

LOUIS D. BRANDEIS

OTHER  
PEOPLE'S  
~~MONEY~~

Taxes



My Taxes, Your Taxes,  
and the Vibrant  
History of American  
Fiscal Citizenship

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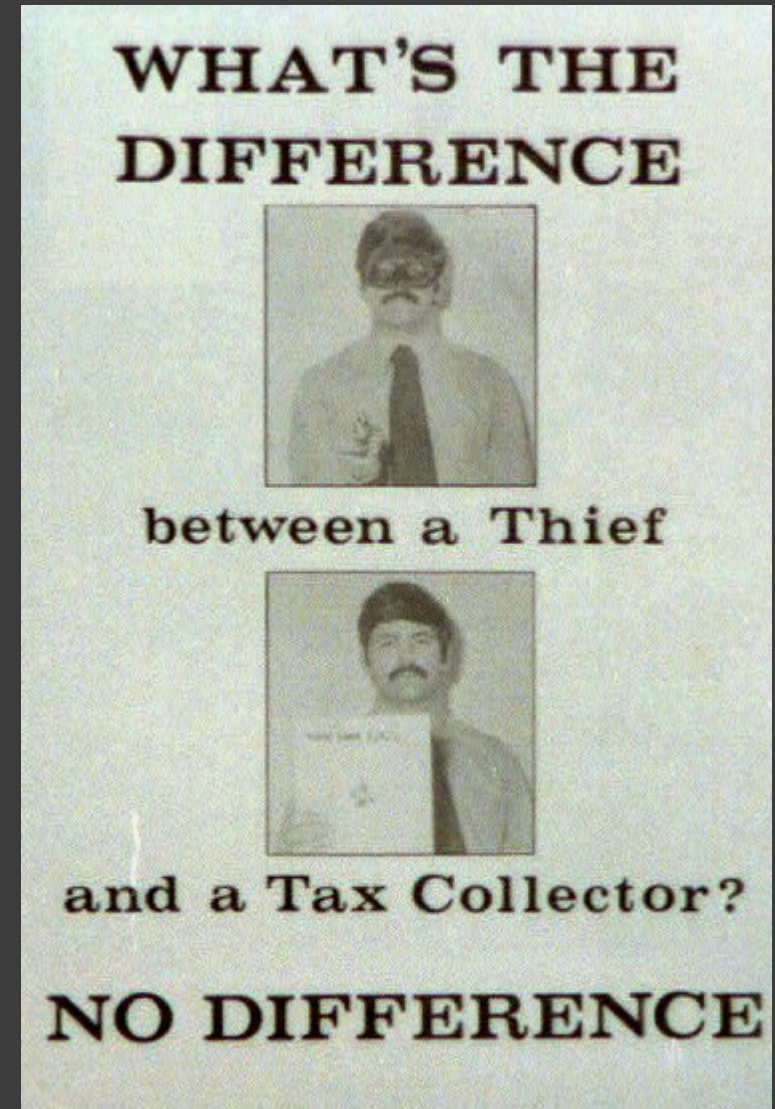
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# A Nation of Tax Haters?

“At least until 1913, America was brimming with tax rebels. From the time when the British tried to tax us in 1764, to the adoption of the income tax amendment in 1913, our combative anti-tax character led from one rebellion to another.”

– Charles Adams, *Those Dirty Rotten Taxes*



# Tax Revolts Have Definitely Been a Thing

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## Both Early ...

Boston Tea Party, 1773

Shay's Rebellion, 1786-1787

Whiskey Rebellion, 1791-1794

Fries Rebellion, 1799-1800

## And Late ...

Property tax revolts of the 1930s

Income Tax Limitation Amendment of the 1950s

Proposition 13

The Tea Party of 2009

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# Complex Meanings

- Tax revolts are typically understood as objections to high taxation.
- But this one-dimensional explanation leads to a reductive conclusion: That Americans simply don't like taxes.
- Adams: "our combative anti-tax character" (such claims are typically phrased in the first person)
- This reductive, essentialist view explains neither tax revolts nor the broader history of U.S. taxation.

# U.S. Tax History in a Nutshell

## The Four Regimes

- Founding to the Civil War
- Civil War to World War I
- World War I to World War II
- World War II to the Present

## Wars have been the inflection points

- But not every war has brought lasting change
- None since World War II

## The end of fiscal history? Not likely.

- Eventually, another imperative will emerge.

# The Nature of Change in U.S. Tax History

The Iron Law of Tax History:  
Real, durable change happens  
when it must, not when it  
should.

It's not all about revenue  
imperatives – but revenue has  
determined the inflection points.

Fairness has given shape to  
change, once revenue  
imperatives have made change  
necessary.



# The Political Construction of Tax Fairness

- Fairness is a slippery term, in tax and elsewhere
- Skeptics see it as meaningless—a rhetorical convenience used to claim moral legitimacy for self-interested policy preferences
- Perhaps. But in terms of politics, fairness is very real indeed.
- And its possible to discern popular conceptions of fairness in the historical record.
  - Contested, contingent, socially and politically constructed
- I'd like to suggest a phrase that captures many of these conceptions, in many different periods.





THE "BRAINS"

THAT ACHIEVED THE TAMMANY VICTORY AT THE ROCHESTER DEMOCRATIC CONVENTION.

# "Other People's Taxes"

Americans tend to think about taxes in terms of other people – their fellow fiscal citizens.

Americans talk (and complain) less about the taxes THEY are paying and more about the taxes OTHER PEOPLE are NOT paying.



# Malleable Politics

The rhetoric of tax “otherness” has never been the exclusive domain of any party or ideological block.

Often used to advance progressive reform: introduction of new tax instruments (the income tax), elimination of old ones (the tariff), or rejection of alternatives (a national consumption tax).

But also used to attack the income tax for its nonpayers (charges which have dogged the levy since its inception).

"Other People's Taxes" is an element of fiscal citizenship: the web of rights and responsibilities that connect citizens to one another—and citizens to the state.

