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The Religious Roots of the Progressive Income Tax in America

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The Religious Roots of the Progressive Income Tax in America

Cover Page Footnote

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THE RELIGIOUS ROOTS OF THE PROGRESSIVE INCOME TAX IN AMERICA

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I. INTRODUCTION

G.K. Chesterton famously said that the United States is “a nation with the soul of a church.”¹ Does this analogy extend to the realm of taxation? Have Americans sought to raise money for their government in the same ways that they have learned to raise money for their churches? An examination of the congressional debate over the adoption of the United States’ first peacetime income tax in 1894 provides a resounding “yes” to these questions. Over and over, congressional advocates explicitly argued that the progressive income tax

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1. G.K. CHESTERTON, WHAT I SAW IN AMERICA 11–12 (1923).

was supported by Judeo-Christian teachings rooted in the Bible. In the words of one Congressman: “This tax is biblical. It is authorized by God Almighty.”²

Beyond the Bible, income tax advocates found support in contemporary religious teachings and practices. The 1894 income tax followed a strong movement among American churches to raise funds based on proportionate giving of income, including tithing, while largely turning away from prior methods more akin to excise taxes, such as the once dominant system of pew rentals.³ The language and ideas of this proportionate giving movement would repeatedly appear in the Congressional income tax debate. As ecclesiastical leaders had said to their church members—paraphrasing the Apostle Paul—congressmen now said to taxpayers: “As the Lord has prospered you, so give.”⁴

Whether or not it is theologically appropriate to apply such teachings to secular government, the ability to argue that the progressive income tax conformed to biblical principles proved to be a highly effective tool for income tax advocates. Religious ideas and practices served as a powerful force giving the tax moral legitimacy and broad acceptance. Because the tax could be sold as uniquely compatible with the prevailing religious teachings on money and fundraising, most Americans were already predisposed to find the tax fair and just.⁵

Understanding the forces that helped give the income tax moral authority allows us to better understand why it was successful and why it has been less popular in recent times. At its inception, the federal income tax enjoyed remarkable popular esteem. Despite the Taft administration proposing the 16th Amendment as a cynical way to kill an income tax bill that was likely to pass in Congress,⁶ the amendment succeeded overwhelmingly, even in unlikely states.⁷ Today such a result seems unthinkable. But even as late as 1972, surveyed

2. 26 CONG. REC. 1731 (1894) (Statement of Rep. Sibley); for an excellent study also examining the role of religion in bringing about progressive tax reform in this period, but focused on the intermediating role of professional academics who were motivated by religious concerns but who prioritized scientific arguments and avoided direct appeals to biblical teachings, *see also* Ajay K. Mehrotra, “Render Unto Caesar...”: *Religion/Ethics, Expertise, and the Historical Underpinnings of the Modern American Tax System*, 40 LOY. U. CHI. L.J. 321, 357 (2009).

3. *See* JAMES DAVID HUDNUT-BEUMLER, IN PURSUIT OF THE ALMIGHTY’S DOLLAR: A HISTORY OF MONEY AND AMERICAN PROTESTANTISM 9–10 (2007).

4. 26 CONG. REC. app. 3,413 (1894) (Statement of Rep. McMillin).

5. HUDNUT-BEUMLER, *supra* note, 3 at 7–8 (2007).

6. *See* JOHN F. WITTE, THE POLITICS AND DEVELOPMENT OF THE FEDERAL INCOME TAX 74–75 (1985); SIDNEY RATNER, TAXATION AND DEMOCRACY IN AMERICA 298–301 (1980).

⁸ Forty-two states approved the amendment, six more than needed. SVEN STEINMO, TAXATION AND DEMOCRACY: SWEDISH, BRITISH AND AMERICAN APPROACHES TO FINANCING THE MODERN STATE 75 (1993). While approval was expected in Western and Southern states, several Northeastern states also approved the amendment, usually by lopsided votes with little opposition. WITTE, *supra* note 7, at 75. Connecticut, Rhode Island, Florida, and Utah opposed, while Pennsylvania and Virginia did not take any action. RANDOLPH E. PAUL, TAXATION IN THE UNITED STATES 98 (1954).

Americans chose the federal income tax as “the fairest of all the major taxes used by the various levels of government.”⁸ By 1979, however, Americans had dramatically reversed their opinion, with “a plurality rat[ing] the income tax as the least fair.”⁹ What might explain the high support for and perceived fairness of the income tax in the past? And why has it been replaced by disdain and perceived unfairness? The religious roots of the early income tax, as well as their gradual replacement by economic and technocratic ideas, can help explain this trend.

Clearly, religious ideas are only part of a complex explanation for the changing perceptions of the income tax. Most obviously, early versions of the income tax applied to a small minority of citizens,¹⁰ so it was easy for voters to support a tax that they would not pay. As the tax base and tax rates expanded over time, along with the complexity of the tax code, it would naturally become less popular.¹¹ While such factors are part of the explanation, they are not complete. A wealth or property tax with a high exemption, for example, would also be paid by a small minority of taxpayers, and tariffs and excise taxes could have been reformed to be more progressive. But for some reason, a progressive income tax always seemed to be the alternative managing to gain sufficient support and acceptance.¹² By understanding the religious appeal of the progressive income tax to citizens in 1894, we are able to see a more complete picture. In the 1800s, religion was the primary source informing citizens’ understanding of public morality and the appropriate way to share burdens.¹³ Today, we tend to overlook the ability of religion to serve this function, especially in taxation.¹⁴

8. Michael J. Graetz, *The Truth About Tax Reform*, 40 UNIV. FLA. L. REV. 617, 618–19 (1988).

9. *Id.* at 619.

10. *Id.*

11. *Id.* Other plausible explanations include that an income tax compared favorably to the contemporary practice of high tariffs on consumer goods that taxpayers today have not experienced, or that the multiplication of loopholes and avoidance techniques and their coverage in mass media makes the average taxpayer feel that many are not paying their fair share. *Id.* at 621, 627.

12. For example, the Civil War era income tax passed only after unsuccessful attempts to enact a direct tax on land, and agricultural states had wanted to tax wealth and income, but only an income tax succeeded. WITTE, *supra* note 7, at 68–69.

13. Joel Bernard, *Between Religion and Reform: American Moral Societies, 1811-1821*, 105 MASS. HIST. SOC’Y. 1, 4 (1998).

14. An important exception is the work of Susan Pace Hamill, see Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 ALA. L. REV. 1, 3 (2002) [hereinafter Hamill, *An Argument for Tax Reform*] (arguing that Judeo-Christian teachings call for fundamental changes in Alabama’s tax laws); Susan Pace Hamill, *An Evaluation of Federal Tax Policy Based on Judeo-Christian Ethics*, 25 VA. TAX REV. 671, 673 (2006) [hereinafter Hamill, *An Evaluation of Federal Tax Policy*] (arguing for a moral obligation to support tax policies consistent with Judeo-Christian values).

To be clear, I do not argue that religious texts and teachings actually definitively support a progressive income tax, or any other tax, as a divinely-sanctioned form of raising revenue for government.¹⁵ Indeed, as we will see below, one could just as well use religious teachings to argue against the income tax, as many did. My objective is not to show which form of taxation is most correct under any particular religious tradition, but instead to show that supporters of the income tax in 1894 *did* in fact use religious arguments quite effectively to advance their cause. An analogous use of religion from earlier in American history is Thomas Paine's highly influential pamphlet *Common Sense*. Paine successfully used Biblical arguments to make his case against monarchy, despite valid objections from loyalists that many Bible passages actually supported fealty to the king.¹⁶ What mattered was not so much theological correctness, but the persuasive power that religious ideas exercised over the hearts of citizens.

Another aim of this article is to increase our understanding of the role that religion can play in the public square. The passage of the income tax in 1894 serves as a fascinating case study in this regard. Today, the idea of religion in the public square might conjure up images of contentious social issues and partisan divisions. In contrast, the 1894 income tax debate shows that religious ideas developed over thousands of years have worthwhile contributions to make to discussions about economic policy and welfare. Rather than a radicalizing or uncompromising role, the income tax debate illustrates how religion often serves a constraining and moderating function, with the ability to cut across partisan lines and forge consensus. For example, religious teachings that encourage benevolence and condemn greed can motivate the wealthy minority to willingly sacrifice and accept a greater share of public burdens. At the same time, religious teachings against covetousness and theft can restrain the majority from abusing its electoral power to tax the minority excessively.

Given current trends favoring a much more isolated and limited role for religious people and organizations in public life, as well as partisan gridlock over issues including tax reform, the lessons gleaned in this article are timely and

15. For thoughtful articles examining theological support for progressive taxation in Judaism and Christianity, see Adam S. Chodorow, *Biblical Tax Systems and the Case for Progressive Taxation*, 23 J.L. & RELIGION 51, 56, 95–96 (2007) (concluding that while progressive taxation is consistent with Judeo-Christian values, historical circumstances and religious purposes make it impossible to apply specific religious examples to a modern, secular tax system); Hamil, *An Argument for Tax Reform*, *supra* note 15, at 2 (arguing that Judeo-Christian teachings require a moderately progressive tax structure that raises adequate revenues to ensure opportunity and freedom from oppression).

16. THOMAS PAINE, COMMON SENSE 9–12 (Peter Eckler Publ'g 1922)(1776); for an excellent treatment of the debate between Paine and loyalists who offered a biblical refutation of his argument, see MARK A. NOLL, IN THE BEGINNING WAS THE WORD: THE BIBLE IN AMERICAN PUBLIC LIFE, 1492-1783 78, 82 (2016).

important.¹⁷ The prevailing tax discourse dominated by economic ideology has proved insufficient to maintain the moral legitimacy required for our predominantly voluntary tax system. A statement of Yale College president Theodore Dwight Woolsey in 1855, though speaking of private philanthropy, could be applied equally well to taxation: “Philanthropy must degenerate without the support of piety” but “piety will give tone and power to philanthropy.”¹⁸ So it may be with taxation as well.

A. Notes about Scope

In trying to understand the role of religious beliefs and practices on the adoption of a progressive income tax in the U.S., I have chosen to focus on the congressional debate over the passage of the 1894 income tax. I do so for several reasons. First, I focus as much as possible on one particular legislative event to keep the scope manageable and allow for a more thorough examination of the Congressional debates. I focus on the tax of 1894 because it represents the first real peacetime income tax in U.S. history. While the first U.S. income tax was enacted in 1861, and many of the moral ideas seen in the 1894 debate were also present, concerns about the ongoing Civil War dominated, and the tax was repealed relatively quickly after the war.¹⁹ Though the Supreme Court overturned the 1894 tax before it could really even function,²⁰ its passage still arguably represents the start of one continuous movement that culminated in the 16th Amendment and the adoption of a nearly identical income tax in 1913, never to be repealed. Further, the debate in Congress over the 16th Amendment is

17. See, e.g., Brief for the Federal Respondent at 48–49, *Hosanna-Tabor Evangelical v. EEOC*, 565 U.S. 171 (2012) (arguing for broad elimination of the ministerial exception for religious organizations); IOWA CIVIL RIGHTS COMMISSION, A PUBLIC ACCOMMODATION PROVIDER’S GUIDE TO IOWA LAW (2016), [https://adflegal.blob.core.windows.net/web-content-dev/docs/default-source/documents/resources/media-resources/fort-des-moines-church-of-christ-v.-jackson/icrc-publication-\(old-version\).pdf?sfvrsn=4](https://adflegal.blob.core.windows.net/web-content-dev/docs/default-source/documents/resources/media-resources/fort-des-moines-church-of-christ-v.-jackson/icrc-publication-(old-version).pdf?sfvrsn=4) (originally declaring that a church would become public accommodation subject to limits on religious expression if it held “a church service open to the public”); William P. Marshall, *The Other Side of Religion*, 44 HASTINGS L.J. 843, 844 (1993) (endorsing proposition that “religion and religious conviction are purely private matters that have no role or place in the nation’s political process”); Michael W. McConnell, *Secular Reason and the Misguided Attempt to Exclude Religious Argument from Democratic Deliberation*, 1 J.L. PHIL. & CULTURE 159, 159–60 (2007); Kathleen M. Sullivan, *Religion and Liberal Democracy*, 59 U. CHIC. L. REV. 195, 197–98 (1992) (“Religious teachings as expressed in public debate may influence the civil public order but public moral disputes may be resolved only on grounds articulable in secular terms. Religious grounds for resolving public moral disputes would rekindle inter-denominational strife that the Establishment Clause extinguished.”); BRIAN LEITER, WHY TOLERATE RELIGION? 100, 101–03 (2013).

18. Mark A. Noll, *Protestant Reasoning about Money and the Economy, 1790-1860: A Preliminary Probe*, in GOD AND MAMMON: PROTESTANTS, MONEY, AND THE MARKET, 1790-1860 265, 274 (Mark A. Noll ed., 2002) (quoting THEODORE WOOLSEY, THE DANGER OF SEPARATING PIETY FROM PIETY FROM PHILANTHROPY 16, 18 (1855)).

19. WITTE, *supra* note 7, at 70; PAUL, *supra* note 8, at 25.

20. See *Pollock v. Farmers’ Loan & Tr. Co.*, 157 U.S. 429, 583 (1895).

considerably less extensive than that for the 1894 tax,²¹ and likewise there was less debate over the 1913 tax, since the 16th Amendment coupled with Democratic victories in the 1912 election had made the tax something of a *fait accompli*.

I have also had to narrow my focus in terms of religious ideas and practices, and regrettably this means I excluded many important religious groups and traditions deserving of study. I focus mainly on the role of American Protestant Christianity, partly to keep the scope manageable, but largely due to the demographic makeup of the United States at the relevant time. In 1894 and prior, Protestant Christianity was simply the overwhelming affiliation of the population and especially of the political elite. Religious groups including Catholics, Jews, and Muslims, among many others, have important insights and teachings to be applied to taxation and economic regulation, but were simply not prominent in the 1894 debate due to the demographic and political realities of the time. However, in the case of Judaism, at least, we will see that many of the ideas and texts referenced by the politicians and ministers in the income tax debate in fact have deep roots in Jewish ideas found in the Hebrew Bible, or Old Testament. Indeed, Old Testament ideas and symbols often exercised a special influence over early Americans.²²

The rest of the article will proceed as follows. In Part II, I briefly outline the historical religious environment in the United States leading up to 1894, especially as it relates to money and economics. In part III, I sketch the history and methods of religious fund-raising leading up to 1894, and I discuss the nascent movement to view the state as the instrument of achieving the social goals of the Protestant churches. In Parts IV and V, I focus on the congressional debate over the amendment to the Revenue Act or Wilson-Gorman Tariff Act of 1894 which introduced an income tax of 2 percent on incomes above \$4,000. Part IV covers the principal religious ideas that supporters drew on to make the Biblical case for a progressive income tax, and how these ideas related to contemporary religious teachings and practices. Part V focuses on religiously-rooted ideas that opponents used argue against the tax and call for restraint and moderation of the taxing impulse. Part V briefly attempts to situate the 1894 income tax debate within the concept of American Civil Religion. In Part VI, I conclude.

21. Debate in congress over the 16th Amendment was dominated by concerns about the likelihood of passage in state legislatures, the constitutionality of the proposed income tax bill pending in congress, the corporate income tax jointly proposed with the amendment, and the belief that the amendment was just a ploy to table the pending income tax bill, etc., limiting debate on the merits of income tax *per se*. See RATNER, *supra* note 7, at 298–302.

22. See, e.g., ERAN SHALEV, AMERICAN ZION: THE OLD TESTAMENT AS A POLITICAL TEXT FROM THE REVOLUTION TO THE CIVIL WAR 1 (2014); GARY SCOTT SMITH, THE SEEDS OF SECULARIZATION: CALVINISM, CULTURE, AND PLURALISM IN AMERICA, 1870-1915 56 (1985) (“Calvinists saw Old Testament Israel . . . as a proper model for political life.”).

II. RELIGION AND ECONOMICS IN AMERICA LEADING UP TO 1894

A. *The Pervasive Connection Between Religion, Economics, and Politics*

Alexis de Tocqueville observed that “there is no country in the world where the Christian religion retains a greater influence over the souls of men than in America.”²³ In 1832, another French observer, after noting the dizzying array of religious sects, marveled, “Yet, with all this liberty, there is no country in which the people are so religious as in the United States.”²⁴ Given this defining feature of early American society, religion naturally exercised great influence over political and economic matters. Historian Mark Noll has stressed the importance of recognizing “the fully connected relationship of religious faith and economic forces,” and noted “the folly of trying to write about broader cultural developments of the [antebellum] period—including political developments—without considering religion, economics, and religion and economics together.”²⁵ Indeed, for most Americans throughout the eighteenth and nineteenth centuries, some conception of Biblical Christianity served as the foundation for their ideas about most every other aspect of society.²⁶ U.S. diplomat and Methodist minister Benjamin Tefft expressed the uncontroversial opinion of most Americans when he claimed in the 1830s that “religious principle must be made the basis of political action.”²⁷ The leading antebellum textbook on political economy, written by the Baptist Francis Wayland of Brown University, was, like other major textbooks, “a distillation of political economy as articulated by British Christian moralists.”²⁸ Historian Daniel Walker Howe has argued that “in Antebellum America, it was evangelical Protestantism that provided most of the impulse toward social organization,”²⁹ and notes how religious activities were often the forerunner of commercial activities.³⁰ For

23. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 182 (Harvey Mansfield & Delba Winthrop, trans. 1992) (1835).

