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# “Render Unto Caesar . . .”: Religion/Ethics, Expertise, and the Historical Underpinnings of the Modern American Tax System

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## INTRODUCTION

A variety of scholars and commentators have been recently exploring the relationship between religion and current U.S. tax policy. Whereas some legal scholars have evoked biblical pronouncements to evaluate present tax laws and policies,<sup>1</sup> others have revisited classic hermeneutical practices to decipher modern lessons from ancient Judeo-Christian texts.<sup>2</sup> And still others have examined the role that organized religion has played in framing public discourse about tax justice.<sup>3</sup> Meanwhile, social scientists and social commentators have investigated

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1. Martin J. McMahon, Jr., *The Matthew Effect and Federal Taxation*, 45 B.C. L. REV. 993, 993–98 (2004); Deborah H. Schenck, *The Luke Effect and Federal Taxation: A Commentary on McMahon's The Matthew Effect and Federal Taxation*, 45 B.C. L. REV. 1129, 1129–34 (2004); David L. Cameron & Philip F. Postlewaite, *The Lazarus Effect: A Commentary on In-Kind Guaranteed Payments*, 7 FLA. TAX REV. 339, 342–43 (2006).

2. Susan Pace Hamill, *An Evaluation of Federal Tax Policy Based on Judeo-Christian Ethics*, 25 VA. TAX REV. 671, 671–711 (2006); Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 ALA. L. REV. 1, 46–75 (2002); Adam S. Chodorow, *Biblical Tax Systems and the Case for Progressive Taxation*, 23 J. L. & RELIGION 51, 55–95 (2007); Michael A. Livingston, *Rendering Unto Caesar: Religious Approaches to the Progressive Income Tax*, (Jan. 2006) (unpublished manuscript), available at <http://ssrn.com/abstract=939052>.

3. Carolyn Jones, *Hard Shells of Community: Tax Equity Debates Within the National Council of Churches After World War II*, in TAX JUSTICE: THE ONGOING DEBATE 95 (Joseph J. Thorndike & Dennis J. Ventry, Jr. eds., 2002); Marjorie E. Kornhauser, *Choosing A Rate Structure in the Face of Disagreement*, 52 UCLA L. REV. 1697, 1740–43 (2005).

how the rise of the religious right in America has affected tax policy,<sup>4</sup> and how recent changes in technology and American culture call for the revival of spiritual values to maintain the country's historical egalitarian creed.<sup>5</sup>

The relationship between religion and American taxation, however, runs much deeper than our present period. Indeed, it is no coincidence that roughly a century ago the foundations of our current tax system were taking shape at the height of the religious and ethical fervor known as the Social Gospel movement. For it was during the turn of the twentieth century when social groups, progressive political economists, tax reformers, and lawmakers were leading the campaign to fundamentally transform the U.S. system of public finance. In addressing the ills of modern industrial capitalism, these activists sought to shift the U.S. tax system away from the prevailing nineteenth-century regime of highly partisan tariffs and regressive excise levies toward a more modern, professionally administered structure of direct and graduated levies on income and wealth transfers. These reformers sought, in short, to build the foundations for a new more progressive fiscal order.<sup>6</sup>

At the same time, a group of liberal theologians and more secular ethical leaders also attempted to impart a new reformist vision of Christianity and moral righteousness. Reacting to the social dislocations wrought by modern urban industrialism, many liberal Protestant ministers and moral leaders drew on constructions of the Judeo-Christian ethos and the teachings of the Gospels to critique the rising inequality of the times, the squalid living conditions of the urban working class, and the growing exploitation of labor by the increasing concentration of capital.<sup>7</sup> These moral and religious leaders were anxious to bring humanitarian reforms to this world, and thus they led a decentralized movement to hasten the arrival of the kingdom of God on earth. The leaders of the Protestant Social Gospel movement were joined by liberal Catholic priests and rabbis of Reform Judaism, as well

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4. Fred Block, *Understanding the Diverging Trajectories of the United States and Western Europe: A Neo-Polanyian Analysis*, 35 POL. & SOC'Y 3, 23–24 n.1 (2007); SARA DIAMOND, NOT BY POLITICS ALONE: THE ENDURING INFLUENCE OF THE CHRISTIAN RIGHT 102 (1998); CLYDE WILCOX, ONWARD CHRISTIAN SOLDIERS? THE RELIGIOUS RIGHT IN AMERICAN POLITICS 157 (3d ed. 2006); MICHELLE GOLDBERG, KINGDOM COMING: THE RISE OF CHRISTIAN NATIONALISM 39–40 (2006).

5. ROBERT WILLIAM FOGEL, THE FOURTH GREAT AWAKENING & THE FUTURE OF EGALITARIANISM 44–83 (2000); DAVID W. MILLER, GOD AT WORK: THE HISTORY AND PROMISE OF THE FAITH AT WORK MOVEMENT 143–151 (2007).

6. See *infra* text accompanying notes 157–67.

7. See *infra* text accompanying notes 27–28, 49–69.

as non-theistic ethical leaders, in using religion and moral values to advance progressive political, social, and economic reform.<sup>8</sup> Indeed, the Social Gospel movement emerged from a broader zeitgeist that intimately linked religious and ethical values to social reform.

Existing scholarship, for the most part, does not directly attend to the historical links between liberal theology and progressive tax reform. Yet, most scholars and commentators seem to presume that because of the historical *correlation* of these two reform movements during the Progressive Era, there must naturally be a linear and causal connection between turn-of-the-century tax reform and the teachings of the Social Gospel and the broader ethical climate from which it emerged. The resurgence of religious and ethical values and the interest in fiscal reform were, to be sure, part and parcel of the Progressive movement. But conventional narratives too often appear to imply a direct cause-and-effect relationship, with little evidence beyond the religious backgrounds of key progressive tax reformers<sup>9</sup>

The aim of this essay is to probe further into the religious and ethical underpinnings of our modern tax system. It explores a third historical current, along with theological liberalism and tax reform, that flowed into the steady stream of Progressivism: the increasing professionalization and secularization of American intellectual life. In examining the writings and public advocacy of leading Progressive Era political economists, ministers, and moral leaders, this essay contends that a group of ethically inclined academic professionals—operating as pivotal intermediaries between the state-centered legal foundations of a new fiscal order and the civil society-centered popular appeals of religious and moral reformers—ambivalently undermined the religious support for a new fiscal order by secularizing and domesticating tax reform. On the one hand, these professional academics were inspired by liberal theology, and they in turn appealed to an important reform constituency of ethical leaders by spotlighting the salience of taxation for the development of a moral and just society.

Yet, these scholars simultaneously critiqued the seemingly populist and “unscientific” tax reforms that some religious leaders supported. Though many of the key political economists behind tax reform were imbued with moral and ethical sentiments, they ultimately privileged science over religion. Consequently, these professional social scientists reoriented religious approaches toward tax reform, and in the process redefined the boundaries of acceptable social analysis. In their cautious

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8. See *infra* text accompanying notes 65–73.

9. See *infra* text accompanying note 16.

application of religiously motivated ideas about public finance, they ultimately favored a pragmatic, scientific type of fiscal reform over more prophetic demands for change.

This essay's investigation of the historical ties between liberal theology and progressive tax reform supplements a well-told story about the development of the American social sciences. Scholars have aptly chronicled how the forces of modernity and professionalization in the late nineteenth and early twentieth centuries compelled the emergence of new theories of causation, as well as a new generation of thinkers.<sup>10</sup> These new intellectuals replaced lay notions of simple causation with learned explanations of complex social problems culled from ostensibly more objective, professional knowledge. Many of these theorists emerged from the Social Gospel movement and were ardent supporters of tax reform. Though they were hardly secular liberals, these early conceptual proponents of direct and progressive taxation felt obligated to bracket or contain their religious beliefs while they scientifically developed pragmatic policies and established their economic theories and methods as a rigorously professionalized, university-based academic discipline.

In this sense, the political economists promoting tax reform were not simply unreflective transmission belts between religious social leaders and elite policymakers, nor were they obstinate impediments to the moral demands for progressive change. Instead, as critical links between civil society and the state, these economic theorists echoed rather than simply instantiated the religious fervor of the times. They shared with Social Gospel ministers a sense of anxiety and distress with the excesses of urban industrialism, and they channeled their liberal spiritual energies towards social reform.

But the academic professionals sought a different kind of social reform. They were less concerned about what the Bible had to say—though they were all aware of its teachings—than they were about how economic theories could be scientifically verified by a community of inquirers. They were less concerned about which tax reform proposals were popular than they were about which ones could work. They initially saw religious leaders as allies in the progressive reform movement, but they parted company with those ministers who favored

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10. THOMAS L. HASKELL, *THE EMERGENCE OF PROFESSIONAL SOCIAL SCIENCE: THE AMERICAN SOCIAL SCIENCE ASSOCIATION AND THE NINETEENTH-CENTURY CRISIS OF AUTHORITY* 18–19 (1977); MARY O. FURNER, *ADVOCACY & OBJECTIVITY: A CRISIS IN THE PROFESSIONALIZATION OF AMERICAN SOCIAL SCIENCE, 1865-1905*, at 49 (1975); DOROTHY ROSS, *THE ORIGINS OF AMERICAN SOCIAL SCIENCE* 7, 115 (1991); NANCY COHEN, *THE RECONSTRUCTION OF AMERICAN LIBERALISM, 1865-1914*, at 155–59 (2002).

radical fiscal proposals that seemed implausible and “unscientific.” Ultimately, the professional scholars attempted to make tax reform appear more “scientific” by refraining from directly evoking the religious and moral dimensions of their positions. Even those most clearly associated with the Social Gospel movement were often circumspect in making direct connections between their religious views and their tax reform proposals.

The conspicuous reticence of the professional academics reveals how they differed from religious and ethical leaders when it came to designing and defending reform proposals. Ethical leaders and Social Gospel ministers were more tentative and tepid in their support of direct and progressive taxation. When church leaders did take a concrete and forceful stand on fiscal reform, they frequently gave their support to populist ideas, such as Henry George’s single-tax, that had little practical appeal for elite policymakers.<sup>11</sup> By contrast, the professional social scientists sought to develop a more coherent and sustainable vision of fiscal reform, one that frequently acknowledged the political and administrative constraints on social change. In the end, the historical confluence of a religiously inclined ethical movement, the accelerating professionalization of American intellectual life, and the demands for progressive tax reform suggests that there is a more complex and contingent story to be told about the role of religion and ethics in the formation of the modern American tax system.

#### I. RECENT SCHOLARSHIP ON RELIGION AND TAXATION

Legal scholars have been at the forefront of recent interest in drawing connections between religion and current tax policy. Although some have merely evoked biblical references to evaluate current tax laws and policies, others have examined the implication of Judeo-Christian values and beliefs on current policymaking. Perhaps most notably, Susan Pace Hamill has applied the moral principles of Judeo-Christian ethics to evaluate and critique state and national tax policies.<sup>12</sup> Other

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11. Henry George was a late nineteenth-century journalist who advocated that the government use only a property tax on land values as its main source of revenue. *See generally* HENRY GEORGE, *PROGRESS AND POVERTY* (Robert Shalkenbach Found. 1975) (1879). On the popularity of George’s single tax idea, see JOHN L. THOMAS, *ALTERNATIVE AMERICA: HENRY GEORGE, EDWARD BELLAMY, HENRY DEMAREST LLOYD, AND THE ADVERSARY TRADITION* (1983).

12. *See* Hamill, *supra* note 2. For a sampling of the national press coverage of Hamill’s scholarship, see generally Adam Cohen, *What Would Jesus Do? Sock it to Alabama’s Corporate Landowners*, N.Y. TIMES, June 10, 2003, at A28; Shailagh Murray, *Divine Inspiration: Seminary Article in Alabama Sparks Tax-Code Revolt*, WALL. ST. J., Feb. 12, 2003, at A1. For a similar, normative analysis of how Christian values support progressive taxation, see generally RONALD

legal academics have followed a similar, if somewhat more subtle, path using Judeo-Christian texts and their historical interpretations to explore the religious implications for current tax progressivity and fiscal reform.<sup>13</sup> Still other legal scholars have turned to the more recent past to explore how organized religious groups have attempted to influence public discourse on tax policy.<sup>14</sup> Although these present legal studies have, each in their own way, furthered our knowledge about the links between religion and taxation, they have not explored how the very beginnings of our modern tax system were rooted in a historic moment of religious and ethical fervor.

Other scholars and social commentators, for their part, have attended to the religious and historical underpinnings of our current fiscal conditions. Drawing analogies between the late nineteenth century and today, some have contended that the Bush Administration's signature tax cuts have been fueled by a revitalized commitment to religiously inspired "market fundamentalism."<sup>15</sup> Others, focusing on the post-1970s resurgence of Protestant evangelicalism, have documented how the rise of the religious right as a force in American politics has affected tax law and policymaking more generally.<sup>16</sup> The economic historian and Nobel Laureate Robert Fogel has gone further back in American history to link the Social Gospel movement, which he describes as America's "Third Great Awakening," to the redistributive fiscal policies of the twentieth century and to his calls for a "post-modern egalitarian

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D. PASQUARIELLO, *TAX JUSTICE: SOCIAL AND MORAL ASPECTS OF AMERICAN TAX POLICY* (1985).

13. See Livingston, *supra* note 2; Chodorow, *supra* note 2, at 77; see also Adam Chodorow, *Agricultural Tithing and (Flat) Tax Complexity*, 68 U. PITT. L. REV. 267, 272-77, 293-97 (2006); Michael A. Livingston, *The Preferential Option, Solidarity, and the Virtue of Paying Taxes: Reflections on the Catholic Vision of a Just Tax System* (Jan. 22, 2007) (unpublished manuscript), available at <http://ssrn.com/abstract=958806>.

14. See *supra* note 3.

15. Block, *supra* note 4. See also Margaret R. Somers & Fred Block, *From Poverty to Perversity: Ideas, Markets, and Institutions: Over 200 Years of Welfare Debate*, 70 AM. SOC. REV. 260, 260-62 (2005). For a fascinating set of replies to this work, see 70 AM. SOC. REV. (2005).

16. Paul Boyer, *The Evangelical Resurgence in 1970s American Protestantism*, in *RIGHTWARD BOUND: MAKING AMERICA CONSERVATIVE IN THE 1970S*, at 29-51 (Bruce J. Schulman & Julian E. Zelizer eds., 2008); FRITZ DETWILER, *STANDING ON THE PREMISES OF GOD: THE CHRISTIAN RIGHT'S FIGHT TO REDEFINE AMERICA'S PUBLIC SCHOOLS* 179 (1999). As an explanation for the dearth of historical writing about religion, the American intellectual historian David Hollinger has recently suggested that the current highly secular professional culture of the American historical profession "does not encourage candid, probing explorations of how Jesus matters." See David A. Hollinger, *Jesus Matters in the USA*, 1 MOD. INTELL. HIST. 135, 139 (2004).

agenda” for the twenty-first century.<sup>17</sup> Historians of American economic thought have elaborated on the ties and tensions between the Social Gospel and the rise of neo-classical economics.<sup>18</sup> Yet, rather than interrogate how and why the Social Gospel and its moral variants affected the foundations of our modern tax system, many of these studies take it for granted that historical correlation necessarily implies causation—that the temporal confluence of moralistic enthusiasm and tax reform at the turn of the twentieth century must have been mutually reinforcing.

