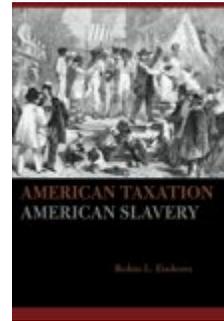


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Robin L. Einhorn. *American Taxation, American Slavery.* Chicago: University of Chicago Press, 2006. xii + 337 pp. \$35.00 (cloth), ISBN 978-0-226-19487-5; \$22.50 (paper), ISBN 978-0-226-19488-2.

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Slavery's place in antebellum American politics remains a bone of contention among historians, political scientists, and law professors. Much mid-twentieth-century writing cordoned off slavery from other political developments. Scholars assumed that until the annexation of Texas or the Wilmot Proviso, the central features of the Jacksonian regime could be analyzed without extensive reference to human bondage. Others, noting John Randolph's fear that the principles of federal power announced in *Gibbons v. Ogden* (1824) might justify national laws emancipating slaves, accommodations for slaveholders were always on the table, even when the conversation was not explicitly about the "peculiar institution." *American Taxation, American Slavery* is a powerful contribution to the now dominant view among scholars that "slavery was such a significant, even a foundational institution in the early United States that it affected almost everything that happened in the political arena" (p. 6). Professor Robin L. Einhorn in that work scrupulously details the direct and indirect ways in which human bondage structured American taxation policies during the eighteenth century and the continued legacy of slavery for modern taxation. The result is a pathbreaking contribution to scholarship on antebellum constitutional politics.

Human bondage, Professor Einhorn successfully argues, structured local and national tax policies. Most obviously, slaveholders in both state legislatures and in the federal government sought to minimize the extent to which their human chattel would be taxed. Slaveholding politics explains both national reliance on the tariff for revenue and state constitutional provisions requiring that all assets be taxed uniformly. The persons responsi-

ble for the constitution championed duties on imported goods as the main source of revenue for the federal government, *American Taxation* notes, because "[t]he impost was the only tax Congress could adopt without talking about slavery" (p. 120). Slavery "was the form of personal property at issue in the early (southern) uniformity clauses" because "Southerners linked slave taxes to taxes on real estate in order to bar their legislatures from levying higher taxes on slaves" (p. 231).

More subtly, *American Taxation* highlights how slavery influenced state capacity to raise revenue. A central theme of that work is how "(d)emocracy and liberty produced stronger and more competent governments in early American history" (p. 7). The relative political equality fostered by a relatively slaveless society, Professor Einhorn documents, explain why northern colonies were able to develop the vigorous local institutions necessary for a fairly sophisticated tax system that could both value property and collect taxes with a minimum of corruption. "More democratic institutions" (p. 60) explain why "Massachusetts could levy taxes that hurt" (p. 53). Southern colonies, dominated by affluent slaveholders, lacked the "democratic tradition of citizen participation in local government" (p. 52) necessary for raising revenue. As a result, southern taxes at the time of the Constitution and after were more primitive than northern taxes and southern tax collectors were more corrupt than northern tax collectors.

These important claims are for the most part meticulously documented. Readers of *American Taxation* will learn more about American tax policies and debates during the eighteenth century than anyone would have

thought possible. More startling, this detailed study of federal and local tax policy is a remarkably easy read. *American Taxation* may be the most surprising page-turner of the early twenty-first century. Occasionally, Professor Einhorn does slip when making particular claims. Whether “the refusal to value tangible rural property can only have reflected a refusal to invite assessors onto the plantation to ask the slaves about the composition and value of their masters’ property—or to ask the masters in the presence of the slaves” (p. 106) is doubtful. Concerned masters might have ensured that slaves were not present when such conversations were taking place and present slaves may not have fully understood the conversation. Still, if not every “i” is dotted, the central theses of *American Taxation* are more than adequately documented. While readers may quibble about the causal mechanisms, *American Taxation* provides convincing evidence that every fundamental difference between northern and southern taxation policy at the time the Constitution was ratified was either a direct or indirect consequence of the privileged position slaveholders held in southern state governments and in the national government.

The last section of *American Taxation* explores how new northwestern states “turned concessions to slaveholders into shelters for other elites” (p. 204) by ratifying constitutional provisions requiring uniform tax rates that had originally been designed to prevent special taxes on slaves. These provisions, originally thought to prevent corporations from obtaining special tax breaks, after the Civil War were invoked to prevent states from placing special taxes on corporate assets. Professor Einhorn convincingly demonstrates that slaveholders were the first to champion tax uniformity. Her claim that “the men who framed state constitutions in the antebellum Northwest simply did not understand that they were establishing privileges for their homegrown elites,” however, is a bit like criticizing the persons responsible for the First Amendment for failing to realize that courts two hundred

years later would invoke that provision when striking down laws regulating campaign finance. The better view may be to recognize that principles that justify progressive policies in one generation are often invoked by conservatives in the next generation. The “color-blind Constitution” provides a good example of this phenomenon, suggesting that the common citizens of the north who fought for tax uniformity were no more or less prescient than other Americans.

Whether sectional differences in capacity to tax influenced the outcome of the Civil War might have provided a more satisfactory conclusion to *American Taxation*. Much debate exists over whether the northern victory was partly a consequence of superior northern governing institutions. If “a more general structural difference between northern and southern tax institutions” (p. 221) explains why free state taxes were higher than slave state taxes before the Civil War, then the Union almost certainly enjoyed greater capacity to extract tax revenues from citizens during that conflict. This capacity, as much as northern industrial advantages, may have explained why northern soldiers were better provisioned than their Confederate counterparts. Perhaps the proper epitaph for the Confederacy is “Died for Lack of Administrative Capacity,” not “Died of State Rights.”

This wish that Professor Einhorn had extended her discussion through the Civil War hardly detracts from the substantial merits of the book she actually wrote. Scholars and citizens interested in antebellum political and constitutional development will find *American Taxation* fascinating. Crossing the boundaries between race scholarship and scholarship on the new institutionalism, Professor Einhorn compellingly ties the debates historians have over the place of slavery in the American order to the debates political scientists have over how state capacity structures American political development. Perhaps the highest compliment one pays an exceptionally good book is the hope that a sequel will be forthcoming in the very near future.

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