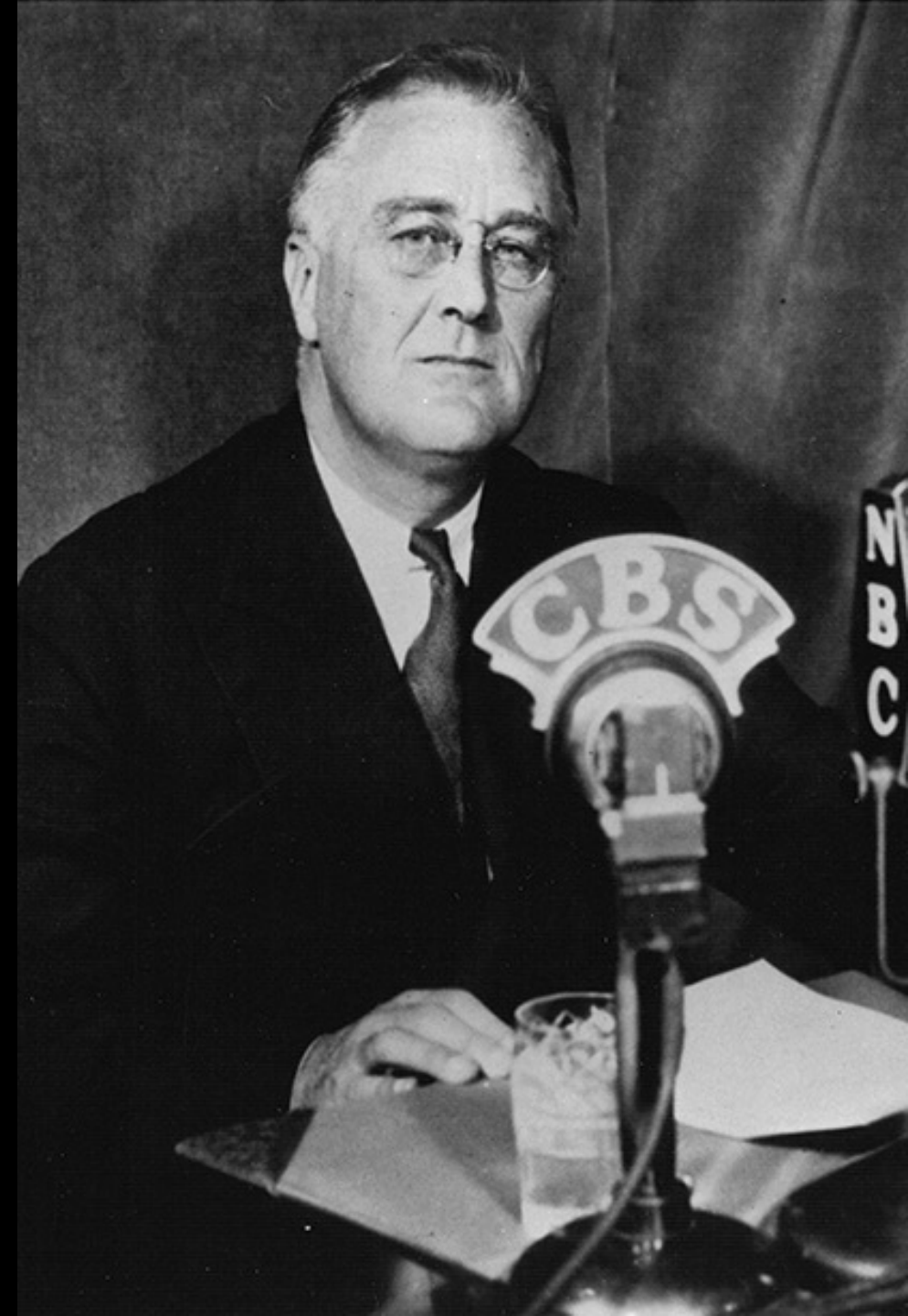
# The Historiography of Fiscal Citizenship

Several scholars have deepened our understanding of U.S. fiscal citizenship, including Ajay Mehrotra, Larry Zelenak, and James Sparrow, to name just a few.

My book seeks to build on these and other efforts, crafting a synthetic history of U.S. federal taxation that puts fiscal citizenship at the center of the story.

# The Language of Other People's Taxes

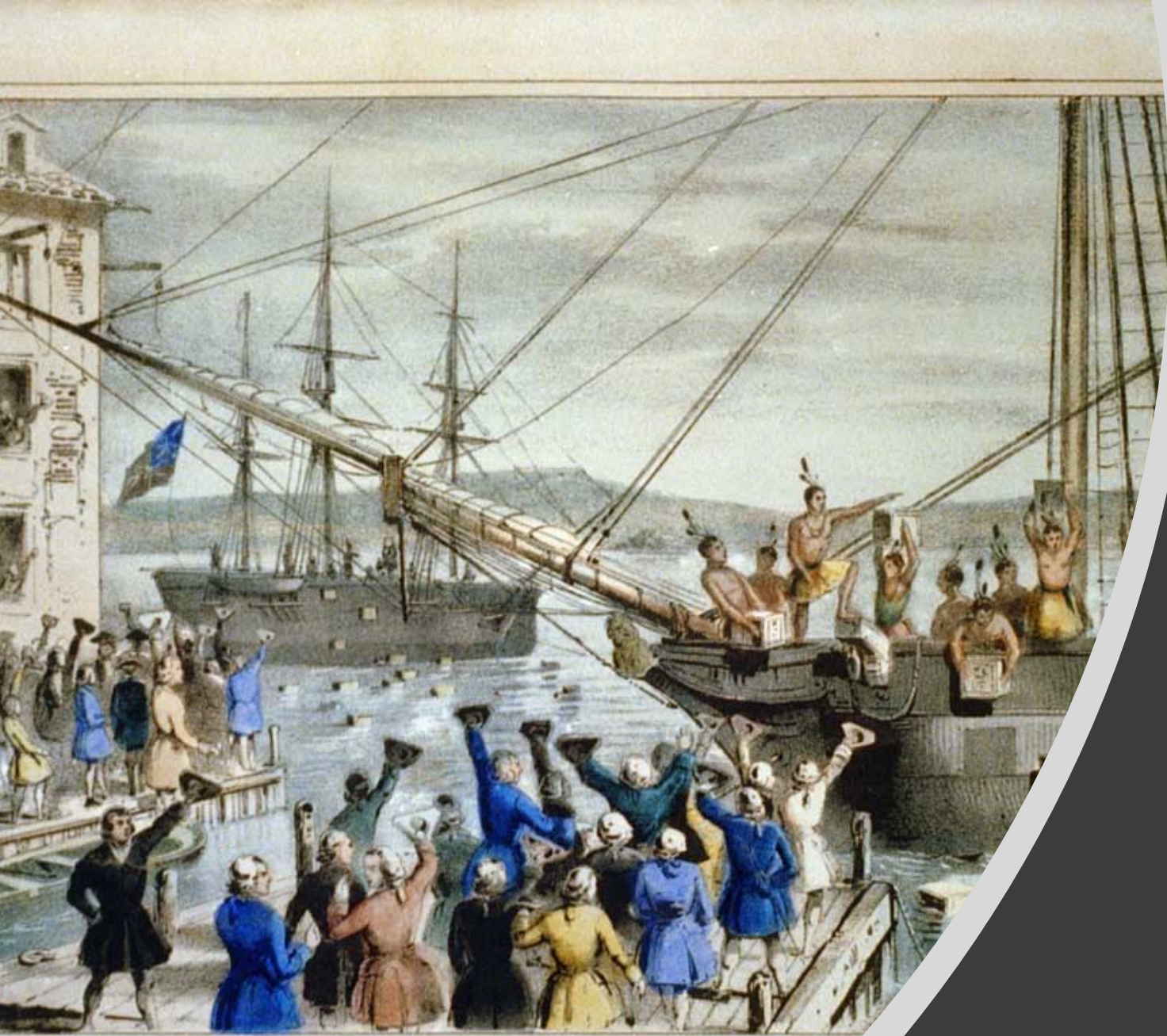
- We find the language of fiscal citizenship at every inflection point in the history of U.S. taxation.
- This language focuses not simply on taxes that Other People WILL pay under the new regime, but on taxes they are NOT paying under the old one.
- The language of fiscal citizenship is shot through with talk of avoidance and evasion, shirking and freeloading.
- A language of moral responsibility brought to bear on the fiscal obligations of American citizenship.
- The upshot: Americans ARE a nation of tax resisters. But we are also a nation of tax PAYERS.





