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How Historical Political Economy Laid the Foundation for the Income Tax: Edwin R.A. Seligman, Henry Carter Adams and the “Ability to Pay”

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Dissertation and Chapter Abstract

This paper is an initial draft of an early chapter of my dissertation. The dissertation, which is tentatively entitled “The Creation of the Modern American Fiscal State: The Political Economy of U.S. Tax Policy, 1880-1930,” investigates the multitude of forces that affected, and were affected by, U.S. fiscal policymaking at the turn of the twentieth century. More specifically, my project explores the questions of how and why the modern federal income tax emerged when it did, and what role tax policy played in the changing status of American state-society relations. The hypothesis guiding my research is the contention that democratic pluralism – that is, a broad cross-section of the American population and not any one social or class group – predominated in implementing tax reform policies.

My dissertation consists of three parts. Part I is an intellectual history of the economic and legal theories undergirding turn of the century tax policy. Part II is an institutional history of the National Tax Association (“NTA”), one of the first volunteer associations to influence the development of early twentieth century U.S. tax policy. And part III will be a social history of the various interest groups such as church organizations, labor unions, and agrarian associations that struggled for a graduated income tax.

This paper is an early attempt at the first chapter in part I, the intellectual history. By examining the backgrounds and scholarship of two key political economists of the time period – Edwin R.A. Seligman and Henry Carter Adams – this paper argues that the historicist assault on laissez-faire principles prepared the groundwork necessary for a more active fiscal state. In illustrating how Seligman and Adams used their historical political economy to advocate for a new basis of taxation, both at the personal and corporate level, this chapter seeks to recover the historical roots of turn-of-the-century tax policy.

Part I. Building the Foundation: The Ideological Origins of the Federal Income Tax

Chapter 1 – How Historical Political Economy Laid the Foundation for the Income Tax: Edwin R.A. Seligman, Henry Carter Adams and the “Ability to Pay”

The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed, the world is ruled by little else. Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist.

- John Maynard Keynes

In the spring of 1886, the editors of the journal *Science* gathered together some of the leading thinkers of American political economy to discuss the role of the emerging economics discipline in a modern, industrial society. Months earlier, in the fall of 1885, several members of a younger generation of professionally trained economists had gathered at the annual meeting of the American Social Science Association to launch their own professional organization, the American Economic Association (AEA). By explicitly excluding older, more orthodox political economists from joining the AEA, the organizers of the new association sought to draw a clear line between their reform-minded theories of economics and the more conservative, laissez-faire approach of the older generation. One of the prominent leaders of the AEA, Richard T. Ely, went so far as to propose a controversial platform for the new organization that completely repudiated laissez-faire doctrine and called for a more active and aggressive role for the state in economic affairs.¹ The establishment of the AEA and the controversy surrounding its membership and initial charter were all part of the on-going struggle to define the meaning of the nascent economics discipline. The ensuing debate in *Science* would become a pivotal part of that struggle.²

¹ For more on the establishment of the AEA and the rise of the economics profession, see generally, Sidney Fine, *Laissez Faire and the General-Welfare State: A Study of Conflict in American Thought, 1865-1901* (Ann Arbor: University of Michigan Press, 1956); Mary O. Furner, *Advocacy & Objectivity: A Crisis in the Professionalization of American Social Science, 1865-1903* (Lexington: University of Kentucky Press, 1974); Thomas L. Haskell, *The Emergence of Professional Social Science: The American Social Science Association and the Nineteenth-Century Crisis of Authority* (Urbana: University of Illinois Press, 1977); A.W. Coats, “The American Economic Association and the Economics Profession,” *Journal of Economic Literature* 23:1697-1727 (December 1985); Dorothy Ross, *The Origins of American Social Science* (New York: Cambridge University Press, 1991).

² *Science Economic Discussion* (New York: The Science Company, 1886). This slim anthology contains edited versions of most of the articles from the economics discussion that were originally published in *Science* from March

The younger generation of scholars who established the AEA welcomed the opportunity to engage their predecessors in a published debate in the pages of *Science*. Some of them saw this as a chance to sever their ties with an anachronistic orthodoxy, and in the process place the science of economics on firmer footing. *Science*, as the signature journal of the prestigious American Association for the Advancement of Science, held great weight in the scholarly community. By publishing their views in such a well-respected journal, some members of the younger generation, such as Ely, believed that an appeal to a broader segment of the scientific community could settle the differences between the contending views of political economy.

The battle between the two schools of thought had begun in 1884 when Ely, then a junior professor at Johns Hopkins University, published a detailed account of what he saw as the key differences between the “old” and “new” schools of political economy.³ Strategically labeling his opponents as outdated adherents of “orthodox English political economy,” Ely proclaimed that the new “Historical School” had “adopted experience as a guide, and judged what was to come by what had been.”⁴ With its roots in German political economy, the new school, according to Ely, had supplanted the methodology, assumptions, and conclusions of the old English School. Whereas the old political economy relied on the methods of deduction from *a priori* absolutes to arrive at immutable, natural laws about wealth, the new school immersed itself in the facticity of empirical and historical data and used methods of induction to demonstrate the relative nature of economic doctrines and institutions. Most importantly for Ely, the two schools differed about the role of the state in modern society. Ely believed that the old school was wedded to a classical liberal theory of laissez-faire that disliked government action. By contrast, Ely and many of his new school colleagues viewed the positive state as an “ethical agency whose positive aid is an indispensable condition of human progress.”⁵

While Ely’s opening salvo was an important first step in creating the cleavage between “old” and “new” political economy, the division became more pronounced once scholars associated with what Ely labeled as the “old” school replied in kind. Simon Newcomb, an astronomer, mathematician and part-time economist at Johns Hopkins, took particular offense at

to July 1886. Future footnotes will refer, however, to the originally published articles, not the anthology, unless otherwise stated.

³ Richard T. Ely, “Past and Present of Political Economy,” *Johns Hopkins University Studies in History and Political Science* 2 (March 1884): 5-64.

⁴ Id. p. 44.

Ely's article, and responded with a staunch defense of laissez-faire principles.⁶ Following on the heels of a negative review of Ely's work in the politically conservative *Nation*,⁷ Newcomb's critique came as an expected retaliation by a senior scholar who may have felt threatened by the innovative work of a younger colleague.⁸ Indeed, Newcomb's adherence to the universal applicability of the laws of the physical sciences to social relations seemed overwrought even to many proponents of laissez-faire, who had recognized the implications of evolutionary theory. A more forceful counter-attack against the "new" school came when William Graham Sumner of Yale University castigated Ely for his policy prescriptions. Responding to Ely's call for an "ethical economics" that could benefit the laboring classes,⁹ Sumner argued that economics would never be taken seriously as an objective science, if agitators such as Ely continued to infuse their scientific studies with political sympathies.¹⁰ For Sumner the conflict between the old and new political economy was essentially about politics, and how the emerging social science of economics needed to resist the temptation to engage contemporary political and social issues.

It was amidst this continuing struggle to define the future parameters of the economics profession, that the *Science* discussion of economics took place. Although Ely's comments had exaggerated the true conformity of the "new school," his assault on laissez-faire soon became a coalescing issue. The "new school" was not a monolithic movement; its members disagreed on both theoretical and practical grounds. But they all shared a common enemy in the extreme individualism associated with the theories of orthodox political economy. In the words of the historian Joseph Dorfman, members of the new school "agreed that the old economics could not supply sound principles of conduct for the community in general, or adequate training for

⁵ "American Economic Association, Platform" quoted in Richard T. Ely, *Ground Under Our Feet: An Autobiography* (New York: MacMillan Co., 1938) p. 136.

⁶ Simon Newcomb, "The Two Schools of Political Economy," *Princeton Review*, 14 (November 1884): 291-301. For more on the origins of the conflict between the new and old political economy, and the particular tensions between Ely and Newcomb, see generally, Furner, *Advocacy & Objectivity*, Ch. 3 "Battle of the Schools"; Benjamin G. Rader, *The Academic Mind and Reform: The Influence of Richard T. Ely in American Life* (Lexington: University of Kentucky Press, 1966), Ch. 2 "His Message: The New Economics."

⁷ "Notes," *Nation* 39 (24 July 1884), p. 74.

⁸ Furner, *Advocacy & Objectivity*, p. 61.

⁹ Richard T. Ely, "Recent American Socialism," *Johns Hopkins University Studies in Historical and Political Science* 3 (April 1885): 231-304.

¹⁰ William G. Sumner, *Collected Essays in Political and Social Science* (New York: Henry Holt and Co., 1885).

prospective businessmen and government officials.”¹¹ Prior to the *Science* discussion, the debate between the new and old schools of political economy had for the most part been confined to the pages of obscure academic publications. With the publication of their beliefs in a prominent journal, the stakes were raised over which group could persuasively seize the mantle of scientific legitimacy.

The implications of the *Science* debate, however, reached well beyond the contest for professional claims to scientific authority. Because the two schools were fundamentally at odds over the role of the state in addressing the dislocations of modern society, resolution of the conflict would have momentous consequences for the making of public policy. Writing at a time when the tensions created by increased economic inequality had reached epic proportions, the academic debates among political economists mirrored public protests and conservative reactions. The economic depression of 1885, the emerging power of the Knights of Labor, as well as the fateful Haymarket riot of 1886 were all seminal events that affected the discussions over the future of the economics discipline. As Mary Furner and Dorothy Ross have aptly demonstrated, Gilded Age class conflicts, and the consequent power of the capitalist class to squelch such tensions, did much to confine the statist possibilities of the emerging social sciences.¹²

Nevertheless, at the time of the academic debates the possibility of envisioning and implementing a new form of social and industrial organization remained an open issue. During the 1880s controversy to define the meaning of economics, members of the new school applied their historical views of political economy to redefine the status of the state in economic and social relations. This chapter argues that it was this redefinition of the function of governance that laid the ideological foundation for the modern American fiscal state. Two political economists actively involved in the discussions of the new economics discipline – Edwin R.A. Seligman of Columbia University and Henry Carter Adams of Cornell University and later the University of Michigan – played crucial roles in shaping how new methods of economic investigation could be applied to the general field of public finance and the particular topic of taxation. Adams and Seligman were certainly not the only political economists concerned with

¹¹ Joseph Dorfman, *The Economic Mind in American Civilization, Volume Three, 1865-1918* (New York: Viking Press, 1949), p. 160.

¹² Ross, *The Origins of American Social Science*; Furner, *Advocacy & Objectivity*. By contrast, Thomas Haskell has argued that the academic differences between old and new school political economists were merely superficial; that the AEA, as the locus of new school reformism, was first and foremost a professional organization and not a vehicle for social change. Haskell, *The Emergence of Professional Social Science*, p. 187.

taxation. In fact, Ely was a member of both the Baltimore and Maryland Tax Commissions during his time at Johns Hopkins.¹³ Unlike Ely, however, Adams and Seligman had a lifelong commitment to studying the theories and administration of tax policies. It is for this reason that these two economic thinkers must be at the center of any study of the ideological foundations of the federal income tax. The primary aim of this chapter is to explore how the general views of political economy held by Seligman and Adams were translated into specific positions regarding taxation, and whether these specific positions ultimately affected public policy prescriptions.

The ideological foundations of early twentieth century U.S. tax policies are, of course, only one significant part of the creation of the modern American fiscal state. Subsequent chapters of this dissertation will examine other important influences on the formation of tax policies. Because the overall thesis of this dissertation is that democratic pluralism – that is, a broad cross-section of the American population and not any one social or class group – predominated in implementing tax reform policies, following chapters will focus on the varying influences on the formation of tax policy. For example, part two of this dissertation will investigate how the members of the National Tax Association, a voluntary organization of tax administrators and officials who interpreted the new tax laws of the early twentieth century, affected the making of public policy. As an institutional history of the National Tax Association, part two will seek to supplement the ideological base of the fiscal state by exploring the administrative framework of the U.S. tax system. Part three of this dissertation will be a social history of the various interest groups, such as church organizations, labor unions, and agrarian associations, that not only struggled to cope with new forms of taxation, but also sought to influence future tax policies. The creation of the modern American fiscal state began, however, not with the grass-roots movements for economic change or with the actions of voluntary organizations like the National Tax Association. The first step in constructing the modern American fiscal state commenced with the ideas and actions of academic theorists such as Adams and Seligman who laid down the ideological foundation upon which others would build – a foundation that required the intellectual and political space of positive state action.

Using the *Science* discussion as a point of departure, this chapter begins by placing Adams and Seligman in the context of the debate between the old and new schools of political economy. As charter members of the AEA and adherents of the new school, Adams and

¹³ Richart T. Ely, *Ground Under Our Feet: An Autobiography* (New York: MacMillian Co., 1938), p. 172.

Seligman both subscribed to the historical and evolutionary view of political economy. Though they came from very different backgrounds, and in some ways disagreed on the extent of public action in private affairs, the two theorists shared a reformist view of liberal, state action. After analyzing their personal backgrounds, this chapter will examine the published writings and private papers of these two key figures to determine how they applied their historical political economy to the issue of taxation. Finally, because both Adams and Seligman mediated between the academic world of ideas and the public sphere of political decision-making, this chapter will conclude with an investigation of how Adams and Seligman were able to apply their ideas in the service of the state.

The Significance of History and Law: Seligman, Adams and the *Science* Debate

Between March and July 1886, over a dozen essays written by nine different individuals appeared in *Science* under the auspices of the “economics discussion.” Since Ely and Newcomb had already done much to define the polar extremes of the debate, the middle ground remained open for consideration. The *Science* discussion began, however, not with a dialogue about the subtle distinctions between the two schools, but with a clarification of the orthodox view itself.

