

## THE LONG SHADOW OF WHITE SUPREMACIST FISCAL POLICY

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This paper examines the fiscal system put in place in the former Confederacy in the decades after Reconstruction. Overturning Reconstruction-era policies that taxed wealth and invested in public services, the white supremacist governments that came to power in the later 19th Century slashed public budgets and shifted taxes onto the poor. The fiscal system was interwoven with a burgeoning carceral state, making forced labor profitable to business and government alike. Finally, around the turn of the century, the Southern states passed new constitutions in which anti-democratic and anti-tax measures reinforced one another. These policies continue to echo in state fiscal policy today, particularly in the persistence of supermajoritarian requirements for the passage of tax increases and the heavy reliance on highly regressive and unequally enforced fees and fines. While these policies are facially color-blind, they are a legacy of American racial apartheid.

## INTRODUCTION

In the late 1860s and early 1870s, a coalition of black Southerners, poor Southern whites, and Northern allies attempted to reconstruct the American South by building “a democratic, interracial political order from the ashes of slavery.”<sup>1</sup> A major issue for Reconstruction governments was tax reform, including modernizing the tax system, making it more progressive, and raising adequate revenue to rebuild the South’s infrastructure and to invest in education for black and white children.

But the revolution was short-lived. As the federal commitment to the protection of black suffrage rights waned, Southern whites worked quickly to reimpose as completely as possible the political and economic hierarchy of the *ante bellum* era. Within a few years, Reconstruction governments fell prey to campaigns of electoral fraud, intimidation, and violence.

Tax reduction was at the center of the agenda for the white supremacist “Redeemer” governments that came to power. As Franklin Drew, elected Governor of Florida in 1877, insisted, the “government will be the most highly esteemed that gives the greatest protection to the tax payer.”<sup>2</sup> Historian C. Vann Woodward explains:

Redemption governments, often describing themselves as the ‘rule of the taxpayer,’ frankly constituted themselves champions of the property owner against the propertyless and allegedly untaxed masses.<sup>3</sup>

For the Redeemers, protection of the taxpayer meant immense cuts to government services; reductions in property taxes, especially for the wealthiest property owners; and shifts in the tax system to push fiscal responsibilities onto poor and working class people. Within a few years, state revenues collapsed across the South, and along with them, the Reconstruction governments’ ambitious attempt to build a robust public education system for black and white students.

In other words, paeans to “the taxpayer” provided rhetorical cover for the destruction of those public institutions that might empower the poor, and especially the black poor, against exploitative employers.<sup>4</sup> Over time, moreover, the Southern tax system became an official means by which political, economic, and social oppression of black people was re-institutionalized. By the end of the 19<sup>th</sup> Century, the fiscal system, like the larger legal framework of the Jim Crow South, had been configured to simultaneously preserve racial hegemony and disempower working people.

To pick just one lesser-known example of this process: taxes played a direct role in maintaining an economy with few or no options for black laborers. Job recruiters, who might convince a farmhand to move out of state, were hit with massive license taxes. South Carolina, for instance, charged a \$1,000 license fee in any county where a recruiter operated, and anyone recruiting workers without a license faced two years in jail. Rules about who qualified as a recruiter were written extremely broadly, so it was nearly impossible to let workers know

about job opportunities without being accused of “enticing” them away from their employers. In Alabama, even the printer who produced recruiting fliers was liable. In one case, a black man from Georgia was tried simply for informing another man of the wages he was to receive at his new job in Tennessee.<sup>5</sup>

License fees were far from the only fiscal mechanism that underwrote Jim Crow. Perhaps most infamous was the poll tax designed to keep black people and poor whites from voting. The constitutions that implemented the new poll taxes also instituted new supermajoritarian requirements for legislatures to implement tax increases. The tax caps ensured that, should progressive reformers ever overcome the barriers to voting and regain a political majority, their fiscal powers would be sharply limited. Thus the constitutional changes to tax policy under Jim Crow were doubly anti-democratic: the tax system was used to circumscribe the number of citizens who could vote, and the system of representation was made especially unequal in order to stymie tax increases.

Along with regressive and oligarchic tax measures, there was a third way the fiscal system reinforced the economic and racial hierarchy. Southern states found they could derive revenue from a lucrative non-tax source: a fiscal-carceral system that made oppression a profitable enterprise.

A system of “convict leasing” allowed businesses, typically in industries like mining, to pay states and localities to hold those convicted of crimes in unpaid indentured servitude, under conditions comparable to or even worse than the brutality of slavery. Governments profited from the fees businesses paid, businesses profited from the use of forced labor, and the penal system ballooned, with hundreds of thousands of black people held in bondage for highly discretionary offenses, like vagrancy, and minor crimes of poverty, like the theft of food or clothing. In later decades, under pressure from Northern reformers and Southern labor activists, states moved away from convict leasing. But they continued to replace taxation with forced labor; prison chain gangs became the preferred mechanism for maintaining public roads.

Racism ceased to be codified explicitly in law in the second half of the 20<sup>th</sup> Century, though the economic effects of those laws are still felt today.<sup>6</sup> Some of the tax policies of the Jim Crow era have also been overturned; the 24<sup>th</sup> Amendment to the Constitution made unconstitutional the poll tax that had helped keep black people and poor whites from voting. But many other policies remain on the books, particularly supermajoritarian requirements for the passage of tax increases and a heavy reliance on highly regressive and unequally enforced fees and fines. While these policies are facially color-blind, they are a legacy of American racial apartheid.

## **WHITE SUPREMACISTS CUT PROPERTY TAXES, UNDERMINE PUBLIC EDUCATION, AND SHIFT TAXES ONTO THE POOR**

The “Redeemers” that came to power at the end of Reconstruction immediately reduced the taxes of the wealthy and white. Budgets were slashed and taxation was localized, allowing richer areas to prevent

redistribution to poorer communities. Black tax revenues were redirected to support whites-only benefits, obliging black communities to raise additional revenue through voluntary fundraising to keep their schools open. Poor whites often saw less tax reduction than they had been promised, as the tax code became more regressive. The self-identified “taxpayers,” once in power, were happy to shift their fiscal responsibilities onto the poor.

