## \*\*\* File Explanation

This file contains a collection of materials that answer libertarian and other right-wing decision rules (or “d-rules”). The evidence in this file will help students defend a more progressive view of politics and the role of government in American society — including, where possible, “offense”.

The first three “hats”—“Libertarianism/Coercion,” “Constitutionality,” and “Separation of Powers”—contain evidence that answers these common impacts.

The final “hat”—“Anti-Taxation Discourse Bad”—contains evidence from Robin Einhorn, a professor at UC-Berkeley who argues that libertarian anti-tax ideology is rooted in the politics of slavery. Students defending progressive or “critical” affirmatives might find these materials particularly interesting when considering 2AC approaches to libertarian strategies.

The materials in this file are not exhaustive, but they will help students fight back against libertarian d-rules.

## \*\*\* Libertarianism/Coercion

### Freedom Not D-Rule

#### Freedom is *not* a d-rule.

Locke 5 — Robert Locke, Columnist for *FrontPage Magazine*, 2005 (“Marxism of the Right,” *The American Conservative*, March 14th, Available Online at http://www.theamericanconservative.com/article/2005/mar/14/00017/, Accessed 10-01-2011)

The most fundamental problem with libertarianism is very simple: freedom, though a good thing, is simply not the only good thing in life. Simple physical security, which even a prisoner can possess, is not freedom, but one cannot live without it. Prosperity is connected to freedom, in that it makes us free to consume, but it is not the same thing, in that one can be rich but as unfree as a Victorian tycoon’s wife. A family is in fact one of the least free things imaginable, as the emotional satisfactions of it derive from relations that we are either born into without choice or, once they are chosen, entail obligations that we cannot walk away from with ease or justice. But security, prosperity, and family are in fact the bulk of happiness for most real people and the principal issues that concern governments.

Libertarians try to get around this fact that freedom is not the only good thing by trying to reduce all other goods to it through the concept of choice, claiming that everything that is good is so because we choose to partake of it. Therefore freedom, by giving us choice, supposedly embraces all other goods. But this violates common sense by denying that anything is good by nature, independently of whether we choose it. Nourishing foods are good for us by nature, not because we choose to eat them. Taken to its logical conclusion, the reduction of the good to the freely chosen means there are no inherently good or bad choices at all, but that a man who chose to spend his life playing tiddlywinks has lived as worthy a life as a Washington or a Churchill.

### Limiting Freedom Now Increases Freedom Later

#### Less freedom *now* secures more freedom *later*—libertarianism is incoherent.

Locke 5 — Robert Locke, Columnist for *FrontPage Magazine*, 2005 (“Marxism of the Right,” *The American Conservative*, March 14th, Available Online at http://www.theamericanconservative.com/article/2005/mar/14/00017/, Accessed 10-01-2011)

In each of these cases, less freedom today is the price of more tomorrow. Total freedom today would just be a way of running down accumulated social capital and storing up problems for the future. So even if libertarianism is true in some ultimate sense, this does not prove that the libertarian policy choice is the right one today on any particular question.

Furthermore, if limiting freedom today may prolong it tomorrow, then limiting freedom tomorrow may prolong it the day after and so on, so the right amount of freedom may in fact be limited freedom in perpetuity. But if limited freedom is the right choice, then libertarianism, which makes freedom an absolute, is simply wrong. If all we want is limited freedom, then mere liberalism will do, or even better, a Burkean conservatism that reveres traditional liberties. There is no need to embrace outright libertarianism just because we want a healthy portion of freedom, and the alternative to libertarianism is not the USSR, it is America’s traditional liberties.

### Big Government Good

#### Big government is good—it’s the best mechanism to referee social conflicts.

Kamiya 97 — Gary Kamiya, co-founder of *Salon.*com, former writer for the *San Francisco Chronicle*, holds an M.A. from the University of California-Berkeley, 1997 (“Smashing the state: The strange rise of libertarianism,” *Slate*, January 20th, Available Online at http://news.salon.com/1997/01/20/state970120/, Accessed 10-01-2011)

Perhaps the most depressing thing about libertarianism is its almost unconscious aversion to the notion that in a representative democracy, we are the government. Of course, our democracy is plagued with big-money corruption and a thousand other problems, but when a significant percentage of people begin to think of government as “them,” democracy itself is in trouble. There is a discomforting family resemblance between libertarianism and the militia movement.

The libertarian insistence on seeing government as a malevolent or at best obstructionist external force fails to acknowledge its organic, changing nature. Government does, of course, set policy and attempt to dictate the course of events, but much of what it does is respond to, and referee, conflicts in society. Far from being a reified Other, government exists precisely to grapple — through the instrument of law — with issues that individuals cannot resolve by themselves. The libertarian failure to recognize the flexibility of law gives a scholastic, how-many-angels-can-dance-on-the-head-of-a-pin quality to many of its arguments. When property rights clash with environmental rights, for example, who adjudicates? Government does, through law: No libertarian solution would produce a different framework. Government will not resolve those problems to the liking of all interested parties — but neither would any other process. We have big government in large part because we live in an enormously complex society — because we have big problems.

#### Less government doesn’t mean more freedom.

Locke 5 — Robert Locke, Columnist for *FrontPage Magazine*, 2005 (“Marxism of the Right,” *The American Conservative*, March 14th, Available Online at http://www.theamericanconservative.com/article/2005/mar/14/00017/, Accessed 10-01-2011)

Libertarian naïveté extends to politics. They often confuse the absence of government impingement upon freedom with freedom as such. But without a sufficiently strong state, individual freedom falls prey to other more powerful individuals. A weak state and a freedom-respecting state are not the same thing, as shown by many a chaotic Third-World tyranny.

#### Government is the best firewall against absolute chaos—libertarian fantasies are wrong.

Kamiya 97 — Gary Kamiya, co-founder of *Salon.*com, former writer for the *San Francisco Chronicle*, holds an M.A. from the University of California-Berkeley, 1997 (“Smashing the state: The strange rise of libertarianism,” *Slate*, January 20th, Available Online at http://news.salon.com/1997/01/20/state970120/, Accessed 10-01-2011)

And the alternative is — unknown. One need not be a Hobbesian to fear that absolute economic freedom might lead to social stratification and inequalities so great that absolute chaos would ensue — a “spontaneous order” more reminiscent of a tribe of nasty, brutish baboons than a civil society. In its faith that a world without rules will not degenerate into a war of each against each, libertarianism leaves the uncertainties of history for the clarity of theology.

Americans hold nothing more holy than freedom. But the libertarian vision of freedom is too narrow. The freedom to be left alone is vital, but it is ultimately more suited to bears than to human beings. Civilization requires something higher — an embodied freedom, a freedom that enables us to live in peace, but also in justice. That ideal should always stand before us. Imperfect as it is, government — of the people, by the people and for the people — must help hold the banner.