There are, to be sure, deep-seated social reasons for the recent interest in exploring the ties between religion and public policy. The revival of Protestant evangelicalism in the United States in the last third of the twentieth century, as witnessed by the explosive growth of politically active religious groups like the Christian Coalition and Focus on the Family, has had a profound impact on the trajectory of American law and politics.<sup>19</sup> From a broader perspective, the rise of the American religious right has been fueled by a global recognition of the importance of religion to public life—a recognition that has only been heightened in a post-9/11 world.<sup>20</sup>

Yet, despite the growing interest in the theological and moral influences on policymaking, the religious and ethical roots of the modern American tax system remain obscured. Scholars of American religious history have identified how key Social Gospel ministers, such as Washington Gladden and Walter Rauschenbusch, had an interest in tax reform, but these scholars have not delineated what these and other moral leaders meant by “tax reform,” or how and why they came to believe in the need to challenge the prevailing fiscal system.<sup>21</sup>

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17. FOGEL, *supra* note 5, at 2. For an evaluation of Fogel’s “Third Great Awakening” label, see Jon Butler, *Review: The Fourth Great Awakening & the Future of Egalitarianism*, 74 *BUS. HIST. REV.* 699, 700 (2000).

18. Bradley W. Bateman, *Clearing the Ground: The Demise of the Social Gospel Movement and the Rise of Neoclassicism in American Economics*, in *FROM INTERWAR PLURALISM TO POSTWAR NEOCLASSICISM* (Mary S. Morgan & Malcolm Rutherford eds., 1998); R.A. Gonce, *The Social Gospel, Ely, and Common’s Initial Stage of Thought*, 30 *J. ECON. ISSUES* 641 (1996); Thomas C. (Tim) Leonard, *Evolutionary Science and Christian Belief in Progressive Era Political Economy: Adversaries or Allies?* (June 29, 2008) (unpublished manuscript), available at <http://ssrn.com/abstract=1166622>.

19. See *supra* note 16. See also STEVEN M. TELES, *THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT: THE BATTLE FOR THE CONTROL OF THE LAW* 22–57 (2007).

20. MARK LEWIS TAYLOR, *RELIGION, POLITICS, AND THE CHRISTIAN RIGHT: POST-9/11 POWERS AND AMERICAN EMPIRE* 2 (2005). For a historical perspective on 9/11, see generally *SEPTEMBER 11 IN HISTORY: A WATERSHED MOMENT?* (Mary Dudziak ed., 2003).

21. SYDNEY E. AHLSTROM, *A RELIGIOUS HISTORY OF THE AMERICAN PEOPLE* 794–95, 800–02 (1972); see also *RELIGION AND AMERICAN POLITICS: FROM THE COLONIAL PERIOD TO THE*

Likewise, economic, political, and intellectual historians have documented how progressive tax theorists, led by the likes of Richard T. Ely, Henry Carter Adams, and Edwin R.A. Seligman, were imbued with a religiously motivated ethical spirituality, but they have seemingly been uninterested in exploring how this moral inclination influenced the formation of tax policy.<sup>22</sup> One of the principal aims of this essay is to begin the scholarly project of investigating how and why religious and ethical sentiments at the turn of the twentieth century informed the foundations of the modern American tax system.

## II. A COMBINATION OF HISTORICAL FORCES

Although historians have long disagreed about the meaning(s) of Progressivism, most scholars continue to use the term to describe the late nineteenth and early twentieth century movement for social, political, economic, and moral reform.<sup>23</sup> In the realm of political economy, the establishment of a graduated income tax in 1913 was among one of the most significant and contentious achievements of the era. The campaign for direct and progressive taxation had its roots in the late nineteenth century, when critics of the highly partisan tariff and regressive excise taxes began to search for more equitable forms of public financing. This reform movement culminated in the crisis of World War I, when national lawmakers turned to their new-found taxing powers to implement a “soak-the-rich” form of taxation.<sup>24</sup>

In the social and moral sphere, the spread of the Social Gospel movement had a more amorphous and wide-ranging influence. With their focus on addressing the problems of urban industrialism, social Christian leaders and other religiously inclined reformers were pioneers

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PRESENT (Mark A. Noll & Luke E. Harlow eds., 2d ed. 2007); MARTIN E. MARTY, MODERN AMERICAN RELIGION, VOLUME 1: THE IRONY OF IT ALL, 1893-1919, at 294–95 (1986). For the sake of brevity, this essay focuses mainly on Gladden and Rauschenbusch as representatives of the Social Gospel, which was a varied and decentralized movement with numerous other church leaders.

22. See FURNER, *supra* note 10; ROSS, *supra* note 10; COHEN, *supra* note 10. Although there were other progressive political economists inspired by religion, these figures were the critical theorists who linked ethical sentiments with tax reform.

23. Peter G. Filene, *An Obituary for the Progressive Movement*, 22 AM. Q. 20–34 (1970); Daniel T. Rodgers, *In Search of Progressivism*, 10 REVS. IN AM. HIST. 113–27 (1982); GLENDA ELIZABETH GILMORE, WHO WERE THE PROGRESSIVES? 3–24 (2002).

24. W. ELIOT BROWNLIE, FEDERAL TAXATION IN AMERICA: A SHORT HISTORY 59–60 (2d ed. 2004); ROY G. BLAKEY & GLADYS C. BLAKEY, FEDERAL INCOME TAX 8 (Lawbook Exch. 2006) (1940); SIDNEY RATNER, AMERICAN TAXATION: ITS HISTORY AS A SOCIAL FORCE IN DEMOCRACY (1942); STEVEN R. WEISMAN, THE GREAT TAX WARS: LINCOLN TO WILSON, THE FIERCE BATTLES OVER MONEY AND POWER THAT TRANSFORMED THE NATION 39–42 (2002).

in establishing the first settlement houses,<sup>25</sup> and in moral reforms, such as the temperance movement that led eventually to Prohibition.<sup>26</sup> But it was in the area of labor relations where many liberal religious leaders had their greatest impact. From calls for a living wage, to the abolition of child labor, to their support for union organizing and protective labor legislation, Social Gospel ministers and ethical leaders led the charge for local and national labor reforms.<sup>27</sup> What united these seemingly disparate strands of social and moral reform was an abiding faith in how religious activism could draw upon the idea of a Judeo-Christian tradition to bring social salvation and material amelioration to the urban, working poor. These thinkers subscribed to the logic of what the political theorist Eldon J. Eisenach has recently referred to as an “economics of atonement,” in which Christian citizens acted benevolently toward their brethren.<sup>28</sup>

The movements for tax reform and religious activism were fused by a generation of ethically motivated intellectuals, mainly political economists, who believed that the modern forces of industrial capitalism required a new conception of the relations between state and society—a conception informed in many cases by a residual liberal Protestantism and a secularized version of ethical reform. Many of the ethical or proto-institutionalist political economists were among what legal historians have indentified as the “First Great Law & Economics Movement” because many attended to the links between legal institutions and economic analysis.<sup>29</sup> This new generation of theorists was also part of a professionalization project that set them apart not only from an earlier group of amateur economic thinkers and commentators, but also from the broader public.<sup>30</sup> In the process of trying to navigate, and at times bridge, the gap between elite policymaking and social concerns, these moralistically oriented

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25. MAUREEN A. FLANAGAN, *AMERICA REFORMED: PROGRESSIVES AND PROGRESSIVISM 1890s-1920s*, at 35–36 (2006); GARY SCOTT SMITH, *THE SEARCH FOR SOCIAL SALVATION: SOCIAL CHRISTIANITY AND AMERICA 1880-1925*, at 177, 198 (2000).

26. DONALD K. GORRELL, *THE AGE OF SOCIAL RESPONSIBILITY: THE SOCIAL GOSPEL IN THE PROGRESSIVE ERA 1900-1920*, at 202 (1988); HENRY F. MAY, *PROTESTANT CHURCHES AND INDUSTRIAL AMERICA* 127 (Octagon Books 1963) (1949); AARON IGNATIUS ABELL, *THE URBAN IMPACT OF AMERICA PROTESTANTISM 1865-1900*, at 48–50 (1943).

27. *THE SOCIAL GOSPEL IN AMERICA 1870-1920: GLADDEN, ELY, RAUSCHENBUSCH* 38 (Robert T. Handy ed., 1966).

28. ELDON J. EISENACH, *THE LOST PROMISE OF PROGRESSIVISM* 161 (1994).

29. Herbert Hovenkamp, *The First Great Law & Economics Movement*, 42 *STAN. L. REV.* 993 (1990); BARBARA H. FRIED, *THE PROGRESSIVE ASSAULT ON LAISSEZ FAIRE: ROBERT HALF AND THE FIRST LAW AND ECONOMICS MOVEMENT* (1998).

30. See *infra* text accompanying notes 86–100, 112–201.

academics played a pivotal, though ambivalent, role in advancing a weakened or domesticated form of ethical tax reform.<sup>31</sup>

*A. The Legal Foundations of a New Fiscal Order*

From roughly the end of Reconstruction to the start of the Great Depression, the U.S. system of public finance underwent a dramatic structural transformation. The late nineteenth century system of indirect national taxes—associated mainly with politicized import duties and regressive excise taxes on alcohol and tobacco—was eclipsed in the early decades of the twentieth century by a graduated and professionally administered national income tax that soon accounted for more than half of all federal tax revenues.<sup>32</sup> Between 1880 and 1930, for instance, revenues from customs duties and excise taxes as a percentage of total federal government receipts declined from about ninety percent to twenty-five percent. Over the same period the income tax, which did not even exist in 1880, climbed to make up nearly sixty percent of national government funds by 1930.<sup>33</sup>

While this fiscal revolution had enormous consequences for twentieth-century American public life, it did not occur quickly or easily. The incremental process of change began in the last decades of the nineteenth century and was contested at nearly every turn. The first national income tax was enacted by the North during the Civil War, but because it was expressly a temporary measure, it was permitted to expire in 1872 with little opposition when war debts had been repaid.<sup>34</sup> Populist calls from the South and West to eliminate the tariff and replace it with an income tax continued through the 1880s and '90s, until the Panic of 1893—the last and perhaps greatest economic downturn of the nineteenth century—triggered massive social unrest and agitation for reform.<sup>35</sup> Amidst this economic crisis, tax reform

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31. I have elsewhere explored the economic ideas of these pivotal tax theorists and their role in tax reform. See Ajay K. Mehrotra, *Envisioning the Modern American Fiscal State: Progressive Era Political Economists and the Intellectual Foundations of the U.S. Income Tax*, 52 UCLA L. REV. 1793 (2005). Portions of this essay have been drawn from that article.

32. See BROWNLEE, *supra* note 24. See also JOHN D. BUENKER, *THE INCOME TAX AND THE PROGRESSIVE ERA* (1985); JOHN F. WITTE, *THE POLITICS AND DEVELOPMENT OF THE FEDERAL INCOME TAX* 67–88 (1985).

33. BUREAU OF THE CENSUS, *HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, PART 2*, at 11606-08 (1975) [hereinafter *HISTORICAL STATISTICS*]; SEC'Y OF THE TREAS., *1971 STAT. APPENDIX TO ANN. REP. 12* (1971) [hereinafter *APPENDIX TO ANN. REP.*].

34. WEISMAN, *supra* note 24, at 4-5. See also ROBERT STANLEY, *DIMENSIONS OF LAW IN THE SERVICE OF ORDER: ORIGINS OF THE FEDERAL INCOME TAX, 1861-1913*, at 15–19 (1993).

35. RICHARD J. JOSEPH, *THE ORIGINS OF THE AMERICAN INCOME TAX: THE REVENUE ACT OF 1894 AND ITS AFTERMATH* 47 (2004); MAY, *supra* note 26, at 110. For more on the 1890s depression, see generally CHARLES HOFFMANN, *THE DEPRESSION OF THE NINETIES: AN*

moved from the margins of American political life, where it had long been among the demands of independent third parties, to the center of national politics when the Democratic Party implicitly adopted the progressive income tax as part of its party platform.<sup>36</sup> Indeed, it was no coincidence that William Jennings Bryan, an evangelical Christian, was a prominent supporter of progressive taxation, and the Democratic Party's standard bearer at the time.<sup>37</sup>

Even before the Democrats' official endorsement, the federal income tax was reinstated in 1894. Although it was modeled after the Civil War levy, it was relatively moderate, applying a flat two percent rate on all incomes above the comparatively high exemption level of \$4,000.<sup>38</sup> The revival of the income tax was short-lived, however. The following year, the Supreme Court in *Pollock v. Farmers' Loan & Trust Co.* struck down the law as an unconstitutional violation of the direct-tax clause. Overturning a long line of precedent and surprising many commentators, the Court ruled that a tax on income was a direct tax that must be apportioned by population.<sup>39</sup> Rather than signal the end of tax reform, however, *Pollock* became a rallying cry for reformers. Although some historians have characterized the Court's decision as part and parcel of the laissez-faire constitutionalism that marked turn-of-the-century jurisprudence,<sup>40</sup> some contemporary political activists believed the decision provided an opportunity to galvanize the forces for tax reform, to provide an even more progressive and perhaps radical tax law.<sup>41</sup> Still, it would take nearly two decades before political reformers and national lawmakers could overcome *Pollock* with a constitutional amendment. As industrialization increased, leading to greater concentrations of wealth and capital, reformers focused on how direct and progressive taxes could address the growing disparity in wealth, as well as the rising power of corporations.

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ECONOMIC HISTORY 4, 57–58, 109, 285–97 (1970); GERALD T. WHITE, THE UNITED STATES AND THE PROBLEM OF RECOVERY AFTER 1893 (1982).

36. See generally ELIZABETH SANDERS, ROOTS OF REFORM (2004); see also STANLEY, *supra* note 34; NATIONAL PARTY PLATFORMS, VOL. 1: 1840-1956, at 98 (Donald B. Johnson ed., 1978).

37. BUENKER, *supra* note 32, at 45. On the links between Bryan and the Social Gospel, see LAWRENCE W. LEVINE, DEFENDER OF THE FAITH: WILLIAM JENNINGS BRYAN, THE LAST DECADE 1915-1925, at 251–54 (1987).

38. Revenue Act of 1894, ch. 341, § 32, 28 Stat. 509, 556 (1894).

39. *Pollock v. Farmers' Loan & Trust, Co.*, 158 U.S. 601, 618 (1895).

40. ARNOLD M. PAUL, CONSERVATIVE CRISIS AND THE RULE OF LAW: ATTITUDES OF BAR AND BENCH 1887-1895, at 185–220 (Harper Torchbooks 1969) (1960); ROBERT G. MCCLOSKEY, THE AMERICAN SUPREME COURT 140–41 (Sanford Levinson ed., 3d ed. 2000) (1960); SIDNEY RATNER, TAXATION AND DEMOCRACY IN AMERICA 193–214 (1980). For a contrasting perspective on *Pollock*, see Stanley, *supra* note 34.