The extent of tax reductions and budget cuts in the post-Reconstruction era were extraordinary. Florida property taxes were reduced from 13 mills to 8 mills in 1878, and to 4 mills in 1884.<sup>7</sup> Over ten years, Mississippi cut the state budget fifty percent.<sup>8</sup>

The implications for public services were, of course, extreme. Alabama closed public hospitals, and Florida abolished its penitentiary in favor of convict leasing.<sup>9</sup> Above all, the new school systems were decimated; revenues were diverted to other purposes, and state taxes intended for education eliminated.<sup>10</sup> Governor Holliday of Virginia, who oversaw the transfer of constitutionally-mandated school funds to pay state bondholders, deemed schools “a luxury... to be paid for like any other luxury, by the people who wish their benefits.” Across the South, school terms became 20 percent shorter, on average.<sup>11</sup> Public education was so underfunded that illiteracy rates among whites actually rose in Louisiana between 1880 and 1900.<sup>12</sup>

Black communities rallied to make up some of the lost revenue; as early as 1866, when the Freedmen’s Bureau closed black schools, purportedly in order to cut costs, the black citizens of Louisiana petitioned the military to levy an extra tax on them to support a school fund. One petition, according to Freedmen’s Bureau official John Alvord, was over thirty feet long, signed by ten thousand black citizens. “It was affecting to examine it,” Alvord noted in a report,

“and note the names and marks (x) of such a long list of parents, ignorant themselves, but begging that their children might be educated, promising that from beneath their present burdens, and out of their extreme poverty, they would pay for it.”<sup>13</sup>

These early petitions foretold the shifting of the financial responsibility for black education onto black communities. But separate was never equal; at every turn, tax revenue, raised from both white and black people, was funneled to whites-only education.

States used multiple tax mechanisms to ensure white schools were better funded than their black counterparts. In some states, funds from white taxpayers were earmarked for white schools, with black taxpayers supporting black schools; the vast economic gulf between the races ensured that white schools therefore received much more money per pupil.<sup>14</sup> Other states implemented two separate levies on property, with a higher tax for the white schools and a lower one in support of black schools.<sup>15</sup>

Local tax policy was also designed to privilege white education. This often took the form of fiscal gerrymandering. In one North Carolina county, the school superintendent bragged that district lines excluded

every black household and business, and therefore none of the revenue from a local tax would go to black education.<sup>16</sup> In a Mississippi county, by contrast, black communities were included in two local tax districts, so that they were funding both the black school and the white school that their children could not attend.<sup>17</sup> In some cases, local officials simply redirected state money intended for the black school to the white school, instead.<sup>18</sup>

After subsidizing the whites-only schools via their taxes, black people collected money for their own schools through voluntary fundraising.<sup>19</sup> By the twentieth century, northern charities such as the Rosenwald Fund would contribute some of the funds to support black education in the South, but the building of schools continued to rely heavily on local black contributions of both money and labor.<sup>20</sup>

Given the myriad injustices these voluntary efforts were obliged to overcome, their success was remarkable. At the start of the Civil War, some 95 percent of black Southerners were illiterate; literacy was illegal for enslaved people. But within two generations, more than two thirds of black people in the South could read. The educational “process could be slowed” by chronic underfunding, historian James Anderson notes, “but it could not be stopped or reversed.”<sup>21</sup>

While black citizens were raising money to keep their schools afloat, wealthy whites were benefiting from new and immense tax cuts. Business wealth escaped taxation through rampant underreporting, while politically powerful large landholders sought and received lower assessments. Special deals for corporations, decried as corrupt during the Reconstruction era, were by and large maintained once white supremacists had returned to power.<sup>22</sup> The post-Reconstruction tax systems left no rich people behind.

Lower income whites, some of whom had been convinced to vote against Republican governments on the promise of tax relief, saw at most small tax reductions once white supremacy was reinstated. The inequities of the post-Reconstruction tax system sparked anger among white populists. The Alabama legislature, according to one newspaper, was

“sandwiched through with railroad lawyers who prevent legislation in favor of the burdened taxpayers of this State and shield the corporations as a matter of course.”<sup>23</sup>

It was not only corporations that received special treatment. Rural real estate assessments were cut by a third or more in the “black belt” counties that were home to large plantations, but declined only modestly in other counties.<sup>24</sup> Redeemer governments also reduced the property tax exemptions that benefited poorer people, such as exemptions for a mechanic’s tools, while maintaining exemptions for large properties.<sup>25</sup> And as the property tax became more regressive, taxes that hit working people, like licenses and poll taxes, became heavier.<sup>26</sup> The poor had become “the unwitting financiers” of economic development schemes that benefited the wealthy;<sup>27</sup> or, in the words of C. Vann Woodward, “upland plebeians found they had redeemed the state from the [Northern] Carpetbaggers only to lose it to the lowland bosses.”<sup>28</sup>

Even as state taxes declined, county taxes often remained high in the post-Reconstruction era. The shifting of taxation to a local level allowed richer counties in the plantation belt to avoid subsidizing poorer upcountry areas. It also put poor counties in a bind; areas with a great deal of wealth definitionally have a larger tax base, and therefore can raise substantial revenue with lower rates, while poorer areas, with lower property values, are obliged to have high rates to raise the same revenue. Moreover, because new state funding formulas often allocated revenue to counties according to what they raised, wealthy counties also received more state funding than their poorer counterparts.<sup>29</sup>

The tax localization, combined with the redirection of black taxes to neighboring whites, was a double boon for wealthy whites. Black populations, formerly enslaved, were still concentrated in the rich plantation areas, meaning black people's taxes were funneled to the wealthiest white communities. Poor whites tended to live in the Southern upcountry, where few black people resided.<sup>30</sup>

The net effect of state and local policy was an enormous disparity in both taxation and school funding by race and class. On average, white schools received two to three times the per-pupil funding of black schools.<sup>31</sup> But black tax rates were between two and six times as high white tax rates.<sup>32</sup> In North Carolina, the white tax rate in poor counties was 1.7 times the rate in rich counties.<sup>33</sup>

## ***THE FISCAL-CARCERAL SYSTEM: STATE REVENUE FROM FINES AND FORCED LABOR***

In addition to regressive taxation, white supremacist governments found other ways to shift the cost of government off propertied whites and onto black communities. Through the leasing of convict labor to Southern industries, and later, the reliance on chain gang prisoners to improve public roads, black servitude (now under the guise of criminal justice) became a revenue source for Southern state and local governments, and thereby underwrote a fiscal system that kept taxes exceptionally low on the white and wealthy.