A prologue on the “regulation of contracts” preceded the formal debate. The senior scholar Sumner took on Arthur T. Hadley, one of Sumner’s young disciples at Yale, over the issue of “freedom of contract.” Though Hadley was a contemporary of the new school members, as a student of Sumner, he resisted the reformist tendencies that had imbued Ely, Seligman, Adams and others. Hadley was not alone; several economists from the younger generation rejected new school, reformed principles in favor of the conservative teachings of their instructors. Like Frank W. Taussig and J. Laurence Laughlin, who studied with the traditionalists Charles F. Dunbar at Harvard, Hadley did not stray far from the teachings of his mentor.¹⁴ Indeed, in his essay regarding the “regulation of contracts,” Hadley’s conclusions paralleled those of Sumner’s, though the two used divergent reasoning. The question that both were asked to address was whether changing economic conditions had altered the principle that “men should be left free to make their own bargains.” Hadley began his response with what

appeared to be a justification for state action. Describing the radical changes wrought by industrialization, Hadley seemed to support “the demand for new laws and for new interpretations of existing laws.”¹⁵ But lest one confuse his call for increased regulation as a repudiation of laissez-faire, Hadley made it quite clear in his conclusions that his suggestions for limited state action were merely pre-emptive strikes against more radical forms of governance, namely socialism. “This paper is not intended to be a plea for extension of government activity,” wrote Hadley. “Such extension is threatened from every quarter, and it involves the most serious dangers, both political and moral.” Rather, for Hadley, conceding some limited form of industrial regulation was the only way to preserve the economic liberty of capitalism.

Allow the employer to exempt himself from responsibility, and you drive the community into a system of factory inspection. Allow the railroad to make arbitrary differences in its charges, and you furnish the most powerful argument in favor of state railroad ownership. To try to preserve freedom by chafing at the restrictions of public policy is simply suicidal . . . For a nation to enjoy political liberty, it was necessary for its members to resign some of their former lawless independence; the alternative was despotism. To enjoy industrial liberty, it will be necessary to resign the claim to industrial lawlessness; the alternative is socialism.¹⁶

Not surprisingly, Sumner shared the aversion to state power articulated by his student. But for Sumner even the slightest concession to public intervention in private contracts was anathema. Using “the lessons of history,” Sumner reasoned that past experiences had developed human “instincts or sagacity” that were “expressed in certain maxims,” the finest example of which was the “maxim of laissez-faire.” In his reading of history, Sumner believed that the arbitrary and capricious powers of civil authority could not be trusted to allow even minor intrusions into the affairs of private individuals. Self-interest, not public regulation, was the true guide to human progress. “The value of laissez-faire and free competition,” Sumner proclaimed, “is not that the system gives any guarantee of ideal results, or promises to fulfill any optimistic expectations, but that it throws out arbitrary action and leaves rights and interests to be adjusted

¹⁴ Although Taussig remained loyal to his mentor Dunbar during the *Science* debate, he was sympathetic with certain methodological aspects of the new school, especially its use of historical analysis. Taussig to Seligman, May 15, 1886, pp. 120-21 in Joseph Dorfman “The Seligman Correspondence I” *PSQ* 56: 107-124 (March 1941).

¹⁵ Arthur T. Hadley, “Regulation of Contracts: How Far Have Modern Improvements in Production and Transportation Changed the Principle that Men Should be Left free to Make Their Own Bargains?” *Science – Supplement. On the Freedom of Contract* March 5, 1886, pp. 221-5.

¹⁶ *Id.* pp. 224-5.

by their own collision and struggle, until they find their true resultant in the facts and conditions of the case.”¹⁷

It was in response to the Hadley-Sumner defense of laissez-faire, that Seligman entered the *Science* fray. In fact, it appears that Seligman was particularly disturbed by Sumner’s use of history to support a universal conception of classical liberalism. As a corrective to what he saw as Sumner’s acontextual use of history, Seligman set out to clarify how the tenets of political economy had changed with the times.¹⁸ Addressing old school political economists such as Hadley and Sumner, Seligman chastised the reigning orthodoxy for its blindness to the connections between economic theory and changing material conditions. “[W]hat many of the older school then, as now, often disregarded, is the essential interrelation between economic theories and the changing external conditions of industrial life,” wrote Seligman. By contrast, the new school was attuned to the relativity of economic doctrine. “The modern school, the historical and critical school,” declared Seligman, “holds that the economic theories of any generation must be regarded primarily as the outgrowth of peculiar conditions of time, place, and nationality, under which the doctrines were evolved, and that no particular set of tenets can arrogate to itself the claim of immutable truth, or the assumption of universal applicability to all countries or epochs.” This relativism, for Seligman, was liberating. It allowed him and his new school colleagues to disregard antiquated doctrines that no longer applied to a modern, industrial nation. In speaking for the new school, Seligman announced that “because of our belief in the relativity and continuity of economic doctrine, we are compelled to regard much of what was at the time comparatively correct and feasible, as to-day positively erroneous and misleading.”¹⁹

Seligman continued his rebuke of the old school with a lengthy set of examples of how past economic theories were derived from the social and political contexts of their times. From the usury laws and reasonable price doctrine of the medieval period, to the mercantilism of the seventeenth century, through the canonical teachings of Adam Smith, Robert Malthus, and David Ricardo, Seligman contended that past economic theories and practices were reflections of the material economic conditions of particular eras. And that the individual exponents of these theories were simply “unconscious emanations of the spirit of the age.” In an analysis that is

¹⁷ William Graham Sumner, “Regulation of Contracts” *Science – Supplement. On the Freedom of Contract* March 5, 1886, pp. 225-228.

¹⁸ Edwin R.A. Seligman, “Change in the Tenets of Political Economy with Time,” *Science – Supplement* April 23, 1886, pp. 375-82.

remarkably similar to the work of Karl Marx in the *Grundrisse*, Seligman demonstrated how each set of past economic theories had its proper place in the historical unfolding of economic doctrine. The work of Smith, in particular, played a pivotal role in creating space for more modern theories. “Smith’s whole work,” Seligman argued, “consisted in pulling down the rotten fences which obstructed the path of the artisan, the farmer, and the merchant, and we of today cannot be too grateful for the salutary impulse he thus gave to all economics.” Yet unlike his followers, Smith recognized the historical contingency of his ideas. Seligman claimed that Smith understood that his ideas applied only to a particular time and place, “for he possessed a far truer historical spirit than many of his successors.”²⁰

Citing no less an authority than Smith, Seligman claimed that history itself was on the side of the new school. Just as Smith’s notions of individual self-interest and laissez-faire had played their part in the development of economic science, new material conditions created by advances in transportation, commerce and industry called for a new theory of economic and social relations – a new theory that Seligman and his reform-minded colleagues were eager to provide.

Before building the new, it is imperative to tear down the old, and Smith certainly succeeded beyond his anticipations in demolishing the old principles. But since his times new conditions have arisen. The factory system, then in its infancy, has revolutionized industrial life, and has brought in its train problems which scarcely existed in 1776. The machinery of commerce and transportation is vastly more complex, and cannot be regulated by any such simple methods of laissez-faire as were possible when Smith wrote. ... Smith’s work is by far the most important ever written in the science; but we must not, on that account, bow down blindly before its author, and meekly accept all his conclusions. Had we lived in 1776, we would certainly have been followers of Smith: did Smith live in 1886, he would no less surely have been in the vanguard of the new school.²¹

Though Seligman strategically used Smith against the old school, the new school’s true inspiration, he argued, came not from the British Isles, but from the European continent. Ely had earlier identified the German historical school of economists as the model for the American new school,²² and Seligman – who along with Ely and many of the other younger generation of economists had studied in Germany – followed suit. Seligman claimed that German scholars,

¹⁹ Id. p. 375.

²⁰ Id. p. 379.

²¹ Id. p. 379.

²² Ely, “Past and Present of Political Economy,” p. 43.

such as Wilhelm G.F. Roscher, Karl Knies and Bruno Hildebrand, were the first thinkers to place these economic ideas on a “truly scientific basis” by proclaiming “the necessity of treating economics from the historical stand-point.” It was these German thinkers, and now their American counterparts in the new school, who discarded “the exclusive use of deductive method” and called for the “necessity of historical and statistical treatment;” it was they who denied “the existence of immutable natural laws in economics, calling attention to the interdependence of theories and institutions, and showing that different epochs or countries require different systems.” It was the German historical school that disclaimed any “belief in the beneficence of the absolute laissez-faire system,” and maintained “the closer interrelation of law, ethics, and economics,” while refusing to accept “the assumption of self-interest as the sole regulator of economic action.” Finally, and most importantly for Seligman, the new school shared with its German counterpart the need to address contemporary problems. Once it was free from the reigning orthodoxy of laissez-faire, “the new school, devoid of all prepossessions, devoted itself to the task of grappling with the problems which the age had brought with it.” These were the main principles, Seligman argued, that their German mentors had bequeathed to the new school.²³

For Seligman, the new school was not, however, a simple imitation of German historicism. Both sets of ideas were rather a function of changing material circumstances. As we shall see, Seligman was an avid reader and translator of Marx, and he borrowed much of his theory of history from the historical materialism of traditional Marxism. Thus, according to Seligman’s historicism, ideas were not the engines of change, material economic conditions were. Thus, the message of the German historical school was a manifestation of an industrial era, and similarly “the new school,” Seligman explained “is the product of the age, of the *zeitgeist*, not of any particular country; for the underlying evolutionary thoughts of a generation sweep resistlessly throughout all countries whose social conditions are ripe for change.” Even English economists, Seligman argued, could not resist the force of the *zeitgeist*, as John Stuart “Mill himself had gone through an evolution and was sincere enough to express his disbelief in the old economy, and to a certain extent in his own work.”²⁴

²³ Seligman, “Change in the Tenets of Political Economy with Time,” p. 381.

²⁴ Id., p. 381.

It was the spirit of the new industrial age, Seligman believed, that now permitted the new school to debunk the myth of infallibility associated with the immutable, natural laws of classical theory. The historical perspective “proved ... the relativity of economic doctrines.” To believe otherwise would be to engage in narcissistic indulgence. “To maintain that all previous generations and countries have erred, and that we alone possess the truth,” declared Seligman, “is an egotistic assumption, based, moreover, on the untenable hypothesis of the identity of human nature and the similarity of outward conditions.” The only truth that Seligman and his historically inclined colleagues would adhere to would be the relativity of theory. With Sumner’s universal vision of history no doubt in mind, Seligman issued one last rebuke against the inviolability of past doctrine. The “truly historical mind will ... in one word maintain the relativity of theory;” wrote Seligman, “he will divest the so called absolute laws of much of their sanctity, and thus henceforth render impossible the baseless superstition that all problems can be solved by appeal to the fiat of bygone economists.”²⁵

Unlike Ely, however, Seligman represented the moderate wing of the new school, for he continued to emphasize that the laissez-faire theories of the old school had an important part to play in the evolution of economic doctrine. Thus, Seligman tempered his disapproval of the old school with a consoling gesture. His ironic use of Smith – the patron saint of classical economics – against the old school itself was followed by a comment about how even classical theory was vital to the overall progression of economic ideas. “The new movement in political economy simply intimates this progressive continuity,” Seligman wrote. “It maintains that the explanations of phenomena are inextricably interwoven with the institutions of the period, and the practical conclusions must not be disassociated from the shifting necessities of the age. We accept with gratitude the results of former economists, as containing much of what was true at the time; but we desire to erect a structure more suitable to the exigencies of the present.”²⁶

By combining this emphasis on continuity with the historical specificity of economic thinking, Seligman was careful not to exaggerate the distance between the past and present. Ely, in his initial essay defining the new school, had also acknowledged the historical connections between classical theory and the new progressive school,²⁷ but Ely later recanted such ideas. In drafting the initial platform of the AEA, Ely sought to drive a temporal stake between the old and

²⁵ Id., p. 382.

²⁶ Id. p. 379.

new schools, when he wrote: "... we hold that the doctrine of laissez-faire is unsafe in politics and unsound in morals; and that it suggests an inadequate explanation of the relations between the state and the citizens."²⁸ Distancing himself from Ely's views, Seligman's historical political economy was a theory not of radical rupture, but rather of measured progression. In speaking for the new school, Seligman stated, "we hold that there is a well-defined thread of continuity and gradual development in the history of economic doctrines; and we assert that each period of economic life must be treated by itself, both in regard to the truth and falsity of the doctrine itself, and in regard to the applicability of the particular theory in question."²⁹

Although Seligman's essay was a mix of reproach and consolation, other participants in the *Science* discussion, especially those of the old school, neglected to respond to it. Editors of the journal concluded that because the article "was considered to be historical, ... it met with no adverse comments from those consulted in regard to it."³⁰ If the old school had decided to give Seligman a pass, they would not be so kind to his colleagues. The remaining set of articles in the *Science* discussion generally consisted of groups of three essays in tandem. A new school economist would begin by writing about some aspect of the contrasting assumptions, methodology or conclusions of the two schools; an adherent of the classical view would respond with a critique of the "unscientific basis" of the new progressive school, and the initial writer would conclude with a rejoinder about the true meaning of science in a modern world. After Seligman's opening essay, the debate between new and old school economists began with full force. Edmund J. James, of the University of Pennsylvania's Wharton School, expounded on the new school's endorsement of the state as a facilitator of economic progress, against the objections of the young conservative Taussig.³¹ Similarly, Ely and Newcomb followed by rehashing their differences this time over the role of ethics in the development of an economic

²⁷ Ely, "Past and Present of Political Economy," pp. 158-161.

²⁸ "American Economic Association, Platform" quoted in Ely, *Ground Under Our Feet*, p. 136.

²⁹ Seligman, "Change in the Tenets of Political Economy," p. 382.

³⁰ *Science Economic Discussion*, p. i. Because the Seligman essay did not receive any explicit criticism, the editors took the liberty of editing the title of the essay for the anthology. Although the essay was reprinted in its entirety with its reprimands of the orthodox view, the editors blunted the effect of Seligman's essay by renaming it "Continuity of Economic Thought." Id., p. iii.

³¹ Edmund J. James, "The State as an Economic Factor," 7 *Science* May 28, 1886, pp. 485-88; Taussig's Reply, pp. 488-490; James's Rejoinder, pp. 490-1.

science.³² Henry Carter Adams's contribution to the *Science* discussion followed the Ely - Newcomb exchange.