41. See, e.g., John McBride, *The Income Tax Law*, AM. FEDERATIONIST, June 1895, at 71.

By 1909, proponents of the income tax were able to garner sufficient bipartisan congressional support to introduce a constitutional amendment overturning *Pollock*, as well as a carefully crafted corporate excise tax. Although some conservative lawmakers may have agreed to the proposed constitutional amendment and the corporate tax as a way to forestall more radical tax proposals, the ratification process and the use of the corporate tax to regulate capital revealed the rising popular desire to create a new fiscal order.<sup>42</sup> The ratification process was long and arduous, reflecting deep-seated sectional differences over taxation. Indeed, it took nearly four years before the Sixteenth Amendment was ratified, empowering Congress to levy an income tax “from whatever source derived, without apportionment among the several States.”<sup>43</sup>

Congress exercised that power almost immediately with a rather moderate progressive income tax, enacted in 1913. The measure encapsulated the long, hard-fought battles of reformers and lawmakers to spread more evenly the costs of financing a modern polity.<sup>44</sup> Although there was some pressure from social groups to use steeply graduated taxes to reorder the prevailing American socio-economic structure, few key proponents of the income tax believed that it could or ought to be used to redistribute wealth in any radical way. Rather, the more general aim, as Congressman Cordell Hull (D-TN), a Southern Methodist and one of the chief architects of the 1913 law, explained, was to ensure that “the wealth of the country should bear its just share of the burden of taxation and that it should not be permitted to shirk that duty.”<sup>45</sup>

Despite these modest beginnings, it did not take long for the federal government to vigorously employ its newfound fiscal powers. In response to World War I, the government established a series of revenue laws that dramatically expanded the scale and scope of the

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42. See BUENKER, *supra* note 32; Marjorie E. Kornhauser, *Corporate Regulation and the Origins of the Corporate Income Tax*, 66 IND. L.J. 53, 93–94 (1990). For more on the origins of the corporate tax, see generally Reuven S. Avi-Yonah, *Why Was the U.S. Corporate Tax Enacted in 1909?*, in *STUDIES IN THE HISTORY OF TAX LAW* 377–92 (John Tiley ed., 2007); Steven A. Bank, *Entity Theory as Myth in the US Corporate Excise Tax of 1909*, in *STUDIES IN THE HISTORY OF TAX LAW*, *supra*, at 393–426.

43. U.S. CONST. amend. XVI. On the sectional differences in American political economy of this time period, see generally RICHARD FRANKLIN BENSEL, *SECTIONALISM AND AMERICAN POLITICAL DEVELOPMENT, 1880-1980* (1987); ROBIN L. EINHORN, *AMERICAN TAXATION, AMERICAN SLAVERY* (2006).

44. RATNER, *supra* note 40, at 195–200, 206–08; RANDOLPH E. PAUL, *TAXATION IN THE UNITED STATES* 101–04 (1954).

45. CORDELL HULL, *MEMOIRS* (1948); HAROLD B. HINTON, *CORDELL HULL: A BIOGRAPHY* 151–52 (1942).

national tax system.<sup>46</sup> The sheer demand for government revenue to support the war was certainly an important determinant of this fundamental change in American tax laws. But concerns about social justice and the distributional impact of American tax laws were equally significant. The astronomically high marginal and effective income tax rates and the enactment of an inheritance tax and innovative levies on a variety of wartime business profits illustrated that a new “soak-the-rich” form of taxation was taking shape. In fact, by the end of the war, levies on income and profits had come to dominate federal revenues.<sup>47</sup>

Although the WWI tax system was scaled back as part of the general retrenchment of the 1920s, the Progressive Era foundations of the graduated income tax provided subsequent reformers with a conceptual base upon which to build. Another world war would trigger the second major transformation in twentieth-century American tax policy, when the existing “class tax” was replaced with a “mass tax” that reached a broad swath of middle-class wage earners.<sup>48</sup> But by the end of the 1920s, the intellectual, emotional, and cultural spade work had been accomplished; the foundations of a new fiscal polity were firmly established. A group of religiously inclined political economists, as we shall see, was central to setting this fiscal foundation at the turn of the twentieth century.

### B. *The Social Gospel and Ethical Reform*

At roughly the same time that the foundations of the new fiscal polity were taking shape, American liberal theologians were undertaking their own intellectual reformation. Known variously as “social Christians” or “Christian socialists,” Social Gospel advocates were concerned mainly with improving current social conditions and relations, as a means toward individual salvation. They did not want the social to overwhelm the individual’s communion with God. Rather, they sought to preserve the “religious dimension of *personal* experience and its genuinely

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46. W. Elliot Brownlee, *Wilson and Financing the Modern States: The Revenue Act of 1916*, in PROCEEDINGS OF THE AMERICAN PHILOSOPHICAL SOCIETY 129, 173–210 (1985); W. Elliot Brownlee, *Economists and the Formation of the Modern Tax System in the United States: The World War I Crisis*, in THE STATE AND ECONOMIC KNOWLEDGE: THE AMERICAN AND BRITISH EXPERIENCES 401, 406–07 (Mary O. Furner & Barry E. Supple eds., 1990); see also DAVID M. KENNEDY, THE FIRST WORLD WAR AND AMERICAN SOCIETY ch. 2 (2000); STEVEN BANK ET AL., WAR AND TAXES ch. 4 (2008).

47. See HISTORICAL STATISTICS, *supra* note 33.

48. See Carolyn C. Jones, *Mass-Based Income Taxation: Creating a Taxpaying Culture, 1940-1952*, in FUNDING THE MODERN AMERICAN STATE 1941-1995, at 107 (W. Elliot Brownlee ed., 1996).

creative interaction with its environment.”<sup>49</sup> Tax reform thus fit naturally, though at times uneasily, with the broad social focus of the Social Gospel. Social Christians such as Washington Gladden and Walter Rauschenbusch were among those at the forefront of preaching a more modern, liberal Protestantism that sought “to convert the self-oriented Christian consciousness into one that was neighbor-oriented.”<sup>50</sup>

Gladden, who is often identified by scholars of American religious history as “the father of the Social Gospel,” was a Congregationalist minister concerned mainly with labor relations.<sup>51</sup> After graduating from Williams College, he began his career as a newspaperman and then turned to ministering to several different churches in the northeast before he moved to Columbus, Ohio, where he spent the rest of his life as a social reformer, local politician, and pastor to the First Congregational Church.<sup>52</sup> With a serious interest in political economy, Gladden was a frequent correspondent with Richard Ely and an active member of the group that helped launch the American Economic Association.<sup>53</sup> Unlike Ely, however, Gladden was a tepid supporter of graduated income and wealth taxes, perhaps because his main preoccupation as a reformer was with labor relations. An ardent critic of wage labor, Gladden called for labor and capital to set aside their differences and apply the Golden Rule to develop a cooperative commonwealth.<sup>54</sup> The solution to the labor question, Gladden reasoned, was “within the power of the Christian employer. All he has to do is admit his laborers to an *industrial partnership* with himself by giving them a fixed share in the profits of production.”<sup>55</sup>

Whereas Gladden reflected an optimistic view of reform, a younger generation of liberal theologians led by Rauschenbusch provided a more

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49. William McGuire King, *An Enthusiasm for Humanity: The Social Emphasis in Religion and its Accommodation in Protestant Theology*, in RELIGION AND TWENTIETH-CENTURY AMERICAN INTELLECTUAL LIFE 6 (Michael J. Lacey ed., 1989) (emphasis added).

50. AHLSTROM, *supra* note 21, at 804.

51. THE SOCIAL GOSPEL IN AMERICA, *supra* note 27, at 7; GARY DORRIEN, THE MAKING OF AMERICAN LIBERAL THEOLOGY: IDEALISM, REALISM, & MODERNITY 1900-1950, at 311 (2003).

52. See generally JACOB HENRY DORN, WASHINGTON GLADDEN: PROPHET OF THE SOCIAL GOSPEL (1968).

53. FURNER, *supra* note 10, at 70–71. See, e.g., Letter from Richard T. Ely to Washington Gladden (August 28, 1900), Series 1 Correspondence Jun 1900-Apr 1903, Box 3, Washington Gladden Papers, 1847-1970, Ohio Historical Society, Columbus, OH [hereinafter WGP] (copy on file with author); Letter from Washington Gladden to Dr. Richard Ely (Sept. 8, 1892), Box 5, Folder 6, Richard T. Ely Papers, Wisconsin Historical Society, Madison, WI (copy on file with author).

54. CHRISTOPHER H. EVANS, THE SOCIAL GOSPEL TODAY 103 (2001).

55. WASHINGTON GLADDEN, APPLIED CHRISTIANITY: MORAL ASPECTS OF SOCIAL QUESTIONS 34 (1886).

radical edge to the Social Gospel. Born in Rochester, New York, in 1861, the son of a German Lutheran missionary who taught at Rochester Theological Seminary, Walter Rauschenbusch received extensive theological training at the Rochester Seminary and abroad before he became a Baptist minister in the New York City neighborhood then referred to as “Hell’s Kitchen.” His daily exposure to the living conditions of the working poor and the radical reform ideas that accompanied the existence of poverty amidst plenty greatly affected his thinking. After a decade preaching, he returned to the Rochester Seminary to become a professor of church history. Rauschenbusch did not always agree with Gladden and the older generation of Social Gospel ministers, especially on the issue of tax reform. But Rauschenbusch did not lose sight of the continuity between generations. “You are one of the veterans who made it easier for us of the next generation to see our way and to get a hearing,” Rauschenbusch wrote to Gladden in 1908. “You have done a noble day’s work and have lived to see the reapers going out to the harvest which you helped sow.”<sup>56</sup> A professed socialist, Rauschenbusch became the leading voice of the second half of the Social Gospel movement.<sup>57</sup>

The social Christianity espoused by the likes of Gladden and Rauschenbusch was never a formal or centralized movement, though it did develop enough of a critical mass to establish the Federal Council of Churches in 1908, a predecessor to the National Council of Churches.<sup>58</sup> The leaders of the Federal Council and the Social Gospel were responding to the social dislocations wrought by the urban industrialism of the late nineteenth and early twentieth centuries. The social scientific studies of tenement life and the muckraking journalism of Upton Sinclair and Jacob Riis revealed to ordinary Americans, as well as their religious leaders, the abject poverty and squalor that lurked behind the prosperity and opportunity of industrial capitalism.<sup>59</sup> The mass migration and rapid industrialization of the time, in conjunction with the resulting dependency of wage-labor, challenged many precepts of traditional American republicanism and presented religious leaders with the dilemma of adapting “the Protestant tradition of an earlier rural

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56. Letter from Walter Rauschenbusch to Dr. Gladden (December 2, 1908) Series 1 Correspondence May 1907-1909, Box 8, WGP (copy on file with author).

57. *See generally* CHRISTOPHER HODGE EVANS, *THE KINGDOM IS ALWAYS BUT COMING: A LIFE OF WALTER RAUSCHENBUSCH* (2004); PAUL M. MINUS, *WALTER RAUSCHENBUSCH: AMERICAN REFORMER* (1988).

58. AHLSTROM, *supra* note 21, at 802–04; SMITH, *supra* note 25, at 68–69.

59. *See generally* UPTON SINCLAIR, *THE JUNGLE* (1906). *See also* JACOB A. RIIS, *HOW THE OTHER HALF LIVES: STUDIES AMONG THE TENEMENTS OF NEW YORK* 29 (1890); FRED J. COOK, *THE MUCKRAKERS: CRUSADING JOURNALISTS WHO CHANGED AMERICA* 97 (1972).

America to the changing demands of a newly industrial society.”<sup>60</sup> Although certain aspects of this liberal theology hewed closely to a reactionary view of race and gender relations,<sup>61</sup> the movement for the most part advocated a forward-looking and progressive perspective on many other areas of reform, including tax reform. It even provided some feminist reformers with an opportunity to break free of traditional gender roles.<sup>62</sup> For some leaders, the rise of social Christianity was a necessary and inevitable response to the forces of modernity. “The social movement is the most important ethical and spiritual movement in the modern world, and the social gospel is the response of the Christian consciousness to it,” explained Rauschenbusch. “Therefore, it had to be.”<sup>63</sup>

Turn-of-the-century American theologians, of course, were not alone in confronting these issues. The Social Gospel movement was in many ways an outgrowth of both domestic and transnational impulses.<sup>64</sup> In some ways, it represented the continuation of a long-standing “indigenous” American commitment to liberal Protestantism that had surfaced with earlier great awakenings.<sup>65</sup> Yet, even if the Social Gospel movement was “uniquely American”—a proposition that has in recent years come under criticism—there is no doubt that leading social Protestants, like the economic thinkers at the center of tax reform, were in a transatlantic dialogue with their European counterparts.<sup>66</sup> With his European education and contacts, Rauschenbusch frequently served as an important conduit between continental social Christians and American church leaders.<sup>67</sup>

There were also institutional transatlantic links. The U.S. settlement house movement and the Salvation Army, pioneers in providing

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60. MARK A. NOLL, *A HISTORY OF CHRISTIANITY IN THE UNITED STATES AND CANADA* 307 (1992).

61. *See generally* RONALD C. WHITE, JR., *LIBERTY AND JUSTICE FOR ALL: RACIAL REFORM AND THE SOCIAL GOSPEL (1877-1925)* (1990); *see also* RALPH E. LUKER, *THE SOCIAL GOSPEL IN BLACK AND WHITE: AMERICAN RACIAL REFORM 1885-1912* (1991).

62. FLANAGAN, *supra* note 25, at 88, 255–59. *See also* GENDER AND THE SOCIAL GOSPEL (Wendy J. Deichmann Edwards et al. eds., 2003).

63. WALTER RAUSCHENBUSCH, *A THEOLOGY FOR THE SOCIAL GOSPEL* 4–5 (1917).

64. JAMES T. KLOPPENBURG, *UNCERTAIN VICTORY: SOCIAL DEMOCRACY AND PROGRESSIVISM IN EUROPEAN AND AMERICAN THOUGHT* 207, 229, 251, 279, 294 (1986).

65. CHARLES HOWARD HOPKINS, *THE RISE OF SOCIAL GOSPEL IN AMERICAN PROTESTANTISM, 1865-1915*, at 3, 326 (1961).

66. *Id.* at 207; DANIEL T. RODGERS, *ATLANTIC CROSSINGS: SOCIAL POLITICS IN A PROGRESSIVE AGE* 84–85, 90, 100 (1998).

67. Letter from Walter Rauschenbusch to Washington Gladden (Feb. 10, 1912), Series 1 Correspondence May 1907-March 1912, Box 9, WGP (copy on file with author).

