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Rebellion, Rascals, and Revenue: Pleasingly Gaudy and Preposterous

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BOOK REVIEWS
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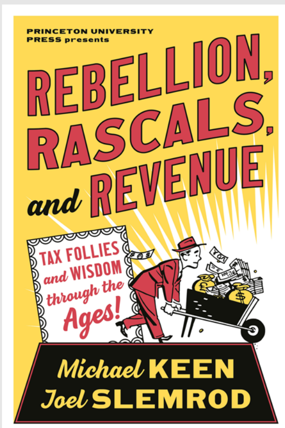
Reviewed by Reuven S. Avi-Yonah



Rebellion, Rascals, and Revenue: Tax Follies and Wisdom Through the Ages, by Michael Keen and Joel Slemrod. Published by Princeton University Press (2021). Hardcover, 536 pages. Price: $29.95.

Michael Keen and Joel Slemrod's book is wonderful and should be read by any student of tax. It is both entertaining and instructive. And to this historian, it is remarkable how a volume written by two prominent public finance economists can successfully accomplish the goals of historical study first enunciated by its founders, Herodotus and Thucydides. Herodotus believed that the study of history was primarily about learning from what was different about the past and other cultures to better understand our own,[1] while Thucydides thought that it was about understanding how people react similarly to similar situations in order to predict their future behavior.[2] Keen and Slemrod explain that their objective is to achieve both:

> Tax stories from the past, we hope to show, can be entertaining — sometimes in a weird way, sometimes in a gruesome one, and sometimes simply because they are fascinating in themselves. They are also helpful in thinking about the tax issues that run through today's headlines and politics. The stories we tell in this book span several millennia, from Sumerian clay tablets, Herodotus, and the unusual tax ideas of the Emperor Caligula through to the slippery practices revealed by the Panama Papers, the tax possibilities unleashed by blockchain, and the outlook for taxation in a world transformed by the COVID-19 pandemic. But this book is not a history of taxation. Nor is it a primer on tax principles. It is a bit of both.[3]

To most tax policymakers and academics, tax history may seem a bit arcane, because they believe that the study of taxation, and especially public finance economics, is a story of progress and that we know better how to design good tax systems than our ancestors. To this attitude, Keen and Slemrod offer a decisive rejoinder: We do not necessarily understand taxation better than our predecessors, and in fact we can learn from their experience. As they say:

[1] Herodotus 1.1: "These are the researches of Herodotus of Halicarnassus, which he publishes, in the hope of thereby preserving from decay the remembrance of what men have done, and of preventing the great and wonderful actions of the Greeks and the Barbarians from losing their due meed of glory."

[2] Thucydides 1.22: "The absence of romance in my history will, I fear, detract somewhat from its interest; but if it be judged useful by those inquirers who desire an exact knowledge of the past as an aid to the interpretation of the future, which in the course of human things must resemble if it does not reflect it, I shall be content. In fine, I have written my work, not as an essay which is to win the applause of the moment, but as a possession for all time."

[3] Keen and Slemrod, *Rebellion, Rascals, and Revenue: Tax Follies and Wisdom Through the Ages*, xv (2021).

> Many of the tax episodes we look at may at first seem far-fetched or ridiculous. Some are stories of disastrous missteps and cruelty. Some, we admit, teach no useful lesson that we can discern, but are just pleasingly gaudy and preposterous.[4] But along with the follies there are also episodes of remarkable wisdom. *For it is a theme of the book that, when it comes to designing and implementing taxes, our ancestors were addressing fundamentally the same problems that we struggle with today. And they were no less ingenious — not just in creating taxes, but also in avoiding and evading them — than we are. We should not feel too superior to our forebears, given the taxes we have nowadays*. The idea of taxing chimneys may seem quaint to us. But we suspect our descendants will find some of the things that we do today more than a little peculiar, such as taxing multinationals by trying to figure out what some entirely different and hypothetical set of companies would have done in the unlikely (possibly inconceivable) event that they found themselves in the same circumstances. And they would be right.[5] [Emphasis added.]

