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The Intellectual Origins of the Modern International Tax Regime: Edwin R. A. Seligman, Economic Allegiance, and the League of Nations' 1923 Report

Abstract: In March 1923, a group of prominent political economists and tax law experts gathered in Geneva, Switzerland to discuss the post–World War I framework for a new international tax regime. Commissioned by the League of Nations, these experts produced a comprehensive report that gradually became the intellectual foundation of the modern international tax regime. Relying on archival materials and other primary sources, this article contends that the US expert Edwin R. A. Seligman played a vital role in revising the report. While scholars have noted Seligman’s influence over US tax law and policy, his pivotal role in drafting the 1923 report has only recently been acknowledged. This article builds on this recent scholarship by investigating how Seligman’s background, experiences, and ideas—particularly his analysis and advocacy of the concept of “ability to pay” and “economic allegiance”—shaped the 1923 Report, and hence the subsequent development of the modern international tax regime.

Keywords: international taxation, fiscal history, interwar period, global capitalism, League of Nations, Edwin R.A. Seligman

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I. Introduction

In March 1923, a group of prominent political economists and tax law experts gathered in Geneva, Switzerland to discuss the post–World War I framework for a new regime of international taxation. At the time, the numerous dislocations of the Great War were still reverberating throughout the world. Many European countries were burdened by unprecedented debts while their economies and societies were in shambles (Tooze 2014; Hobsbawm 1994). The experts who gathered in Geneva were commissioned by the newly created League of Nations to provide professional guidance to the League’s Financial Committee—a group of global policymakers focused on post–World War I renewal, including the making of a new and more stable international tax regime (Gorman 2012; Clavin 2015). The tax experts were asked to investigate the “economic consequences of double taxation” and to formulate “general principles” to address “the evil consequences of double taxation” (Bruins et al. 1923, hereinafter “1923 Report” or “Report,” 1). The goal was to create a new legal framework that would help rebuild the postwar global economy by creating an efficient, effective, and equitable international tax regime.¹

The experts were tasked with addressing one of the fundamental fiscal challenges of the post-WWI period: how to tax cross-border economic activity while respecting national sovereignty. When income was earned in one country by a citizen or resident of another, the question arose: Which country, or sovereign, had the legitimate right to tax such income? The “source country” where the income was earned? Or the “residence country” where the owner of the income lived or was a citizen? Or perhaps both, since neither country would be eager to give up its sovereign power to tax? Prior to World War I, this defining dilemma of international double taxation was less salient because most countries had only modest income taxes and the level of transnational commercial activity was relatively low. In this earlier period, such potential cross-border tax conflicts were resolved mainly through rudimentary unilateral or bilateral measures (Avi-Yonah and Lampert 2023; Ring 2008).

After the Great War, however, changing conditions elevated anxieties about international double taxation. The dramatic wartime escalation of income tax rates in many countries and the need for increased global economic activity to revive war-torn European economies heightened concerns about international taxation. Likewise, broad postwar political changes altered international power relations. The end of the Austro-Hungarian and Ottoman Empires and the consolidation of the British dominions meant that newly decolonized countries would be seeking foreign investments from capital-exporting, creditor nations like England and the United States, while maintaining their newfound taxing sovereignty (Aldcroft 1997; Carr and Hart 2016). Although the United States formally rejected the League and began to roll back its wartime fiscal state (Brownlee 2016), it emerged after World War I as a leading geopolitical power, just as American mass production and industrial output were exploding, and the country was fast becoming a net creditor nation (Kennedy 1980; Levy 2021).

For these reasons, international policymakers were scrambling in the early 1920s to determine how to avoid the double taxation of cross-border commercial activity, and hence remove an impediment to free trade, international capital flows, and economic growth. At the same time, these global lawmakers were aware that they needed to protect the taxing powers of various European countries. War-torn nations such as France and Italy were in the process of redeveloping their battered economies and

¹ For more on the history of the 1923 Report, see, generally, Jogarajan (2018); Avery Jones (2013); Vann (2020); Muster (2023); Avi-Yonah (2023).

societies. And newly sovereign, decolonized nation-states such as Poland, Czechoslovakia, and Yugoslavia were eager both to attract foreign investment and protect their newfound taxing powers. As one League official explained, there was a dire need to substitute “international order for the international anarchy which reigns in this field.”² The League of Nations thus turned to the prominent political economists for help.³

In April 1923, the tax experts delivered to League officials a comprehensive and detailed Report that covered three main topics.⁴ First, the “economic consequences of double taxation.” Second, “the general principles” governing tax jurisdictions. Third, and perhaps most importantly, the “practical applications of the principles” to alleviate international double taxation (1–2). The Report’s central goal was to address the defining dilemma of international double taxation, though the experts also implicitly endorsed the idea that taxpayers had a duty to pay taxes fully on international economic activity. They understood that double nontaxation could also be a problem. Because some of the experts began working on this project well before their March 1923 Geneva meeting, the final Report was a culmination of several years of research, private correspondence, and drafting.⁵

Gradually, the 1923 Report became the intellectual foundation for the modern international tax regime. Its focus on the concept of “economic allegiance” became a touchstone for determining international tax liabilities—a touchstone that was filled with tensions and contradictions. The Report’s primary objective of ameliorating the international double taxation of income, and its implicit endorsement of taxing transnational income fully, became guiding principles for the post-WWI global network of bilateral international tax treaties, and over time for the modern international tax regime (Jogarajan 2013; Peroni et al. 2012; Avi-Yonah 1996; Ault 1992).

The tax experts consisted of four eminent political economists and legal scholars—mainly from developed creditor nations. Professor Gijsbert W. J. Bruins of Commercial University (Rotterdam, Netherlands) was a monetary policy expert who had previously assisted the League with other financial studies (Bruins 1920). Professor Senator Luigi Einaudi of Turin University (Italy) was a legal scholar, journalist, and prominent proponent of a European union, and the only representative from a debtor nation as well as the only expert who did not attend the Geneva meeting (Santagostino 2017). Professor Edwin R. A. Seligman of Columbia University (New York, USA) was the dean of American tax scholars who played a pivotal role in the 1913 ratification of the Sixteenth Amendment to the US Constitution (establishing a federal income tax) and the subsequent enactment of US income tax laws (Dorfman 1958). And Sir Josiah Stamp was a longtime English civil servant turned industrialist who was the leading British tax expert (Jones 1964; Avery Jones 2013).⁶

² F. H. Nixon (Director, Economic and Financial Section, League of Nations) to Sir Josiah Stamp, January 4, 1921. Stamp shared this letter with Edwin R. A. Seligman: Josiah Stamp to Edwin R. A. Seligman, January 31, 1922, Series II: Arranged Files, Box 44, Folder 118—League of Nations, Committee on Double Taxation, Correspondence & Notes, 1921–1923, Edwin R. A. Seligman Papers, Butler Library, Columbia University, New York, NY [hereinafter ERASP].

³ The League of Nations also created throughout the world several postwar mandate territories controlled by various Allied powers that were semi-independent but lacked the administrative capacity to be sovereign taxing nation-states (Housden 2014; Pedersen 2015).

⁴ Page citations to the original 1923 Report—Bruins et al. (1923)—are enclosed in parentheses in the text.

⁵ The final Report also dealt with “death duties and property taxes,” but the primary focus was on the double taxation of international income.

⁶ For more on the four experts, see Muster (2023).

Although the United States was not a formal member of the League, Seligman's inclusion demonstrated the importance of the United States—as one of the postwar hegemons—to international taxation and Seligman's own stature in the nascent “epistemic community” of global tax experts. Indeed, through his research, teaching, and mentorship, Seligman helped create a transnational “network of knowledge-based communities with an authoritative claim to policy-relevant knowledge” (Haas 2015, 5). His contact with tax scholars and officials across the globe, including in many parts of the colonized world, undoubtedly influenced his views on international taxation and his contributions to what became known as the “Economists' Report” to the League (Woker 2018; Jogarajan 2018, 18).

The group of fiscal experts was led by Stamp and Seligman. Bruins attended the Geneva meeting and provided some marginal comments on the final Report, endorsing the analysis and recommendations.⁷ Despite his absence in Geneva, Einaudi also supported the final Report (Jogarajan 2018). But as the only official from a debtor, redeveloping nation, his absence might have had an impact on the deliberations and disagreements and perhaps even the final Report's implications.⁸ Ultimately, as modern scholars have noted, Stamp and Seligman were the “spiritual fathers” of the final version of the Report (Cavelti 2016, 54). In fact, they were longtime colleagues and friends who had been corresponding about the topic of international double taxation well before the League commissioned the Report and well after the Report was published (Avery Jones 2013; Cavelti 2016; Jogarajan 2018).⁹

Scholars have persuasively demonstrated that Stamp played a central role in composing the initial version of the Report (Jogarajan 2013; Avery Jones 2013).¹⁰ Seligman, however, had an equally important influence on the Report (Avi-Yonah 2005; Cavelti 2016). As the more senior scholar, Seligman instructed Stamp to take the lead in drafting the initial version of the Report.¹¹ Yet the final version contains many details about US taxation, as well as economic theories and political principles of tax law and policy, that are attributable mainly to Seligman and his progressive values and implicit biases. The recommendations, moreover, reflect the practical, and perhaps unsatisfactory, compromises that were negotiated between the tax experts.

Seligman's general social and political theories about the need for an activist state had a profound impact on the development of US and, as we shall see, international tax law and policy. Seligman believed that the modern state, by which he meant all levels of government, had a duty to address the excesses of industrial capitalism, particularly increasing economic inequality. He was, first and foremost, a theorist and advocate for progressive taxation in the United States and abroad (Mehrotra 2013b; Woker 2018). He firmly believed that the turn-of-the-twentieth-century shift to direct and graduated taxes embodied a transformation toward greater distributive equity and fairness. “In former times but little attention was given to the question of justice in taxation,” he wrote in his classic 1895 treatise *Essays in Taxation*. “But nowadays the question is forging to the front” (Seligman [1895] 1925, 107). In this way, Seligman's views were historically specific, and his influence reflected the prevailing ideas of his time and place.

⁷ Gijsbert W. J. Bruins to Josiah Stamp, April 4, 1923; Josiah Stamp to Gijsbert W. J. Bruins, April 10, 1923, Box 44, Folder 118, ERASP.

⁸ Luigi Einaudi to Edwin R. A. Seligman, April 7, 1923, Catalogued Correspondence, ERASP.

⁹ Edwin R. A. Seligman to Josiah Stamp, November 23, 1921, Catalogued Correspondence, ERASP.

¹⁰ As early as January 1922, Stamp informed League officials that he and Seligman would take the lead by getting “into one line” and then approaching the others. Josiah Stamp to F. H. Nixon, January 13, 1922, Box 44, Folder 118, ERASP.

¹¹ Edwin R. A. Seligman to Josiah Stamp, February 26, 1921, Box 44, Folder 118, ERASP.