# Other People's Taxes at some iconic and critical junctions

The language of fiscal  
citizenship



# The Boston Tea Party

DESTRUCTION OF TEA AT BOSTON



# America's original tax protest

- The original tea party was NOT a protest against high taxes – on tea or anything else.
- In fact, the Tea Act of 1773 gave the East India Company a tax break on tea shipped to the colonies, as well as special privileges for selling that tea in America – all of which meant lower prices for colonial consumers.
- The Tea Party was a protest against tax favoritism and crony capitalism.

## Georgii III. Regis.

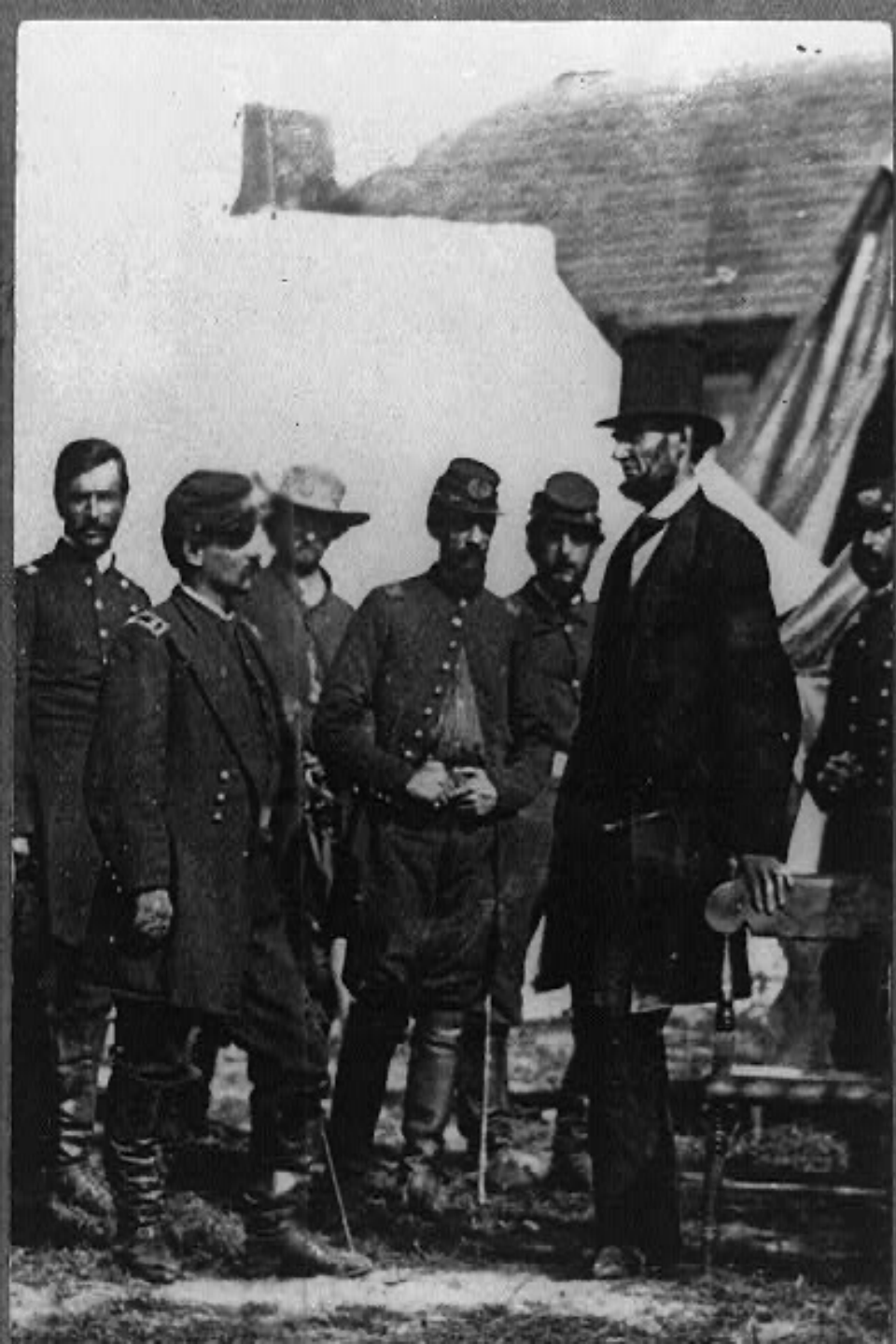
C A P. XLIV.

An Act to allow a Drawback of the Duties of Customs on the Exportation of Tea to any of His Majesty's Colonies or Plantations in *America*; to increase the Deposit on Bohea Tea to be sold at the *India Company's* Sales; and to empower the Commissioners of the Treasury to grant Licences to the *East India Company* to export Tea Duty-free.



WHEREAS by an Act, made in the Twelfth Year of His present Majesty's Reign, (intituled, An Act for granting a Drawback of Part of the Customs upon the Exportation of Tea to *Ireland*, and the *British* Dominions in *America*; for altering the Drawback upon foreign Sugars exported from *Great Bri-*