As the other progressive economist most concerned with public finance, Adams supplemented the historical findings of Seligman's earlier essay with an analysis of the inseparable connections between law and economics.³³ For Adams, the historical perspective on political economy – the touchstone of the new school – was rooted, at bottom, in the historical development of jurisprudence. The historical views of the new school, wrote Adams, “seem to have been suggested by an extension to the economic field of the conception of the historical school of jurisprudence.” German legal scholars such as Friedrich von Savigny had begun the historicist assault, Adams suggested, and their relativism gradually spilled over to the realm of political economy.³⁴

With its historical roots in jurisprudence, Adams argued that political economy had much to learn from an analysis of the legal institutions that structured society. Anticipating the theories of the next generation of institutional economists, Adams believed that the study of economics could not be conducted in a vacuum separate from the web of legal relations that defined economic behavior. For Adams economics was essentially “the science of industrial society;” he maintained that economic relations in an industrial age could not be understood outside the context of their social structure, and the most important element of that social structure was the laws and customs of industrial society. “[I]t is not too much to say that the economic character of man itself has been modified by means of the hereditary transmission of habits first contracted through the pressure of changes in the social structure;” wrote Adams, “for, as the stroke of the shuttle is limited by the framework of the loom, so the industrial movements of men are bound by the liberties of law and of custom, and, to carry the metaphor a step further, the industrial weaving of society is largely determined by its legal structure.”³⁵

It was not just law's power to limit individual action that Adams highlighted. He also underscored the use of law in advancing the communitarian goals of a society. Adams readily admitted that “in many instances legal enactments undertake to enforce certain lines of conduct

³² Richard T. Ely, “Ethics and Economics,” 7 *Science* June 11, 1886, pp. 529-33; Simon Newcomb, “Aspects of the Economics Discussion,” 7 *Science* June 18, 1886, pp. 538-42; Richard T. Ely, “The Economic Discussion in Science,” 8 *Science* July 2, 1886, pp. 3-6.

³³ Henry Carter Adams, “Economics and Jurisprudence,” 8 *Science* July 2, 1886, pp. 15-19.

³⁴ *Id.* p. 16.

³⁵ *Id.* p. 15.

on a stubborn minority.” But this was not the real power of legal institutions. “The most important use of law,” for Adams was “as an agency of reform.” Law, as the embodiment of public opinion, guaranteed that the immediacy of individual incentives in a market economy would not trump long-term social interests. Adams recognized that the fierce competition of industrial capitalism could compel individuals to act in opposition to the commonweal. Unfettered competition had placed the social interest in tension with individual interests, and “the only way in which the social purpose can influence the practice of individuals,” proclaimed Adams “is for law to establish uniformity of action.”³⁶

Law’s ability to restrict individual action in the name of community goals had broad practical implications for Adams. His theory of law and economics “touched directly the great economic questions of the day.”³⁷ Seligman had earlier identified the “paramount question of political economy today” as “the question of distribution, and in it the social problem (the question of labor, of the laborer).”³⁸ Adams seconded that comment, as he focused on “industrial re-organization as a means of solving the social problem.” For Adams the source of the problem was clear. “Difficulties have arisen,” he wrote “because the industrial life and activity of the social organism have grown to a different plane from the one which underlies the juridical system.” It was this “uneven and disjointed development” of law and industrial relations that was to blame. “[T]he conception of rights and duties, of liberties and constraints, of privileges and responsibilities, which lies at the basis of juridical system,” Adams contended “is not applied to the highly developed industrial system of the present.” The gravest example of the disjuncture between static laws and a dynamic industrial society was, for Adams, the tension between traditional property rights and new forms of capital:

The most effective power of the present day is capital, for by means of capital the forces of nature are brought to serve the industrial purposes of men. But all men who work as business-agents must conform to the economic law of capital. In this day all must work with machinery, or not work at all; and yet the law of property, which grants ownership in capital, does not recognize its public character. The consequence is that we find a power, which necessarily touches the life of every man, managed for purely private ends. This is contrary to the spirit of English liberty.³⁹

³⁶ Id. p. 17.

³⁷ Id. p. 17.

³⁸ Seligman, “Changing Tenets of Political Economy with Time,” p. 382.

³⁹ Adams, “Economics and Jurisprudence,” p. 18.

The reference to “English liberty” had particular resonance for Adams’s argument. Like many of his new school colleagues, Adams began his article by paying homage to the importance of the German historical school of political economy. But lest one confuse Adams’s message, he made it quite clear that socialism, or the public ownership of property, was not what he was advocating. “Private ownership in capital must be allowed, in order to secure its most economical administration;” wrote Adams “but there is no reason why its administration should be irresponsible. It is from its very nature a social force; and not only should the community as a whole have a word to say respecting its management, but the employees also, as members of the community.” Giving employees a voice meant enlarging the conventional conception of private property, “by increasing the duties of property, which would be equivalent to the creation of proprietary rights for the non-possessors.” Adams specifically distinguished his proposal to reform property rights from German style-statism. Like Seligman, he applied the historicism of the new school to his own theories. “It may be proper in Germany, where the principles underlying the juridical system are quite different from those that determine either English or American law, to advocate constructive socialism;” Adams declared “but it is absurd for one who claims to be a disciple of the historical school of economy to adopt German conclusions in this respect.” The specificity of economic conditions and legal institutions forced Adams to acknowledge that what may be appropriate for one nation, may not be suitable for another. The Anglo-American tradition of jurisprudence was opposed to “constructive socialism.” Since laws and customs determined the possibilities of economic reform, for Adams, it was “easier to bring our industries in harmony with the spirit of our law than to re-organize our society from top to bottom, industries included.” The deference to the venerable tradition of Anglo-American laws did not limit Adams’s call for political and economic change. By demonstrating how social and economic relations were embedded in legal institutions, Adams primary goal was to convince his readers of the need for legal change, for as he saw it “not only does the jural system assist in explaining many facts of industrial life, ... it may be advantageously used by society in the realization of industrial ends.”⁴⁰

If Adams intended to reach out to old school economists with his article, many of them were not impressed. Arthur Hadley, the young Sumner student who was teaching at Yale, responded to Adams with a brief but contemptuous restatement of laissez-faire principles that by

⁴⁰ Id. p. 19.

now had become the shibboleth of the old school. Hadley admitted that law influenced economics, but he argued that in order for economics to become an objective discipline it must retain its independence as a form of scientific analysis. And to do that economics must adhere to certain immutable natural laws that no form of human legislation could challenge. “[T]he material out of which the science of economics is built consists of a few simple laws of human nature,” wrote Hadley, “the chief of which is that men strive to obtain the maximum of satisfaction with the minimum of sacrifice.” Those who “deny all independence to economic reasoning,” and refuse “to recognize the rigidity of economic laws,” Hadley believed, are destined “to suffer for it in practical experience.” The proper role of the economist was not in making policy proposals for legislative action, but in delimiting the role of the state by pointing out how the full force of economic laws – the power of market forces – could undermine state action. According to Hadley, it was these rigid economic laws that marked the limits of state action, and it was up to the economist to identify those limits. “As long as political economy is occupied with defining those limits,” Hadley stated, “it can maintain its claim to the position of an authoritative science.”⁴¹

Returning to Adams’s main point about the link between economics and legal institutions, Hadley strongly advised against commingling the two disciplines. For as he saw it, the two were separate forms of analysis that simply imposed limitations upon one another. “Industrial activity is limited by legal conditions; legislative activity, by economic conditions,” wrote Hadley. “The attempt to confuse the two, and to merge them in a crude science of sociology, seems for the present likely to check scientific progress, and to involve us in serious practical dangers.”⁴² As a young economist, Hadley had a stake in the future perception of the profession. Creating an independent identity for his discipline, one based on the *laissez-faire* principles that he had imbued throughout his life, was essential to defining his own role in an industrial society.

In his rejoinder, Adams displayed his disappointment and frustration over the *Science* discussion, as a whole. Confounded by what he believed to be Hadley’s misrepresentation of his views, Adams wondered whether there was any middle ground for compromise between the old and new schools. Hadley, like nearly all members of the orthodoxy, held strongly to the analogy

⁴¹ Arthur T. Hadley, “Economic Law and Methods,” 8 *Science* (July 16, 1886), pp. 46-8.

⁴² *Id.* p. 48.

of economics to the physical sciences. He and his colleagues, Adams bemoaned, refused to see the relative merits of “new truths” emerging “from the growth of the social organism.”⁴³ By continuing to view economics as a type of physical science, Hadley and his ilk discarded the legal and material conditions of society as irrelevant to the study of economics.

By contrast, Adams reiterated his theory of the complex interdependency of modern social relations. Unwilling to concede scientific authority to Hadley and the conservatives, Adams argued that the science of economics had two strands, one analytic the other constructive. “Its purpose as an analytic science is to explain the industrial actions of men,” wrote Adams. “Its purpose as a constructive science is to discover a scientific and rational basis for the formation and government of industrial society.” To accomplish the latter, economists had to understand that as a *social* science their discipline was part and parcel of the historical evolution of society itself. “Economy is not an independent study; it is a dependent subordinate study, which first finds its true place when framed into the study of society as a whole,” Adams declared. “There is no such thing as a scientific treatment of one function of a developing organism which does not recognize the essential and permanent relations of that function to other forms of activity by the same organism.” Recognizing the multiple and complex interrelations of a social organism meant eschewing economic truths as authoritative and rigid, and seeing them instead as dependent and relative. “There is no meaning in the science of history otherwise,” proclaimed Adams.⁴⁴

Adams’s response to Hadley formally concluded the *Science* dialogue, with little resolution.⁴⁵ Seligman’s emphasis on the historical perspective, and Adams’s illustration of how economic relations were embedded in larger social structures, were both practically ignored by orthodox economists. The *Science* discussion did little to persuade either side of the merits of the other. What is significant, however, is how both Seligman and Adams used the *Science* debate as a foundation from which they launched their ideas about state action in the realm of public finance.

⁴³ Henry Carter Adams, “Another View of Economic Laws and Methods,” 8 *Science* (July 30, 1886), pp. 103-5.

⁴⁴ *Id.*, p. 105. The emphasis on the interdependency of modern society is at the crux of Thomas Haskell’s thesis that the professionalization of social science occurred in response to the crisis of authority caused by modern interrelatedness. Haskell, *Emergence of Professional Social Science*.

⁴⁵ Richmond Mayo-Smith had an article that followed the Adams-Hadley exchange, but like Seligman’s opening essay, Mayo-Smith’s concluding article did not elicit a response from the old school political economists. Mayo-Smith, “Methods of Investigation in Political Economy,” 8 *Science* (July 23, 1886), pp. 82-7.

Scholars who have examined the *Science* discussion have viewed it, for the most part, in the context of the professionalization of the economics discipline. Focusing on the debate's potential for agreement, Mary Furner, for instance, has argued that the discussion was an important prologue to the compromises that would eventually compel the discipline to unite into a profession. Though Furner intimates that the public display of disagreement between the two schools forestalled the professionalization process, she concludes that the debate "identified some issues on which agreement could be reached."⁴⁶ Similarly, Dorothy Ross has chronicled the *Science* discussion as part of the larger unsuccessful historicist challenge to the ideas of American exceptionalism. While she admits that the historical economists, including Seligman and Adams, had the larger voice in the *Science* debate, the professionalization process and the rise of marginal utility theories in economics, she contends, eventually eclipsed their reform message.⁴⁷ Thomas Haskell, by contrast, gives little significance to the *Science* discussion. He sees it, along with the tensions surrounding the establishment of the AEA, as ephemeral, a mere epiphenomenon in the liberal march towards professionalization.⁴⁸

By focusing exclusively on the professionalization process, these scholars have neglected the broader implications of the late nineteenth century academic debates. While it may be true that there was more consensus than disagreement among academic thinkers over the role of the positive state, the business and popular communities remained wedded at the time to classical notions of laissez-faire. The intervention of a centralized nation-state into the everyday economic affairs of private citizens remained a highly contested issue. The historical political economy advocated by Adams, Seligman and their new school colleagues was addressed not only to their academic peers, but more importantly to the larger public. For these thinkers, the historical perspective was intimately tied to progressive politics. Uncovering the historical contingency of laissez-faire policies – or what Adams called the "historical coincidence" of Anglo-American thought – was simply the first step in instituting progressive public policies. Only after de-naturalizing the night watchman state of classical liberalism, could these theorists take the second step of developing reformist policies. Only by demonstrating that there was nothing natural or necessary about the Anglo-American presumption against state action, could these academics influence the formation of future public policy.

⁴⁶ Furner, *Advocacy & Objectivity*, p. 92.

⁴⁷ Ross, *Origins of American Social Science*, pp. 106-22.

The historically based sociology employed by Adams, Seligman and many of their colleagues was eventually blunted by the revival of classical theory in the form of marginal utility analysis, but not before the inductive and historical methods of the new school had a resounding impact on the future of state-society relations. As the labor historian Sidney Fine as shown, the late nineteenth century ideas of economists such as Ely, Adams and Seligman did much to prepare the groundwork for the general-welfare state.⁴⁹ Ideas about how economic doctrines were historically developed and how economic relations were parts of larger social structures would become important pillars of the American welfare-state. As we shall see, it was from this same foundation that Seligman and Adams would build their theories of public finance – theories that would be the bedrock of the modern American fiscal state.

Adams and Seligman: The Midwestern Preacher's Son and the Affluent Cosmopolitan

Despite their shared interest in public finance, Adams and Seligman had rather disparate backgrounds. As contemporaries separated in age by only a decade, the two came from two wholly different worlds. Adams was born in Davenport, Iowa in 1851 the son of Ephraim Adams, a missionary preacher and educator who was a key figure in the founding of Grinnell College.⁵⁰ The elder Adams, a native New Englander who graduated from Phillips Academy, Dartmouth College and Andover Theological Seminary, moved to the Midwest in the 1840s, where he became a leader of the “Iowa Band” of antislavery Congregational ministers.⁵¹ Edwin Robert Anderson Seligman, by contrast, was born in New York City in 1861 into a prominent German-Jewish family.⁵² His father Joseph, who immigrated to the U.S. from Bavaria in 1837, was a self-made business man and financier who along with his brothers founded the house of J.& W. Seligman, a merchant banking firm that would one day rival the likes of J.P. Morgan. Although Joseph Seligman had turned down the opportunity in 1873 to become Grant's

⁴⁸ Haskell, *The Emergence of Professional Social Science*, pp. 185-89.

⁴⁹ Fine, *Laissez Faire and the General-Welfare State*, Ch. VII. The New Political Economy.

⁵⁰ William Bristol Shaw, “Henry Carter Adams,” *Dictionary of American Biography*, 1 (1928) pp. 67-8.