As a Progressive-era American political economist, Seligman was part and parcel of a zeitgeist that was challenging the dominant laissez-faire notions of law and political economy prevalent at the time (see, for example, Fine 1964; Rodgers 1998; Novak 2022). As an international realist, he also harbored his own biases about modernization and the preeminent role of the United States in establishing a new post-WWI global order. While scholars have noted Seligman's influence over US tax law and policy (Brownlee 2016), his pivotal role in drafting the 1923 Report and his influence over international taxation has only recently been acknowledged (Delalande 2012; Avery Jones 2013; Cavelti 2016; Jogarajan 2018; Vann 2020; Muster 2023; Avi-Yonah 2023). This article seeks to build on this recent scholarship by investigating how Seligman's background, experiences, and ideas—particularly his analysis and advocacy of the concept of “ability to pay” and “economic allegiance”—shaped the 1923 Report, and hence the subsequent development of the modern international tax regime.

A historical analysis of the intellectual origins of the 1923 Report is particularly timely. Recent changes to the international tax regime and the centennial of the 1923 Report have led scholars and tax experts alike to turn their attention to the origins of the 1923 Report (Vann 2020; Muster 2023; Avi-Yonah 2023). The recent changes are exemplified by the Base Erosion and Profit Sharing (BEPS) project launched by the Organization for Economic Cooperation and Development (OECD) and the Group of 20 forum (G20) in the wake of the 2008–2010 financial crisis (OECD 2013). The stated goal of the BEPS project is to prevent multinational enterprises from exploiting existing gaps and mismatches in tax rules to reduce or eliminate their taxable income. Some believe the project might foster international cooperation among both developed and developing nation-states to eliminate aggressive tax avoidance techniques (for example, Brauner 2014; Mason 2020; Stewart 2022), while others contend that BEPS is yet another way for powerful OECD/G20 countries to maintain control over international taxation (for example, Christians 2016; Dagan 2023; Oei and Ring 2024). The apparent goal, from the OECD perspective, is not only to ensure that all taxpayers, particularly multinational enterprises, pay their fair share, but also to develop trust and confidence in the integrity of the international tax regime (OECD 2020).

Some commentators have recently contended that the BEPS project has transformed the international tax regime (Brauner 2014; Mason 2020; OECD 2021a; 2021b), while others have maintained that “the principles developed in the 1923 Report are still influential a hundred years later” (Avi-Yonah 2023, 1). Indeed, as this historical analysis demonstrates, there are many conceptual continuities between the 1923 Report and the BEPS project, particularly the focus on “economic allegiance” as a primary rationale for allocating taxing authority for cross-border economic activity. Yet, much has also changed in the last hundred years. In today's digital and global economy, the primary dilemma of international taxation is more about double nontaxation or tax avoidance, rather than the double taxation of transnational commercial activity. Still, many of the proposed solutions to today's tax avoidance challenges have their roots in the formative post-WWI period. Similarly, although the names and geographical locations of the nation-states have changed, the asymmetry in global power relations continues to be a specter haunting attempts at international tax cooperation. The mixed legacy of the League of Nations' role in international tax relations, in other words, remains with us today.

The League's 1923 Report, to be sure, was not the only factor to shape the nascent post-WWI international tax regime. The International Chamber of Commerce and the United States were pivotal players in postwar global reconstruction efforts (Graetz and O'Hear 1997; Cavelti 2016). Nonetheless, the ideas behind the 1923 Report resonated with international lawmakers responsible for crafting postwar tax treaties throughout the world. At its publication, the Report was hailed by experts as “the

most valuable examination” (Cowcher 1923, 578) of the topic and “the most thorough analysis of the problem of double taxation that has been attempted” (Spaulding 1927, 74). In sum, the 1923 Report was an authoritative analysis of post-WWI international tax governance—one that continues to resonate today.

Revisiting the intellectual origins of the 1923 Report at a potentially transformative moment in international tax law can be instructive to a broad range of audiences. For scholars of Law and Political Economy, a genealogy of the 1923 Report can be a useful reminder of an earlier era when legal and economic expertise was concerned about much more than just market efficiencies, when experts focused on the importance of democracy, sovereignty, and the imbalance of power in international relations (Harris and Varellas 2020; Britton-Purdy et al. 2019; Bearer-Friend et al. 2022; McCluskey 2022). After all, as *political* economists, the League’s fiscal experts were analyzing cross-border economic transactions from a broader social and political perspective, with the goal of advancing tax justice by balancing the interests of competing nation-states.

For historians of the interwar period and global capitalism, this analysis of the Report’s origins and implications demonstrates the significance of international taxation to the postwar reconstruction of Europe—an area of law and political economy that is frequently neglected in global histories of the interwar period (for example, Tooze 2014; Kershaw 2015; Slobodian 2018). Seligman’s international influence also complicates the conventional historical narrative that the interwar period was mainly a time of American isolationism; it illustrates how a transatlantic flow of ideas from the US to Europe continued well after World War I. Finally, for tax law scholars and present-day policymakers, this historical tale about the continuities and changes between the 1923 Report and the possible transformation ushered in by the BEPS project can provide some perspective on recent OECD/G20 efforts (for example, Brauner 2014; Mason 2020). It may show how the BEPS project is, for better or worse, part and parcel of long-run efforts to address the importance of equity, power, and democracy in the international tax regime.

This article explores Edwin R. A. Seligman’s influence over the 1923 Report and his impact on key features of the modern international tax regime. Part II begins with a brief biography of Seligman, chronicling his background, experiences, and ideas, particularly those that informed his views of international taxation. Part III, then, turns to the 1923 Report itself to identify and analyze the sections that correspond to the Progressive-era ideas that Seligman embodied. This section demonstrates how Seligman’s support for the concept of “faculty” or “ability to pay” shaped the Report’s focus on “economic allegiance.” Part IV briefly explains the long-term influence of the Report on the subsequent development of the international tax regime. Finally, the article concludes with a summary of the historical narrative and main arguments.

II. Edwin R. A. Seligman: “A Universal Scholar”

Edwin R. A. Seligman was a thoroughgoing cosmopolitan, progressive reformer.¹² Reared in an affluent New York City home of German-Jewish immigrants, he received a classic aristocratic education. He attended Columbia College when it was fast becoming a leading institution for social

¹² Although there is no full-scale biography of Seligman, he has long been recognized as one of the early giants of American Law and Political Economy. See, generally, Dorfman (1958); Fine (1964); Rodgers (1998); Moss (1999); Mehrotra (2013b); Muster (2023). Seligman himself published a slim autobiography in German, which has been translated into English by Pier Francesco Asso and Luca Fiorito (2006).

science research. And after a formative sojourn abroad to study in Europe, including with some of the leaders of the German Historical School of Economics and Jurisprudence, Seligman returned to Columbia in 1882 to earn a law degree and a doctorate in political economy. In 1885, he became a lecturer in Columbia's newly created School of Political Science. Within six years, he was a full professor of political economy and finance. He then spent the rest of his five-decade academic career at Columbia, becoming the first McVickar Professor of Political Economy in 1904, and retiring in 1931.

During his early years as an academic and reformer, Seligman became a prominent proponent of what historians have referred to as the "Columbia School of Taxation and Development" (Woker 2018; Mehrotra 2013a). As a leading member of the Columbia faculty, Seligman focused on an early form of historical institutionalism that became an essential element of the early American social sciences. As a trained lawyer, he was also part of what has been identified as the "First Great Law & Economics Movement" (Hovenkamp 1990; Fried 1998). A tall, "strikingly handsome figure," Seligman had a thick dark beard and routinely wore classic Windsor spectacles. He was an eloquent lecturer and systematic thinker, admired by many of his colleagues and students (Johnson 1942, 123). By the end of his career, he was known as one of the leading Progressive-era political economists of tax law and public finance. And he established himself as one of the leading figures of American thought by coediting, with his former student Alvin Johnson, the first volume of the critically acclaimed *Encyclopedia of the Social Sciences* (Seligman and Johnson 1930). Seligman passed away in 1939 at the age of seventy-eight. Because of the breadth and depth of his knowledge, he was remembered by his colleagues as a "universal scholar," and by his students, who carried on his intellectual legacy, as "a master economist" (Johnson 1942; Haig 1942).

A. *The Early Years: A Cosmopolitan and Progressive Upbringing*

Edwin Robert Anderson Seligman was born in New York City in 1861, the youngest son of nine children. From the start, the Seligman family provided young Edwin with a liberal, cosmopolitan upbringing that would later fuel his internationalist visions for progressive reform. Like his siblings, young "Eddie" (as he was called by his family and friends) was educated at home from an early age, tutored by Horatio Alger Jr. (Shoup 1968), who corresponded with Edwin throughout his life.¹³ Because of this training and the family's many travels abroad, Edwin became proficient in German, French, Italian, Spanish, and Russian. He no doubt also received instruction in Greek and Latin. These language skills and his international family travels would inform his broad, cosmopolitan views and help develop his remarkable breadth of knowledge about international and comparative public finance.

Edwin's father, Joseph, was the patriarch of the family. He left an indelible imprint on Edwin and the rest of the family. Together with his brothers, Joseph became a self-made businessman. The brothers established the banking house of J. & W. Seligman—a prosperous financial institution that would one day rival the likes of J. P. Morgan (Weisberger 1999). After the Civil War, President Ulysses S. Grant offered Joseph Seligman the opportunity to become US Treasury Secretary, but the elder Seligman declined the offer to focus on his business interests (Muir and White 1964, 24; Beckert 2001). In subsequent years, Joseph played a key role in government financing and railroad development.

¹³ Horatio Alger Jr. to Edwin R. A. Seligman, February 21, 1876; May 7, 1876; April 1, 1876, Cataloged Correspondence, ERASP.

Although Edwin would turn his back on the family business, he likely absorbed a great deal from his family about the importance of public finance for American economic and political development.¹⁴

The Seligman family was active in New York City's reformist social, political, and philanthropic circles—all of which undoubtedly influenced Edwin. His father was a lifelong progressive Republican, though he advised government officials of both parties (Weisberger 1999). Edwin and his family also kept company with many other progressive reformers including Jane Addams and W. E. B. Du Bois (Recchiuti 2007).¹⁵ Seligman family members, moreover, were active members of the Reform Jewish congregation of Temple Emanu-El in Manhattan. They were major supporters of Felix Adler's New York Society for Ethical Culture, a liberal reform organization that backed tenement housing reform, the abolition of child labor, and many other Progressive-era social improvements (Hull 2013; Friess 1981).¹⁶ After his homeschooling, Edwin Seligman enrolled in the Columbia Grammar School in the Upper West Side of Manhattan. In 1875 he began his undergraduate studies at Columbia College. He was just fourteen years old (Moss 1999; Shoup 1968).

B. *The Education of Edwin Seligman*

Seligman attended Columbia College during a formative period for the school and for American higher education. Like other elite colleges, Columbia at the time was undergoing a dramatic professionalization of the social sciences. Scholars associated with the emerging American Social Science Association were displacing the authority of religious faith with scientific expertise (Haskell 1977; Furner 1975; Ross 1991); it was a time when “science not theology was to be the educational core of the future,” historian Louis Menand (2001, 230) has noted. Under the leadership of the jurist and political economist Francis Liber, and Liber's protégé John W. Burgess, Columbia undertook many curricular reforms, essentially importing to the United States the German methods of scientific research and teaching. Burgess joined the Columbia faculty in 1876 and within five years he helped establish Columbia's School of Political Science. Burgess and Richmond Mayo-Smith, another German-trained academic, would soon become important figures in Edwin Seligman's early education (Rozwadowski 1993).