### Progressivism D-Rule

#### Progressive policies are vital to reduce widespread suffering and inequality—competing D-Rule.

West 99 — Robin West, Professor of Law at the Georgetown University Law Center, holds a J.D. from the University of Maryland Law School and a J.S.M. from Stanford Law School, 1999 (“Is American Progressive Constitutionalism Dead?: I. Conceptual And Critical Themes In Normative Progressive Constitutionalism: Is Progressive Constitutionalism Possible?,” *Widener Law Symposium* (4 Wid. L. Symp. J. 1), Spring, Available Online to Subscribing Institutions via Lexis-Nexis)

Progressivism is in part a particular moral and political response to the sadness of lesser lives, lives unnecessarily diminished by economic, psychic and physical insecurity in the midst of a society or world that offers plenty. This insecurity is unjust and should end; the suffering should be alleviated, and those lives should be enriched. To do so must be one of the goals of a morally just or justifiable state. Not all suffering and not all lesser lives, of course, give rise to such a response. The suffering attendant to accident, disease, war and happenstance is neither entirely chargeable to our societal account, nor is it within our control. A "lesser life" marred by the early loss of a parent, a parent's mourning occasioned by the accidental death of a child, or an adult's ongoing trauma set off by a childhood disease, although cosmically unjust, is neither unjust in the ordinary sense, nor is it easily ameliorated through politics. In contrast, the suffering attendant to poverty or stunted opportunities for growth, the suffering attendant to the absence of supportive communities, or the suffering attendant to the desperate attempt to nurture children while unsure of one's own physical or economic safety is largely chargeable to our moral account and may be ameliorated through politics--at least in a social world like our own, marked by abundant natural resources, vast economic opportunity, thriving neighborhoods, and competent police and security forces.

That such suffering exists on a shockingly widespread scale in our world is a product of two states of affairs. First, it is the consequence of the decision to allow not simply "property," but vast quantities of wealth to accumulate in a few private hands, and social and sexual esteem as well as physical security and well-being to reside in one race and sex. Second, the suffering is a product of our collective, political and legal inattention to the suffering those distributions leave in their wake. Progressivism, I will assume, is marked by a distinctive moral response to that suffering. When brought on by collective inattention to private maldistributions of wealth, security or privilege, that suffering is unjust, and for that reason gives rise to a moral and political imperative: the conditions which give rise to the [\*2] suffering must be changed, and changed through some form of collective action, which in turn may (although often times may not) require the coercive power of the state.

### Permutation

#### Totalizing libertarianism is delusional—*balancing* individualism *and* collectivism is key to justice.

Locke 5 — Robert Locke, Columnist for *FrontPage Magazine*, 2005 (“Marxism of the Right,” *The American Conservative*, March 14th, Available Online at http://www.theamericanconservative.com/article/2005/mar/14/00017/, Accessed 10-01-2011)

This is no surprise, as libertarianism is basically the Marxism of the Right. If Marxism is the delusion that one can run society purely on altruism and collectivism, then libertarianism is the mirror-image delusion that one can run it purely on selfishness and individualism. Society in fact requires both individualism and collectivism, both selfishness and altruism, to function. Like Marxism, libertarianism offers the fraudulent intellectual security of a complete a priori account of the political good without the effort of empirical investigation. Like Marxism, it aspires, overtly or covertly, to reduce social life to economics. And like Marxism, it has its historical myths and a genius for making its followers feel like an elect unbound by the moral rules of their society.

#### The permutation is key to prevent authoritarianism: people won’t democratically choose libertarianism.

Locke 5 — Robert Locke, Columnist for *FrontPage Magazine*, 2005 (“Marxism of the Right,” *The American Conservative*, March 14th, Available Online at http://www.theamericanconservative.com/article/2005/mar/14/00017/, Accessed 10-01-2011)

Empirically, most people don’t actually want absolute freedom, which is why democracies don’t elect libertarian governments. Irony of ironies, people don’t choose absolute freedom. But this refutes libertarianism by its own premise, as libertarianism defines the good as the freely chosen, yet people do not choose it. Paradoxically, people exercise their freedom not to be libertarians.

The political corollary of this is that since no electorate will support libertarianism, a libertarian government could never be achieved democratically but would have to be imposed by some kind of authoritarian state, which rather puts the lie to libertarians’ claim that under any other philosophy, busybodies who claim to know what’s best for other people impose their values on the rest of us. Libertarianism itself is based on the conviction that it is the one true political philosophy and all others are false. It entails imposing a certain kind of society, with all its attendant pluses and minuses, which the inhabitants thereof will not be free to opt out of except by leaving.

## \*\*\* Constitutionality

### Transportation Infrastructure Constitutional

#### Transportation infrastructure spending is explicitly constitutional.

Cardenas 12 — Al Cardenas, Chairman of the American Conservative Union, partner in the law firm of Tew Cardenas, holds a B.A. from Florida Atlantic University and a J.D. from Seton Hall University, 2012 (“Conservatives should break transportation bill gridlock,” *The Washington Examiner*, June 21st, Available Online at http://washingtonexaminer.com/conservatives-should-break-transportation-bill-gridlock/article/2500245, Accessed 07-27-2012)

Perhaps most importantly, those of us who believe in constitutional conservatism understand that unlike all the things the Federal Government wastes our money on, transportation spending is at the core of what constitutes legitimate spending.

Article One, Section Eight of the Constitution specifically lists interstate road-building as one of the delineated powers and responsibilities vested in the federal government. In Federalist Paper #42, James Madison makes an early case for the federal government's role in maintaining a healthy infrastructure, by stating "Nothing which tends to facilitate the intercourse between the states, can be deemed unworthy of the public care."

### Constitution Not D-Rule

#### The Constitution is open-ended—no d-rule.

Litchwick 11 — Dahlia Lithwick, journalist covering courts and the law for *Slate*, 2011 (“Read It and Weep,” *Slate*, January 4th, Available Online at http://www.slate.com/articles/news\_and\_politics/jurisprudence/2011/01/read\_it\_and\_weep.single.html, Accessed 04-30-2012)

This newfound attention to the relationship between Congress and the Constitution is thrilling and long overdue. Progressives, as Greg Sargent points out, are wrong to scoff at it. This is an opportunity to engage in a reasoned discussion of what the Constitution does and does not do. It's an opportunity to point out that no matter how many times you read the document on the House floor, cite it in your bill, or how many copies you can stuff into your breast pocket without looking fat, the Constitution is always going to raise more questions than it answers and confound more readers than it comforts. And that isn't because any one American is too stupid to understand the Constitution. It's because the Constitution wasn't written to reflect the views of any one American.