⁵¹ Marvin B. Rosenberry, “Henry Carter Adams,” in *Michigan and the Cleveland Era: Sketches of University of Michigan Staff Members and Alumni who Served the Cleveland Administrations* ed. Earl D. Babst and Lewis G. Vander Velde (Ann Arbor, MI: University of Michigan Press, 1948), pp. 23-4.

⁵² Joseph Dorfman, “Edwin Robert Anderson Seligman,” *Dictionary of American Biography*, Suppl. 2, (1958), pp. 606-9.

Secretary of the Treasury, he played a prominent role in government finance and railroad development throughout the nineteenth century.⁵³

From these contrasting beginnings Adams and Seligman were raised in equally dissimilar fashions. While Adams was educated by his father, who no doubt imbued in him the evangelical and pietistic traditions of Christian idealism, Seligman was tutored by Horatio Alger, and, due to the travels of his family, became fluent in several languages including French, German and Italian by his early teens. Both men remained close to home for their formal education. Adams enrolled in Grinnell, then known as Iowa College, where he continued to receive instructions from his father who was a trustee of the college. Seligman, for his part, was the thorough product of a Columbia education. After attending Columbia Grammar School, he matriculated at the tender age of 14 at Columbia College where he came under the influence of the political economist John W. Burgess. It was generally assumed by both families that the two sons would follow in the footsteps of their fathers, Adams would join the clergy and Seligman would join the family business. Neither one would adhere to the family plan. After a year at the Andover Seminary, Adams quit the clergy and sought to channel his reformist urges, first into journalism, and then into scholarship and public activism. Similarly, Seligman returned from his European travels after college to declare that academia, not finance, would be his calling.⁵⁴

In spite of the diversity of backgrounds, the research interests and scholarship of the two men began to converge during their formal graduate education, both in the U.S. and abroad. After leaving the seminary in 1876, Adams enrolled in the newly opened graduate school for the social sciences at Johns Hopkins University. Two years later, he received the first doctorate conferred by the university when he completed a thesis on the “History of Taxation in the United States, 1789-1816.” During his years as a graduate student, Adams garnered the attention of University President Daniel Coit Gilman, a trained geographer who had done much to promote

⁵³ Ross L. Muir and Carl J. White, *Over the Long Term: The Story of J. & W. Seligman & Co.* (New York: J. & W. Seligman & Co., 1964), p. 24.

⁵⁴ Rosenberry, “Henry Carter Adams,” p. 23; Joseph Dorfman, *The Economic Mind in American Civilization, Volume Three, 1865-1918* (New York, Viking Press, 1949), p. 164; “Edwin Robert Anderson Seligman: Seventh President of the American Economic Association, 1902-3,” *American Economic Review*, 33 (June 1943) p. 2. The secondary literature on late 19th century American economic thought has emphasized how the religious roots of individuals such as Adams and Seligman influenced their reformist activism. While the historical evidence supporting such a claim is abundant in the Protestant upbringing of Henry Carter Adams and Richard T. Ely, it is unclear whether Seligman’s “Jewish liberal humanism” or “the moral orientation of reformed Judaism” had an equally resounding effect on his moderate activism. Furner, *Advocacy & Objectivity*, p. 56; Ross, *Origins of American Social Science*, p. 103 [check Dorfman entry in DAB].

the historical study of politics and society.⁵⁵ At Gilman's insistence, and with support from a university benefactor, Adams headed off to Europe after obtaining his graduate degree. Adams's decision to continue his studies in Europe was likely also influenced by Herbert Baxter Adams, an assistant fellow at Hopkins who had arrived at the opening of the graduate school with a doctorate in history from Heidelberg. Henry Carter Adams remained in Europe for a little over a year, studying first briefly at Oxford and Paris, and then moving on to the more formative influence of German scholarship in Berlin and Heidelberg. While at Berlin he studied with Adolf Wagner, a second-generation member of the German Historical School who focused on topics such as public finance – one of the fields in which Adams himself would become an expert.⁵⁶

Seligman's sojourn to Europe had a similar effect. During his undergraduate years at Columbia, Seligman was influenced by Burgess and the young Richmond Mayo-Smith, two American educators who themselves had been trained in Germany. Although Burgess had been brought to Columbia in the late 1870s to infuse the curriculum with the new inductive methods of the German Historical School, it was Mayo-Smith who would build the university's Department of Political Economy and Social Science. Mayo-Smith was also a pioneer in the use of statistics in the study of political economy, as well as a proponent of Ely's new school during the *Science* debate.⁵⁷ Singled out by Burgess as a promising young scholar, Seligman took his mentor's advice and headed off to Europe after his undergraduate education to attend classes in Berlin, Heidelberg, and Paris. Having imbibed the historical and cooperative theories of the European academy – especially the German Historical School's emphasis on economic history and public finance – Seligman returned to Morningside Heights in 1882 to enroll in Columbia's newly created School of Political Science, and the law school. Among his peers in law school, was the future New York State Governor and Supreme Court Justice, Charles Evan Hughes. Seligman and Hughes remained good friends throughout their lives, even when their differing views on the constitutionality of a federal income tax brought them to loggerheads. It was at this point, early in his formal graduate school years, that Seligman explicitly rejected the family

⁵⁵ Ross, *Origins of American Social Science*, p. 67.

⁵⁶ Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge: Harvard University Press, 1998) p. 97; William J. Barber, "Political Economy in the Flagship of Postgraduate Studies: The Johns Hopkins University," in *Economists and Higher Learning in the Nineteenth Century* ed. William J. Barber (New Brunswick, NJ: Transaction Publishers, 1993), pp. 203-24.

⁵⁷ Richmond Mayo-Smith, "Methods of Investigation in Political Economy," 8 *Science* (July 23, 1886), pp. 82-7.

business and dedicated his life to the academy; he earned his law degree in 1884 and his doctorate the following year, when he defended a dissertation on the mediaeval guilds of England, written under the supervision of Mayo-Smith.⁵⁸

With their formal educations complete, Adams and Seligman had vastly different experiences in navigating the limited teaching opportunities available to young scholars in late nineteenth century America. Upon his return from Europe, Adams was forced to juggle part-time employment duties: delivering a series of lectures at Johns Hopkins on “National Debts,” while at the same time teaching on a temporary basis at Cornell University. The same arrangement was extended for another year, before Adams was offered a position at the University of Michigan. From 1880 through 1886, Adams split his time between Cornell and Michigan, shuttling back and forth between the two institutions. In 1886 he was forced to resign from Cornell when his public comments supporting labor – comments that were nearly identical to his position in the *Science* essay “Economics and Jurisprudence” – angered prominent Cornell alumni. Officials at Michigan responded by offering Adams a permanent position in Ann Arbor, but only after they were assured of the appropriateness of his political leanings. Adams would remain at Michigan throughout his academic career, despite an invitation by Cornell to return in 1890.⁵⁹

By contrast, Seligman with his links to Columbia and his New York City-based family connections had little trouble securing employment. Having been groomed during his graduate years as a future colleague by Burgess and Mayo-Smith, Seligman won a prize lectureship at Columbia in 1885, immediately after he received his doctorate. Within three years, he was appointed adjunct professor and by 1891 he had been promoted to full professor of Political Economy and Finance. Seligman would remain at Columbia for over four decades, becoming the first McVickar Professor of Political Economy, chairing the Department of Economics for

⁵⁸ Frank Rozwadowski, “From Recitation Room to Research Seminar: Political Economy at Columbia University,” in *Economists and Higher Learning in the Nineteenth Century* ed. William J. Barber (New Brunswick, NJ: Transaction Publishers, 1993), pp. 188-97; Edwin R.A. Seligman, *Two Chapters on the Mediaeval Guilds of England* (New York: J.F. Pearson, 1884).

⁵⁹ Rosenberry, “Henry Carter Adams,” p.27. It appears that Adams did not believe that his public comments at Cornell were the cause of any worry. As late as the fall of 1886, many months after his public comments, Adams wrote Seligman about the controversy stating that he “had no reason to apprehend difficulty.” Henry Carter Adams to Seligman, November 9, 1886, p. 270 in Joseph Dorman “The Seligman Correspondence II” *PSQ* 56: 270-86 (June 1941). Nevertheless, Adams did request that Seligman publish a positive review of Adams’s *Outline of Lectures on Political Economy* in the next issue of the *Political Science Quarterly*, as a safeguard against the possibility of dismissal from Cornell. Adams to Seligman, November 17, 1886, Id. p. 270-1

many years, and finally retiring in 1931. Together with Mayo-Smith, he would create and cultivate the graduate seminars that would become a hallmark of Columbia's graduate program.⁶⁰

Once Adams was able to overcome his initial difficulties in securing a permanent teaching position, his scholarship soon became as diverse and prolific as the younger Seligman's. Both men were able to combine their interests in economics, history and law as they converged on the topic of taxation. For Adams, the American system of taxation and public finance in general were early interests. His doctoral dissertation, for instance, was a quantitative analysis of eighteenth century U.S. tax policy, in which Adams sounded the clarion call for free trade – a rather unpopular position at the time among both scholars and the popular community. Analyzing the origins of the republic's tax system, Adams argued that the original sin of creating protective tariffs had blinded contemporary society to the initial objective of tax laws: to raise revenue. "Tariff reform," wrote Adams, "means tariff for revenue only."⁶¹ Adams followed this early endeavor into the history of American public finance with his provocative contributions to the *Science* discussion. Soon thereafter he published one of his early treatises on public finance, *Public Debts: An Essay in the Science of Finance*, as well as a paper that expanded his insistence on state action in industrial relations. This latter essay, "Relation of the State to Industrial Action," continued the attack on laissez-faire principles that Adams had launched in his *Science* articles.⁶²

Public finance, or what Adams and Seligman often referred to as "the science of finance," was especially important to Adams because it embodied the holistic nature of economic relations. It was this organic conception of social relations that remained at the heart of Adams's theories. Writing to Seligman during the middle of his academic career, Adams reaffirmed that "the science of finance is *par excellence* the branch of economic science which lays stress upon the organic or collective conception of social relations. ... We have almost come to the point," Adams continued, "where the individuality of business conduct is swallowed up in its collective character so that the individual point of view is now the exception rather than the rule." The topic of public finance, as the name suggests, embodied a view of economics that did not starkly

⁶⁰ Joseph Dorfman, "Edwin R.A. Seligman" in *Dictionary of American Bio.* Vol. 12; Supp. 2 (New York: Charles Scribner's Sons, 1958), pp. 606-9; Rozwadowski, "From Recitation Room to Research Seminary," pp. 197-8.

⁶¹ Henry Carter Adams, *Taxation in the United States, 1789-1816* (New York: Burt Franklin, 1970), p. 79.

separate the public good from private interests. It was this mutually constitutive aspect of public and private found in public finance that drew Adams to the topic. Adams continued throughout his life to research and write about issues of public finance, publishing a college textbook on the topic as well as numerous other articles, but his interests also expanded to include statistics and the government regulation of monopoly, particularly railroads.⁶³

Seligman came to taxation by a more circuitous route. His early research combined his interests in economics and history. His first publications included his dissertation on the early history of the English guilds, and an article about Robert Owen and the Christian Socialists.⁶⁴ These early works illustrate Seligman's sympathies with social alternatives to unfettered individualism. The dissertation favorably analyzed the "cooperative production" of English craft-guilds as a possible solution to the age-old tension of industrial relations. Similarly, the essay on Owen and the Christian Socialists emphasized how peaceful and voluntary attempts to combat "the patent evils and abuses of an unrestricted competition," could perhaps be the appropriate form of "constructive socialism." In his later writings he would make clear that, while he was no socialist, his progressive views on economics entailed an active role for the state in regulating the economic sphere. The state's power to tax its citizenry would soon become an important component of Seligman's view of the positive state. His form of progressive liberalism would dominate his research and writing, as public finance become his true area of expertise, and the field in which he would gain his greatest notoriety. His treatises on taxation contained groundbreaking theories that were republished in numerous editions and translated into several languages.⁶⁵ Seligman's interests in political economy, however, reached well beyond taxation; he wrote literally hundreds of articles and book reviews in the general field of political economy, and participated in countless conferences, pursuing scholarly interests in such

⁶² Henry Carter Adams, *The Science of Finance: An Investigation of Public Expenditures and Public Revenue* (New York: H. Holt & Co., 1899); Henry Carter Adams, "Relation of the State to Industrial Action," get full cite.

⁶³ Henry Carter Adams to Seligman, June 20, 1904 in Joseph Dorfman, ed. "The Seligman Correspondence II" pp. 275 *PSQ* 56: 270-86 (June 1941). Among the many essays on public finance that Adams wrote, some of the most significant include: "Borrowing as a Phase of War Financing," *Annals of American Academy of Political and Social Science* 1918, pp. 23-30; "Problems of Budgetary Reform," *Journal of Political Economy* (October 1919), pp. 621-38. For a complete bibliography of Adams's publications, see generally, S. Laurence Bigelow, I. Leo Sharfman, R.M. Wenley "Henry Carter Adams," 30 *Journal of Political Economy* (April 1922), pp. 201-11.

⁶⁴ Seligman, *Two Chapters on the Mediaeval Guilds of England*; "Owen and the Christian Socialists," *PSQ* Vol. 1 No. 2 (June 1886), pp. 206-49.

⁶⁵ Among his several treatises, Seligman's most significant were: *The Shifting and Incidence of Taxation* (New York: Columbia University Press, 1892); *Progressive Taxation in Theory and Practice* (Baltimore: American

vast topics as railroad regulation, monetary reform, labor relations, and most especially economic history. As an insatiable bibliophile with sufficient financial means, he compiled a personal library of monographs, pamphlets, and historical documents that exceeded 40,000 volumes.⁶⁶

In addition to their academic writings, Adams and Seligman, like many of their Progressive Era colleagues, were both consummate public servants. As activist scholars they struggled with what the historian Leon Fink has identified as the long-standing dilemma of progressive intellectuals: “how to bridge the world of educated opinion and that of the working masses.”⁶⁷ For both Adams and Seligman the solution to this dilemma lay in applying their scientific expertise to the compelling issues of the day, both as educators and public guides. Neither individual hesitated in answering the call for technical assistance from government officials, legislators, and voluntary organizations, such as taxpayers’ associations. As early as 1887, when the Interstate Commerce Commission (ICC) was first created, the chairman of the commission, Thomas M. Cooley – a former colleague of Adams’s from the faculty of the Michigan law school – hired Adams as the ICC’s chief statistician. In accepting this appointment, Adams began a long career of activity in public affairs that included not only his oversight of the statistical investigation of railroads, but also participation in the Michigan tax commission as well as consultations for the Chinese government regarding railroads and finance.