Seligman admired and respected Burgess, though they held dramatically different political views. While Burgess was an arch political conservative, favoring a laissez-faire approach to American law and political economy, Seligman, like many of his Progressive-era peers, became an advocate for applying social science research and using state power to address the many social dislocations of modern industrial capitalism (Recchiuti 2007; Ross 1991; Mehrotra 2004). Unlike Burgess, Seligman was also an advocate for greater gender and racial equality. He mentored several female Columbia graduate students. He was a founding member of the National Association for the Advancement of Colored People (NAACP). And he welcomed and educated a broad group of students from around the world (Oliver 2014; Recchiuti 2007; Woker 2018). Despite their political differences, Seligman learned a great deal from his mentor. Burgess's focus on empirical methods, particularly historical and comparative

¹⁴ Seligman's son, Eustace, recounted that his father was not willing to join the family business because of his scholarly interests. *Reminiscences of Eustace Seligman: Oral History, 1975*. Columbia Oral History Collections, Butler Library, Columbia University, New York, NY.

¹⁵ Jane Addams to Edwin R. A. Seligman, March 3, 1909, Catalogued Correspondence, ERASP.

¹⁶ The Seligmans played an instrumental role in helping Adler secure employment at Columbia University. See, for example, Edwin R. A. Seligman to Isaac Seligman, March 14, 1905; Nicholas Murray Butler to Isaac Seligman, March 31, 1905, Catalogued Correspondence, ERASP.

analysis, and Burgess's emphasis on the importance of institutions such as law would have a lasting impact on Seligman's thinking, including his views on international taxation.

After college, Seligman traveled to Europe (from 1879 to 1882) to begin his graduate studies. These formative years reinforced much of what Seligman had learned at Columbia. Like many of his generation of emerging social scientists, Seligman took classes in Heidelberg, Berlin, and Paris (Dorfman 1955b; Herbst 1965; Rodgers 1998). During his time in Germany, he became a student of scholars associated with the German Historical School of Economics and the related area of German historical jurisprudence. He took classes with Karl Knies, Gustav von Schmoller, and Adolph Wagner, and remained in touch with many of these scholars long after he returned home to New York.¹⁷ These figures reaffirmed the importance of historical context and contingency for the making of social and economic policy. They underscored, moreover, the crucial role of institutions, such as law and government, in addressing social problems. And they introduced Seligman to the canonical European texts of *Wissenschaft der Finanzen*, the "science of finance," or what we would today call "public finance." In time, Seligman would become a central figure in helping popularize for an American audience the work of his German teachers (Rodgers 1998; Herbst 1965).¹⁸

The German Historical School's emphasis on social and political context and historical contingency stimulated Seligman and his colleagues to scrutinize late-nineteenth-century American political economy. In addition to Seligman, many other American students, including Henry Carter Adams, John Bates Clark, and Richard T. Ely, toured Germany as part of their professional education. After their German training, these emerging scholars soon became the "young Turks" of the fledgling American Economic Association (AEA), proclaiming themselves the leaders of a heterodox "new school" of political economy (Ely 1938, 136; Furner 1975; Ross 1991; Fine 1964). They learned from their German teachers that universal economic laws were incoherent outside of their social and political contexts. Like their German professors, they believed that human societies were not governed by abstract and dogmatic "natural laws" of economic behavior. Instead, the German historicists and their American students contended that social and economic relations were contingent on changing historical contexts, on variations in place and time (Rodgers 1998; Herbst 1965).

Seligman's German mentors also stressed the importance of institutions, such as norms and other socially created constraints on human behavior. One of the most important institutions was law and state power. In contrast to the laissez-faire commitments of the classical Manchester school of economics, the German historicists argued that the increasing complexity and interdependence of modern industrial life required a changing and more active role for the positive state (Furner 1975; Ross 1991). Seligman and his contemporaries absorbed this important lesson. In their initial 1885 charter for the AEA, the "new school" economists promoted "the state as an educational and ethical agency, whose positive assistance is one of the indispensable conditions of human progress" (Ely 1886, 6–7). This belief culminated in the US interwar period with the rise of American economic institutional thought, of which Seligman was a key early figure (Rutherford 2011; Yonay 1998; Dorfman 1955a). And, as we shall see, the League's 1923 Report is replete with examples of this type of early historical institutionalism.

¹⁷ See, for example, "Notebooks from Classes in Berlin," Box 86, Lecture Notes, ERASP; Cataloged Correspondences with Schmoller and Wagner, ERASP.

¹⁸ Early in his academic career, when he was the de facto book review editor of *Political Science Quarterly*, Seligman translated and reviewed the work of many of his German teachers. He later recounted that this "mere accident of department organization" would lead to his lifelong interest in public finance (Mitchell 1939).

After his studies in Europe, Seligman returned to the United States in 1882 and enrolled in Columbia's law school and the newly created School of Political Science. He earned his law degree in 1884 and his doctorate the following year, with a thesis on the medieval guilds of England (Seligman 1884; Dorfman 1958). Given his family's relationship with the university, it is unsurprising that Seligman was able to secure a prize lectureship in Columbia's School of Political Science in 1885. As a junior member of the faculty,¹⁹ Seligman became a crucial figure in the development of Columbia's commitment to economic institutionalism and the use of tax law and policy to further economic and political development (Rutherford 2011; Mehrotra 2013b).

C. *The Early Columbia School of Taxation and Development*

In many ways, Seligman was both a product and a subsequent leader of the early "Columbia School of Taxation and Development." Like other so-called "schools" of thought, this was a loose grouping of individuals who shared a sentiment about economic science rather than a rigid allegiance to particular intellectual tenets. They were, in this sense, early pioneers of the growing Institutionalist movement. "Institutionalists as a group had no one method to defend and no one economic theory to peddle," historians Mary S. Morgan and Malcolm Rutherford have observed. "What they did have was a commitment to serious scientific investigation, detailed empirical work (though with no one method), serious theory building (which eschewed simple assumptions), and a commitment to understand the importance of economic institutions in determining economic outcomes" (Morgan and Rutherford 1998, 3). Seligman relied on many of these elements of economic institutionalism in much of his scholarship. And he passed along these lessons to many of his intellectual heirs, including Robert Murray Haig, Mary Kingsbury Simkhovitch, Mabel Newcomer, Carl S. Shoup, and perhaps his most prominent student, Charles A. Beard, who would follow Seligman's footsteps by becoming one of the Columbia graduate students to join the faculty. With the publication of his *An Economic Interpretation of the Constitution* (1913), Beard took Seligman's economic institutionalism in a new direction, and in the process became a lightning rod of academic controversy (Barrow 2000; Mehrotra 2014).

Like other early institutionalists, Seligman was committed, first and foremost, to empirical and inductive research. For him, this meant combining qualitative methods of comparative and historical analysis with a focus on statistical studies. This empirical mix was evident in nearly all his writings, including his contributions to the 1923 Report. Although Seligman did not engage in the sophisticated, statistical work pioneered by Mayo-Smith and Seligman's junior colleague Wesley Mitchell, he understood the importance of such research for the field and for Columbia. In fact, when he was department chair, Seligman sought to put Columbia "as far in the lead in practical statistics, as she is already in the lead in economics and sociology" (Dorfman 1958, 188; Camic and Xie 1994).

A second fundamental element of the Columbia School of Taxation and Development was melding theory and practice. Seligman's training in law undoubtedly contributed to this viewpoint. He and his Columbia students subscribed to what scholars would later refer to as the "prescriptive" or "political economy" branch of public finance. As one proponent has explained, this subfield "combines rigorous theory with practical policy advice," and believes "that fiscal institutions are important to our understanding of public finance and that theory and practice must interact for success in making

¹⁹ Seligman was one of the first and few Jewish professors at Columbia during a period of overt anti-Semitism in American higher education. Apparently, Columbia had an "ambivalent attitude toward Jews" (Ginzberg 1990).

democracy function” (Eden 1991, 3–4). Seligman exemplified this approach. Indeed, the 1923 Report, particularly the section on the “practical applications of the principles,” is a testament to this type of prescriptive public finance.

A prescriptive approach, however, also came with some potential drawbacks. For many members of the Columbia school, the United States became the baseline against which all other nation-states were measured. By subscribing to a stage theory of modernization, these Columbia scholars contended that nearly all nation-states followed a linear path of economic and political development toward Western capitalism and liberal democracy, with the United States frequently atop the hierarchy of Whiggish progress. While this theory would become popularized in the post–World War II period during the height of the Cold War (for example, Rostow 1960), it had much earlier roots. For Burgess, the seeming superiority of American political, economic, and legal institutions allowed him to claim with smug confidence “that the destiny of history is clearly pointing to the United States as the great world organ for the modern solution of the problem of government as well as liberty” (Burgess 1898, 40).

This hubristic American exceptionalism was shared by other Columbia political economists, who applied a type of economic determinism to modernization theory (Martin, Mehrotra, and Prasad 2009). Seligman famously contended that economic development defined the evolution of a nation-state’s tax system. “Fiscal conditions are always an outcome of economic relations,” he wrote (Seligman [1895] 1925, 1). By the early twentieth century, when the United States was fast emerging as a global economic and geopolitical leader, it was unsurprising that Seligman and his Columbia colleagues held out the United States as an ideal type of modern nation. As a result, these political economists and tax experts frequently viewed developing and redeveloping countries as “natural laboratories” to experiment on and instill American political and economic values. This sentiment was evident in Seligman’s work in Cuba, in Haig’s work in post-WWI France, and in the many post-WWII international tax missions undertaken by Shoup and others (Woker 2018, Mehrotra 2013a). It was also manifest in the 1923 Report.

There was perhaps no better example of how Seligman combined his ideas with practical policy guidance—together with his own self-assured sense of American exceptionalism—than his popularization of the “ability to pay” concept, and his advocacy of this principle as a lodestar for US and international tax law and policy. The phrase “ability to pay” was drawn from the writings of John Stuart Mill, who used the term to denote the economic sacrifice that undergirded an effective and equitable tax system. Seligman used the term “faculty” interchangeably with “ability to pay” to refer to the fair and equitable taxation of economic power. For Seligman, this meant that those with greater power to produce, secure, and consume wealth also had a greater responsibility to contribute to the broader social and political community. Those who earned more, thus, had an obligation to pay more in taxes to support the community—not just proportionally more but progressively more (Seligman 1893; 1908; Mehrotra 2013b).