In important ways, Jim Crow penal policies approximated pre-war legislation governing free black people, as well as the "Black Codes" put in place in the immediate aftermath of the Civil War. A number of states in the *ante bellum* South used a system of "hiring out" to impose temporary enslavement on free blacks who could not pay their taxes or fines.<sup>34</sup> Virginia's law imposing forced servitude for tax debt dated back to 1782. Such taxes were expanded following emancipation. In Mississippi, county officials were authorized to levy a special poll tax exclusively on black people, nominally to support a "Freedman's Pauper Fund." The real purpose of the act, however, was not to raise funds but to ensnare black people into servitude; failure to pay the special poll tax was deemed "*prima facie* evidence of vagrancy."<sup>35</sup>

In the immediate post-war period, prior to radical Reconstruction, the list of finable offenses rapidly multiplied until “almost every act, word or gesture of the Negro” became a criminal offense.<sup>36</sup> In Mississippi in 1866, for instance, a vagrancy law applied a fine of up to fifty dollars on black people “with no lawful employment or business, or found unlawfully assembling.” Those unable to pay the fine would then be forced to work for any employer who would cover their debt. The vagrancy fines were to be “paid into the county treasury for general county purposes.”<sup>37</sup> In total, seven former Confederate states adopted “hiring out” practices between 1865 and 1867.<sup>38</sup>

Alongside the burgeoning criminal code, white Southern leaders instituted a new discriminatory tax code intended to ensure the economic subjugation of black people.<sup>39</sup> Heavy new license taxes were applied on black businesses. In South Carolina, a black person in any occupation except farmer or servant owed a tax of up to one hundred dollars.<sup>40</sup> At the same time, heavy taxes were instituted on dogs and guns, prohibiting access to self-defense and the economic independence that hunting could provide.<sup>41</sup>

As part of their broader commitment to black civil rights, Radical Reconstruction governments put an end to the “Black Codes” that attempted to reinstitute slavery by a new name. Ironically, however, it was also Reconstruction governments that instituted new policies to lease prisoners to labor for local industries.<sup>42</sup> In the Civil War, many state penitentiaries had been destroyed, and afterwards, state treasuries were so severely depleted that there was no funding to repair them; convict leasing was seen by Reconstructionists as a temporary coping measure.<sup>43</sup> These first leases did not typically raise state funds. Instead, state governments paid private contractors for taking over the state’s responsibilities to house and clothe felons, who were often put to work on infrastructure projects like railroads.<sup>44</sup>

But a much more profitable fiscal-carceral system would emerge in the post-Reconstruction period, as politicians realized they could charge businesses for access to convict labor.<sup>45</sup> In broad outlines, the Jim Crow fiscal-carceral system functioned as follows.<sup>46</sup> First, a state or county official would, typically on the flimsiest of pretexts, convict a black person of a “crime.” Some were crimes of poverty, such as vagrancy; others were violations of the racist social code, such as “speaking loudly in the presence of white women.”<sup>47</sup> An enormous range of behaviors were newly criminalized, and the penalties for those crimes were extreme; “pig laws,” for instance, made stealing a hog a felony. In some areas, nonpayment of taxes resulted in ‘hiring out’ as forced labor—this despite constitutional prohibition of imprisonment for debt.<sup>48</sup>

Then, instead of going to prison, convicts served their terms working for employers who had signed contracts with the state or county. Convicts were often leased *en masse* to the owners of mines, brickmaking or turpentine factories, and similar enterprises. In 1880, a black man named Monday Haines received a 12-year sentence for stealing four hogs, a term he served as a forced laborer for the Chattahoochee Brick Company.<sup>49</sup>

In addition to sentences, officials would impose exorbitant financial penalties, typically composed mostly of court fees that they themselves pocketed. In 1884, a freedman named Henry Gale in Mississippi, who was

sentenced to ninety days for being a "tramp," also owed \$5 in fines and an additional \$9.95 in fees due directly to the jailer, officer, and mayor.<sup>50</sup> Another convict, working at a mine in Alabama, owed \$1 in fines and \$75 in other costs. The fees and fines were designed to be too expensive for a poor person to pay. Instead, the convict would be obliged to work off the debt, adding immensely to the length of their sentences.

Thirteen states adopted convict leasing,<sup>51</sup> and predictably, given the enormous profit motive, the incarcerated population in those states sky-rocketed.<sup>52</sup> At times, white employers would demand a quota of arrests from local officials to meet their labor needs.<sup>53</sup> By its end in the 20<sup>th</sup> Century, between one hundred and two hundred thousand workers had been caught in the convict-leasing system.<sup>54</sup>

Difficult as it is to conceive, the conditions under which convicts labored were commonly described as worse than slavery. Malnutrition, overcrowding and disease were rampant; prisoners worked all day at hard labor without shoes, warm clothing, adequate food, access to sanitation or even clean water to drink. Torture as punishment for failure to meet work requirements was standard practice. Women and children were housed with grown men and were subject to the same treatment.

A shocking percentage of convict laborers died in custody. In the early 1880s, the death rate for black convicts in Mississippi was 11 percent a year; in Arkansas, 25 percent annually,<sup>55</sup> and annual mortality rates for leased Alabama prisoners peaked at 45 percent.<sup>56</sup> These numbers are in no way comparable to typical prisons of the period; the annual death rate in Northern prisons hovered around 1 percent.<sup>57</sup> To find institutions with similar or higher death rates, one must turn to the atrocities of the mid-20<sup>th</sup> Century. At their highest, the Southern convict labor figures rival the annual death rates in the prisoner of war camps in Japan during World War II, as well as the deadliest years of the Soviet gulags.<sup>58</sup>

Convict leasing was a simultaneous system of racial domination and labor control. In Georgia, black people were imprisoned at rates twelve times that of whites; in South Carolina, whites made up about one twentieth of the state prisoners.<sup>59</sup> Arrest was more common where the local black community was more economically independent.<sup>60</sup> Moreover, with a portion of their workforce literally shackled, employers had a tremendous power not only over the convicts who worked for them, and the free black population at risk of arbitrary incarceration, but also the free white laborers obliged to compete with prisoners.<sup>61</sup> As is often the case in the policing of the poor, the direct effects of convict leasing were born by the black community, while the wider ramifications served to undermine the power of the entire working class.