Although Seligman did not directly participate in a federal agency as conspicuous as the ICC, his commitment to reform and public service was not limited to his role as an educator. Throughout the early decades of the twentieth century, Seligman was an active participant in local, state and national tax reform, serving on several key commissions. As the expert on the historical and comparative perspective on taxation, he played a prominent role in the intellectual debates surrounding the 1913 U.S. constitutional amendment that sanctioned the permanent federal income tax, the New York State Tax Committee that eventually adopted the state-level income tax, and several New York City studies concerning municipal revenues. Seligman’s deepest commitments to reform came, however, from his dedication to teaching and scholarship.

Economic Association, 1894); *Essays in Taxation* (New York: MacMillian Co., 1895); and *The Income Tax* (New York: MacMillian Co., 1911).

⁶⁶ During his retirement, Seligman sold his personal library to Columbia University, and the collection became the greater part of Columbia’s holdings in the history of economic thought. Dorfman, “Edwin R.A. Seligman,” p. 607.

⁶⁷ Leon Fink, *Progressive Intellectuals and the Dilemmas of Democratic Commitment* (Cambridge, MA: Cambridge University Press, 1997).

With life long allegiances to his alma mater, he became a critical institution-builder at Columbia University. His service to the university, especially his editorship for many years of the *Political Science Quarterly* and the Columbia book series on political economy, helped establish the School of Political Science and the Department of Economics. In addition to his role in the formation of the AEA, an organization of which he was President from 1902-04, Seligman was a staunch supporter of academic freedom. He helped establish the American Association of University Professors by assisting in the writing of its charter, and by supervising several controversial academic freedom disputes. Even in retirement, Seligman's commitment to scholarship continued unabated, as he took on the role of editor-in-chief of the *Encyclopedia of the Social Sciences*.

Contemporary scholars who have studied the young generation of professionally trained economists that included Adams and Seligman have placed a great deal of emphasis on the personal backgrounds of these historical figures. Contrasting those who came from active Protestant cultures with those who were raised amidst a commercial social class, historians have argued that personal, family influences determined the reformist or conservative leanings of these economic thinkers.⁶⁸ But, as the contrasting biographies of Adams and Seligman illustrate, family background only tells part of the story. While Adams's religious upbringing may certainly have influenced his economic theories, it appears that Seligman had similar ideas about political economy without sharing the same pious beliefs. Focusing exclusively on the personal background of these figures blinds us to the affect that their similar formal educations had in molding their economic and social theories. It was not just their childhood rearing, but more likely their adult interaction in a network of scholars and educators – both at home and abroad – that ultimately shaped their ideas and actions.

To learn more about the ideas that the two political economists shared, we need to move beyond their biographies and their personal contributions to the *Science* discussion. To understand where Adams and Seligman agreed and where they parted company, we need to examine their general economic and social theories. Their contributions to the *Science* debate in 1886 were early opportunities for the young scholars to make their mark among well-known professors and the rising new academic stars. Yet because the *Science* discussion arose only a year or so after Seligman first began teaching, and at a time when Adams's academic career was

⁶⁸ Furner, *Advocacy & Objectivity*, pp. 50-56; Ross, *Origins of American Social Science*, pp. 101-03.

at its most precarious point, it is possible that these articles only provide a small glimpse of the beliefs held by the two men. The *Science* essays reflect their respective self-conscious sense of status, their unease at being new members of a nascent profession. A much clearer and more fuller understanding of their general views can perhaps be distilled from some of their later writings, from Adams's continued engagement with industrial relations and Seligman's preoccupation with history.

Adams and the Study of Industrial Society: Social Control Over Corporate Power

As early as 1885, during the formation of the AEA, Adams articulated the primary concern that would dominate his lifelong research and civil service. "The great problem of the present day," Adams wrote in his analysis of the establishment of the AEA, "is properly to correlate public and private activity so as to preserve the harmony and proportion between the various parts of organic society."⁶⁹ In his published writings, his classroom lectures, and his government service, Adams would continue to examine the complementary nature of private and public power. No matter whether he was exploring current labor relations, the existence of monopoly corporations, or general tax policy, Adams was constantly seeking to explain how society, as a social organism, required both private incentives and public control to regulate the productive forces of industrial capitalism.

Nowhere was this desire to balance the public and the private clearer than in his landmark monograph, "The Relation of the State to Industrial Action."⁷⁰ This essay, along with the contributions to the *Science* discussion, formed what one of Adams's earliest students has described as "the core of Adams's contribution to social economics."⁷¹ His essays in the *Science* discussion, which would be revised and later republished,⁷² focused mainly on how legal rights, namely private property, influenced economic relations. In "The Relation of the State to

⁶⁹ Richard T. Ely, "Report of the Organization of the AEA," *American Economic Review* 1 (March 1886), p. 21.

⁷⁰ Henry Carter Adams, "Relation of the State to Industrial Action," *Publications of the American Economic Association* Vol. 1 No. 6 (January 1887): 471-549. Originally presented as papers before The Constitution Club and The Institute of Social Science, the essay was to undergo significant revisions even after its publication by the AEA. Adams's commitment to the ICC, however, prevented him from completing any further revisions to the essay. Joseph Dorfman, "Introductory Essay – Henry Carter Adams: The Harmonizer of Liberty and Reform," in *Two Essays by Henry Carter Adams*, ed. Joseph Dorfman (New York: Augustus M. Kelley, 1969).

⁷¹ Lazar Volin, "Henry Carter Adams," *Journal of Social Philosophy*, April 1938, p. x.

⁷² Henry Carter Adams, "Economics and Jurisprudence," *Publications of the AEA*

Industrial Action,” Adams concentrated his analysis on the role of the state in preserving constructive competition.

Adams researched and wrote these seminal essays during a tumultuous moment in American labor history. In 1885, the Knights of Labor launched a successful strike against Jay Gould’s Southwestern Railroad System, and in the following year a second disastrous attempt was made to repeat the strike against Gould. Meanwhile, the newly formed American Federation of Labor intensified its efforts for an eight-hour work day. This labor agitation culminated in the Haymarket bombing of May 1886, which itself brought forth a conservative backlash against the labor movement and radicalism of nearly every stripe. It was amidst this provocative social context that Adams cloaked many of his reformist ideas in the language of mainstream and even conservative economics.⁷³

The main aim of “Relation of the State to Industrial Action,” was, thus, to justify positive state action within the Anglo-American tradition of personal liberty and individual rights. The primary purpose of the essay, wrote Adams, “is to conserve true democracy ... by weakening the influence of commercial democracy which now rules the minds of men.”⁷⁴ In the essay, Adams sought to illustrate that the greatest threat to individual freedom came not from state power, as most proponents of laissez-faire held, but from the rising forces of corporate capitalism. For, as Adams observed, “the tyranny of corporations, which grew naturally from conditions of ‘industrial freedom,’ was as grievous as any tyranny ever established by government agency.”⁷⁵

To combat this new form of tyranny, Adams argued, the state had two primary responsibilities. First, it had an obligation to raise the ethical plane of competition through the rule of law. Second, it had the duty to regulate those unique industries known as “natural monopolies.” The first goal could be achieved through factory legislation such as the limits against child labor and the calls for an eight-hour work day that were then prominent at the time. Such legislation would provide a uniform threshold that could mitigate the evils of unrestrained competition. Without state intervention, unfettered individualism led to an “unguarded competition” that necessarily compelled individuals to operate at the lowest moral level of business dealings. “It is a necessary result of a competitive society,” Adams explained, “that the

⁷³ Lawrence Goodwyn, *Democratic Promise: The Populist Moment in America* (New York: Oxford University Press, 1976).

⁷⁴ Henry Carter Adams “Relation of the State,” p. 540.

⁷⁵ *Id.* p 477.

plane of business morals is lower than the moral character of the great majority of men who compose it.” Ethical standards in business were debased, Adams maintained, because the cutthroat competition of industrial capitalism, the barbarism of the free market, forced all those operating in the same industry to adhere to the lowest common denominator. Those who refused to engage in the dubious activities of the lowest competitor were driven out of business. It was at this point where the state, Adams claimed, had a duty to intervene through the force of law on behalf of the majority of competitors. “When the large body of competitors agree respecting some given method of procedure, but are powerless to follow it because a few men engaged in the same line of business refuse to conform to the proposed regulations, it becomes the province of the state to incorporate the wish of the majority in some practical law,” wrote Adams. “In this manner there is established a legal plane of competition higher than that which could be maintained in the absence of legal enactment.”⁷⁶

In addition to raising the ethical plane of competition, the state also had a duty to intervene in those industries that were “natural monopolies.” One could identify such industries, Adams claimed, by examining their productivity – how their output increased with an incremental increase in capital and labor. Using terminology established by J.S. Mill, Adams listed all industries as falling within three broad categories: (1) those that exhibited “constant returns” to scale; (2) those that had “diminishing returns”; and (3) those that showed “increasing returns.” In the first instance – when the output of an industry increased in direct proportion to the increase of inputs – there was little need for government interference. The ease of entry into “constant return” industries such as retail businesses guaranteed that competition would lead to efficient results. The same was true for the agricultural firms that had diminishing returns as the factors of production increased. Competition among many small producers in this case would itself guard against the adverse effects of monopoly power. The third category, however, was a wholly different case. As “natural monopolies,” industries such as railroads and utilities often took corporate forms that did little to insure the efficient allocation of society’s resources. For those industries where output increased at a greater rate than the increase of inputs, “the principle of free competition is powerless to exercise a health regulating influence,” wrote Adams. “This is true,” he continued, “because it is easier for an established business to extend its facilities for satisfactorily meeting new demand than for a new industry to spring into competitive existence.”

⁷⁶ Id. pp. 507-08.

The comparative advantage of the large, single provider suggested that society was faced, in Adams's view, with a simple choice: "whether society shall support an irresponsible, extralegal monopoly, or a monopoly established by law and managed in the interest of the public." Adams preferred the latter as a form of "public financiering."⁷⁷

Adams recognized that the economic logic of regulating industries with increasing returns would not be enough to convince many opponents of state action. The Anglo-American presumption against state action – which for Adams itself was nothing more than an historical coincidence – would be too strong.⁷⁸ Laissez-faire theorists would still hold firmly to the belief that a corrupt and dysfunctional state could not be trusted to manage the public interest. Adams responded by cleverly inverting the laissez-faire argument. The state was weak and corrupt, he claimed, precisely because its powers were circumscribed. Opponents had mistaken "a result for a cause" when they argued against granting the state any additional powers. It was laissez-faire policies themselves that had hindered governments. "The policy of restricting public powers within the narrowest possible limit tends to weaken government and render it inefficient," wrote Adams. "This leads to corruption on the part of public officials, which, in turn, invites to yet greater corruption in private practices." Distrust of the state and an unyielding faith in competition had allowed the powers of corporate capital to overwhelm the public interest. "There is certainly a close connection between the rise of the menacing power of corporations and the rise of municipal corruption," Adams declared. "They are both an inevitable result of the too great confidence that has been placed in the regulative potency of competition, on the one hand, and of the too great suspicion with which governmental action is viewed on the other." The solution to such powerlessness and fraud lay in invigorating the American civil service. "The best results may be expected," Adams concluded, "when the duties assigned to public officials, and the functions performed by private individuals, are so correlated that the inducements offered are of about the same strength in both domains of activity." Only by

⁷⁷ Id. pp. 519-27.

⁷⁸ The Anglo-American presumption against state action was a historical coincidence because, in Adams's view, there was nothing logical or necessary about such an assumption. "It is this fact," wrote Adams, "this accidental coincidence between the judgments which spring from natural conservatism and the presumption against extending the duties of the state, which deceives men, and brings them to think that the modified form of laissez-faire yet bears with it an authority. Its authority is nothing more than the authority, which always rests with an established fact." Id. p. 491.

empowering state officials with the prestige and power found in the private sector, could society insure that government would operate in a competent and efficient manner.⁷⁹

Even then, Adams remained highly skeptical of corporate power. In an 1893 address before the Michigan Political Science Association, Adams articulated his concern with the surprising growth of corporations. If the social organism required the harmonious balance of public and private power, as Adams had stated in numerous writings, then the gravest threat to this balance rested in the increasing potency of these American corporations. Such growing private power could be checked, Adams believed, by restricting the state-sponsored privilege of incorporation. Recalling his tripartite division of industries based on productivity, Adams advocated having “different laws of incorporation for different industries.” Since the corporate form was a source of power, Adams did not take the granting of corporate privileges lightly. “I would have it understood,” Adams proclaimed, “that certain industries should not avail themselves of the right to incorporation. In my opinion there is nothing that ought to demand the attention of legislatures of our states more earnestly than the question of incorporation.”⁸⁰

In those instances where Adams could not restrict incorporation, he had an alternative suggestion: use the government’s power to tax corporate wealth as a form of social control. Like Seligman, Adams was a proponent of reforming the American system of taxation to use income rather than property as the proper base for measuring tax contributions. As we shall see, Seligman had been the pioneer in advancing an income tax based on the theory of “faculty” or one’s “ability to pay.” Adams agreed with Seligman that in a modern, industrial society the general, state-level property tax was an antiquated form of revenue generation. “The development of the corporation and the increase of incorporeal property which comes with the increase of interdependence in industrial matters have destroyed the conditions under which a general property tax can work in a satisfactory manner,” Adams affirmed. “A reform in our system of taxing, therefore, must mean the abandonment of the general property tax and the substitution of some other form of taxation adjusted more closely to the requirements of modern industrial life.” That other form of taxation would soon become the income tax.⁸¹

⁷⁹ Id. p. 529.

⁸⁰ Henry Carter Adams, “Suggestions for a System of Taxation,” *Michigan Political Science Association* May 1894, p. 69. Adams initially presented these ideas before the Oct. 1893 meeting of the association.

⁸¹ Id. p. 55. Adams elaborated on his views on the need for public control of corporations in his next paper to the Michigan Political Science Association, Henry Carter Adams, “Publicity and Corporate Abuses,” *Michigan Political Science Association* May 1894, pp. 109-120.