24. *THE VOLUNTARY CHURCH: AMERICAN RELIGIOUS LIFE (1740-1860) SEEN THROUGH THE EYES OF EUROPEAN VISITORS* 50 (Milton B. Powell ed., 1967).

25. Mark A. Noll, *Introduction*, in *GOD AND MAMMON: PROTESTANTS, MONEY, AND THE MARKET, 1790-1860* 3, 8 (Mark A. Noll ed., 2002).

26. ROBERT T. HANDY, *A CHRISTIAN AMERICA: PROTESTANT HOPES AND HISTORICAL REALITIES* 3 (1971); SMITH, *supra* note 27, at 9, 36, 53.

27. Richard Carwardine, *Charles Seller's "Antinomians" and "Arminians": Methodists and the Market Revolution*, in *GOD AND MAMMON: PROTESTANTS, MONEY, AND THE MARKET, 1790-1860* 75, 92 (Mark A. Noll ed., 2002) (quoting BENJAMIN F. TEFFT, *THE REPUBLICAN INFLUENCES OF CHRISTIANITY. A DISCOURSE* 10–11 (1841)).

28. Noll, *supra* note 22, at 275.

29. Daniel Walker Howe, *Charles Sellers, the Market Revolution, and the Shaping of Identity in Whig-Jacksonian America*, in *GOD AND MAMMON: PROTESTANTS, MONEY, AND THE MARKET, 1790-1860* 54, 64 (Mark A. Noll ed., 2002).

30. Daniel Walker Howe, *Afterword*, in *GOD AND MAMMON: PROTESTANTS, MONEY, AND THE MARKET, 1790-1860* 295, 296 (Mark A. Noll ed., 2002).

example, missionaries blazed the trail for later commercial traders, and religious entities pioneered the forms of organization that businesses would later adopt.³¹ In the period when the 1894 income tax was adopted, historians have identified strong causal connections between religious affiliation and political party affiliation.³² Indeed, contemporaries at the time are quoted as saying that “Catholics . . . think one is not a Catholic if he is a Republican” while evangelical Protestants believed it was inconsistent to go “to the Lord’s table on Sunday and vote for Cleveland on Tuesday.”³³

By the time of the progressive era, the relationship between religion and political economy would become stronger and more explicit than ever. A 1906 survey of social crusaders revealed that 85 percent were connected in some way to evangelical Protestantism.³⁴ In studying progressive intellectuals at the center of the progressive movement, historian Jean Quandt found that they saw themselves not merely as advocates of scientific reform, but as “the redemptive agents of the kingdom of God in America.”³⁵ Given the pervasive role of religion in the prominent reforms and political movements of the time, it is no surprise to find it integrally connected to the fight for the progressive income tax. Perhaps nothing embodies this connection better than the fact that the leader of the pro-tax forces in the House of Representatives was William Jennings Bryan, the era’s most prominent “social Christian.”³⁶

Another aspect of the historical connection between religion and public life that emerges from studying the 1894 income tax debate is the remarkable extent to which the Bible served as a sort of shared language and rhetorical common space. Senator William Peffer of Kansas could call his colleagues attention to “a book which a great many of us have read more or less” and then apply lessons from the Book of Kings to argue for an income tax.³⁷ At the same time, David

31. *Id.*

32. RICHARD JENSEN, *THE WINNING OF THE MIDWEST: SOCIAL AND POLITICAL CONFLICT, 1888-1896* 69 (1971) (identifying two contrasting theological positions, “pietists entered the Republican party . . . [and] liturgicals became Democrats”); GEORGE M. THOMAS, *REVIVALISM AND CULTURAL CHANGE: CHRISTIANITY, NATION BUILDING, AND THE MARKET IN THE NINETEENTH-CENTURY UNITED STATES* 64, 98 (1989) (linking “evangelical revivalism” with Republicanism and Prohibitionism); For a discussion of political party affiliation of religious groups in the twentieth century, see Robert T. Handy, *Protestant Theological Tensions and Political Styles in the Progressive Period*, in *RELIGION AND AMERICAN POLITICS: FROM THE COLONIAL PERIOD TO THE PRESENT* 291 (Mark Noll & Luke Harlow eds., 1990) (noting that Traditionalists supported the Republican Party and Modernists supported the Democratic Party).

33. PAUL KLEPPNER, *WHO VOTED?: THE DYNAMICS OF ELECTORAL TURNOUT, 1870-1980* 46 (Gerald M. Pomper ed., 1982).

34. FERENC MORTON SZASZ, *THE DIVIDED MIND OF PROTESTANT AMERICA, 1880-1930* 43 (1982).

35. JEAN QUANDT, *FROM THE SMALL TOWN TO THE GREAT COMMUNITY: THE SOCIAL THOUGHT OF PROGRESSIVE INTELLECTUALS* 75 (1970).

36. Handy, *supra* note 38, at 291.

37. 26 CONG. REC. app. 653 (1984).

Bennett Hill of New York could quote a prominent economist to claim “that a text suitable to and illustrative of every situation may be found in the Bible” before referring to Paul’s First Epistle to the Corinthians.³⁸ Congressmen or journalists could make references to what today might seem obscure Biblical names and phrases and have them be understood by all with little to no explanation.³⁹ Biblical language and allusions were even used to make jokes. The *Congressional Record* notes that Representative Bourke Cockran elicited laughter when he said the Republican tariff of 1833 was “[l]ike the Ark of the Covenant among the Chosen People, it was sacrilege to look upon it; it was death to touch it.”⁴⁰ In sum, Congressmen generally seemed to share the belief of Southern preachers that responses to economic questions were “ideally based on straightforward biblical instruction derived from a largely literal reading of Scripture.”⁴¹

B. Religion and Capitalism Leading up to 1894

Foreign visitors to the early United States, as well as modern historians looking back, have always noted two exceptional characteristics about antebellum American society, “its feverish commercial activity and the vitality of its churches.”⁴² While each characteristic is notable alone, it is the combination of the two together that is most remarkable. These two strong forces, intense free market capitalism and a fervent, animating religious faith coexisted in a fascinating and seemingly contradictory relationship. Religion served as the fuel and foundation of commercial activity, but also as a constraining and moderating force. Religion cultivated values and habits which made for better workers and entrepreneurs while fostering the trust that makes free market activity possible, but religion was also capitalism’s strongest critic and a sort of quasi-regulatory authority.⁴³

38. 26 CONG. REC. 6622 (1894) (quoting letter from economist David A. Wells).

39. See, e.g., Paul, *supra* note 8, at 33–34 (discussing Iowa State Register warning of “Ananias” in every community); 26 CONG. REC. 1658 (1894) (statement of Rep. W. J. Bryan, quoting but not citing *Matthew* 23:4) (“oppressed ‘with burdens grievous to be borne,’ and yet ‘touch not the burdens.’”).

40. 26 CONG. REC. app. 12 (1894).

41. See SMITH, *supra* note 27, at 1, 38 (“[b]elief in the Bible had provided the foundation for much of America’s political, social, economic, and educational life” and “the effort to keep America resting on Biblical values was still quite successful in 1870.”).

42. Noll, *supra* note 31, at 3; see also DE TOCQUEVILLE, *supra* note 29, at 36, 182 (noting both that men sought “with almost equal eagerness material wealth and moral satisfaction” and “there is no country in the world in which the Christian religion retains a greater influence.”).

43. See John Witte, Jr., *Tax Exemption of Church Property: Historical Anomaly or Valid Constitutional Practice?*, 64 S. CAL. L. REV. 363, 387 (1991) (“churches foster democratic principles and practices[,] . . . inspire citizens to participate in the political process[,] . . . and promote peace, order, and prosperity in the community.”).

The evangelical Protestants that became dominant in America during the 19th century arguably did so partly by adapting to the new market revolution, showing a “willingness to allow their message to be accommodated to the spirit of the culture.”⁴⁴ As historian Richard Pointer has argued, by the middle of the 19th century, “nothing less than a coherent theory of ‘Christian capitalism’ had developed to give sweeping religious and moral sanction to the existing economic order.”⁴⁵ The important evangelical movements of the era “extolled and inculcated habits of self-discipline, industry, and temperance.”⁴⁶ A prominent Presbyterian minister amazingly used the Eight Commandment (“Thou shall not steal”) as the basis for a sermon preaching that it was the duty of a Christian to increase “worldly prosperity.”⁴⁷ Through industry and hard work, he encouraged young people to emulate “the men of wealth” who “began the world with little—often with nothing but their hands and their industry” because “the same way to wealth” was “equally open to all.”⁴⁸ The formal articles of Methodism, the dominant Protestant denomination, endorsed the right of every person to the enjoyment of private property, and “[n]ot even the earliest and poorest Methodists favored the doctrine of community of goods.”⁴⁹ Even Phoebe Palmer, a prominent Methodist writer and promoter of the ambitious doctrine of Christian Perfection in spiritual matters, believed that in temporal matters “[t]here are gradations in society which always have been, and doubtless always will be, till the end of time.”⁵⁰

Although it embraced the opportunities of free market capitalism, early American religious culture by no means did so unconditionally and without reservations. The most common attitude was to accept the free market system by and large, while attempting to exercise a benign influence that moderated its

44. GEORGE M. MARSDEN, *THE EVANGELICAL MIND AND THE NEW SCHOOL PRESBYTERIAN EXPERIENCE: A CASE STUDY OF THOUGHT AND THEOLOGY IN NINETEENTH CENTURY AMERICA* 230–31 (1970).

45. Richard W. Pointer, *Philadelphia Presbyterians, Capitalism, and the Morality of Economic Success*, in *GOD AND MAMMON: PROTESTANTS, MONEY, AND THE MARKET, 1790-1860* 171, 171–72 (Noll ed., 2002).

46. Carwardine, *supra* note 33, at 84 (quoting RICHARD CARWARDINE, *TRAUMA IN METHODISM: PROPERTY, CHURCH SCHISM, AND SECTIONAL POLARIZATION IN ANTEBELLUM AMERICA*).

47. Pointer, *supra* note 51, at 171 (quoting ASHBEL GREEN, *LECTURES ON THE SHORTER CATECHISM OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA: ADDRESSED TO YOUTH* (1829)).

48. *Id.*

49. Carwardine, *supra* note 33, at 84, 95–96 n.30 (quoting RICHARD CARWARDINE, *TRAUMA IN METHODISM: PROPERTY, CHURCH SCHISM, AND SECTIONAL POLARIZATION IN ANTEBELLUM AMERICA*).

50. Carwardine, *supra* note 33, at 79 (quoting RICHARD CARWARDINE, *TRAUMA IN METHODISM: PROPERTY, CHURCH SCHISM, AND SECTIONAL POLARIZATION IN ANTEBELLUM AMERICA*).

excesses and directed its energies for good.⁵¹ As Mark Noll concludes, “There is little evidence that Protestant thinking was directly coopted by market reasoning, and much evidence that market reasoning remained subordinate to intrinsically religious convictions.”⁵²

One example of this constraining influence is manifest in another exceptional attribute of early Americans. With all of their intense commercial ambition and acquisitiveness, Americans were noted for being uniquely philanthropic. One visitor to the United States, upon his return to Germany in 1853, remarked,

Even the business man, if in any degree religiously disposed, considers his pecuniary gain only a means “to do good”—as he expresses it; and though the Americans are not unjustly reproached with avarice and covetousness, yet they are entitled, on the other hand, to the praise of a noble liberality towards all sorts of benevolent objects,—a liberality unrivaled in modern history.⁵³

And indeed, this was arguably the direct result of the religious teaching at the time, which consistently taught that while it was good to work and prosper, those who did so must “be faithful stewards of [their] bounty; that is, be generous to the church and other good causes.”⁵⁴ In this way, ecclesiastical leaders aimed to, as one sermon expressed it, “baptize the riches of men with the spirit of the gospel.”⁵⁵

Besides urging benevolent uses of profits, religious figures sought to influence the conduct of business itself. One Vermont minister, whose reasoning was representative of his peers, taught that even if a monopoly that drove up prices “does not violate the laws of the land, it certainly does the laws of Christian love.”⁵⁶ Attitudes such as “every man has a right to make as good a bargain as he can” or “to buy as cheap as he can and sell as dear as he can” were clearly condemned.⁵⁷ It is not surprising to find that Americans believed market actors should be held to a divine standard more restrictive than the law alone, for the principal colleges that trained ministers in theology taught that “the universe operated according to a divinely established moral law. God’s governance through that law extended to all spheres of human activity, including the economic.”⁵⁸ Since that moral law was timeless, ministers did not seek to create

51. Howe, *supra* note 36, at 298.

52. Noll, *supra* note 22, at 273.

53. PHILIP SCHAFF, AMERICA: A SKETCH OF ITS POLITICAL, SOCIAL, AND RELIGIOUS CHARACTER 29–30 (Perry Miller ed. [1855], 1961).

54. Howe, *supra* note 36, at 298.

55. John McFarlane, *Altar-Gold; or, Christ Worthy to Receive Riches*, in PULPIT ELOQUENCE OF THE NINETEENTH CENTURY 673 (Henry C. Fish ed., 1857).

56. Noll, *supra* note 22, at 275.

57. *Id.*

58. Pointer, *supra* note 51, at 179; see generally DONALD H. MEYER, THE INSTRUCTED CONSCIENCE: THE SHAPING OF THE AMERICAN NATIONAL ETHIC 89–97 (1972).

a new morality to govern the new and rapidly changing modes of economic activity, but simply to “find new ways to justify and sustain basic ethical values in an emerging capitalist economy.”⁵⁹

For many decades, Protestants in America maintained this balance where they both “eagerly exploited new market conditions” and “maintained traditional reservations about the entrapping power of money.”⁶⁰ At least up until the Civil War, they did this through “an uncomplicated acceptance of commercial society alongside an extraordinary elaboration of scruples concerning how the wealth engendered by modern commerce should be used.”⁶¹ However, as the end of the 19th century approached, this tenuous balance could no longer hold as pressure grew for religion to exercise stronger influence over the increasingly industrialized world, especially with respect to business and money. Richard Pointer’s conclusion with respect to Presbyterians could well summarize the situation for most Protestants of the time:

All in all, then, Presbyterians were both powerfully drawn and occasionally repulsed by emergent capitalism. In a very real sense, they were torn between embracing it fully and keeping it at arm’s length. For the time being they tried to tread a middle road. But the development in the postbellum era of the Gospel of Wealth, on the one hand, and the Social Gospel, on the other hand, suggests that Presbyterians could live with the tension only so long.⁶²

As religious progressives called for a more direct influence over economic affairs, the income tax would become one of their first major initiatives.⁶³ In this, they would be able to draw ideas from the realm of religious financing, which had recently experienced strong movements favoring systematic fundraising based on income and the ability to pay.⁶⁴

III. HISTORICAL MODES OF RELIGIOUS FINANCING

Historian James Hudnut-Beumler argues that the most important legacy of influential Presbyterian minister and social reformer Lyman Beecher was to “elevate fund-raising to an art form by imbuing it with a religious soul.”⁶⁵ Ministers of religion and agents of the many associated “voluntary societies” undertook an ambitious array of benevolent causes, and the price tag of these efforts forced them to learn the best methods to elicit sufficient donations from

59. MEYER, *supra* note 64, at 109.

60. Noll, *supra* note 22, at 270.

61. *Id.* at 273.

62. Pointer, *supra* note 51, at 185.

63. Witte, *supra* note 49, at 388.

64. *Id.* at 387.

65. Carl H. Esbeck, *Dissent and Disestablishment: The Church-State Settlement in the Early American Republic*, 2004 B.Y.U. L. REV. 1385, 1547 (2004).

their congregations.⁶⁶ As we shall see, this long experience taught Americans many lessons that would go on to shape how they funded the rapidly growing expenditures of the Federal Government as well.

The history of religious fundraising can be traced as an arc running from the establishment era practice of public financing for state-established churches, to the disestablishment era proliferation of various voluntary revenue-raising methods, and then back to a sort of re-establishment; first as fundraising became increasingly “systematic” and centralized, and finally as the state took over many activities previously performed by ecclesiastical organizations.⁶⁷ It is not surprising then, that as the state began to feel pressure to undertake a widened array of activities, frequently at the urging of religious organizations, it would also naturally look to the financing theories and methods then ascendant in the Protestant community, especially the related movements of proportional giving and tithing, which I discuss below.

In the establishment period, colonies and later many states had established official churches that were supported by taxes levied on the population, regardless of personal religious belief or affiliation.⁶⁸ At the time of the American Revolution, “ten of the original thirteen states had some form of tax-supported religion.”⁶⁹ This state of affairs continued to some extent for several decades of the new nation’s life,⁷⁰ but establishment officially ended in 1833 when Massachusetts stopped support for the Congregational Church.⁷¹ This “largest instance of privatization in all of American history[,] . . . moved a large part of the traditional public sector into the private marketplace in a relatively short period of years.”⁷² Churches which had not enjoyed support under establishment welcomed the more free competition, and formerly established churches had to adapt previous fund-raising methods and adopt new ones.⁷³

Some of the common methods for financing disestablishment churches included the glebe system, where churches and their ministers lived off the revenue from donated land or slaves;⁷⁴ free-will offerings solicited on special

66. *Id.* at 1540–47.