Unlike traditional imprisonment, however, convict leasing made racial and economic domination profitable for industrialists and for the government. By turning the prison system over to private actors, Southern governments could not only avoid the costs associated with mass imprisonment but could even provide a lucrative source of funds for state and county officials.<sup>62</sup> Every former Confederate state except Virginia

adopted convict leasing,<sup>63</sup> and its profits “made up more than 10 percent of government revenues in some states.”<sup>64</sup> Hundreds of thousands of dollars poured into government treasuries in a period when total state budgets were but a few million dollars; in the words of one historian, convict leasing was “morally shameful and fiscally brilliant.”<sup>65</sup>

Politicians celebrated the budgetary benefits of convict leasing. In 1877, South Carolina Redeemer George Tillman, supported the leasing of convicts rather than having to “compel taxpayers to support them in idleness.”<sup>66</sup> By 1881, the Texas governor was gloating about the amount of “cash [that] goes into the treasury” as a result of leasing.<sup>67</sup> In the same year in Florida, the governor asserted that selling the labor of convicts, rather than paying for their upkeep in prison, was “much better for the tax-payers of the State.”<sup>68</sup>

Against repeated reform efforts in the late 19<sup>th</sup> Century,<sup>69</sup> the convict lease persisted precisely because of its economic value to Southern capitalists and its integral role in the “financial structure of governments.”<sup>70</sup> Legislators apparently felt no compunction about emphasizing the state’s monetary incentive for forced labor; in Tennessee, a lease would only be renewed if it would “guarantee \$50,000 per year” in revenues.<sup>71</sup> A Georgia prison commission report in 1908 found that two five-year leases had resulted in a net profit of \$2.3 million dollars for the state. Legislation to outlaw convict leasing was made toothless by provisions allowing the practice to continue unless there would be “no fiscal consequences” for the state.<sup>72</sup> And so, the practice continued into the 20<sup>th</sup> Century.

Alabama was the last state to abandon convict leasing. In 1915, revenues from the Convict Department made up one-sixth of the state government’s total income.<sup>73</sup> Alabama counties were generating about \$250,000 annually from their convict leasing, while the state government saw \$595,000 in convict lease revenue each year,<sup>74</sup> and amount comparable to that raised by poll taxes.<sup>75</sup> As late as 1922, a state prison inspector could rejoice that “our jails are money-making machines.”<sup>76</sup> Finally, in 1927, the governor of Alabama moved to end convict leasing, transferring county prisoners from private enterprises to new prisons and work camps.

Why did convict leasing, at long last, fall out of favor? In substantial part because technological advancement and economic modernization reduced the corporate demand for convict labor.<sup>77</sup> Also significant, however, was state and local officials’ realization that black forced labor could continue to substitute for white tax revenue.

During the convict leasing era, some counties relied on misdemeanor convicts to improve public roads. As the leasing of state prisoners to private companies came under renewed attack, the appeal of road repair chain gangs increased. The experience of a prisoner on a public chain gang had much in common with that of convicts leased to private companies, including malnutrition, physical abuse and outright torture. But now, prisoners were working directly for the government.

This brutal system, ironically, was understood at the time as a progressive reform.<sup>78</sup> Convict leasing competed with free labor in mines, mills and factories, undermining workers’ capacity to negotiate with their

employers. Public chain gangs, by contrast, would keep forced labor confined outside of the private labor market. In some states, moreover, penal labor on public roads would bring an end to the *corvée*, in which free men were required to work a certain number of days on country roads unless they could afford a steep cash fee.<sup>79</sup> Essentially feudal in its design, the *corvée* was profoundly regressive system of funding road repair. Compared to its predecessors, therefore, the chain gang could be made to seem a populist step forward for Southern penal practice and infrastructure funding, one that was of particular advantage to poor white working men.

The other advantage of the chain gang system, of course, was that it continued to use forced labor to prop up government; with prisoners rather than free labor repairing the roads, less tax revenue was needed. Forced labor was estimated to cost half as much as that of free men.<sup>80</sup> Southern campaigners in the national “good-roads movement” found that a plan to rely on convict labor at least partially assuaged wealthy fears that this infrastructure investment would raise their taxes.<sup>81</sup> Wealthy business owners also benefited from improved roads, of course, in getting their products to market, and proponents pointed to the “increase in the taxable value of property” where roads were convict-built.<sup>82</sup>

The use of road repair chain gangs quickly spread, particularly in counties with a large black population.<sup>83</sup> In Georgia in the early 20<sup>th</sup> Century, for instance, about 5,000 convicts worked on public roads each year. Convicts also served in publicly owned mines and farms. In Tennessee, the end of the leasing system simply meant transferring convicts to Brushy Mountain, a state mine; convict labor continued to profit the state to the tune of \$200,000 a year.<sup>84</sup> During the same period, the Parchman prison farm in Mississippi was netting \$185,000 annually.<sup>85</sup> Chain gang labor survived into the mid-20<sup>th</sup> Century.<sup>86</sup>

## ***THE RISE OF ANTI-DEMOCRATIC TAXATION: POLL TAXES TO DISENFRANCHISE, TAX LIMITS TO DISABLE MAJORITY RULE***

The final component of the Jim Crow fiscal system was the enactment of tax measures intended to undercut voting and voting measures intended to undercut taxation. Starting in the 1870s and culminating at the turn of the century,<sup>87</sup> Southern states enacted a broad anti-democratic agenda that took the power to tax out of the hands of a legislative majority, and used the tax code as one mechanism among others to disenfranchise black people and poor whites.

