The taxpayer as reformer: 'Pocketbook politics' and the law, 1860--1940

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THE TAXPAYER AS REFORMER: 'POCKETBOOK POLITICS' AND THE LAW, 1860 - 1940

BY

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DISSERTATION

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Doctor of Philosophy

in

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May, 2009
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4/30/09
Date
DEDICATION

For my life partner, Peter
ACKNOWLEDGMENTS

Completing this dissertation has been a herculean labor and the realization of a long-held dream. On this journey from graduate student to PhD I have incurred many debts from institutions and individuals. Much assistance has come from the professors and staff in the History Department at the University of New Hampshire, who were always available to answer my questions, offer encouragement, and critique my arguments.

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ABSTRACT

THE TAXPAYER AS REFORMER:

'POCKETBOOK POLITICS' AND THE LAW, 1860 - 1940

by

Linda Upham-Bornstein

University of New Hampshire, May 2009

Dissertation Director, Associate Professor Lucy Salyer

Taxes and the citizens’ tax burden have always been at the hub of American politics. This dissertation opens up consideration of taxpayers as political and legal actors, who saw paying taxes as a source of political legitimacy and empowerment. It examines the powerful connection between organized taxpayer activity, political reform, and the law.

Organized taxpayers have relied heavily on the law in general, and on taxpayers’ lawsuits in particular, to promote their interests and political reform. During the last half of the nineteenth century courts, and legislatures throughout the nation came to recognize the right of taxpayers to bring suit to restrain unlawful acts by local government officials and to force them to perform their duties. Between 1908 and 1930, the Citizens Union, a political reform organization in New York City, employed this taxpayers’ tactic in a concerted and successful taxpayers’ litigation program to combat corruption and promote reform in municipal government.

Organized taxpayer activity became institutionalized with the formation of taxpayers’ associations in the 1850s, but for the next seventy-five years the creation and activities of
such organizations were sporadic. The Great Depression was a watershed in the history of taxpayers’ associations in the United States. That economic crisis precipitated the widespread proliferation of taxpayers’ associations, and by 1935 the taxpayers’ association had developed into a permanent and influential institution in the United States through which Americans engaged in political and legal activism. Since 1930, taxpayers’ organizations have played a critical role in refashioning the institutions and the operations of state and local government.

Although taxpayers associations are often associated with conservative politics in contemporary America, the history of organized taxpayer activity demonstrates that the taxpayer could be mobilized for a broad range of political endeavors, even joining forces with groups that some deemed radical. Organized taxpayer activity is significant because it sheds light on key features of American society and because for 250 years it has frequently been a sphere of activity in which the dynamics of citizenship, political reform, pocketbook politics and law intersect.
INTRODUCTION

PROTECTING THE TAXPAYERS' "HARD EARNED MONEY:"
ORGANIZED TAXPAYER ACTIVITY IN THE UNITED STATES

For nearly two and a half centuries, taxes and the citizens' tax burden have been at
the center of political tension in the United States. The nation was born in the context of a
tax revolt, and early in its history it experienced civil insurrection during the Whiskey
Rebellion. Taxes remain at the forefront of political debate in 2009, as anyone who watches
the 24-hour news coverage can attest. Meg Jacobs has argued that "the fact that every
person...[is] a shopper made a consumer interest potentially powerful" in the early twentieth
century.¹ Likewise, the fact that almost every adult American is a taxpayer has made the
interests of taxpayers prominent and powerful in American history. Organized taxpayer
activity is significant because it sheds light on certain key features of American society and
because for 250 years it has been a sphere of activity where the dynamics of citizenship,
political reform, pocketbook politics and law intersect and interact.

A taxpayer's July 1931 letter to the editor, published in the Middlesboro Daily News
in Middlesboro, Kentucky, touched upon many of the salient aspects of organized taxpayer
activity in the United States. The writer praised the recently formed Taxpayers' League of
Bell County, declaring that "[w]e have a few unselfish citizens in our towns and county who
have organized a Taxpayers' League for the purpose of protecting the hard earned money the
taxpayers pay into the cities' and county's treasuries." The writer argued that such a
taxpayers' organization was essential for several reasons. First, history had shown numerous "irregularities and misapplication" of public funds by officials, as a result of which there were then pending thirty-seven suits against public officials to recover those funds. Moreover, because local officials "do not have full and complete audits made of their records so that the taxpayers may know how their tax money is being spent, ... we need a Taxpayers' League to compel such audits to be made." Finally, the writer maintained, the "Taxpayers' League is the only unselfish friend the taxpayer has – the only friend that will go out into the open and into the courts and fight for the rights of the taxpayer." The letter concluded with a ringing indictment of opponents of the League, declaring that any "man that hates and abuses the Taxpayers' League... is not a first-class citizen of the country in which he lives." 

The anonymous letter is hardly an objective assessment of taxpayers' associations but, rather, a partisan paean to them. It did, however, depict how taxpayers applied conceptions of citizenship, engaged in pocketbook politics, endeavored to facilitate political reform, and called upon the law and the courts to promote their interests. The writer grounded the very origins of the taxpayers' league in notions of citizenship, equated good citizenship with participation in such organized taxpayer activity, and questioned the citizenship status of its opponents. The overarching purpose of the league was to engage in pocketbook politics at one of its most basic levels by protecting taxpayers' dollars. One means to this end was to promote political reform through combating corruption and requiring transparency in government. Another was to resort to the courts and there invoke the coercive power of the law to enforce the rights of citizen taxpayers and to hold public officials accountable. The letter thus reflects organized taxpayer activity as a realm of action
in which of citizenship, pocketbook politics, political reform, and the law all figured prominently.

Taxes and taxpayers' organizations may not, at first glance, appear to be the most engaging or alluring subjects of historical inquiry. On closer examination, however, one finds that organized taxpayer activity is indeed important. It merits scholarly investigation because it has so often been the context for the engagement of taxpayers and tax spenders (referring to governments units and officials who expend public funds and to those individuals who supported greater government spending) in American history.³ In general, taxpayers have focused on containing the cost of government, whereas tax spenders have been preoccupied with maintaining what they consider a reasonably necessary level of government activity. The critical issues over which the interests of taxpayers and tax spenders collide have consistently been at the hub of American politics. What is the reasonably necessary level of government services, how big should government become, and how and by whom (meaning which taxpayers) should it be funded? Disagreement about to what extent, and on what matters, tax dollars should be spent has been a recurrent element of taxpayer - tax spender engagement. The economic downturn of 2008 - 2009 has once again brought this dynamic to the front and center of American politics.

Moreover, collective action by taxpayers illustrates how Americans have developed, adapted and applied conceptions of citizenship over time. It also offers insights into how and why they have engaged in pocketbook politics and political reform to promote their interests. Finally, organized taxpayer activity tells us much about the role of law in American society and how taxpayers have used law and legal institutions in an effort to shape their destinies.
and control their environments.

Organized taxpayer activity in the United States became formalized in its current state with the creation of taxpayers' associations (sometimes called taxpayers' organizations or taxpayers' leagues) in the 1850s. For a century and a half, taxpayers' associations have been an institution, and since 1930 a principal institution, through which Americans have realized their status as citizens, advanced political reform, participated in pocketbook politics, and used the law to achieve their objectives.

The connections between taxpayers' associations and citizenship are fundamental and vital. Citizenship, as historian Linda Kerber has suggested, "is basic to all other claims which individuals make on the state, or the state makes upon them." Citizenship is, to say the least, a complex and multifaceted concept. In general, it refers to the status or standing of members of a state with respect to the state. It denotes a mixture of obligations, privileges and rights that stand in various relations to one another. Such "[r]ights and obligations are reciprocal elements of citizenship" and, in that sense, two sides of the same coin. One of the obligations of citizenship is to pay taxes, but in the mid-nineteenth century taxpayers began to argue that this obligation gave rise to a corresponding right of citizens to hold public officials accountable for how they spend taxes. Since that time, organized taxpayer activity in the United States has been galvanized by that obligation and rooted in that right.

I contend that the development and expansion of the taxpaying citizen's right to hold public officials accountable is a primary component of organized taxpayer activity in the United States. Such a right was not contemplated when the nation was created. When the colonists declared "no taxation without representation," they were merely asserting a general
right to have their own elected representatives vote on taxes, not a specific right to oversee
how those taxes were spent or to check or restrain particular expenditures by public officials.
In the mid-nineteenth century, the latter right was still relatively inchoate and incipient.
Around 1850, however, taxpaying citizens started to articulate and advance such a right
through taxpayers’ associations. For the next eighty years they pressed and expanded that
right, mainly through traditional political activity and through taxpayers’ lawsuits against
local government officials.

By the late 1920s this aspect of citizenship in America was firmly established, but by
no means prominent or dominant. Organized taxpayer activity in general, and citizens’
assertions of their right to accountability in particular, were still occasional and sporadic.
The economic crisis of the Great Depression was transformative in this regard. That crisis
precipitated an explosive growth of taxpayers’ associations in almost every state. As a
consequence, Americans nation-wide intensively pursued, enforced and expanded their right
to hold public officials accountable for how they operated government and expended public
funds through a broad array of organized taxpayer activities, most notably through research,
legislative, legal and political efforts. The taxpayers’ association movement of the 1930s
played an indispensable part in the evolution of Americans’ conception of citizenship from
one based on obligations to one based on rights. It gave rise to a more distinctively
“modern” notion of the taxpayer as citizen with the rights to insist that government officials
be made to account for how they spent tax dollars and to check particular public
expenditures, rights which from that time on were widely recognized and invoked.

Taxpayers organizations also exemplify another critical aspect of citizenship in the
United States – the “daily use which [Americans] make of the right of association” that Alexis de Tocqueville had observed a century earlier. Such organizations were symptomatic of the propensity and the tradition of “[t]he citizen of the United States... to rely upon his own exertions in order to resist the evils and the difficulties of life.” Tocqueville argued that liberty of association in America was a principal means by which its citizens engaged in self help to promote their interests, to resist “the tyranny of the majority,” to “prevent the despotism of faction or the arbitrary power” of the state, and otherwise to advance their political objectives.

This tradition of self help explains in part the indigenous and spontaneous character of taxpayers’ leagues. The scope and extent of organized taxpayer activity in the United States confirmed Tocqueville’s observations that Americans are “freely and constantly forming associations for the purpose of promoting some political principle” and that they also make use of public associations “in civil life, without reference to political objects.”