67. See generally Jason S. Marks, *Only A “Speed Bump” Separating Church and State?*, 57 J. Mo. B. 36 (2001).

68. Michael A. Paulsen, *Religion, Equality, and the Constitution: An Equal Protection Approach to Establishment Clause Adjudication*, 61 NOTRE DAME L. REV. 311, 320 (1986).

69. HUDNUT-BEUMLER, *supra* note 3, at 9–10.

70. Noll, *supra* note 31, at 8–10.

71. HUDNUT-BEUMLER, *supra* note 3, at 9–10.

72. *Id.* at 8; Kelly Olds, *Privatizing the Church: Disestablishment in Connecticut and Massachusetts*, 102 J. POLIT. ECON. 277, 296 (1994).

73. HUDNUT-BEUMLER, *supra* note 3, at 9–10.

74. Noll, *supra* note 31, at 8–9; ERSKINE CLARKE, *OUR SOUTHERN ZION: A HISTORY OF CALVINISM IN THE SOUTH CAROLINA LOW COUNTRY, 1690-1990* 57–58 (2014); HUDNUT-BEUMLER, *supra* note 3, at 10.

occasions for special purposes;⁷⁵ voluntary subscriptions where members pledged amounts towards causes such as the construction of new buildings;⁷⁶ a Deacon's Fund or permanent fund consisting of donations generating interest to support church work such as assistance of poor congregants or community members;⁷⁷ and lotteries.⁷⁸ Some churches with roots in the establishment area simply levied taxes on their members.⁷⁹ Another interesting development was the rise of "Free Churches" where wealthy philanthropists paid to construct, staff, and even maintain a church.⁸⁰ Interestingly, this practice would arouse controversies later paralleled in debates over the income tax, such as whether it was appropriate for the very wealthy to bear all expenses, or whether poorer members needed to make some contribution in order to give them dignity and make them committed stakeholders.⁸¹

But probably the most common means of raising revenue in the beginning of the disestablishment period was through pew rentals.⁸² The churches set the prices for the pews, and although practice varied,⁸³ the "tithing men" or "vestrymen" in charge of this function seem to have administered a fairly sophisticated form of progressive price discrimination, as they would "periodically set the prices and assign and reassign the pews as families became more affluent, prominent, and able and willing to pay for more expensive seats closer to the front."⁸⁴ Even though pew rents would remain an important revenue source for many churches well into the twentieth century,⁸⁵ they were the subject of criticism and gradual decline.⁸⁶ Arguably, pew rents as the predominant form of church finance paralleled excise taxes and tariffs as the

75. HUDNUT-BEUMLER, *supra* note 3, at 10; Noll, *supra* note 31, at 8–10; David Hempton, *A Tale of Preachers and Beggars: Methodism and Money in the Great Age of Transatlantic Expansion, 1780-1830*, in GOD AND MAMMON: PROTESTANTS, MONEY, AND THE MARKET, 1790-1860 123, 129 (Mark A. Noll ed., 2002).

76. HUDNUT-BEUMLER, *supra* note 3, at 9–10; Noll, *supra* note 31, at 9–10; Hempton, *supra* note 81, at 129.

77. HUDNUT-BEUMLER, *supra* note 3, at 10; Robin Klay & John Lunn, *Protestants and the American Economy in the Postcolonial Period: An Overview*, in GOD AND MAMMON: PROTESTANTS, MONEY, AND THE MARKET, 1790-1860 30, 46 (Noll ed., 2002).

78. Noll, *supra* note 31, at 8–10 (noting that relatively small number of churches using lotteries tended to experience problems).

79. HUDNUT-BEUMLER, *supra* note 3, at 10; Hempton, *supra* note 81, at 129.

80. Noll, *supra* note 31, at 10.

81. *Id.*; see also, *What the Free Church System Requires*, 10 CHURCH REV. 88, 88–105 (Apr. 1857).

82. Noll, *supra* note 31, at 8–10.

83. HUDNUT-BEUMLER, *supra* note 3, at 9.

84. *Id.* at 11; see also Klay & Lunn, *supra* note 83, at 44 (detailing progressive pew rental rates for First Reformed Church of Bethlehem).

85. HUDNUT-BEUMLER, *supra* note 3, at 59–60. A survey of sixteen churches throughout the U.S. in the 1920s showed that six still substantially relied on pew rentals. *Id.*

86. *Id.* at 12.

dominant form of public finance, and the criticism of pew rents foreshadowed attacks on the indirect tax system. The “free pew”, or absence of pew rents, was one of Methodism’s four founding pillars, based on “the idea that membership could not be conditioned on being able or willing to rent a pew.”⁸⁷ This theme was later echoed in the common refrain against the tariff system that “want, not wealth, pays the tax,”⁸⁸ instead of a fairer system that taxed people “on what they have rather than what they need.”⁸⁹

A. Systematic Benevolence

Even with the array of church finance methods available, church leaders began to find the inconsistent and ad hoc revenue sources insufficient to tackle the growing scope and number of causes that they wished to support, in addition to traditional ecclesiastical expenses. Through the first half of the nineteenth century, traditional clergy increasingly competed with the agents of nationwide “benevolent societies” or “voluntary societies” who visited congregations to solicit funds for various causes including social movements such as temperance and antislavery.⁹⁰ By the late 1850s, “the price tag attached to the comprehensive reforms that once had been sought by the American Protestant mainstream became simply too much to bear.”⁹¹

Already by this time, available evidence indicates that church-going Americans gave more money to their churches each year than the federal government collected in revenue.⁹² And churches put this money to use on a scale that rivaled the federal government as well. Methodists alone by the 1850s had constructed about as many church buildings as the U.S. government had post offices, and though the post office was the largest federal government employer, the two main Methodist denominations had about as many ministers as the post office had employees.⁹³ While the U.S. government spent approximately \$3.6 million on infrastructure such as roads and canals from the country’s founding until 1828, the thirteen leading benevolent societies spent more than \$2.8 million towards their causes in the same span.⁹⁴

Such grand undertakings gave rise to complaints about the inadequate and unpredictable flow of funds and the inefficient administration thereof. Both

87. *Id.* at 10.

88. 26 CONG. REC. app. 413 (1894) (Statement of Rep. McMillin).

89. *Id.* The statement is also attributed to influential political economist and moral philosopher Henry George, the founder of the single-tax movement or Georgism. See PAUL, *supra* note 8, at 31.

90. Noll, *supra* note 31, at 11; Klay & Lunn, *supra* note 83, at 48–49.

91. Noll, *supra* note 31, at 15.

92. Klay & Lunn, *supra* note 83, at 39.

93. *Id.* at 40.

94. *Id.* at 41; see also, CHARLES I. FOSTER, AN ERRAND OF MERCY: THE EVANGELICAL UNITED FRONT, 1790-1837 121 (1960).

clergy and benevolent societies bemoaned this fact and called for a more regularized, “systematic benevolence.”⁹⁵ Church leaders felt confident that there was indeed enough money available to accomplish their lofty goals, if only they had the appropriate system to collect it.⁹⁶

In 1850, three influential tracts appeared arguing for a broadly similar vision of such a system, and they would remain popular for the rest of the nineteenth century.⁹⁷ Each author looked to the Bible for the divine pattern of fundraising, and each one found it to a greater or lesser extent in the first two verses of the 16th chapter of Paul’s First Epistle to the Corinthians: “Now concerning the collection for the saints, . . . Upon the first day of the week let every one of you lay by him in store, as God has prospered him, that there be no gatherings when I come.”⁹⁸ From this, Parson Cooke derived the eponymous law from his tract, *The Divine Law of Beneficence*, that “binds all to the principle of setting apart, every Sabbath, . . . a portion of their income or means of living, as God shall prosper them, for charitable uses.”⁹⁹ Thus, although it had rarely been so under any of the disestablishment era fundraising methods, Cooke argues that the divine law evident in Biblical teachings was that *income* should serve as the base for giving money towards charitable purposes, and the amount given should therefore increase in proportion to the amount of income.¹⁰⁰

Similarly, in his tract *The Mission of the Church*, John Lawrence argued that Paul’s teaching required each member to give in proportion to both property and a broad conception of annual income, including “a portion of each gain in every enterprise”.¹⁰¹ In the final tract, *Zaccheus*, Samuel Harris also made the case for income as the basis for giving, and he emphasized that such giving must be regular and systematic.¹⁰² Biblical teaching, according to Harris, “forbids giving merely from impulse, as under the excitement of an eloquent charity sermon, or the accidental sight of distress.”¹⁰³ Instead, scripture required that “charitable appropriations be systematic. It requires some plan, deliberately and prayerfully adopted, *assessing on the income a determinate proportion* for charitable purposes.”¹⁰⁴ A strong consensus was forming that a systematic contribution of a regular proportion of annual income was the pattern established by the Bible

95. HUDNUT-BEUMLER, *supra* note 3, at 15, 19.

96. *Id.* at 19.

97. *Id.*; Noll, *supra* note 22, at 280.

98. PARSONS COOKE, *THE DIVINE LAW OF BENEFICENCE* 28 (1850).

99. *Id.* (emphasis added).

100. *Id.* at 29–30.

101. EDWARD LAWRENCE, *THE MISSION OF THE CHURCH; OR, SYSTEMATIC BENEFICENCE* 116–130 (1850); HUDNUT-BEUMLER, *supra* note 3, at 24.

102. SAMUEL HARRIS, *ZACCHEUS; OR, THE SCRIPTURAL PLAN OF BENEVOLENCE* 6 (1850).

103. *Id.*

104. *Id.* (emphasis added).

for supporting the various ecclesiastic and social causes performed by churches and their offshoot benevolent societies.¹⁰⁵

B. Tithing

The push for systematic, proportionate giving based on income logically crystallized into the tithing movement. Religious ministers continued to look to the Bible as the best source for the divine pattern of fundraising, and now turned to the books of the Hebrew Bible. American Protestants viewed themselves as reviving an ancient, neglected law that had always been in force, the rule that Christians, as ancient Israel before them, should give “as a minimum, one-tenth of our income to the treasury of God.”¹⁰⁶ While this idea was already appearing in the 1850s, it really gathered force in the 1870s.¹⁰⁷ In an anonymous tract from that decade titled *One-Tenth for All; or, Proportionate Giving God’s Rule*, the author used reasoning from Leviticus and Deuteronomy to argue that the now widely-accepted idea of proportionate giving of income should be attached to a specific proportion, one-tenth.¹⁰⁸

In 1873, two Southern Presbyterians from Virginia, Alexander L. Hogshead and John W. Pratt, produced a collection of treatises on tithing, which they collectively published as *The Gospel Self-Supporting*.¹⁰⁹ Their central argument was that the tithe of ten percent was God’s permanent and minimum expectation.¹¹⁰ Pratt argued that the divine rule that led Abraham and Jacob to pay tithes in the Book of Genesis was still “a law for every worshiper” in the current time.¹¹¹ In his treatise, Alexander Hogshead added an important wrinkle. While offerings previously had been characterized by the terms “free-will” or “voluntary,” Hogshead asserted that the tithe of one-tenth represented a *mandatory* minimum.¹¹² Rejecting any objections that the New Testament seemed to refer mostly to voluntary contributions, Hogshead wrote that “The old fixed law of tithes” was “obligatory under all circumstances, as the minimum standard,” with additional free-will offerings to be paid in addition, due to “the increased privileges and the enlarged work of the new dispensation.”¹¹³

Nevertheless, the idea of one-tenth of income as the minimum expectation gained wide and lasting acceptance.¹¹⁴ In his 1878 book *The Christian*

105. *Id.* at 9.

106. Noll, *supra* note 22, at 273.

107. HUDNUT-BEUMLER, *supra* note 3, at 52.

108. *Id.* (citing Anonymous, *One-Tenth for All; or, Proportionate Giving God’s Rule* (1870)).

109. ALEXANDER L. HOGSHEAD & JOHN W. PRATT, *THE GOSPEL SELF-SUPPORTING* (1873).

110. *Id.* at 206–07.

111. *Id.* (citing Abraham’s payment of tithes on gains in *Genesis* 15 and Jacob’s promise to God in *Genesis* 28:22 that “of all that thou shalt give me, I will surely give the tenth to thee.”).

112. *Id.* at 28.

113. *Id.*

114. HUDNUT-BEUMLER, *supra* note 3, at 52.

Treasury; or, The Church's Sources of Income, C.P. Jennings, dean of St. Andrew's Cathedral in Syracuse, New York, argued that tithing was a biblical law that still bound all church members.¹¹⁵ Espousing Hogshead's view, Jennings believed the tithe was to be viewed as a sort of mandatory minimum, above and beyond which Christians must follow Paul's oft-cited commandment to the Corinthians and give even more "as they prospered."¹¹⁶ In other words, "Every one owes the tythe . . . Not less than one-tenth of a man's income will discharge the debt. It is to be paid before any other debt. It is a debt to be paid before anything else can be called a gift, or free-will offering to Christ."¹¹⁷

By the 1890s—as the movement to restore the income tax was about to begin—the idea of tithing had become accepted throughout the country, and various denominations enshrined the practice in their administrative manuals and guides.¹¹⁸ It "was everywhere becoming a weekly ritual whereby parishioners would 'present their tithes and offerings' to the Lord, . . . A systematic approach had triumphed to the extent that the offerings themselves were often placed in specially printed envelopes with two pockets—one for church support and one for mission or benevolences."¹¹⁹ This practice was a triumph for the idea of "periodicity," a concept that had been urged in the influential tract *One-Tenth for All*.¹²⁰ Its anonymous author defined periodicity as "[p]ayments made at definite times and 'appointed seasons'" and viewed this as "the bed-rock of great national financial operations."¹²¹

Here we see that in addition to fixing one-tenth of income as a minimum proportion of giving, the tithing movement also influenced the organizational system of church finance.¹²² To this end, John Pratt appeared to be the first to use another Old Testament passage that would appear in tithing advocacy literature for decades: Malachi's accusatory question "Will a man rob God?"¹²³ Malachi condemned Israel for failure to pay tithes and offerings and commanded, "Bring ye all the tithes into the storehouse."¹²⁴ Pratt used this reference to argue that donations should be given directly to the church, or storehouse, and from there distributed to worthy causes.¹²⁵ Previously, even

115. C.P. JENNINGS, *THE CHRISTIAN TREASURY: OR, THE CHURCH'S SOURCES OF INCOME* 17–19 (1878).

116. HUDNUT-BEUMLER, *supra* note 3, at 51; *see generally* JENNINGS, *supra* note 121 *passim*.

117. *Id.* at 18.

118. HUDNUT-BEUMLER, *supra* note 3, at 55–56.

119. *Id.*

120. *Id.* at 52.

121. *Id.*

122. *Id.* at 57.

123. *Malachi* 3:8.

124. *Malachi* 3:10.

125. HUDNUT-BEUMLER, *supra* note 3, at 57.

under the guise of systematic benevolence, the norm had been for individuals to contribute to each of the various causes directly as they saw fit.¹²⁶

Methodist minister W.W.W. Wilson created and publicized a plan that realized both the goal of periodicity and that of centralization under church control.¹²⁷ He instituted “Good Tithings Day” in his congregation, an annual event that condensed all charitable giving into one day.¹²⁸ Members studied literature from the various causes then brought their donation in a church-provided envelope on the appointed day, and the minister collected and distributed all funds.¹²⁹ Regardless of the specific plan adopted, everywhere the tithing movement was helping reformers centralize and rationalize fundraising. As a logical result of this process, most Americans were becoming familiar with and accepting the idea of routinely paying a portion of one’s income to a recognized authority for efficient administration and distribution.

C. Church and State Blur

By the time religious organizations in America, dominated by Evangelical Protestantism, had achieved a more centralized and standardized fundraising system based on proportionate giving of income, there was another important shift beginning to take place. Protestants were coming to see the state as an appropriate, indeed the most appropriate, means of achieving their own objectives, especially their goals for social and temporal reform. As the number and scope of projects that churches and benevolent societies took on became too large, they searched for more resources and power to accomplish them. At the same time, ideas that would later blossom into the Social Gospel and the Progressive movement legitimized the concept of the state as an instrument of God’s work.¹³⁰ This shift of many activities from sole performance by the church to joint or sole performance by the state made it natural that ideas about methods of financing them would also migrate from church to state.

For most of American history, many functions now largely within the confines of the federal government were chiefly performed by churches, or voluntary organizations arising from or sponsored by churches. This included functions related to welfare and education. For example, churchgoers experienced a constant stream of solicitations to support causes such as aid for orphans,¹³¹

126. *Id.*

127. *Id.* at 58.

128. *Id.*

129. *Id.* (quoting W.W.W. WILSON, THE MODEL BENEVOLENT SYSTEM 15–16 (1895)).

130. See, e.g., JOSIAH STRONG, OUR COUNTRY: ITS POSSIBLE FUTURE AND ITS PRESENT CRISIS 229 (1891) (arguing that “kingdoms of this world” will become “the kingdom of our Lord” by “Christianizing” power of money).