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religiously based social services, both had their origins in Britain.<sup>68</sup> Similarly, many of the most prominent progressive theorists of social Christianity and ethical reform, ministers and academics alike, were educated in Germany, where they saw first-hand how German liberal Protestantism had helped to facilitate the growth of social democracy, progressive taxation, and a modern and effective welfare state.<sup>69</sup>

While the religious and moral fervor that existed in the half century between 1880 and 1930 is most often identified with the liberal Protestantism of the Social Gospel movement, this moral resurgence in American life was not limited to Protestants, or for that matter even Christians. Catholic priests, Jewish rabbis, and even non-theistic moral leaders were motivated by an active engagement with humanitarian reforms. Though Roman Catholics, despite their growing numbers, remained on the margins of elite American political life during this time period, several leading Catholic priests shared the reformist tendencies of their Protestant counterparts. Archbishop James Gibbons of Baltimore supported the Knights of Labor, one of the leading labor organizations of the late nineteenth century.<sup>70</sup> John A. Ryan, a social activist and professor of theology at The Catholic University of America, was one of the early supporters of a living wage and other social reforms.<sup>71</sup> Likewise, rabbis of American Reform Judaism were equally focused on applying their religious views to the social problems of the day. In a meeting held in Pittsburgh in 1885, a group of Reform rabbis, led by the recent German immigrant Kaufman Kohler and the Chicago Rabbi Emil G. Hirsch, set out to define the parameters of American Reform Judaism. The Pittsburgh Platform, as it came to be known, included among its main principles the religious community's commitment to social reform, which was "an early statement of what became the social justice movement, a twentieth-century concern of Reform Judaism that it shared with liberal Protestantism."<sup>72</sup> Although a careful analysis of how each of these religious groups viewed

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68. ABELL, *supra* note 26, at 122–27.

69. BENJAMIN G. RADER, *THE ACADEMIC MIND AND REFORM: THE INFLUENCE OF RICHARD T. ELY IN AMERICAN LIFE* (1966); EVANS, *supra* note 54; KLOPPENBURG, *supra* note 64, at 207–11; RODGERS, *supra* note 66, at 84–85, 90, 100.

70. Aaron I. Abell, *Introduction* to JAMES CARDINAL GIBBONS, *THE STATE OF THE CATHOLIC CHURCH IN THE LABOR MOVEMENT*, in *AMERICAN CATHOLIC THOUGHT ON SOCIAL QUESTIONS* 143 (Aaron I. Abell ed., 1968); LEON FINK, *WORKINGMAN'S DEMOCRACY: THE KNIGHTS OF LABOR AND AMERICAN POLITICS* (1983).

71. SMITH, *supra* note 25, at 349.

72. Lloyd P. Gartner, *American Judaism: 1880-1945*, in *THE CAMBRIDGE COMPANION TO AMERICAN JUDAISM* 44 (Dana Evan Kaplan ed., 2005). *See generally* GERALD SORIN, *A TIME FOR BUILDING: THE THIRD MIGRATION 1880-1920*, at 193–95 (1992) (1940).

progressive tax reform is beyond the scope of this essay, the parallel and pluralistic emergence of a reformist religious spirituality reflects the breadth and depth of theological liberalism at this time.<sup>73</sup>

Yet, the ascendancy of reformist inclinations across denominations and religions did not go unchallenged. More conservative elements within mainstream Protestantism, Catholicism, and Judaism questioned the secular tendencies of reform-minded theologians and their followers. The Social Gospel movement, for instance, never had more than a minority of adherents, as traditional Protestants feared that social engagement, especially in its “socialist” strain, would dull Christian values and undermine the individual’s covenant with God.<sup>74</sup> Liberal Catholics received similar skepticism not only from mainstream Catholics, who believed that social and moral questions ought to be left to the religious—not the political—realm, but also from liberal Protestants who believed that Catholicism’s hierarchical rigidity made it incompatible with true social reform.<sup>75</sup> Likewise, Orthodox Jewish communities, who gathered strength from the massive Eastern European migration to American cities, viewed certain aspects of Reform Judaism as a dilution of Talmudic teachings.<sup>76</sup> For other liberal Jews, the assimilated Reform movement was not open or ecumenical enough. Felix Adler, the founder and leader of the non-theistic Society for Ethical Culture, became the standard bearer for this form of lapsed Reform Judaism.

Born in Germany in 1851, the son of a prominent rabbi, Adler was a critical figure in the development of the political economist Edwin Seligman’s ethical thinking, and thus Adler exerted an indirect influence on the trajectory of progressive tax reform. Felix Adler immigrated to the U.S. in 1857 when his father was elected to the prestigious pulpit of one of the nation’s leading Reform synagogues, Temple Emanu-El in New York.<sup>77</sup> After studying at Columbia College and then at the Universities of Berlin and Heidelberg, Adler seemed destined to follow in his father’s footsteps. But an 1873 sermon before the Temple Emanu-El, in which Felix Adler tested the liberal

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73. The religious historian, Leigh E. Schmidt has recently linked the spirituality of nineteenth century American religious liberalism with political progressivism. *See generally* LEIGH E. SCHMIDT, *RESTLESS SOULS: THE MAKING OF AMERICAN SPIRITUALITY* (2005).

74. HOPKINS, *supra* note 65, at 121–22.

75. ABELL, *supra* note 26, at 72, 91.

76. Gartner, *supra* note 72, at 45; MICHAEL A. MEYER, *A RESPONSE TO MODERNITY: A HISTORY OF THE REFORM MOVEMENT IN JUDAISM* 264 (1995).

77. BENNY KRAUT, *FROM REFORM JUDAISM TO ETHICAL CULTURE: THE RELIGIOUS EVOLUTION OF FELIX ADLER* 1–2 (1979).

boundaries of Reform Judaism by calling upon the congregation to embrace a universalism that was conspicuously silent about God, ended any hopes of a rabbinical post.<sup>78</sup> With the help of the Seligman family, who were prominent temple supporters and personal friends of the Adlers, Felix became a part-time instructor of Hebrew and Oriental literature at Cornell University.<sup>79</sup> Dissatisfied with the insularity of academic life, Adler returned to New York City in 1876 to give a series of regular lectures that would soon become the foundation for the New York Society for Ethical Culture.<sup>80</sup>

Adler's Society for Ethical Culture in many ways anticipated the social justice movement of Reform Judaism and was integral to the spirit of the times that inspired social Christianity and progressive reform. Downplaying the importance of traditional religious customs and rituals, Adler sought to develop a universal science of modern religion, what he referred to as the "New Ideal."<sup>81</sup> Ethical Culture thus appealed to a variety of lapsed believers, particularly Reform Jews, for whom it became "a substitute religion that was intellectually respectable, ritually undifferentiating, and morally earnest."<sup>82</sup>

### C. *The Increasing Professionalization of American Intellectual Life*

The same historical forces that impelled tax reform and liberal theology also had a profound impact on the social and institutional development of American intellectual life. The growing complexity of a modern interdependent society, a by-product of mass industrialization and urbanization, led to a questioning of traditional and often religious authority. The earlier amateur scholarly investigations of men of letters

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78. HORACE L. FRIESS, *FELIX ADLER AND ETHICAL CULTURE: MEMORIES AND STUDIES* 36–38 (Fannia Weingartner ed., 1981). For more on Adler and the Ethical Culture Movement, see generally SCHMIDT, *supra* note 73, at 143–46; HOWARD B. RADEST, *TOWARD COMMON GROUND: ETHICAL SOCIETIES IN AMERICA* 14–28 (1969).

79. Interview with Eustace Seligman, Columbia University Oral History Collections (Sept. 3, 1974) (on file with Butler Library, Columbia University, New York, NY). The Seligman family not only contributed generously to Adler's Society for Ethical Culture, they were also instrumental in eventually securing an academic appointment for him at Columbia University later in his life. Letter from Edwin R.A. Seligman to Isaac Seligman (Mar. 14, 1905), Cataloged Correspondence, Edwin R.A. Seligman Papers (on file with Butler Library, Columbia University, New York, NY); Letter from Nicholas Murray Butler to Isaac Seligman (Mar. 31, 1905), Cataloged Correspondence, Edwin R.A. Seligman Papers (on file with Butler Library, Columbia University, New York, NY).

80. KRAUT, *supra* note 77, at 2; Felix Adler, *Lecture Before the Society for Ethical Culture: Pictures of Justice* (Dec. 21, 1879), Felix Adler Papers, Jacob Rader Marcus Center of the American Jewish Archives (on file with Cincinnati Campus, Hebrew Union College, Jewish Institute of Religion, Cincinnati, OH).

81. FELIX ADLER, *CREED AND DEED: A SERIES OF DISCOURSES* 63–75 (1881).

82. MEYER, *supra* note 76, at 266.

and social commentators no longer seemed tenable in an expanding pluralistic world of interdependent strangers. Gradually, the genteel and lay communities of knowledge gave way to a new kind of secularized authority in the form of the rigorously professionalized disciplines of the modern, university-based social sciences.<sup>83</sup>

Although the professionalization of knowledge had been occurring since at least the end of the Civil War, the modern forces underpinning this transformation became more pronounced in the decades that straddled the turn of the twentieth century. Ships teeming with new immigrants landed on U.S. shores. New factories and industries in rising urban centers pulled apart more rural “island communities,” just as the American frontier was disappearing.<sup>84</sup> And, as a result, the individualistic explanations of social events proffered by amateur thinkers seemed insufficient and outdated. The forces of modernity, in short, led to a crisis of intellectual authority.<sup>85</sup>

In response, theorists and reformers turned to the emerging university-based social sciences as a possible savior. The new generation of intellectuals, who exalted the scientific study of society, operated as key transitional figures between the Victorian age of cultural authority and the more modernist impulses in the human and social sciences.<sup>86</sup> These figures appropriated the language of religious experience to express the ethical underpinnings of scientific inquiry. For them, the quest for objectivity, which was central to scientific methods, required the transcendence of seemingly undisciplined, subjective leanings.<sup>87</sup> In this way, the progressive political economists subscribed to what the historian David A. Hollinger has referred to as an “intellectual gospel”; they believed that “conduct in accord with the ethic of science” could itself be religiously fulfilling.<sup>88</sup>

Professional social scientific investigation held the promise not only of helping to understand a complex and interdependent world, but also

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83. HASKELL, *supra* note 10, at 18–19.

84. SAMUEL HAYS, *THE RESPONSE TO INDUSTRIALISM 1885-1914*, at 47 (2d ed. 1995) [1957]; ROBERT WEIBE, *SEARCH FOR ORDER: 1877-1920*, at 44 (1991) [1967].

85. HAYS, *supra* note 84, at 99–100; *see generally* HASKELL, *supra* note 10.

86. *See generally* MODERNIST IMPULSES IN THE HUMAN SCIENCES, 1870-1930 (Dorothy Ross ed., 1994).

87. Michael J. Lacey, *Introduction: The Academic Revolution and American Religious Thought*, in *RELIGION AND TWENTIETH-CENTURY AMERICAN INTELLECTUAL LIFE* 7 (Michael J. Lacey ed., 1989); *see also*, PETER NOVICK, *THAT NOBLE DREAM: THE “OBJECTIVITY QUESTION” AND THE AMERICAN HISTORICAL PROFESSION* (1988).

88. David A. Hollinger, *Justification by Verification: The Scientific Challenge to the Moral Authority of Christianity in Modern America*, in *RELIGION AND TWENTIETH-CENTURY AMERICAN INTELLECTUAL LIFE* 123 (Michael J. Lacey ed., 1989).

of assisting in the formation of effective public policy solutions to contemporary problems.<sup>89</sup> Founded in 1865, the American Social Science Association (ASSA) was one of the first organizations to bring together theorists and activists dedicated to promoting social scientific knowledge and the use of such knowledge for social reform, including tax reform. Although the ASSA itself dissipated, its founding ideals and many of its members became the nucleus for other more specialized associations. By the 1880s, the ASSA had become the “mother of associations,” giving birth to a whole host of professionally oriented organizations focused on reform, like the National Conference of Charities and Correction, and rigorously professionalized disciplinary communities, such as the American Historical Association (AHA) founded in 1884, and the American Economic Association (AEA) established a year later.<sup>90</sup>

In its early years, the AEA was an organization that brought together moral leaders like Washington Gladden and ethical tax and economic theorists such as Richard Ely and Edwin Seligman.<sup>91</sup> But the AEA was not alone in developing a specialized community of inquiries. The AHA similarly sought to develop professional standards for historical research and training.<sup>92</sup> The American Academy of Political and Social Science, established in 1889, also sought to promote social scientific investigations. In 1892, G. Stanley Hull, psychologist and President of Clark University, helped found the American Psychology Association. In 1903, the American Political Science Association was established, and two years later the American Sociological Association got its start.<sup>93</sup> What these new scholarly associations had in common was their desire not only to raise the professional standards of their disciplines, and in the process bring a certain amount of status, prestige, and power to their respective specialties, but also to communicate their research

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89. MICHAEL E. MCGERR, *A FIERCE DISCONTENT: THE RISE AND FALL OF THE PROGRESSIVE MOVEMENT IN AMERICA, 1870-1920*, at 243 (2003); RODGERS, *supra* note 66, at 231.

90. HASKELL, *supra* note 10, at 109–10.

91. A.W. Coats, *The American Economic Association and the Economics Profession*, 23 J. ECON. LIT. 1697, 1700–01 (1985).

92. NOVICK, *supra* note 87 at 430 (1998).

93. See generally ROSS, *supra* note 10; A.W. Coats, *The First Two Decades of the American Economic Association*, 50 AM. ECON. REV. 556, 556 (1960); J. Franklin Jameson, *The American Historical Association: 1884-1909*, 15 AM. HIST. REV. 1, 1–20 (1909); Dorothy Ross, *The Many Lives of American Institutionalism in American Social Science*, 28 POLITY 117, 117–19 (1995); *The American Political Science Association*, 2 MICH. L. REV. 396, 396 (1904); *Handbook of the American Academy of Political and Social Science*, 9 ANNALS AM. ACAD. POL. & SOC. SCI. 1, 3–4 (Supp. 1897); *Organization of American Sociological Society: Official Report*, 11 AM. J. SOC. 555 (1906).

and findings to a broader community of elite policymakers and ordinary citizens.<sup>94</sup>

These new associations were populated by a young generation of scholars who found a new institutional home in the modern and increasingly secular research university.<sup>95</sup> Herbert Baxter Adams, one of the founders of the AHA, was among the cohort of young, German-educated, research-oriented U.S. scholars who came to dominate the nascent development of the American social sciences and the fields of higher education. Adams's career path soon became a model for others, including some of the central figures linking moral reform with fundamental tax changes, such as Richard Ely, Henry Carter Adams, and Edwin Seligman.

Each of these political economists eventually found a home in the emerging American research university, albeit with varying degrees of difficulty. Ely began his studies at Columbia College and then traveled to Germany to obtain his doctorate. Upon his return, he helped bring the seminary style of graduate teaching to Johns Hopkins University, where Ely began his academic career before taking his message of social Christian reform to the University of Wisconsin.<sup>96</sup> Henry Carter Adams, as a student of Henry Baxter Adams, received one of the first doctorates granted by Johns Hopkins, which was quickly establishing itself as one of the leading American research universities and the "ideologically intense bastion of the intellectual gospel."<sup>97</sup> After making his requisite sojourn to Germany, H.C. Adams returned to begin teaching at Johns Hopkins and Cornell University. His support for organized labor soon placed his academic career in jeopardy. But with assistance from the jurist Thomas M. Cooley, Adams obtained a position at the University of Michigan. He spent the rest of his academic career in Ann Arbor, with an interlude as chief statistician for the Interstate Commerce Commission, when Cooley became the commission's chairman.<sup>98</sup> Seligman spent his entire academic career at

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94. FURNER, *supra* note 10, at 12.