For Seligman and other Progressive-era political economists, the terms “faculty” and “ability to pay” soon became key words in their campaigns for a comprehensive, graduated US income tax (Mehrotra 2013b). They used these words as political tools. Along with the American pragmatist philosophers, they understood that people do things with words. And what the political economists sought to do was use a new fiscal idiom focused on ethical obligations and social solidarity to reinvigorate American democracy and civic engagement. In contrast to the prevailing nineteenth-century theory of taxation based on “benefits,” they forwarded a more progressive vision based on the notion of taxpaying faculty or ability. “We pay taxes not because we get benefits from the state,” Seligman explained in

one of his most famous essays, “but because it is as much our duty to support the state as to support ourselves or our family; because, in short, the state is an integral part of us” (Seligman [1895] 1925, 72). As we shall see, Seligman’s commitment to the “ability to pay” principle would be translated into his views about the importance of “economic allegiance” in structuring a new international tax regime.

D. *Seligman and the First Great Law and Economics Movement*

Another essential element of Seligman’s background that influenced his contributions to the 1923 Report was his legal training. Seligman was writing at a time when the intellectual boundaries between political economy and law were rather porous, which is why he has been identified as a key member of “The First Great Law and Economics Movement” (Hovenkamp 1990). For these political economists, the law emphasized the importance of practical considerations. Like his Legal Realist colleagues on the Columbia law faculty, Seligman believed that “law in action” was more important than “law on the books,” which is one reason why he was acutely aware of the importance of tax administration (Rutherford 2011; Zelenak 2018). This posture explained why Seligman was skeptical of certain American tax reforms that required robust administrative capacity, such as state-level income taxes and the World War I “excess-profits” tax (Seligman 1914; Seligman and Haig 1917). This sense of practicality was also evident in Seligman’s contributions to the 1923 Report. Although some scholars have characterized Seligman as a “theorist” and Stamp as the “practical” official among the League’s fiscal experts, this characterization misses Seligman’s constant concern for the importance of administration. This concern was also one reason why the American academic was recruited by League officials who were looking for “practical results” and “concrete proposals” as they constructed the committee of tax experts.²⁰

Seligman, moreover, was well respected by lawyers, judges, and legislators, who regularly cited his research (Hovenkamp 1990). He played an important, albeit unsuccessful, behind-the-scenes role in the case *Pollock v. Farmers’ Loan and Trust Company*, 157 U.S. 429 (1895), in which the US Supreme Court struck down the 1894 federal income tax.²¹ He testified before the New York legislature when it was considering ratifying the Sixteenth Amendment, overturning *Pollock*. And he consulted with national lawmakers when they were drafting the first progressive US income tax in 1913 and further refining federal income tax laws in later years (Mehrotra 2013b; Zelenak 2018).²² In this sense, Seligman’s work with the League of Nations followed his pattern of providing expert guidance, though from a distance rather than in any official rulemaking capacity.

Seligman’s sense of law also informed his views of politics and participatory democracy. Because he was an incrementalist reformer rather than a revolutionary, Seligman understood that laws were critical to address the social disruptions of modern industrial capitalism. As he put it, “public opinion, crystallized into law,” was how the modern administrative, regulatory, social-welfare state could ensure greater liberty, equality, and human flourishing (Seligman 1898, 261; Recchiuti 2007, 39). Law was the traditional language of state power, and when that power was exercised appropriately, it reflected the outcome of democratic processes. In this sense, Seligman was a true American progressive. He thus shared with his Columbia colleague, philosopher John Dewey, a steadfast—some might say naïve—faith in participatory democracy (Recchiuti 2007; Westbrook 2015). In the international context, Seligman’s belief in law and participatory democracy meant respecting national sovereignty

²⁰ F. H. Nixon to Josiah Stamp, January 26, 1922, Box 44, Folder 118, ERASP.

²¹ Joseph H. Choate to Edwin R. A. Seligman, April 11, 1894, Catalogued Correspondence, ERASP.

²² Cordell Hull to Edwin R. A. Seligman, April 16, 1915; July 11, 1918, Catalogued Correspondence, ERASP.

and the taxing authority of different jurisdictions, including redeveloping and newly decolonized nations.

Yet, it was not always clear whether Seligman was consistent in aligning his political theory with his views about international taxation. His own biases and prejudices often clouded his judgment. Moreover, his zeal for legal reform at times compromised his scientific objectivity. His lawyerlike advocacy for the “ability to pay” principle and progressive taxation appeared to exceed his sense of scientific objectivity. During World War I, Seligman was critical of colleagues, such as Yale economist Thomas S. Adams, who officially joined the war effort as a government adviser (Brownlee 1993; Graetz and O’Hear 1997). He warned his students to be wary of what later sociolegal scholars would identify as the “pull of the policy audience” (Sarat and Silbey 1988). At the same time, however, Seligman was a zealous advocate for his own ideas, even though he did not often take on an official policymaking role. He testified frequently before American lawmakers, instructing them with little ambivalence about their critical role in crystallizing public opinion. This was also apparent in his advisory work for the League. Seligman may not have participated in the 1923 Report if the United States had been a formal member of the League of Nations. As an “outsider” to the League, perhaps he believed he could maintain his scientific objectivity. This tension between advocacy and objectivity was on display in his correspondence with other tax experts and in the final 1923 Report.

III. Seligman and the 1923 Report

There are many aspects of the 1923 Report that reflect Seligman’s imprint. From the Report’s “Introduction” through its detailed prescriptions in the final section on “Application of the Principles,” Seligman’s ideas, background, and experiences shaped the final version. Historical conditions, including the concern for the free flow of capital during postwar economic renewal; the possibility of new taxes in recently decolonized, sovereign nations; and the need for tax fairness between competing countries, all shaped Seligman’s ideas and the Report itself. Some of Seligman’s influences are obvious, as evidenced by his private correspondence with Stamp and others.²³ His use of US examples demonstrates both his specific contributions and his overall commitment to empirical and inductive methods. Other aspects of the Report reflect how Seligman’s American worldview affected the ideas of the tax experts, and subsequently those of the global tax policymakers. Indeed, there is perhaps no better evidence of Seligman’s deep influence than the contributions to Part II of the Report (General Principles Which Govern International Competence in Taxation) and its discussion of “the basis of taxation” and “the principle of ability to pay” (18).

Taken together, Seligman’s contributions illustrate that he played a pivotal role in moderating Stamp’s initial hostility to source-based taxation (taxing income at its origins). Like Stamp, Seligman intuitively favored residence-based taxation (taxing based on taxpayer’s domicile or citizenship), but his historicism, his institutionalist perspective, and his concern for fairness and practical considerations diminished his ultimate support for residence-based taxation. Seligman’s private correspondence with Stamp and archival summaries of the March 1923 Geneva meeting demonstrate that Seligman convinced Stamp that double taxation was a serious problem—one that required a thoughtful and pragmatic solution.

²³ “Allocation of Earnings Where the Whole of the Economic Stakes Are Not Conducted Within One Area” (Edwin R. A. Seligman to Josiah Stamp), n.d., Box 44, Folder 118, ERASP.

In a series of 1927 lectures, Seligman reflected back on his participation in the Report (Seligman 1928). He acknowledged that the experts did not always agree, but that they were able to provide rough guidance for the League as it forged a new postwar regime of international taxation. A guiding principle for Seligman and the Report was the apparent distinction between modern, “industrialized” countries and “semi-developed,” emerging nations—a distinction that revealed both the biases that Stamp and Seligman shared as well as the practical compromises necessitated by changing conditions (51). As a result, the final Report contains a rather complex—and at times convoluted—set of recommendations that reveal the tensions of a document authored by a transnational, epistemic community of experts affected by the postwar realities of global capitalism.

A. US Examples and a Commitment to Empirical and Inductive Methods

As other scholars have noted, several of the Report’s firsthand examples are taken from the United States, indicating that Seligman is the likely author. Reuven Avi-Yonah (2023) has persuasively shown how Seligman relied on the American experience in taxing interstate commerce as one of the examples of how both source and residence jurisdictions had rightful claims on income derived from cross-border economic activity. In one of the more memorable sections of the Report, undoubtedly drafted by Seligman, the US example of the growth, harvesting, and sale of California oranges across the country is used to demonstrate that all stages of the production of wealth should be considered in determining a taxpayer’s economic allegiance. Bruins, the Italian expert, also noted that there were similar European examples of cross-border taxation (Avery Jones 2013), and throughout the nineteenth century the Swiss were dealing with the taxation of economic activity across their cantons (Muster 2023). But ultimately it was the US illustrations that were added to the Report. Other US examples included how market forces impacted the yield on tax-exempt US securities (14), which Seligman noted in correspondence with Stamp.²⁴

With these empirical examples, Seligman was able to counter Stamp’s initial skepticism about the gravity of double taxation. In his early letters to League officials, Stamp had complained about the “rather nebulous remit” that the League had provided to the tax experts.²⁵ He wondered aloud “how far apparent double taxation exists as a real burden upon the individual, or how far it is merely a hindrance to the flow of international investment?”²⁶ Stamp’s initial disbelief is surprising given that he played an important role in crafting relief from double taxation within the British Empire (Avery Jones 2013), but it proved to be a significant entry point for the initial Stamp-Seligman deliberations. Indeed, this fundamental threshold question is what occupied much of the early 1921–1922 Stamp and Seligman correspondence. It also became the foundation for Part I of the Report.

Seligman’s private correspondence confirms that he added the American illustrations. In the process, he helped convince Stamp to take double taxation seriously. Identifying the problem was an important first step in developing a coherent epistemic community of tax experts. Referring often to his prior published work, Seligman reminded Stamp of the American challenges of taxing multistate corporations, such as railroads, and the cooperative taxing methods that were used by US states.²⁷ The Columbia professor agreed that, theoretically, market forces might address some of the League’s

²⁴ Edwin R. A. Seligman, “Allocation of Earnings,” ERASP.

²⁵ Josiah Stamp to F. H. Nixon, January 13, 1922, Box 44, Folder 118, ERASP.

²⁶ Ibid. Stamp also questioned whether “international conciliation” was “the best way to handle” double taxation. Ibid.

²⁷ E. R. A. S. to Josiah Stamp, June 22, 1922, “Double Taxation—Note on Sir Josiah Stamp’s Note Transmitted on June 1, 1922,” Box 44, Folder 118, ERASP.

concerns, as Stamp insisted. But Seligman emphasized that more needed to be done, especially regarding “Equitable Distribution,” a term that Stamp found “rather cryptic.”²⁸ In his early comments, Seligman also stressed the importance of noting practical distinctions that American taxing authorities stressed, such as “accountancy details” and “the actual economic structure of the business under consideration.”²⁹ As the sole US expert, Seligman is undoubtedly responsible for adding these American-specific observations to the final Report.