Adams elaborated his view of the “faculty theory” that supported the income tax. He argued that “ability to pay” should be extended to the most conspicuous but amorphous kinds of wealth – corporate assets. Together with the power to grant incorporations, the state’s power to tax would regulate corporate power, especially those businesses that were monopolies by nature. “All industries should be divided into two classes,” asserted Adams, “the monopolistic industries and industries subject to the influence of competition. In the case of a monopolistic industry the tax will decrease the revenue of the persons who own it, and it is that class of interests which to my mind ought to be allowed the privilege of incorporating, and be brought under the control of the state; and it is that class of industries, as it seems to me, to which the state should address itself for contribution.” Natural monopolies that served a municipality or town had, in Adams’s opinion, an added responsibility towards the public interest. Local transportation companies and municipal utilities such as water works were the perfect examples. “[H]ere is an industry which, from its very nature, is a monopoly and the value of this monopoly increases as the city grows,” Adams stressed. “The increment of earnings is largely an unearned increment to the corporation and should be directed through the machinery of taxation to the benefit of the citizens from whom it accrues.”⁸²

Adams’s proposals to regulate corporate capital, especially natural monopolies, would have appeared to have been radical suggestions, if they were not cloaked in conservative language. In “Relation of the State to Industrial Action,” Adams made it quite clear that the transformations wrought by modern industrial society had forced Americans to choose between two separate alternatives: One was marked by the individualism of English political philosophy, while the other was a function of the opposite belief in German statism. As Adams put it: “the American people are obliged to choose between the principle of individualism and the principle of socialism.” Adams sincerely believed, however, that this choice was not a simple binary, either/or decision between individualism and socialism. The powers of the state could be extended without tumbling down the slippery slope to socialism. “It is an intellectual blunder to say that all extensions of the functions of government are in the direction of socialism,” Adams wrote, “for it may be that such a movement contemplates merely the extension of responsible control over a business which would be otherwise irresponsibly managed. Such an extension of governmental duties, therefore, finds its warrant in English political philosophy.” Writing at a

⁸² Id. p. 74, 60.

time of great turmoil, Adams sought to divorce his reforms from more radical calls for political change. Indeed, he argued that his support for the enlargement of state power could even be seen as a bulwark against socialism. “It is true that the theory of governmental action, for which this essay contends, would press the principle of personal responsibility farther than it has yet been applied; but it is nevertheless conservative, for its aim is to bring industrial society into harmony with the fundamental thought of our political constitution. There is no other escape from socialism.”⁸³

There is little doubt that Adams, like Seligman, had an aversion to the extreme form of social democracy that he witnessed in Bismarck’s Germany. Just as Seligman frowned on the political repression that accompanied Bismarck’s imperialism, Adams reviled the excesses of state power that he witnessed in Germany.⁸⁴ Even several years after his first-hand experience in Germany, Adams confided in Seligman that while he remained unsure about the extent of state action, he was certain that the German model would be inappropriate for American soil. “I am free to say that I have not thought out clearly the exact limits which should be placed to the conceptions, Society, State, Government,” wrote Adams. “I am quite sure the Germans lead to confusion in expanding the conception of State, so as to include (practically) Society.”⁸⁵

Yet like Seligman, Adams was equally repelled by the American commitment to *laissez-faire*. Caught between the extremes of Lockean liberalism and German-style statism, Adams sought a middle ground from which he could justify his economic theories. His discussion of state incorporation laws suggest that Adams was well aware of the American common law tradition of local self-government and economic regulation. By appealing to incorporation laws, Adams sought to harness the potential power of this antebellum republican ideology in an effort to tame the growing powers of corporate capital.⁸⁶

Adams realized, however, that in the context of large-scale social transformations an appeal to venerable traditions might not be enough. Much had changed since individual states

⁸³ Henry Carter Adams, “Relation of the State to Industrial Action,” p. 78, 80.

⁸⁴ For more on how Adams, Seligman and other American economists reacted to their training in Germany, see, Rodgers, *Atlantic Crossings*, pp. 94-97.

⁸⁵ Henry Carter Adams to Seligman, June 20, 1887, p. 271 in Joseph Dorman ed. “The Seligman Correspondence II” *PSQ* 56: 270-86 (June 1941).

⁸⁶ For more on the American common-law tradition of local regulation, see William J. Novak, *The People’s Welfare: Law and Regulation in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 1996).

first began granting businesses corporate status. The increasing consolidation of transnational corporate power during the late nineteenth century had dramatically altered the balance of power between the public and private sectors. To supplement state authority and refigure the imbalance of authority, Adams proposed that corporate taxation – not just at the state-level property tax but at the national level of an income tax – be used to control the excesses of corporate wealth and power.

The combination of incorporation and tax laws could be used to carve the middle ground that Adams was searching for. His Protestant rearing, his formal education, and his everyday experiences in an industrial world, all demonstrated to him that some middle ground between laissez-faire individualism and German-style socialism could indeed exist. Part of that middle ground included a robust but stable state apparatus that could use the powers of incorporation and taxation to control the greatest threat to individual freedom, the rising corporations. Adams's views on taxation were, however, an outgrowth of the theories promulgated by Seligman. And Seligman's theories on taxation were, in turn, embedded in his understanding of human history. Thus, to understand Adams's use of taxation to control corporate power, we must first comprehend Seligman's theory of historical change.

Seligman's Economic Interpretation of History

While Adams was grappling with the role of the positive state in industrial society, Seligman focused his energies on an equally large task. From 1886 to the turn of the century, Seligman began concentrating his efforts on the field of public finance, publishing numerous articles and several treatises. The dawn of a new millennium, and the moments of reflection that came with it, no doubt compelled Seligman to step back in 1901 from his writings on taxation to examine the much larger issue of historical change.

Seligman had always been an active proponent of studying economic history. His German training and his dissertation research had focused on the historical roots of contemporary economic questions, and his preoccupation with the past was carried over into his teaching, as he developed Columbia's seminar on the history of economic thought. Thus, in some ways it should come as no surprise that Seligman devoted a significant amount of time and

energy in researching and writing a slim text on the philosophy of history, which he modestly entitled, *The Economic Interpretation of History*.⁸⁷

Originally published in 1901 as several articles in the *Political Science Quarterly*, *The Economic Interpretation of History* was a programmatic monograph that sought to synthesize the fragmentary disciplines of the social sciences. Just as Adams had continued to emphasize the embeddedness of economic relations in larger social structures, especially legal institutions, Seligman sought to demonstrate that the increasingly specialized social sciences were “only constituent parts of a larger whole.” Seligman admitted that the trend in contemporary scholarship was towards greater synthesis, and that the discipline of history was undergoing this broadening process by recognizing that all sub-fields of history were parts “of that wider activity which includes all the phenomena of social life.” Yet what was left unexamined, Seligman believed, was “the fundamental causes of this social development – the reason of these great changes in human thought and human life which form the conditions of progress.” The main purpose of the book was, thus, to seek out “the fundamental causes of social progress.” The question that framed his analysis was: what explains historical change?⁸⁸

Seligman was well equipped for this foray into the philosophy of history. His European training and his mastery of languages allowed him to keep pace with the latest international scholarship, as well as many of the classics of social theory. The text of the book, its examination of the genesis and development of the doctrine of economic interpretation, as well as its critique and final assessment of the theory, provided Seligman with an opportunity to catalogue his vast knowledge of economic and historical theories. The history of economic thought had been one of his passions throughout his life, and the monograph demonstrated Seligman’s engagement with the broad issues of historical change. *The Economic Interpretation of History* was, thus, Seligman’s contribution to the ongoing explanation of historical and social transformation.

Seligman’s thesis was rather straightforward, and as he admitted not very innovative. He traced the explanation of all historical and social change to one critical factor: economic conditions. His view of history was, thus, derived from the historical materialism that dominated continental theories, but he argued that his theory was more precise and refined. He admitted

⁸⁷ Edwin R.A. Seligman, *The Economic Interpretation of History* (New York, Columbia University Press, 1902).

⁸⁸ *Id.* p. 2.

that European thinkers, mainly from the continent, had first advanced the economic interpretation of history, but they had often exaggerated its implications, or were misled by its assumptions. Seligman did not proclaim to be the originator of these ideas, but rather the person who highlighted their true significance by limiting their application.

Because Seligman believed that the dynamics of human history were driven predominantly by economic factors, the aim of the book was nothing short of unifying social scientific thought under the larger rubric of a subtle but broader form of economic determinism – a revamped version of historical materialism. By privileging the study of economic conditions, Seligman meant “not that all history is to be explained in economic terms alone, but that the chief considerations in human progress are the social considerations, and that the important factor in social change is the economic factor.” Seligman made his point more explicitly when he wrote: “Economic interpretation of history means, not that the economic relations exert an exclusive influence, but that they exercise a preponderant influence in shaping the progress of society.” Yet while Seligman emphasized the importance of economic relations, he did not divorce them from the larger social relations within which they were embedded. He used a simple syllogism between the individual and society to make his point:

The existence of man depends upon his ability to sustain himself; the economic life is therefore the fundamental condition of all life. Since human life, however, is the life of man in society, individual existence moves within the framework of the social structure and is modified by it. What the conditions of maintenance are to the individual, the similar relations of production and consumption are to the community. To economic causes, therefore, must be traced in the last instance those transformations in the structure of society which themselves condition the relations of social classes and the various manifestations of social life.⁸⁹

The lens of economic causation, Seligman argued, provided one with a view of the larger social forces at work in historical change. This, in sum, was what Seligman believed to be his “bold” and “profound” contribution to historiography.

Though Seligman acknowledged that the origins of this theory of history rested primarily with Marx, he argued that most scholars had confounded Marx’s philosophy of history with his economic socialism. The former was for Seligman a viable, scientific understanding of social change; the latter was merely a utopian dream best relegated to the dustbin of history. Seligman

singled out Marx's historical materialism as the culmination of a long tradition of European historicism. The relativistic and historically specific view of the past had its origins and development in many areas, from the historical jurisprudence of Savigny and Eichhorn, to the historical school of economics of Roscher, Hildebrand and Knies, to of course the popularization of Darwin's theory of evolution. But Marx, according to Seligman, had taken the historical relativity of economic institutions a step further, for he "not only stated that every economic institution is an historical category, but pointed out in a novel and fruitful way the connection between economic and social facts." Indeed, in this way, Seligman credited Marx, and not Smith, as the true father of modern economics. "The realization of the fact that social institutions are products of evolution, and that they thus form historical and relative categories, instead of being absolute categories, is the one great acquisition of modern economics, which differentiates it *toto coelo* from that of earlier times." If Marx, however, was to be the fountainhead of modern economics, Seligman had to first sever Marx's materialist philosophy of history from his scientific socialism. "Socialism is a theory of what ought to be; historical materialism is a theory of what has been," wrote Seligman. "The one is teleological, the other is descriptive. The one is speculative idea; the other is a canon of interpretation. It is impossible to see any necessary connection between such divergent conceptions."⁹⁰ By separating Marx's socialism from his philosophy of history, Seligman believed he could rescue the latter from the fateful demise of the former.

Contemporary scholars who have examined Seligman's endeavor into the philosophy of history have generally concluded that by abandoning Marx's socialism, Seligman became an apologist for industrial capitalism.⁹¹ The intellectual historian Christopher Lloyd, for example, has maintained that Marx's historical materialism was inseparable from his scientific socialism, and that Seligman severed the two for his own political purposes. For Seligman, Lloyd writes, "the whole point of divorcing a materialist philosophy of history from Marx's socialist economics was to make available a realist justification for his advocacy of market capitalism and

⁸⁹ Id. pp. 2-3

⁹⁰ Id. pp. 161, 108

⁹¹ Ross, *Origins of American Social Science*, pp. 186-191; Christopher Lloyd, *Left Out: American Pragmatism, Exceptionalism and the Poverty of American Marxism, 1890-1922* (Baltimore: Johns Hopkins University Press, 1997).

Darwinian gradualism.”⁹² Whether Seligman’s domestication of Marx eviscerated American socialism, as Lloyd has argued, is a tangential issue for the purposes of this [draft of the] chapter. Rather, what is significant is how *The Economic Interpretation of History* underscores Seligman’s belief that economic relations could not be separated from the social structures that defined them. In the monograph, in his contribution to the *Science* discussion, and in his 1903 presidential address before the AEA,⁹³ Seligman continued to emphasize that the study of economic history was a mean to a larger end; the economic interpretation of history shed light on broader social factors. “It is not that the historian of the future is to be simply an economic historian,” Seligman wrote, “for the economic life does not constitute the whole of social life. It is, however, the theory of economic interpretation that was largely responsible for turning men’s minds to the consideration of the social factor in history.”⁹⁴

Although many of Seligman’s new school colleagues shared his embrace of historicism, only Seligman and Adams applied this historicism to their own theories and to their views of public finance. Throughout his public finance scholarship and in his role as advisor to government agencies and voluntary associations, Seligman applied a historical analysis to nearly every policy problem that he faced. The federal income tax was no exception.

Applying Historical Political Economy to the Federal Income Tax

The first federal income tax originated well before Seligman and Adams began their academic careers. The first such tax in the U.S. was instituted during the Civil War as part of the response to the national war emergency. A low flat rate of 3% on incomes above \$800 was established in 1861; subsequent amendments during the war years reduced the exemption level and introduced modestly graduated rates. Although this first income tax generated significant federal revenue, financing nearly 20% of the Union army costs, it affected only a small

⁹² Lloyd, *Left Out*, p. 86. In fact, Lloyd sees the limited vision of Seligman’s liberal historicism as symptomatic of all of American social science. “The liberal professor’s need to pillage so wantonly the analytic holdings of the Marxist tradition points up the limited resources American social science offered the historically minded at the turn of the century,” writes Lloyd. “Seligman, in a word, consorted with Marx for the same reason Dewey kept company with Hegel: neither could squeeze a conception of ‘the social’ from the politically palatable but analytically desiccated body of Anglo-American empiricism.” Id., p. 87.

⁹³ Edwin R.A. Seligman, “Economics and Social Progress” *Papers and Proceedings of the Fifteenth Annual Meeting of the AEA* (New York: MacMillan Co., February 1903), pp. 52-70.