Some states experimented with a return to taxpaying qualifications for suffrage as early as the 1870s, along with strong limits on what the legislature was allowed to do.<sup>88</sup> During this period, black voting power was dwindling in the face of fraud and sporadic extralegal violence, but also as a result of a patchwork of legislation that will sound familiar to a contemporary American: gerrymandering, difficult registration processes, paperwork requirements on Election Day, long lines to vote and the closing of polling places.<sup>89</sup> By the 1890s, however, Southern states sought the systematic legal disenfranchisement of black voters.<sup>90</sup>

To be clear, poll taxes were not an invention of the late 19<sup>th</sup> Century. The “poll” of the poll tax did not originally mean a tax related to elections; “poll” was a synonym for “head,” and a “poll tax” designated a tax of a flat amount that was applied to individuals.<sup>91</sup> Because they require only counting people, as opposed to valuing goods, poll taxes are relatively simple to administer and have been used since ancient times.<sup>92</sup>

So the poll tax was far from a new policy, but its structure and intention in the Jim Crow-era was distinctive. Taxes are usually mandatory, required to be paid by everyone to whom they apply. But, while payment of the post-Reconstruction poll tax was required in order to vote, it was designed to allow those who owed the tax not to pay. “No legal process, nor any fee or commission shall be allowed for the collection” of the poll tax, the 1901 Alabama Constitution specified, and the “Tax Collector shall make returns of poll tax collections separate from other collections.”<sup>93</sup> The point was to give Alabamans every opportunity to not pay their poll tax, and therefore be excluded from the voting rolls. “If you provide a compulsory way of collecting the poll tax,” explained Alabama convention delegate Oliver Roland Hood, you “destroy the objects and purposes” of the tax provision: disenfranchisement.<sup>94</sup>

Moreover, poll taxes in Alabama, Mississippi and Virginia were cumulative, meaning that failing to pay in one year would disenfranchise potential voters for years to come.<sup>95</sup> Again, this outcome was intentional. “We want that poll tax to pile up so high,” delegate Hood asserted, that black people “will never be able to vote again.”<sup>96</sup> Rather than a mandatory tax paid by every man, the poll tax was an optional payment used to discriminate among citizens for the purpose of limiting suffrage.<sup>97</sup>

The poll tax was far from the only suffrage limitation passed at the turn-of-the-century Southern conventions. Literacy tests, voter registration procedures, and other measures were also put in place to reduce the black vote. Nonetheless, the disenfranchisers often expressed more confidence in the poll tax as a means of exclusion than the other discriminatory measures codified in the same period. Again, Alabama convention delegate O.R. Hood:

Now in my judgment, this poll tax qualification is the most important provision in this entire article. We are told that in the Black Belt and that in many counties in the state, there is a large percentage of those young Negroes who are coming of age that will be able to read and write, therefore will be qualified under the provisions of this article. The only safety valve... is this poll tax of \$1.50.

Hood’s assessment was echoed in other states as well. “As a means of negro disenfranchisement,” insisted a delegate to the Mississippi constitutional convention of 1895 [check], the poll tax was “worth all the rest.” In Louisiana, poll taxes were lauded not only for excluding black voters, but for getting “rid of many whites at the same time.”<sup>98</sup>

In hindsight, 20<sup>th</sup> Century scholars have concluded that other methods of disenfranchisement were actually more powerful than the poll tax.<sup>99</sup> All-white primaries, for instance, legally excluded black people from the only

meaningful election in the solid Democratic South. Literacy tests were Kafkaesque; in Louisiana in the 1960s, would-be voters were given ten minutes to answer thirty questions of this type: "Write every other word in this first line and print every third word in the same line (original type smaller and first line ended at comma) but capitalize the fifth word that you write."<sup>100</sup> A single error meant failing the test.

But taken together, the effect of the disenfranchisement measures was immense. In Tennessee, which passed a voting restriction package including a poll tax in 1890, the percentage of adult men who voted dropped from 78 percent to 50 percent in two years, and continued to fall thereafter.<sup>101</sup> In Louisiana, where more than 130,000 black men had been registered to vote in 1896, only 1,342 remained on the rolls in 1904. The voting patterns in these states are typical Southern states during the period.<sup>102</sup>

The other significant anti-democratic tax provision in the Jim Crow constitutions was the sharp limitation of tax and revenue increases. The governments that codified the exclusion of black people from Southern politics also imposed new limitations on the states' capacity to tax.<sup>103</sup> In 1890, Mississippi passed what is now the oldest constitutional supermajority requirement in the country, requiring three fifths of the legislature to approve all state tax increases. Arkansas and Louisiana passed similar measures. Alabama, Arkansas, Missouri, and Texas had already imposed limitations specifically on property taxes, the tax most able to limit the consolidation of wealth. In turn-of-the-century Georgia, a local tax increase required endorsement by a grand jury and the electoral support of two thirds of registered voters, deemed at the time to be "an ironclad protection against taxing property."<sup>104</sup>

The purpose of tax limitations was clear. Wealthy whites wanted to "protect themselves from the possibility that the black majority in their counties would ever again be able to use that political power... to tax them."<sup>105</sup> To a substantial degree, they succeeded.

## ***CONCLUSION: THE LONG SHADOW OF WHITE SUPREMACIST FISCAL POLICY***

In America, the history of opposition to taxation is bound up with opposition to racial equality. The white supremacist reaction to the efforts of Reconstruction governments to tax wealth and provide robust public services put in place a fiscal system that helped preserve a racial and class hierarchy that continues to this day.

The first wave of fiscal measures in the post-war South, which followed immediately upon the end of Reconstruction, curtailed social spending and shifted taxes onto the poor. Starting in the same period, the fiscal system was interwoven with a burgeoning carceral state, making forced labor profitable to business and government alike. Finally, around the turn of the century, the Southern states passed new constitutions in which anti-democratic and anti-tax measures reinforced one another.

Though the civil rights achievements of the mid 20<sup>th</sup> Century brought an end to official poll taxes and the most egregious versions of convict labor, the fiscal-carceral system has not disappeared. Some of the most

significant Jim Crow fiscal policies remain on the books today. Mississippi still requires a supermajority to pass a state tax increase. Alabama's strict limits on state and local property taxes, first passed in 1875, remain in effect, as do the Jim Crow property tax limits in Texas, Arkansas and Missouri.<sup>106</sup>

Hampered in their ability to raise taxes, states and localities have come to rely heavily on other income sources, including highly regressive fees and fines. On average, almost one fifth of states' general revenue comes from these non-tax sources.<sup>107</sup> Non-tax revenue provides more revenue to the states than do state income taxes, typically the most progressive component of the state tax system.<sup>108</sup> Though the supermajoritarian requirements for tax increases have since spread across the country (not coincidentally in the decades following the Great Migration and the Civil Rights movement), the local governments that are heavily reliant on fine revenue are still concentrated in the South.<sup>109</sup>

The reliance on fees and fines continues to marginalize black communities.<sup>110</sup> In the Department of Justice's report on civil rights violations in Ferguson, Missouri, investigators concluded that,

Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing, and has also shaped its municipal court... Ferguson's police and municipal court practices both reflect and exacerbate existing racial bias.<sup>111</sup>

Recent years have seen a renewed reckoning with the legacies of slavery and Jim Crow in American public life. Activists have successfully called for the removal of statues honoring Confederate generals as well as the re-naming of schools, roads and other public institutions that celebrate the military leaders of the pro-slavery cause. It is salutary, to say the least, to end the symbolic celebration of white supremacist government in America. The monuments to Jim Crow that remain imbedded in the fiscal structure of the Southern states are equally deserving of re-examination and removal.