The use of American evidence also sheds light on Seligman’s contributions to the Report’s analytical methods. Indeed, Seligman and Stamp seemed to rely on contrasting methods that did not fit their apparent backgrounds. Although Seligman was a lifelong academic, the Columbia professor relied on his inductive empiricism to provide practical solutions to the dilemma of double taxation. He was no pure academic theorist. By contrast, Stamp, relying mainly on economic theory, questioned whether double taxation was, in fact, a significant problem. Though he was no theorist, Stamp firmly believed in market forces. The contrast between the two methods is most apparent in the private revisions that were made by the two scholars to the Report’s Part I, an initial draft of which was drawn from an earlier note written by William Coates and Stamp (Cavelti 2016).³⁰

Much of Part I of the Report addresses the question of whether double taxation is a significant problem. It is mainly an economic analysis of the potential differences between existing versus new taxes and whether such taxes are simply a “burden” on current foreign investors or a “barrier” to new funding (7). These sections are drawn from the initial Coates and Stamp theoretical analysis. They show how source-based taxation can prevent a developing country from reaping the benefits of foreign investments due to changing market conditions. According to this theoretical analysis, source taxation would be counterproductive because the origin or source country would need to absorb the incidence of such taxes to attract foreign capital. As a result, there would be no real economic effect on foreign investors. These sections are highly abstract, complete with deductive reasoning and hypothetical examples based on the fictitious country of “Morania,” an imaginary developing nation presumably in need of foreign capital (7). It is certainly possible that Coates was responsible for much of this economic reasoning, but the conclusion of favoring residence-based taxation seemed to appeal to a skeptical Stamp.

By contrast, the sections in Part I of the Report attributable to Seligman are more inductive, relying on verifiable examples. In addition to the discussion of US tax-exempt securities, Seligman noted how the US policy of using foreign tax credits undermined some of Stamp’s hypotheticals and economic logic. Referring to his own research (Seligman 1892),³¹ Seligman explained how the US policy of using foreign tax credits was an example of how developed countries were seeking to remain impartial in the international investment decisions made by their citizens. In this sense, the US was pursuing what present-day tax experts refer to as capital export neutrality. Similarly, Seligman questioned whether practical conditions, such as the varying elasticities of supply and demand, undermined some of Stamp’s initial economic analysis.³² Consistent with his views on the importance of historicism, Seligman’s contributions challenged Stamp’s deductive logic. Seligman’s US illustrations and his

²⁸ Josiah Stamp to Edwin R. A. Seligman, February 27, 1923, Box 44, Folder 118, ERASP.

²⁹ Edwin R. A. Seligman, “Allocation of Earnings,” ERASP.

³⁰ It is unclear how much Stamp contributed to the coauthored note, but he informed Seligman that he agreed with its main arguments (Jogarajan 2013; Avery Jones 2013).

³¹ Seligman also reminded Stamp that their fellow tax expert Einaudi had also written on this topic. Edwin R. A. Seligman, “Observations on Sir Josiah Stamp’s Draft Report I,” n.d., Box 44, Folder 118, ERASP.

³² Edwin R. A. Seligman, “Observations on Sir Josiah Stamp’s Draft Report I,” ERASP.

concern about possible “limitations” on the general principles indicated that relying solely on economic reasoning with fabricated examples was incomplete. For Seligman, the “frictions” of everyday life frequently tainted the purity of economic logic.

Seligman’s focus on empirical, inductive thinking was evident elsewhere, as was his American bias. Indeed, the Stamp-Seligman correspondence confirms that Seligman was eager to add many real-world US examples, beyond the sale of California oranges, to the Report, perhaps in a continued effort to convince Stamp about the seriousness of double taxation, and to suggest that the US system of interstate taxation could be a model for global tax governance. By the time the experts met in Geneva, Stamp agreed that the fundamental question was “which Government is to bear the burden of relief.”³³ Likewise, the Report’s conclusions note that exempting source or origin taxation, and hence favoring residence taxation, might be “a rough approximation to justice” (48). But this method was contrary to many existing tax rules, especially among less affluent, capital-importing/debtor countries and their “instinctive ideas as to their rights to origin taxation” (49). Seligman’s empirical and inductive research methods were thus spread throughout the final version of the Report. In the end, Seligman appeared more open to the notion of permitting some aspect of source-based taxation and thereby respecting the self-determination and democratic sovereignty of postwar newly decolonized nation-states that favored taxing at the origin.

B. *From Ability to Pay to Economic Allegiance*

The use of empirical and inductive methods was not the only sign of Seligman’s influence. The more significant confirmation can be seen in Part II of the Report, portions of which are drawn directly from an early draft that Seligman circulated to the other tax experts.³⁴ Indeed, scholars have long noted that Seligman was the primary author of this section, mainly because it draws on his earlier scholarship about the growing importance of taxation based on a taxpayer’s “faculty” or “ability to pay” (Jogarajan 2013; Avery Jones 2013; Cavelti 2016; Vann 2020). This short phrase, “ability to pay,” was used by Seligman and his US colleagues to advance the American movement for progressive income taxes as a way to equitably reallocate the distribution of underwriting an expanding public sector. In the final Report, “ability to pay” was translated into the concept of “economic allegiance,” which was used to determine to which country (source or residence) a taxpayer had the greater obligation and duty to pay taxes. The translation process was not always intellectually consistent, but it provided a useful political tool in creating a usable global tax framework. With the phrase “economic allegiance,” Seligman helped lead the transnational epistemic community of tax experts and policymakers toward a conceptual rationale for taking action to address the problem of double taxation. In time, the concept of economic allegiance would also be helpful in addressing double nontaxation, or tax avoidance.

Seligman’s major contribution was to meld the ideas of earlier theorists, particularly Adolph Wagner—one of Seligman’s early teachers—and Georg von Schanz (Cavelti 2016; Thier 2007), but he did so in his own unique way. Seligman agreed with Wagner’s notion that ability to pay meant that residence-based taxation on a citizen’s worldwide income should be the default rule, which is one reason why the United States adopted such a position in its initial income tax laws (Mehrotra 2013b). But Seligman feared that Wagner’s views and rhetoric about a radically redistributive level of progressive taxation was too extreme for an American audience. Whereas Wagner was a self-proclaimed *Kathedersozialist*

³³ Josiah Stamp to Edwin R. A. Seligman, February 27, 1923, Box 44, Folder 118, ERASP.

³⁴ Edwin R. A. Seligman, “Note on the Principles Which Should Govern in Matters of Double Taxation,” n.d., Box 44, Folder 118, ERASP.

(academic socialist) who believed that steeply progressive taxes were an essential part of the state's duty to redistribute wealth, Seligman was much more moderate. He supported progressive taxation to equitably reallocate the burdens of financing a modern regulatory, administrative, social-welfare state, not to radically redistribute wealth. In this sense, Seligman was representative of the new school of American political economists who translated the ideas of their German teachers for an early-twentieth-century US audience (Herbst 1965; Mehrotra 2008). For Seligman, that translation process meant tempering the broad implications of the "ability to pay" principle.

At the same time, Seligman also embraced Schanz's notion of "economic allegiance," but he reformulated it to comply with his own vision of a taxpayer's faculty. Schanz based "economic allegiance," and subsequently his preference for source-based taxation, on the benefits provided by the government where income was generated. This reliance on the "benefits principle" of taxation implied, for Seligman, a rather limited view of state intervention. It suggested that taxation was simply a reciprocal, quid pro quo arrangement. According to benefits theory, taxes were paid in exchange for public goods and services. By contrast, Seligman contended that economic allegiance meant much more. It referred not to what the state did for its citizens or residents, but rather the duties and obligations that citizens and residents had to the state and by extension each other. "This consisted in looking at taxes from the point of view of the taxpayer rather than of the government," Seligman (1928, 120) noted. Economic allegiance was determined by the obligations and responsibilities that a taxpayer had to particular jurisdictions. This was in keeping with Seligman's longstanding notions of fiscal citizenship (Musgrave 1996; Mehrotra 2013b; Zelenak 2013).

Throughout his scholarship and advocacy, Seligman attacked the "benefits" theory of taxation as antiquated, intellectually incoherent, and contrary to progressive values. In a modern, industrial society, the state played a vital role in regulating a highly interdependent economy and society. In such modern times, Seligman argued, citizens and residents had an ethical duty and social obligation to support the state—a duty and obligation that went well beyond a simple exchange of taxes for public goods and services. Benefits doctrine, moreover, provided little guidance on who should pay taxes and in what amount, because government provisions could be measured in many ways, especially in a global context. Finally, and perhaps most importantly, Seligman and like-minded progressive US political economists objected to benefits theory because it celebrated an idiom of market relations. By focusing mainly on exchange value, benefits doctrine commodified the relationship between individuals and the state. It reduced this significant social relationship to a simple economic transaction. For a group of thinkers who valued the importance of ethical duties and social solidarity, benefits theory was antithetical to their vision for a new type of civic identity. In sum, the benefits doctrine was, for many American thinkers led by Seligman, a misrepresentation of the social obligations of modern fiscal citizenship (Mehrotra 2013b).

Given Seligman's longstanding disdain for benefits theory, it is little surprise that he recast "economic allegiance" away from exchange values created by the state to focus on the taxpayers' duties and obligations. He did not do so by completely discarding benefits theory. Rather, he argued that the faculty or "ability to pay" theory had absorbed exchange theory and the benefits principle. "The entire exchange theory," the Report noted, "has been supplanted in modern times by the faculty theory or theory of ability to pay." The latter "is more comprehensive than the preceding theory because it includes what there is of value in the benefit theory." In an international context, the benefits principle based on exchange values had some limited worth, but that worth was subsumed by the faculty or "ability to pay" principle. In short, "the faculty theory is the more comprehensive theory" (10).

Relying on a more comprehensive theory meant that Seligman and the other tax experts could move beyond the traditional ties that linked taxpayers to the nation-state. Historically, under conventional social contract theories, individuals paid taxes to the state where they had the greatest “political allegiance”—where they lived, voted, and enjoyed public goods and services, including security and protection. But just as benefits theory was outdated, so too was “political allegiance.” Seligman drew directly from his earlier writings to stress how altered social and political conditions had undermined the importance of “political allegiance.” He had noted that “modern wealth is more or less cosmopolitan” (Seligman [1895] 1925, 109, 96). Thus, in an age of global capitalism, political allegiance was no longer an accurate measure of fiscal citizenship. “In the modern age of the international migration of persons as well as of capital, political allegiance no longer forms an adequate test of individual fiscal obligation,” the Report stated. Consequently, political allegiance “is fast breaking down in practice and it is clearly insufficient in theory” (19). Seligman’s historicism was plainly at work.

If political allegiance was no longer appropriate, what was the best method to determine to which country a taxpayer owed greater loyalty and obligation? A narrow view of the “ability to pay” principle seemed inadequate to answer this question, but Seligman’s broader view of faculty, one that included the ability not just to generate income and wealth, but also to secure it and spend it, led to a different conclusion. In place of political allegiance, the Report proposed “economic allegiance” or “economic interest” (20). This was Seligman’s contribution drawn directly from his earlier writings. In his initial circulated draft of this section, Seligman’s commitment to a stage theory of modernization and development was evident when he stressed how economic allegiance was an improvement driven by changing conditions. “The world thus has been slowly moving from the principle of political allegiance, or nationality, to that of economic allegiance,” he informed the other experts with a confident tone of teleological optimism.³⁵

In specific comments to Stamp, Seligman elaborated further on the implications of economic allegiance. “The question arises as to whether we must not combine the two principles of origin and residence, under the wider term of what I have been accustomed to call economic allegiance or economic interest,” he wrote. Seligman clarified that this term “is not equivalent to origin.” But he was sympathetic to the claims of developing countries, especially “in the matter of the income tax,” where “it is perfectly proper to say that income should at all events be taxed in principle where it is earned that is according to the principle of origin or that the property should be taxed where is situated as in the case of land.”³⁶

Yet in the modern era, an exclusive reliance on origin/source taxation was insufficient. Residence taxation was equally compelling for modern times. “[T]he mere fact that the individual spends his income in part at least where he resides, gives the country of residence a certain right also to levy a tax on that income,” Seligman explained. The international mobility of persons and capital required a broader view of global tax competition, something that Seligman acknowledged in his other writings about German reparations and the politics of wartime debt repayments (Seligman 1921). “This problem [of international competition] is perhaps the most difficult in the whole realm of double taxation because of the conflicting interests of various countries. There are all sorts of complications between countries somewhat similar to the complication between the various American states.”³⁷ Once again, Seligman relied on his comparative tax knowledge and his American experiences to

³⁵ Edwin R. A. Seligman, “Note on the Principle Which Should Govern in Matters of Double Taxation,” ERASP.