Freedom of association, however, was not only a right but also an obligation of citizenship. Historian Christopher Capozzola has contended that, throughout much of the nineteenth and early twentieth centuries, “[b]eing a good citizen meant fulfilling your political obligations and doing so through voluntary associations,” and that Americans “preferred voluntary associations as forums for public discussion and the execution of political agendas” to the expansion of central government. The freedom of association that Americans exercised by participating in taxpayers’ associations implicated reciprocal components of citizenship in the United States, right and duty.

As the evolution of the taxpaying citizen’s right to accountability suggests, the
relationship and balance between rights and obligations in Americans’ notions of citizenship have not been static. Capozolla has noted that “throughout American history, a citizenship of obligation has always coexisted with one of rights,” but that “a rights-based vision of citizenship...play[ed] a [more] prominent role in twentieth-century America.” Some historians, such as Kerber and Capozolla, have focused on the obligations of citizenship. Others, like Meg Jacobs, have concentrated on the rights side of the citizenship coin. Jacobs has identified an economic aspect of citizenship that emerged during the twentieth century and was “based on participation in the mass consumer economy” and the right to consume. She argued that “[i]n the twentieth century, as the economy and society became increasingly organized around a new national mass consumer market, the means to consume became important...as a marker of economic citizenship and full membership in the American polity.”

Taxpayers, in their status as taxpayers, do not consume goods, but they do pay for and consume government services. Consequently, the extent of their tax burden directly affects the extent to which they are able to “become full economic citizens” and enjoy the “promise of a better, richer life.” Collective action by American taxpayers has, for the most part, been the product of a culture of citizenship emphasizing rights rather than obligations.

The outgrowth of this economic citizenship was what Jacobs calls “pocketbook politics.” She contends that, as a result of the development of a mass consumer economy in the last century, the question of purchasing power - the ability of people to afford goods - came to the forefront of political debate, and “for most of the twentieth century... was never far from the center of American politics.” To optimize purchasing power, Americans pushed for higher wages and lower prices. Pocketbook politics for taxpayers, as consumers of...
government services, focused on the cost side of the equation. Simply put, taxpayers wanted to buy more government for the same amount of money or the same amount of government for less money. Consequently, a perennial objective of taxpayers' associations has been to promote economy and efficiency in government.

Organized taxpayers sought to achieve this goal through a wide array of political and legal activities directed at the reformation of state and local government. One approach was to change the people who ran government, with a view to improving the quality and integrity of public officials, by engaging in traditional party politics. Another was to implement measures, either administratively or by changing the relevant law, designed to improve the means and methods of public administration and finance. These efforts, broadly referred to as good government reform, gained momentum in the first decade of the twentieth century. A third was to bring lawsuits, generally known as taxpayers' actions, to restrain the unlawful expenditure of public funds or other illegal acts by local government officials or to compel them to comply with the law. Taxpayers' suits were useful tools in fighting corruption in local government and in making public officials accountable for how they spent public funds and carried out their duties.

There were two aspects to the political reform activities of organized taxpayers: reform has been both an objective of taxpayers' organizations and a strategy employed by them. In some cases the main focus and objective of the taxpayers' association was reform of the political system itself, and the taxpayers' association was a strategy or instrument with which to change the political system. In these circumstances, taxpayers' organizations generally served as a means by which political outsiders (those not then in political power)
sought to exercise some degree of control and influence over those office holders who were in power. The efforts of the Citizens Union and other New York City reform organizations directed against the Tammany machine in the first three decades of the twentieth century, and those of taxpayers' associations in the South during Reconstruction, aimed at local governments run by Republicans and "carpetbaggers," are representative of this aspect of the political reform programs of organized taxpayers. Sometimes these political reform activities had a progressive tenor to them, pursued for the purpose of combating corruption, waste and inefficiency in local government. At other times they appeared reactionary, the efforts of conservative naysayers who wanted to circumvent the will of the majority or unreasonably tie the hands of government.

In the other aspect of organized taxpayer political reform, economic relief and pocketbook politics were the objectives, and political reform was the strategy that taxpayers' associations used to these economic ends. The most obvious example of this second facet is the taxpayers' association movement of the Great Depression.

In both contexts, whether political reform was the ends or the means, law played an indispensable part. Law was both a strategy or tool of reform and an arena in which much of the engagement between taxpayers and tax spenders played out. Law and legal institutions also figured prominently in the other tax reduction efforts of organized taxpayers.14

Kermit Hall has argued that the "contemporary definitions of law fully stress its connection to society.... [L]aw is a system of social choice, one in which government provides for the allocation of resources, the legitimate use of force, and the restructuring of social relationships."15 Much of my analysis of organized taxpayer activity in the United
States draws on law and society historiography. A recurring theme in that literature, as the name implies, is the nature of the relationship between law and society. Do law and the legal institutions of a society inform and shape that society and effectuate social and cultural change over time? Or, on the other hand, do the impacts flow primarily in the opposite direction, such that a society’s law and legal institutions are essentially products of that society?

The problem with both formulations is that they characterize the influence as flowing principally only in one direction, much like the phenomenon of direct current in the context of electricity. Such a unidirectional conception does not do justice to the complex, organic relationship between society and law and, in the long run, is as ineffective in generating meaningful light on the subject as direct current is in generating electric light over great distances. It is more useful to regard the relationship as a bidirectional one, more akin to alternating current, in which the current flows in both directions, albeit sometimes more in one direction and sometimes more in the other. Perhaps the most salient feature of the relationship between law and society is its mutuality, a quality that is reflected in the activities of organized taxpayers.

The intimate and reciprocal relationship between social reform and the law is illustrative. At the turn of the twentieth century, for example, progressive reformers secured important changes in statute law that advanced their agendas, such as the passage of child labor laws and worker’s compensation acts in most states. In these efforts Americans expressed “no hesitancy in making affirmative use of the law” and in shaping it “to their wants and vision.” These statutory innovations, in turn, by redefining and restructuring
social and economic relationships between employers and employees, had a profound impact on American society and demonstrated the power of the law "to shape social life."\textsuperscript{19} Progressive-era social and economic legislation not only shaped and informed society in the United States, but also was a product of that society.

The significant degree to which organized taxpayers have called upon the law and the courts for assistance since 1860 corroborates the conclusions of historians such as James Willard Hurst that the nineteenth century legal order was shaped by a "common instrumental belief" that people "could materially control their environment through the legally mobilized power of the community," that in the first half of the twentieth century most Americans "continued... to hold and indeed to strengthen the confidence that we could by law measurably shape environment to our ends," and that, as Kermit Hall has summarized the consensus school of thought, the law "has functioned as an honest broker through which conflicting interests have sought to achieve their own ends" in American society.\textsuperscript{20} The taxpayers' suit was a good example of the manner in which, Hurst noted, "Americans made considerable use of legal compulsion to meet the challenge of [their] environment."\textsuperscript{21}

At the same time, the amplitude and magnitude of taxpayers' associations' law-related activities, especially the surge in taxpayers' actions, reveal the profound influence of law in American society. Because, as Tocqueville had observed, "[s]carcely any question arises in the United States which does not become, sooner or later, a subject of judicial debate," Americans "are obligated to borrow the ideas, and even the language usual in judicial proceedings, in their daily controversies.... The language of the law thus becomes, in some measure, a vulgar tongue; the spirit of the law... gradually penetrates... into the
Americans' conceptions of legality in general, and the mature body of law regarding taxpayers' suits that evolved between 1860 and 1930 in particular, both framed the disputes between taxpaying citizens and government units and determined their outcomes. In this regard, the law was, as Christopher Tomlins has hypothesized, "a mode of operation, a structure, a discourse in itself" that "informed and helped constitute" the discourse of power. Moreover, the issues that taxpayers' suits presented and resolved—the specifics of how tax dollars were to be spent and how local government was to be operated—were acutely political ones. Consequently, taxpayers' associations and taxpayers' litigation manifest the dynamic relationship between law and politics, the alliance of legal and political activism, and the taxpayer as political and legal actor. In doing so, they reflect the "complex interrelationship between law and politics" articulated by critical legal studies scholars.

Taxpayers' associations thus demonstrate the centrality of law in America and the complex, reciprocal relationship between law and society in the United States. Through these instruments ordinary Americans made affirmative use of the law and of conceptions of legality for their own purposes in order to advance their interests, arbitrate their controversies with local government officials, and influence the conduct of government. Those same instruments simultaneously served as conduits for a substantial centrifugal flow of influence from the legal order, especially the common law courts and legislative bodies, to society.

Notwithstanding its significance, organized taxpayer activity has received little attention from historians. Occasionally, one finds a passing reference to or a short discussion of taxpayers' associations in works on other subjects. The only treatment of taxpayers'
organizations throughout the United States is that contained in the first chapter of historian David Beito's work on the 1930-1933 Chicago tax strike. Beito limits his examination to a brief survey of taxpayers' associations that proliferated across the nation in the early 1930s. I undertake a more comprehensive and thorough investigation of organized taxpayer activity, examining the evolution of taxpayers' associations between the mid-nineteenth century and 1940, the tools and tactics that taxpayers developed to promote their interests, and the conceptual basis for their claims. I look at organized taxpayer activity both from a national perspective and in particular local contexts. Doing so provides insights into the salient characteristics of such activity in the United States and how those dynamics played out in specific instances.

One of the challenges presented by the history of organized taxpayer activity in the United States is its diversity, which makes it somewhat amorphous. Depending on the time and the context, organized taxpayer activity assumed a variety of forms, shapes, and even hues. In the majority of cases, organized taxpayer activity represented the bottom-up, grassroots, local efforts of the broad swath of middle-class citizens aimed primarily at lightening their tax burden. In other instances, the taxpayers' main objective was the political reform of local government, and lowering taxes was an ancillary goal. In the Reconstruction South, organized taxpayer activity was infused with a considerable degree of racial and political animus, and was directed both at alleviating oppressive taxes and at combating Republican regimes in local government. The Citizens Union in New York City was not organized taxpayer activity per se but, rather, an organization of upper-crust Progressive reformers who adopted a tactic developed by taxpayers in the nineteenth century,
the taxpayers' lawsuit, to accomplish their political reform goals. Organized taxpayers employed an extremely broad range of means to accomplish their various ends, ranging from moderate research, investigation and legislative efforts to more aggressive, but still mainstream, tactics, most notably traditional political activity and taxpayers' litigation. Sometimes, particularly during the crisis of the Great Depression, taxpayers' organizations invoked even more aggressive modes, including pressing for tax limitations and occasionally utilizing their most militant weapon, the tax strike. The most extreme methods were employed by southern white taxpayers during Reconstruction, where the threat and the act of violence were not uncommon. In short, the form, the ends, and the means of organized taxpayers in the United States have been extremely variegated, giving organized taxpayer activity something of a chameleon-like quality.