## NOTES

- <sup>1</sup> Foner, Eric. "Reconstruction: An Unfinished Revolution." (2002). pp. xxv and xix.
- <sup>2</sup> Woodward, C. Vann. *Origins of the New South, 1877–1913: A history of the South*. LSU Press, 1981. p. 58- 59
- <sup>3</sup> Woodward, C. Vann. *Origins of the New South, 1877–1913: A history of the South*. Lsu Press, 1981. p. 59
- <sup>4</sup> Landowners could take advantage of the limited literacy of their sharecroppers, for instance, to understate crops' value or inflate the amount their tenants owed for their rented land or leased supplies. Tenant farmers were thus often held in involuntary servitude to work off their (purported) financial liabilities, a system known as "debt peonage." Cohen, William. "Negro involuntary servitude in the South, 1865-1940: A preliminary analysis." *The Journal of Southern History* 42.1 (1976): 31-60. p. 35
- <sup>5</sup> Cohen 1976, p. 39-40.
- <sup>6</sup> Rothstein, Richard. *The color of law: A forgotten history of how our government segregated America*. Liveright Publishing, 2017.
- <sup>7</sup> Thornton, p. 62
- <sup>8</sup> Foner 2002. p. 588
- <sup>9</sup> Foner 2002. p. 589
- <sup>10</sup> DuBois, p. 664
- <sup>11</sup> Woodward, pp. 61-62, 93
- <sup>12</sup> Foner 2002. p. 589
- <sup>13</sup> Quoted in Anderson, James D. *The education of Blacks in the South, 1860-1935*. Univ of North Carolina Press, 1988. p. 9-10.
- <sup>14</sup> Walsh, Camille. *Racial Taxation: Schools, Segregation, and Taxpayer Citizenship, 1869–1973*. UNC Press Books, 2018. p.17. Black activists seeking equalization of school funding and taxation occasionally found success in the courts when taxes were explicitly defined in racial terms. See Kousser, J. Morgan. "Making separate equal: integration of black and white school funds in Kentucky." *The Journal of Interdisciplinary History* 10.3 (1980): 399-428.
- <sup>15</sup> Walsh 2018, p. 50
- <sup>16</sup> Malczewski, Joan. "'A Civilized Society Requires Taxation': Foundations and Taxation in the Jim Crow South," paper presented at the 2019 SSHA Conference. p. 26 For more on the impact of local segregated school districts, see Pritchett, "North Carolina's Public Schools: Growth and Local Taxation" *Social Science History*, 1985.
- <sup>17</sup> Walsh, p. 49. No white households were similarly double taxed.
- <sup>18</sup> Malczewski, p. 9.
- <sup>19</sup> See also Anderson, p. 154-156
- <sup>20</sup> Anderson, p. 153. Education foundations also worked to encourage local communities to raise local revenue, with some success, but because "whites tolerated tax policies as long as separate and unequal was maintained," these tax hikes exacerbated the racial divide in education.
- <sup>21</sup> Anderson, p. 31
- <sup>22</sup> Hyman, Michael R. "Taxation, Public Policy, and Political Dissent: Yeoman Disaffection in the Post-Reconstruction Lower South." *The Journal of Southern History* 55.1 (1989): 49-76.
- <sup>23</sup> Hyman 1989, p. 64
- <sup>24</sup> Hyman 1989.
- <sup>25</sup> Hyman 1989. See also Foner, Eric. *Nothing but freedom: Emancipation and its legacy*. LSU Press, 2007. p. 70-71.

## NOTES

- <sup>26</sup> Foner 2002, p. 588
- <sup>27</sup> Durrill, Wayne K. "Producing Poverty: Local Government and the Economic Development in a New South County, 1874-1884." *The Journal of American History* 71.4 (1985): 764-781. p. 774.
- <sup>28</sup> Woodward, p. 80.
- <sup>29</sup> Kousser p. 174-175. Pritchett, Jonathan B. "North Carolina's public schools: Growth and local taxation." *Social Science History* 9.3 (1985): 277-291.
- <sup>30</sup> As one education reformer put it, "the white children in the black belt have thus an unfair advantage over the white children elsewhere." Malczewski p. 10.
- <sup>31</sup> Malczewski, p. 9. Walsh 2018, p. 18
- <sup>32</sup> The black/white tax rate ratio declined over the late 19<sup>th</sup> Century, as poll taxes were made voluntary but a requirement of voting, a mechanism intended to exclude black people from the polls. Kousser p. 174
- <sup>33</sup> Kousser p. 175
- <sup>34</sup> Wilson, Theodore Brantner. *The Black Codes of the South*. University of Alabama Press, 1965. p.39-40
- <sup>35</sup> Quoted in Wilson, p. 68.
- <sup>36</sup> Burgess, John William. *Reconstruction and the Constitution, 1866-1876*. Vol. 7. C. Scribner's Sons, 1902. p. 53, cited in DuBois p. 179.
- <sup>37</sup> DuBois p. 175.
- <sup>38</sup> Cohen 1976, p. 55
- <sup>39</sup> Foner 2007, p. 68
- <sup>40</sup> Wilson p. 75; Foner 2007, p. 50
- <sup>41</sup> Sawers, Brian. "The Poll Tax before Jim Crow." *American Journal of Legal History* 57.2 (2017): 166-197.
- <sup>42</sup> Blackmon, Douglas A. *Slavery by another name: The re-enslavement of black Americans from the Civil War to World War II*. Anchor, 2009. p. 54-55.
- <sup>43</sup> Oshinsky, David M. *Worse than slavery*. Simon and Schuster, 1997. p. 35. For more on the continuity of convict labor on the railroads between Reconstruction and Redemption, see Lichtenstein, Alex. *Twice the work of free labor: The political economy of convict labor in the New South*. Verso, 1996, p. 47
- <sup>44</sup> Adamson, Christopher R. "Punishment after slavery: Southern state penal systems, 1865-1890." *Social Problems* 30.5 (1983): 555-569. p564.
- <sup>45</sup> Mancini, Matthew J. *One dies, get another: Convict leasing in the American South, 1866-1928*. Univ of South Carolina Press, 1996. p. 120.
- <sup>46</sup> For simplicity, I simplify the differences between fees-and-fines peonage and formal convict leasing (Muller, Christopher. "Freedom and convict leasing in the Postbellum south." *American Journal of Sociology* 124.2 (2018): 367-405. P. 372). The first, more local and less formalized, forced those owing fees and fines to work for local business owners, often plantation owners. Contracts were settled on an individual basis; because local record-keeping was so lax, the full scope of local fees-and-fines peonage is not known. "Local jailers were so casual in releasing prisoners to farmers... that they did not even both to record the names." Cohen 1976, p. 55. The second, statewide and more systematized forced labor system, convict leasing, involved large-scale contracts between the state and major industries that replaced a penitentiary system.
- <sup>47</sup> Blackmon 2009, p. 67.
- <sup>48</sup> Durrill 1985, p. 769.