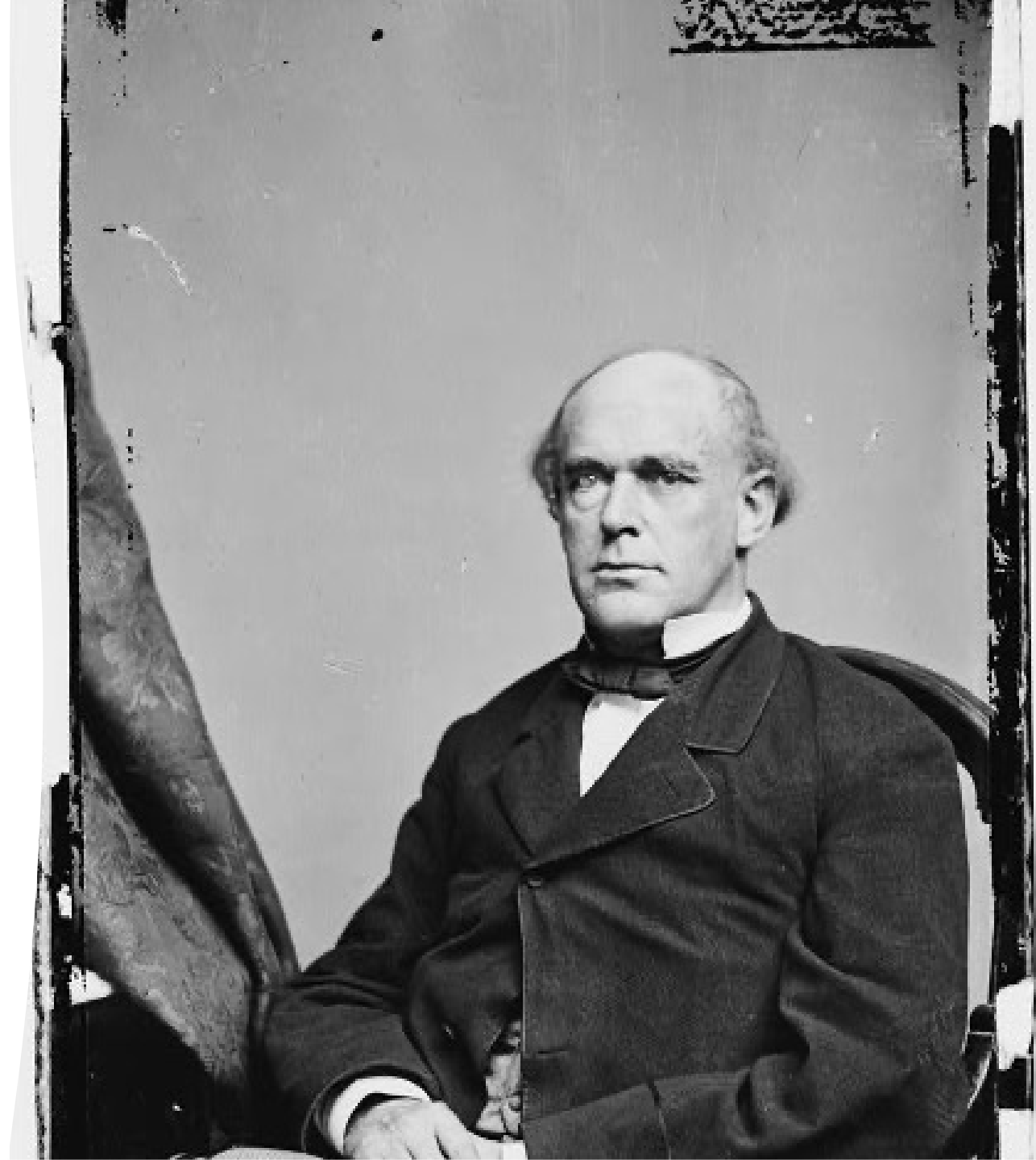


# The Civil War



# Desperate for revenue

- The war forced Union lawmakers to look for new revenue
- Government spending rose quickly, from less than 2% of gross national product to roughly 15%.
- Tariffs, the traditional revenue source, couldn't keep up.
- Lawmakers turned to alternatives, including a federal property tax.





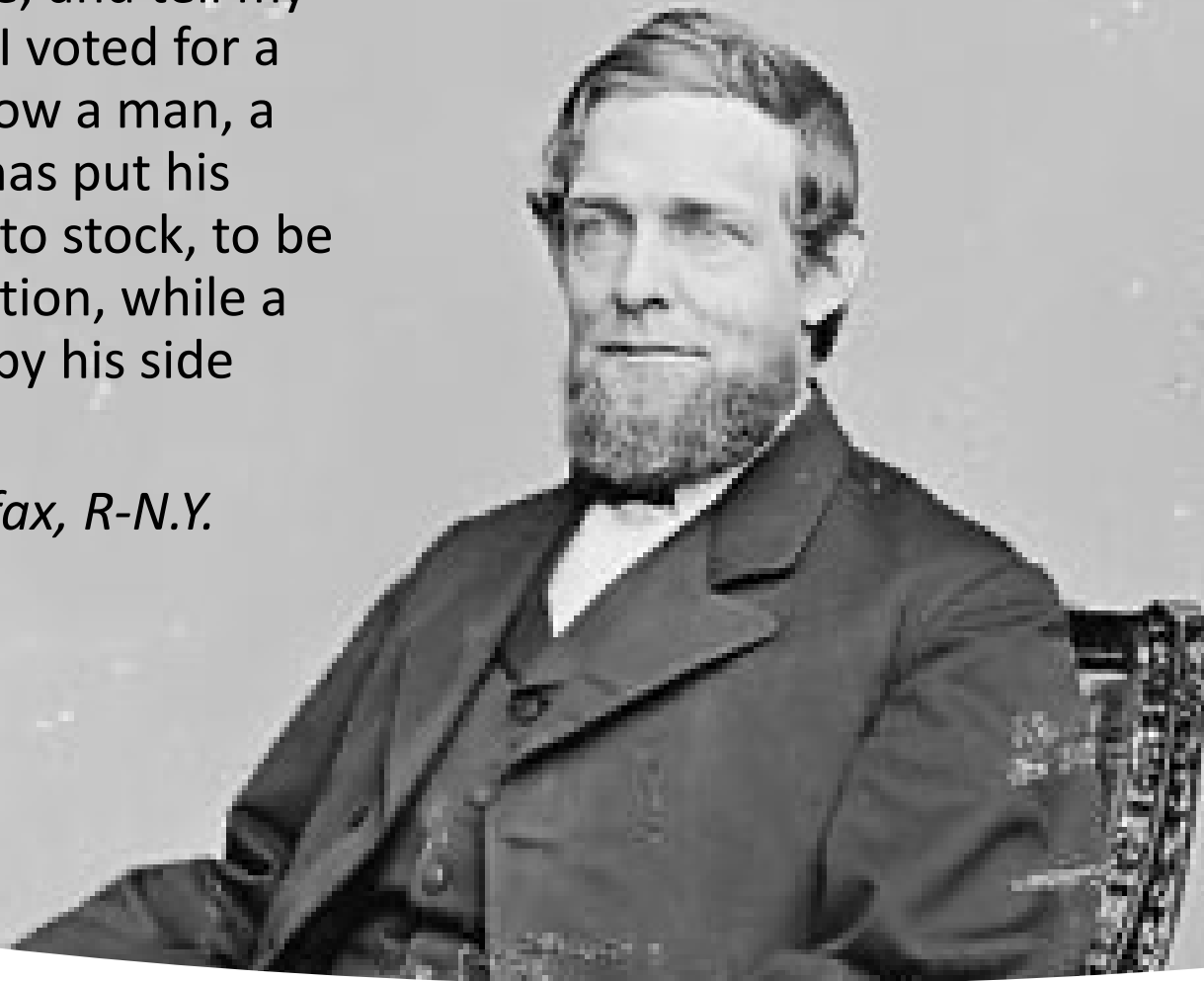
# A Tax on Farmers

- Lawmakers from agrarian states objected to the property tax, emphasizing its heavy burden on farmers.
- But their principal complaint was NOT that farmers would have to pay the tax.
- Rather, they complained that non-farmers would ESCAPE the tax.