³⁶ Edwin R. A. Seligman, “Double Taxation,” June 22, 1922, Box 44, Folder 118, ERASP.

³⁷ *Ibid.*

remind Stamp and others that changing historical conditions ought to be respected. In the modern world, a taxpayer's broad notion of faculty or ability to pay—and hence their economic allegiance—existed both where such faculty was created and where it was exercised.

Relying on Seligman's concept of "economic allegiance," the tax experts concluded that there were mainly two jurisdictions to which a taxpayer owed economic fealty: the country where they resided or were citizens and the nation where the income was generated. Of course, a developing country could unilaterally tax domestic-source income, but the Report presumed that most nation-states would be willing to follow the US and other historical models of bilateral treaty cooperation. The United States was once again the baseline against which any progress toward modernity was to be measured. And one way to ensure such "progress" was to control the powers of source-based taxation.

The Report noted, moreover, that a taxpayer owed the full amount of a tax. To be sure, the experts were primarily concerned about the impediments of double taxation. But they were also aware of the possibility of tax avoidance or double nontaxation—a problem that would take on greater prominence in subsequent decades during the "golden age" of international tax avoidance (Farquet 2012). Thus, a subsidiary question was how to determine the complete tax liability as between the two competing jurisdictions—for which they had an answer:

The ideal solution is that the individual's whole faculty should be taxed, but that it should be taxed only once, and that the liability should be divided among the tax districts according to his relative interests in each. The individual has certain economic interests in the place of his permanent residence or domicile, as well as in the place or places where his property is situated or from which his income is derived. If he makes money in one place, he generally spends it another. (20)

With these words, the Report provided a potential solution to both the problem of double taxation as well as that of double nontaxation, the possibility that cross-border economic transactions would go untaxed by either jurisdiction.³⁸

Once again Seligman's faculty theory supported this contention. If a taxpayer was engaging deeply with more than one tax jurisdiction, they had an economic interest in more than one jurisdiction because their ability to create, secure, and spend wealth was occurring in more than one jurisdiction. And, therefore, they had a duty to pay taxes in more than one jurisdiction. This position echoed comments that Seligman had made decades earlier when he first articulated the importance of economic allegiance. "Every man may be taxed by competing authorities according to his economic interests under each authority," he wrote in his 1895 treatise. "The ideal solution is that the individual's whole faculty should be taxed; but that it should be taxed only once, and that it should be divided among the tax districts according to his relative interests in each" (Seligman [1895] 1925, 110–11).

While this "allied problem of fiscal evasion" was not the League's primary concern, the Report's implication was clear: a new international tax regime needed to ensure that national taxing sovereignty was respected and that all taxpayers were paying their full tax liability based on the principle of "economic allegiance."³⁹ What the single tax rate or full tax liability should be remained unresolved,

³⁸ Present-day tax law scholars have identified the second issue of possible double nontaxation as the "single-tax" or "full-tax" principle (Avi-Yonah 2014; Mason 2020).

³⁹ "Summary of the Committee of Tax Experts on Double Taxation," ERASP.

but the broader conceptual point was to discourage fiscal evasion—a point that has become even more prominent today.

To determine a taxpayer's economic allegiance, the Report contended that there were four key elements—each of which was related to the development of an individual's faculty or ability to pay. All four elements were reminiscent of Seligman's earlier writings about double taxation. First, there was the consideration of where an individual's faculty was initially created, or “where the yield is physically or economically produced” (Seligman 1928, 120–21). Second was the matter of where the wealth was possessed by the taxpayer, which turns on the location or “situs of the wealth.” The third element focused on where legal title to the wealth was established and preserved. This element of “enforceability” relied on a jurisdiction's “legal framework.” And finally, there was the “disposition of the wealth,” the taxpayer's location where she exercised her faculty and consumed or saved her wealth (22–24). Seligman's imprint was once again apparent. In many ways, these four stages of wealth development—“acquisition, situs, enforceability, and domicile” (Seligman 1928, 122)—mirrored concepts about the sequence of economic development that Seligman shared with other proponents of the early Columbia School of Taxation and Development. Moreover, the focus on the importance of law and property rights, as the third vital element, demonstrated Seligman's legal training and acknowledgment that legal institutions were essential to a modern global economy.

Seligman was equally aware of how the absence of overarching international legal institutions affected the Report's practical considerations. Although theoretically it was possible that the four elements of economic allegiance could lead to tax liabilities in four different jurisdictions, the more realistic outcome was that the four elements would favor either the origin/source nation or the domicile/residence country. Seligman later observed that the precise apportionment of international taxes might be possible “if there were some supreme authority with power to apportion to each one of the relevant countries its proper share of the revenue derived from taxation” (Seligman 1928, 122). Initially, some League officials agreed, suggesting that the tax experts consider some type of “permanent international machinery” that could “enable a kind of case law on the subject” to resolve disputes about apportionment.⁴⁰ But, as Seligman noted, without “any supreme central authority the problem of international fiscal cooperation will in all probability be solved for a long time to come only through bilateral agreements on the part of the two countries concerned” (Seligman 1928, 122). Seligman proved to be more prescient than he would know.

C. The Report's Four Methods to Address Double Taxation

With economic allegiance as its measure, the Report concluded that there were four methods to address double taxation. The first “method of deduction” followed the US foreign tax credit model, whereby “a country might deduct from the tax due from its residents any tax paid by them on their income abroad” (41). Although this method had the administrative advantage of being implemented unilaterally by any country, it required creditor nations, like the United States, essentially to cede tax revenues and some fiscal authority to source countries. As the postwar hegemon seeking to promote foreign investments and the repayment of wartime debts from redeveloping nations, the United States was willing to adopt this method. The tax experts, however, were skeptical that other debtor nations struggling to rebuild their economies would accept this method. Indeed, this American-centric approach to the problem was rejected by nearly all other countries, including capital-exporting nations such as England and the Netherlands (Cavelti 2016).

⁴⁰ F. H. Nixon to Josiah Stamp, January 26, 1922, ERASP.

The second proposal—the “method of exemption”—was the inverse of the first, and essentially entailed residence-based taxation (42). It called on source countries to exempt all nonresident taxpayers from taxation in the source country. Like the first proposal, this one could also be adopted unilaterally, but it favored creditor/residence nations at the expense of the treasuries of debtor/source countries. This is the method that Stamp preferred from the start. In a nod to Stamp’s concerns, the Report concluded this method was “the most practicable solution to the difficulties of double taxation” (51). With an eye toward the priorities of UK Inland Revenue, and the opportunities for British foreign investments, it is not surprising that Stamp as the English expert favored this method of privileging residence taxation. A great deal of British tax revenue was at stake. As we have seen, Seligman also supported this approach, at least initially. It seemed to align most directly with the “ability to pay” principle and the concept of taxing a US citizen’s worldwide income. In their summary, the political economists concluded “that wherever possible the second method should be adopted.”⁴¹

To their credit, however, the tax experts understood that their ideal solution (method 2—of exemption or residence-based taxation) might not be appropriate for postwar conditions. In a summary of their meeting, they noted two primary objections. First, capital-importing/debtor nations would be loath to give up their taxing sovereignty. “Owing to the wide difference between the interests of the exchequers of predominantly creditor and predominantly debtor nations, a sacrifice might be called for from the Governments of the latter that would make any settlement impossible,” the meeting summary noted. Second, debtor nations seeking both foreign funds and tax revenue would reflexively resist exempting source-based income from their tax base. “Moreover,” the summary observed, it is “so strongly ingrained in the view of many countries that a right to taxation exists upon everything within the country’s borders, irrespective of ownership, that this doctrine might be unacceptable in the present development of opinion in many quarters.”⁴² As we shall see, these words accurately captured how redeveloping and newly created countries were clinging to taxation at the source. They thus resisted this method and resented the political economists’ smug confidence in the so-called “simplicity” of this approach. Still, the focus on “ingrained views” and the “present development of opinion” suggests that Seligman’s historicism and his progressive and practical concerns once again shaped the Report.

The third approach was the “method of division,” whereby the two competing jurisdictions would share the tax revenue (42). This was obviously a compromise position between the first two proposals. It was also the method that had been “adopted by the British Imperial Government in relation to its Dominion Governments,” the Report noted, and thus “need[ed] very careful consideration” (47). Of course, this method required cooperation among jurisdictions—or something akin to an “imperial allegiance and common imperial service” (47). Independent nation-states could arrive at similar relations via bilateral treaties, but the larger administrative concern was determining the economically precise division of tax revenues between the two countries, and then enforcing such tax sharing. Such precision, in turn, required “a very highly developed civil service and a taxing department of very great intelligence and skill” (47). In their meeting summary, the experts noted that this type of cooperation “might be unacceptable to some countries whose constitutional development was not suited for it.”⁴³ Once again, the different stages of a nation-state’s economic and legal development, including administrative capacities, seemed to be a foremost concern.

⁴¹ “Summary by the Committee of Experts on Double Taxation,” Box 44, Folder 118, ERASP.

⁴² *Ibid.*

⁴³ *Ibid.*

To address this concern about the limits to cooperation, the Report recommended a fourth and final method: a “method of classification,” which granted exclusive taxing authority to one of the two competing jurisdictions based on the type of income. This mirrored the English schedular income tax system admired by many Anglo-American experts. In their meeting summary, the experts agreed that this “was the only remedy left . . . as a beginning.”⁴⁴ This method of “classification and assignment” was a direct application of economic allegiance. Under this method, the income from “immovable property” such as land would be assigned to source countries, while income from “movable property” such as dividends, interests, and salaries would be attributed to residence countries (28). This division of taxing sovereignty foreshadowed what present-day tax scholars refer to as the distinction between “active” versus “passive” income (Avi-Yonah 2023).