In the remainder of this introduction, I trace the origins of taxpayers' associations and their development from the mid-nineteenth century to the late 1920s. With this foundation laid, the subsequent chapters look at specific aspects and episodes of organized taxpayer activity by Americans.

While taxpayers' associations came into their own and assumed a prominent role in American life in the 1930s, they did not then suddenly appear from nowhere, fully developed and ready for battle, like Athena was said to have sprung from the head of Zeus. Rather their origins and antecedents may be traced to the mid-nineteenth century. Citizens' frustration with perceived political inequities, graft and corruption was evidenced by the episodic formation of taxpayers' associations across the United States, starting in the 1850s. Although
the organizations varied in purpose and makeup, they were all established by taxpaying stakeholders as a tool to influence the direction of local and state economies.

As early as 1858, the New York Herald reported that taxpayers in assembly districts across New York City were forming "Citizens and Taxpayer Association[s]" and nominating candidates for alderman. One taxpayers' association proclaimed that its candidates had received support "from the best and most influential citizens...[and] they therefore... invite every voter who desires to elect honest and reliable men ... to support the ticket." In 1861, the Herald identified another taxpayers’ association in New York City, which urged the citizens to "restore capacity and honesty in the administration of the municipal government, and show themselves worthy of republican institutions," in response to reports that the Democratic Mayor, Fernando Wood, a Confederate sympathizer, had mishandled city funds and allowed "traitors" from the "rebellious States" to seize arms from the New York armory. In California, rapid expansion and development fueled conflict between local officials and taxpayers associations in that state in the early 1860s.

During Reconstruction, former Confederate states witnessed a surge in the number of taxpayers’ associations in response to the political policies of the Republican Party. In much of the South, the property taxes levied by Republicans were burdensome, and many people, especially farmers, were unable to pay them. As a consequence, white southerners organized taxpayers’ leagues to combat oppressive taxation caused by corruption in government and by wasteful public spending. In this regard, they were motivated by the same economic concerns as other organized taxpayers throughout the nation. What distinguished taxpayers’ associations in the South, though, was their willingness to use
vélence to achieve their goals. When they did not get what they wanted through political, bureaucratic, and legislative efforts, it was not uncommon for southern white taxpayers to threaten and engage in violence and even to murder black officeholders.

Taxpayers' leagues proliferated throughout the South in the decade following the Civil War. In 1868, taxpayers in Nashville, Tennessee organized to protest against "unwise and wicked legislation" in municipal affairs and to prevent "burdensome and unjust taxation." The Association proclaimed it would take steps to correct the injustices in municipal administration or "bring the guilty parties to justice." An article in a Memphis daily newspaper called on local taxpayers to look to Nashville's example and form their own organization to fight the rise of "schemes...to make private fortunes out of public misfortunes."

Contemporary news accounts throughout the South identified several influential taxpayers groups emerging in South Carolina and Alabama. They attributed this phenomenon to the current political and military circumstances that allowed "thieves and miscreants" to control municipal governments. The Macon Weekly Telegraph complained about the "[n]umber of blacks who occupy seats in the Legislature," as a result of which that body was "made up almost exclusively of degraded and venal paupers.... Not one representative in ten stands for a tax-paying or property-holding constituency." It further argued that the conditions that existed in South Carolina would never be tolerated in "any Northern State without a tax-payers' league being organized to resist the payment of taxes imposed for fraudulent purposes." Two years later, in 1874, the same newspaper commended the taxpayers in two counties in Alabama that had "united to resist in every
lawful and legitimate manner, the thieving of their Radical and carpet-bag officials." The Alabama taxpayers vowed that if they could not effectuate change in municipal administration through "the strictest scrutiny," then "as a last resort, [they would] appeal to the courts for justice against their knavery." True to their word, in May 1874, the Montgomery County League successfully pushed for the prosecution and conviction of the tax collector and the filing of indictments against several other county officials. The Macon paper showered the Alabama taxpayers' group with praises and called for such action by taxpayers in all southern communities in "hopes that the law may yet have its course, but at present the carpet-bagger's star is in the ascendant, and he bids defiance to all legal process."

Frustration with northern interference with southern property owners' individual rights and local control spawned taxpayers' groups in other states. In 1873, in Smith County, Tennessee a taxpayers' group, sought to enjoin the subscription of $300,000 of stock to the Tennessee and Pacific Railroad Company because, it alleged, the election held in December 1869 did not include the taxpayers in the eighth district of Smith County and that, therefore, the election and the expenditure of public funds pursuant to that vote were illegal. The Supreme Court of Tennessee ruled in favor of the taxpayers and enjoined the subscription. Why the decision was made by the county to by-pass the taxpayers in the eighth district is unclear. What was significant was their decision to organize in response to the immediate need and bring a taxpayers' action in order to assert their claims and protect their rights as taxing citizens.

The central role that violence played in taxpayers' organizations was all too evident
in Vicksburg, Mississippi, where in 1873 taxpayers formed a taxpayers’ league numbering 600 in response to a dramatic property tax increase, the result of “reckless extravagance.” The League launched an investigation of city officials and found evidence to suggest that the city clerk had forged script and practiced “other rascalities.” Verbal attacks by League members exposed the deep rift between the white southerners and the Reconstruction government officials, whom Leaguers believed were robbing white property owners. A violent backlash resulted against the local black population that, according to white southerners, was in cahoots with the Reconstruction government. Northern news accounts of the events in Vicksburg suggest that the taxpayers’ league and a so-called White League were one and the same and were rooted in the Ku Klux Klan. In a subsequent hearing members of the taxpayers’ league defended their actions, claiming that “there was nothing political in [their organization]; colored men, if taxpayers, could join it.” The League’s goal had been “to examine the books of the Chancery Clerk,” but the Clerk had refused to cooperate, stating that “I don’t represent you or any of your crowd.” To this the League responded that since its members paid 90% of the taxes they had a right to ensure that the clerk was “competent and honest.”

Much organized taxpayer activity in the states of the former Confederacy was fueled by the deep political, racial and social divisions in the South during Reconstruction. Indeed, the members of the Vicksburg Taxpayers’ League likely went out of their way to disavow political and racial motivations for their actions in order to obscure the class, racial and political issues at stake. Taxpayers’ associations provided white southerners a facade of legitimacy, a forum for civic protest that was neutral on its face, but behind which boiled
profound societal tensions. In many southern states during Reconstruction, the tensions between white taxpaying southerners and Republican political leaders, black or white, in some cases were exhibited in the moderate form of legal action by taxpayers, and in others the violent form of murderous rampages, as seen in Vicksburg. Though much organized taxpayer activity in the South in this period was spurred by the taxpayers' genuine desire to reduce their taxes, in some cases taxpayers' associations served as fronts for groups of whites determined to oust Republican regimes by any means necessary, including violence. The degree to which these white taxpayers' organizations resorted to violence distinguishes them from other taxpayers' associations, which pursued their objectives through lawful channels.

Southern communities were not alone in their efforts to confront the "reckless expenditure of the people's money." In the 1870s, Camden, New Jersey and its neighbor, Philadelphia, Pennsylvania both had active taxpayers' leagues. The Camden Taxpayers' League, in 1875, obtained an injunction to restrain the city treasurer from paying "certain bills allowed by Councils to the former and present supervisors of highways." The League adopted measures to "prevent future excessive rates of taxation" and to stop the "illegal expenditure of public money." The next year it sought an injunction restraining the "city treasurer from paying the additional $3.00 per week to the clerk's messenger," arguing that the messenger's salary had been improperly increased from $12 to $15 per week by the Council. In 1878, on the other side of the river in Philadelphia, citizens formed a taxpayers' league in the twenty-seventh ward in response to the increased tax burden and their belief that the present political parties were incapable of reforming government. Unlike many of the taxpayers' organizations mentioned previously, which were politically
independent, the Philadelphia group entertained an alliance with the Labor Party. The
*Philadelphia Inquirer* saw this action as the emergence of a “[r]eform [m]ovement.” In
Philadelphia’s eighth ward a taxpayers’ league called on voters to “elect none but good
men… who have … at heart the interests of the people.”43

Taxpayers continued to organize in New York in the last three decades of the
nineteenth century. Taxpayers’ associations in Hunters Point, Brooklyn, Long Island,
Gravesend, and New-Utrecht (a suburb of Brooklyn) utilized political pressure, injunctions
and lawsuits to address municipal mismanagement. In Hunters Point a Citizens’ and
Taxpayers’ Association opposed special legislation and the “collection of unequal and unjust
taxes,” and demanded equal property valuation and the economical administration of town
affairs. In 1872, the Taxpayers Association of Newtown, Long Island was formed to
investigate “charges against the trustees and constables” and to reform municipal affairs
because the “taxes were recklessly and dishonestly squandered.” The attorney for the Long
Island association asserted that a “public officer can make more money by robbing the
people violating his oath of office, than by honestly discharging his duty….” The Brooklyn
Citizens’ and Taxpayers’ Association appointed a committee to “collect… evidence of
fraud… in connection with certain public works and submit it to the Attorney General.”

New Utrecht’s and Gravesend’s taxpayers’ associations joined with other local political
reform groups to create what the *New York Times* variously called a “Citizens’ Movement”
or a “Citizens’ League” in an effort to defeat Democratic “ring” politicians. 44

The same themes of graft, mismanagement and “ring” politics echoed from the pages
of *The Baltimore Sun* in the 1870s. Both Washington, DC and Baltimore taxpayers
organized to fight municipal cronyism and excessive property taxes and to search for honest politicians. District taxpayers contemplated withholding property tax payments because property assessments made the previous year were from "twenty-five to one hundred percent in excess of the actual cost value." In August 1874, The Sun published a "Letter From Washington" which outlined the work and policies of the District of Columbia Taxpayers' Association. In an 1876 editorial the Baltimore Sun commended the County Taxpayers' Association for its efforts to "protect taxpayers against waste and extravagance on the part of the county officials." The Baltimore County Taxpayers' Association added its voice to the call for non-partisan municipal government to benefit "all the people" who are "citizens and Taxpayers of Baltimore." In 1880, it sent a petition to the state legislature protesting the ability of the wealthy in the state to avoid taxation. The petition declared "that exemption from taxation by contract is inadmissible" and demanded "that all such laws which may be inconsistent with the principles of equal taxation shall be repealed." The Association also recommended that the citizens of Baltimore send representatives from each ward to a "citizens' convention." Its avowed objective was only to oversee the spending of municipal government independent of any political party. It is interesting to note that many of the pleas to keep municipal government free from partisan politics continued to reverberate well into the twentieth century. The Citizens Union in New York City likewise put municipal independence at the top of its agenda. Taxpayers continued to organize and agitate during the first three decades of the twentieth century. Prior to 1930, however, taxpayers' associations were neither numerous nor a significant presence in American public life. In 1930, taxpayers' organizations
probably numbered no more than fifty nation-wide. Furthermore, their creation and activities were episodic and almost always in response to specific local problems. When the stock market collapsed in 1929, the taxpayers' association was an inchoate institution with only modest influence on a national scale.