The problem with the Tea Party's new Constitution fetish is that it's hopelessly selective. As Robert Parry notes, the folks who will be reading the Constitution aloud this week can't read the parts permitting slavery or prohibiting cruel and unusual punishment using only their inside voices, while shouting their support for the 10th Amendment. They don't get to support Madison and renounce Jefferson, then claim to be restoring the vision of "the Framers." Either the Founders got it right the first time they calibrated the balance of power between the federal government and the states, or they got it so wrong that we need to pass a "Repeal Amendment" to fix it. And unless Tea Party Republicans are willing to stand proud and announce that they adore and revere the whole Constitution as written, except for the First, 14, 16th, and 17th amendments, which totally blow, they should admit right now that they are in the same conundrum as everyone else: This document no more commands the specific policies they espouse than it commands the specific policies their opponents support.

This should all have been good news. The fact that the Constitution is sufficiently open-ended to infuriate all Americans almost equally is part of its enduring genius. The Framers were no more interested in binding future Americans to a set of divinely inspired commandments than any of us would wish to be bound by them. As Justice Stephen Breyer explains in his recent book, Making Our Democracy Work: A Judge's View, Americans cannot be controlled by the "dead hands" of one moment frozen in time. The Constitution created a framework, not a Ouija board, precisely because the Framers understood that the prospect of a nation ruled for centuries by dead prophets would be the very opposite of freedom.

### Strict Constitutionalism Bad

#### Fetishizing the Constitution tanks progressivism—the case is an impact turn.

West 4 — Robin West, Professor of Law at the Georgetown University Law Center, holds a J.D. from the University of Maryland Law School and a J.S.M. from Stanford Law School, 2004 (“The Progressive Constitution: An Oxymoron?,” *The Constitution in 2020*, November 25th, Available Online at http://constitutionin2020.blogspot.com/2004/11/progressive-constitution-oxymoron-post.html, Accessed 04-30-2012)

Progressivism requires: a commitment to the happiness of people. An understanding that human life is about needs and interests and loves and passions, and not about servicing fetishized fictive entities -- that the goal of a progressive politics should be, to quote Erich Fromm's lovely mid-century book (and book title) "Man for Himself" and not man for something other. And it requires not just a resistance to imperialism, but a thorough-going anti-nationalism. The Constitution is the obstacle to progressive politics, it cannot be the handmaiden.

Progressive constitutional lawyers and thinkers have responses to all of this -- I've written plenty myself -- but none of it is all that satisfying. Thus: the constitution does not necessarily mean the adjudicated constitution, and once the distinction is seen clearly, other and more progressive interpretations are revealed that do not pit individual liberty against happiness in quite such a regressive and disastrous way. That corporations are persons is an unfortunate but fixable mistake, not central to the project of constitutionalism. Through some very mysterious and alchemical process of osmosis, transformation and borrowing, our constitutional project can be synthesized not only with cosmopolitan human rights but even with constitutions and constitutionalisms elsewhere, eventually yielding a constitution that not only is not inconsistent with but deeply resonates with cosmopolitan ethical orientations. Well -- maybe but maybe not. Maybe the problem really is the constitution, and the idea of the constitution, and not adjudication, in either its institutional or jurisprudential mode; maybe corporate personhood is now irretrievably embedded in constitutionalism, and has already done the lion's share of the work, although beneath the surface, of re-definition of the entire document and our relationship to it, and maybe constitutionalism is just meaningless when divorced from a commitment to our sense of national exceptionalism, a sense that is disastrous for world populations when magnified by religiousity and imperialist power. Maybe a part of the conversation about the constitution in 2020 should conceive of the constitution as an obstacle to progressive politics, rather than one which, with the right interpreters and fixes, is actually the key to the whole project and has been all along, just never quite appreciated as such.

#### Conservative constitutionalism would roll back decades of progress—laundry list of impacts.

Podesta and Halpin 11 — John Podesta, President of the Center for American Progress, and John Halpin, Senior Fellow at the Center for American Progress, 2011 (“Constitution is inherently progressive,” *Politico*, October 10th, Available Online at http://dyn.politico.com/printstory.cfm?uuid=FDBF1F29-05F2-4D3C-9A66-3A3B838BD299, Accessed 07-27-2012)

Since our nation’s founding, progressives have drawn on the Declaration of Independence’s inspirational values of human liberty and equality in their own search for social justice and freedom. They take to heart the constitutional promise that “We the People” are the ultimate source of political power and legitimacy and that a strong national government is necessary to “establish justice, … provide for the common defense, promote the general welfare and secure the blessings of liberty.”

Successive generations of progressives worked to turn these values into practice and give meaning to the American dream, by creating full equality and citizenship under law and expanding the right to vote. We sought to ensure that our national government has the power and resources necessary to protect our people, develop our economy and secure a better life for all Americans.

As progressives, we believe in using the ingenuity of the private sector and the positive power of government to advance common purposes and increase freedom and opportunity. This framework of mutually reinforcing public, private and individual actions has served us well for more than two centuries. It is the essence of the constitutional promise of a never-ending search for “a more perfect union.”

Coupled with basic beliefs in fair play, openness, cooperation and human dignity, it is this progressive vision that in the past century helped build the strongest economy in history and allowed millions to move out of poverty and into the middle class. It is the basis for American peace and prosperity as well as greater global cooperation in the postwar era.

So why do conservatives continue to insist that progressives are opposed to constitutional values and American traditions? Primarily because progressives since the late 19th century rejected the conservative interpretation of the Constitution as an unchangeable document that endorses laissez-faire capitalism and prohibits government efforts to provide a better existence for all Americans.

Progressives rightly charge that conservatives often mask social Darwinism and a dog-eat-dog mentality in a cloak of liberty, ignoring the needs of the least well-off and the nation as a whole.

As President Franklin D. Roosevelt said in his 1944 address to Congress, “We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. ‘Necessitous men are not free men.’ People who are hungry and out of a job are the stuff of which dictatorships are made.”

Yet according to modern conservative constitutional theory, the entire Progressive, New Deal and Great Society eras were aberrations from American norms. Conservatives label the strong measures taken in the 20th century to protect all Americans and expand opportunity — workplace regulations, safe food and drug laws, unemployment insurance, the minimum wage, limits on work hours, the progressive income tax, civil rights legislation, environmental laws, increased public education and other social welfare provisions — as illegitimate.

Leading conservatives, like Texas Gov. Rick Perry, claim that Social Security and Medicare are unconstitutional. Sen. Mike Lee (R-Utah) even argues that national child labor laws violate the Constitution.

They lash out at democratically enacted laws like the Affordable Care Act and claim prudent regulations, including oversight of polluters and Wall Street banks, violate the rights of business.

