrawing due to severe depression.<sup>7</sup> After a false start or two, Henry’s curiosity and ambition were awakened by employment at a brokerage firm, Jackson and Curtis.<sup>8</sup> There, Minot devoted himself to close study of the economies of the western states, charting in great detail the many factors influencing western initiatives, which enabled him to make judgments about promising and less promising opportunities for investment, especially railroads.<sup>9</sup> This was critical at a time when many railroad lines were initiated, but bankrupt before they were completed. After two years at work, Minot “saw himself” not only as an advisor, but also “as a planner and a leader in the creation of [a national] railroad system.”<sup>10</sup> Minot’s expertise was grounded in extensive travel across the country. On one extended trip, Minot visited Illinois, Kansas, Colorado, Utah, California, Oregon, Washington, British Columbia, Wisconsin, and Michigan.<sup>11</sup> In every locale, Minot listened to locals describe the dynamics of their farms and businesses, as well as the prospects for their local economies.<sup>12</sup> Minot was a determined and close observer of agricultural conditions, environmental constraints, livestock ranching, state regulation of corporations, and myriad aspects of planning, building, financing, and managing railroads. Minot’s growing knowledge and expertise made him a valued advisor and partner in many ventures. In the west, financiers and investors were often viewed as reckless gamblers, indifferent to the social consequences of their activities. In Boston, the power of finance was considered a social good, and financiers were seen “not as reckless speculators or illegitimate profiteers but as daring visionaries, gentlemen whose prudent judgment made them indispensable to

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2. *Id.* at 53.

3. *Id.* at 99.

4. *Id.* at 53.

5. *Id.*

6. MAGGOR, *supra* note 1, at 99.

7. *Id.* at 106. One of Henry’s brothers characterized him more gently: “many of those who knew him doubted his fitness for the practical side of life.” *Id.* at 105.

8. *Id.* at 106–07.

9. *Id.* at 107–08.

10. *Id.* at 110.

11. MAGGOR, *supra* note 1, at 110–13.

12. *Id.* at 112–13.

general welfare and prosperity.”<sup>13</sup> The wide differences in perspectives between east and west no doubt increased the value of Minot’s imprimatur on projects to be funded by Boston’s financiers.

Although Boston’s leading men were very successful, they were not hegemonic. Close to home they encountered a coalition of “middling Bostonians,” white and blue collar, who proposed a metropolitan Boston.<sup>14</sup> In that vision, Boston annexed the small surrounding cities, and with the tax monies that expanded base provided, delivered to her residents good schools, affordable housing, and clean, lighted streets, increasing the well-being of the city’s residents.<sup>15</sup> Affluent Bostonians were horrified both by the threat of increased taxes and by the prospect of losing exclusive control of their own communities.<sup>16</sup> In phrases familiar today, they denounced this vision as extravagant and wasteful.<sup>17</sup> The middling coalition was somewhat successful, annexing several suburbs and, as hoped, providing “[p]ublicly funded urban amenities [that] made dense settlement[s] viable,” dramatically expanding housing for working families.<sup>18</sup> “The annexed districts became the fastest growing neighborhoods in the city,” settled by “a heterogeneous urban population, especially small manufacturers, shop keepers, tradesmen, low-level whitecollar workers, and industrial laborers.”<sup>19</sup>

Other towns remained independent. Brookline was among them and “came to embody the suburban ideal. . . . Residential development proceeded . . . [providing] sizeable lots, with detached homes.”<sup>20</sup> In contrast to the mixed-use development of annexed areas, Brookline’s curved streets and large homes evoked pastoral affluence and leisure. For Boston city government, results were mixed. The more densely-settled, annexed areas required paving, street lights, sewers, and schools, yet Brookline and like neighborhoods outside the metropolis housed—and so could tax—residents with higher incomes.<sup>21</sup> The result was that the city could deliver only some of the initial metropolitan vision.

In time, conservative politicians came to oppose not only the generous vision begun at mid-century, but also the neighborhoods that had been granted investment and services by the city government. In the 1890s, Nathan Matthews, Democratic leader of a reform movement in Boston, crafted a lengthy critique of that project as he campaigned to curb municipal spending.<sup>22</sup> His critique of city government was aimed at the residents of the annexed areas at the periphery. “They consumed large portions of the budget but paid back in taxes on about one-third or one-half of that sum.”<sup>23</sup> Well-priced housing, paved and

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13. *Id.* at 124.