⁹⁴ Seligman, *Economic Interpretation*, p. 165.

percentage of affluent Americans. Since the tax was first instituted under the guise of a war emergency, nationalistic sentiment insured relatively high rates of individual compliance. But once the wartime and Reconstruction emergencies were over, many of the constituents affected by the law lobbied to have it removed. By 1872, America's first experiment with a federal income tax came to an end.⁹⁵

Throughout the 1870s and 1880s American public finance was dominated by a regime of high indirect consumption taxes such as the tariff and sales taxes. During the depression of the early 1890s, however, criticism of the regressive nature of the high tariff regime began to mount. The rise of corporate consolidation together with the economic downturn, led Populists and disciples of Henry George's "single tax" to call for a more equal distribution of the burdens of financing a modern, regulatory state. Congressional Democrats, responding to this clamor for tariff reform, re-instituted the income tax in the 1894 Wilson-Gorman Tariff Bill. Like the Civil War income tax, the 1894 law affected only a small percentage of the population, since it taxed all incomes above the exemption level of \$4,000 at the modest rate of two percent. The U.S. Supreme Court, in Pollock v. Farmers' Loan and Trust Co.,⁹⁶ would strike down the new tax law just a year later. But the initial enactment of the 1894 income tax signified a turn towards a more active, albeit limited, role for the federal government in public finance. This short-lived tax law can thus be viewed as the result not of wartime emergencies, but as part of a search for social justice – an attempt, in other words, to address economic inequality. The 1894 law not only re-established the income tax for a brief period, it set the foundation for the ultimate passage of the 16th amendment to the U.S. Constitution in 1913. As a lightning rod of protest, this modest attempt at redistribution galvanized the forces in favor of the constitutional amendment – an amendment that would provide the legal foundation for a direct federal tax on income. The 1894 law, thus, became an integral part of a new political philosophy. The tax historian W. Elliot Brownlee has called this new philosophy "democratic statism," which he defines as "a radical program of invoking instruments of government power to create a more democratic social order."⁹⁷

⁹⁵ W. Elliot Brownlee, *Federal Taxation in America: A Short History* (New York: Cambridge University Press, 1995), pp. 23-46.

⁹⁶ 157 U.S. 429 (1895).

⁹⁷ Brownlee, *Federal Taxation*, p. 37.

If “democratic-statism” was, as Brownlee suggests, “a new kind of liberalism, a realignment of classic 19th century liberalism and the commonwealth tradition of early republicanism,”⁹⁸ then Seligman and Adams were its greatest advocates. During the Congressional debates surrounding the 1894 tax law and the ensuing controversy over the Pollock decision, Seligman, in particular, wrote many of the seminal articles on taxation that would become the centerpieces of his later public finance treatises. Even before the 1894 legislation was enacted, Seligman emphasized the need for graduated rates, in his article, “The Theory of Progressive Taxation.”⁹⁹ And once the law was in place, he followed up his earlier publication with another article defending the re-establishment of an income tax.¹⁰⁰ But while these articles firmly placed Seligman in the pro-income tax camp, his views remained cautious and measured. These articles were less ringing endorsements of the progressive income tax, than they were analytical pieces laying out the differing positions for and against the income tax. At the time, Seligman’s ideas were still gestating; they would not come to full fruition until two decades later, when the movement for a constitutional amendment overriding the Pollock decision began to gain momentum.

In 1911, Seligman published what would become one of his best-known treatises, *The Income Tax: A Study of the History, Theory, and Practice of Income Taxation at Home and Abroad*.¹⁰¹ Although portions of the book had been published earlier, discussion of the constitutional amendment gave Seligman the opportunity to synthesize his ideas on the topic. In the preface to this book, Seligman made his goals quite clear. “As it seems probable that we shall before long have an income tax in the United States my chief object in writing this book has been to set the subject in a somewhat clearer light and to aid the legislator in constructing a workable scheme.”¹⁰² The workable scheme that Seligman had in mind was nothing short of convincing every legislator and reader of the book that a progressive income tax was the historically appropriate method of taxation for a modern, industrial society.

Applying his historical perspective on political economy to the issue, Seligman argued that theories of taxation had evolved over the centuries to meet the changing functional needs of

⁹⁸ Id.

⁹⁹ Seligman, Edwin R.A. “Theory of Progressive Taxation,” *PSQ* Vol. 8, Issue 2. (June 1893), 220-251.

¹⁰⁰ Seligman Edwin R.A. “The American Income Tax,” 4 *Economic Journal* (1894), pp. 639-667; “The Income Tax,” *PSQ* Vol. 9, No. 4 (Dec. 1894), pp. 610-648.

¹⁰¹ Seligman, Edwin R.A. *The Income Tax: A Study of the History, Theory, and Practice of Income Taxation at Home and Abroad* (New York: The MacMillian Company, 1911).

society. What remained constant during this historical evolution was the criterion used by the central authority to determine the basis of taxation. Seligman called this unifying criterion “the principle of faculty or ability to pay,” and he tied this principle to an on-going search for social justice. “Amid the clashing of divergent interests and the endeavor of each social class, we discern the slow and laborious growth of standards of justice in taxation, and the attempt on the part of the community as a whole to realize this justice,” Seligman proclaimed. “The history of finance, in other words, shows the evolution of the principle of faculty or ability to pay – the principle that each individual should be held to help the state in proportion to his ability to help himself.”¹⁰³

According to Seligman, the criterion of faculty had undergone several manifestations from its origins in preliterate society to modern times. More specifically, Seligman set out five stages in the development of Western taxation. The first form of faculty tax, existing during the early phases of community development, was the poll or head tax. “Wherever we have primitive economic and democratic conditions,” Seligman claimed, “whether it be in the early stages of Teutonic civilization or in the beginnings of Puritan New England we find that the poll tax forms an essential ingredient of the fiscal system.” Once private property, and the subsequent inequality of possessions, sets in, Seligman argued, the poll tax gives way to a property tax. This second stage of fiscal development is characterized by “moderate agricultural and commercial development,” when property “becomes the only possible general test of faculty in taxation because it is the specific mark of distinction between classes and between individuals within each class.” As industry and commerce become more productive, the property tax as a levy on land expands to include “various forms of personal property” until what was once a tax solely on real estate becomes a “general property tax.”¹⁰⁴

But the general property tax too comes up against the limitations of developing economic conditions. In time, Seligman argued, property becomes a deficient measure of faculty. As the productive capacity of land increases and diversifies, the property tax is unable to account for the random differences in the income produced by different forms of land; neither does it consider the qualitative distinction between “property utilized primarily for purposes of enjoyment and property utilized for the securing of a money income.” The greatest limitation of the property

¹⁰² Id. p. v.

¹⁰³ Id. p. 4.

tax, for Seligman, however, was its inability to reach new and emerging forms of wealth. “The theory of the general property tax originally rested on the assumption that fiscal equality could be reached by taxing all individuals on their visible property,” wrote Seligman. “When the mass of property split up, and the myriad forms of modern intangible personality disclosed themselves, the basis of the theory was undermined by the new conditions, and instead of equal and universal taxation there was now developed a system of partial and unequal taxation.”¹⁰⁵

To combat this “travesty of justice,” as Seligman called it, the early tax reformers sought to construct a system of taxation from which the new forms of wealth could not escape. Their solution, Seligman explained, was a consumption tax – the third stage of fiscal development. “This took the form of both direct and indirect taxes on consumption, as well as of taxes on trade and business which were supposed ultimately to reach the consumer.” While this new system of taxation, a system based on “expenditure as the criterion of faculty,” reached the pockets of all classes of society, it placed a relatively larger burden on the least wealthy classes. Seligman explained this regressive aspect of a consumption tax as follows:

The lower we go in the economic scale, the greater is the lack of equilibrium between revenue and expenditure. At the bottom of the scale are those whose incomes only barely suffice for their living, while at the top of the scale are those whose expenditures, no matter how large, are but a fraction of their revenue. In the one case there is absolutely no surplus available; in the other the surplus is many times greater than the expenditure.¹⁰⁶

Because of this disparity between expenditure and revenue, Seligman contended that the consumption tax reproduced many of the deficiencies exhibited by the general property tax – the affluent still did not bear their fair share of the burden of financing a modern state. “Expenditure becomes an unsatisfactory test of ability to pay,” Seligman claimed, “not only because it puts a premium on the penurious rich man, but because it imposes a crushing burden upon the average poor man.”¹⁰⁷

Nevertheless, the consumption tax remained an essential part of Western fiscal systems throughout the 18th century, and Seligman attributed this persistence not to economic factors but

¹⁰⁴ Id. p. 6.

¹⁰⁵ Id. p. 10.

¹⁰⁶ Id. p. 11.

¹⁰⁷ Id. p. 12.

to political ones. Here Seligman added a twist to his historical political economy, to his economic interpretation of history. The move away from a consumption tax was explained not by a change in economic conditions – the material conditions of production or consumption – but by the spread of political ideals. “It is evident,” Seligman proclaimed, “that with the growth of democracy in more recent times a system of taxation which inevitably results in undue burdens on the less fortunate members of society was destined to become unpopular and to pass away.”¹⁰⁸ Popular resistance to the regressive consumption tax, we are led to believe, was the reason for its demise.

In Seligman’s continued gradual progression of fiscal systems, the consumption tax would be replaced by the “adoption of product or produce as the norm of taxation.” Whereas the earlier property tax focused on the owners of land and other personal property, the new “product tax” assessed the yield that such property created. Taxing authorities, thus, shifted their analysis from the owner of objects to the objects themselves. As Seligman explained, under a produce tax, “property would be split up into its constituent elements, and the tax would be levied directly on the yield of each. Thus the tax would be levied on the produce of a piece of land, irrespective of who owned the land; the yield of the land was to be ascertained by a careful process, and if the taxes were not paid by some one, the land would be sold.” Seligman viewed this product tax as a decided step in the right direction, but applying his historical analysis, he concluded that this system would also fall away as the result of changing economic conditions. The produce tax waned, Seligman argued, mainly because it ignored the fact that individuals ultimately owned property in a capitalist society. And since the product of property was meant to be a proxy for an owner’s ability to pay, it suffered much of the same defects as the general property tax. “The net produce of a piece of property, in other words, is no necessary indication of the net revenue of the owner,” Seligman wrote. “The tax upon the thing, just because it is upon the thing, does not lend itself readily to the shifting conditions of the man who owns the thing; and yet the real ability of a person to pay taxes must be in some relation to his individual condition.” The produce tax, therefore, was another failed attempt to capture a person’s tax capacity, or their true ability to pay for the price of a modern state.”¹⁰⁹

¹⁰⁸ Id. p. 12.

¹⁰⁹ Id. p. 13.

At this point in his historical analysis, Seligman concluded that “ability to pay” would remain an elusive basis of taxation. Even though the produce tax would be supplanted by the income tax, as the fifth and perhaps final stage of fiscal evolution, Seligman went to great pains to emphasize that the income tax should not be viewed as the only accurate measure of “ability to pay.” The income tax, for him, was not without its faults. It left unanswered many thorny questions, such as what constituted income, could all sources of income be treated equally, and the all-important issue of “whether different amounts of income present identically the same criteria of ability to pay.”¹¹⁰ In addition to these substantive questions, the income tax also posed a whole host of administrative concerns, not the least of which was whether it could be executed without being overly intrusive. In the end, Seligman admitted that, although a tax based on income was perhaps the final stage of fiscal evolution, a system of taxation that accurately gauged an individual’s faculty or ability to pay would remain an ideal beyond the reach of practical politics.

Seligman’s theory of fiscal evolution was, however, not a teleological one with the income tax as some sort of whiggish culmination of progress. Seligman recognized that the income tax by itself was no panacea for the complexities of a modern, industrial society. Instead, he saw it as a vital component in a larger matrix of economic and social justice – a component that remained tied to Seligman’s criteria of “ability to pay.” Seligman acknowledged the idealistic aspects of his theory when he wrote: “While the system of taxation should endeavor, roughly at all events, to adjust itself to income in general, the income tax as such can form only a part, even though it may be a permanent part, of the system, the other elements of which must be based upon the remaining criteria of faculty in order to reach as close an approximation to justice as may be possible.”¹¹¹

In discussing the importance of the income tax, Seligman did not lose sight of his historical methods. The income tax had come into its own as the proper policy for an industrialized nation. But that did not mean that an income tax was or should be sacrosanct. For Seligman to give it such timeless, transhistorical prominence would be to betray his own historicism. Instead, because the income tax corresponded with the level of economic development that existed in early twentieth century America, Seligman became a vocal advocate

¹¹⁰ Id. p. 16.

¹¹¹ Id. p. 18.

for the implementation of a permanent federal income tax. His academic publications as well as his writings for the popular press focused on how a federal income tax was the historically and socially appropriate form of taxation for a modern, industrial nation. Seligman did not limit his advocacy to writing. He also played a significant role in New York State's ratification of the constitutional amendment that would override Pollock and establish the right of the federal government to tax directly the income of its citizenry.

A Taxing Process: Seligman and New York State's Ratification of the Sixteenth Amendment

On July 13, 1911, New York became the thirty-first, and arguably the most important, state to ratify the Sixteenth Amendment to the United States Constitution. Though the amendment was initially proposed as a way to forestall a pending income tax bill, the Sixteenth Amendment would soon provide the legal foundation and the political impetus for the first permanent, progressive federal income tax. With New York's crucial support, the ratification process gained steady momentum, and by February 1913 the requisite number of states had ratified the proposed amendment. Less than a year later, the 62nd U.S. Congress seized the political moment to pass the Underwood-Simmons Tariff Act of 1913, which provided for a modest but significant graduated federal income tax. As one of the centers of northeast economic concentration, New York State played a critical role in helping establish one of the essential institutions of modern American fiscal governance.¹¹²

The road to ratification was not, however, a smooth one, nationally or within the Empire State. New York's path in particular was paved with numerous political potholes – most important of which was the opposition to the amendment articulated by the governor of New York, and one of Edwin Seligman's oldest friends, Charles Evan Hughes. Although Governor Hughes did not directly object to the idea of an income tax amendment, his opposition to the proposed language of the Sixteenth Amendment led to a tumultuous battle in New York's ratification process – a battle that lasted two years and included an initial defeat of the proposed amendment in 1910.