This is a profound misreading of U.S. history and a bizarre interpretation of what makes America exceptional.

There are few Americans today who believe America was at its best before the nation reined in the robber barons; created the weekend; banned child labor; established national parks; expanded voting rights; provided assistance to the sick, elderly and poor; and asked the wealthy to pay a small share of their income for national purposes.

A nation committed to human freedom does not stand by idly while its citizens suffer from economic deprivation or lack of opportunity. A great nation like ours puts forth a helping hand to those in need. It offers assistance to those seeking to turn their talents, dreams and ambitions into a meaningful and secure life.

America’s greatest export is our democratic vision of government. Two centuries ago, when our Founding Fathers met in Philadelphia to craft the Constitution, government of the people, by the people and for the people was a radical experiment.

Our original Constitution was not perfect. It wrote women and minorities out and condoned an abhorrent system of slavery. But the story of America has also been the story of a good nation, conceived in liberty and equality, eventually welcoming every American into the arms of democracy, protecting their freedoms and expanding their economic opportunities.

Today, entire continents follow America’s example. Americans are justifiably proud for giving the world the gift of modern democracy and demonstrating how to turn an abstract vision of democracy into reality.

The advancements we made collectively over the years to fulfill these founding promises are essential to a progressive vision of the American idea. The continued search for genuine freedom, equality and opportunity for all people is a foundational goal that everyone — progressives and conservatives alike — should cherish and protect.

## \*\*\* Separation of Powers

### SOP Not D-Rule

#### No d-rule: strict SOP is *bad*—it reduces checks and balances.

Magill 2k — M. Elizabeth Magill, Associate Professor of Law at the University of Virginia School of Law, 2000 (“The Real Separation in Separation of Powers Laws,” *Virginia Law Review* (86 Va. L. Rev. 1127), September, Available Online to Subscribing Institutions via Lexis-Nexis)

One might even put the argument more strongly: Functional differentiation could actually work to dilute tension and competition among governmental institutions. As compared to two institutions engaged in the same function, institutions that are assigned different tasks might be less competitive with one another—with different tasks, each would have an independent sphere of competence. Imagine a regime where functional differentiation among governmental institutions is quite sharp; that sharp differentiation might facilitate cooperation, not competition, among institutions and deference between and among them based on differential levels of expertise. The insight is simply that it is natural to be most competitive with those who perform the same function, and, as a relative matter, less competitive with those who perform different tasks. The world's fastest runner is not as competitive with the world's best high jumper as he is with the world's second-fastest runner.

#### Strict SOP is impossible—can’t distinguish between categories of government power.

Magill 2k — M. Elizabeth Magill, Associate Professor of Law at the University of Virginia School of Law, 2000 (“The Real Separation in Separation of Powers Laws,” *Virginia Law Review* (86 Va. L. Rev. 1127), September, Available Online to Subscribing Institutions via Lexis-Nexis)

Formalists treat the Constitution's three "vesting" clauses as effecting a complete division of otherwise unallocated federal governmental authority among the constitutionally specified legislative, executive and judicial institutions. Any exercise of governmental power, and any governmental institution exercising that power, must either fit within one of the three formal categories thus established or find explicit constitutional authorization for such a deviation. The separation of powers principle is violated whenever the categorization of the exercised power and the exercising institution do not match and the Constitution does not specifically permit such a blending. n41

Thus, the structural provisions of the Constitution specify the type (legislative, executive, judicial) and place (Congress, President, Supreme Court) of all governmental power. The judge assessing the validity of an institutional arrangement must first identify the type of power being exercised and, unless one of the [\*1140] explicitly provided-for exceptions is relevant, make certain that that power is exercised by an official residing in the appropriate governmental institution.

While all of the criticisms of formalist approaches will not be rehearsed here, n42 two are worth mentioning because they highlight the differences between formalism and functionalism. First, heeding the "identify-and-place" rules would, it should be obvious, have dramatic practical consequences. n43 Consider a dominant feature of contemporary government: administrative (including so-called independent) agencies. Both of the garden-variety forms of administrative action--rulemaking and adjudication--present serious constitutional difficulties for the formalist. Rulemaking--the promulgation of prospective, general rules that bind private parties--looks in many cases like the exercise of the legislative power, which is vested exclusively in Congress. n44 Likewise, adjudication of [\*1141] individualized disputes carried out in administrative agencies looks like a classic exercise of judicial power, a power vested by the Constitution in the Supreme Court and such lower courts as Congress creates. n45

But it is more than transformative consequences that plague the formalist position. n46 There is an independent problem with the formalist project: The enterprise depends heavily upon workable distinctions among the three categories of governmental power, for in order to "place" correctly, one must "identify" correctly. n47 When [\*1142] examining the validity of an institutional arrangement—for example, the Sentencing Commission n48 or the Independent Counsel n49—a formalist would first have to determine what sort of power these entities or officers were exercising. While the formalist approach thus presupposes an ability to distinguish among the three types of government power, the differences among those three powers are—to understate the point—elusive. As Gary Lawson, among others, admits, "the problem of distinguishing the three functions of government has long been, and continues to be, one of the most intractable puzzles in constitutional law." n50

### A2: SOP Prevents Concentration of Power

#### SOP isn’t key to prevent concentration of power.

Magill 2k — M. Elizabeth Magill, Associate Professor of Law at the University of Virginia School of Law, 2000 (“The Real Separation in Separation of Powers Laws,” *Virginia Law Review* (86 Va. L. Rev. 1127), September, Available Online to Subscribing Institutions via Lexis-Nexis)

Those who extol the importance of separating government functions rarely explain what, exactly, is wrong or dangerous about a combination of functions. Adherents usually just repeat the Montesquieuian-Jeffersonian-Madisonian phrase, that the combination of functions is "the very definition of tyranny," to supply a reason for separating functions. n167 Functional separation, at the institutional level, is a way to prevent "tyranny," but how so?

The most often-stated goal of separating government functions is to achieve the dispersal of power, or to avoid, as the courts and commentators say, the concentration of political power. n168 Repeated use of that ambiguous word, "power," sheds little light. There is this obvious point: Separating functions is not necessary to disperse power. That is, power can be dispersed without insisting that there are three different types of governmental power that must be allocated to three different institutions. Consider the most obvious examples: bicameral or multicameral legislatures. Both are examples of power dispersal that do not rely on functional distinction. In our system, both the House and the Senate must concur in legislation before it is presented to the President; in that way, power is dispersed, but each body still exercises legislative powers. Or, consider a multi-member court: Each judge exercises judicial power, but again, there is power dispersal, because it takes a majority or plurality to control the outcome in a given case. A [\*1184] corresponding point can be made about the phrase "concentration of power." Just as there are different ways of dispersing power, there are different ways to concentrate it. One way of concentrating power would be to limit the number of entities that exercise a particular task. As compared to a multicameral legislature, bicameral or unicameral legislatures are concentrations of power because fewer entities exercise legislative power. So too with a court: As compared to a multi-member court, having a single judge exercise the same judicial power represents a concentration of power.