The history of taxpayers' associations in the United States spans more than one hundred and fifty years. One of the most remarkable attributes of such organizations prior to the Great Depression, however, was their caducity. Like the lilies of the field, they sprouted up, flourished for a season and then faded away. The Great Depression was transformative in this way, as in so many other ways. In the five years following the 1929 stock market crash, the taxpayers' association rapidly evolved into a permanent and enduring institution in American society, a part of the fabric of civic life and political life in the United States. By the mid-1930s it had become, to paraphrase historian Fernand Braudel, one of the "structures of everyday life" in this country. The chapters that follow assess the processes through which this development occurred, its impacts on American society, and its significance for historians.

In Chapter 1 I examine taxpayers' lawsuits and the development of the law regarding such suits in the United States. In the decades following the Civil War, courts in nearly every state came to recognize the right of taxpayers to bring actions to restrain illegal or corrupt acts by local government officials and to force them to perform their duties. In those states where the courts did not afford taxpayers this right, the legislatures authorized such taxpayers' suits and thereby created by statute a judicial remedy that taxpaying citizens could
invoke. I argue that, although some taxpayers’ actions have been filed for petty reasons or
in an effort to thwart the will of the majority, their effects on the American political order in
general, and on local government in particular, have been largely salutary.

Chapter 2 concentrates on the use of taxpayers’ actions by the Citizens Union, a
political reform organization in New York City, as an instrument for eliminating corruption
in the public sector and for promoting efficiency and reform in government between 1909
and 1930. The chapter also places the Citizens Union’s taxpayers’ litigation program in the
overall context of political reform in New York City in the late nineteenth and early
twentieth centuries. The Citizens Union did not style itself as a taxpayers’ association and
was not organized as one; it was a reform organization. Its relevance to the history of
organized taxpayer activity lies in the fact that it used a tool developed by taxpayers, the
taxpayers’ suit, as a principal tactic by which it pursued its reform agenda. Political reform
was also an objective of much organized taxpayer activity. The Citizens Union’s sustained,
extensive taxpayers’ litigation program represented a policy formulated by the organization’s
leadership. In this respect it was analogous to the roughly contemporaneous litigation
program of the American Anti-Boycott Association (AABA), a voluntary organization of
small manufacturers organized with very different objectives — “to litigate and lobby against
organized labor” — but which also relied on a focused litigation strategy in advancing its
agenda. The Citizens Union’s litigation program represented a powerful and dynamic
fusion of legal and political activism.

Chapter 3 looks at the taxpaying citizen as a political and legal actor in the
Depression era. It investigates the remarkable proliferation of taxpayers’ associations in the
early 1930s and identifies them as one of the primary institutions through which middle-class Americans engaged in political activism and legal activism during the Great Depression, producing what may fairly be termed a taxpayers' association movement. Such organizations exercised an influence on state and local governments and on American civic life that was both deep and wide. Americans' conceptions of citizenship, the imperatives of pocketbook politics, political reform impulses, and the law interacted in the crucible of taxpayers' associations in complex and vital ways, giving the taxpayers' association movement of the Great Depression its character, and bringing meaningful change in American social, civic and political life.

Chapter 4 is an in-depth study of this process of interaction in Depression-era America in Berlin, New Hampshire, a small city in the White Mountains. It examines how a group of concerned citizens, confronted both by the desperate economic circumstances created by the Great Depression and by corruption in city government, formed a taxpayers' association, which then instituted a taxpayers' action against city officials and prevailed in the trial court. The chapter also assesses how these efforts in turn created the requisite critical political mass to sustain a viable third-party political movement and resulted in the formation of the Berlin Farmer-Labor Party. The tale of the Berlin Farmer-Labor Party, although rooted in the particular circumstances existing in that city in the 1930s, is representative in many ways of the political protest movements of that decade and illustrates the crucial role that law and notions of citizenship played in organized taxpayer activity and in such political reform efforts.


3. I define the term “tax spender” differently than historian, David Beito, for whom it refers to “receivers of government funds.” David T. Beito, *Taxpayers In Revolt: Tax Resistance During the Great Depression* (Chapel Hill: University of North Carolina Press, 1989) xii, 169. As historian Barry D. Riccio has pointed out in his review of Beito’s book, Beito’s distinction between tax spenders and taxpayers is a “strained dichotomy… since nearly everyone in the United States is both a taxpayer and a tax spender” as Beito defines the latter phrase. Barry F. Riccio, *The Business History Review*, 66, no. 1 (Spring, 1992), 195. My use of the term “tax spender” results in a somewhat cleaner dichotomy, though there is still some overlap between the two groups since most public officials and exponents of more expansive government also pay taxes.


5. Ibid., 304.


7. See Chapter 3, notes 22 to 29 for a discussion of the spontaneous, indigenous and local character of taxpayers’ associations.


12. Ibid., 2, 265.

13. Ibid., 3, 4 - 8.

14. Some discussion of the meanings of law and my use of that term is in order. In its broadest sense law may be defined as “[t]he body of rules, whether proceeding from formal enactment or from custom, which a particular state or community recognizes as binding on its members or subjects.” *Oxford English Dictionary Online* (Oxford University Press, 2009), 2nd edition, 1989. It also refers to the body of substantive and procedural rules governing various subjects and activities and the institutions (legislative bodies, courts, and the legal profession) that create, apply and administer those rules. Depending on the context, the term may also have more precise meanings, such as statute law or the system of remedial justice administered by the courts or by other legal authorities. When I discuss “law” the meaning should be apparent from the context, but where it may not be I will endeavor to clarify it.


17. James Willard Hurst is the leading advocate of this pluralist consensus school of thought, which he articulated in *Law and the Conditions of Freedom In the Nineteenth-Century United States* (Madison, Wis.: University Of Wisconsin Press, 1956).


27. *New York Herald*, December 6, 1858, 3; November 1, 1860, 2, 3.

28. Ibid., November 27, 1861, 4.


30. In Mississippi, for example, one newspaper characterized state and county taxation as “enormously excessive...[and] oppressive.” Harris, *The Day of the Carpetbagger*, 624 - 627.


34. Ibid., May 22, 1874, 2.

35. Ibid.

36. Ibid.

37. N. C. Winston et als. v. Tennessee & Pacific R.R. Co., *County Court of Smith County and Justices of Said County*, 60 Tenn. 60, 1 Baxt. 60 (1873).

38. *New York Times (NYT)*, January 3, 1875, 1; *Inter Ocean* (Chicago, IL), December 12, 1874, 9; Harris, *The Day of the Carpetbagger*, 645 - 649.

39. Ibid., December 12, 1874, 9; December 13, 1874, 1; Nicholas Lemann, *Redemption: The Last Battle of the Civil War* (New York: Farrar, Straus and Giroux, 2006), 82 - 86.

40. *NYT*, January 3, 1875, 1.

42. Ibid., Aug 31, 1875, 3; July 20, 1875, 3; January 31, 1876, 3; September 4, 1876, 7.

43. Ibid., October 8, 1878, 3; February 8, 1879, 3.

44. *NYT*, February 18, 1870, 2; January 11, 1872, 8; November 28, 1875, 2; May 11, 1893, 6; February 18, 1894, 12; March 12, 1894, 9; February 25, 1894, 12.

45. *The Baltimore Sun*, August 6, 1874, 4; *Inter Ocean*, July 12, 1874, 1; *The Baltimore Sun*, July 29, 1874, 1; August 6, 1874, 4; September 9, 1876, 1; July 17, 1880, 1; March 3, 1878, 1.

46. See Chapter 2.

47. See Chapter 3, notes 6, 43 and 44.

48. See Chapter 3, notes 47 to 51.


50. Daniel R. Ernst, *Lawyers against Labor: From Individual Rights to Corporate Liberalism* (Urbana: University Of Illinois Press, 1995), 5. In this work Ernst examined the aims, philosophies and strategies of the AABA, the individuals who founded and guided it, the litigation that it pursued, and organized labors' interactions with the AABA.
CHAPTER I

"WHERE JUSTICE REQUIRES A REMEDY:"
THE EVOLUTION OF TAXPAYERS' ACTIONS IN THE
NINETEENTH-CENTURY UNITED STATES

In July 1895, Land, Log & Lumber Company and other taxpayers of Vilas County, Wisconsin appeared before the county board of supervisors with what they likely considered a relatively straightforward request. They asked the board to institute suit against F. W. McIntyre, the former chairman of the board, to recover moneys that the taxpayers alleged had been "corruptly drawn by him" from the county treasury. The taxpayers informed the board that between April 1894, and April 1895, while he was chairman of the board of supervisors, McIntyre had submitted, and had the county treasurer pay, fraudulent bills for excessive and "pretended services" and for "constructing a so-called county road that had no existence in fact." To the surprise and chagrin of the taxpayers, the county board refused to pursue the matter. The taxpayers, on behalf of themselves and all other county taxpayers, then filed suit against McIntyre to compel him to account for and repay the money that he had illegally obtained. McIntyre argued that only the county could bring such an action and that, therefore, the taxpayers had no right to relief. The Wisconsin Supreme Court emphatically rejected this contention, stating that if a county or other corporation has a plain cause of action for an injury done to it, that should be enforced for the protection of its members, and its governing body refuses to perform its plain duty..., our system of jurisprudence is by no means so weak that justice can thereby be defeated... It certainly would be a strange situation if unfaithful officials could plunder
a county...and be free from danger of being compelled to return their ill-
gotten gains, or make good the injury caused by their corrupt conduct,
because they had retired from office and the corporation, through its proper
officers, unjustly refused to prosecute them.