## NOTES

- <sup>49</sup> Muller 2018, p. 377. Similar laws existed in Mississippi and North Carolina. Adamson 1983, p. 562.
- <sup>50</sup> Oshinsky 1997, p. 42.
- <sup>51</sup> Lichtenstein 1996.
- <sup>52</sup> "In Mississippi it increased nearly 300 percent in less than four years, from 272 convicts in 1874 to 1,072 by the end of 1877. Two years after Georgia's new law was enacted, the size of the convict population had more than tripled, from 432 to 1,441." Adamson 1983, p. 562
- <sup>53</sup> Oshinsky 1997, p. 71.
- <sup>54</sup> Blackmon 2009, p. 7.
- <sup>55</sup> Woodward 214. Mancini 1996, p. 139.
- <sup>56</sup> Blackmon 2009, p 57. The annual death rate in Northern prisons during this period hovered around 1 percent. Cohen 1976, 56.
- <sup>57</sup> Cohen 1976, 56.
- <sup>58</sup> Spitzer, Kirk. "The American POWs Still Waiting for an Apology 70 Years Later," Time, September 12, 2014. Robert S. La Forte, "Resistance in Japanese Prison Camps during World War II." The Journal of American-East Asian Relations Vol. 12, No. 1/2 (SPRING-SUMMER 2003), pp. 105-116. Applebaum, Anne. Gulag: A History. Knopf Doubleday. 2007.
- <sup>59</sup> Oshinsky 1997, 63
- <sup>60</sup> Muller 2018, 367
- <sup>61</sup> Oshinsky 1997, 81
- <sup>62</sup> Lichtenstein 2015; Woodward p. 212.
- <sup>63</sup> Blackmon 2009, p. 55
- <sup>64</sup> Adamson 1983, p. 567. "The Southern states were the only section of the Union where the income from prisons and reformatories exceeded the expense." DuBois "The Spawn of Slavery" in Race Crime and Justice A Reader p. 5
- <sup>65</sup> Mancini 1996, 106
- <sup>66</sup> Cohen 1976, 56
- <sup>67</sup> Adamson 564. Mancini 1996, 177.
- <sup>68</sup> Mancini 1996, 187
- <sup>69</sup> For opposition to the lease, see Myers 1998, 14-20
- <sup>70</sup> Blackmon 2009, 206
- <sup>71</sup> Mancini 1996, 158
- <sup>72</sup> Mancini 1996, 222.
- <sup>73</sup> Mancini 1996, 112
- <sup>74</sup> Blackmon 2009, 368
- <sup>75</sup> U.S. Census, "Taxes Collected," *Wealth, Public Debt, and Taxation: 1922*.
- <sup>76</sup> Blackmon 2009, 367
- <sup>77</sup> Woodward 424-425
- <sup>78</sup> Lichtenstein 1993