Unlike other books about tax history, Keen and Slemrod organize their volume not chronologically but by issues, and so it "jumps around across the centuries and over the continents."[6] The volume is divided into five parts. The first part is about the big picture, taking a broad look at "how, over the ages, governments have set about trying to make the likes of us all pay for whatever it is they wanted to do."[7] Part 2, in contrast to the younger generation of public finance economists who worship utilitarianism and the social welfare function, is about fairness, because "this is something even wicked rulers have to care about if they want to survive, and we look at the many mistakes and occasional brilliance that they have shown in trying to cope."[8] However, figuring out winners and losers turns out to be difficult, because the question of who bears the burden of a tax is hard (just look at today's debate over the corporate tax, whose incidence is still uncertain after over 50 years of economic disputes). Part 3 highlights the ingenious ways people have sought to avoid taxation, from the ancient Egyptians to today's multinationals. Part 4 is about tax collection and the ways that governments have found "to threaten, cajole, and sweet-talk us into paying whatever their rules say we ought to."[9] The final part "looks at the messy realities of making tax policy, describes spectacular successes and failures, and distills a few lessons to help cope with a future in which taxation, we can be pretty sure, is not going away but may well start to take quite different forms from those we are accustomed to." The book ends by speculating about what "tax follies future generations will find to chuckle over when they see how we do things today."[10]

For a historian, this jumping about from one century to another is a bit dizzying, and makes you worry that some nuance is lost because of the lack of historical context. But as far as I could see, there are no major inaccuracies, and the book offers much to learn from, especially for those who seek to better understand basic issues in public finance. For example, what do economists mean when they discuss "deadweight loss" or "excess burden"? Keen and Slemrod offer the following lucid example from the English hearth tax (1662-1689):

> Troubled though this short-lived experience was, the hearth tax provides a way to see the nature and workings of excess burden through the eyes of one taxpayer who went through it. In 1662,

[4]"Taxation . . . is eternally lively; it concerns nine-tenths of us more directly than either smallpox or golf, and has just as much drama in it; moreover, it has been mellowed and made gay by as many gaudy, preposterous theories." H.L. Mencken, "The Dismal Science," in *Prejudices: Third Series* 79 (1922).

[5]Keen and Slemrod, *supra* note 3, at xvi. For a similar argument, see also Reuven S. Avi-Yonah, "*Why Study Tax History?* P. Harris & D. de Cogan (editors), Studies in the History of Tax Law, Volume 9, Hart Publishing Oxford, 2019," 48(6-7) *Intertax* 687 (2020).

[6]Keen and Slemrod, *supra* note 3, at xvii.

[7]*Id*.

[8]*Id*. at xviii.

[9]*Id*.

[10]*Id*.

when the hearth tax was introduced, John Windover was living in Holy Rood parish, just outside Southampton, on the south coast. He was doing pretty well: His home had five fireplaces, which was around the average for all those in the parish that were liable to the tax. Eight years later, however, Mr. Windover had only four fireplaces. We do not know if it was the tax that led him to have one less fireplace, but suppose that it was. On his remaining fireplaces, Mr. Windover remitted a total tax of 8 shillings. But the true cost to him of the tax was more than that: In addition to having less to spend on other things, he now lived in a colder and no doubt less welcoming house. That additional cost, over and above the tax he paid — the numb fingers, the nightcap pulled lower to warm his ears — was the excess burden that Mr. Windover suffered from the hearth tax.

This loss is less tangible than the 8s that Mr. Windover handed over to the tax collector, but it was no less real for that. And we can even put a money value on it. The additional loss that he bore was the value to him of the one hearth that he no longer had in 1670. How much was that worth to him (over and above the cost of the fireplace itself)? Certainly less than the extra 2s of tax it would have triggered had it had still been there: If it had been worth more to him than that, he would have kept the fireplace and endured the extra tax liability it caused. And it was also worth to him no less than nothing: otherwise he would not have had it to begin with. So the value to him of the fireplace he no longer had in 1670 was between 2s and nothing. A reasonable guess would be in the middle, at 1s. So the total loss to him from the hearth tax was about 9s. Of that, 8s was in the very obvious form of a tax payment and at least had the merit to wider society of helping to finance government spending. The other 1s, the excess burden, was not just hard to see but benefited no one: It was, for both John Windover in particular and Restoration England in general, pure waste.[11]

This explanation seems to this reader a much more fun way of learning about excess burden than any fancy diagram with supply and demand curves and mysterious triangles.