“I cannot go home, and tell my constituents that I voted for a bill that would allow a man, a millionaire, who has put his entire property into stock, to be exempt from taxation, while a farmer who lives by his side must pay a tax.”

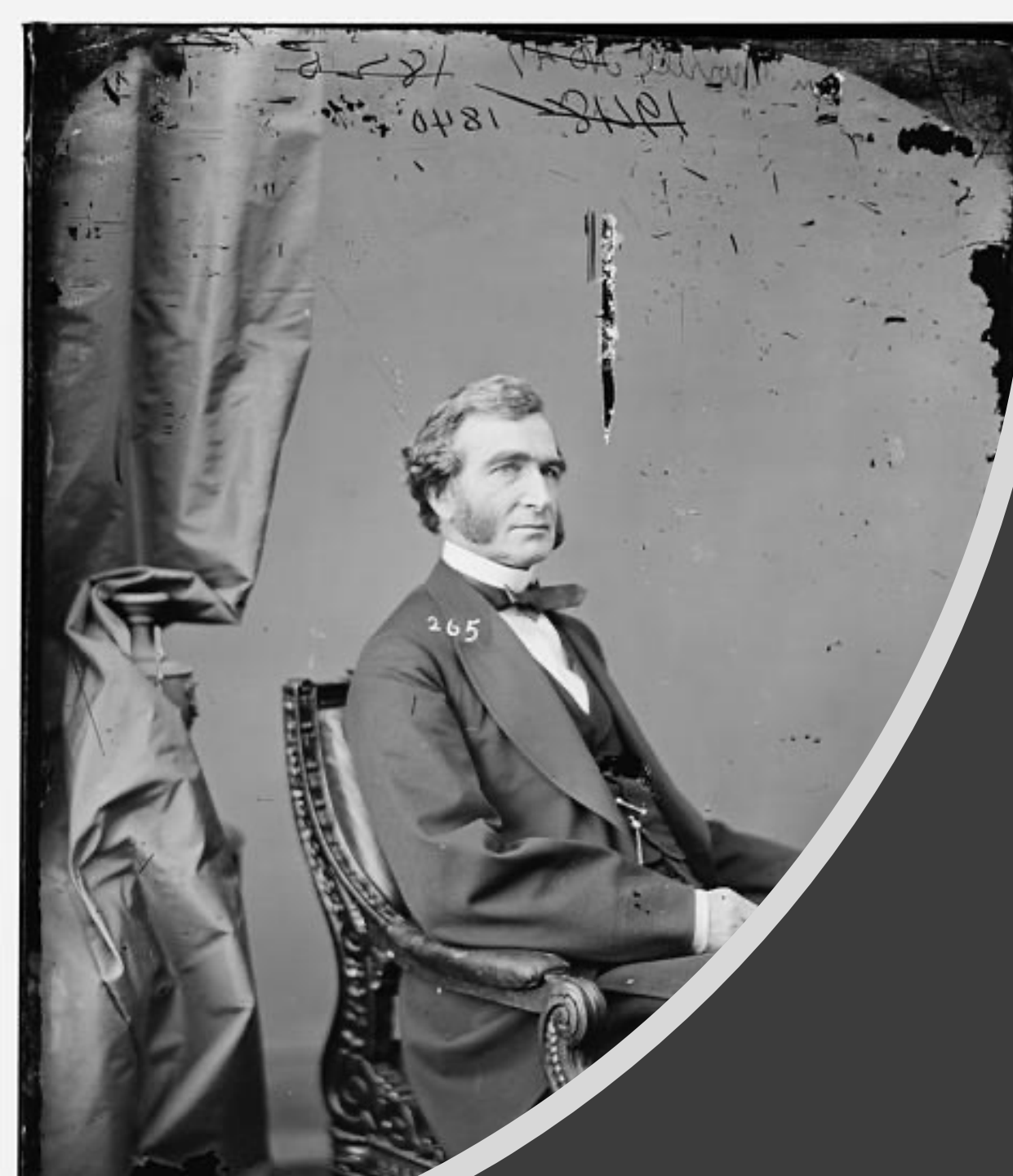
*Rep. Schuyler Colfax, R-N.Y.*





"I ask if the farmers of this country are to have their lands pledged as security for payment of this debt, while the great stockholders, the money lenders, and the merchant princes of Wall Street, and all the great capitalists, are to go free, and bear none of these burdens?"

*Rep. Sidney Edgerton, R-Ohio*



# Taxing the merchant princes – and others

- The income tax emerged as a response to this criticism about freeloading capitalists
- Some might call this legislated envy – indeed, some DID call it legislated envy
- But defenders of the idea, like Rep. Justin Morrill of Vermont, viewed the income tax as a instrument of modern fiscal citizenship – a tool for ensuring that Americans worked together in a common fiscal enterprise.
- Notably, by war's end, something like 10 percent of Union household were paying the income tax – not a mass tax, but not a plutocrat's tax either.