131. Noll, *supra* note 22, at 274; HUDNUT-BEUMLER, *supra* note 3, at 48.

relief for disaster victims,¹³² assistance to the poor,¹³³ construction and operation of hospitals,¹³⁴ and help for minority groups including Native Americans,¹³⁵ free blacks,¹³⁶ and slaves.¹³⁷ Further, Christians were called upon to support more politically-oriented social reform movements, such as temperance, women's suffrage, improved factory conditions, civil service reform, and antislavery.¹³⁸ In addition, churches played a large role in education, and while many church-connected schools charged tuition, the amount was means-tested and subsidized for poorer students, and churches frequently solicited members for donations to support educational causes.¹³⁹ While of course many religious organizations continue to perform similar activities to this day, originally they were the sole providers of many forms of social welfare when federal, and even state, government had very little involvement in such things.¹⁴⁰

Naturally, such a large and ambitious array of projects tended to overwhelm the resources of the various churches and benevolent societies, who all relied on donations from congregants beset with pleas from not only their ministers but from visiting agents delivering emotional pleas on behalf of the numerous benevolent societies. As Edward P. Gray, an Episcopal priest in reconstruction-era Minnesota, described it, one "finds himself sorely puzzled, because he is supposed to know the proportionate demands and necessities of all these claimants" but generally just gave varying amounts to the cause that seemed most urgent at that moment.¹⁴¹ One response to this dilemma, as we have seen, was to try to expand and systematize church philanthropy under the guise of systematic benevolence, generally based on periodic giving proportionate to income, with an emphasis on the biblical proportion of one-tenth of income. However, the rise of the Social Gospel opened up another possibility: achieving divine purposes through the instrumentality of the state. In this, it is not surprising that advocates of this movement would claim a proportionate amount of income for the state, just as they had done for their churches.¹⁴²

132. Noll, *supra* note 22, at 274.

133. *Id.*; Klay & Lunn, *supra* note 83, at 40–41; HUDNUT-BEUMLER, *supra* note 3, at 58.

134. Klay & Lunn, *supra* note 83, at 49; Howe, *supra* note 36, at 300; HUDNUT-BEUMLER, *supra* note 3, at 48.

135. Noll, *supra* note 22, at 274.

136. *Id.*; HUDNUT-BEUMLER, *supra* note 3, at 48.

137. Noll, *supra* note 22, at 274.

138. SMITH, *supra* note 27, at 15–16; Noll, *supra* note 31, at 11.

139. SMITH, *supra* note 27, at 38; Howe, *supra* note 36, at 300; Noll, *supra* note 22, at 274; Klay & Lunn, *supra* note 83, at 40–41; HUDNUT-BEUMLER, *supra* note 3, at 48; *see also id.* at 58.

140. Klay & Lunn, *supra* note 83, at 40–41.

141. HUDNUT-BEUMLER, *supra* note 3, at 48 (quoting EDWARD P. GRAY, *THE APOSTOLIC TREASURY: ITS NATURE, HISTORY, AND RESTORATION* (1871)).

142. *See id.*

As the Progressive Era was dawning—just at the time of the 1894 income tax debate—it was a time of, in the words of historian Robert Kelley, “Northern WASP ascendancy in all things, including government, literature, scholarship, the arts, and the economy.”¹⁴³ In this setting, it is natural that Protestants would see government as their natural ally and tool to achieve their aims. As historian George M. Marsden argues, the increasing secularization that would occur as a result of the progressive movement “took place not by a developing hostility between religion and the dominant culture, but by a blending of their goals.”¹⁴⁴ The depression of 1893 and the rising populist movement prompted many Protestants to actively address social problems, challenging the prevailing individualistic ethic in order to promote social salvation as well.¹⁴⁵

The successful fight for the income tax of 1894 would serve as the key opening salvo in this movement. As we shall see, religious ideas and forces were central to this pivotal moment in American history. And the tax’s most prominent champion in Congress, the Evangelical William Jennings Bryan, would be propelled by this victory from junior member of the House of Representatives to Democratic nominee for President only two years later, a dramatic reconfiguration of American politics.¹⁴⁶

IV. THE DEBATE: A BIBLICAL CASE FOR PROGRESSIVE INCOME TAXATION

As opposing congressmen stood in January 1894 to debate the adoption of the first peacetime income tax in American history, it quickly became clear that this was no technocratic debate about the most efficient means of raising revenue, but a struggle that both sides viewed as filled with moral significance. Indeed, advocates of the income tax scarcely attempted to counter their opponents point that “the income tax . . . is unnecessary for the purpose of raising sufficient revenue,”¹⁴⁷ but instead argued that the income tax was just and fair. While both sides frequently drew on biblical language and ideas, supporters of the income tax especially saw themselves as advocating a righteous, biblical form of taxation. As William Jennings Bryan stood in the House of Representatives to begin his defense of the proposed tax, he compared himself to David facing

143. ROBERT LLOYD KELLEY, *THE CULTURAL PATTERN IN AMERICAN POLITICS: THE FIRST CENTURY* 285 (1979).

144. George M. Marsden, *Afterword: Religion, Politics, and the Search for an American Consensus*, in *RELIGION AND AMERICAN POLITICS: FROM THE COLONIAL PERIOD TO THE 1980S* 459, 464 (Mark A. Noll ed., 1990); Handy, *supra* note 38, at 228–29.

145. *Id.*

146. Marsden, *supra* note 152, at 463.

147. 26 CONG. REC. 6701 (1894) (Statement of Sen. Platt); *see also id.* at 6694 (Statement of Sen. Sherman) (stating he would vote for tax if necessary for revenue, but claims it is not); *id.* at 3565–67 (Statement of Sen. Hill) (making extensive argument that income tax not necessary for balanced budget).

Goliath.¹⁴⁸ Feigning that although he could never match the eloquent speech of his chief opponent, fellow Democrat Bourke Cockran of New York, he nevertheless said, “clad in the armor of a righteous cause I dare oppose myself to the shafts of his genius, believing that ‘pebbles of truth’ will be more effective than the ‘javelin of error,’ even when hurled by the giant of the Philistines.”¹⁴⁹

Thus, Bryan immediately and effectively claimed the moral high ground. He and others would go on to argue that the progressive income tax was the only tax conforming to the Biblical standards of a just, righteous tax.¹⁵⁰ They based this argument on two main grounds: first, the general claim that Christianity emphatically teaches that the wealthy must give of their wealth to care for the poor;¹⁵¹ and second, the much more specific claim that Christianity and Judaism mandate giving in proportion to ability to pay, as measured by income.¹⁵² Alone, these arguments might be compatible with a strictly proportionate or “flat” tax.¹⁵³ However, income tax supporters also made arguments about what I call the decreasing moral value of money, attaching extra value to lower levels income, especially earned income, while devaluing high levels of wealth which they viewed as unearned and morally suspect.¹⁵⁴ In this way, they used religiously-rooted arguments to show that the ability to pay increases in more than direct proportion to income.¹⁵⁵ Supporters of progressive taxation today have especially overlooked the compelling support for this latter claim in Judeo-Christian teachings.

A. Bearing One Another's Burdens

Representative Uriel Hall of Missouri was among the chief income tax advocates in the House debate. He explicitly stated his belief that Biblical Christianity endorsed an income tax:

I have heard a gentleman say on this floor that no one ever heard of an income tax prior to 1842. I desire to say that that gentleman has

148. *Id.* at 1655 (statement of Sen. Bryan).

149. *Id.*

150. *See id.*

151. *See id.* at 1655–56.

152. *See id.*

153. Treasury Secretary Andrew Mellon and President Ronald Reagan both later cited tithing as a precedent for a flatter, and lower, tax rate structure. *See* ANDREW MELLON, TAXATION: THE PEOPLE'S BUSINESS 83 (1924) (expressing hope “that some day we may get back on a tax basis of 10%, the old Hebrew tithe, which was always considered a fairly heavy tax”); Boris I. Bittker & Joseph Pechman, *“The Bad New Tax Law”: An Exchange*, N.Y. REV. BOOKS, Jul. 16, 1987 (relating that Reagan told Press Club of Orange County in 1961 that progressive income tax conflicts with biblical tithe); Lori Clune, *Political Ideology and Activism to 1966*, in A COMPANION TO RONALD REAGAN 30 (Andrew L. Johns ed., 2015) (claiming Reagan based tax proposal on biblical tithe).

154. Bittker & Pechman, *supra* note 162.

155. *See* 26 CONG. REC. 1608 (1894).

certainly never read Moses in Deuteronomy, where he advocates collecting taxes according to the means and ability to pay. . . . He has certainly not read Saint Luke, where he declares, “For unto whomsoever much is given, of him shall be much required; and to whom men have committed much, of him they will ask the more.”¹⁵⁶

Hall argued that only an income tax, which made the wealthy pay “their just and righteous proportion” was “in consonance with all the principles of Christianity, of morality, and of political economy.”¹⁵⁷ The sentiment that an income tax was the system for raising revenue most in harmony with Judeo-Christian theology was repeated time and again. Representative John Sharp Williams of Mississippi stated, “[t]hat all men ought to pay to the State in proportion to their abilities is, I take it, simply infusing into our system of taxation some of the spirit of Democracy and of Christianity.”¹⁵⁸ Representative Henry Coffeen of Wyoming echoed him, arguing, “Let the strong help to bear the burdens for the weak, ought to be good political doctrine in a Christian nation.”¹⁵⁹ According to Representative William Baker of Kansas, “While the strong may not be responsible for the infirmities of the weak, for their poverty and destitution, it is plainly their duty to bear their burdens, says the Great Teacher.”¹⁶⁰ Baker elaborated that bearing those burdens involved taxes, alluding to Christ’s parable of the talents in the 25th chapter of Matthew:

I do believe in a Scriptural sense that we should bear one another’s burdens; that the man who has received one talent or five or ten or twenty talents should be held according to the laws of God and man to render an account as well as make a just return to his country for the prosperity he has obtained under the law in which he has lived; and if we take the highest type of justice and equity as taught by the Great Teacher and as taught by our ablest and best writers on the subject of taxation we will find that the people should be taxed upon their ability and not upon their necessities.¹⁶¹

Just as they argued that the income tax was the only biblical tax, proponents also used the language of the Bible to condemn their opponents for espousing an unrighteous cause. William Jennings Bryan used Christ’s language condemning unrighteous Pharisees in the New Testament and applied them to his anti-income-tax opponents “who are willing to see their fellows oppressed ‘with burdens grievous to be borne,’ and yet ‘touch not the burdens.’”¹⁶² Uriel Hall

156. *Id.* (quoting *Luke* 12:48). Evidently Rep. Hall may not have read Luke very closely, either, as it was Christ, and not Luke, that declared the quoted words.

157. *Id.* at 1610.

158. *Id.* at 1621.

159. *Id.* at app. 289.

160. *Id.* at app. 503.

161. *Id.* at app. 504. A talent was a contemporary unit of money.

162. *Id.* at 1658 (quoting without citing *Matthew* 23:4).

said that those against the income tax could only be acting out of a perverse misapplication of scripture: “By refusing to pass this bill its opponents can find but one authority in divine writings to justify them, and that is where St. Mark says: ‘Unto him that hath shall be given, but unto him that hath not, even that which he hath shall be taken from him.’”¹⁶³

There is strong evidence that these congressmen were not simply applying their own lay reading of the Bible, but were responding to trends and teachings from church leaders and thinkers.¹⁶⁴ Much of their language indicates a clear link to the widespread Protestant movement for systematic benevolence through proportionate giving of income.¹⁶⁵ As previously seen, all the influential tracts in this movement based their claim on the scriptural authority of Paul in 1 Corinthians 16:2, who advised each member of the church to regularly set money aside for the work of the church “as God hath prospered him.”¹⁶⁶ We can trace this line of thought directly to the congressional debate, where supporters of the income tax repeatedly referenced this Biblical idea. Tennessee Representative Benton McMillin warned the wealthy citizens of the country—to loud applause—that “we will require you to do what the great Redeemer of the world instructed His disciples to do: ‘As the Lord has prospered you, so give.’ That is the doctrine of the Democratic party.”¹⁶⁷ Likewise, William Jennings Bryan declared that he and his compatriots would “insist that each citizen should contribute to government in proportion as God has prospered him.”¹⁶⁸ Representative Joseph Sibley categorically stated that “[t]his tax is biblical. It is authorized by God Almighty. I do not vote for it in order to punish anyone, for no one can be punished by being made to pay in proportion as he hath been prospered.”¹⁶⁹ And in the Senate, James Kyle of South Dakota believed that “[t]here is no better law than the Biblical laws on which to found a prosperous government. The sum of all those teachings is that the rich or favored should not oppress the poor, and that all citizens should recognize government and contribute to its support as they are prospered.”¹⁷⁰

Beyond these links to the systematic benevolence movement and proportional giving, the congressional debate also indicates that the connection with Protestant fund-raising ideas went further. Advocates for an income tax were clearly familiar with and influenced by the explicitly-Biblical tithing movement.

163. *Id.* at 1608 (quoting *Mark* 4:25).

164. *See* Howe, *supra* note 36, at 300; SMITH, *supra* note 27, at 38.

165. 26 CONG. REC. 1665 (1894).

166. *1 Corinthians* 16:2.

167. 26 CONG. REC. app. 413 (1894); *see also id.* at 417. (Statement of Rep. McMillin) (“This law says, ‘As you have been prospered so pay. As you have received the blessings of the Government, contribute something to perpetuate them.’”).

168. *Id.* at 1658.

169. *Id.* at 1731.

170. *Id.* at 6684–85.

Benton McMillin held up the Mosaic law as a divine system that the American people should emulate, stating, “Under the government established by the all-wise and omnipotent God for the government of his people, He required them to pay one-tenth. The more a man made the more he paid.”¹⁷¹ In his impassioned speech, Uriel Hall cited “the great theocracy of Judea, which collected its taxes by tithes, which means one-tenth of a man’s income, no matter how wealthy he may be.”¹⁷² Representative John Davis of Kansas even submitted a proposed bill that would tax both incomes and inheritances at a top rate of 10 percent, though he did not cite any Biblical authority.¹⁷³

Overall, income tax advocates did not use tithing as a guide for setting rates, but as support for the principle that income was the best tax base because income is the best measure of ability to pay.¹⁷⁴ Therefore, the amount of tax paid should increase in proportion to income. The conspicuous use of ideas and language from the systematic benevolence and tithing movements paints a clear picture of religion directly influencing policymakers’ thought.

It is perhaps because of the support for an income tax that many found in the Judeo-Christian tradition that it was widely considered the fairest and most just of taxes, even if it had other flaws. From elites and academics down to the common man, there was a broad consensus that an income tax based on ability to pay was the fairest system, while the tariff was the epitome of unfairness because it taxed the poorest citizens proportionally more.¹⁷⁵ Representative Franklin Bartlett would later express a common theme when he said that “I believe the income tax to be the most just, equitable, and proper tax that Congress can levy” because it took the burdens “from the backs of the masses of the people” and put them instead “upon the pockets of those who do not now bear their just share.”¹⁷⁶ Representative Hernando Money of Mississippi supported the income tax “because it is a moral tax . . . because it is founded upon the rules of equity and justice.”¹⁷⁷ In addition to other academics,¹⁷⁸ many congressmen cited economist Richard T. Ely who said, “it is universally or almost universally admitted that no tax is so just . . . it places a heavy load only

171. *Id.* at app. 415.

172. *Id.* at 1608.

173. *Id.* at 1666. 10 percent had also been the highest rate achieved under the Civil War income tax. Witte, *supra* note 7, at 69.

174. 26 CONG. REC. 1605 (1894).

175. *Id.* at 1609.

176. 44 CONG. REC. 4410 (1909).

177. 26 CONG. REC. 1731 (1894).

178. See *e.g.*, *id.* at 1618; RATNER, *supra* note 7, at 180 (statement of Rep. William Wilson citing W.G. Sumner, Amasa Walker, Francis A. Walker, and Arthur L. Perry as great New England economists in favor of income tax); 26 CONG. REC. app. 71 (1894) (statement of Rep. Fithian citing Prof. Robert Ellis Thompson); 26 CONG. REC. 1646 (1894) (statement of Rep. Pigott: “Now, I was educated in Yale College to believe that an income tax is a just and righteous tax.”).

on strong shoulders.”¹⁷⁹ However, support by no means came primarily from the academic elite, and Representative William Bowers of California made this clear, saying, “I do not care . . . for all the pretty theories of all the college professors that ever lived respecting [the income tax]. The . . . commonest intelligence comprehends them—the burdens of taxation are not equitably distributed.”¹⁸⁰

Even opponents of an income tax were quoted as acknowledging its fairness. Grover Cleveland and his Treasury Secretary John Carlisle opposed the tax for political reasons, but both seem to have acknowledged that it was just.¹⁸¹ Representatives Uriel Hall and John Davis each quoted income tax opponent Frederick C. Howe of Johns Hopkins University as “an unwilling witness” who admitted that the income tax “has much to defend it, and theoretically it appears to be the most equitable of taxes.”¹⁸² Another prominent economist opposed to the income tax, David A. Wells, lamented that despite the tax’s evils, it “seems to find favor with the American people.”¹⁸³ And indeed, most people seemed to have an innate belief that the income tax was fair, as seen in the overwhelming and relatively swift passage of the 16th Amendment by 42 states.¹⁸⁴

B. The Decreasing Moral Value of Money

To argue that the progressive feature of the income tax—represented in 1894 by the exemption of the first \$4,000 of income—was truly “just and equitable,” proponents had to show that the ability to pay increased in more than direct proportion to income, or that one dollar in the hands of a wealthy person was not equal to one dollar in the hands of a poor person.¹⁸⁵ In fact, support for exactly this proposition exists in the New Testament. Just as Christ taught that one sheep can be greater than ninety-nine,¹⁸⁶ His story of the widow’s mites teaches that money should not always be measured by its face value, especially when making donations or tribute. As Christ sat observing many cast donations into the treasury of the temple and saw “many that were rich cast in much,” He also saw

179. 26 CONG. REC. 1605 (1894) (Statement of Rep. Williams, quoting Mr. Ely).