D. The Report’s Final Recommendations

After providing the four possible methods, the tax experts concluded with a final set of three recommendations. At first glance, the Report’s intricate set of conclusions appear contradictory or at least convoluted, partially because of private disagreements about the sequence of proposals.⁴⁵ But a more careful examination of how the Report divided the world into “industrialized” versus “semi-developed” countries reveals not only the bias in favor of developed/creditor nations, but also how the experts attempted to restrain their own preferences with practical considerations. For the developed or “industrialized” world, by which the Report meant affluent, creditor countries that relied mainly on income tax revenues, such as the United States and the United Kingdom, the best solution was “the reciprocal exemption of the non-resident under method 2” (51). Such a residence-based solution would, indeed, protect the fisc of many advanced, creditor nations, but at the cost of the treasuries of capital-importing, redeveloping, and newly created countries. This preference for residence taxation was an unsurprising conclusion from a committee of experts led by Stamp, Seligman, and to a lesser degree the Dutch delegate, Bruins. These experts, after all, were from advanced creditor nations that relied heavily on income taxes. Only Einaudi, who was absent in Geneva, was from a debtor country (Italy). But the Report did not end there.

Instead, the second and third sets of recommendations focused on lesser developed nations, those redeveloping and newly decolonized countries struggling to exercise their taxing sovereignty. Several factors shaped these last two recommendations. Postwar political and economic conditions, the absence of an overarching global legal institution, and the desire to respect self-determination and democratic sovereignty ultimately led the experts to posit two other alternatives. First, for those developing and redeveloping nation-states that were “reluctant to abandon the principle of origin”—a principle that Seligman identified as “instinctive” to underdeveloped countries—the Report recommended relying on method 4 (classification and assignment): using bilateral treaties to permit different tax treatment for different types of income. This was the Report’s second recommendation and one that reflected the experts’ international realism about the negotiations involved in bilateral treaties.

There is little doubt that Seligman played a major role in inserting this option and modifying the Report’s initial advocacy for pure residence taxation (method 2). Through his comparative research and his global network of students, Seligman was familiar with the public finance priorities of semi-

⁴⁴ Ibid.

⁴⁵ Josiah Stamp to Edwin R. A. Seligman, April 3, 1923, Box 44, Folder 118, ERASP.

colonized countries and emerging economies. In his correspondence immediately before the 1923 Geneva meetings, Seligman the political realist informed Stamp that the preferred method of residence taxation (method 2) “would be equally inadmissible in many countries.”⁴⁶ Seligman seemed aware that developing countries would be reluctant to give up their taxing powers, and that their cooperation was necessary to create a more stable international tax regime. As a result, the Report noted that “[i]n theory we should, of course, consider that the fourth method [classification and assignment] would be the soundest” (45). Stamp might have been displeased, but he seemed willing to let his senior colleague shape the Report’s final recommendations.

The third, and final, recommendation called for nations to consider a division of tax sovereignty not only based on the classification of income and property (method 4), but also with some level of precision as to the apportionment of tax liabilities between competing jurisdictions (method 3). This recommendation appeared to be aimed at developing countries, as a concession to their demands and need for source-based taxation. But the experts believed it was a utopian solution at best. “[W]e hold out no hope of this proving to be a smooth and practical arrangement,” the Report stated. “It can be only approximate and not an instrument of that degree of sensitiveness and accuracy which developed communities expect” (51). Once again, the implicit distinction between “industrialized” and “semi-developed” countries determined which recommendation should be followed.

E. Seligman’s Moderating Influence and the Stages of Modern Development

Seligman was responsible for challenging Stamp’s calls for residence-based taxation (method 2), as scholars have noted (Jogarajan 2013; Muster 2023; Avery Jones 2013). Unsurprisingly, the two experts and old friends were highly deferential to each other. As the junior colleague, Stamp referred to Seligman as his “Father Confessor.”⁴⁷ And Seligman reciprocated with a great deal of mutual respect and admiration—one reason why the final recommendations appear to be a convoluted and perhaps unsatisfying compromise.⁴⁸ Prior to the March 1923 meeting, Stamp was also distracted by other obligations and health concerns, which might explain his willingness to defer even further to his senior American colleague (Avery Jones 2013; Jogarajan 2013).

Still, in the end, Seligman had a profound impact on the final, optimistic words of the 1923 Report. Relying on a stage theory of modernization that was a hallmark of the Columbia school’s “prescriptive political economy,” the Report was sanguine that one day developing countries would reach a stage of economic advancement that would allow them to follow industrialized nations in adopting residence-based taxation (method 2). Fiscal convergence seemed inexorable. Looking to the future, the Report concluded that there was hope of a move away from parochial, “instinctive” notions of source taxation toward the more advanced concept of residence-based taxation (51). The Report concluded:

[A]s semi-developed countries become more industrialized, with the resulting attenuation of the distinctions between debtor and creditor countries, the principle of personal faculty at the place of residence will become more widely understood and appreciated and the disparity between the two principles will become less obvious, so that we may look forward to an

⁴⁶ Edwin R. A. Seligman to Josiah Stamp, March 8, 1923, Catalogued Correspondence, ERASP.

⁴⁷ Josiah Stamp to Edwin R. A. Seligman, November 27, 1925, Catalogued Correspondence, ERASP.

⁴⁸ Josiah Stamp to Edwin R. A. Seligman, February 14, 1923; Edwin R. A. Seligman to Josiah Stamp, February 26, 1923; Josiah Stamp to Edwin R. A. Seligman, April 3, 1923, Box 44, Folder 118, ERASP.

ultimate development of national ideas on uniform lines toward method 2, if not as a more logical and theoretically defensible economic view of the principles of income taxation, at least as the most practicable solution of the difficulties of double taxation. (51)

This denouement reflected how Stamp's initial preference for residence-based taxation continued to influence the Report. But it also contained much of the Columbia school's haughty faith in the powers of modernity and globalization. Less affluent countries were simply at a lower stage of economic development and the modernization process. They needed time to catch up to their more affluent counterparts.

In some ways, Seligman's naïve faith in a linear theory of economic development might also explain why he resisted Stamp's preference for residence-based taxation. Although he was not explicit about this in his writings or his contributions to the Report, Seligman likely believed that an exclusive reliance on residence taxation in the early 1920s could inhibit the development of less affluent nation-states. What redeveloping and newly created nations needed was not only foreign investments, but also public revenues to rebuild and develop the infrastructure necessary for economic development and human flourishing. The supposed backwardness of "instinctive" attachments to source-based taxation by redeveloping and less affluent countries appeared to be a necessary early step in the process of modernization. Perhaps this is one reason why Seligman was willing to concede that permitting some level of source/origin taxation, at least temporarily, was necessary to address the realities of the postwar global order.

Yet Seligman remained confident, perhaps overly confident, that all countries would eventually converge to a level of development and modernity that would no longer require such distinctions—to a point where there would be "an ultimate development of national ideas on uniform lines toward method 2" (51). Seligman's bumptious American hubris was once again on display. Affluent countries such as the United States and the United Kingdom were obviously leading the way. They were the cities upon a hill. And it was only a matter of time before the fictional "Moranians" of the world would catch up and converge—before they too would become "modern."

For lesser developed parts of the world, according to Seligman, there was an "ingrained," "instinctive" preference for source/origin-based taxation because the main types of wealth in these agricultural countries were still "immovable" land and real property. Seligman respected the needs of these less affluent countries to maintain their democratically determined taxing sovereignty; his familiarity and knowledge of the public finance of colonized jurisdictions undoubtedly affected him. But the powers of modernity and globalization meant that forms of wealth were rapidly changing. They were becoming more intangible and hence more mobile across national borders. "Modern wealth is more or less cosmopolitan," Seligman had noted as early as 1895 ([1895] 1925, 96). As a result, there was a need for different ways to measure a taxpayer's faculty or ability to pay, moving away from property to persons.

An individual's civic obligations and duties, moreover, were changing under a new vision of civic identity and fiscal citizenship. For advanced, industrialized nations, "movable" or "intangible" wealth in the form of public debt and corporate securities was already more prevalent by the early twentieth century (Roy 1999; Ott 2011). Consequently, taxing powers were aimed at persons not property. And, thus, industrialized countries were already in the vanguard by relying on citizenship-based or residence-based taxation. From Seligman's perspective, this was a function of the shift from tradition

to modernity, from the local to the global, from provincial views of taxation to more cosmopolitan ones, from *Gemeinschaft* to *Gesellschaft*. Seligman's Teutonic influence was clear.

Ultimately, Seligman's ideas, background, and experience fundamentally influenced the final version of the Report. Stamp, to be sure, played a crucial role in composing the initial draft, and he continued to consult regularly with Seligman on the final draft, sharing with him some frustrations about dealing with League officials.⁴⁹ Bruins also participated by correspondence and with his attendance at the 1923 Geneva meeting.⁵⁰ Even Einaudi (the Italian expert) eventually signed off on the final version, though he did not attend the Geneva meetings (Jogarajan 2018).⁵¹ But it was Seligman's historicism, his focus on institutional development, his concern for progressive values and practical considerations, as well as his American biases, that were most evident in one of the defining aspects of the Report: the distinction between advanced, "industrialized" nations and "semi-developed" ones (51).

IV. The Broad and Continuing Influence of the 1923 Report

The initial reception of the 1923 Report was in many ways predictable. Seligman did his part to help disseminate the final Report by providing League officials with a cover letter contextualizing the study, and a long list of recommended recipients, mainly prominent German and US professors, bankers, and lawyers, as well as leading newspapers and academic journals.⁵² After its publication, several tax experts commended the League for the Report's comprehensive analysis of the fundamental challenges of international double taxation (Cowcher 1923; Spaulding 1927).

Other reactions were more mixed. The British Inland Revenue expert Sir William H. Coates, for example, was rather critical of the Report, particularly Seligman's contributions. Unsurprisingly, Coates noted that Part I, which was drawn from his earlier study with Stamp, was on "firm ground" because it is "presented with an economic argument which rests upon stable reasoning" (Coates 1924, 100). When it came to Part II's analysis of the general principles of "faculty" and "economic allegiance," however, Coates contended that this section's "dogma" rests "upon no appeal to economic reasoning such as distinguishes Part I of the Report" (ibid. at 101).⁵³ Seligman would have been puzzled by Coates's review. The Columbia professor would not have appreciated the reference to economic "dogma," but he would have agreed that his primary goal was to move beyond "economic reasoning" to analyze the real-world experiences of creditor and debtor countries, and to reconcile the ideal with the possible. Indeed, Seligman readily acknowledged that "in international relations we are still very far removed from the ideal" (Seligman [1895] 1925, 125).

The Report received a more favorable, if somewhat skeptical, reception among other fiscal officials. Soon after the Report was published, the League convened a meeting of "technical experts" to consider next steps. In contrast to the political economists who met in Geneva, these "technical experts" were mainly government officials responsible for tax administration in their respective countries. Although some of these public officials were increasingly concerned about tax evasion and avoidance or the double nontaxation problem, they focused most of their energies toward elaborating

⁴⁹ Josiah Stamp to Edwin R. A. Seligman, April 3, 1923, Box 44, Folder 118, ERASP.

⁵⁰ Gijsbert W. J. Bruins to Josiah Stamp, April 4, 1923; Josiah Stamp to Gijsbert W. J. Bruins, April 10, 1923, Box 44, Folder 118, ERASP.

⁵¹ Luigi Einaudi to Edwin R. A. Seligman, April 7, 1923, Catalogued Correspondence, ERASP.