95. GEORGE M. MARSDEN, *THE SOUL OF THE AMERICAN UNIVERSITY: FROM PROTESTANT ESTABLISHMENT TO ESTABLISHED NONBELIEF 177-78* (1994).

96. William J. Barber, *The Political Economy in the Flagship of Postgraduate Studies: The Johns Hopkins University*, in *BREAKING THE ACADEMIC MOULD: ECONOMISTS AND AMERICAN HIGHER LEARNING IN THE NINETEENTH CENTURY* 209-10 (William J. Barber ed., 1982); RADER, *supra* note 69, at 16-17; Julie Nelson, *Ely and Christian Social Reform*, in *ECONOMISTS AT WISCONSIN, 1892-1992*, at 55-58 (Robert J. Lampman ed., 1993).

97. Hollinger, *supra* note 88, at 126.

98. Joseph Dorfman, *Introductory Essay* to HENRY C. ADAMS, *TWO ESSAYS: RELATION OF THE STATE TO INDUSTRIAL ACTION & ECONOMICS AND JURISPRUDENCE* (Joseph Dorfman ed., Augustus M. Kelley Publishers 1969) (1954); 1 JOSEPH DORFMAN, *ECONOMIC MIND IN*

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Columbia University, earning his undergraduate, graduate, and law degrees there before studying in Germany and then returning to Columbia, where he became a faculty member and then later one of the leading figures at the university and in the larger academy.<sup>99</sup>

Though there were other scholars who shared the ethical sentiments of these leading figures, Ely, Adams, and Seligman were the first American political economists to begin the serious study of public finance, or what they referred to, borrowing from their German mentors, as the “science of finance.”<sup>100</sup> They had other similarities. They were each raised in religious environments of one sort or another. They were founding members of the AEA and each was a one-time president of the association. They were institution builders both within and outside of their respective universities. And, most important, they were early advocates of tax reform.

Like the social sciences, the study and teaching of law also became more professionalized at the turn of the twentieth century. Although law, as one of the traditional professions, laid claim to a long-standing source of power, status, and prestige, the study of American law in the late nineteenth century became more systematic and formal with the emergence of Christopher C. Langdell’s “case method” style of instruction. As the dean of Harvard Law School from 1870 to 1895, Langdell introduced and helped popularize the case method, which held that the fundamental principles of law could be distilled from a careful, rigorous and formal analysis of appellate court opinions.<sup>101</sup> Although Langdell is often criticized today for helping create a highly formalistic jurisprudence that ignored the importance of social context and facilitated the acceptance of laissez-faire principles,<sup>102</sup> his pedagogical innovations were part of a process that helped usher in the modern law school and its full-time, professional law faculty.<sup>103</sup>

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AMERICAN CIVILIZATION 164 (1964).

99. Franek Rozwadowski, *From Recitation Room to Research Seminar: Political Economy at Columbia University*, in *BREAKING THE ACADEMIC MOULD: ECONOMIST AND AMERICAN HIGHER LEARNING IN THE NINETEENTH CENTURY*, *supra* note 96, at 196; THOMAS BENDER, *INTELLECT AND PUBLIC LIFE* 55–56 (1997).

100. *See, e.g.*, HENRY CARTER ADAMS, *THE SCIENCE OF FINANCE: AN INVESTIGATION OF PUBLIC EXPENDITURES AND PUBLIC REVENUES* 1 (1899).

101. WILLIAM P. LAPIANA, *LOGIC AND EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION* 55–78 (1994).

102. Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1, 23–24 (1983); Bruce A. Kimball, *The Langdell Problem: Historicizing The Century of Historiography 1906-2000s*, 22 L. & HIST. REV. 277, 277–80 (2004).

103. LAPIANA, *supra* note 101, at 170.

As part of the professionalization of the legal academy, Langdell and his generation of legal scholars and teachers also advanced a secular, positivist legal science that seemed to distance the law from its traditional moral foundations. Building on John Austin's model of jurisprudence, legal positivists contended that law was a function not of moral principles or universally held religious truth, but of the commands of a legal sovereign.<sup>104</sup> The growing power of legal positivism was evident to most professional legal scholars when Roscoe Pound noted in 1908 that "there is coming to be a science of legislation."<sup>105</sup> Referring to the "excessive output of legislation in all our jurisdictions," Pound celebrated the scientific expertise that lay behind the creation of statutes, as he cautioned common-law jurists and lawyers against ignoring the trend toward greater legislative action. "Modern statutes," wrote Pound, "represent long and patient study by experts, careful consideration by conferences, or congresses, or associations."<sup>106</sup>

In attempting to develop law as an autonomous field of scientific expertise, law professors like Pound began to broaden the yawning gap between the legal academy and society. Positivists like Pound were consciously contrasting a legal secularity against a presumed Christian culture. Their posture on morality and religion isolated them from the religious elite of the Social Gospel, as well as from ordinary Americans and even many jurists for whom law was still grounded in morality, ethics, and the Judeo-Christian tradition.<sup>107</sup> Their commitment to law as a science, that was somehow distinct from other forms of knowledge, was also ironically pulling them apart from the emerging American social science disciplines—a point that a later generation of legal realist scholars would seize upon in their critique of Langdellian legal formalism.<sup>108</sup>

The growing aloofness between academics and the rest of the population became more acute as the twentieth century progressed. The increasing professionalization and specialization of American intellectual life made scholars more receptive to their peers within the

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104. *Id.* at 169.

105. Roscoe Pound, *Common Law and Legislation*, 21 HARV. L. REV. 383, 384 (1908).

106. *Id.* at 383.

107. Paul D. Carrington, *Hail! Langdell!*, 20 L. & SOC. INQUIRY 691, 714–15 (1995). On the nineteenth century influence of Christianity on American jurists and lawyers, see HAROLD J. BERMAN, *THE INTERACTION OF LAW AND RELIGION* (1974); Stuart Banner, *When Christianity Was Part of the Common Law*, 16 L. & HIST. REV. 27 (1998).

108. See WILLIAM W. FISHER ET AL., *AMERICAN LEGAL REALISM* 233 (1993); NEIL DUXBURY, *PATTERNS OF AMERICAN JURISPRUDENCE* 52–57 (1997).

secularized academy, and their own specific subfields, than to the broader public of non-experts.<sup>109</sup> At an early stage in this historical process, however, some academics attempted to navigate, and when possible bridge, the gap between expert knowledge and democratic commitments.<sup>110</sup> They aspired to use their expertise to inform policymaking, and many held the attention of lawmakers, judges, and policy analysts. Foremost among this group was what Ely referred to as his cohort of “ethical school” economists.<sup>111</sup> These religiously informed, German-trained economic experts typified the kind of academic scholar who sought to communicate a morally engaged vision of economic reform. At the same time, these economic experts and tax reformers attempted to temper or moderate the populist leanings of religious leaders in an effort to make such reforms more palatable to elite policymakers.

### III. THE ETHICAL POLITICAL ECONOMISTS AND A TEMPERED VISION OF TAX REFORM

The social scientists were not alone in developing an “ethical school” of American political economy. Many Social Gospel leaders were also active in melding their liberal theology with political, economic, and social issues, and some were eager to join the academics in pursuing reform. Of the original fifty founding members of the AEA, roughly twenty were former or practicing ministers, including Washington Gladden who played an instrumental role in consulting with Ely about the formation of the association.<sup>112</sup> Indeed, Ely underscored that “a large and influential body of Christians” was interested in the AEA and that the future success of the organization rested on the “united efforts of Church, state, and science.”<sup>113</sup>

In promoting reform, the academics and religious leaders faced similar challenges. Like other political and social activists, they sought to carve out a middle ground between competing poles of thought.<sup>114</sup> For the social scientists, this meant operating between the extremes of

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109. See RUSSELL JACOBY, *THE LAST INTELLECTUALS* 6 (1987); Hollinger, *supra* note 16, at 137; Andrew Jewett, *Science and the Promise of Democracy in America*, 132 *DAEDALUS* 4, 68 (2003).

110. LEON FINK, *PROGRESSIVE INTELLECTUALS AND THE DILEMMAS OF DEMOCRATIC COMMITMENT* 30 (1997).

111. RICHARD T. ELY, *SOCIAL ASPECTS OF CHRISTIANITY AND OTHER ESSAYS* 118 (1889).

112. FURNER, *supra* note 10, at 75; Bradley W. Bateman & Ethan B. Kapstein, *Between God and the Market: The Religious Roots of the American Economic Association*, 13 *J. ECON. PERSP.* 249 (1999).

113. *Id.* at 71–72 (internal quotation marks omitted).

114. See KLOPPENBERG, *supra* note 64, at 160–70.

laissez-faire political economy and state socialism.<sup>115</sup> For the theologians and ethical leaders, it meant advancing a communal notion of salvation and material improvement without abandoning the importance of individual action and personal responsibility.<sup>116</sup> The social context of the times, to be sure, shaped the ideas and actions of the reformist academics and liberal theologians. But one of the defining aspects of this new “ethical political economy” was its ability to advance progressive state action while maintaining some ideological distance from socialism.

Yet, if the professional experts and the moral leaders shared a certain discomfort with being associated with socialism, they differed greatly when it came to applying their knowledge and beliefs to the specifics of tax reform. Whereas the ethical political economists almost uniformly supported the adoption of progressive taxes on incomes and inheritances, the social ministers were more cautious in turning to the state as the source of collective action, and thus they often refrained from taking definitive positions on tax reform debates. When they did take a stand, it was usually with the seemingly populist ideals of Henry George’s single-tax—a policy that nearly all professional political economists loathed as a hopelessly reactionary panacea. This fundamental difference over the single-tax, as we shall see, was a microcosm of the larger tension between the reform efforts of professional academics and their religious counterparts. Disagreement about the political ideology behind the single-tax and its practical feasibility reflected a deeper fissure about the meaning of reform, about how consequential social and economic change could be achieved.

#### A. *An Ethical Political Economy*

For the professional academics, ethical political economy was a unique combination of theory and practice. As Ely explained, his generation of political economists comprised the “ethical school” precisely because they not only “consciously adopt an ethical ideal,” but because they also “endeavor to point out the manner in which it is to be attained, and even encourage people to strive for it.”<sup>117</sup> The academics did not always agree on the precepts of an ethical political economy, but their religious upbringing and their exposure to the harsh realities of urban industrial life gave them a common bond and desire to use their

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115. FURNER, *supra* note 10, at 63–64; ROSS, *supra* note 10, at 13–15.

116. ABELL, *supra* note 26, at 48, 87, 251–54; THE SOCIAL GOSPEL IN AMERICA, *supra* note 27, at 6–8; HOPKINS, *supra* note 65, at 62, 90; MAY, *supra* note 26, at 57, 114, 265.

117. ELY, *supra* note 111, at 118.

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social scientific knowledge to improve society. Like all reformers, though, the progressive academics and ministers needed to demarcate the extents and limits of their support for state action. How far ought the polity go in intervening in economy and society? This was the central question confronting those reformers who saw taxation as pivotal to the reconstruction of a new social order.

The academics' personal and religious backgrounds shaped how they approached this question about the scope of state action. H.C. Adams and Ely were among the group of ethical economists who "were sons of evangelical families of New England heritage that valued moral conscience in social and political as well as personal life."<sup>118</sup> While their German training certainly enhanced their awareness of how a social-welfare state could deal effectively and compassionately with the excesses of industrialism, they "were already strongly motivated by evangelical religion"<sup>119</sup>—usually a strain of rural pietistic Protestantism. Even those who did not fit the traditional mold of New England liberal Protestantism were influenced by a religious and ethical environment. Edwin Seligman, the son of an affluent and assimilated New York City German-Jewish banking family, was reared in the open environment of Reform Judaism, and during his adult life he became a prominent member of Adler's Society for Ethical Culture.<sup>120</sup>

Yet, while their religious upbringing informed their lifelong beliefs, each of these figures also consciously separated themselves from organized religion to varying degrees, without completely renouncing their religious affiliations. In the process, they reoriented their religious and ethical values toward their chosen careers as professors of political economy. Along the way, they became more committed to the "intellectual gospel" than the Social Gospel or any of its moral variants. Seligman apparently rejected organized religion relatively early in life, but he remained an active supporter of Adler's Society for Ethical Culture; thus, ethical values informed his tax scholarship throughout his career.<sup>121</sup>

Ely and Adams had similarly tentative experiences with formal institutional religion without losing confidence in their Protestant faith.

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118. ROSS, *supra* note 10, at 102.

119. FURNER, *supra* note 10, at 49.

120. Scholars have generally attributed Seligman's moral inclinations to his family's commitment to Reformed Judaism, overlooking his connections to Adler's Ethical Culture Society. ROSS, *supra* note 10, at 103; Bateman, *supra* note 18, at 38.

121. According to his son Eustace, Edwin Seligman had "broken with Judaism psychologically, intellectually and every other way" relatively early in his life. Interview with Eustace Seligman, *supra* note 79.

Ely was raised in the agricultural region of Western upstate New York by a family of ardent Presbyterians dedicated to egalitarianism and social change who had hoped that young Richard would one day join the ministry.<sup>122</sup> Ely did not develop these clerical ambitions, but among his contemporaries he was the most deeply and directly engaged with the Social Gospel movement.<sup>123</sup> He developed a close relationship with Gladden and many other reform ministers; he was a frequent lecturer on the Chautauqua circuit of adult education, helping establish their Political Economy Clubs, and he wrote eloquently and passionately about how social Christianity informed modern political economy.<sup>124</sup>

Adams followed a similar path. He was born and raised in rural Iowa, the son of a Congregational minister and abolitionist leader, who also aspired to mold his son into a preacher. But like Ely, Adams did not share his father's zeal for the ministry. Even at an early age, he confided to his mother his recurring religious doubts.<sup>125</sup> After graduating from Grinnell College in 1874, Adams reluctantly entered Andover Theological Seminary, but soon left to try to find his own path toward ethical reform. He received a fellowship from John Hopkins University as one of its first graduate students and thus embarked on his academic career.<sup>126</sup> Although he rejected the ministry, he never turned his back on his Congregationalist beliefs. When Adams informed his father that he had chosen a career as an academic over the ministry, he emphasized the religious aspects of his new career. Quoting scripture for support, Adams told his father that providing the "voters of this country" with "a political education" was now his calling. "It is work of a lower order than dealing directly—profoundly—with the souls of men," Adams admitted, "but it is work which a follower of Christ may do."<sup>127</sup> Thus, Adams, like Ely, Seligman, and other academics,

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122. See generally RICHARD T. ELY, *GROUND UNDER OUR FEET: AN AUTOBIOGRAPHY* (1938).