There are thus ways of dispersing power that do not require functional separation and ways of concentrating power that do not depend on the merger of functions. On the separation-of-functions conception, however, it is crucial to prevent one institution from exercising more than one type of function. The understanding requires more than just the dispersal of power. What particular explanation can be offered for a command to institutionally separate governmental functions?

#### SOP isn’t key to power dispersal.

Magill 2k — M. Elizabeth Magill, Associate Professor of Law at the University of Virginia School of Law, 2000 (“The Real Separation in Separation of Powers Laws,” *Virginia Law Review* (86 Va. L. Rev. 1127), September, Available Online to Subscribing Institutions via Lexis-Nexis)

The coordination thesis does not work as a justification for institutional separation of functions. On one reading, the thesis is just a variation on the argument that government power should be dispersed. The insight is that a single institution should not control all governmental power; to avoid that, the system provides three different authoritative decisionmakers. As just demonstrated, however, dispersing political power does not require that power be classified into three categories and assigned to separate institutions. To disperse power, there must be more than one authoritative decisionmaker, but institutional separation of government functions is not necessary. Arbitrary action can be guarded against by requiring that three institutions—all engaged in the same function called lawmaking—concur before liberty or property is taken from an individual. It might be logical or convenient to say those institutions are exercising different types of power. But classification of government power into three categories and dispersal of it among different institutions does not play a distinctive role in this understanding.

### A2: SOP Key To Checks and Balances

#### SOP isn’t key to checks and balances.

Magill 2k — M. Elizabeth Magill, Associate Professor of Law at the University of Virginia School of Law, 2000 (“The Real Separation in Separation of Powers Laws,” *Virginia Law Review* (86 Va. L. Rev. 1127), September, Available Online to Subscribing Institutions via Lexis-Nexis)

But the claim that each department does and should look independently at every question that comes before it is wrong. This reading of the coordination thesis transforms routine exercises of the executive and judicial functions into feats of second-guessing, or checking, the previously exercised function. But the occasions for interdepartmental checking are not that all-encompassing; they are, rather, sharply limited to powers such as the exercise of the presidential veto, judicial review, the Senate's confirmation powers, and Congress's impeachment powers. Return to the earlier example to see the point: Assuming that the hypothesized "arbitrary" law that Congress has enacted is a constitutional one, under the orthodox understanding of the three functions of government, it is in fact Congress that is to make the policy judgment. True, the [\*1188] Executive enforces the law and the judiciary adjudicates disputes under the law. But except for cases where the law is unconstitutional, it is not the job of those exercising the executive or the judicial power to assess independently the wisdom of the congressional choice reflected in the statute (and the presidential choice, given that the President either signed the bill, or suffered an override of his veto). Far from it. Those exercising executive and judicial power are--except for the rare case of an unconstitutional law--to adhere to the policy judgment made by Congress.

Another way of putting the point is that the coordination thesis rests on the notion that government functions are always and everywhere checking each other. On this understanding, separating government functions collapses entirely into the balance-of-power idea. In some sense, in fact, the thesis depends on each of the departments exercising the same function of independent policymaking. But the occasions for independent assessment by one department of another are specific and circumscribed. The checking feature implemented through devices like a presidential veto or congressional impeachment is not supposed to be in play every time the Executive decides whether and how to enforce a law Congress has passed, or every time the courts decide whether to vindicate a prosecution under a statute. To put the point simply: With respect to statutes that are constitutional, Congress does reign supreme and it can and (depending on one's view) does enact arbitrary laws that are enforced by executive officers and adjudicated by judges, and those actors are obliged to look to the statute for their instructions.

Not only does the coordination thesis depart from the orthodox understanding of the three functions of government, it also departs from the practice that arises out of that understanding. Legal rules do not acknowledge an executive or judicial right to assess independently the wisdom of a legislative choice. As students of law in a post-realist period, of course, we know there is much room for discretion in the execution of the law and in the adjudication of disputes under the law. And, there do seem to be little pockets of the coordination thesis. Consider in this regard the view, put forward most prominently by Justice Scalia in his dissent in Morrison, that the Executive's prosecutorial discretion emanates, not from [\*1189] pragmatic considerations, but from the Constitution itself. n178 On this view, Congress could not pass a statute restricting prosecutorial discretion, and this must be because executive power includes a constitutionally protected right to secondguess particular applications of statutes in the course of enforcing them. n179 [\*1190]

### A2: SOP Key To Rule of Law

#### SOP isn’t key to rule of law.

Magill 2k — M. Elizabeth Magill, Associate Professor of Law at the University of Virginia School of Law, 2000 (“The Real Separation in Separation of Powers Laws,” *Virginia Law Review* (86 Va. L. Rev. 1127), September, Available Online to Subscribing Institutions via Lexis-Nexis)

Once isolated in this way, however, the deficiencies of the rule-of-law idea are obvious. First, the idea depends on the ability to distinguish among the functions of government in a workable and coherent way. On the rule-of-law idea, it is crucial to separate lawmaking from law implementation; to carry out that command, we [\*1193] would need robust definitions of lawmaking and law implementation, definitions that would permit us to separate one from the other. To state the task is to expose it as daunting, if not impossible. Two examples illustrate the depth of the difficulty. The status of the nondelegation doctrine provides the first example. Judicial failure to enforce the rule that the legislature not delegate lawmaking to other branches of government demonstrates that courts have been unable to fashion a definition of lawmaking and law implementation that would permit them to sort the cases appropriately. n186 It is not only that it is difficult to tell the difference between lawmaking and law implementation, however. Another example illustrates that the distinction between lawmaking and law implementation collapses at the margin. Consider the enforcement of the law by prosecutors. Prosecutors' ability to enforce the law in the way they see fit is considered an executive function--indeed, it is thought to be implementation of the law in the most basic sense. At the same time, decisions by prosecutors about how to enforce a statute are indistinguishable from lawmaking. n187 That is, given that the range of permissible enforcement actions under criminal laws (and many other laws) is extremely broad, it is the prosecutors' pattern of decisions that shape the meaning of the law, not the underlying statute itself. Where prosecutors make law in the course of executing a statute, the command to separate lawmaking from law implementation seems nonsensical. [\*1194]

There is another difficulty with the rule-of-law idea. Even if we could separate lawmaking from law implementation, it is not obvious why those functions need to be separated at the level of the branches of government. That is, we operate in a regime that permits the combination of functions within a single institution, but requires separation of functions within the institution itself. Administrative agencies make the point most obviously: They are examples of entities that combine lawmaking, law implementation, and adjudication under the law. Yet, within these institutions, we have embraced a modified version of the rule-of-law thesis: The Administrative Procedure Act requires some separation of functions within an agency, n188 and the Due Process Clause sometimes operates to require separation of functions within agencies. n189 Neither of these doctrines, though, require that lawmaking, law implementation, and adjudication be separated on the institutional level. This level of commitment to separation of functions may be sufficient to satisfy the rule-of-law idea.