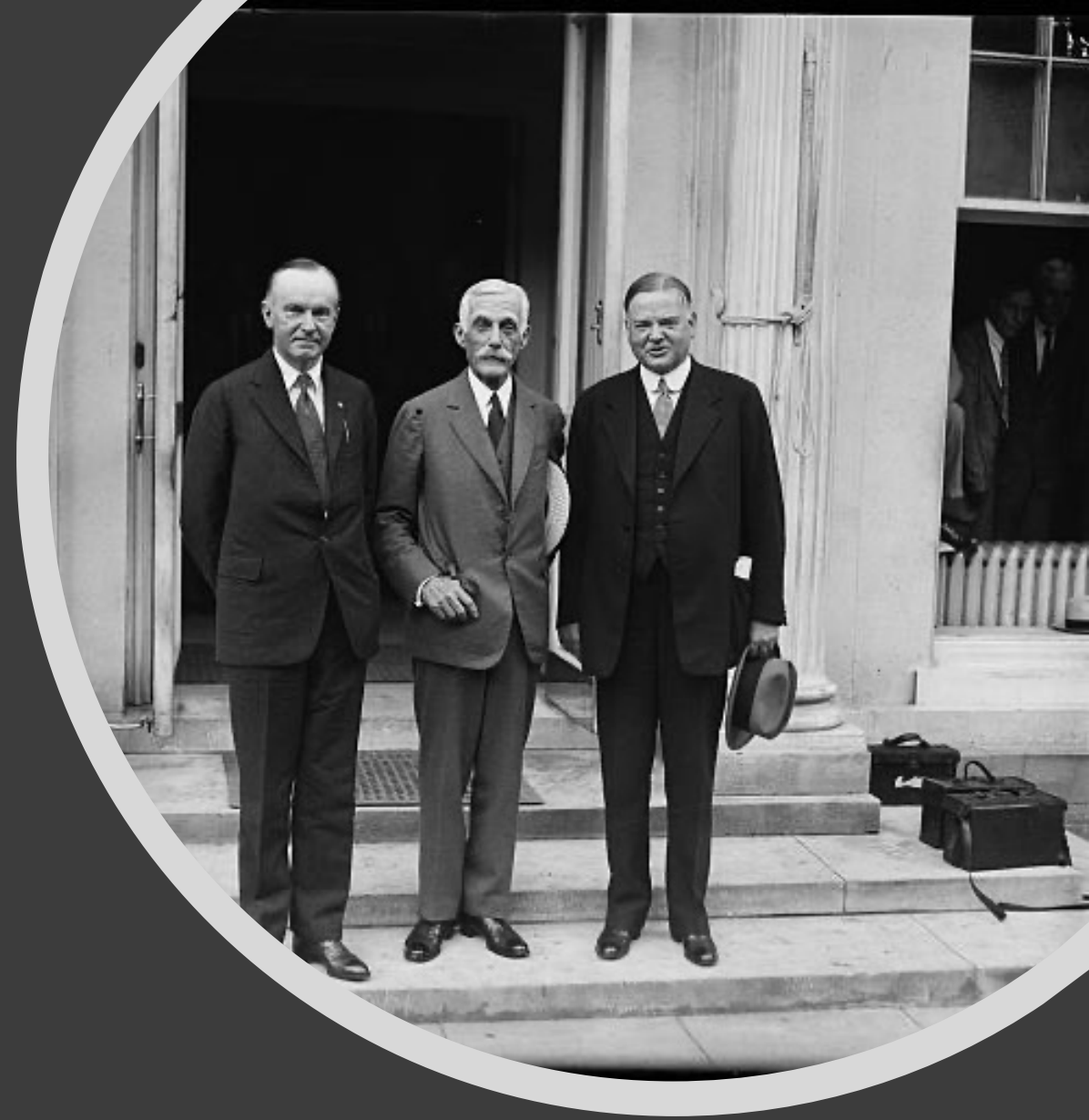




# The Republican Ascendancy of the 1920s

# Income Tax Non-payers

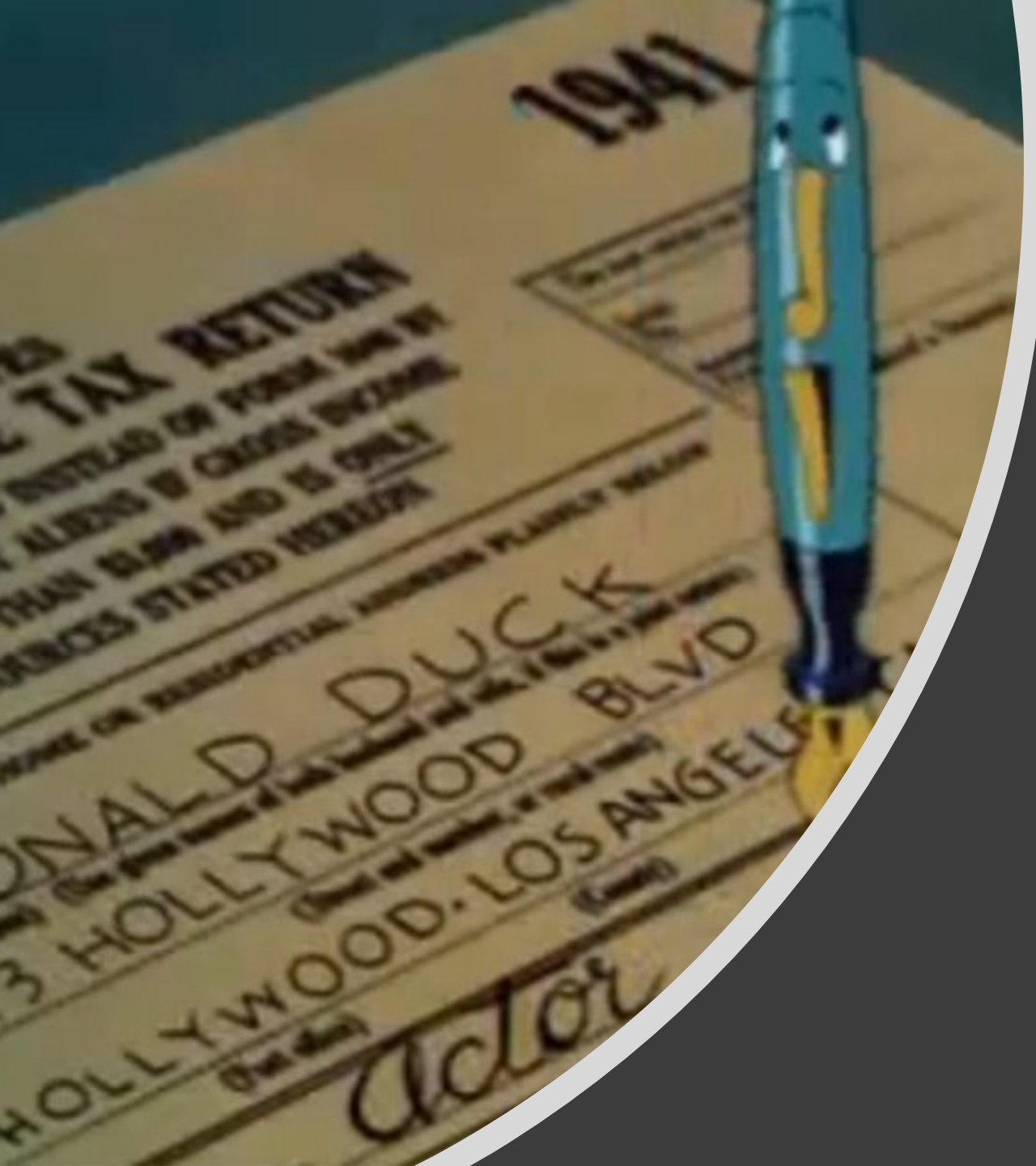
- Republicans used the language of other people's taxes to criticize the high exemptions of the post-World War I income tax
- Andrew Mellon: "As a matter of policy, it is advisable to have every citizen with a stake in his country. Nothing brings home to a man the feeling that he personally has an interest in seeing that government revenues are not squandered, but intelligently expended, as the fact that he contributes individually a direct tax, no matter how small, to his government."