123. *Id.*

124. *Id.* at 79–87; RADER, *supra* note 69, at 32–33, 64–65; Letter from Kate F. Kimball, Executive Secretary, The Chautauqua Literary and Scientific Circle, to Richard T. Ely (Nov. 15, 1892), Correspondence Mar–Nov 1892, Box 5, Richard T. Ely Papers, Wisconsin Historical Society, Madison, WI (copy on file with author) (discussing the organization of Political Economy Clubs).

125. Letter from Henry C. Adams to Mother (Oct. 23, 1870), Box 1, HCAP (on file with Bentley Library, University of Michigan); S. Lawrence Bigelow, I. Leo Sharfman & R.M. Wenley, *Henry Carter Adams*, 30 J. POL. ECON. 201, 201–11 (1922).

126. A.W. Coats, *Henry Carter Adams: A Case Study in the Emergence of the Social Sciences in the United States, 1850–1900*, 2 J. AM. STUD. 177, 179–83 (1968); ADAMS, *supra* note 98, at 11.

127. Letter from Henry C. Adams to Father (Ephraim Adams) (June 12, 1876) Correspondence 1876 Jan. – June, Box 1, HCAP (on file with Bentley Library, University of

channeled his religious and ethical sensibilities into his professional career and his government service.

Common religious and ethical backgrounds may explain why these academics brought an ethical perspective to their analysis of economic and fiscal issues, but an equally salient factor was the social context of the times. These figures came of age during the turbulent decades of the late nineteenth century, when the growing disparity of wealth and the concomitant increase in class conflict and labor unrest were part and parcel of the Gilded Age.<sup>128</sup> As modern economists have shown, the distribution of wealth in the United States became increasingly concentrated in the late nineteenth century.<sup>129</sup> Contemporary commentators were cognizant of this trend. In the early 1890s, federal statistician George K. Holmes estimated that the top nine percent of American families controlled nearly seventy percent of the nation's wealth.<sup>130</sup> Social critics seized on these and similar studies to assert that "indirect and inequitable taxation" was among the primary causes of this concentration of wealth.<sup>131</sup> The uneven development of American capitalism, of course, had an effect on industrial relations. The interchange of radical labor protests and conservative reactions heightened the social anxiety surrounding the role of an autonomous labor movement in an industrialized democracy. In 1886 alone, there were 1,500 strikes, none better known than the one leading to the Haymarket Riot and the subsequent backlash against organized labor.<sup>132</sup>

The social turbulence of the day was not lost on the aspiring social scientists. In fact, they sought to use their early expertise to assist the working-class and the nascent labor movement. As early as 1880, after searching for work on the streets of New York, Ely resolved to become an advocate for the working class.<sup>133</sup> Even before he became a leading

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Michigan).

128. ROBERT WIEBE, *THE SEARCH FOR ORDER, 1877-1920*, at 45-78 (1967); MELVYN DUBOFSKY, *INDUSTRIALISM AND THE AMERICAN WORKER 1865-1920*, ch. 2 (1975).

129. JEFFERY J. WILLIAMSON & PETER H. LINDERT, *AMERICAN INEQUALITY: A MACROECONOMIC HISTORY 67-75* (1980). For an overview of economic studies of nineteenth-century American inequality, see Clayne Pope, *Inequality in the Nineteenth Century*, in *THE CAMBRIDGE ECONOMIC HISTORY OF THE UNITED STATES* (Stanley L. Engerman & Robert E. Gallaman eds., 2000).

130. George K. Holmes, *The Concentration of Wealth*, 8 *POL. SCI. Q.* 589, 592 (1893). See also CHARLES B. SPAHR, *AN ESSAY ON THE PRESENT DISTRIBUTION OF WEALTH IN THE UNITED STATES* (1896).

131. Eltweed Pomeroy, *The Concentration of Wealth and the Inheritance Charge*, *AM. FEDERATIONIST*, July 1895, at 1, 1.

132. DUBOFSKY, *supra* note 128; P.K. EDWARDS, *STRIKES IN THE UNITED STATES, 1881-1974* (1981); WALTER LICHT, *INDUSTRIALIZING AMERICA: THE NINETEENTH CENTURY* (1995).

133. ELY, *supra* note 111, at 16-18; ELY, *supra* note 122, at 164-65; RADER, *supra* note 69,

voice for a new strand of institutionalist economics, Ely's early scholarship on socialism and American trade unionism reflected his allegiance to organized labor.<sup>134</sup> Adams was similarly struck by the extent of urban poverty during his graduate studies in Baltimore, and he too set out to use his knowledge of political economy to benefit the urban poor. "There is no study which comes into contact with daily life—affecting the conditions and happenings of men—as much as Political Economy," Adams informed his family.<sup>135</sup> His early scholarship also displayed an interest in labor relations, state regulatory power, and of course taxation.<sup>136</sup> Even Seligman, the scion of a prestigious banking family, was empathetic with trade unionism, as his early scholarship on the cooperative movement and Christian socialism suggests.<sup>137</sup>

Despite the apparent empathy with the working class, the ethical political economists refrained from taking bold stands when it came to defining the parameters of their nascent profession. When Ely drafted the initial charter for the AEA in 1885, he carefully described the state as "an ethical agency whose positive aid is an indispensable condition of human progress."<sup>138</sup> This language did not satisfy the more ardent statist among the ethical economists nor did it placate moderates like H.C. Adams and Seligman, who feared that such language might imply the AEA's endorsement of state socialism.<sup>139</sup> The association's final platform modified Ely's initial draft, but the organization's creation ultimately served the professional purpose of distinguishing the "new school" of ethical economics with its openness to state action, from the orthodox, laissez-faire theories of the old guard.<sup>140</sup>

Whereas the political economists were eager to explore the potential for using state power for ethical improvements, ecclesiastical leaders

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at 16.

134. See generally RICHARD T. ELY, *THE LABOR MOVEMENT IN AMERICA* (1886). See also ELY, *FRENCH AND GERMAN SOCIALISM IN MODERN TIMES* (1883).

135. Letter from Henry C. Adams to Mother (Oct. 22 1877), Correspondence, Box 1, HCAP (on file with Bentley Library, University of Michigan, Ann Arbor, MI).

136. See generally Henry C. Adams, *Relation of the State to Industrial Action*, 1 PUBLICATIONS OF THE AM. ECON. ASS'N 6 (1887); Henry C. Adams, *President's Annual Address to the Am. Econ. Ass'n* (Dec. 28, 1896), in 2 ECON. STUD. 7 (1897); Henry C. Adams, *Taxation in the United States, 1789-1816* (1878), in 2 JOHNS HOPKINS U. HIST. & POL. SCI. V, V-VI (1884).

137. See Edwin R.A. Seligman, *Owen and the Christian Socialists*, 1 POL. SCI. Q. 206 (1886); Edwin R.A. Seligman, *Two Chapters on the Medieval Guilds of England*, 2 PUBLICATIONS OF THE AM. ECON. ASS'N 9 (1887).

138. ELY, *supra* note 122, at 136.

139. FURNER, *supra* note 10, at 74.

140. SIDNEY FINE, *Laissez-Faire to the General Welfare State: A Study of Conflict in American Thought 1865-1901*, at 201 (1964). See also FURNER, *supra* note 10, at 74-75.

held a more cautious view of government power. This distinction proved to be critical. Liberal theologians and moral leaders were not completely opposed to state action, to be sure. Many realized that the reforms they called for would not be possible without an active role for the polity; “though the state cannot do everything,” wrote Gladden, “there are some things that it can do, and must do.”<sup>141</sup> Still, the religious leaders’ skepticism toward government intervention led them to take rather tentative positions on tax reform. By contrast, because the academics were more resolute in promoting state action, at least beyond the limited confines of conventional laissez-faire theory, their tax reform proposals were often more concrete, pragmatic, and forceful.

Unlike some of the more radical ethical economists, Social Gospel ministers retained a much greater faith in individual benevolence, goodwill, and the productive powers of private enterprise. Although they supported protective labor legislation, some believed that it was up to Christian employers to adhere to the Golden Rule. “Every employer over whom Christian motives have any power,” wrote Gladden, “ought to feel the weight of the obligations resting on him to establish between himself and his workmen a relation in which it will be natural for them as well as for him to obey Christian law.”<sup>142</sup> Other Social Gospel leaders were less sanguine about the eminent power of Christian love, but they were also skeptical of state power. For Rauschenbusch, the solution to the problems of industrialism did not rest solely with an activist state but with an empowered working-class. Similarly, Adler applied his ethical ideals to call for a new form of “organized democracy.” Though he favored state control and even ownership of natural monopolies, Adler had great faith in private associational ownership and control. Writing about labor relations, he declared that “group ownership is to favor the ethical ends of a calling. Every worker is to have an interest in the business, and is to be encouraged to contribute to the advancement of the calling.”<sup>143</sup>

There were many reasons why the religious and ethical leaders were dubious about state action. Their exposure to the corruption of urban party politics certainly dampened any theoretical enthusiasm they might have had for a well-functioning democratic polity. Gladden, in his days as a journalist, saw firsthand how Boss Tweed’s urban political machine operated.<sup>144</sup> By 1907, Rauschenbusch became convinced that American

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141. GLADDEN, *supra* note 55, at 100.

142. *Id.* at 99–100.

143. Adler quoted in FRIESS, *supra* note 78, at 151.

144. DORN, *supra* note 52, at 33.

political democracy was in crisis, and the root cause was the growing economic inequality. “Politics is embroidered with patriotic sentiment and phrases,” he wrote, “but at bottom, consciously or unconsciously, the economic interests dominate it always.”<sup>145</sup> Adler, likewise, questioned the effectiveness of liberal democracy in an industrial age, though he held out some hope. “Our system of government,” he wrote, “may be described as a system carried on by professional politicians, in a league with powerful special interests, intermittently modified and sometimes irresistibly directed by the force of public opinion.”<sup>146</sup>

If the malfeasance of American party politics undermined faith in government, the impending specter of socialism proved to be a far more formidable force. Indeed, disassociating ethical political economy from state socialism had always been a major concern for ministers and academics alike, one that undeniably affected their conflicting visions of tax reform.

### *B. Distancing the Socialist Threat*

Despite their measured confidence in government action, most of the political economists were ambivalent toward socialism. On the one hand, they were attracted to the use of public power to address the excesses of private capital. On the other, they denounced an orthodox view of state socialism because, for many, it did not mesh well with their internal religious sensibilities and their faith in an individual’s covenant with God. And for others, European style socialism did not correspond with an American political culture ostensibly committed to individualism and private enterprise. Even if some academics were willing to put aside these difficulties, external political pressure exerted by university authorities often forced them to moderate their public pronouncements. This political pressure fed into the developing professional norm that “true” academics were non-partisan, objective experts who used their knowledge not for political purposes, but for the scientific analysis of public policy.

Congregationalists like H.C. Adams seemed the most reluctant to embrace state socialism. Though he advocated early in his career for labor’s “proprietary rights” in industrial capital,<sup>147</sup> he did not believe that conventional socialism was viable in the United States. Writing to his mother during his European travels, Adams described German socialism as “a dream of a new creation in which the nature of man as

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145. WALTER RAUSCHENBUSCH, *CHRISTIANITY AND THE SOCIAL CRISIS* 254 (1907).

146. FRIESS, *supra* note 78, at 152 (quoting Adler).

147. Adams, *supra* note 136, at 471–549.

well as social organization must be entirely remodeled.” Such a communal view of society, he wrote, “cannot exist and spread in America because we love our homes to [sic] much. Men are too exclusive in their habits to want commonality in everything.”<sup>148</sup> Adams later admitted that he learned a great deal about the historical and institutional roots of industrialism “through the study of socialism,” and that he saw “much benefit in their criticism, and . . . much justice in their claims,” but he reassured his family “not to be frightened,” and that he was “no socialist.”<sup>149</sup> Though Adams did not explicitly mention his religious faith, his Congregationalist sensibilities may have inoculated him from wholeheartedly accepting a political philosophy that left little room for individual free will and the autonomy of local churches to commune with God. Moreover, any residual affinity that Adams initially may have had toward socialism quickly dissipated in the early years of his career when political pressures placed his professional academic career in peril, serving to remind him of the limits of American academic freedom.<sup>150</sup>

Gladden, as a Congregationalist pastor, shared some of Adams’s sentiments. In a chapter on “Strengths and Weaknesses of Socialism” in his highly acclaimed book, *Applied Christianity: Moral Aspects of Social Questions*, Gladden began with a list of reasons why socialism was incompatible with Christianity.<sup>151</sup> While he agreed with the socialists’ condemnation of unregulated industrialism, he disagreed with their prescriptions for change—particularly the elimination of private enterprise, which Gladden, along with many other ministers, believed was the “motive power of material civilization.”<sup>152</sup> Just as his solution to the labor question was to turn to the Golden Rule and the Christian benevolence of capitalists, he also believed that large-scale social reform ought to come from religious, not radical political change. Conflating socialism with anarchism, he declared, “the reform needed is not the destruction, but the Christianization of the present order.”<sup>153</sup>

Other academics and ministers had much less trouble reconciling their internal faith with socialism. Unsurprisingly, Ely did not think that

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148. Letter from Henry C. Adams to Mother (Aug. 4, 1878) Correspondence 1876 Jan. – June, Box 1, HCAP (on file with Bentley Library, University of Michigan, Ann Arbor, MI).

149. Letter from Henry C. Adams to Mother (Oct. 13, 1878; Nov. 1, 1878), Correspondence 1876 Jan. – June, Box 1, HCAP (on file with Bentley Library, University of Michigan, Ann Arbor, MI).

150. Dorfman, *supra* note 98, at 37–42.

151. GLADDEN, *supra* note 55, at 86–101.

152. *Id.* at 94.

153. *Id.* at 98.

using the state to own and control the means of production or to redistribute wealth through a robust tax and transfer system was anathema to social Christianity. On the contrary, he contended that the state “is religious in its essence,” and that God worked “through the state in carrying out His purposes more universally than through any other institution.”<sup>154</sup> Rauschenbusch concurred; for him, socialism and Christianity were not incompatible. As scholars have shown, Rauschenbusch believed socialism was “not primarily an economic program but a moral principle justifying a variety of policies.”<sup>155</sup> To be sure, Rauschenbusch disavowed Marxist materialism and atheism, but he thought that socialism was, as he put it, “the most powerful force for justice, democracy, and organized fraternity in the modern world.”<sup>156</sup>

Still, while Rauschenbusch spoke freely about Christian socialism, the aspiring professional academics did not share the same freedom in their pronouncements on scientific socialism. Ely, like Adams, was forced to restrain his public statements and teachings on socialism when the bounds of academic freedom became severely tested. In the mid-1890s, a member of the Board of Regents at the University of Wisconsin accused Ely of teaching socialism and anarchism and of participating in local strikes and boycotts. Ely recoiled at the allegations, but rather than defend his right to academic freedom, he disavowed much of his radicalism, highlighting instead the moderate and conservative tendencies of his writings.<sup>157</sup> The experience had a profound impact not only on Ely, who de-emphasized his pro-labor stance and altered his writings to reflect a more conservative ideology, but also on the professionalization of the social sciences.<sup>158</sup> Together with several other academic freedom cases of the time, Ely’s experience illustrated the sharpening distinction between acceptable objective scholarship and unacceptable popularized advocacy.<sup>159</sup>

Besides their internal religious leanings and external political pressures, the political economists re-cast their views of socialism for

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154. ROBERT T. ELY, *THE SOCIAL LAW OF SERVICE* 162–63 (1896); FINE, *supra* note 140, at 180–81.