The court emphasized that the “powers of courts of equity are broad and absolute enough to
fit all situations where justice requires a remedy” and ruled that the taxpayers were entitled
to maintain their taxpayers’ action.¹

The Vilas County taxpayers’ litigation represented, at its core, a collision of interests
between those who pay taxes and those who spend them. This tension between taxpayers
and tax spenders is a recurring theme in American history, harking back to (and beyond) the
American Revolution. Taxpayer activism in the United States has most frequently been
thought of and studied in terms of taxpayer “revolts,” whether they be literal revolts, such
as Shays’ Rebellion in 1786 or the Whiskey Rebellion in 1794, collective strikes, such as the
taxpayers’ strike in Chicago during the Great Depression, or traditional political activity that
resulted in the legal overhaul of systems of taxation, such as the passage of Proposition 13
in California in 1978.² Some scholars have examined lawsuits instituted by taxpayers to
advance their direct, private interests.³ Except for legal commentators, however, few
scholars have assessed the impact on American political life in general, and on local
government in particular, of “taxpayers’ suits,” defined by one legal scholar as “proceedings
in which one or more taxpayers, representing an entire class of taxpayers, seek a remedy for
illegal acts injurious to their interests as taxpayers through misuse, disuse or spoilation of
public funds or property.”⁴

Though largely ignored by historians, such taxpayers’ actions, by providing an
effective legal mechanism by which taxpaying citizens of all backgrounds could hold public
officials accountable and could eliminate corruption and promote reform in local
government, have profoundly influenced politics and the public sector in the United States.
In the twentieth century there are literally hundreds of reported cases in which taxpayers
prevailed in such actions, preventing or righting a host of wrongs.\textsuperscript{5} Specific, tangible
benefits accrued to local communities as a result of these court rulings. The cumulative
impact of these benefits and decisions, which have acted as a leaven in the American
political system to foster the honest and healthy functioning of local government, has been
significant. Moreover, taxpayers' suits have provided a means by which citizens could
lawfully and constructively express political discontent. Admittedly, not all taxpayers'
actions have been prompted by lofty motivations or had salutary effects. Some cases have
involved disgruntled cheapskates and gadflies who sued to delay or derail the political
processes or to frustrate or circumvent the will of the majority.\textsuperscript{6} Nevertheless, the overall
impact of taxpayers' suits on the American political order has been generally positive.

Taxpayers' litigation is not, however, only a twentieth century phenomenon. The
foundation for this legal edifice was established during the sixty years before World War I.
During the late nineteenth and early twentieth centuries, courts of equity in most states came
to recognize the standing of taxpayers to bring actions to enjoin illegal or corrupt acts by
public officials. In those states in which the courts did not do so, such as New York,
legislatures authorized such taxpayers' actions in order to create a judicial remedy for
malfeasance in government. By the eve of the First World War, American courts had
developed a mature body of law regarding taxpayers' lawsuits and had applied that law to
an immense variety of taxpayers' claims.
The Development of Taxpayers' Litigation Jurisprudence by Courts

Nineteenth century taxpayers instituted actions against local government officials for reasons as numerous as the universe of official misdeeds. In most cases taxpayers filed actions in courts of equity to obtain injunctive relief, that is, a court order requiring a public official either to do or to refrain from doing something. The most common actions were those to obtain injunctions restraining the expenditure or misappropriation of public funds through the unauthorized acts of local officials.\(^7\) Taxpayers also sought to enjoin other allegedly unlawful municipal actions, ranging from the illegal issuance of municipal bonds to the unauthorized extension of a waterworks franchise.\(^8\) If municipal officials had already improperly paid out public funds, as in an Illinois case in which officials had donated monies to pay the debts of a private company, taxpayers brought actions to compel the return of the donations.\(^9\) Finally, taxpayers initiated proceedings to enforce municipal causes of action where the public officers wrongfully declined to do so.\(^10\) In short, taxpayers turned to courts of equity for relief in a wide range of circumstances, in which they maintained that they had or would suffer damage as taxpayers as a result of the unlawful acts of local government.

The recognition and expansion of taxpayers’ rights to bring such actions in the nineteenth century was not, however, a tale of uninterrupted progress. Courts of equity in a number of states refused to entertain taxpayers’ suits. In Massachusetts, the Supreme Judicial Court consistently ruled that, unless conferred by statute, courts of equity in that state did not have jurisdiction to hear actions by taxpayers to enjoin illegal or wrongful acts of municipalities.\(^11\) Courts of equity in New York also denied taxpayers a remedy. In an 1822 decision, the judge of the Chancery Court of New York rejected a taxpayer’s request
to restrain the town of Mooers from collecting monies to pay bounties for the destruction of wolves, stating that "I cannot find, by any statute, or precedent, or practice, that it belongs to the jurisdiction of chancery, as a Court of equity, to [grant the requested injunction]... and in the whole history of the English Court of Chancery, there is no instance of the assertion of such jurisdiction as is now contended for." 12 Although some early lower court decisions in New York did allow taxpayers' actions and some did not, in 1858 New York's highest court settled the matter in Doolittle v. Broome County, ruling that a taxpayer had no right to bring an action against municipal officials to restrain the waste of public funds or illegal acts unless the taxpayer would sustain some particular injury not common to all taxpayers. 13 Unlike courts in some other states, the New York Court of Appeals declared that "[n]o private person or number of persons can assume to be the champions of the community, and in its behalf challenge the public officers to meet them in the courts of justice to defend their official acts." 14 Courts in Kansas and Michigan adopted the New York common law rule. 15

In most states, though, courts of equity were prepared to afford taxpayers the right to bring taxpayers' suits for the public benefit and to craft appropriate relief to address citizens' complaints. The willingness of nineteenth-century judges to jump into the breach and devise equitable relief for taxpayers is reflected in the Wisconsin Supreme Court's bold assertion of the equity powers of the courts in its 1898 decision in *Land, Log & Lumber Company v. McIntyre*. After enunciating "the boasted power of courts of equity to lay hold of situations where legal remedies stop, and prevent a failure of justice flowing from defective legal remedies," the court, paraphrasing an earlier decision, declared:

If for conduct such as detailed in the complaint, there is no remedy... the taxpayers are at the mercy of dishonest officials and must stand by and see
the public treasury plundered... The idea is simply preposterous, and that is all that need be said about it. While guided by precedents, equity is not bound by them, but may meet new situations as they arise, so that in the race between it and the ingenuity of unfaithful officials, the former will generally prevail... 16

In an 1882 taxpayers' suit to require a judge and two county commissioners to repay to the county funds that they, through fraud and collusion, had obtained, the Oregon Supreme Court likewise held that a “taxpayer has an equity which entitles him to claim, through a court of equity, that he shall not be subjected to the payment of additional sums of taxes on account of the fraudulent and illegal disposal of the public funds and property by public officers…” 17

In so ruling, the court expressly rejected the New York rule denying taxpayers such a remedy, observing that the “effect of these decisions in New York was to leave the inhabitants of a municipal corporation without remedy where its officers made a fraudulent disposition of its revenues.” 18 These sentiments reflected the views of judges in the vast majority of states on the subject of taxpayers' actions. Consequently, most nineteenth-century courts were prepared to expand the rights of taxpayers in order to provide more effective protection against the unlawful acts of municipal officials.

By 1900, courts in almost all states recognized the standing of taxpayers to bring taxpayers' suits against local officials. The conceptual basis for such actions articulated by most of these courts was that public property was held in trust by public officials for the benefit of the body of taxpayers, analogously to the situation of corporate officers and stockholders. In 1897, the Georgia Supreme Court ruled that a taxpayer was entitled to an injunction restraining the city of Waycross from operating a plumbing business that competed with the taxpayer's plumbing business on the grounds that the city's actions were
unauthorized and hence illegal. The court offered this explanation for taxpayers’ suits:

Following out the theory which regards the municipal corporation as a trustee for the inhabitants, it is almost, if not quite universally, conceded by the courts in the United States that... any... municipal taxpayer may resort to equity to prevent municipal corporations or officials from exceeding their lawful powers or neglecting or violating their legal duties, under any circumstances where the taxpayer’s interest will be injuriously affected... In private corporations, it is well settled that if the directors will not protect the rights of the creditors and stockholders, then the latter may and should attend to their own interests. There is no reason whatever why a different rule should be applied to municipal corporations, in which the taxpayers are the beneficiaries upon whose shoulders will ultimately fall the loss and expense which is caused by illegal, fraudulent or tortious acts... ¹⁹

In a similar vein the Wisconsin Supreme Court observed that the

philosophy of the taxpayer’s action... is that the taxpayer is a member of a municipal corporation who, by virtue of his contributions to the funds of the municipality, has an interest in its funds and property of the same general quality as the interest of a stockholder in the funds of a business corporation, and hence when corporate officers are about to illegally use or squander its funds or property he may appeal to a court of equity on behalf of himself and his fellow stockholders (i.e., taxpayers) to conserve and protect the corporate interests and property from spoilation by its own officers. ²⁰

Courts explicitly acknowledged that public officials held a position of trust with respect to public property and funds and that taxpaying citizens had a substantial and legally enforceable interest in ensuring that local officers did not violate that trust.

These published rationales highlight several important features of the American judiciary in the late nineteenth century. It is not surprising that common law judges, at a time when business and corporation law were evolving into their modern forms and when business and economic issues occupied such a prominent place in American jurisprudence, would utilize business analogies in evaluating taxpayers’ claims. Moreover, judges in this period were notably protective of private property rights and vigorous in shielding private
interests from government intrusion. Taxpayers' suits represented a clash between public and private rights in which most courts were prepared to intervene to protect taxpayers from the transgressions of public officials.

Taxpayers' actions shared at least two common characteristics. First, in every case one or more taxpayers filed suit because they were in some way unhappy with how government officials were spending their tax dollars. In this sense the taxpayers' suit was a legal manifestation of what historian Meg Jacobs has called "pocketbook politics." Second, in each case taxpaying citizens resorted to the courts in order to bypass and, they hoped, overrule political processes that were not working to their advantage. Some of these lawsuits did not involve issues of great public import but were filed by obstructionists who simply disagreed with the wisdom of a particular government action or policy and sought to frustrate the will of the majority through protracted litigation. Most taxpayers' actions, however, were brought to promote reform and combat corruption in government by those in the political minority who lacked access to or influence in the local political machinery. Taxpayers' actions gave political outsiders an effective and much-needed weapon.