14. *Id.* at 58.

15. *Id.* at 59.

16. MAGGOR, *supra* note 1, at 60.

17. *Id.* at 64.

18. *Id.* at 71.

19. *Id.*

20. *Id.* at 73–74.

21. MAGGOR, *supra* note 1, at 74.

22. *Id.* at 184.

23. *Id.* at 195.

lighted streets, and quality public education were of course the core of the metropolitan vision advanced in the 1870s, but for Matthews the result was not municipal success. At the same time, Matthews allied himself “with the state’s immigrant leadership, . . . a coalition of Yankee money and Irish votes.”<sup>24</sup> Recognizing universal suffrage as the underlying cause of spending, Matthews, like institutional reformers in other places and times, worked to distance municipal government from popular will. Matthews succeeded at reducing the number of elected officials in the city, changing the city legislature from bicameral to unicameral, lengthening terms in office, abolishing districts in favor of citywide representation, concentrating municipal authority in the mayor, and introducing civil service for city employees.<sup>25</sup> In this way, the vision of the prosperous middling metropolis was stymied for decades to come.

If Boston Brahmins were able to suppress the plans of local populist opposition, results in the west were more equivocal. In the western states as in Boston, Brahmin investors were met with values and concerns different than their own and challenging to corporate privilege. Reviewing debates in western constitutional conventions, Maggor recognizes that, even as delegates hoped outside investors would help their communities grow and prosper, they feared the indifference of corporate managers to the communities they joined. At the same time, the “common law tradition to which delegates held fast affirmed the supremacy of the state over chartered corporations.”<sup>26</sup>

Delegates authored provisions outlawing certain kinds of labor contracts, establishing length of legal workdays, limiting working hours for women and young adults, and prohibiting the employment of child labor.<sup>27</sup> Constitutions often seemed filled with mere legislation, instead of charting organic law. As investors viewed the west, and their state constitutions, they were unsettled not only by the audacity of some provisions, but also by the variety of provisions from state to state. If western residents naturally thought of their states as territories in transition as their economies developed, the same acceptance of change was threatening to investors, who prized certainty.<sup>28</sup> “The political pushback from farmers, workers, small businessmen, and other settlers enabled them to score meaningful victories, assimilating elements of their own vision into the political framework” of western governance, from tax policy to natural resources to labor rights.<sup>29</sup>

Maggor has provided an excellent account of myriad lines of argument about political economy and ordinary life that influenced outcomes in the west and Boston alike. Much has been written about western residents who both desired and feared investors from afar. Maggor’s presentation of an eastern perspective on western development broadens our understanding of how it came about.

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24. *Id.* at 187.

25. *Id.* at 194.

26. MAGGOR, *supra* note 1, at 167.

27. *Id.* at 176. I have argued elsewhere that the inclusion of such detail (essentially legislation) in western state constitutions was rational in an environment of very closely competitive party politics. What security could legislation protective of labor provide if it might be overturned at the next election? Constitutional provisions, much more difficult to change, provided greater security. See AMY BRIDGES, *DEMOCRATIC BEGINNINGS: FOUNDING THE WESTERN STATES* 143 (2015).

28. MAGGOR, *supra* note 1, at 174.

29. *Id.* at 175.

Ajay Mehrotra's book is a different sort of accomplishment.<sup>30</sup> By framing the creation of the modern U.S. fiscal state with a comparison of its financing in 1877 to its sources of income after 1916, Mehrotra instructs the reader that the income tax was not simply another item on President Woodrow Wilson's progressive agenda, but instead was the world of financing the federal government turned upside down. In 1877, the impost was the source of funding for the central government, as it had been up to the Civil War. The government rested on the many, whose meager earnings were transferred to the nation's coffers. Here were the poor, tenant farmers of the south, ever in debt, and the hapless farmers of the Midwest, hobbled by their mortgages, supporting the federal machine by paying, by way of the impost, taxes on the purchase of their daily necessities. By contrast, the federal income tax—reaching only twenty-two percent of the population—secured ample federal funding from their social betters, mostly settled in the northeast.<sup>31</sup>