# Paying Other Taxes

- Of course, they did have a stake, as lawmakers like Rep. John Nance Garner, D-Tex., pointed out.
- As an Omaha newspaper observed: “We pay taxes on our coats, on our shoes and socks, on our hats, on our shorts and underwear, on the food on the breakfast-table, on the materials of which are homes are constructed, on the furniture in them ... Do not these payments entitle us to feel equally with Mr. Mellon, that we have a stake in our country?”
- Still, a powerful critique, and one that even some Democrats found compelling.
- Would prove relevant in the following two decades.





# The New Deal and World War II

# The Era of Tax Vilification

- The 1933 Pecora Investigation, when J.P. Morgan, Jr.'s tax returns made national headlines.
- The 1937 “loophole” investigation, when the White House leaked the names of wealthy taxpayers engaged in legal but potentially embarrassing tax avoidance.
- The 1943 debate over withholding and tax forgiveness, when FDR asked Treasury for a list of the nation’s 100 largest taxpayers (but eventually thought better of publicly shaming them).

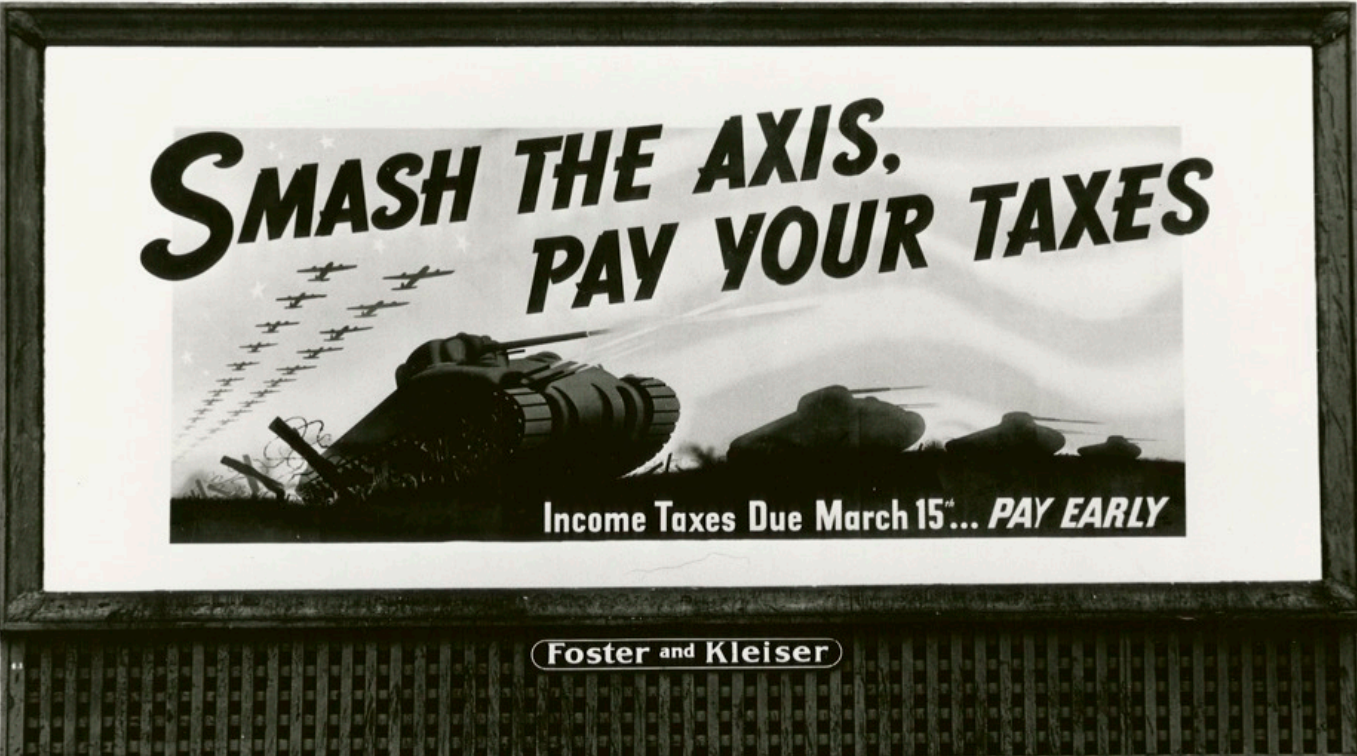






## Civilization at a Discount

- FDR and his Treasury Secretary, Henry Morgenthau, Jr., insisted repeatedly that tax avoidance was immoral, legal niceties notwithstanding.
- “We still have too many cases of what I may call moral fraud,” Morgenthau warned, “that is, the defeat of taxes through doubtful legal devices which have no real business utility, and to which a downright honest man would not resort to reduce his taxes.”
- Of percentage depletion: “perhaps the best example of legalized theft from the United States Treasury which the revenue laws still permit.”



**SMASH THE AXIS.  
PAY YOUR TAXES**

Income Taxes Due March 15... **PAY EARLY**

**Foster and Kleiser**

## Shaping the Wartime Watershed

- FDR's penchant for taxing the rich reveals more than a trace of demagoguery.
- But it paved the way for a politically fraught transformation of the income tax during World War II—from "class tax" to "mass tax"
- FDR's fixation on rich people's taxes made it easier to sell the idea of a middle-class income tax.
- It also helped sink the idea of a national sales tax, which FDR cast as hopelessly regressive and inconsistent with ideals of shared sacrifice and fiscal citizenship.



## Postwar Consolidation ...

- The wartime regime long survived the end of the war
- Implicit bipartisan consensus masked by sharp rhetorical division
- Not entirely uncontested: tax rate limitation movement of the 1950s
- Proliferation of preferences softened the sharper ideological edges of the tax



## ... And Corrosion

- Henry Simons (1938): “a decorative sort of progression”
- “A subtle kind of moral and political dishonesty ... a grand scheme of deception whereby enormous surtaxes are voted in exchange for promises that they will not be made effective.”
- Over the short-term, preferences bolstered the political resilience of the tax regime. Over the long-term, they weakened it.
- Gradually undermined faith in the horizontal equity of the system.
- Other people were not paying their taxes.






# Tax Reform

- Tax reform in 1986 was a response to the failures of the postwar income tax.
- TRA86 relied heavily on the rhetoric of Other People's Taxes
- Reagan in 1985: "How many times have we heard people brag about clever schemes to avoid paying taxes, or watched luxuries casually written off to be paid for by somebody else -that somebody being you. I believe that in both spirit and substance our tax system has come to be un-American."
- "There is one group of losers in our tax plan, those individuals and corporations who are not paying their fair share or, for that matter, any share. These abuses cannot be tolerated...The free rides are over."