Nineteenth-century judges developed two principal limitations on a taxpayer's right to obtain relief. First, the taxpayer must have a pecuniary interest in the matter; that is, he must be able to demonstrate that the municipal action he was challenging would increase his tax burden. For example, in *Patten v. Chattanooga* taxpayers in Chattanooga, Tennessee who asked the court to declare void a franchise that the city had granted to a utility company were denied relief because the ordinance in question "cannot affect their tax burden." Second, courts generally would not grant relief with respect to acts within the authorized,
lawful discretion of public officials because such actions, even mistaken ones, were “beyond legal redress.” Taxpayers, that is, could not second-guess or micromanage the lawful decisions of public officials or obtain relief for their mistakes or poor judgment. In those circumstances, taxpayers were left to their political remedies, including voting such unwise officials out of office. As the Michigan Supreme Court observed in 1885,

[t]here has been an idea in some places...that courts of equity can always stand between citizens and municipal authorities, to shield them from abuses and extravagant action. This is not one of the functions of courts. It is one of the incidents of popular government that the people must bear the consequences of the mistakes of their representatives. No court can save them from this experience. It is one of the means of teaching the necessity of choosing proper servants...28

In applying the first restriction, judges were essentially adapting a “no harm, no foul” rule. In applying the second, they were giving appropriate deference to the political (non-judicial) branches of government and were demonstrating a pragmatic approach to the limits of judicial authority in political matters.

Several factors account for the increasing frequency with which taxpayers’ suits were instituted in the decades following the Civil War. Perhaps most important, the rapid industrialization and urbanization of the United States in this era dramatically expanded the public sector and public spending and, as a consequence, multiplied the potential scope, magnitude and incidence of official misconduct. Conversely, the extension of local government institutions into the unsettled frontier regions also threatened the interests of taxpayers. In his study of the Wisconsin lumber industry in the nineteenth century, James Willard Hurst identified two reasons why the lumber industry and the principal taxpayers generally opposed the creation of new local government units. They were concerned that the
"temptations inherent in the spending that would go with setting up a whole new county machinery" would "tend to increase the burden of taxation." Furthermore, the establishment of new town and county governments conduced toward public corruption because "in the newer, thinly settled counties... it was peculiarly hard for local officials to withstand private importunities and peculiarly difficult to staff the public offices with men of probity and detachment from personal fortune." Indeed, one of these newly-created counties was Vilas county, the source of the *Land, Log, & Lumber Company* case, in which the former chairman of the board of supervisors was alleged to have, among other things, billed the county for constructing a "pretended county highway" that did not exist. Finally, the absence of central supervision of local government by state legislatures in many states contributed to the rise in taxpayers' litigation. As Hurst noted, "[L]egislative initiative for policing or invigorating local government was rare, episodic, and marked by that relative indifference to adequate implementation that stamped most nineteenth-century statute law."

**Progressive-era Taxpayers' Suits in New Hampshire**

A survey of taxpayers' actions in New Hampshire during the Progressive Era illustrates the salient features of the law, the objectives of taxpayers, and the concerns of courts. In *Blood v. Manchester Electric Light Co.* a group of taxpayers in the city of Manchester asked the courts to invalidate an 1893 contract between the city and Manchester Electric Light Company to provide electric lighting for the city streets for ten years. The taxpayers' objections to the agreement are not apparent from the court's decision. Perhaps they were Luddites who opposed the conversion of municipal lighting systems from gas to
electricity, a sentiment that played at least some part in an 1890 taxpayers' suit against the city of Buffalo to restrain that city from substituting electric lights for gas. More likely, the Manchester taxpayers believed the terms of the contract and the expenditure of public funds to be imprudent and wasteful. Whatever the citizens' motivation, the taxpayers argued that the contract was invalid because city officials could not bind the city to a contract that extended beyond their term of office. At the outset, the New Hampshire Supreme Court acknowledged the right of New Hampshire taxpayers to request a court of equity to "restrain a municipal corporation and its officers from appropriating money raised by taxation to illegal or unauthorized uses" and noted that the basis for "such a suit is to enforce a trust with a municipal corporation on behalf of its taxpayers." The court ruled, however, that in this case the term of the contract was for a reasonable duration and that the contract was legal because the city councilors had, "in good faith, exercised that discretion lodged with them." Thus, the court denied the taxpayers' petition.

Seven years later taxpayers in Concord, New Hampshire instituted a proceeding in equity seeking to enjoin the city from constructing a new municipal building and from issuing municipal bonds to pay for it. Between November 1901 and March 1902, the city council had adopted various resolutions authorizing the expenditure of up to $130,000 to pay for the project, and on March 25, 1902, the city purchased land for the proposed site. The taxpayers filed their action on April 3, 1902, contending that the city's real intention was to build, not a municipal building, but an opera house for purposes of entertainment and that, regardless of the city's purpose, the proposed cost was unreasonable. The state Supreme Court rejected both contentions, finding no evidence that the city council planned to build
anything other than a building for purely municipal purposes and that the “right to determine the cost of the building is vested in the city council as a matter of legislative discretion. So long as they proceeded in good faith the court cannot interfere.” Equity judges were prepared to afford a remedy for illegal acts of public officials, but not for lawful, albeit ill-conceived or unwise, acts falling within the bounds of their discretion. Moreover, courts were willing to enjoin future unlawful acts of municipal officers but loath to attempt to “unring the bell” with respect to past conduct.

In 1904, a proposed baseball park became a bone of contention between the city of Portsmouth, New Hampshire and a number of its taxpayers. In 1716 an eleven-acre public common had been given to the city; it had been used for militia musters and as a public playground since that time. In 1903 the city council proposed to fence the common “for the purpose of amusement and for the better protection of city property.” A group of Portsmouth taxpayers instituted suit in which they alleged that the city, pursuant to this resolution, actually intended to privatize the city common by building a baseball park that would be operated by private individuals who would charge a fee for admission. They asked the court to restrain the city from constructing the baseball park and from voting to fence the common. The court sided with the taxpayers on the first request and against them on the second. It began with a bold declaration of “the power of the court to restrain city councils at the suit of a taxpayer for acting illegally,” affirming that it is

the policy of the law to subject all persons acting in a trust capacity to the control of the court... So city councils act in a trust capacity in administering the ordinary business affairs of the city... Since they act in that capacity, they are subject to the control of the court... [T]here is the same need of a remedy to prevent city councils from abusing their trusts that there is to prevent other trustees from abusing theirs.
The court then ruled that the relevant New Hampshire statutes did not authorize cities to use money raised by taxation to build baseball parks and that, consequently, the construction of such a park by the city of Portsmouth would be illegal. The court also stated that any uses to which the city put the common “must be public.” Accordingly, the court held that the city could not be enjoined from passing the resolution to fence the common because construction of a fence to protect the property was legal. The city could, however, be restrained from building a baseball park or otherwise using the common in a manner that excluded the public for an unreasonable time. The Court thus endeavored to strike a balance between the lawful acts of public officials and the legitimate interests of the taxpaying public.

Another New Hampshire taxpayer case from this period is Cox v. Jones, decided in 1906. In that case taxpayers of the Meredith Village Fire District sought to restrain the execution of a contract between the district and the Meredith Electric Light Company to light streets. In August 1904 the district had entered into an agreement with a company to light the streets for one year, beginning September 1. On September 7, notwithstanding the August contract, the district negotiated a second contract for the same services with Meredith Electric Light Company, this time for a five-year period. The taxpayers maintained that the second contract was illegal because it exposed the district to a breach of contract action from the utility company awarded the first contract, and because it was not in the district’s best interests to enter into the second contract. The court rejected both arguments. First, it ruled that the second contract was lawful, and the fact that the district did not intend to honor the first contract did not make the second one illegal. Furthermore, it concluded that, even if the district’s action in making the second contract was “hasty and ill-advised” and “not in the
best interest of the district” and its taxpayers, that “would not authorize the court to enjoin the defendants.” Even though a court may restrain a municipal corporation from using tax monies for illegal purposes, it explained, it “has no authority to enjoin such corporation[s] from doing what the law authorized them to do.” While affirming the rights of taxpayers to obtain injunctive relief for unauthorized or illegal acts, the court declined to afford relief for lawful acts, however unwise.

The New Hampshire taxpayers’ suits in the Progressive Era are representative of the manner in which courts of equity in most states had developed the law governing taxpayers’ actions during the preceding half century and of the competing interests of taxpayers and tax spenders. The right of taxpayers to restrain illegal acts of local officials was firmly established, as were the limitations on that right. Judges mostly adopted a flexible and common-sense approach, providing injunctive relief in cases of illegal, fraudulent or corrupt actions but generally (if not always) declining to grant it in the absence of such bad behavior. Taxpayers challenged a broad variety of municipal actions, almost always on the grounds that the proposed actions would increase the citizen’s tax burden. Municipal officials defended the scope of their authority, the bounds of their discretion, and their ability to govern efficiently.

**Authorization of Taxpayers’ Suits by Statute**

In those few states in which the judiciary did not afford taxpayers the right to maintain taxpayers’ suits in courts of equity, the other two branches of government, responding to political pressure, came to the rescue. In Massachusetts, where the courts had
refused to provide taxpayers with a judicial remedy for alleged abuse of authority by municipal officials, the legislature in 1847 gave the Supreme Judicial Court jurisdiction, upon the petition of ten or more taxable residents of a town, to restrain the unlawful expenditure of public funds. In 1905 the legislature in Kansas, in which the courts had followed the New York rule denying taxpayers the right to enjoin the illegal acts of public officials, enacted a statute affording taxpayers that remedy. In some states in which the courts had already established the right of taxpayers to challenge local government actions, the legislatures expanded those rights. An 1881 statute in Indiana, for example, authorized county taxpayers to appeal certain actions of county commissioners. Perhaps the state in which taxpayers were most in need of a judicial remedy for illegal acts of government officials, though, was New York.

In the decade prior to 1872, several developments converged to create immense public pressure for legislative recognition of taxpayers’ suits in New York. First, New York was then the nation’s most populous state and among the most urbanized, and New York City was the largest city in the United States. Consequently, the nature and magnitude of potential official misconduct in New York was proportionally greater than in other states. Moreover, the harsh reality of government corruption of seemingly unparalleled scope was brought home vividly to New Yorkers with the exposure of the Tweed ring in 1871 and the arrest of William "Boss" Tweed in late 1871. The *New York Times* began providing sensational coverage of Tweed’s crimes in July 1871, and Thomas Nast’s political cartoons in *Harper’s Weekly* depicted the political rot that had infected Tammany Hall. Tweed understood only too well the political potency of Nast’s cartoons. According to Nast
biographer Albert Bigelow Paine, after Nast's publication of a two-part cartoon entitled "Two Great Questions," Tweed declared:

Let's stop them d_d pictures... I don't care so much what the papers write about me — my constituents can't read; but, d_n it, they can see pictures.  

Finally, only a decade earlier the state's highest appellate court, in its 1861 decision in Roosevelt v. Draper, had reaffirmed its refusal to allow taxpayers' suits in equity courts. The confluence of these circumstances prompted the New York legislature and the governor to take action to provide taxpayers with a judicial remedy for official misconduct, a remedy that would encourage transparency and integrity in government.