## \*\*\* Anti-Taxation Discourse Bad

### Anti-Taxation Discourse Bad

#### Turn—Slavery:

#### A. Their radical libertarian narrative about taxation romanticizes the era of slavery and tanks democracy.

Einhorn 6 — Robin Einhorn, Professor of History at the University of California-Berkeley, 2006 (“Introduction,” *American Taxation, American Slavery*, Published by the University of Chicago Press, ISBN 0226194876, p. 3)

There is a story we already know about taxation in American history. In this story, the nation was born in a tax revolt. Impatient of government restraints on their liberty and resenting the costly pomp of parasitic kings and aristocrats, the colonists jettisoned this European baggage for a republican government that was small, weak, and frugal. The frugality was threatened in the nineteenth century, as "special interests" insisted on government subsidies (protective tariffs to help industry at the expense of the farmers), but agrarian "independence" held the field until after the Civil War, when the victorious North built a much stronger federal government. In the twentieth century, the floodgates opened. Liberals and socialists agitated for the programs that culminated in the welfare state and won the 1913 constitutional amendment that authorized the federal income tax. It has been a downhill slide ever since: government growing, tax burdens skyrocketing, and our liberty in more danger than George III ever posed.

The problem with this story is that it leaves out a lot. It leaves out the states, which did much of the taxing before the twentieth century; it leaves out the Revolution, which was not an inexpensive undertaking; and it leaves out slavery altogether. In this story, American liberty was most complete when millions of Americans were the chattel property of owners who could buy them, sell them, whip them, separate their families, and exert all manner of other arbitrary power over their lives. And if romanticizing the era of slavery (for its liberty!) is not a serious enough problem to damn this story, there is also the little matter of democracy. This story casts "the government" of the United States as an autonomous entity, whose relationship to the people is that it forces us to pay taxes to finance it and to do other intrusive paperwork in the guise of "regulation." Elections never enter into this story, as the significant decisions are made behind the scenes in conspiratorial (and undoubtedly smoke-filled) conclaves of insiders. In the radical libertarian world of this story, it is inconceivable that Americans might have wanted (and might still want) to use their (our) government to provide certain services, voting for candidates who promised to deliver them.

#### B. Vote to reject this self-deception—unmasking the historical basis for anti-taxation politics is key to overcome cynicism and despair.

Einhorn 6 — Robin Einhorn, Professor of History at the University of California-Berkeley, 2006 (“Introduction,” *American Taxation, American Slavery*, Published by the University of Chicago Press, ISBN 0226194876, p. 1-2)

This book is a history of American taxation in the two centuries before the Civil War. It is also an extended essay about democracy in America over this long period. Some readers may find the title misleading, but one of the main themes of this book is the source of the assumptions about American politics and American history that would encourage a reader to be misled in this way. This book is not about how taxation enslaved Americans. It is about how slavery enslaved Americans, including the white majorities who gained wealth and status from the enslavement of Africans and African Americans. This book is about how slavery undermined democracy in the long period when slave-holding "masters" ruled the United States.

We must stop beating around the bush on this issue. Slaveholding masters did rule much of the United States most of the time in this period. We can all agree that some of these masters had admirable qualities, that Thomas Jefferson was charming and eloquent, that James Madison was a talented political theorist, that George Washington was a brilliant general, and that Andrew Jackson fought for the interests of people who were not rich. Nevertheless, these men all owned human beings and, as politicians, defended the ownership of human beings—even when they believed that society would be better off if it acknowledged that "all men are created equal; that they are endowed by their Creator with certain unalienable rights," and so on. There was a Civil War for a reason, and this reason had very little to do with tariffs or railroads. The United States collapsed into one of the bloodiest wars of the nineteenth century (620,000 dead) because a series of political struggles in the 1850s demonstrated that it "cannot endure, permanently, half slave and half free." Americans were forced to decide, continuing in Abraham Lincoln's words, whether it would become "all one thing, or all the other." At Gettysburg, [end page 1] Antietam, Vicksburg, Petersburg, and Atlanta, they decided that it would become all free. The masters finally lost control of American politics, though they certainly did not disappear altogether.1

This book operates on the assumption that we will gain much more than we can ever lose by taking these facts seriously. We do not celebrate our democratic traditions more faithfully by identifying them incorrectly. On the contrary, when we embrace slaveholders as the champions of liberty and democracy in our history, what we really promote is cynical despair—not only about our political history but also about contemporary political life. There is a real tradition of liberty in the United States. There is also a real tradition of democracy, including a democracy practiced in formal political institutions. Rebels and outsiders are often fascinating people, and their stories produce great and inspiring histories. But it is hardly necessary to "give voice to the voiceless" to locate an American democratic tradition. It is only necessary to accept the reality that the stories the slaveholders liked to tell about themselves are misleading when they are not downright false. These stories are our most familiar historical set pieces, the ones in which the slaveholding champions of liberty and democracy defeat legions of monarchists and aristocrats (by which they usually meant northerners) on behalf of "the people."2

Writing about hobbits, J. R. R. Tolkien could have been describing our situation. Hobbits, it seems, were voracious consumers of their own history, though only when it was packaged in familiar form. They were especially partial to genealogy. "Hobbits delighted in all such things, if they were accurate: they liked to have books filled with things that they already knew, set out fair and square with no contradictions." Tolkien's joke here, of course, is that the "accuracy" of stories we already know depends on their familiarity rather than on a more meaningful measure of truth. For hobbits, the result of reading the same stories over and over again is that they know almost nothing about who they are or who they were in the past. They are profoundly surprised to learn that they actually have the capacity to be heroes. For Americans, whose familiar stories of slaveholding "founding fathers" are no longer quite as delightful as they used to be, the result is an unnecessary fatalism about our capacities to act on our ideals.

### Turns The Impact

#### This turns their impact—rejecting the radical libertarian narrative of taxation is key to maximize liberty.

Einhorn 6 — Robin Einhorn, Professor of History at the University of California-Berkeley, 2006 (“The Myth that Low Taxes and Liberty Go Hand in Hand,” George Mason University’s *History News Network*, October 30th, Available Online at http://hnn.us/articles/29018.html, Accessed 09-06-2009)

One might think the record of the Bush administration and Republican Congress -- from domestic spying to Terri Schiavo to a long and expensive war -- would explode the idea that the difference between liberals and conservatives has something to do with the power of government to intervene in our lives. Yet the stereotype of strong-government liberals and weak-government conservatives continues to shape American political debate, especially when the subject is taxes. The Republicans who substitute debt for tax revenue may actually be feeding rather than starving "the beast," but the idea that Americans have always distrusted this "beast" allows them to paint antigovernment rhetoric as an apple-pie invocation of the national tradition.