Advances in economic and legal understanding were key to this new political economy. Mehrotra explains that a “conceptual revolution . . . changed the way educated Americans and policymakers thought about and imagined the financial basis of government programs.”<sup>32</sup> Three economists, each a talented public intellectual—E. R. A. Seligman, Henry Carter Adams, and Richard Ely—effectively tutored educated Americans and policymakers alike in new ways of thinking about public finance.<sup>33</sup> The trumpet sounded when the Supreme Court found the 1894 federal income tax unconstitutional.<sup>34</sup> In advance of the Court's ruling, Seligman and Thomas Cooley, another progressive economist, submitted detailed briefs seeking to instruct the Court otherwise, to no effect.<sup>35</sup> In defiance of generations of judicial consensus that the direct taxes forbidden to the federal government in the Constitution were poll and land taxes alone, the Court found that the income tax was a direct tax in violation of the provision.<sup>36</sup>

Creating a federal income tax required a constitutional amendment; generating the “political will and power” for the amendment was a twenty-year task.<sup>37</sup> The political and didactic agenda for progressive economists included replacing the benefit theory of taxation with grounding in ability-to-pay, insistence on a more equitable system of federal finance, and the creation of administrative authority and capacity. Progressive economists had competitors to their right (in opposition to the income tax) and their left (a more diverse group including the American Federation of Labor, Henry George, and the single taxers). Progressive economists' task was “to show that the movement for direct and progressive taxation was, in fact, an assault on privilege that did not amount to an

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30. AJAY K. MEHROTRA, *MAKING THE MODERN AMERICAN FISCAL STATE: LAW, POLITICS, AND THE RISE OF PROGRESSIVE TAXATION, 1877–1929*, at 5 (2014).

31. *Id.* at 72.

32. *Id.* at 9.

33. *Id.* at 11, 87 (“Through their efforts and achievements, these economic experts became the visionaries or architects of the modern American fiscal state.”).

34. *See* *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601 (1895).

35. MEHROTRA, *supra* note 30, at 131.

36. *Id.* at 87.

37. *Id.* at 145.

inexorable move toward state socialism.”<sup>38</sup>

How to think about taxes? The benefit understanding of taxes, altogether transactional, held that taxes were payment, by citizens and corporations, for benefits received from the government.<sup>39</sup> This was an understanding both academic and popular. In the west, delegates to constitutional conventions argued that mines—admittedly the source of collective prosperity—should bear much of the burden of taxation because they made the greatest demands on, and were the primary beneficiary of, state government.<sup>40</sup> Progressive economists “loathed how the benefits doctrine commodified the relationship between citizens and the state.”<sup>41</sup> Rather than payment for services, Ely wrote, taxes were “one-sided transfers. . . . The citizen pays because he is a citizen, and it is his duty as a citizen to do so.”<sup>42</sup> The doctrine of ability-to-pay—already voiced by labor, small farmers, and populists—was more popularly a protest against the regressive impost. For his part, Ely “remained absolutely confident that a graduated income tax could equitably reallocate fiscal burdens and reinvigorate civic and political participation.”<sup>43</sup> Like the benefit theory, ability-to-pay was also voiced by advocates who were not academics.<sup>44</sup> So, in the west, the mining companies, the very source of taxes according to the benefit theory, were also the source of taxes because of their enormous assets. In Boston, Thomas Hills, an upholsterer by trade and later senior assessor of the property tax, offered elaborate argument for equitable taxes. Like the progressive economists, Hills argued residents pay taxes “not to pay the state for its expense in protecting him.”<sup>45</sup> Rather, “he pays taxes because his membership in society preceded his right to property.”<sup>46</sup> In Hills’s words, “[h]e paid taxes because his original relations to society require it.”<sup>47</sup>

Whether or not an income tax was going to reinvigorate political participation, Seligman, Ely, and Carter were resolute in their effort to explain and advocate for the federal income tax. Not only in their academic writings, but also in more popular venues, they argued that the burdens of government would be more equitably distributed, a great advance over the current system. Moreover, to argue that this change was not a departure from longstanding practice, they “uncovered and underscored the long history of progressive faculty taxes in the United States.”<sup>48</sup> They explained the long history of ability-to-pay in Anglo-American political economic thinking and insisted that the progressive income tax was not a path to socialism.<sup>49</sup> And in every venue, they stressed that the progressive income tax was a plan to more equitably spread the burden of

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38. *Id.* at 148.