180. *Id.* at 1727.

181. RATNER, *supra* note 7, at 174.

182. 26 CONG. REC. 1607, 1666 (1894).

183. RATNER, *supra* note 7, at 190 (quoting David A. Wells, *An Income Tax: Is It Desirable?*, FORUM, Mar. 1894, at 1–13).

184. *See Steinmo, supra* note 8, at 75.

185. PAUL, *supra* note 8, at 25–26 (quoting Sen. Sherman); LOUIS EISENSTEIN, *THE IDEOLOGIES OF TAXATION* 33–34 (1st ed. 1961) (making argument that progressivity is only equal if ability to pay increases in more than direct proportion to income).

186. *See Matthew* 18:12; *Luke* 15:4.

“a certain poor widow” cast in the very small sum of “two mites.”¹⁸⁷ He quickly summoned His disciples in order to impart an important lesson: “Verily I say unto you, That this poor widow hath cast more in, than all they which have cast into the treasury: For all they did cast in of their abundance; but she of her want did cast in all that she had, even all her living.”¹⁸⁸

From this, we can observe a fundamental principle about how Christians were supposed to view money. The widow’s two mites were surely among the very smallest donations made by anyone in terms of nominal value, but Christ declared that in fact this widow had contributed more than anyone, including the rich men casting in great sums. Clearly then, money could be assigned a value other than its face value: it could have spiritual or moral value. Christ’s disciples were encouraged not to think in simple numerical terms. What gave the widow’s mites greater moral value than all the rest? Her contribution came out of “her living,” or daily subsistence needs. In contrast, the amounts that came from the rich men’s “abundance” were deemed to be lesser in terms of moral value. While it is a matter of debate whether Christ intended this principle to apply beyond the immediate context of ecclesiastical donations,¹⁸⁹ it is evident that proponents of the income tax did apply this reasoning to secular government.¹⁹⁰ The principle of the decreasing moral value of money as it moves from the level needed for “living” to the realm of “abundance” would be a repeated theme in the debate for the income tax.¹⁹¹ Income tax proponents used this idea to condemn the regressive tariff and justify their proposed income tax, with its progressive \$4,000 exemption.¹⁹²

In the House, Hernando Money framed the question of the income tax as whether there should be a tax “not upon the necessities, but upon the luxuries of life” and echoing Christ’s comparison of the rich men’s “abundance” to the poor widow’s mites, asked “whether we shall tax the superabundance of the rich or the wages of the poor laboring man.”¹⁹³ Benton McMillin said that while under a tariff “want, not wealth, pays the tax,” under the income tax they would “put more tax upon what men have, less on what they need.”¹⁹⁴ “My friends, . . .” he asked, “. . . are we going to put all of this burden on the things men eat and wear

187. *Mark* 12:41–42; *see also Luke* 21:1–2. The connection between the widow’s mites and progressive tax rates has previously been noted in Bruce Bartlett, *Tax Policy and the Bible*, 141 TAX NOTES 1231, 1233–34 (2013).

188. *Mark* 12:43–44.

189. *See, e.g.*, Christ’s famous declaration respecting taxes, distinguishing between secular and religious obligations: “Render therefore unto Caesar the things which are Caesar’s, and unto God the things that are God’s.” *Matthew* 22:21.

190. 26 CONG REC. app. 417.

191. *See, e.g.*, 26 CONG. REC. 1731 (1894).

192. *Id.* at 1667.

193. *Id.* at 1731.

194. *Id.* at app. 413.

and leave out those vast accumulations of wealth?”¹⁹⁵ The *Chicago Times*, representing the views of Midwestern farmers, supported “a taxed income rather than a taxed breakfast table.”¹⁹⁶

To illustrate this point, John Sharp Williams asked his fellow representatives to consider the injustice of a flat tax of ten percent levied on three men with incomes of \$100, \$5,000, and \$100,000.¹⁹⁷ He asked, “What have you done? You have taken from the man with \$100 income, \$10, but what have you taken? Not money, but what money could buy, and what he would have bought with it. You have taken from him fuel, flannels, medicines—the necessities of life.”¹⁹⁸ Just like the biblical widow, he had contributed not just money, but his living. Therefore, they must not ask what *could* be bought with ten dollars, but what actually *would* be bought. And because the poorest man must use the money to buy his basic necessities, it was unjust to take that money. In contrast, by taxing the man with \$5,000, Williams said that “[y]ou have taken from that man some of the comforts of life, a higher degree of education for his children perhaps, lithographs or engravings, books that he might have wanted. That is his sacrifice. It is a sacrifice of comforts, of refinements of life, but not of prime necessities.”¹⁹⁹ Further still, Williams argued that in taking \$10,000 from the man with income of \$100,000, the government would tax “[n]ot necessities, not comforts, not even refinements, but luxuries. I might go further and say you have simply taxed out of his surplus, over and above luxuries even.”²⁰⁰ In making his point that the income tax was “biblical” and “authorized by God Almighty,” Joseph Sibley endorsed Williams’ example and, channeling Christ’s term, said that the man with \$100,000 or more “simply pays out of his superabundance.”²⁰¹

It is fascinating to observe that most congressmen felt comfortable determining what amount constituted a minimum standard of decent living, and most agreed on that level within a certain range. The \$4,000 exemption was generally thought to be well above such a level, and was doubtless at least in part an attempt to make the tax more politically popular.²⁰² Senator David Hill of New York, the chief opponent of the income tax in the Senate, did not disagree with the principle that the income necessary for a decent living should not be

195. *Id.*

196. PAUL, *supra* note 8, at 33.

197. 26 CONG. REC. 1606 (1894).

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* at 1731.

202. This fact was later admitted by Woodrow Wilson. 4 WOODROW WILSON, THE PUBLIC PAPERS OF WOODROW WILSON 111–112 (Ray Stannard Baker & William E. Dodd eds., 1926) (writing that he desired an exemption of \$3,000 “in order to burden as small a number of persons with the obligations involved in the administration of what will at best be an unpopular law.”).

taxed, but he objected that the \$4,000 exemption was “twice as much as is ordinarily necessary to furnish a fair living.”²⁰³ Fellow Senator James Kyle, although an avid supporter of the tax, went further, arguing that the “exemptions should be placed as low as \$1,000, an amount supposed to represent the average living expense of a family in moderate circumstances.”²⁰⁴ John Davis in the House was satisfied that \$4,000 was “sufficient to provide the number of persons ordinarily supported from a single income with the requisites of life and health, and even in luxury.”²⁰⁵

Besides losing moral value as it was no longer needed to supply necessities, money lost value as it increased beyond a certain point for another reason as well. High incomes lost moral value because they were not seen as legitimately earned through labor. Representative T.J. Hudson of Kansas most clearly articulated this belief:

[A] man earning an income of, say, \$10,000 per annum may be receiving that income as a result of his own industry and exertion and there might be, and in such cases frequently would be, many persons depending upon him for a living, . . . On the other hand, I assume that no man by his own industry and exertion can honestly earn an annual income for a long period of years of over \$25,000, and the rule is in nearly all cases . . . that their incomes come to them without exertion on their part or through some unfair and vicious system. . . The families of such frequently spend much of their time and money abroad living in idle indulgence . . . but the income itself smells of oppression, misery, and want.²⁰⁶

Benton McMillin assured his opponents that the income tax “would detract nothing from the capital of him who earns, after the commandment of God, his daily bread by the sweat of his face.”²⁰⁷ By implication, those who did not earn their wealth this way, and who had considerably more than a day’s supply of bread, did not enjoy the same divine sanction. Senator James Kyle explained why the unearned nature of wealth justified a progressive form of taxation:

The toiler whose life is spent in the yoke—almost like the beast of burden—gives of his lifeblood to add to the material wealth of the nation and knows little of ease or luxury. The rich are often the children of fortune, living on the fruits of others’ labor, and it is right economically and morally that they should bear the larger share of the public expense.²⁰⁸

203. 26 CONG. REC. 3559 (1894).

204. *Id.* at 6689.

205. *Id.* at 1667.

206. *Id.* at app. 57.

207. *Id.* at app. 413.

208. *Id.* at 6684–85.

Representative Tom Johnson of Ohio similarly thought that the great fortunes of the country were the result of “the appropriation of the fruits of labor by those who do no labor.”²⁰⁹ Therefore, large incomes lacked moral value not only because they did not result from the recipient’s own labor, they were often even more suspect because they were presumably derived from the exploitation of others’ labor. The principle that large incomes were debased because they were unearned had a parallel application that gave a working person’s income extra value because it was earned through labor. These corollary principles had deep roots in the religious teachings of the time. Presbyterian Pastor Thomas Beveridge taught that Christ’s work as a carpenter forever “ennobled labour” while at the same time the “Scriptures give no tolerance to idleness.”²¹⁰

Perhaps the most common source of preachers’ views on the relative worth of wealth and poverty was the parable of the rich man and Lazarus. The rich man, who lived luxuriously, and Lazarus, a sick beggar who laid at his gate in the hopes of receiving the rich man’s crumbs, both died. Lazarus then found himself in paradise, while the rich man lay across an impassable gulf in hell.²¹¹ The prevailing interpretation of this passage by ministers was to condemn the rich man as a criminal for “getting all he could and keeping all he got.”²¹² Reason to question the moral value of wealth could also be found in Christ’s assertion that “a rich man shall hardly enter into the kingdom of heaven.”²¹³

Theodore Roosevelt, as a New York Assemblyman in 1891, had already adopted this attitude of the criminality of wealth when he spoke of “that most dangerous of all classes, the wealthy criminal class” whom he would later call “malefactors of great wealth.”²¹⁴ In the 1894 debate, Representative William Talbert of South Carolina labeled opponents of the income tax and other populist causes as “money changers,” thereby explicitly linking them to the corrupt merchants and traders condemned by Christ.²¹⁵ William Jennings Bryan went even further and, to great applause, compared his opponents to Judas Iscariot, saying, “Oh, sirs, is it not enough to betray the cause of the poor—must it be

209. *Id.* at 1653.

210. Pointer, *supra* note 51, at 176 (quoting THOMAS BEVERIDGE, A SERMON ON THE DUTIES OF HEADS OF FAMILIES 4 (3rd ed. 1830)); *see also* JOHN MEARS, THE BIBLE IN THE WORKSHOP; OR, CHRISTIANITY THE FRIEND OF LABOR 37–42 (1857) (arguing based on the Bible and Christ’s example for the legitimacy of work).

211. *See Luke* 16:19–31.

212. Noll, *supra* note 22, at 272 (stating that this view very common and “the norm” among ministers and citing numerous sermons espousing same).

213. *Matthew* 19:23.

214. EDMUND MORRIS, THE RISE OF THEODORE ROOSEVELT 177 (Modern Library ed. 2001); Theodore Roosevelt, Address of President Roosevelt on the Occasion of the Laying of the Corner Stone of the Pilgrim Memorial Monument, Provincetown, Massachusetts (Aug. 20, 1907), https://archive.org/stream/addressofpreside00roo/addressofpreside00roo_djvu.txt.

215. 26 CONG. REC. 1672 (1894). *See Matthew* 21:12; *Mark* 11:15; *John* 2:15 (relating Christ’s eviction of moneychangers from temple).

done with a kiss?”²¹⁶ Another common tactic was to link income tax opponents to wealthy financiers whom income tax advocates labeled “Shylocks” after the merciless financier of Shakespeare’s *The Merchant of Venice*.²¹⁷ Nebraska Representative Omer Kem accused these Shylocks of taking “vast sums of money from our people for the support of the European aristocracy.”²¹⁸

Representative James Williams of Illinois brought together all of these themes in his speech and explicitly alluded to the widow’s mites.²¹⁹ Whenever war threatened the nation, he argued, “the poor citizen . . . stands ready not only to protect his own little mite of property, but to protect the vast accumulations” of the wealthy “who never go to war except by proxy” and who, even worse, act as “modern shylocks” profiting from the war waged on their behalf by laborers from the farms, workshops, and mines.²²⁰ William Jennings Bryan likewise invoked the disproportionate military sacrifice of the poor, explicitly claiming superiority for them by tying them to Christ.²²¹ “These people,” he said, “whom you call anarchists because they ask that the burdens of government shall be equally borne, these people have ever borne the cross on Calvary and saved their country with their blood.”²²² In this formulation, the poor man’s mite had greater moral worth not only because it represented his means of living, but because he bore the greatest sacrifice when it came to protecting and securing all the country’s property, including the vast accumulations that the wealthy had not legitimately earned in the first place.

In arguments such as these, income tax advocates drew on Christian teachings to argue that the burdens of taxation should increase with income “in much more than arithmetical proportion.”²²³ Small amounts of income had greater moral value because they were earned through labor, were used to furnish the necessities of life, and because the working class disproportionately fought to

216. 26 CONG. REC. 1656 (1894).

217. See *id.* at app. 297 (Statement of Rep. Kem) (“Foreign Shylocks Must Contribute”); *id.* at 6686 (Statement of Sen. Kyle) (“thirty years with Shylock in power has left the country burdened with indebtedness, . . . with the wealth of the nation centralized in a small area and in few hands”); *id.* at 6715 (Statement of Sen. Allen) (predicting the budget surplus will be used to redeem bonds at a premium to “Shylocks” in New York City). Those opposed to income tax also used the reference, see *id.* at 6631 (Statement of Sen. Hoar) (opposing income tax because it would turn the United States into “a Shylock, demanding its pound of flesh”). The character is a Venetian Jewish moneylender. While the references to Shylock could therefore have an anti-Semitic connotation, I did not encounter any clear evidence that this was the intent of the congressmen who used it. A reading of the references in context gives the impression that the speakers intended to refer to all powerful financiers.

218. *Id.* at app. 297.

219. *Id.* at app. 212–13.

220. *Id.*

221. *Id.* at 1657.

222. *Id.*

223. PAUL, *supra* note 8, at 14 (quoting William P. Fessenden, Treasury Secretary near the end of the Civil War).

secure liberty and property. At the same time, the moral value of money rapidly declined as it ceased to be earned through toil and approached the level of superabundance and surplus. Worse, there was constant suspicion that the money was not only unearned by the owner, but unethically expropriated from the labor of the virtuous poor. In fact, Progressive congressmen claimed that the tax system was a chief instrument of this expropriation, as the wealthy had used the tariff system to protect their industries from foreign competition, allowing themselves to reap profits from high prices charged to the working poor.²²⁴

C. Aversion to Accumulation

Closely related to the theme of the decreasing moral value of money as it moves from necessity towards abundance, another idea that emerges again and again in the income tax debate is a deep aversion to the accumulation of wealth. Congressional champions of the income tax repeatedly cited the accumulation and concentration of wealth as a danger to the republic.²²⁵ Just as they blamed this concentration in part on the protective tariff system—which laid a proportionately heavier burden on the working class while protecting profits of wealthy manufacturers—they prescribed the income tax as the remedy.²²⁶ This fear of accumulation and hoarding as an evil in itself has roots in Biblical teachings which remained highly salient in contemporary American Christianity.²²⁷

The condemnation of hoarding wealth and the suggestion that the great accumulations of it be used to relieve the burdens of the poor are conspicuous in New Testament teachings, albeit with no suggestion that the state be the instrument of redistribution. In the parable of the Rich Fool, a man becomes so prosperous that he pulls down all of his barns to build new ones large enough to store his bounty.²²⁸ God calls the man a “fool,” and he dies before enjoying his fruits.²²⁹ The parable is given as a warning to anyone who “layeth up treasure for himself.”²³⁰ Guidance as to what the Rich Fool should have done with his wealth is found in Christ’s encounter with the Rich Young Man. Having certified that he has kept all of the commandments in the law, a young man who “had great possessions” asked Christ what he still lacked to gain eternal life.²³¹ Christ answered, “If thou wilt be perfect, go and sell that thou hast, and give to

224. See, e.g., 26 CONG. REC. app. 415 (1894) (Statement of Rep. McMillin) (“. . . fortunes are gathered together here by protection [i.e. the tariff system], and the tribute that it levies on the many for the enrichment of the few . . .”).

225. See, e.g., *id.* at 6634.

226. See, e.g., *id.* at app. 413.

227. 1 *Timothy* 6:9–10.

228. *Luke* 12:15–19.

229. *Luke* 12:16–21.

230. *Luke* 12:21.