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Figure 1 Cartoon from Albert Bigelow Paine, TH. Nast: His Period and His Pictures (New York: The Macmillian Co., 1904), 179.
Even though he had been Tweed's handpicked candidate for governor, Governor John Hoffman had to respond to the public outcry for cleaning up Tammany Hall. In his January 1872 annual message, Hoffman, characterizing himself, "like everyone else, [as] a Reformer," called for "a remedy in Courts for taxpayers against abuses of trust." The state legislature promptly passed a bill authorizing taxpayers' actions to redress wrongful acts of public officers, but Hoffman vetoed it on February 12 because "its provisions were open to serious objections." The Court of Appeals, in an advisory opinion requested by Governor Hoffman, had indicated that Hoffman's objections were well-founded. Hoffman, noting that in "times of unusual excitement about abuses in the Administration, and when the demand for correction and reform is urgent and loud, it is especially important that those charged with the responsibility of legislation should move with great caution," returned the bill to the state senate to make "such amendments... as will carry out effectually the important purposes which the legislature had in mind."

The New York Legislature made the necessary revisions and, later in 1872, passed "an act for the protection of taxpayers against fraud, embezzlement and wrongful acts of public officers and agents," which the governor signed. The 1872 statute authorized a taxpayers' action "to prevent waste or injury to any property, funds or estate" of any county, town, or municipal corporation. The New York Court of Appeals upheld the constitutionality of the statute in its 1875 decision in People v. Tweed.

Tweed was eventually brought to justice, although not under the 1872 statute. In 1873 he was prosecuted criminally, convicted and sentenced to a twelve-year prison term. Tweed was also the principal target in a civil suit by the state of New York under an 1875
statute authorizing the state to institute suits to recover money fraudulently obtained from a municipality.\textsuperscript{50} The state was represented in this suit by a trio of distinguished lawyers, including James Coolidge Carter, a prominent Mugwump reformer.\textsuperscript{51} Carter was a leader in a number of nonpartisan organizations whose primary purpose was to eliminate corruption and promote reform in municipal government, including the City Club Of New York, the National Municipal League, and the New York City Citizens Union.\textsuperscript{52} The state sought to recover misappropriated public funds in excess of $6 million. There was so much public interest in the trial that the \textit{New York Times} covered the March 7, 1876 closing arguments of Carter and Tweed’s attorney, David Field, in great detail.\textsuperscript{53} On March 8 the jury returned a verdict against Tweed for more than $4.7 million, which verdict with interest exceeded $6.5 million.\textsuperscript{54}

Although Tweed may not have been the object of the 1872 statute authorizing taxpayers’ suits, he was clearly the impetus for it. Not only did contemporary politicians and newspaper coverage make the connection, but so did New York courts on more than one occasion. In a 1916 decision the New York Court of Appeals, after reviewing the common law rule in New York that did not allow a taxpayer to bring an action unless he had suffered some damage not suffered by taxpayers in general, observed that the legislature recognized that this condition of the law was inadequate to protect the public rights where public officials who were charged with the enforcement of the law were themselves guilty of waste or injury to public funds or property or illegal official acts. The need for legislation upon this subject was made very apparent in the litigation growing out of the frauds of Tweed and his associates...\textsuperscript{55}

Two years later the Appellate Division traced the roots of the legislation to the same source, noting that the legislature had enacted the various statutes authorizing taxpayers’ suits “[a]s
a result of the many illegal and wasteful acts committed by Tweed and his associates.\textsuperscript{56}

Judges in other states also appreciated that public outrage and political pressure had forced the political branches of government to create a remedy for aggrieved New York taxpayers. In 1898 the Wisconsin Supreme Court, emphasizing the necessity of such remedies and declaring that their earlier absence in New York "amounted to an absolute denial of justice," observed that it was the early doctrine in New York that a taxpayer could not prosecute such an action as this. The result was that when the people of the city and county of New York discovered that they had been systematically plundered by trusted officials, and the members of the governing body of the corporations were so interested in the fraudulent schemes by which the people had been defrauded that they would not prosecute to recover the public funds, squandered and lost, such taxpayers were powerless to meet the situation in any effective manner, and the legislature was compelled to provide a remedy.\textsuperscript{57}

The Legislature amended the 1872 taxpayers' statute on several occasions and eventually incorporated it in section 1925 of the New York Code of Civil Procedure.\textsuperscript{58}

In 1881 the New York Legislature passed a second, broader "act for the protection of taxpayers," chapter 531 of the Laws of 1881, to provide more effective protection against official misconduct. Not only did this statute authorize a taxpayer to bring suit to prevent "waste or injury" to public property, as had the 1872 law, but it also authorized taxpayers' actions to "compel the restitution of such property" and to "prevent any illegal official act." This statute was amended in 1887 and again in 1892, and it was eventually codified in section 51 of the General Municipal Law.\textsuperscript{59}

In the generation following the enactment of the two acts for the protection of New York taxpayers, citizens instituted scores of taxpayers' actions and the courts had numerous
opportunities to interpret and apply those statutes and to develop a coherent body of law governing such actions. The fact that New York City and other major New York municipalities in this era were often controlled by political machines, to which complaining taxpayers had little access through ordinary political channels, largely accounts for this burgeoning of taxpayers' litigation. The most frequent complaint of taxpayers was that public officials had illegally paid out public funds, often to themselves. In an 1887 case the Court of Appeals ruled that a taxpayer could maintain an action under the 1881 statute to restrain a county treasurer from paying to himself his fees and expenses in connection with the sale of land for the county before his claims had been audited and allowed by the town auditors. Such action by the treasurer, the court ruled, would be an "illegal official act" covered by the statute. The Court reached a similar conclusion in favor of a taxpayer who sued the three members of the Nassau County Board of Supervisors to recover from them monies that, the taxpayers alleged, they had illegally and collusively paid to themselves for services rendered to the county. Courts also restrained other types of illegal actions, as in the case of a taxpayer who obtained an injunction barring the superintendent of buildings for Manhattan from approving plans for the alteration of a theater that would violate the city fire code and therefore constitute a public nuisance. Like courts of equity in other states, New York courts refused to provide a remedy for discretionary acts of public officers within the scope of their authority, regardless of how imprudent the proposed action may have been. In Talcott v. City of Buffalo, for instance, a taxpayer filed suit to restrain the city of Buffalo from substituting electric lights for gas lights on one of its streets. The Court of Appeals dismissed the action, ruling that city officials had the authority to make the proposed change
in lighting systems and that courts would not restrain officials “acting within the limits and scope of their powers and discretion” even though a taxpayer alleges that the intended action was “due to mistakes, errors of judgment or the lack of intelligent appreciation of official duty,” in other words, stupid. New York courts were diligent, however, in crafting appropriate remedies in cases involving waste, injury to public property, or illegal acts that threatened the public interest.

The Legacy and Importance of Taxpayers’ Lawsuits

By the turn of the twentieth century the United States had undergone something of a taxpayer’s legal revolution. The taxpayers’ suit, almost unheard of a century earlier, had become firmly ensconced in the jurisprudence of every state, either through the efforts of courts of equity or state legislatures. In the twentieth century, middle-class political activists built upon this foundation and utilized taxpayers’ actions to pursue their goals in a number of contexts. Reformers and progressives seeking to liberate New York City from Tammany Hall between 1900 and 1935, for example, used a variety of tactics, one of the most important being the taxpayers’ suit. The Citizens Union, the political arm of the New York City Club, implemented a concerted litigation program to combat Tammany Hall’s influence. Taxpayers’ litigation provided a means by which political outsiders could facilitate political change and hold government accountable.

The taxpayers’ suits of the nineteenth century are also significant because of what they tell us about nineteenth-century Americans’ notions of citizenship. Taxpayers viewed themselves as political actors; they saw paying taxes as a source of political legitimacy and
empowerment and as a badge of citizenship. The connection between paying taxes and citizenship was most often made by Americans when considering the right to vote. In the colonial era and the early Republic, the right to vote was extended only to those who owned property and paid taxes. As historian Linda Kerber has noted, suffragists likewise understood tax paying and voting as two sides of the same citizenship coin, anchoring one indication of citizenship, the right to vote, on another, the obligation to pay taxes.65 Nineteenth-century judges explicitly acknowledged the connection between paying taxes and citizenship, variously identifying the persons bringing actions as “taxpayers and citizens,” “citizens and taxpayers,” and “citizens who pay taxes.”66 The obligation to pay taxes was an incident of citizenship and gave rise to a corresponding right as a citizen to take legal action to ensure that public officials did not violate the trust that citizens had reposed in them.

The development of the law regarding taxpayers’ lawsuits also served an important political function. By empowering the judiciary to entertain taxpayers’ actions and to afford relief in appropriate cases, courts and legislatures provided a means by which citizens could lawfully, and within the bounds of civil society, achieve legitimate goals, require public officials to answer for their actions, and encourage good government. As a consequence, the law and the legal order gave citizens an outlet through which they could release political steam, a constructive way in which to vent and to obtain a public benefit for themselves and their fellow citizens. This aspect of taxpayers’ actions served the United States well in the late nineteenth and early twentieth centuries as accelerating industrialization, urbanization and immigration dramatically expanded the size and scope of municipal government and, consequently, the tax burden of property owners.
Finally, the taxpayers' actions reflected certain prominent features of the nineteenth-century American legal order. They represented one of the many ways in which Americans made affirmative use of the law to further their interests and employed the legal order, in Hurst's words, "wherever it looked as if it would be useful."67 They also reflected the expansion of judicial review and judicial intervention in American life.68 For the most part, judges were unwilling to see justice want for lack of a remedy when confronted with waste, injury to public property, or illegal acts by government officials. They adapted the law, addressed citizens' complaints, and devised such equitable remedies as the situation demanded in order to effectuate the policies of integrity and accountability in government. In doing so, as Morton Horowitz has argued, "common law judges came to play a central role in directing the course of social change."69 Nineteenth-century judges understood that they were breaking new ground in recognizing taxpayers' actions, noting that "the precedents for suits of this nature are of modern origin."70 Where direct resort to the legal system did not avail, taxpayers pursued the goal of obtaining a judicial remedy for government malfeasance through political channels. Consequently, in those states in which the courts did not jump into the breach, state legislatures, responding to political pressure from their constituents, created judicial remedies by statute for aggrieved taxpayers. Throughout the nineteenth century, both courts and legislatures refashioned the law to accommodate the needs of a growing and urbanizing society, in which the public sector and public spending played increasingly important roles.