⁵² Edwin R. A. Seligman "Dear Sir" (cover letter template), May 15, 1923; "German List of Addresses as Supplied by Dr. Seligman," n.d., Box 44, Folder 118, ERASP.

⁵³ Coates (1924, 100) made an oblique reference to Seligman as the possible author of Part II of the Report.

on the political economists' Report, which Professor Sunita Jogarajan (2018, 25) has shown "was the starting point for the experts and provided a framework for their discussion." Because many of these representatives were from capital-importing/debtor nations, they were dismayed by the Report's calls for an eventual move toward residence/domicile taxation—Stamp's preferred method 2 of exemption at source. The majority of these officials preferred source-based taxation, just as Seligman had anticipated. They were thus likely disappointed by what the political economists had recommended (Avi-Yonah 2005). Perhaps they were also offended by the Report's condescending suggestion that their "semi-developed" countries were not yet "industrialized" enough. Countries like France and Italy, which were recovering from the war and deeply in debt, likely wondered why their interests were not well represented by the Report. For this audience of government officials, the Report appeared to be a less-than-subtle way of protecting the interests of creditor nations like the United States and England.

Initially, Stamp was distressed by how the League's technical experts were making use of the Report. In November 1923, after receiving word about their initial deliberations, Stamp confided in Seligman that he thought "everything went to pieces" because the technical experts, led by France, "went 'scudding back' to origin." Stamp feared that "nothing will shift them, so I am afraid that our Report will be crying for practical recognition yet a little longer!"⁵⁴ Stamp did not have to wait long, however. By December 1924, after reviewing a confidential draft of the technical report, Stamp provided Seligman with a more optimistic update, noting that "as a first approximation to virtue, they are not so bad as one might have expected." Their draft, Stamp acknowledged, was "very flattering to our efforts in Geneva; in fact, we are a kind of stained glass window on which these feeble mortals have to keep their eyes to their best!"⁵⁵ Eventually, the technical experts issued a 1925 Report that in many ways followed the Report's compromise position of classification and assignment (method 4). As the League's work progressed, American tax experts such as T. S. Adams, the leading US tax policymaker, commended Seligman for his contributions to the League's leadership.⁵⁶

Throughout the remainder of the interwar period, the League continued to refine approaches to international taxation. During much of the 1920s, as tax havens began to emerge, the issue of "fiscal evasion" or double nontaxation became more prominent, especially as countries like Switzerland combined low tax rates with bank secrecy rules to attract foreign capital (Farquet 2012). Gradually, the League expanded the participants invited to discuss and debate international tax laws and policies. While the 1923 Report provided the general framework, new details were supplied by a more diverse group of experts, including many from developing/debtor countries. The transnational network of knowledge-based, policy-relevant experts was slowly growing.

The 1925 Report by technical experts was followed by a second 1928 Report by government officials proposing several model tax conventions addressing both double taxation and double nontaxation. Once again, the 1923 Report's initial conception of economic allegiance was evident and influential. Indeed, the 1928 model conventions relied on the principle of classification and assignment based on the type of tax (the Report's method 4). Impersonal taxes on real and immovable property were assigned to the source/origin country, while personal taxes on income from dividends and interest were assigned to the residence/domicile nations. Under the League's leadership, this division became the model for numerous bilateral treaties throughout the interwar period. Even the United States relied

⁵⁴ Josiah Stamp to Edwin R. A. Seligman, November 8, 1923, Box 44, Folder 118, ERASP.

⁵⁵ Josiah Stamp to Edwin R. A. Seligman, December 23, 1924, Box 44, Folder 118, ERASP.

⁵⁶ T. S. Adams to Edwin R. A. Seligman, March 9, 1925, Catalogued Correspondence, ERASP.

on it for their treaty negotiations (Jogarajan 2018; Zolt 2018; Graetz and O’Hear 1997; Rosenbloom and Langbein 1981; Wang 1945).

A. The Post–World War II Period

During World War II, the League’s work on double taxation continued, albeit at a halting pace given wartime conditions. There were improvements to the 1928 model conventions that included a greater focus on reciprocal administrative assistance, including the sharing of tax information (Dean 2008). After the war, when the League was transformed into the United Nations, the newly created Organization for European Economic Cooperation (the forerunner of today’s OECD) seized the opportunity to address international tax issues (Teo 2023; Vann 2022; Oei and Ring 2024). The United States for its part became the post-WWII global hegemon and soon began to shield US multinational enterprises from source taxation with the assistance of the OECD (Avi-Yonah 2005). In the 1960s and ’70s, the OECD promulgated a set of sample tax treaties and conventions that have continued to shape the existing international tax regime to the present day (Cavelti 2016; Jogarajan 2018; Teo 2023). At the center of the OECD’s models is the classification and assignment method proposed in the 1923 Report.

Seligman might have been disappointed that a century after the Report, there were still significant differences between “industrialized” and “semi-developed” nations. He might not have predicted that the composition of the countries in those two groups would have changed, with nation-states in the global South becoming the key members of the developing world. He had hoped that his recommendation would have been a temporary solution. His sanguine vision for the future convergence of international tax had not come to fruition. But perhaps he might have found some solace in knowing that his practical compromise was still shaping the conceptual foundations of the modern international tax regime.

In many ways, the 1923 Report’s central contributions are still with us today. Most current international tax treaties, for instance, maintain the “classification and assignment” mode of allocating taxing authority that was articulated in the Report. Even the OECD BEPS project’s two main pillars contain elements drawn from the 1923 Report. Pillar I’s focus on profit allocations and nexus seeks to expand “the taxing rights of market jurisdictions . . . where there is an active and sustained participation of a business in the economy of that jurisdiction” (OECD 2020, 10). This language, and Pillar I’s willingness to allow states to tax without physical presence, echo the 1923 Report’s claims that a taxpayer’s economic allegiance includes all jurisdictions that contributed to the creation, development, and exercise of the taxpayer’s faculty or ability to pay. Recall that the Report specifically mentioned the US example of the growth, harvesting, and sale of California oranges across multiple states as a leading example of how economic allegiance operated in practice. “By production of wealth,” the Report explained, “we mean all the stages which are involved up to the point of wealth coming to fruition, that is, all the stages up to the point when the physical production has reached a complete economic destination and can be acquired as wealth” (23). Pillar I thus has a striking resemblance to the Report’s definition of economic allegiance.

The BEPS project’s second pillar similarly corresponds to the 1923 Report, though in a more subtle and nuanced way. In calling for a global minimum tax, Pillar II seeks to ensure that all taxpayers, particularly multinational enterprises, pay a minimum level of tax. The aim is to address the problem of international tax avoidance or what tax experts today refer to as “stateless income”—the situation

where neither source nor residence countries fully tax the business profits from transnational economic activity (Kleinbard 2011). Although such concerns about the “allied problem of fiscal evasion” were not a primary consideration for the League’s experts,⁵⁷ they implicitly endorsed what present-day scholars refer to as the “single-tax” or “full tax” principle (Avi-Yonah 2023; Mason 2020).

Indeed, as Avi-Yonah (2023, 428) has demonstrated, the Report “is based on the assumption that all cross-border income should always be taxed.” Because Seligman’s faculty principle was at the heart of the Report’s central arguments and recommendations, the experts’ ideal solution was to abolish source taxation and rely exclusively on residence taxation to tax transnational economic activities fully. Presumably, the experts were confident that capital-exporting, “industrialized” countries like the United States, England, or the Netherlands—the countries represented by the Report’s leading authors—would want to maintain their sovereignty and authority to tax their residents and citizens.

Echoes of the 1923 Report are also with us today in more troubling ways. The imbalance of political and economic power between nation-states continues to hover over the international tax regime. The distinction between “industrialized” and “semi-developed” countries that was at the heart of Seligman’s analysis has an analog in current tensions between the OECD countries of the global North and the emerging economies of the global South. While developing countries might be involved in the new more inclusive attempts at global tax cooperation, the dominant rich OECD countries continue to control the agenda and decision-making process. The current power imbalances resemble the past. During the 1920s, the asymmetry in power was between “industrialized,” developed, creditor nations such as England, the Netherlands, and the United States on one side and redeveloping countries, such as France and Italy, and the newly decolonized “semi-developed” Slavic states on the other.

Today, the countries in the two camps have changed but the power imbalances and tensions remain. Developing countries from the global South, such as Kenya, Nigeria, and India, have been critical of the BEPS project, particularly Pillar II’s call for a global minimum tax (Kurian 2022). They have argued that the OECD-led project prevents developing countries from using certain tax incentives to attract foreign investments while leaving intact other fiscal advantages routinely offered by developed countries. As a result, some developing states have contended that the locus of international tax reform should be shifted from the OECD to the United Nations (Teo 2023; Oei and Ring 2024). If the history recounted in this article is a guide, any simple attempt to relocate the institutional center of global tax reform discussions, without addressing the underlying asymmetry of political and economic power, is unlikely to fundamentally alter international tax relations.

V. Conclusion

When the League of Nations first contacted the political economists and legal experts for their guidance, few could have anticipated the far-reaching implications of the 1923 Report, including, perhaps, the experts themselves. Sir Josiah Stamp was essential in organizing the group and composing the initial draft, which was based on his earlier study with William Coates. That original British study and the early draft of the Report revealed the English preference for residence-based taxation. But it was Stamp’s senior colleague and American friend—his self-professed “Father Confessor”⁵⁸—Edwin R. A. Seligman who became the main intellectual force behind the final Report. Reflecting the views

⁵⁷ “Summary of the Committee of Tax Experts on Double Taxation,” ERASP.

⁵⁸ Josiah Stamp to Edwin R. A. Seligman, November 27, 1925, Catalogued Correspondence, ERASP.

of Progressive-era, US political economists, Seligman constrained Stamp's initial preference for residence-based taxation, while promoting a certain type of American fiscal exceptionalism.

Seligman's background, experiences, and ideas influenced his contributions to the 1923 Report and his general views of international taxation. His cosmopolitan and progressive upbringing, his formal education in law and the emerging social sciences at Columbia and in Germany, and his leadership of early American economic institutionalism all fueled his research methods and political commitments. As a member of the Columbia School of Taxation and Development and the First Great Law & Economics Movement, Seligman combined his faith in "prescriptive political economy" and law as the "crystallization of public opinion" to theorize and advocate for progressive taxation based on the principle of ability to pay. That principle, in turn, informed Seligman's view of international taxation based on "economic allegiance"—a concept that would become not only the touchstone of the 1923 Report, but also the subsequent framework of twentieth-century international taxation.

Initially, Seligman agreed with Stamp that residence-based taxation was the ideal solution to the defining dilemma of international double taxation. But over time he developed a more moderate and nuanced position. Eventually, Seligman was able to convince the other political economists and members of the international epistemic community that a more restrained and practical approach—one that respected the national sovereignty of capital-importing/debtor countries—was more realistic for the times, or at least for the time being. Indeed, Seligman's contribution was intended to be a temporary compromise until "semi-developed" countries could catch up to the "industrialized" geopolitical powers of the world. The United States continued to be the ideal type. Seligman represented the thinking of his time and place. As a result of his efforts, Seligman can arguably be considered, for better and worse, the primary architect of the modern international tax regime.

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