231. *Matthew* 19:16–22.

the poor.”²³² In the House debate of 1894, Joseph Sibley generated laughter with a modern take on the Rich Fool, joking that

Why, sir, man is the only animal that lays up fuel in advance . . . the man who, after he got 250,000 neckties, would lie awake thinking how to get another necktie, was the biggest fool in the world. Now, we are simply proposing to stop these men from wanting to get more than 250,000 neckties.²³³

Rather than appeal to these New Testament sources, Representative James Maguire of California turned to the Old Testament:

“The land shall not be sold forever, for the land is mine.” This we are told in the twenty-fifth chapter of Leviticus, twenty-third verse, is the command of the Lord to the children of men. “Woe unto them that joins house to house, that lay field to field, till there be no place, that they may be placed alone in the midst of the earth.” This, we are told in the fifth chapter of Isaiah, eighth verse, is the curse of the Lord upon the monopolists of the earth.²³⁴

Authority for the denunciation of excessive wealth accumulation was also readily available from contemporary Christian teachings. Methodism, the dominant strain of Protestantism, especially in the rural areas that most avidly supported the income tax, had a congenital suspicion of accumulated wealth.²³⁵ One presiding elder was happy to move from Virginia to Ohio, “where there is so much of an Equality & a Man is not thought to be great . . . because he possesses a little more of this Worlds rubbish than his Neighbour.”²³⁶ In his *Journal*, the founding figure of Methodism in America, Francis Asbury, expresses a “deep-seated fear of the corrupting power of money” and key aspects of his vision for the church “were dependent on and guaranteed by equality and poverty.”²³⁷ Historian Richard Carwardine has concluded that “there was within Methodism a continuing and pronounced strain of concern over the dissipating, enervating effects of wealth on church activity and moral integrity.”²³⁸

In another bastion of support for the income tax, the South, the attitude towards excessive wealth was stronger than suspicion and closer to outright condemnation. According to historian Kenneth Startup, “*avarice* . . . was a venerable loadstone of antebellum Southern sermonology, often employed alongside the . . . more commonplace term *mammonism* Few themes . . .

232. *Matthew* 19:21.

233. 26 CONG. REC. 1731 (1894).

234. *Id.* at app. 329, 331–32.

235. JOHN WESLEY, *THE WESLEYAN-METHODIST MAGAZINE* 134 (1868).

236. Letter from John Sale to Edward Dromgoole (Feb. 20, 1807), in WILLIAM WARREN SWEET, *RELIGION ON THE AMERICAN FRONTIER 1783-1840*, VOL. 4, *THE METHODISTS* 160 (1946).

237. Hempton, *supra* note 81, at 132.

238. Carwardine, *supra* note 33, at 211.

rivalled, in force or in quantity, the ministers' antimammon message."²³⁹ Clergy in the antebellum South had laid the blame for many social problems at the feet of mammonism. In the words of Startup, "Southern ministers stridently condemned this excessive appetite for gain as a destroyer of social and civil relations. Notably, the clergy believed that it was largely the mammonist mentality—the capitalist excesses—of masters that precluded the reformation of the slavery system."²⁴⁰ Just as bad, the southern ministers believed that "the commercial, capitalist culture of the South promoted an obsession with accumulation and ostentation calculated to divide Southerners along economic class lines."²⁴¹

Overall, Mark Noll concludes that, even as they embraced the new market opportunities, "evangelicals retained a great deal of hereditary Protestant nervousness about the accumulation of wealth, suspicion about the seductive power of money, and caution about the corrupting influence of economic power."²⁴² This nervousness and suspicion was on full display in the debate over the 1894 income tax. Income tax supporters feared the consequence of excessive wealth concentration would be no less than the destruction of liberty and the American way of life. Populist Senator William Peffer of Kansas warned that "by reason of the concentration of wealth among the people of the great cities of the country their power has increased to such an enormous extent as to become a menace and a continuing danger to the perpetuity of republican institutions."²⁴³ In the House, William Jennings Bryan referred to "the great fortunes which are accumulated in cities" and "the dark shadows which these fortunes throw over the community,"²⁴⁴ and John Davis denounced "The dangerously rich classes."²⁴⁵ Surveying history, Joseph Sibley concluded that "It has been the accumulation of wealth in the hands of a few individuals that has led to the overthrow of all."²⁴⁶

Having identified the danger, Sibley, like his fellow champions of the income tax, had found the solution as well: "In this graduated income tax, reaching proportionately the great incomes of this country, we have a check that will

239. Kenneth Startup, "A Mere Calculation of Profits and Loss": *The Southern Clergy and the Economic Culture of the Antebellum North*, in *GOD AND MAMMON: PROTESTANTS, MONEY, AND THE MARKET, 1790-1860* 217 (Mark A. Noll ed., 2002).

240. *Id.* at 218.

241. *Id.*

242. Noll, *supra* note 22, at 270, 283 n.14.

243. 26 CONG. REC. 6633–34 (1894).

244. *Id.* at 1655, 1657.

245. *Id.* at 1664–65.

246. *Id.* at 1730. Equally or more important than religion in the fear of accumulated wealth was a Greek tradition of thought holding that a roughly egalitarian distribution of wealth was necessary for republican government. See ERIC NELSON, *THE GREEK TRADITION IN REPUBLICAN THOUGHT* 199 (2004).

measurably stop these vast accumulations.”²⁴⁷ Representative Andrew Hunter quoted fellow Illinoisan Scott Wike, Assistant Secretary of the Treasury, who predicted that a graduated income tax would “prevent the unnatural, rapid, and extremely dangerous accumulation of excessive fortunes and the concentration of the wealth of the country into the hands of the few.”²⁴⁸ Describing with approval the taxation of ancient Athens, Uriel Hall, admired that “the largeness of the taxes on what was superfluous prevented superfluity.”²⁴⁹ The editor of the *St. Louis Republic*, C.H. Jones, had urged William Jennings Bryan to lead the fight for a graduated income tax, believing this was the best way to fight the “Eastern Plutocrats.”²⁵⁰ Multiple congressmen cited statistics from an influential essay in *Political Science Quarterly* by an employee of the Census Office, George F. Holmes, detailing the concentration of wealth in the country.²⁵¹ The congressmen also agreed with Holmes’s suggestion that progressive taxes would be the best check on this concentration, with William Talbert concluding that since the wealthy had “thus hoarded their great fortunes, it seems to me to be just and proper to force them to come to law and pay a tax upon their wicked earnings.”²⁵²

In sum, supporters of the income tax in Congress passionately made the case that a progressive income tax was the only Christian and Biblical tax. While one can rightly object that the Bible never talks about using the coercive power of a secular state to apply Judeo-Christian principles of caring for the poor and needy, the congressmen fighting for a progressive income tax were nevertheless able to use Biblical and religious authorities to give moral force to their arguments.²⁵³ They found persuasive support in Scripture for their contentions that income was the proper base for taxation, because it best captured ability to pay.²⁵⁴ Furthermore, Christian principles underlay their position that the ability to pay increased disproportionately as income increased.²⁵⁵ From this perspective, the morally tainted wealth concentrated in the hands of the few should justly bear a heavier burden, lightening the load of noble laborers. This

247. 26 CONG. REC. 1730 (1894).

248. *Id.* at app. 181, 183.

249. *Id.* at 1607–08.

250. RATNER, *supra* note 7, at 172–73 (quoting Letter from C.H. Jones to William Jennings Bryan (May 8, 1893), in WILLIAM JENNINGS BRYAN PAPERS, 1877-1940 (Library of Congress)).

251. George F. Holmes, *The Concentration of Wealth*, POLIT. SCI. Q. 589–600 (1893); RATNER, *supra* note 7, at 189–90. *See, e.g.* 26 CONG. REC. 1672, 6707–15, app. 653 (1894) (all citing Holmes’ work); *see also id.* at 1672 (statement of Rep. Talbert) (citing income distribution statistics from various other sources).

252. *Id.* at 1672; RATNER, *supra* note 7, at 189–90.

253. It is interesting to note, though, that in my examination of the debate transcripts, I did not find anyone making this objection explicitly.

254. *Matthew* 22:17–21.

255. *Luke* 21:1–4.

would have the salutary side effect of lessening the concentration of wealth and saving the republic from a dangerous plutocracy.

V. THE DEBATE: RELIGIOUS RESTRAINTS ON THE TAXING IMPULSE

While Judeo-Christian teachings helped income tax supporters craft a compelling moral case for a progressive tax on income, it would be wrong to say that ideas founded in the Bible were one-sided or radical. Rather, as we shall see, biblical ideas also provided important arguments to opponents of the income tax. These ideas did not so much argue against the very existence of an income tax, but instead brought to bear forces that moderated and constrained some of the populist impulses behind the tax.²⁵⁶ Indeed, moderation and constraint is arguably one of the most important effects of religious ideas in the public square. This is evident in the way that some foundational Judeo-Christian principles that relate to economics serve to balance one another.²⁵⁷ For example, the condemnation of greed (“do not take too much for yourself but instead share with others”) is mirrored by the related commandment against covetousness (“be content and do not yearn for the things that belong to others”). Because the logical end of unrestrained covetousness or greed is theft, the biblical prohibition of theft is also closely related.

Just as the case for the income tax was often founded on a message that condemned greed and encouraged benevolence, religious teachings against covetousness and theft, as well as the related value that some Christian traditions place on voluntarism, were important counterforces in the 1894 income tax debate. These ideas sometimes combined in another objection to the income tax, the idea of “sacred” rights of property.²⁵⁸ Religious ideas also served to protect citizens against theft and abuse by arguing for restraints on governments and tax authorities, who could be just as covetous as individuals.²⁵⁹ Finally,

256. Daniel J. Hurst, *A Defense of Taxes as Christian Responsibility*, THE ETHICS & RELIGIOUS LIBERTY COMMISSION (Apr. 15, 2016), <https://erlc.com/resource-library/articles/a-defense-of-taxes-as-christian-responsibility> (“We sometimes may hear the distress of concerned Christians who say that the government uses their tax dollars for all kinds of waste and even evil, such as abortion, which leads them to question whether they are complicit in such acts and should pay their taxes.”).

257. See Arnold McKee, *Christian Economic Policy and the Role Of Economic Science*, 45 REV. OF SOCIAL ECONOMY 243, 253–54 (1987) (“[W]hen all facets of the modern economy . . . are closely interdependent, so that any moderation from ruling competitive practices risks being crushed . . . the conclusion is not that Christian policies are ‘wrong’; rather, in various respects they do not fit contemporary economics, itself reflecting unchristian norms.”).

258. See Louis Wolowski, *Wolowski on Property as a Sacred Right which is an Emanation from Man’s Very Being (1863)*, ONLINE LIBRARY OF LIBERTY (last visited Feb. 9, 2019), <https://oll.libertyfund.org/quotes/522> (“This property is legitimate; it constitutes a right as sacred for man as is the free exercise of his faculties. It is his because it has come entirely from himself and in no way anything but an emanation from his being.”).

259. Christopher Callaway, *Religion and Politics*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY (last visited Feb. 9, 2019), <https://www.iep.utm.edu/rel-poli/> (“But religious beliefs and practices

income tax opponents also raised two other objections rooted in religious ideas: that the tax violated the biblical injunction against lying by encouraging perjury and fraud,²⁶⁰ and that the tax unjustly punished thrift and industry, contrary to biblical teachings in favor of work and against idleness.²⁶¹

A. Covetousness and Theft

The general injunction, “Thou shalt not covet,” among the original ten commandments handed down by Moses in the Hebrew Bible, specifically forbids coveting the wealth of one’s neighbor.²⁶² In the New Testament, Christ’s teaching against covetousness actually arises in the context of a man’s appeal for a redistribution of property. “Master, speak to my brother,” he asked, “that he divide the inheritance with me.”²⁶³ But confronted with a potentially unjust distribution of wealth, Christ does not take action to redress it, but instead used the occasion to warn against covetousness. He answered, “Man, who made me a judge or a divider over you? . . . Take heed, and beware of covetousness: for a man’s life consisteth not in the abundance of the things which he possesseth.”²⁶⁴ While we do not know all the facts of this particular case, clearly Christ intended that anti-covetousness should serve as some kind of check on inevitable demands for coerced redistribution by authority. Similarly, when soldiers asked John the Baptist “what shall we do?”, one of his answers was to “be content with your wages.”²⁶⁵

These ideas were alive and well in American Protestantism in the nineteenth century. Christian outlets routinely preached against covetousness,²⁶⁶ and historian Richard Pointer has concluded that “Probably all Presbyterian ministers at one time or another preached on the biblical admonition to be content in all things, including one’s present economic lot. To envy and covet the wealth of others was idolatrous and an implicit denial of God’s authority over worldly affairs.”²⁶⁷ Phoebe Palmer, the prominent Methodist advocate of

also potentially support politics in many ways. The extent and form of this support is as important to political philosophers as is the possibility for conflict.”).

260. Rick DiMare, *A Just and Practicable Income Tax*, PROGRESS (May 20, 2018), <https://www.progress.org/articles/a-just-and-practicable-income-tax> (“[I]n every country where an income tax has been imposed, . . . the result has been to put a premium upon perjury and to develop an enormous amount of fraud.”).

261. See *Who Pays the Taxes?*, N.Y. TIMES (Feb. 19, 1899), <https://timesmachine.nytimes.com/timesmachine/1899/02/19/100436199.pdf> (“We tax the consumer. . . [and] this tax is a burden that bears heavily and disadvantageously. It strangles industry, lessens improvements, and punishes thrift.”).

262. *Exodus* 20:17.

263. *Luke* 12:13.

264. *Luke* 12: 14–15.

265. *Luke* 3:14.

266. Noll, *supra* note 22, at 279.

267. Pointer, *supra* note 51, at 181.

Christian Perfection, proclaimed that she had “no sympathy with that querulous spirit which is ever denouncing the rich, merely because they are so; or perhaps oftener than otherwise, because the denouncer is not possessed of the same means, and who, were he possessed of them, would be less faithful than those whom he denounces.”²⁶⁸

Phoebe Palmer’s assessment was echoed in the 1894 Senate debate by Orville Platt of Connecticut, who believed that “a large portion of this inveighing against anybody who has, by proper means, acquired some property comes, after all, from the passion of envy and covetousness.”²⁶⁹ He illustrated his point with the story of two farmers who had started out on equal footing. While one farmer grew disappointed with the amount he earned from his crops, which did not “enable him to live as he thinks he is entitled to live,” the second farmer had enterprisingly invested in some city lots that he was able to sell for a fortune.²⁷⁰ Rather than feel happy for his friend or invest in any new enterprise himself, the first farmer becomes bitterly envious.²⁷¹ This attitude would be summed up well when Theodore Roosevelt later tried to resurrect the income tax during his presidency, and the *New York Globe* accused him of “stimulating latent envy that the improvident feel toward the thrifty.”²⁷²

However, most congressional opponents of the income tax skipped past objections about covetousness because they viewed matters as having already progressed to the point of violating another biblical commandment: “Thou shalt not steal.”²⁷³ Many relied on arguments from an 1880 article in the *North American Review* by economist David A. Wells, including his allegation that the feature of graduation or progressivity in an income tax turned it into “unmasked confiscation” and “flagrant spoliation”.²⁷⁴ Representative Franklin Bartlett of New York also denounced the income tax as “confiscation” and designated those subject to the tax as its “victims.”²⁷⁵ Senator David Hill explicitly adopted the attitude that the income tax was a criminal act, saying, “I object to becoming a *particeps criminis* in any such larceny.”²⁷⁶ Speaking of the Civil War income tax, Vermont Representative Justin Morrill had said that progressive taxation was only defensible “on the same ground the highwayman defends his acts.”²⁷⁷

268. REV. RICHARD WHEATLEY, LIFE AND LETTERS OF MRS. PHOEBE PALMER WHEATLEY 600 (W.C. Palmer ed. 1876).

269. 26 CONG. REC. 6703 (1894).

270. *Id.*

271. *Id.*

272. PAUL, *supra* note 8, at 90.

273. *Exodus* 20:15.

274. David A. Wells, *The Communism of a Discriminating Income Tax*, N. AM. REV. 236, 238–239 (1880).

275. 26 CONG. REC. 1642 (1894).

276. *Id.* at 3560.

277. PAUL, *supra* note 8, at 24.

In the minds of these objectors, the progressive nature of the income tax allowed a majority who would not pay the tax to impose it on the minority who would, a very near approximation to the crime, and sin, of theft or robbery.²⁷⁸ Income tax opponents did not argue that the resulting distribution of the tax burden would be unjust, but that the means adopted to achieve that end were immoral and even illegal.²⁷⁹

As far back as the American founding, the Bible had been used to warn against the confiscatory nature of taxation. In his pamphlet *Common Sense*, Thomas Paine took Samuel's warnings to ancient Israel about the costs of a monarch and adapted them to the American colonies.²⁸⁰ Among Samuel's—and Paine's—arguments was the warning that a king “will take the tenth of your seed, and your vineyards, and give to his officers, and to his servants And he will take the tenth of your sheep: and ye shall be his servants.”²⁸¹ Whereas income tax advocates had used the practice of tithing to endorse proportionate giving of income as a divine law, Paine used this passage to imply that the principle is evil when applied to a secular government.²⁸²

The biblical injunction against theft along with biblical arguments that confiscatory government power can lead to despotism perhaps help explain why people began to attach the adjective “sacred” to the right of property. In the debate over the 1894 income tax, pleas on behalf of the sacred right of property constitute perhaps the most frequent religious reference used by income tax opponents.²⁸³ Senator Orville Platt said, “I wish to state that the rights of property are just as sacred as the rights of life and liberty, and that no country which has not a just regard for the right of private property can go on progressively as a republic.”²⁸⁴ In the House, Joseph Walker of Massachusetts made clear the view of income tax opponents that “The proposed law violates the most sacred rights of property.”²⁸⁵

Although early Christians had prominently practiced community ownership of property, the short-lived practice had all but disappeared long before the founding of the United States, and American ministers were often eager to show

278. *Id.*

279. *Id.*

280. Paine, *supra* note 17, at 9.

281. 1 *Samuel* 8:15,17. *See also* Paine, *supra* note 17, at 9–12.