Historians have a role to play in such invocations of "tradition," since it is our job to find out what the "tradition" has actually been. In regard to taxes, however, it seems fair to say we've dropped the ball. How many U.S. historians can even name a tax (other than the tariff) that was levied before 1913? We can all lecture about how the colonists hated the Stamp Act and South Carolina hated the Tariff of Abominations, with nods to the tax problems that provoked Shays's Rebellion and the Whiskey Rebellion, but after that we descend into a silence broken only when the Supreme Court declares the federal income tax unconstitutional in 1895 -- and the West and South (yes, the West and South!) rally behind it to win the Sixteenth Amendment.

But the tax history of early America actually involves much more than the Stamp Act and Nullification Crisis. It involves the taxes Americans levied in their own colonies and states and their own towns and counties. The moment we begin to examine these taxes, a startling pattern emerges. Over the long period of American history from the initial founding of the colonies to the outbreak of the Civil War, taxes were more sophisticated -- and usually higher -- in the North than the South. Along with the well-known geographical distribution of slaveholding, the less well-known organization of the northern and southern governments, particularly in the colonial era, almost turns this into a controlled experiment -- a laboratory test of the relationship between liberty, democracy, and taxation in the American past. People who lived in freer societies (little or no slavery) with more democratic governments (annually elected local officials) were more comfortable with taxation than people who lived in less free societies (lots of slavery) with less democratic governments (appointed local officials). Liberty and democracy actually produced better and higher taxes in early American history!

Northern taxes required more of the taxpayer in terms of intrusive administration. They usually were ad valorem levies based on assessments of the value of various forms of property, from land and buildings to commercial and financial assets. Southern taxes, meanwhile, usually were flat-rate levies based on nothing more complicated than simple reports of numbers of acres and people (slaves in particular). Southern states began to introduce limited assessment regimes during the Revolutionary War, but, as late as 1860, these regimes still did not compare with their northern counterparts in sophistication or coverage.

Why was this? One obvious explanation is that the democratically elected local officials who administered sophisticated tax systems in the North were more competent and trustworthy than the oligarchic appointees who administered primitive tax systems in the South. This was the explanation that Oliver Wolcott, Jr., the nation's second Treasury Secretary, proposed when he surveyed the state tax systems in 1796 and tried to account for their differences.

Yet liberty may have been as important as democracy, as the unusual experience of South Carolina suggests. Unlike Virginia, North Carolina, and Maryland, where the local governments consisted of appointed (really, coopted) county courts and sheriffs, South Carolina -- with hardly any local government at all -- managed to tax the commercial and financial wealth of Charleston throughout its history. But even South Carolina did not value the land or slaves of its plantation economy. No southern colony sent assessors onto plantations to value agricultural land before the Revolution -- and few southern states did it before the 1830s. The fact is that the "masters" of southern plantations refused to tolerate the intrusive procedures of tax assessment. Northern farmers, merchants, and artisans took these procedures in stride, but, of course, few Northerners were "masters" of their domains in anything like the same way.

The irony of this history surfaced in 1777, when the Northerners and Southerners had to figure out how to finance a war together. Article 8 of the Articles of Confederation established a ridiculously unworkable requirement that Congress apportion its taxes to the states according to the value of real estate (land and buildings). The northern delegations to Congress opposed this rule, knowing that a national real estate valuation was impractical, but the southern delegations all endorsed it -- even though they had never so much as seen a real estate valuation before! But the Southerners did not choose real estate because they thought it would work. They chose it because it seemed like the only way to avoid something worse: an apportionment-by-population that would force them to debate with their northern colleagues about slavery -- since they would have to decide how to count slaves when counting the population. When Congress finally held this debate in 1783 (by which time the Confederation was all but bankrupt), they hammered out the infamous fraction that later entered the Constitution as the three-fifths rule for apportioning "representatives and direct taxes."

In a democracy, the people can opt for a high-tax-high-service government or a low-tax-low-service government. Public decision-making of this kind is what democracy is for. Yet our debates about these important matters might make more sense if we could persuade ourselves to actually look at the tax history of early America, and abandon the false histories that invite us to see ourselves as Jeffersonian "masters." The fact is that Americans have often opted for higher taxes and stronger governments -- especially when they had the freedom to choose.

### Taxation Isn’t Slavery

#### Taxation isn’t slavery—false analogy.

de Neufville 11 — Robert de Neufville, Instructor in Political Science at San Francisco State University and the University of California-Berkeley, writer/blogger for *Big Think*, holds a Ph.D. in Political Science from the University of California-Berkeley, 2011 (“Taxation Is Not Slavery,” *Big Think*, April 22nd, Available Online at http://bigthink.com/politeia/taxation-is-not-slavery, Accessed 07-27-2012)

“Taxation without representation,” as James Otis said, “is tyranny.” But taxation with representation is just democratic government.

After I argued earlier this week that if anything we should pay more in taxes, a Facebook commenter wondered if Big Think ever came down against government coercion. I don’t speak for Big Think, of course, and I’m sure that the other bloggers here disagree with me about much of what I write. But it certainly is true that if we don’t pay the taxes we’re asked to pay the government will fine us or even throw us in jail. Some even compare the time we spend working to pay our taxes to slavery.

It’s not slavery. While it the government does force us to pay our taxes, portraying taxes simply as a form of government coercion is a bit strange. It's a little like comparing having to pay your share of the rent to slavery. People who live in the U.S. don’t have any choice about whether to obey U.S. laws. We may disagree with how the government spends our money, and may not feel we personally receive enough tangible benefits. But the U.S. is a democracy, and we are also collectively the ones who get to decide—and who benefit from—what the government does,

Those who complain about paying their taxes seem to want goverment to operate on a take-a-penny-leave-a-penny model. But if we were each allowed to pay as little taxes as we wanted—or to pay only for those programs we happen to like—most of us wouldn’t do our share. With the success of the Tea Party, it’s certainly not as if the people who want smaller government and lower taxes are underrepresented in Congress. But those people still have to compromise with those of us who don’t share their views, and abide by the decisions of majority.

While we may not personally use government services that much, or receive much in the way of government handouts, the truth is that most of us benefit from what the government does more than we realize. Just because you didn't call the police today, doesn't mean you didn't benefit from having them there. The U.S. is such a nice place to live not just because Americans are great people, but also because we have used government policy—by investing in infrastructure and education, enforcing contracts, regulating business, protecting our borders, providing social services, and so on—to make it that way. It is our system of government as much as anything that makes the U.S. a better place to live than Somalia.