155. HARLAN BECKLEY, *PASSION FOR JUSTICE: RETRIEVING THE LEGACIES OF WALTER RAUSCHENBUSCH, JOHN A. RYAN, AND REINHOLD NIEBUHR* 92 (1992).

156. WALTER RAUSCHENBUSCH, *CHRISTIANIZING THE SOCIAL ORDER* 397 (1912).

157. MERLE EUGENE CURTI ET AL., *THE UNIVERSITY OF WISCONSIN: A HISTORY* 53–69 (1949); SPECIAL COMM. OF THE AMER. ASS’N OF UNIV. PROFESSORS, *ACADEMIC FREEDOM AND TENURE IN THE QUEST FOR NATIONAL SECURITY*, 42 *AAUP Bulletin* (1956), reprinted in WALTER P. METZGER, *THE AMERICAN CONCEPT OF ACADEMIC FREEDOM IN FORMATION* 220–54 (1977); RADER, *supra* note 69, at 130; FURNER, *supra* note 10, at 155–59.

158. RADER, *supra* note 69, at 130–31; ELY, *supra* note 122, at 178–79.

159. See generally METZGER, *supra* note 157.

other more self-interested reasons. Some feared that connections with a highly partisan and controversial political movement would jeopardize their prestige and status as apolitical experts. Just as adherence to the “intellectual gospel” required the political economists to transcend the subjectivity of religious experience, so too did it demand that they disavow any political bias that could color the ethic of scientific justification. As the historian Thomas Bender has recently shown, there was perhaps no better exemplar of this view than Seligman.<sup>160</sup> At the founding of the AEA, it was Seligman who countered Ely’s call to use the new association to define the ideological purity of the new school of ethical political economy. Seligman argued, instead, that the AEA, as an authoritative professional organization, ought to appeal to a broader perspective of expertise.<sup>161</sup>

The son of a prominent banking family, Seligman had his own ideological leanings, but he seemed to be driven less by his affinity for progressive capitalism than by his desire to maintain the authority of experts—an authority that he believed emanated from the profession’s avowed neutrality. “The economist, if he is an honest man, tries to represent the common interests of society,” Seligman declared.<sup>162</sup> “The statesman may have to appeal to class interests in order to secure his practical ends,” he explained, “but the economist, if he has any conception of his real mission, will repudiate with scorn the imputation that he is endeavoring to subserve the special interests of any individual or of any social class.”<sup>163</sup> Many of Seligman’s colleagues agreed.<sup>164</sup> Taking sides rather than reconciling conflicting interests, they contended, would ultimately retard the development of their discipline as a rigorous and respected profession. Seligman’s vision of the “expert, working within dominant institutions, somewhat isolated from public opinion and free of politics, became the foundation of a putatively neutral professional social science in America.”<sup>165</sup>

### *C. Religion, Science, and Tax Reform*

A commitment to political neutrality was one way to build the institutional foundations of an emerging community of professional inquirers. Another was to reaffirm an allegiance to science over all

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160. See generally BENDER, *supra* note 99.

161. *Id.* at 59–60, 63.

162. John R. Commons et al., *Discussions of the President’s Address*, 1 PUBLICATIONS OF THE AM. ECON. ASS’N 62, 83 (1900).

163. *Id.* at 84.

164. FURNER, *supra* note 10, at 99.

165. BENDER, *supra* note 99, at 63.

other methods of knowledge, including religious belief. Just as the ethical political economists sought to mediate between orthodox laissez-faire and state socialism, they also attempted to navigate between their religious and ethical motivations and their commitment to scientific knowledge. For some, this was a false choice. Early in his career, Ely believed that religion could be reconciled with social scientific analysis, just as he maintained that progressive reform necessarily entailed an American version of state socialism. Thus, Ely saw no distinction between the “intellectual gospel” and the Social Gospel.<sup>166</sup>

Ely was in the minority, however. The vast majority of his colleagues believed that ethical political economy could be most useful for public policy if it arrived at its ideals and policy proposals through detached and objective scientific analysis. Nowhere was this presumed neutrality more pertinent than in the investigation of the controversial issue of progressive taxation. To illustrate their scholarly and scientific objectivity, many ethical economists refrained from discussing the religious roots of their tax theories. In this way, what they did *not* write or say was nearly as telling as what they did.

In his treatise on public finance, one of the first-written by an American scholar, H.C. Adams dedicated nearly 1,000 pages to an analysis of “the wants of the State and the means by which those wants may be supplied.”<sup>167</sup> But he refrained from making direct links between his Congregationalist faith and his scientific findings. Only in the preface to his treatise did he obliquely reference what he saw as the religious impulse behind the growing movement for progressive taxes. The move towards progressive taxation based on ability to pay, Adams wrote, was derived from the “New Testament doctrine of service,” and its adoption “showed that the modern science of finance recognizes one of the fundamental principles of Christian ethics.”<sup>168</sup> The rest of the treatise trenchantly analyzed the salience of taxes, public debts, budgets, and similar topics, but it did not elaborate on how “Christian ethics” influenced the development of modern public finance. The ethics of science, for Adams, seemed to overshadow the ethics of Jesus.

When it came to writing about taxation, even Ely was surprisingly circumspect. As we have seen, Ely was not timid in spotlighting the state’s Christian responsibilities toward ethical reform. This was

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166. See *supra* notes 138, 154 and accompanying text.

167. ADAMS, *supra* note 100

168. *Id.* at 329. In his earlier treatise on the more narrow topic of public debts, Adams was equally reticent about linking his faith with his social scientific analysis. See generally HENRY CARTER ADAMS, PUBLIC DEBTS: AN ESSAY IN THE SCIENCE OF FINANCE (1887).

evident in much of his writings on labor, where he reminded his readers that “Christ forever elevated labor and exalted the laborer.”<sup>169</sup> But in attending to the links between his Christian faith and his support for progressive taxes, Ely was rather muted. There is no mention of taxation in *The Social Aspects of Christianity*, the most religiously imbued of his works.<sup>170</sup> Similarly, his treatise on subnational taxation, which grew out of his work for the city of Baltimore and the state of Maryland, had little to say about the role of religion in tax policy.<sup>171</sup>

The reticence of the religiously inclined economists did not mean that they failed to see the hand of providence behind tax reform. It only meant that, in addressing the larger public, they were careful to foreground their allegiance to economic science. In doing so, they inadvertently perhaps facilitated the secularization of religiously inspired tax reform and the privileging of scientific expertise over populist protest. Thus, for the political economists, the moral support behind tax reform was not rooted in religious practices or creeds, but rather emanated from a religious spirituality that informed ethical imperatives, including the ethic of science.

Once again Seligman seemed to be the paradigmatic case. As a leading member of Adler’s Society for Ethical Culture, he embraced the power of moral and ethical values, especially as it applied to late nineteenth-century tax policy. Writing in the *Political Science Quarterly*, Seligman noted in 1894 that “whereas in former years the income tax was adopted chiefly from considerations of revenue, there is of late a growing tendency, especially in the more democratic communities, to utilize the income tax as an engine of reparation—a means of attaining greater justice.”<sup>172</sup> Seligman’s focus on social justice ideals suggests that the notions of ethical culture and a secularized Social Gospel undoubtedly influenced his ideas about fiscal development.

Yet, ultimately, Seligman was a modern social scientist who was preoccupied with how economic forces were the key determinants of incremental, progressive reform. Relatively early in his career, he

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169. See generally ELY, *THE LABOR MOVEMENT IN AMERICA*, *supra* note 134, at xi. In some of his other scholarship Ely pointed out, albeit briefly, the Christian duty to address growing poverty and inequality. See, e.g., RICHARD T. ELY, *THE PAST AND PRESENT OF POLITICAL ECONOMY* 25 (1884).

170. See generally ELY, *supra* note 111.

171. See generally RICHARD T. ELY, *TAXATION IN AMERICAN STATES AND CITIES* VII (1888). Ely noted the hypocrisy of the faithful Christian who “is but too ready to browbeat the tax-assessor and shift his just burden to the shoulders of the weak and defenseless.” *Id.* at viii.

172. Edwin R.A. Seligman, *The Income Tax*, 9 *POL. SCI. Q.* 610, 616 (1894).

delved into the philosophy of history, writing a monograph on *The Economic Interpretation of History*. This sprawling tract not only illustrated Seligman's economic determinism, it also influenced a subsequent generation of progressive scholars including Charles Beard.<sup>173</sup> In his main works on taxation, Seligman applied his crude economic determinism and his historicist leanings to an analysis of the development of tax law and policy.

If the history of taxation teaches any one lesson, it is that all social and moral advance is the result of a slow process and that while fiscal systems are continually modified by the working out of ethical ideals, these ideals themselves depend for their realization upon the economic forces which are continually transforming the face of human society.<sup>174</sup>

Thus, for Seligman, it appears that economics trumped ethics, or at least that a commitment to the ethics of economic science meant much more than any residual faith in an ethics of religion.

Even as the political economists were privileging science over religion, the Social Gospel ministers were tentatively turning to social science studies of tax policy to understand social and economic issues. Like the academics, moral leaders were alarmed by the rise in inequality and class tensions. Leveling the concentration of wealth was, for many, essential for the future survival of a Christian Commonwealth. "Wealth—to use a homely illustration—is to a nation what manure is to a farm," Rauschenbusch wrote using his gift for vivid metaphors; "if the farmer spreads it evenly over soil, it will enrich the whole. If he should leave it in heaps, the land would be impoverished and under the rich heaps the vegetation would be killed."<sup>175</sup> Gladden concurred. He cited his good friend Richard Ely's summary of Karl Marx to underscore the notion that the uneven development of industrial capitalism necessarily created a restless "army of reserve forces" in the form of unemployed labor.<sup>176</sup>

The ministers also agreed with the academics that taxation could be a critical instrument to address social concerns. For the political economists, one of the most vexing problems of the existing fiscal system was its dominant reliance on indirect taxes such as tariffs and

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173. See generally EDWIN R.A. SELIGMAN, *THE ECONOMIC INTERPRETATION OF HISTORY* (2d ed. 1907) (1902); Clyde W. Barrow, *From Marx to Madison: The Seligman Connection in Charles Beard's Constitutional Theory*, 24 *POLITY* 379 (1992); RICHARD HOFSTADTER, *THE PROGRESSIVE HISTORIANS: TURNER, BEARD, PARRINGTON 197–200* (1968).

174. EDWIN R.A. SELIGMAN, *ESSAYS IN TAXATION* 18 (1921) (originally part of his 1903 AEA presidential address).

175. RAUSCHENBUSCH, *supra* note 145, at 281.

176. GLADDEN, *supra* note 55, at 66.

excise levies. These taxes were placed on importers and manufacturers, but were presumably paid mainly by everyday consumers. Although the academics led by Seligman knew that there was no meaningful economic distinction between direct and indirect taxes, they realized that there were sound social, political, and legal reasons for replacing indirect taxes on consumption with direct levies on income and wealth.<sup>177</sup>

One reason why the ethical political economists favored direct taxes was because of their visibility and express link to government. Because it was often unclear who ultimately paid indirect taxes like the tariff, theorists argued that citizens were frequently unaware of how they were financially supporting their governments. Thus, they had only a tangential connection to the state and remained detached from the governing process. As Ely explained, the opaque nature of indirect taxes and their uncertain incidence were obstacles to the promotion of good government. A direct tax on income, Ely contended, was “precisely the kind of tax needed” to reengage otherwise indifferent citizens with the political process. “It is beyond question,” Ely concluded, that a fairly ministered income tax “would change the attitude of a large portion of the community towards government.”<sup>178</sup> Other religiously inclined tax experts were more lucid in revealing the relationship between direct taxes and good governance. As the Unitarian lawyer and ethical reformer, Henry W. Sprague explained:

Taxes should be collected directly from the people, and that by this method alone we shall check the riot of expenditure, which is getting to be the most evil tendency of our State governments. When the people realize that they have to foot the bills by direct taxation, a check upon this waste of public funds will come, and not until then.<sup>179</sup>

Rauschenbusch went even further in criticizing indirect taxes. In his influential 1912 book, *Christianizing the Social Order*, he advocated eliminating indirect consumption taxes to mitigate government corruption and “resocialize our revenue system.”

The surest way to make our taxation serve public uses only is to collect direct taxes only. Indirect taxes are supposed to be easy to collect because the people do not feel them. . . . They are, in fact, an invention of unsocial governments, of an age when Government and

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177. EDWIN R.A. SELIGMAN, *ESSAYS IN ECONOMICS* 315 (1925).

178. ELY, *supra* note 171, at 290.

179. Letter from Henry W. Sprague to Samuel A. Eliot, Officer of Am. Unitarian Ass'n (Jan. 15, 1912), BMS 11060-1, American Unitarian Association, Department of Social and Public Welfare, Admin. Records: Taxation Committee, 1911–12, Harvard University Divinity School Archives, Cambridge, MA (copy on file with the author).

the People were not identical, but hostile interests. Indirect taxes are a cover for all kinds of deceptions, and in the end the most costly of all taxes.<sup>180</sup>

Though academics like Seligman may have contested some of Rauschenbusch's claims about the incidence of indirect taxes, they generally shared his defense of direct taxes.

In fact, the tax theorists were leading the intellectual campaign to replace the prevailing system of indirect and regressive taxes with direct and graduated levies based on the notion of ability to pay.<sup>181</sup> As early as 1888, Ely had proclaimed, with some hyperbole, that a direct tax on income "is the fairest tax ever devised" because "it places a heavy burden when and where there is strength to bear it, and lightens the load in case of temporary or permanent weakness."<sup>182</sup> Adams agreed, though with less exaggeration. "Assuming the ability to pay to be the just measure of payment," he intoned, "income is accepted as the surest test of ability."<sup>183</sup> Seligman was the staunchest proponent of progressive income taxes. He viewed such levies as an ideal-typical way to capture a citizen's faculty or taxpaying ability. Responding to laissez-faire critics, who charged that "progressive taxation necessarily implies socialism and confiscation," Seligman countered that "[i]t is quite possible to repudiate absolutely the socialistic theory of taxation and yet at the same time advocate progression."<sup>184</sup> Although he held some practical reservations, Seligman believed that a graduated income tax could help establish an equitable distribution of tax burden; it could help "round out the existing tax system in the direction of great justice."<sup>185</sup>

While the religious and ethical leaders joined the political economists in criticizing indirect taxes, they were more cautious in their support for specific tax reform proposals. Some like Gladden rather tentatively backed the progressive income tax. "It may become the duty of the state to reform its taxation, so that its burdens shall rest less heavily upon the lower classes," he wrote, "and possibly to levy a progressive income tax, so that the enormous fortunes should bear more, instead of less, than their share of the public burdens."<sup>186</sup> Gladden's guarded

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180. RAUSCHENBUSCH, *supra* note 156, at 428–29.