¹¹² For more on the origins of the Sixteenth Amendment, see generally, John Bunker, *The Income Tax and the Progressive Era* (New York: Garland Press, 1985), pp. 57-137.

Many politicians and activists challenged Governor Hughes's reading of the proposed amendment, but no challenger was more experienced in the field of public finance, or perhaps as widely influential, as the professor of political economy at Columbia University. In his writings and testimony before the New York State legislature, Seligman explicitly and brashly challenged the Governor's arguments against ratification. While it is difficult to gauge precisely the extent of Seligman's influence on the ratification process, there is little doubt that his strident defense of the income tax supported the ultimate triumph of the Sixteenth Amendment in New York.

Seligman had always favored a national income tax ahead of any state-level attempts to administer such a system. Just as Adams had acknowledged the historical role of state incorporation laws, Seligman understood that individual states would likely want to manage an income tax as part of their local regulation of economic affairs. While he respected the notion of local self-government, Seligman argued that only an income tax gradually instituted at the federal level could address the national character of corporate earnings. A state-level income tax, first instituted by Wisconsin in 1911 did, in fact, precede the permanent national income tax.¹¹³ But the force of Seligman's logic was not lost. An income tax designed to capture one's "ability to pay" could be best administered at a centralized level where assessment of earnings across state lines could be monitored, reported and collected.

By privileging a national income tax, Seligman did not intend to challenge the American system of federalism. Indeed, the evolution of American tax policy would eventually vindicate Seligman's argument that a federal income tax was the historically appropriate method of public finance. Throughout the early decades of the twentieth century, general property taxes remained the purview of state and local governments, while the income tax gradually became the main source of revenue for the federal government. From 1900 through the 1920s, the property tax accounted for more than 60% of all state and local government revenue, and the income tax at both the individual and corporate level amount to only 2% or so of total state and local revenue. Meanwhile, during that same period, the income tax gradually became a critical part of federal proceeds, as it slowly supplanted indirect taxes from sales and the tariff. In fact, the amount of federal revenue generated by indirect taxes decreased from nearly 75% in 1902 to roughly 25% at the start of the Great Depression. At the same time, revenue from the income tax rose to

¹¹³ W. Elliot Brownlee, *Progressivism and Economic Growth: The Wisconsin Income Tax, 1911-1929* (Port Washington: Kennikat Press, 1974).

approximately 50% of general federal revenue. Over time the federal income tax did supplant indirect national taxation, but Seligman realized early on that the process would be a slow and gradual one.¹¹⁴

Although Seligman proceeded cautiously with his advocacy of a federal income tax, especially after the Pollock decision, once the ratification process had begun, the pragmatic scholar realized that the time had come for the income tax to be centralized at the national level. Thus Seligman focused his reform efforts on securing a constitutional amendment. In Seligman's view one of the greatest obstacles facing ratification was the argument proffered by his old law school classmate and good friend, Governor Charles Evans Hughes.

Seligman v. Hughes: The Professor Meets the Politician

On January 5th 1910, at the opening session of the New York State Legislature, Governor Hughes delivered a special message regarding the proposed income tax amendment. Acknowledging receipt of the Congressional resolution regarding the amendment, Hughes began by reading the specific language of the resolution: "Article XVI: The Congress shall have power to lay and collect taxes on income from whatever source derived without apportionment among the several states, and without regard to any census or enumeration."¹¹⁵ As a prominent lawyer and esteemed member of the New York State Bar, Hughes had no problems with the latter half of the resolution, which excluded apportionment among the several states. After all, this was the language that directly addressed the Supreme Court's 1895 decision in Pollock – the decision that had invalidated the 1894 federal income tax.¹¹⁶ Hughes admitted "this power should be held by the Federal Government so as properly to equip it with the means of meeting National exigencies." What offended the Governor more, however, were the four words that read: "from whatever source derived;" he believed that these words gave Congress the power to destroy the fiscal powers and the political sovereignty of the individual states. "To place the borrowing capacity of the State and of its governmental agencies at the mercy of the Federal taxing power,"

¹¹⁴ U.S. Department of Commerce, Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1957* (Washington, 1960), pp. 723-24.

¹¹⁵ Article XVI, U.S. Constitution

¹¹⁶ 157 U.S. 429 (1895).

Hughes proclaimed, “would be an impairment of the essential rights of the State which, as its officers, we are bound to defend.”¹¹⁷

In Hughes’s reading of the amendment, Congress would be free to tax the proceeds of state and local bonds. Such a grant of federal power, Hughes believed, would abrogate an implied constitutional restriction. “The immunity from Federal taxation that the State and its instrumentalities of government now enjoy,” Hughes argued, “is derived not from any express provision of the Federal Constitution, but from what has been deemed to be necessary implication. Who can say that any such implication with respect to the proposed tax will survive the adoption of this explicit and comprehensive amendment?”¹¹⁸ Citing to Pollock, and other Supreme Court decisions, Hughes contended that the implied constitutional restriction against federal taxation of state and local securities was enshrined in American jurisprudence, and that the proposed amendment as written was a threat to this long-held tradition.

Hughes did not base his opposition to the amendment solely on constitutional or legal grounds. He also argued that a federal tax on state and local bonds would inhibit individual states and municipalities from effectively tapping the capital markets. “In order that a market may be provided for State bonds, and for municipal bonds, and that thus means may be afforded for State and local administration, such securities from time to time are exempted from taxation. In this way lower rates of interest are paid than otherwise would be possible,” Hughes stated. “To permit such securities to be the subject of Federal taxation is to place such limitations upon the borrowing power of the State as to make the performance of the functions of local government a matter of federal grace.”¹¹⁹

As the historian John Bunker has documented, the fallout from the Hughes message was as to be expected. Fellow Republicans, and newspapers opposed to the income tax, supported the Governor’s comments, while many Democrats and pro-income tax reformers assailed the speech as an example of the power of moneyed interests. Although Hughes would soon resign as governor to accept an Associate Justice position on the U.S. Supreme Court, his comments in January 1910 would reverberate for some time.

¹¹⁷ State of New York, Senate, *Special Message from the Governor Submitting to the Legislature Certified Copy of a Resolution of Congress Entitled “Joint Resolution Proposing an Amendment to the Constitution of the United States,”* January 5, 1910, p. 3.

¹¹⁸ Id.

¹¹⁹ Id..

Many politicians and activists voiced their disapproval of Hughes's message. Even some prominent Republicans, such as U.S. Senator Elihu Root attempted to defuse the potency of Hughes's remarks by assuring state legislators that the amendment was not designed to allow the federal government to supersede the fiscal power of states and localities. In a letter to the state legislature, Root stated that the sole objective of the amendment was to address the constitutional obstacle posed by the Pollock decision, and that apportionment, and not control over state and local fiscal policy, was the true target of the proposal. In a less publicized comment, Seligman, a self-proclaimed "good Republican" also rebuked the legislature for taking Hughes message too seriously and ignoring the democratic will of the people.

Writing in the pages of the *Political Science Quarterly*, Seligman argued that Hughes's opinion was "erroneous in three respects." First, the governor, Seligman claimed, had confused the legal precedents. Second, he did not understand how economic forces would balance out any tax effects on state and local bonds, and finally and most importantly Seligman argued that Hughes did not understand how the historical evolution of centralized political power was a function of changing political and social life. "The conditions which existed when the constitution was framed are no longer existent," Seligman wrote. "During the last century, ... the development of the underlying economic and social forces has created a nation, and this development calls for uniform national regulation of many matters which were not dreamed of by the founders." Using a comparative analysis, Seligman concluded that economic and legal progress should not be hindered by antiquated attachments to the ideas of state and local self-governance. "Let us not make a fetish of 'self-government,'" Seligman argued, "and let us not oppose central authority in those cases where self-government means retrogression rather than progress." Though Seligman testified about his views before the state legislature, his article in the *Political Science Quarterly*, and the subsequent book on the topic of the income tax,¹²⁰ went largely unnoticed by the popular press and the most common people.¹²¹

Despite Seligman's views, and the voices of the many others who challenged Hughes, ultimately, the income tax amendment could not survive the resistance of the Republican majority in the New York Assembly. Three times the resolution was put to a vote in the Assembly and all three times it was defeated by the Republican majority. But the fate of the

¹²⁰ Seligman, *The Income Tax*.

¹²¹ Edwin R.A. Seligman, "The Income Tax Amendment" *PSQ* Vol. 25, Iss. 2 (June 1910), p. 193-219, 214.

Sixteenth Amendment in New York was not limited to the 1910 legislative session, for when the political tides changed direction in the following year, delivering the legislature to the Democrats, the congressional proposal for an income tax amendment received new and considerably greater consideration.¹²²

With a Tammany Hall majority in the legislature and Democratic Governor John Dix in office, the 1911 legislative session seemed to be a more receptive audience for the proposed amendment. Yet, the dire warnings of Governor Hughes, who was now an Associate Justice of the U.S. Supreme Court, continued to resonate among many state legislators. This time, Professor Seligman would take no risks in voicing his support for the constitutional amendment. Realizing perhaps that his influence could be expanded beyond the pages of an academic journal, Seligman appeared again before a state legislative committee – this time he came with a renewed sense of purpose.

Testifying last after a long Saturday afternoon of witnesses, Seligman clearly displayed his disapproval not only with Governor Hughes comments, but with those Republican assembly members who had retained their political positions, despite the Democratic landslide of 1911. Essentially, Seligman reiterated his comments that Hughes did not realize (1) that the proposed amendment would simply restore the constitutional status quo pre-Pollock; (2) that an efficient capital market would take into consideration the different tax effects of state and local bonds and all other securities, and; (3) that even if the federal government did limit the fiscal powers of states and localities, the increased revenue of an income tax would benefit all, and not just the federal government. Seligman peppered his second argument, the economic analysis, with a personal attack on Hughes. After he explained the economic logic of how an efficient capital market would take into consideration the tax-status of securities, Seligman concluded: “If any of my students at Columbia had made the same mistake as Governor Hughes, I should have flunked him dead.”¹²³

In a similar tone, Seligman reminded the Republican assemblymen of the political warning he had issued in his previous testimony. During the 1910 legislative session, Seligman testified before the Senate Judiciary Committee, where he forewarned the senators that by rejecting the amendment the legislators would be ignoring the political power of the people at

¹²² Buenker, *The Income Tax and the Progressive Era*, pp. 278-80.

¹²³ “Corrects Hughes on Income Tax,” *The New York Times* May 21, 1911, p. 12.

their own peril. “It was my good fortune,” Seligman stated in his 1911 testimony, “to say to the Senate committee that though I was as good a Republican as any of those present, I believed the party would be snowed under at the polls, if it refused to accept the amendment. The Republican Party was snowed under and one of the reasons was its failure to observe my warning.”¹²⁴

Seligman’s comments, especially his rebuke of Hughes’s economic logic, caused quite a stir. The anti-income tax *New York Times*, for instance, not only gave Seligman’s comments prime news coverage, it also published a scornful editorial and several letters to the editor questioning Seligman’s assumptions about the efficiency of the capital markets.¹²⁵ State Democrats, for their part, used Seligman’s comments as a cudgel to beat away continued Republican claims against the amendment. Just as the Republicans in the previous year used Hughes’s message as political cover for their rejection of the proposal, many Democrats in 1911 used Seligman’s comments, and his credentials as an expert, to curry more support for the amendment. During Seligman’s testimony, a Republican member of the Judiciary committee attempted to impeach Seligman’s expertise in taxation. Holding up a public finance text, he asked the professor whether he had read the whole book through. The question caused a great deal of amusement among the onlookers, and some embarrassment for the legislator when he realized that he was holding up one of Seligman’s own treatises.¹²⁶

With the Democrats controlling both the Senate and Assembly, and with the support of Governor John Dix, the income tax amendment sailed through the 1911 session on firm partisan lines. The change in political composition of the legislature from 1910 to 1911 was of course the major factor leading to ratification, but Seligman’s writings and testimony also had a significant impact. While it is difficult to quantify precisely Seligman’s affect on the ratification process, his challenge of Hughes’s message certainly galvanized the pro-income tax forces by lending them the prestige and prominence of a well-known expert in the field. Indeed, Seligman’s position against Hughes seemed to be vindicated several years later in the 1916 Supreme Court decision in *Brushaber v. Union Pacific*,¹²⁷ where a then Justice Hughes assented to a unanimous decision that essentially refuted his earlier position on the general power of the Sixteenth Amendment.

¹²⁴ Id.

¹²⁵ “The Income Tax Hearing,” *The New York Times* May 23, 1911, p. 10.

¹²⁶ Buenker, *The Income Tax in the Progressive Era*, p. 288.

¹²⁷ 240 U.S. 1 (1924).

Conclusion

The ratification of the Sixteenth Amendment and Seligman's personal victory over Hughes were only brief acts in the larger drama of American fiscal policy making at the turn of the century. American historical political economy, as embodied in the ideas and actions of Seligman and Adams, contributed much more to our understanding of the American system of taxation. The scholarship of Seligman and Adams – from their contributions to the *Science* debate to their lifelong writings on public finance and political economy – played a key role in laying the ideological foundation for the modern American fiscal state. It was their ideas and actions that helped destabilize the American presumption in favor of laissez-faire. It was their emphasis on the historical contingency of economic ideas and policies, and their focus on the larger sociological context of economic relations that promulgated public finance, or the “science of finance,” as a proper topic of scholarly investigation. From their academic positions, these theorists were able to give force to the idea that taxation in a modern industrial society should be based on one's faculty or “ability to pay.” With their arguments for a more active state in the realm of public finance, Adams and Seligman were able to sketch the outlines of a new form of American liberalism – a new liberalism that would soon propel the institutional and social forces that would eventually determine the structures of wealth and opportunity in the United States.

While Adams and Seligman attempted to apply their historically based theories of political economy to the formation of public policies, neither individual completely left the academy to oversee the actual implementation of their ideas. Seligman did not hesitate in testifying before state and local committees, and Adams was a key figure in the early ICC, but neither individual completely repudiated the life of a scholar. Both continued their commitments to scholarship and teaching, although Adams was certainly limited by his increased role at the ICC. Content to mediate between the world of academic theory and public policy, both scholars left the more adventurous and perhaps dangerous task of directly creating tax policies to other scholars.

Chapter 2 – Financing the New Liberalism: T.S. Adams, World War One, and the “Excess Profits” Tax