282. The correct interpretation of *Samuel* 8 is the subject of a long and complex debate in Rabbinical Literature and Western political thought. For a good summation, *see* ERIC NELSON, *THE HEBREW REPUBLIC: JEWISH SOURCES AND THE TRANSFORMATION OF EUROPEAN POLITICAL THOUGHT* 24–44 (1st Harvard Pr. ed. 2011).

283. 26 CONG. REC. 6702 (1894).

284. *Id.* at 6702.

285. *Id.* at 1651.

that Christianity was entirely compatible with private property.²⁸⁶ In America, the formal articles of Methodism, the country's largest and most influential denomination,²⁸⁷ protected the right of private property, and "[n]ot even the earliest and poorest Methodists favored the doctrine of community of goods."²⁸⁸ While Methodist founder John Wesley had briefly experimented with community ownership of property in England, he quickly abandoned it as a failure.²⁸⁹ Thus, for most Americans, including most Christians, the sacredness of property rights was a strongly held belief.

This veneration of property rights helps explain the strong emphasis that Christian groups, especially in America, placed on the idea of voluntarism, including voluntary financial contributions. Historian Daniel Walker Howe claims, "The voluntary basis of American religion—economic, legal, and, in the dominant evangelical heritage, theological—was unique in the world."²⁹⁰ Lyman Beecher, at first a supporter of religious establishment, became by experience an advocate of disestablishment and voluntarism, because he found that it "created that moral coercion which makes men work."²⁹¹ In his influential tract on proportionate giving, Parson Cooke took great pains to stress the voluntary nature of contributions. Even when the Bible records that early Christians held their property in common, Cooke argued that "these gifts were all freewill offerings. Each one's right of property was respected; no law imposed a fixed rate of contribution, and none required the whole of any one's property. Here operated that principle which we have already noticed, leaving individual hearts to spontaneous action."²⁹² In his case for the "law" of tithing, John Pratt maintained that it was entirely voluntary. "The faithful performance of this duty depended solely on the enlightened and faithful consciences of the people," he claimed, and therefore, "the law of tithes belongs to the domain of morals and not to that of ceremonials."²⁹³

While clearly motivated at least in part by a desire to make their teachings palatable to a contemporary American audience, the emphasis placed by religious leaders on voluntarism could also claim biblical support. The Mosaic

286. David Bentley Hart, *Are Christians Supposed to Be Communists?*, N.Y. TIMES, Nov. 5, 2017, at SR4 (discussing communal property practices of early Christian Church and later abandonment); see, e.g., HUDNUT-BEUMLER, *supra* note 3, at 19–22 ("Cooke went to extreme lengths to argue that the holding of property in common in Acts 4 and 5 was anything but a challenge to private property He went on to read the Bible's account of the church to be in perfect harmony with the structures of the American republic").

287. Nathan O. Hatch, *The Puzzle of American Methodism*, CHURCH HIST. 177–178 (1994) ("Quite simply, Methodism remains the most powerful religious movement in American history.").

288. Carwardine, *supra* note 33, at 84.

289. Hempton, *supra* note 81, at 124, 141 n.5.

290. Howe, *supra* note 36, at 63.

291. HUDNUT-BEUMLER, *supra* note 3, at 14.

292. HUDNUT-BEUMLER, *supra* note 3, at 20.

293. HOGSHEAD AND PRATT, *supra* note 115, at 213.

law dictated that “if ye offer a sacrifice of peace offerings unto the Lord, ye shall offer it at your own will.”²⁹⁴ When King David sought donations to build the temple, and the people responded generously, “the people rejoiced, for that they offered willingly, because with perfect heart they offered willingly to the Lord.”²⁹⁵ In the New Testament, as we have seen, Christ taught the Rich Young Man that he should sell all his possessions to give to the poor, but when the man declined, Christ made no effort to compel him.²⁹⁶ And when John the Baptist responded to the people’s question “What shall we do then?” by saying, “He that hath two coats, let him impart to him that hath none; and he that hath meat, let him do likewise,”²⁹⁷ he endorsed the redistribution of wealth while clearly maintaining that it was to be performed voluntarily by the original owners.

The high value placed on voluntarism had even played a role in Alexander Hamilton’s defense of consumption taxes in *The Federalist Papers*. “It is a signal advantage of taxes on articles of consumption,” Hamilton argued, that taxpayers, and especially poor taxpayers, could avoid the taxes by refusing to buy the articles.²⁹⁸ In Great Britain, Charles James Fox opposed the income tax for the same reasons. Whereas with consumption taxes, “the individual would always have it in his power, as soon as the tax became oppressive and intolerable to him, to desist from” consuming the taxed articles; an income tax posed the danger of eventually taking the entirety of one’s property.²⁹⁹ By taxing consumption, an element of consent or choice remained which was lost under an income tax. However, as time passed, the understanding that many consumption taxes were highly regressive in practice, as well as the increasing taxation of basic items that working people could hardly avoid purchasing, eroded the power of this argument.³⁰⁰

B. Constraints on Tax Authorities

In addition to constraining the passions of citizens through teachings against covetousness and theft, biblical ideas also argued for placing moral constraints on governments and tax authorities, who could likewise be guilty of covetousness and theft. To the publicans, the Jewish tax collectors under Roman rule, John the Baptist said, “Exact no more than that which is appointed you.”³⁰¹ And the publican who seemingly enjoyed Christ’s approval, Zacchaeus, stressed that “if I have taken any thing from any man by false accusation, I restore him

294. *Leviticus* 19:5.

295. *1 Chronicles* 29:9.

296. *Matthew* 19:20–22.

297. *Luke* 3:11.

298. THE FEDERALIST Nos. 12, 21 (Alexander Hamilton).

299. PAUL, *supra* note 8, at 75.

300. *Id.*

301. *Luke* 3:12.

fourfold.”³⁰² The practice of providing compensatory damages paid to taxpayers wronged by the tax authority is largely absent in American tax law.³⁰³ This simple practice suggests itself as an obvious means to restore some moral legitimacy to tax code largely reliant on voluntary compliance.³⁰⁴

In the 1894 Senate debate, William Peffer relied on a different Biblical account to argue for mercy towards taxpayers.³⁰⁵ He called his colleagues’ attention to “a record that is found in a book which a great many of us have read more or less, and it is found at the twelfth chapter of I Kings.”³⁰⁶ In the account, the people of Israel gathered to make Rehoboam king and asked him for relief from the high tax burdens imposed by his father, King Solomon.³⁰⁷ Rehoboam consulted with the old men who had advised his father, and they counseled him to relieve the people’s burdens in order to win their lasting loyalty.³⁰⁸ But instead, Rehoboam followed the counsel of his young advisers and raised taxes to assert his authority.³⁰⁹ After this, Peffer relates that “the record . . . shows that the people went into rebellion.”³¹⁰ Peffer used the account to argue for an income tax that would relieve the majority of the people from heavy tariff burdens.³¹¹ But the story also offers Biblical support for the broader principle that there is a point at which the tax burden becomes too heavy and government should be responsive to pleas for relief.

For opponents of the income tax in the 1894 debate, though, by far the biggest concern expressed with respect to tax authorities was “inquisitorialism.” The objection that the tax would give the federal government invasive powers to harass honest citizens was raised to a greater or lesser extent by nearly every congressman and newspaper speaking against the income tax.³¹² In the words

302. *Luke* 19:8.

303. *See, e.g.,* *Morris v. United States*, 521 F.2d 872, 873–74 (holding that man who lost entire business due to aggressive audit and collection erroneously conducted by IRS unable to recover any damages); William B. Henning, *Reforming the IRS: The Effectiveness of the Internal Revenue Service Restructuring and Reform Act of 1998*, MARQ. L. REV. 405 (1999) (outlining available methods of obtaining damages from IRS and noting severe limitations); James T. Towe, *Is the IRS above the Law? Potential Remedies for Taxpayers Damaged by Unlawful IRS Conduct*, MONT. L. REV. 469 (1994).

304. *See, e.g.,* Richard Lavoie, *Flying above the Law and below the Radar: Instilling a Taxpaying Ethos in Those Playing by Their Own Rules*, 29 PACE LAW REV. 637, 650–55 (2009) (arguing that trust in government and perceptions of tax authority behavior and fairness are significant factors in determining level of voluntary tax compliance).

305. 26 CONG. REC. app. 653 (1894).

306. *Id.*

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.*

312. *See, e.g., Id.* at app. 464, (Statement of Rep. Cockran) (“ . . . any form of income tax is objectionable in a commercial community, because it is necessarily inquisitorial in character”); *id.*

of the *New York Sun*, there could be no income tax without “a system of inquisition and espionage repugnant to American ideas and abhorrent to the free citizen”.³¹³ While of course the charge of inquisitorialism was not directly a religious claim, it did serve to associate the income tax indirectly with the Catholic Inquisition in the minds of America’s mostly Protestant voters. Senator David Hill strengthened this association by linking the income tax to oppressive “Old World” governments, warning that it would lead to a bureaucratic ruling class that the founding fathers had rejected because “[t]hey eschewed its systematic domination and espionage. They gave the Federal taxgatherers no mission to draw up all things to a central head at this Capitol. They virtually dissolved that Old World institution, the standing army of tithe-takers.”³¹⁴

For their part, those who favored the income tax did not deny the charge of inquisitorialism in the income tax, but responded that it was no more inquisitorial than state property taxes or existing customs duties.³¹⁵ The other strategy used to answer the charge of inquisitorialism was to argue that the strict penalties in the bill for internal revenue agents who revealed confidential information would deter any problems.³¹⁶ This could be considered an application of the aforementioned practice of the Bible’s Zacchaeus, who paid damages to the taxpayers that he harmed.

On the other hand, some contemporary religious practices argued *for* inquisitorialism. Some churches relying on funds from voluntary subscriptions purposely circulated the names of subscribers and the amounts pledged as a means to shame the miserly and reward the generous.³¹⁷ In fact, legislators have frequently endorsed the same logic, as tax return information was publicly available under the Civil War income tax, and progressive Senators again

at 3559 (Statement of Sen. Hill) (“it must be inquisitorial in its imposition and collection”); PAUL, *supra* note 8, at 33–34, 98 (citing statements of *St. Louis Globe Democrat*, *New York Sun*, and *Philadelphia Public Ledger* objecting to inquisitorialism); *id.* at 95 (noting Elihu Root’s opposition to income tax due to grant of inquisitorial power to Washington); *id.* at 77 (arguing inquisitorialism was driving concern in opposition to income tax in U.K.).

313. *Id.* at 33–34.

314. 26 CONG. REC. 3548, 3564 (1894).

315. See, e.g., *id.* at 1658 (Statement of Rep. Bryan) (comparing to N.Y. state taxes); *id.* at 1664 (Statement of Rep. Davis) (comparing to customs duties); *id.* at 1667 (Statement of Rep. Maddox) (comparing to Geor. state taxes); *id.* at app. 417 (Statement of Rep. McMillin) (comparing to excise and customs taxes).

316. See, e.g., *id.* at 417 (Statement of Rep. McMillin) (arguing that tax agents will be “fined, imprisoned, and turned out of office” if they divulge any confidential information of audited taxpayer). Today, breaches of taxpayer confidentiality are one of the rare occasions where a taxpayer has a reasonable chance of successfully recovering damages from the IRS. See Towe, *supra* note 324, at 484–493 (discussing successful suit by taxpayer suffering wrongful disclosure of tax return information in *Johnson v. Sawyer*, 980 F.2d 1490 (5th Cir. 1992), *modified and reh’g en banc granted*, 4 F.3d 369 (5th Cir. 1993)).

317. MARK A. NOLL, *THE LOGIC OF EVANGELICALISM AND THE CHALLENGES OF PHILANTHROPY* 9 (2007).

attempted to make tax returns public in 1916 and temporarily succeeded in 1924.³¹⁸ Proposals for similar shaming systems for corporations have periodically cropped up since, and in the case of individuals abandoning U.S. citizenship, with or without a tax motive, such a system already exists.³¹⁹

Government tax authorities could also glean lessons from the experience of religious fundraising. In his second epistle to the Corinthians, Paul notes that the man in custody of church member donations did not travel alone, but was accompanied by another church member with an impeccable reputation, “that no man should blame us in this abundance which is administered by us: Providing for honest things, not only in the sight of the Lord, but also in the sight of men.”³²⁰ This passage serves as moral authority to ensure good control systems over tax authorities and government finance.

From Methodist experience, we also learn that certain choices about the mechanics of fundraising can have positive externalities.³²¹ Methodists emphasized raising and spending money as much as possible in the same geographic location to increase transparency and accountability.³²² Further, “[m]eticulous methods of accounting trained the laity in prudence, and careful delineation of expenses trained the preachers to expect nothing in this life but the bare necessities.”³²³ At the same time, the Methodist connectional system aspired to use its national network to move funds from more prosperous areas to those experiencing hard economic times.³²⁴ This provides a template, albeit imperfect, for giving local citizens as much control as possible over the spending of the federal tax revenues raised from their community while also maintaining national redistributive effects. Another rich religious source for this line of thinking is the principle of subsidiarity from Catholic social teaching.³²⁵

C. *An Incitement to Fraud and Perjury*

While income tax opponents argued that the tax would turn the government into an inquisitorial thief with taxpayers as its victims, they also worried that the

318. WITTE, *supra* note 7, at 81; PAUL, *supra* note 8, at 107; for a summary of historical tax return publicity, see Paul M. Schwartz, *The Future of Tax Privacy*, 51 NAT'L. TAX J. 883–900 (2008).

319. See, e.g., David Lenter, Joel Slemrod & Douglas Shackelford, *Public Disclosure of Corporate Tax Return Information: Accounting, Economics, and Legal Perspectives*, 56 NAT'L. TAX J. 803, 808 (2003); Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G, 82 Fed. Reg. 50,960 (Nov. 2, 2017).

320. 2 *Corinthians* 8:20–21.

321. Hempton, *supra* note 81, at 138.

322. *Id.* at 138–39.

323. *Id.* at 139.

324. *Id.* at 128 (describing aspiration but noting complaints by some that practice never properly followed).

325. See Robert K. Vischer, *Subsidiarity as a Principle of Governance: Beyond Devolution*, 35 IND. L. REV. 103, 142 (2001).

income tax would turn otherwise honest taxpayers into liars and fraudsters as well. By pitting the people's natural and just desire to keep the fruits of their labors against their duty to be honest, opponents of the income tax argued that it put them in an impossible and demoralizing position.³²⁶ The *Iowa State Register* predicted that an income tax would "breed more liars than any dozen laws on our statute books. It would pay a premium on lying. The Ananiases would flourish in every community."³²⁷ In this, of course, the paper referred to the Biblical account of Ananias and Sapphira, who falsely reported that they had contributed all of their property to the early Christian church, when in fact they held back a portion.³²⁸

In Congress, the charge of inciting perjury and fraud was nearly as common as the charge of inquisitorialism. Representative William Coombs declared that the income tax "leads men into doing their business by secret methods; it promotes deceit and fraud; it is an onerous tax on the conscientious, a device by which the honest must pay while the shrewd and unscrupulous go free."³²⁹ He noted the difficulty of enforcing such a tax, citing the experience of other countries, and concluded that a "law that can not be enforced demoralizes and debases the people."³³⁰ Bourke Cockran cited Adam Smith to argue that the income tax would have to be completely public and transparent, or else "you put a premium upon bribery; else you sow the seeds of corruption which, while human nature remains subject to temptation, will bring forth a plentiful crop of crime and oppression and injury."³³¹ Cockran argued that when choosing between honesty and preserving one's property, the result must be inevitable: "I believe that wherever the defense of property is made a crime, there crime will always flourish; wherever government becomes oppressive, there men will adopt all means of resisting oppression."³³² Many income tax opponents agreed with Representative Franklin Bartlett's view that an income tax acted like a tax on honesty and a subsidy on dishonesty, because it

can not possibly be enforced without being the greatest burden on those who are most conscientious. The honest man will pay the taxes, while the dishonest man, who evades the obligation of his oath, will escape nearly all payment of taxation; in other words, it is a bounty upon fraud and perjury.³³³

326. *Id.*

327. *Id.*

328. *Acts* 5:1-11.

329. 26 CONG. REC. app. 60 (1894).

330. *Id.*

331. *Id.* at app. 464.

332. *Id.*

333. *Id.* at 1645; *see also id.* at 1650 (Statement of Rep. Walker) ("That is what an income tax come (sic) to at last. It takes from the conscientious and honest and gives it to the perjurer and the dishonest."); *id.* at 6622 (Statement of Sen. Hill) ("it oppresses the honest citizen who will tell the

D. Thrift, Industry, and Trickle-Down

Opponents of the income tax also repeatedly raised an objection that is very familiar to us today, that the income tax is a disincentive to hard work and economic growth.³³⁴ In this view, the income tax punishes the most successful and thereby harms everyone by depriving the economy of the growth the wealthy would have created. In the words of Bourke Cockran, it was simply “a tax on industry and thrift and is therefore a manifestation of hostility to that desire for success which is the mainspring of human activity.”³³⁵ To David Bennett Hill the income tax was “a tax upon what a man earns—upon his thrift, his industry, his capacity, his pluck, his savings, his prudence”, and therefore “it checks enterprise and energy; it retards progress.”³³⁶ But unlike the mostly economic or technocratic arguments one hears today, the 1894 tax opponents were able to infuse their growth and incentive arguments with moral content, rooting them in religious ideas.