39. *Id.* at 64.

40. BRIDGES, *supra* note 27, at 53.

41. MEHROTRA, *supra* note 30, at 114.

42. *Id.*

43. *Id.* at 115.

44. *Id.* at 111.

45. MAGGOR, *supra* note 1, at 89.

46. *Id.*

47. *Id.*

48. MEHROTRA, *supra* note 30, at 154.

49. *Id.* at 183.

supporting the central government.<sup>50</sup>

Innovations in the states provided lessons for this effort. Of these, the standout was Wisconsin's income tax, which passed using the language of ability-to-pay.<sup>51</sup> States also enacted inheritance taxes. In New York in 1912, the inheritance tax provided twelve million dollars to the state, "making it the leading source of state receipts."<sup>52</sup> Some states imposed taxes on corporations; in New Jersey, corporate taxes consistently generated half of state revenue in the 1920s.<sup>53</sup> In the administration of taxes, state authorities found centralization brought great rewards, and thus experimented with corporate reporting of wages paid to individuals and withholding (then termed "stoppage at the source").<sup>54</sup>

Enacting a federal income tax required giving the government the authority to impose and collect the tax, provided in the Sixteenth Amendment to the Constitution. The income tax also required the institutional capacity to administer and collect it. As the proposed income tax moved the burden of supporting the national government from the south to the north, resistance was prominent in the northeast. New York's passage of the amendment in July 1911, despite the opposition of Governor Charles Hughes, marked a turning point.<sup>55</sup>

Mehrotra's account of the design and staffing of the Bureau of Internal Revenue, powered by anticipation of U.S. entry into World War I, charts the building of an effective and powerful federal bureaucracy.<sup>56</sup> The Bureau of Internal Revenue looked much like Max Weber's archetype: it was staffed by committed civil servants acting "without respect to persons," careful, honest, and efficient administration, ever increasing expertise, and Carpenter-ish reputation building. In 1913, the Bureau counted 4000 employees, in 1920, 16,000, and in 1923, 18,000.<sup>57</sup> The final number shows that the "return to normalcy" marked not the shrinkage, but rather the continued growth of the Bureau.<sup>58</sup> In sum, the new fiscal regime created "a robust and fair legal Leviathan."<sup>59</sup>

The 1920s were a vindication of much of progressive social reform. Mehrotra's account of the income tax, placing progressive economists at the center, sidelines the popular forces who resented the inequity of the old system and supported the income tax.<sup>60</sup> In the west, for example, "six states—Nebraska, South Dakota, Idaho, Montana, Nevada, and Arizona—ratified [the Sixteenth Amendment] by unanimous votes in both houses of the legislature."<sup>61</sup> The "bold new ideas" voiced about taxes and government "well before the war had by the end of the 1920s become an accepted part of the vocabulary of

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50. *Id.*

51. *Id.* at 228–41.

52. *Id.* at 226.

53. MEHROTRA, *supra* note 30, at 223.

54. *Id.* at 283.

55. *Id.* at 269.

56. *Id.* at 283–96.

57. *Id.* at 305.

58. MEHROTRA, *supra* note 30, at 33.

59. *Id.* at 347.

60. *Id.* at 33.

61. JOHN D. BUENKER, *THE INCOME TAX AND THE PROGRESSIVE ERA* 169 (1985).



mainstream American political, economic, and social discourse.”<sup>62</sup> For Mehrotra, the lesson is that “the emotional and imaginative energies,” “the political will,” “the social and economic justice ideals” that fostered the pursuit of change, and the fortitude required to maintain their pursuit, were rewarded with success.<sup>63</sup> In these times of great uncertainty, a thought well worth holding.

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62. MEHROTRA, *supra* note 30, at 33.

63. *Id.* at 418.