Obviously, there are serious, difficult questions about what share of our collective expenses each of us should have to pay. I have argued that the rich should bear a larger share of burden, both because they can more easily afford to and because they prosper the most under our system. The rich do, of course, pay proportionally more federal income tax than the rest of us. But payroll taxes and sales taxes fall more heavily on the rest of us, so that we all end up paying roughly the same share of our income in taxes.

But whatever you think about who should bear the burden of paying for government, it doesn’t make sense to say we shouldn't have to pay for it at all. People who think should taxes should be lower in general should campaign against the things we actually spend our money on, not object to the fact that they are forced to contribute their share. If they want to demand that we reduce defense spending or cut Medicare benefits, that’s totally understandable. They just shouldn't complain that they are asked to do their part to pay for those programs.

### Anti-Tax Politics Rooted In Slavery

#### Here’s more evidence that their anti-tax politics are rooted in slavery.

Einhorn 8 — Robin Einhorn, Professor of History at the University of California-Berkeley, 2008 (“Tax Aversion: The Legacy of Slavery,” *Poverty & Race*, Volume 17, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

The evidence is clear, especially around April 15: With a passion, Americans hate everything about taxation. We sometimes tell pollsters we are willing to pay higher taxes to get better public services from our governments (schools, roads, and so on), but, in a "read my lips" political culture, no campaign promise works better than the promise to cut taxes.

Americans are easily persuaded of our desperate need for "tax relief, " but the fact is that our taxes are low relative to other nations. According to the Organization for Economic Co-operation and Development (OECD), American governments (federal, state, local) take less of our incomes in taxes than the governments of other countries with comparable economies. In 2002, American taxes amounted to 26% of GDP. This was only half the burden in the true high-tax countries, Sweden (50%) and Denmark (49%), and well below the average for the 30 OECD member countries (36%).

Most Americans would probably agree that our hatred for taxes has something to do with a more profound aversion to government in general, an aversion with deep roots in our history. A nation founded in a tax revolt, we are told, is true to itself only when it is "starving the beast. " Yet the original revolutionary objection was never to taxes in general, much less to government in general. It was to taxation without representation [shades of DC-ed.] and government by a faraway empire.

Nevertheless, Americans are right to think that our anti-tax and anti-government attitudes have deep historical roots. Our mistake is to dig for them in Boston. We should be digging in Virginia and South Carolina rather than in Massachusetts or Pennsylvania, because the origins of these attitudes have more to do with the history of American slavery than the history of American freedom. They have more to do with protections for entrenched wealth than with promises of opportunity, and more to do with the demands of privileged elites than with the strivings of the common man. Instead of reflecting a heritage that valued liberty over all other concerns, they are part of the poisonous legacy we have inherited from the slaveholders who forged much of our political tradition.

The Role of Slavery

Slavery was a major institution in the American economy, slaveholders major players in American politics, and major political decisions, such as tax decisions, always had to take these facts into account. To tell a story about early American political history that ignores slavery is to miss what often was the very heart of that story.

It might seem strange to trace our anti-tax and anti-government ideas to slavery instead of to liberty and democracy. Isn't it obvious that a democratic society where "the people" make the basic political decisions will choose lower taxes and smaller governments? The short answer is no. In this democratic society, the people might decide to pool their resources to buy good roads, excellent schools, convenient courthouses and an effective military establishment. But slaveholders had different priorities than other people and special reasons to be afraid of taxes. Slaveholders had little need for transportation improvements (since their land was often already on good transportation links such as rivers) and hardly any interest in an educated workforce (it was illegal to teach slaves to read and write because slaveholders thought education would help African Americans seize their freedom). Slaveholders wanted the military, not least to promote the westward expansion of slavery, and they also wanted local police forces ("slave patrols") to protect them against rebellious slaves. They wanted all manner of government action to protect slavery, while they tended to dismiss everything else as wasteful government spending.

But the crucial thing was the fear. Slaveholders could not allow majorities to decide how to tax them, even when the majorities consisted solely of white men. Slaveholders occasionally supported lavish government spending, but they would never yield the decision-making power to non-slaveholding majorities. Recognizing that the power to tax was "the power to destroy," they could not risk the possibility that non-slaveholding majorities would try to destroy slavery, even when the non-slaveholders insisted on their loyalty to the "peculiar institution." As a Virginia planter phrased it in 1829, opposing a reform that would have granted a non-slaveholding majority its fair share of seats in the state legislature, this was a flat-out rejection of anything that "put the power of controlling the wealth of the State into hands different from those which hold the wealth. " It was a flat-out rejection of democracy.

#### Their arguments have it exactly backwards—anti-tax positions are rooted in a defense of slavery.

Einhorn 8 — Robin Einhorn, Professor of History at the University of California-Berkeley, 2008 (“Tax Aversion: The Legacy of Slavery,” *Poverty & Race*, Volume 17, Issue 2, March/April, Available Online to Subscribing Institutions via Alt Press Watch)

Yet the real slaveholder victory lay in a fourth strategy: persuading the non-slaveholding majorities that the weak government and constitutionally restrained tax power actually were in the interests of the non-slaveholders themselves. Pro-slavery representation rules—the three-fifths clause of the U.S. Constitution and similar devices within Southern states—became necessary compromises with slavery, but the other two solutions to the slaveholders' political problem became protections for the "common man." Majorities voluntarily renounced the right to regulate their society by majority rule. Giving up the essence of democratic self-government, they celebrated the outcome as democracy. The consequences would outlive the slaveholders who played such a large role in establishing this attitude toward government and taxation. Long after slavery was gone, a regime forged around preferential treatment for the slaveholding elite came to favor very different elites: commercial and industrial elites who shared little with their slaveholding predecessors except a demand that majorities renounce their right to govern what ostensibly was a democratic society.

The irony is that the slaveholding elites of early American history have come down to us as the champions of liberty and democracy. In a political campaign whose audacity we can only admire, charismatic slaveholders persuaded many of their contemporaries, and then generations of historians looking back, that the elites who threatened American liberty in their era were the non-slaveholders! Today, this brand of politics looks eerily familiar. We have experience with political parties that attack "elites" in order to rally voters behind policies that benefit elites. This is what the slaveholders did in early American history, and they did it very well. Expansions of slavery became expansions of "liberty"; constitutional limitations on democratic self-government became defenses of "equal rights"; and the power of slaveholding elites became the power of the "common man." In the topsy-turvy political world we have inherited from the age of slavery, the power of the majority to decide how to tax became the power of an alien "government" to oppress "the people."