The one issue I would have liked Keen and Slemrod to be clearer about is to distinguish between the various goals of taxation.[12] In my opinion, a tax can have one of three goals: raising revenue for the government, redistributing income from the rich to the poor, and regulating behavior. We should evaluate each tax in relationship to these goals.

Taxes whose primary purpose is to raise revenue should primarily be judged based on their efficiency (that is, how little they affect taxpayer behavior to minimize deadweight loss). A poll tax (taxing each person the same amount) is very efficient because the only way to avoid it is to leave the taxing jurisdiction and forgo the benefits it provides. For modern taxes, the most efficient and also easiest to administer is the VAT, because it is imposed on a relatively inelastic (less responsive to tax) behavior, that is, the consumption of goods and services, and because it recruits the private sector to administer it. No wonder that it is a "money machine" that even weak tax administrations deploy successfully, and that the biggest flaw in the current U.S. tax system is our lack of a VAT.[13]

Taxes whose primary purpose is redistribution to achieve a more equal society should primarily be judged by how effective they are in reducing inequality. A wealth tax, as proposed by Senate Finance Committee member Elizabeth Warren, D-Mass., would do a better job than our current personal income tax, which is heavily riddled with tax expenditures such as the yawning gap between the ordinary income rate (37 percent) and the capital gains and dividends rate (23.8 percent). In fact, the entire federal tax

[11] *Id*. at 216.

[12] *See* Avi-Yonah, "The Three Goals of Taxation," 60 *Tax L. Rev*. 1 (2007).

[13] On why the United States should adopt a VAT in addition to the income tax, see Avi-Yonah, "Risk, Rents, and Regressivity: Why the United States Needs Both an Income Tax and a VAT," *Tax Notes*, Dec. 20, 2004, p. 1651.

system does not contribute much to reducing inequality in the United States; most of the reduction in inequality from before to after taxes and transfers comes from the transfer side, not the tax side.[14]

Finally, taxes whose primary purpose is regulation should be judged by how well they achieve regulatory goals compared with other forms of regulation, such as command and control. A carbon tax, for example, is a better way of combating climate change (that is, reducing negative externalities from emitting greenhouse gases) than either cap-and-trade or command-and-control regulation.[15] In my opinion, the corporate income tax is primarily about regulating corporate behavior, rather than an indirect way of taxing shareholders or a means for raising revenue, and should be evaluated as such.[16]

Keen and Slemrod do not follow this classification, and they tend to mix revenue-raising taxes, redistributive taxes, and regulatory taxes in their examples. To some extent this is justified, because there is no such thing as a pure tax — any actual tax has more than one purpose.[17] All taxes influence behavior, and therefore come within our definition of regulatory taxes, and all taxes produce some revenue and effect some redistribution, and therefore come within our definitions of revenue-raising or redistributive taxes. But to me, it still makes sense to try to classify tax provisions according to their primary goals, because that underlies our method of evaluating them. It makes no sense to criticize the VAT for its regressivity, for example, because its main goal is to raise revenue, not to address distributive issues, and any regressive effects can be offset by other means (for example, either by spending the revenue from the tax progressively, or by giving the poor cash grants to eliminate the effect of the tax on them).

Keen and Slemrod's marvelous book is not an attempt to directly effectuate tax policy or to rewrite tax history. Instead, it is a very wise excursion by two highly experienced public finance economists into the past to better understand the present by comparing it to what was different, and to improve the future by learning from both past wisdom and past follies. Herodotus and Thucydides would have been delighted to read it.

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[14] *See* Avi-Yonah, "The Parallel March of the Ginis: How Does Taxation Relate to Inequality and What Can Be Done About It?" University of Michigan Law and Economic Research Paper No. 14-003 (Feb. 9, 2014).

[15] Avi-Yonah and David M. Uhlmann, "Combating Global Climate Change: Why a Carbon Tax Is a Better Response to Global Warming Than Cap and Trade," 28 *Stan. Envtl. L. J.* 3 (2009).

[16] Avi-Yonah, "A New Corporate Tax," *Tax Notes Federal*, July 27, 2020, p. 653.

[17] *See Sonzinsky v. United States*, 300 U.S. 506, 513 (1937): "Every tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed. But a tax is not any less a tax because it has a regulatory effect." *See also National Federation of Independent Businesses v. Sebelius*, 567 U.S. 519 (2012) ("Every tax is to some extent regulatory.").