## NOTES

- <sup>79</sup> Hyman 1989 p. 72. By 1904, only 10 of North Carolina's 100 counties had entirely abandoned the feudal system of 'warning out' all able-bodied road hands for four or five days of work a year on the local roads. In Georgia, only 8 of 137 counties had done away with this so-called labor tax by 1904, and the value of conscripted labor across the state that year exceeded the cash taxes collected for county road work." Lichtenstein, Alex. "Good Roads and Chain Gangs in the Progressive South: The Negro Convict is a Slave". *The Journal of Southern History* 59.1 (1993): 85-110. p. 87. For more on Georgia's labor tax for roads, see Myers 1998, p295n6.
- <sup>80</sup> Lichtenstein 2015.
- <sup>81</sup> Myers, Martha A. *Race, labor, and punishment in the New South*. Ohio State Univ Press, 1998. p. 23
- <sup>82</sup> Lichtenstein 1993 p. 101
- <sup>83</sup> Before the end of convict leasing, counties needing road repair at times competed with corporations for access to the county's forced labor supply. Lichtenstein 1993, p. 93-96.
- <sup>84</sup> In 1904. Oshinsky 1997, 82.
- <sup>85</sup> In 1905. Oshinsky 1997, 109.
- <sup>86</sup> Wallenstein, Peter. "Slavery Under the Thirteenth Amendment: Race and the Law of Crime and Punishment in the Post-Civil War South." *La. L. Rev.* 77 (2016): 1. p. 19. See also Myers 1998, 21-29.
- <sup>87</sup> After the fall of Reconstruction, the role of black people in political life was somewhat contested, as black people resisted their marginalization and as competing factions of whites occasionally sought the dwindling black vote. See C. Vann Woodward's *Origins of the New South and The Strange Career of Jim Crow* for more on this period.
- <sup>88</sup> Foner 2002, 422. Keyssar, Alexander. *The right to vote: The contested history of democracy in the United States*. Basic Books, 2009. p. 105. C Vann Woodward *Origins* 335.
- <sup>89</sup> Woodward *Origins* 55.
- <sup>90</sup> Keyssar 2009, 111 See Key Jr, Valdimer O. *Southern politics*. 1949. p. 578 for the dates of poll tax introduction in the Southern states.
- <sup>91</sup> Poll taxes are therefore extremely regressive, since the same fee is typically applied to everyone, whether they are rich or poor. That said, poll taxes often make some distinctions related to presumed ability to pay, for instance applying only to men of working age.
- <sup>92</sup> A poll tax features in the text of Exodus; Moses is instructed to conduct a census of the children of Israel, and "they shall give, every one that passeth among them that are numbered, half a shekel" as an offering to the Lord." Exodus 30, 11-15 (KJV); cited in Sawers 2017.
- <sup>93</sup> [https://en.wikisource.org/wiki/Alabama\\_State\\_Constitution\\_of\\_1901/Initial\\_Constitution](https://en.wikisource.org/wiki/Alabama_State_Constitution_of_1901/Initial_Constitution)
- <sup>94</sup> C. Vann Woodward 336. For the name of the delegate, see *United States v. State of Alabama*, 252 F. Supp. 95 (M.D. Ala. 1966). US District Court for the Middle District of Alabama - 252 F. Supp. 95 (M.D. Ala. 1966) March 3, 1966. <https://law.justia.com/cases/federal/district-courts/FSupp/252/95/1410461/>
- <sup>95</sup> For more on the cumulative provisions of the poll tax, see Key 581.
- <sup>96</sup> C. Vann Woodward 336. For the name of the delegate, see <https://law.justia.com/cases/federal/district-courts/FSupp/252/95/1410461/>
- <sup>97</sup> Keyssar 2009, 112
- <sup>98</sup> C. Vann Woodward 336.
- <sup>99</sup> V.O. Key (1949) argues that "other restraints on Negro voting" concentrated the impact of the poll tax on white voters, and estimated that the "elimination of the poll tax alone would increase voting in most southern states by no more than from 5 to 10 per cent of the potential number of white voters." p.617-18 Over time, as the political system of the South

## NOTES

atrophied into a one party state, removal of the poll tax in some Southern states in the early to mid-20th Century was accompanied by some increase in turnout but "no great social upheaval." For more on poll tax rates in the early to mid 20th Century, see Key Chapters 27-28.

<sup>100</sup> Onion, Rebecca. 2013. "Take the Impossible 'Literacy' Test Louisiana Gave Black Voters in the 1960s." Slate. June 28.

<sup>101</sup> Shapiro, Karin A. *A new South rebellion: the battle against convict labor in the Tennessee coalfields, 1871-1896*. Univ of North Carolina Press, 1998., p. 132.

<sup>102</sup> Keyssar 115

<sup>103</sup> Walsh 2018. Kousser 1980. Leachman, Michael, Michael Mitchell, Nicholas Johnson, and Erica Williams. "Advancing racial equity with state tax policy." Center on Budget and Policy Priorities, November 15 (2018). Kousser, J. Morgan. "Separate but not equal: The Supreme Court's first decision on racial discrimination in schools." *The Journal of Southern History* 46.1 (1980): 17-44. Kousser, J. Morgan. "Making separate equal: integration of black and white school funds in Kentucky." *The Journal of Interdisciplinary History* 10.3 (1980): 399-428.

<sup>104</sup> McIver, Charles D. "Current Problems in North Carolina." *The ANNALS of the American Academy of Political and Social Science* 22.2 (1903): 49-59.

<sup>105</sup> Historians J. Mills Thornton, Robert J. Norrell, and Henry J. McKiven, cited in Newman, Katherine S., Rourke L. O'Brien, and Rourke O. Brien. *Taxing the poor: Doing damage to the truly disadvantaged*. Vol. 7. Univ of California Press, 2011. p. 36

<sup>106</sup> Leachman et al. 2018.

<sup>107</sup> "What are the Sources of State Revenue?" Tax Policy Center Briefing Book. <https://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-state-governments#:~:text=Revenue%20from%20charges%2C%20user%20fees,increases%20in%20public%20university%20tuition>.

<sup>108</sup> "What are the Sources of State Revenue?" Tax Policy Center Briefing Book.

<sup>109</sup> "Local Government Fine Revenue By State," *Governing*. <https://www.governing.com/gov-data/other/local-governments-high-fine-revenues-by-state.html>

<sup>110</sup> Shoub K, Christiani L, Baumgartner FR, Epp DA, Roach K. Fines, Fees, Forfeitures, and Disparities: A Link Between Municipal Reliance on Fines and Racial Disparities in Policing. *Policy Studies Journal*. Singla, Akheil, Charlotte Kirschner, and Samuel B. Stone. "Race, representation, and revenue: Reliance on fines and forfeitures in city governments." *Urban Affairs Review* 56.4 (2020): 1132-1167.

<sup>111</sup> U.S. Department of Justice, Civil Rights Division. "Investigation of the Ferguson Police Department," March 4, 2015.

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**Vanessa Williamson** is a Senior Fellow in Governance Studies at Brookings, as well as a Senior Fellow at the Urban-Brookings Tax Policy Center. She studies the politics of redistribution, with a focus on attitudes about taxation. She is the author, with Harvard professor Theda Skocpol, of *The Tea Party and the Remaking of Republican Conservatism*.

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Williamson's current research focuses on American public opinion about taxation. She finds that, while Americans see taxpaying as a moral commitment to the community, they tend to underrate the tax contributions made by the poor – a mistake that is reinforced by the taxpaying process. Moreover, though most believe the rich need to pay more in taxes, their experiences of the tax system leave them misinformed about the tax reforms that would achieve this end. Williamson's other work on taxation and redistribution examines the political origins of the state Earned Income Tax Credit, the electoral effects of the American Recovery and Reinvestment Act, and conditions in which voters have supported state tax increases.

Williamson has testified before Congress and appeared on CNN's "Fareed Zakaria GPS," MSNBC's "The Rachel Maddow Show," and Al Jazeera America. She has written a variety of outlets including the *New York Times*, *The Atlantic*, the *Atlanta Journal-Constitution* and her hometown newspaper, the *Sacramento Bee*. Her work has also been cited by the *Economist*, the *Associated Press*, the *Washington Post*, and on National Public Radio, among other sources.

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