Representative Joseph Walker of Massachusetts did this most effectively, using the New Testament parable of the talents to give religious sanction to the role of the wealthiest as job creators.³³⁷ In the parable, a man calls his servants before traveling to a far country and delivers to each a sum of money: to one five talents, to another two, and to the last one talent, “to every man according to his several ability.”³³⁸ By trading, the first two servants doubled their money, but the last wrapped his talent in a napkin and buried it in the ground.³³⁹ Upon his return, the master rewarded the first two servants generously, but chided the last man for his idleness.³⁴⁰ The master then took back the single talent and bestowed it on the first, and now wealthiest, servant.³⁴¹ While Christ likened the parable to “the kingdom of heaven”, Walker interpreted it more literally. He proposed that if the people of the United States were divided into tenths,

the tenth that contribute the most in invention, in restless genius and indomitable perseverance, in direction, in the management of the great affairs of this country, and are the richest and best circumstanced in this country . . . work the most hours, wear out quickest, and contribute

truth as to his resources, and it will give the advantage to the sharper who will prevaricate”); RATNER, *supra* note 7, at 189 (documenting that newspapers including *New York Tribune*, *New York Times*, *New York Sun*, *Brooklyn Eagle*, *Washington Evening Star*, *Philadelphia Public Ledger*, *Cleveland Plain Dealer*, *Milwaukee Journal*, and *Des Moines Iowa State Register* all denounce income tax as “an incitement to perjury and fraud”).

334. 26 CONG. REC. app. 468 (1894).

335. *Id.*

336. *Id.* at 6617, 6622.

337. *Id.* at 1648.

338. *Matthew* 25:14–15.

339. *Matthew* 25: 16–18.

340. *Matthew* 25:28.

341. *Matthew* 25:14–30.

tenfold more . . . than the tenth at the bottom. In fact, but for the modern Christian civilization which develops the class described at the top, the man at the bottom either never would have been born or would have died in infancy. It is the case of the five doubled and the one talent buried.³⁴²

Because of their disproportionate contribution to society, Walker saw in the “fortune builders” of the country the fulfillment of Christ’s instruction that, as Walker paraphrased it, “[i]f any man will be rich or great among us, he must be and is the servant of all.”³⁴³ But Walker saw the income tax as a perverse reversal of the parable, for

[h]iding one talent is by this measure rewarded; increasing five talents to ten is punished. What do you do in this bill? You put a penalty on the improvement of the five talents. You not only excuse the man who buries his talent in a napkin, but you take of the profit of the five talents and give it to the man who buried his talent.³⁴⁴

For Walker, “the whole discussion on this floor on the Democratic side proceeds upon a theory of brutal taxation antedating the Christian religion” when society’s elite were less enlightened and benevolent.³⁴⁵ But now the wealthiest built fortunes that mainly benefitted the masses, and if his opponents tried to tax the rich and exempt the poor, they would “strike the poor man a fatal blow every time.”³⁴⁶

Walker’s perspective could find support in historical American religious culture, especially prior to the progressive era. The Methodist periodical *Christian Advocate* taught that the best method to do good was to “make every individual take care of himself.”³⁴⁷ A prominent Philadelphia minister taught that it was a Christian’s duty to increase everyone’s “worldly prosperity,” and to fulfill this duty young people were encouraged to emulate “the men of wealth.”³⁴⁸ Historian Richard Pointer, in summarizing the abundant economic counsel of American clergymen in the antebellum period, finds that such counsel consistently taught that virtues like “[i]ndustry, thrift, frugality, . . . brought distinction to a man in the workplace and readied him for success. Their opposites—idleness, intemperance, prodigality, sloth, extravagance—led to economic ruin and poverty.”³⁴⁹ In Presbyterian Pastor Thomas Beveridge’s reading, “The Scriptures give no tolerance to idleness, no countenance to

342. 26 CONG. REC. app 1648 (1894).

343. *Id.* at 1648, 1649.

344. *Id.* at 1650.

345. *Id.* at 1648.

346. *Id.* at 1649.

347. Carwardine, *supra* note 33, at 84 (quoting CHRISTIAN ADVOC. AND J., Jul. 1829).

348. Pointer, *supra* note 51, at 171.

349. *Id.* at 176.

carelessness respecting our worldly concerns. Industry was the duty and happiness of man in a state of innocence.”³⁵⁰

For Bourke Cockran, the income tax violated these ideals. He compared the case of a lender and the enterprising borrower to whom he lends \$80,000 at five percent interest.³⁵¹ The idle lender lives off the interest but pays no tax because it falls below the \$4,000 exemption level.³⁵² In contrast, the borrower “who rises early and toils far into the night” and “by unceasing labor and rigorous self-denial realizes a profit” above the exemption level is “waylaid by the Government collector.”³⁵³ The government taxes “the citizen who by industry and frugality made a borrowed capital fruitful” but exempts the privileged lender, “and thus burdens and oppresses the producer while it shields and protects the idle man who derives his profits and his income from the sweat of another man’s brow.”³⁵⁴ Senator George Hoar of Massachusetts used a similar example, objecting that a wealthy man could live tax free off of \$100,000 invested at four percent interest, while a striving bank clerk or manufacturing foreman would be punished after working their way to a \$5,000 salary.³⁵⁵

Here we see how powerful was the idea that unearned income had less moral value than income from labor and exertion, for now even income tax opponents adopted it and used it in their favor. And they seemingly used it to great effect, as the *Congressional Record* notes the prolonged applause at the conclusion of Cockran’s hypothetical example.³⁵⁶ Joseph Walker even compared the idle man living on unearned income to the biblical prodigal son, saying, “The sluggard, the thriftless, the inheritor of property who is wasting his fortune in riotous living and in debauchery, under your income tax pays nothing.”³⁵⁷

Representative Benton McMillin responded to the accusation of the income tax being “a tax on industry and thrift” by repeating the theme that the tax only fell on the *idle* rich, rather than the noble laborer.³⁵⁸ In this, he quoted Paul’s counsel to the Romans to “Be not slothful in business” and insisted that the income tax “would add nothing to sloth in business. We would detract nothing from the capital of him who earns, after the commandment of God, his daily bread by the sweat of his face.”³⁵⁹ Implicitly, McMillin and his allies rejected the notion that returns to capital benefitted the whole economy and viewed them as illegitimate gains derived from the labor of others. Only the fruits of one’s actual labor were worthy of protection.

350. *Id.*

351. 26 CONG. REC. app. 494 (1894).

352. *Id.*

353. 26 CONG. REC. app. 464 (1894).

354. *Id.*

355. *Id.* at 6629.

356. 26 CONG. REC. app. 464 (1894).

357. *Id.* at 1650.

358. 26 CONG. REC. app. 412 (1894).

359. *Id.* at 413 (quoting *Romans* 12:11).

VII. CONCLUSION

While both sides made compelling biblical and non-biblical arguments, clearly advocates of the progressive income tax won the day. Progressive Democrats skillful appeal to the deeply-held religious beliefs and practices of Americans helped them to succeed in enacting a progressive income tax that would come to radically reshape the American tax system and remain popular for decades. As the Progressive movement successfully used the state to take over and expand what they viewed as missions of the Church or gospel, achieving victories not only in the income tax fight but in arenas such as labor rights, suffrage, and temperance, perhaps they lost sight of the roots that gave rise to their victory. Or perhaps it became tempting to go even farther and attach sacred status to all too human policies, inevitably provoking voter disenchantment. Consider Benton McMillin's telling paraphrasing of Paul's oft-cited counsel to the Corinthians, conspicuously inserting the Federal Government in the place of God: "As you have been prospered so pay. As you have received the blessings of the Government, contribute something to perpetuate them."³⁶⁰

Whatever the reason, today the Democratic Party that once argued for an income tax as a divinely sanctioned biblical tax—although still the party more strongly associated with progressive taxation—once removed all religious references from the party platform and has supported efforts to radically confine religion inside the walls of churches.³⁶¹ Republicans likewise generally support at least some level of progression in the tax burden, but without any specific moral foundation for doing so.³⁶² And Republicans, sometimes joined by Democrats, argue for tax cuts almost exclusively in the language of economic growth and efficiency, without harnessing the restraining power of religiously-rooted values still shared by many people such as teachings against covetousness and theft and in favor of voluntarism.³⁶³

360. 26 CONG. REC. app. 411 (1894).

361. The word "God" was re-inserted into the party platform at the 2012 Democratic National Convention after three attempts, although the vote was close and the outcome ambiguous, with loud boos following the announcement of the motion's passage. The motion came at the request of President Obama. Jake Tapper and Amy Bingham, *Dems Quickly Switch to Include "God," "Jerusalem"*, ABC NEWS (Sep. 5, 2012), <http://abcnews.go.com/Politics/OTUS/democrats-rapidly-revise-platform-include-god/story?id=17164108>.

362. See, e.g., Tax Reform Act of 1986, Pub.L. 99-514, 100 Stat. 2085 (Ronald Reagan's signature tax bill retains progressive rate structure); Omnibus Budget Reconciliation Act of 1990, Pub.L. 101-508, 104 Stat. 1388, (bill signed by George H.W. Bush increases progressivity of tax rates); Economic Growth and Tax Relief Reconciliation Act of 2001, Pub.L. 107-16, 115 Stat. 38, (tax cuts under George W. Bush retain progression in individual rates).

363. See, e.g., Larry Kudlow, *Trump Has an Incentive-Packed Tax Plan Like JFK and Reagan*, CNBC (Oct. 1, 2017), <https://www.cnbc.com/2017/10/01/kudlow-trump-has-an-incentive-packed-tax-plan-like-jfk-and-reagan.html>; John F. Kennedy, Radio and Television Report to the American People on the State of the National Economy (August 13, 1962), <http://www.presidency.ucsb.edu/ws/?pid=8812> (arguing for tax cut proposal strictly in terms of economic growth).

Looking back at the debate over the income tax of 1894, we can begin to recover some of the ideas that gave the progressive income tax moral legitimacy and wide acceptance. These religious ideas did not dictate any particular tax system, and religious people can strenuously disagree with the system that resulted. But we can observe that our progressive income tax was originally founded on a particular conception of religious ideas, and a proper understanding of our tax code requires understanding this religious foundation. Our pluralist system leaves room to accept or reject these religious roots, but we should recognize them as powerful ideas that are shared across the political spectrum. To the extent that governments are able to harness these ideas and conform tax policy to pre-existing beliefs and values, they can avoid needless friction. In essence, administering a tax system that conforms to rather than confronts citizens' pre-existing ideas and values involves much less cost and coercive force, especially where these values have proven exceedingly durable and powerful.

Several lasting principles emerge from the study of the religious forces that propelled the enactment of the 1894 income tax. First, deeply-rooted Judeo-Christian teachings require everyone to contribute of their material goods to help the less fortunate. In other words, without mentioning the state, Christian teachings impel a voluntary redistribution of wealth from the rich towards the poor. And more specifically, Judeo-Christian teachings support the idea of income as an appropriate base for giving. In the Hebrew Bible, tithing explicitly applied a proportionate rate to income as the baseline form of giving. These authorities do not compel the use of income as the tax base for secular government, but they make it more attractive because they predispose many people to accept the idea and consider it fair.

In the New Testament, we find further support for the principle of ability to pay increasing in income: "As you have been prospered, so give." Further, we find support for the idea that ability to pay increases in more than direct linear proportion to income, and especially the idea that the income supplying the basic needs of living has much more moral value than higher levels of income constituting "abundance" or "surplus." At the very least, these traditions should create broad support for the exemption of lower levels of income.³⁶⁴ While biblical teachings don't specify tax rates or the number and size of brackets—let alone give much guidance on the level of government spending or its allocation between federal, state, and local governments—they do provide strong support for the idea that, if a given level of spending could be agreed upon, the burden of this spending should be progressively distributed. With

364. Notably, such an exemption is almost universally supported. *See, e.g., Steve Forbes on Tax Reform*, http://www.ontheissues.org/celeb/Steve_Forbes_Tax_Reform.htm (proposals by prominent "flat tax" proponent Steve Forbes consistently preserve exemptions).

global trends towards more regressive taxation, this religiously-rooted idea can be critical in resisting regressive initiatives in the U.S.³⁶⁵

The Old and New Testaments both condemn extreme accumulation and hoarding of wealth while simultaneously elevating the moral status of the poor and those who labor. Notably, both sides in the 1894 debate embraced the general principle that earned income had more moral value than unearned income. Both sides would likely object to the preferential treatment of capital gains and dividends today, and this aspect of the tax code is a likely contributor to the strong perception of unfairness today. More generally, the widely-shared, religiously-rooted views on earned versus unearned income in 1894 serve as an interesting perspective from which to view the many provisions of the tax code distinguishing between the two types of income.

While teachings from the Bible place strong duties and obligations on the wealthy, they place simultaneous restraints on everyone else as well. The poor are to be content and not to covet. Income inequalities must not be addressed through theft or force. There is a strong emphasis on the value of voluntarism. These values imply that, in order for tax policy to enjoy moral legitimacy, there must be some form of broad consent. Hyper-partisan tax bills supported by one part of a polity that place the burden predominantly on another part come too close to the prohibited act of theft. Thus, they lack moral authority and invite evasion.

Likewise, religious teachings support duties of governments and tax authorities to exercise mercy and to redress harms they cause to taxpayers. Government and its agents must act in an ethical manner where the rights and dignity of taxpayers are respected, or an adversarial climate arises where religious motivations will not operate successfully. When taxpayers see news stories about unwarranted Internal Revenue Service (“IRS”) seizures of small business bank accounts, or politically-motivated audits, they may conclude that the tax code is completely separate from their own notions of right and wrong. Instead, the IRS should undertake and publicize acts of integrity, humanity, and generosity. Finally, policymakers must also respect the principle that there is a level where individual or collective tax burdens are too high, and government must exercise mercy.

Obviously, these foundational ideas provide leave many contentious issues unresolved, and today’s society has an increasing proportion of “nones” for

365. See Bret N. Bogenschneider, *The Taxing Power After Sebelius*, 51 WAKE FOREST L. REV. 941, 965 (“Tax policy is trending toward regressive taxation of workers.”); Paige Winfield Cunningham, *The Health 202: Republicans are right. The Individual Mandate is a Tax on the Poor*, WASH. POST (Nov. 20, 2017), https://www.washingtonpost.com/news/powerpost/paloma/the-health-202/2017/11/20/the-health-202-republicans-are-right-the-individual-mandate-is-a-tax-on-the-poor/5a0f2dc030fb045a2e003215/?utm_term=.66a1467e23a9.

whom religiously-based ideas may be unpersuasive.³⁶⁶ However, religiously-rooted ideas still have the ability to cut across party lines and forge consensus. They have the motivating and moderating power to encourage sacrifice on the part of the wealthy and restraint on the part of the majority. In 1894 and beyond, legislators drew on biblical ideas and contemporaneous religious teaching to shape the progressive income tax. It overcame high hurdles and has lasted for over a century. For most of that time, it enjoyed high esteem and even opponents acknowledged that, at least in theory, it was fair and just. The rapid erosion of this consensus should prompt us to look at the sources of the tax's original moral legitimacy and ask if those sources might once again be useful.

This exercise causes us to look at the role of religion in the public square in a new light. In contrast to the view that religion is a radical or contentious force that risks violating rights,³⁶⁷ religious expression can actually be a consensus-building and moderating force with rich ideas about economics. Religious institutions have thousands of years of experience in the area of social and economic welfare, and religious tradition and teaching have many hard-won insights to share. As in 1894, these ideas do not compel action or infringe rights but can be used by political and cultural leaders to argue and persuade. For many people, these moral ideas have a much greater power to motivate action and compromise than arguments based in academic economics or elsewhere. At the same time, religiously-rooted ideas in public debate in no way preclude the use of other ideas including economic and scientific arguments. Comparing the 1894 debate to today, the relative lack of religious themes in public discourse represents the deadweight loss of a valuable and useful voice that has come to be forgotten, especially in economic and tax policy. Fortunately, this voice can be easily restored.

366. See Michael Lipka, *A Closer Look at America's Rapidly Growing Religious "Nones"*, PEW RES. CENT. (May 13, 2015), <http://www.pewresearch.org/fact-tank/2015/05/13/a-closer-look-at-americas-rapidly-growing-religious-nones/>.

367. U.S. COMMISSION ON CIVIL RIGHTS, BRIEFING REPORT, PEACEFUL COEXISTENCE: RECONCILING NONDISCRIMINATION PRINCIPLES WITH CIVIL LIBERTIES (2016) (including statement of commission chairman Martin R. Castro that "religious liberty" and "religious freedom" can be merely "code words for discrimination, intolerance, racism, sexism, homophobia, Islamophobia, Christian supremacy or any form of intolerance").