Past, Present, and  
Future

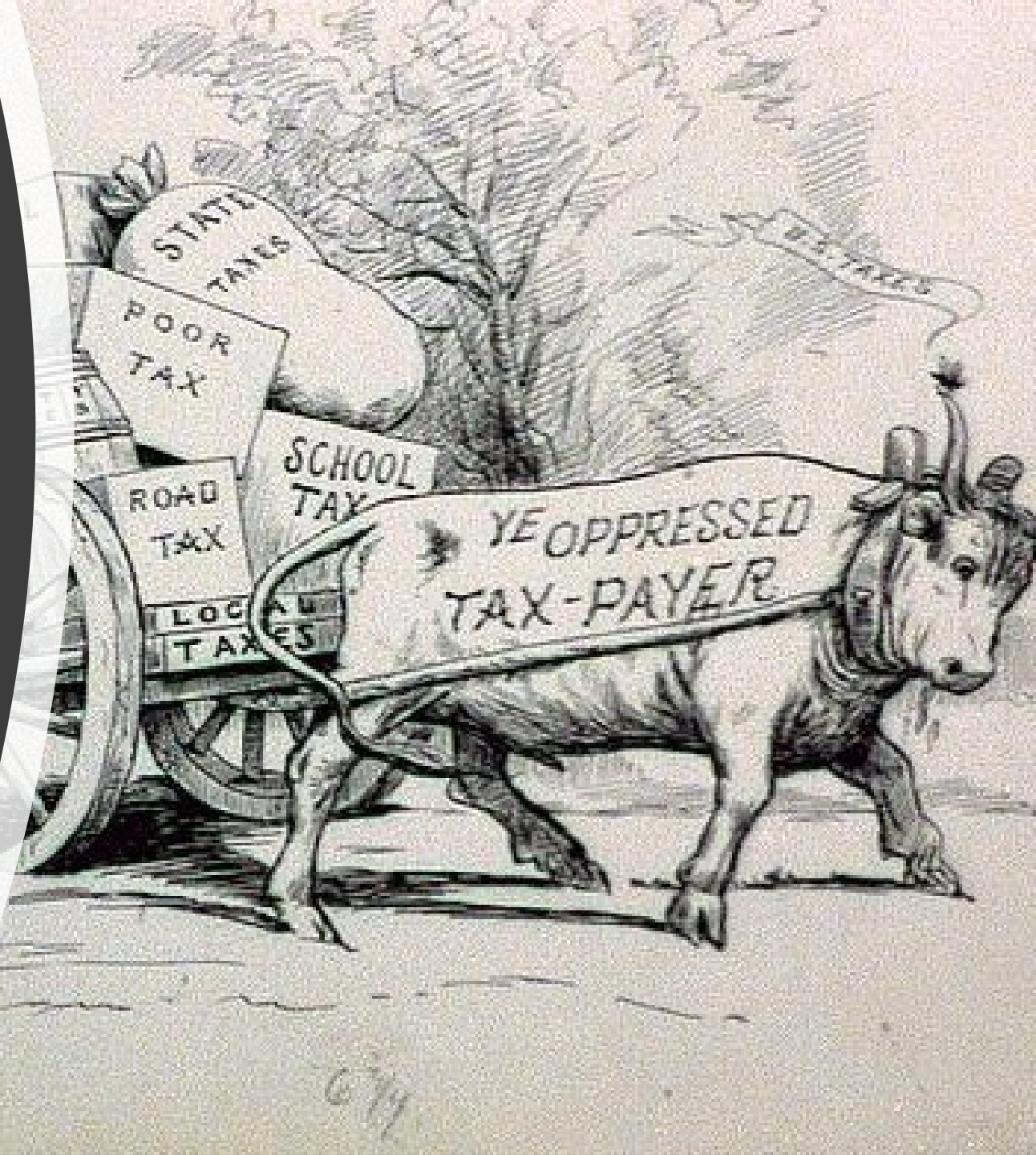


# What the Story of U.S. Taxation is NOT About

- Not just a story about hostility to taxes.
- Not just a story about legislated envy.
- Not just a story about maximizing revenue—Focus on OPT prompted lawmakers to forgo options (e.g. VAT) that would have paid a lot of bills.

# It IS a Story About Fiscal Citizenship

- Fiscal citizenship as a lens draws attention to the social nature of taxpaying
- Fiscal citizenship offers a corrective to the persistent myth that Americans are culturally, essentially, and persistently anti-tax.
- That myth is both a truism—all people everywhere are anti-tax—and an exaggeration that distorts our view of both past and present.
- Over the centuries, Americans have been remarkably willing to pay – as long as other people are paying, too.



# Can Fiscal Citizenship Suggest Anything About The Future?

- As they say on Wall Street, “Past performance is not indicative of future results.”
- The United States would seem to be on an unsustainable fiscal trajectory: A reckoning seems likely ... someday.
- The COVID-19 crisis and its extraordinary costs, both to the government and the economy as a whole, has only made that reckoning more certain (though not necessarily more imminent).
- History suggests that a reckoning will need to be acute if its going to precipitate a shift in tax regimes.



# Change Without Crisis?

- Wars since WWII have not prompted regime change.
- But it seems unlikely that fiscal history has come to an end.
- Maybe a new sort of crisis? A catastrophic loss of faith in U.S. government issued debt?
- Or perhaps we can muster the political will to shift tax regimes WITHOUT an acute crisis.
  - First time for everything.
  - The 1986 tax reform was a decent trial run.
  - Would violate my Iron Law (just sayin')



# Yes, Change Without Crisis

The national response to COVID-19 gives me some hope.

News coverage focuses on conflict, but poll data suggests that Americans are remarkably united in their response to the pandemic.

And for all the gridlock, there's been a remarkable amount of legislation.

That's the sort of unity of purpose that undergirds fiscal citizenship.

The nation's long and vibrant history of fiscal citizenship may be dormant but not dead.

# Speculation on the Nature of Non-Crisis Regime Change

- Durable, systemic tax reform will require some degree of urgency – not a crisis, perhaps, but something more than handwringing about the debt.
- When the time comes, lawmakers will have work to do, reviving the nation's latent and atrophied tradition of fiscal citizenship.
- They will need to advance and defend policy reforms that people will recognize as THEIR taxes—created by their representatives, on their behalf, to serve their interests.
- These reforms will not necessarily involve universal levies—history doesn't suggest that people need to see everyone paying the same taxes. But they will need to see everyone paying ENOUGH taxes – “their fair share.”
- Not inconceivable to me that a VAT is part of the answer, especially if it can be linked to health care care provision or other social welfare spending.