181. *See generally* Mehrotra, *supra* note 31.

182. ELY, *supra* note 171, at 288–89.

183. ADAMS, *supra* note 167, at 356–57.

184. Edwin R.A. Seligman, *The Theory of Progressive Taxation*, 8 POL. SCI. Q. 220, 222 (1893).

185. Seligman, *supra* note 172, at 610.

186. GLADDEN, *supra* note 55, at 101. Gladden equated a tax on wealth with the state's other

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remarks were characteristic of a Social Gospel movement that was hesitant to turn to state power as the savior for the problems of modernity. Adler was more forceful in his endorsement, but he too was taciturn about his reasoning. Though fiscal policy was not as salient to him as urban issues of housing, sanitation, and health policy, he followed Seligman in disaggregating progressive taxation from socialism. “Income tax legislation is right in that the burden should be placed on the wealthy and not on the poor,” wrote Adler. “It is possible to believe in an extension of the powers of the state and still not be a socialist.”<sup>187</sup>

If the moral leaders and political economists shared some common, though shaky, ground in their general advocacy for tax reform, they parted company when it came to supporting the most popular late nineteenth-century tax reform proposal: Henry George’s single-tax. Whereas Christian socialists like Rauschenbusch and grassroots religious groups wholeheartedly endorsed George and the single-tax, the professional academics nearly unanimously discredited the single-tax as an unscientific and reactionary panacea. This fissure was the most decisive way in which the professional political economists domesticated the critical aspects of morally influenced tax reform. By undermining popular support for the single-tax, they brought a degree of pragmatism to tax policy debates. But in the process they also circumscribed the spectrum of fiscal reform.

Henry George was a journalist-turned-economic-commentator who tapped into the American anti-monopoly tradition and the fervor of evangelical Protestantism to propose his own type of fiscal reform that was deeply at odds with the ideas of professional political economists.<sup>188</sup> In his hugely popular book, *Progress and Poverty*, and in subsequent writings on political economy, George advocated that the government impose a levy only on increases in land values—a single tax on what George referred to as the “unearned increment” of appreciated land.<sup>189</sup> After his book burst onto the scene in 1879, the popularity of the treatise led many social movements to take up the call

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police powers: “The keeping up of such fortunes is against public policy, and the state has the same right to discourage them that it has to inspect factories or ships, or tax saloons, or to prohibit the erection of a slaughter-house upon the public square.” *Id.* For more on the antebellum police powers of state governments, see WILLIAM J. NOVAK, *THE PEOPLE’S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA* (1996).

187. Felix Adler, *Definition of Socialism*, GALVESTON DAILY NEWS, Jan. 22, 1895, at 1.

188. See generally CHARLES A. BARKER, *HENRY GEORGE* (1955); STEPHEN B. CORD, *HENRY GEORGE: DREAMER OR REALIST?* 213 (1965); THOMAS, *supra* note 11, at 173–202.

189. GEORGE, *supra* note 11, at 359–60; HENRY GEORGE, *THE SCIENCE OF POLITICAL ECONOMY* 150–51 (1897).

for a single-tax. The book was especially appealing to organized labor. As early as 1885, Richard Ely observed that “tens of thousands of laborers have read *Progress and Poverty*, who have never before looked between the two covers of an economic book.”<sup>190</sup> Accordingly, throughout the 1880s and 1890s, and well into the early twentieth century, the single-tax became an immensely popular social movement, calling for a tax on land, specifically ground rent, as the exclusive source of all government revenue.<sup>191</sup>

George’s single-tax on land was a simple, if not simplistic, idea aimed at curbing land speculation and forestalling more radical attempts at tax reform. Because George believed that land was the source of all wealth, he argued that it should be taxed as common property. Combining such diverse sources as the teachings of the Bible and Aristotle, George concluded that the “unearned increment” on land came from the growth of populations—from society itself—rather than individual effort, and thus the state had an obligation to reclaim such “unearned increment” on behalf of society.<sup>192</sup> The rhetoric of reclaiming the value created by society had a socialistic ring to it, but George was no socialist. Instead, he maintained a rather traditional commitment to individualism, arguing that the fruits of individual labor belonged to the individual and that the state had very little role to play in economic or social matters beyond levying a single-tax on land. With a severely narrow role for the state, George believed that there was little need for any tax beyond one on the unearned increment of land rent. It was only the people’s natural share in wealth that he sought to tax as revenue for an otherwise limited polity. Although George’s ideas appealed to urban laborers because of his populist attacks on land speculators and monopolists, the single-tax itself was premised on a conservative, if not reactionary, view of individualism and the role of state power.

George’s idea of using a single tax to address nearly all of the ills of modern capitalism caught on with populist leaders, including many among the Social Gospel movement. The single-tax seemed to appeal to the Social Gospel’s own attempts to reconcile individual faith with social reform. “I owe my first awakening to the world of social

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190. 2 PHILIP S. FONER, HISTORY OF THE LABOR MOVEMENT IN THE UNITED STATES 120 (1979) (quoting Richard T. Ely).

191. On the popularity of the single tax movement, *see generally* ARTHUR P. DUDDEN, JOSEPH FELS AND THE SINGLE TAX MOVEMENT (1971); ARTHUR N. YOUNG, THE SINGLE TAX MOVEMENT IN THE UNITED STATES (1916); Peter Speek, *The Single Tax and the Labor Movement* 87–88 (1915) (unpublished Ph.D. dissertation, University of Wisconsin).

192. GEORGE, *supra* note 11, at 359–360; GEORGE, *supra* note 189, at 150–51.

problems to the agitation of Henry George,” recalled Rauschenbusch fondly, “and [I] wish here to record my lifelong debt to this single-minded apostle of a great truth.”<sup>193</sup> Other ministers preached about the moral justice of George’s ideas. And single-tax leagues, often created by church groups drawn to George’s reference to his evangelical Christian faith, emerged throughout the country.<sup>194</sup> When George ran for mayor of New York City in 1886, he had the backing of several labor leaders and Social Gospel ministers like Gladden and Rauschenbusch. Although he did not win—finishing behind Abraham Hewitt, but ahead of Theodore Roosevelt—the strength of his candidacy indicated the broad urban support for his views.<sup>195</sup>

Despite the outpouring of popular support for George and his ideas, the professional academics were resolutely opposed to the single-tax. As advocates of using government power as an “ethical agency,” they were dismayed by George’s rather narrow conception of the sources of state revenue. And as promoters of social solidarity, the ethical political economists were equally distrustful of George’s adherence to a reactionary notion of individualism. Even Ely, who one would expect to be sympathetic toward George and his Biblical references and evangelicalism, was suspicious. “[Henry George] is in this respect what some might call an ultra-conservative,” wrote Ely, “for he does not believe in taxes at all, but holds them to be robbery . . . . The truth is, there is in modern society no such individual production as Mr. George assumes. What have I produced alone and unaided? Nothing.”<sup>196</sup> Even for Ely, then, who seemed to be wrestling constantly with the challenge of reconciling his dueling allegiances to science and religion, the science of public finance meant much more than the populism of seemingly radical fiscal demands. In spite of his religious leanings, Ely appeared to choose the science of finance over the populism of the single-tax.

Other professional academics were quick to pick up the cudgel. In an 1890 public debate at the annual meeting of the American Social Science Association, Seligman unsurprisingly took the lead in exposing George as an “unscientific” amateur. In seeking to show how the single-tax violated the “chief principles” of taxation, namely “universality, equality, and justice,” Seligman concluded that the single-

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193. RAUSCHENBUSCH, *supra* note 156, at 394.

194. YOUNG, *supra* note 191, at 116.

195. David Scobey, *Boycotting the Politics Factory: Labor Radicalism and the New York City Mayoral Election of 1884*, 28-30 *RADICAL HIST. REV.* 280, 313 (1984).

196. ELY, *supra* note 171, at 16-17.

tax was a “naive idea” that did not have the support of the true community of specialized scientific inquirers.<sup>197</sup>

Throughout the wide world today there is not a single man with a thorough training in the history of economics, or an acquaintance with the science of finance, who is an advocate of the single-tax on land values. In biology, in astronomy, in metaphysics, we bow down before the specialist; but every man whose knowledge of economics or the science of finance is derived from the daily papers, or one or two books with lop-sided ideas, thinks that he is a full-fledged scientist, able to instruct the closest student of the markets or of the political and social organism.<sup>198</sup>

George did not take this damning indictment lightly. In addition to addressing Seligman’s substantive criticism of the single-tax, George fired his own salvo against the class bias of professional academics. “Given a great social wrong that affects the distribution of wealth,” George declared in response to Seligman, “it is in the nature of things that professors of political economy should either belong to or consciously or unconsciously be influenced by the very class who profit by the wrong, and who oppose, therefore, all means for its remedy.”<sup>199</sup>

An even greater concern for George was not just the inherent class bias of professional political economists, but how they deployed the guise of expertise to foreclose democratic discussion of important everyday topics. Citing Seligman’s comparison of public finance to the natural sciences, George responded that the good professor elided how the study of political economy was unlike the study of biology and astronomy, particularly in its quotidian ramifications. “If we cannot all study political economy—the science whose phenomena lie about us in our daily lives, and enter into our most important relations, whose laws lie at the bottom of questions we are called on to settle with our votes—then democratic republican government is doomed to failure,” intoned George, “and the quicker we surrender ourselves to the government of the rich and learned, the better.”<sup>200</sup>

By coupling the rich with the learned, George attempted to turn the tables on his critics. For if George, as his critics claimed, was only a seemingly amateur economic expert, who did not deserve the attention of serious policymakers, the professional academics were elitists who were not only badly out of touch with the common concerns of the public, but who also sought to wield their authority to ensure that their

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197. Edwin R.A. Seligman, *Single Tax Debate*, 27 J. SOC. SCI. 34, 35, 44 (1890).

198. *Id.* at 44.

199. Henry George, *Single Tax Debate*, 27 J. SOC. SCI. 73, 84 (1890).

200. *Id.* at 85.

ideas and prescriptions—and only theirs—were the true guides for lawmaking. With such fiery populist retorts, it is little wonder that George inspired Rauschenbusch and many other religious and populist leaders.

Still, there was a seeming paradox behind the class implications of George's comments and the ecclesiastic support for the single-tax. For while Gladden, Rauschenbusch, and other ethical leaders were trying to appeal to the downtrodden community of the working poor, they had their greatest impact on middle-class reformers, those who had the power and authority to guide social and economic reform. The liberal theology of the turn of the twentieth century, of which the Social Gospel was the leading part, "did not grow out of actual suffering," as the historian Henry May noted long ago, "but rather out of a moral and intellectual dissatisfaction with the suffering of others. It originated not with the 'disinherited' but rather with the educated and pious middle class."<sup>201</sup> The rhetoric and popularity of Henry George and his single-tax may have afforded theologians like Rauschenbusch with a chance to reach the masses, but in the end it was the moderate and practical positions advanced by the professional political economists that appealed to middle-class reformers and eventually won the day.

#### CONCLUSION

The liberal theologians and ethical leaders at the center of late nineteenth and early twentieth century social reform eventually gave way to a subsequent generation of neo-orthodox religious and moral leaders. But not before they had a profound impact on the development of progressive reform—including the move toward direct and graduated taxes. Their influence was felt less by the details of their reform proposals, than by the general humanitarian reform culture that they helped cultivate. This social Christian and ethical culture of reform inspired the first generation of American political economists who were leaders in fiscal reform. With their religious upbringings and their exposure to the harsh realities of urban industrial capitalism, the aspiring professional tax theorists acknowledged their moral and ethical responsibilities to use social-scientific knowledge and expertise to reconstitute a new fiscal order.

Yet, at the same time, the professors of political economy also felt a professional and institutional obligation to privilege an "intellectual gospel" over the Social Gospel, to favor science over religion, and to

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201. MAY, *supra* note 26, at 235.

prefer pragmatism over populism. As heirs of the enlightenment tradition of reason, they believed that they needed to support their calls for reform not with faith in a higher power, but with human intellect and agency. Thus, in much of their scholarly and even public writings, they were careful not to link explicitly their religious and ethical sentiments to their social scientific analyses of tax reform. Moreover, while they shared with the moral leaders a concern for those who suffered the ravages of industrialism, they parted company with those liberal theologians who supported what the social scientists saw as radical and “unscientific” approaches to social improvement. Indeed, the professional political economists actively undermined those religiously inspired reform proposals that appeared to be obstacles to the advancement of the “science of finance,” reform proposals such as Henry George’s single-tax—the seemingly populist tax reform idea that had captured the imagination of many church leaders and working class citizens. As a result, the professional social scientists redirected the energies and demands of religiously motivated thinkers toward tax reform. In doing so, they circumscribed the limits of acceptable social and public policy discourse about American tax law and policy. In their careful and pragmatic analysis of public finance, they ultimately did as much to temper—as to advance—fiscal reform.

This historical story about the changing dynamics between religious leaders and professional social scientists provides some insight into the broader scholarly presumption about the historical links between liberal theology and progressive tax reform. This essay suggests that the causal relationship between the fervor of liberal religion and the rise of a new fiscal order in the early twentieth century was not nearly as direct as much of the literature has assumed. Rather, the interaction of these two important reform movements was influenced, and moderated, by an important and intermediary third historical phenomenon, namely the increasing professionalization and secularization of American intellectual life. Consequently, the religious and ethical underpinnings of the modern American progressive income tax are more attenuated than one would generally expect. The early twentieth century transformation in American tax policy did not emerge expressly from liberal Protestant roots. It came instead from the ethical echoes of a broader moral and spiritual outlook.

In the end, though, this essay is meant to be more than merely a modest corrective to the existing legal and historical scholarship. This ambivalent historical tale about liberal theology and progressive tax reform is also intended to be a reminder of how the complex and contingent dynamics of religion, ethics, and science have informed the

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development of our current tax system. As scholars and public intellectuals continue to consider how faith-based ethics affect present public policies, including tax policy,<sup>202</sup> and as they consider whether the apparent waning of the religious right provides an opportunity for the rise of a new religious left,<sup>203</sup> they may want to reflect on an earlier period in American history when social scientific expertise did as much to reorient as it did to instantiate religious values into the emergence of a new fiscal order.

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202. *E.g.*, Pace Hamill, *supra* note 2; Chodorow, *supra* note 2; Livingston, *supra* note 2.

203. *See, e.g.*, MICHAEL LERNER, *THE LEFT HAND OF GOD: TAKING BACK OUR COUNTRY FROM THE RELIGIOUS RIGHT* (2006); AMY SULLIVAN, *THE PARTY FAITHFUL: HOW AND WHY DEMOCRATS ARE CLOSING THE GOD GAP* (2008); E.J. DIONNE, JR., *SOULED OUT: RECLAIMING FAITH AND POLITICS AFTER THE RELIGIOUS RIGHT* (2008).