In taxpayers' litigation we see, among other things, a fusion of legal activism and political activism. Time and again, citizens resorted to the courts in the pursuit of political
objectives that they had been unable to attain through traditional politics. When Vilas County, Wisconsin taxpayers were unable to convince the county board of supervisors to file suit against a former county official to recover funds that he had plundered from the county treasury they turned to legal action, as did New Yorkers when they, through the usual administrative and political channels, failed to prevent city officials from turning a public theater into a fire trap. Drawing on this nineteenth-century heritage, twentieth century middle-class Americans would utilize taxpayers' suits with increasing frequency to promote good government, political reform and political change.


7. See, for example, *Winn v. Shaw*, 87 Cal. 631, 25 P. 968 (1891); *City of Richmond v. Davis*, 103 Ind. 449, 3 N.E. 130 (1885).


10. See, for example, *Miller v. Jackson Township of Boone County*, 178 Ind. 503, 99 N.E. 102 (1912).


18. Ibid., 135.


20. *State v. Frear*, 148 Wis. 456, 500–501, 134 N.W. 673, 687 (1912). Other cases in which the courts liken the duties of public officials to those of directors in private corporations and discuss the breach of trust principle include *Jackson v. Norris*, 72 Ill. 364 (1874) and *Sherburne v. City of Portsmouth*, 72 N.H. 539, 58 A. 38 (1904).


23. This is a recurring theme in American legal history, especially during the past two generations in which, for example, blacks have initiated actions to enforce their civil rights, pro-choice advocates have turned to the courts to define and protect the reproductive rights of women and, more recently, gay activists have sought judicial recognition of "gay marriage."


28. Ibid.


34. *Parker v. City of Concord*, 71 N.H. 468, 471–472, 52 A. 1095, 1097 (1902). The court also upheld the trial court’s finding that the taxpayers had lost their right to challenge the city’s actions by virtue of their “unnecessary, unexplained and unreasonable delay in filing their bill” only after the city had gone forward with the project. At the same time the court noted that the taxpayers’ delay in instituting this suit would not bar them from filing a new action in the future to restrain the city from performing future illegal or unauthorized acts in connection with the project (for example, if the city did undertake to erect an opera house).


45. Specifically, the governor was concerned that the proposed statute would have unintended consequences – that it would transfer title to municipal property from the municipality to its officers and that it would "give tax-payers the exclusive right to sue for wrongs by municipal officers" and take away the municipal corporation's right to bring such actions. "The Governor's Veto," *New York Times*, February 13, 1872.

46. Ibid.


52. Ibid., 580.


57. *Land, Log & Lumber Company v. McIntyre*, 100 Wis. 245, 255, 75 N.W. 964, 967–968 (1898).


59. *Altshul v. Ludwig*, 216 N.Y. 459, 466, 111 N.E. 216, 218 (1916) and *Talcott v. City of Buffalo*, 125 N.Y. 280, 287–288, 26 N.E. 263, 265 (1891) both contain a good discussion of the convoluted legislative history of both the 1872 and the 1881 statutes. The 1881 statute essentially conferred on New York taxpayers the same rights to relief for misconduct by local officials that courts of equity in most other states had developed for their citizens by the late nineteenth century.


64. Chapter 2 examines the activities of the Citizens Union and its litigation program.


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68. Friedman, A History of American Law, 530.


70. Carman v. Woodruff, 10 Ore. 133 (1882).
CHAPTER II

THE HAMMER OF JUSTICE:
TAXPAYERS' LITIGATION AND POLITICAL REFORM IN NEW YORK CITY

As the year 1920 drew to a close, Leonard M. Wallstein, legal counsel for the Citizens Union of the City of New York, contemplated with immense satisfaction the newest trophy on the wall of his office. The prize was a personal check in the amount of $250.00 from New York City Comptroller Charles L. Craig, which Wallstein recently had framed. The previous year Wallstein had brought a taxpayers' action on behalf of Citizens Union chairman William Jay Schieffelin against Craig and other city officials to enjoin them from issuing $4.5 million of corporate stock of the city of New York and from using $1 million of the sale proceeds to construct a subway system, with the balance to be used to reduce the 1919 tax levy. The Citizens Union's objection was not to the subway project itself but to paying for it by issuing long term corporate stock (which would not be paid off and retired for fifty years) rather than by issuing, in accordance with the city's former "pay-as-you-go" policy for such projects, special revenue bonds that would be paid the following year. The Citizens Union also opposed using long-term debt to reduce current taxes. The trial court had granted the injunction on February 13, 1919, a ruling that was later upheld by the appellate courts. Although Craig was served with the injunctive order on the afternoon of February 13, he failed to inform his subordinates and other city officials of the restraining order, and on February 15 and 17 they proceeded to issue and sell $1 million of the stock and to apply the proceeds in violation of the injunction. Wallstein was furious with Craig, whom
he characterized three decades later as "an ornery cuss, brilliant, resourceful and unscrupulous," and he promptly initiated contempt proceedings to punish Craig for violating the court order. According to Wallstein, the trial judge "gave Craig every opportunity to 'purge' himself of the contempt by undoing what he had done in violation of the order" but "Craig refused to repent." The judge determined that Craig had been "lamentably remiss in the discharge of his sworn duty," called Craig's excuses "puerile," found him guilty of civil contempt, and ordered him to pay a $250.00 fine and costs in the amount of $824.38. The remaining $3.5 million in stock was never issued.

Upon receiving the fine payment, Wallstein mounted it with the other trophies in his office.

These lawsuits involving Comptroller Craig were but two of more than a score of taxpayers' actions instituted by the Citizens Union, with chairman Schieffelin as the named plaintiff, between 1909 and 1930. The nature, magnitude and duration of this litigation program are unique among political reform groups in New York City during this period. This is not to say that other good government organizations in New York City never resorted to the courts. Following the election of 1889, for example, the City Reform Club successfully maintained an action to enforce election laws and was also instrumental in bringing about the indictment and prosecution of malfeasant election commissioners. Such litigation by other reformers, however, tended to be occasional and episodic. In contrast, the Citizens Union's taxpayers' litigation program was intensive and sustained, the product of a policy formulated and adopted by the Citizens Union's leadership under Schieffelin.

Historians have devoted scant attention to the taxpayers' action as an important arrow in the quiver of New York City reform groups in the late nineteenth and early twentieth centuries and have instead emphasized other aspects of their programs. Many scholars have
examined what was admittedly the most substantial and pervasive component of the reformers' agenda prior to the election of Fusion Mayor Seth Low in 1903 — traditional political activity. Obviously, this included efforts to elect reform candidates and to defeat Tammany candidates or, in the words of historian Augustus Cerillo, Jr., a strategy of "replacing bad men with good men." Indeed, the Citizens Union was established in early 1897 for the explicit purpose of participating in the municipal elections that year. The reform groups' political programs also included public education (for example, publishing voting records of legislators and information on proposed legislation), monitoring polling places to guard against election law violations, promoting specific items of legislation, mobilizing public opinion for or against legislation, and investigating city departments and publishing the findings. Some of these efforts were successful and others less so.

Other historians have focused on the shift in reform strategies after 1900 from political to business and administrative strategies that aspired to change not the men who governed, but the means and methods of public administration by which they governed. This shift in emphasis was spurred by the social science movement then being embraced by much of the city's elite. Representative of these reform efforts was the Bureau of City Betterment, established in 1905 as an arm of the Citizens Union by William H. Allen, a political scientist, with the encouragement and financial backing of Robert Fulton Cutting, a prominent New York banker and then chairman of the Citizens Union. In 1907, the Bureau became independent of the Citizens Union and was renamed the New York Bureau of Municipal Research. The Bureau employed experts in fields relevant to municipal government and, in Allen's words, would "apply the processes of research, and the disinterestedness of research, and the techniques of business management, to public affairs.
The Bureau's aims included the implementation of efficient, transparent and scientific systems of accounting and budgeting, reform of the city's administrative structure to make it more effective and competent, and the staffing of the city's bureaucracy with, where appropriate, professionals in finance, education, business, engineering and other fields crucial to municipal government. The Bureau made considerable progress toward these goals during the Democratic administration of George B. McClellan, Jr. (1904 - 1909) and enjoyed even greater success during the administration of Fusion Party Mayor John Purroy Mitchel (1914 - 1917).

Despite the reformers' achievements in facilitating political change and in promoting a business model of government in New York City, however, corruption, mismanagement and unlawful official acts in municipal affairs were endemic and remained a chronic problem throughout most of the first three decades of the twentieth century. Accordingly, following the election of William Jay Schieffelin as chairman of the Citizens Union in December 1908, the Union's leadership concluded that it needed to add to its arsenal of reform tactics one that would be efficacious in promoting reform in government, in compelling municipal officials to toe the line, and in holding them responsible when they failed to do so—the taxpayers' action. During the next two decades, and with increasing frequency and success after the Tammany machine regained control of city government in 1918 with the election of John Hylan as mayor (1918 - 1925), the Citizens Union utilized the taxpayers' lawsuit with great effect. This less known and less studied tactic complemented and furthered the reform movement's political and scientific government strategies. By exposing and rooting out corruption, the taxpayers' action facilitated reform in municipal government, and by forcing officials to adhere strictly to the law and to the new business methods of public
administration, it made city government more efficient, more honest, more open and more responsive.

For the Citizens Union, organized taxpayer activity was essentially politics pursued by other means. Political reform was the Citizens Union's objective, not its strategy, and the Tammany Machine was its specific target. Schieffelin and his reform allies aimed to force Tammany officials to adhere to the law and to the business methods of government that had been put in place by previous reform administrations, and to hold them responsible when they failed to do so. They also hoped to take down Hylan and other officials in his administration whose political philosophy and conduct they regarded as antithetical to good and honest government. The tactics that the Citizens Union employed to these ends were its vibrant taxpayers' litigation and legislative programs and, to a lesser extent, traditional political activity. In making political reform its objective, as opposed to its strategy, the Citizens Union was being true to its political roots. The Citizens Union was fundamentally a political organization and consistently acted like one. Law and legal institutions were the principal instruments through which it pursued its reform agenda.

The powerful relationship between litigation and political reform movements is an important but neglected aspect of American political culture. Innumerable studies have examined legislation as a tool of reform and litigation as a means of testing or challenging such legislative reform measures, perhaps most notably with respect to Roosevelt's New Deal initiatives. Few works, however, have investigated litigation as a tactic or tool to promote reform. The Citizens Union used the taxpayers' suit for precisely this purpose.

These taxpayer's actions are also worthy of scholarly inquiry because of what they convey about New Yorkers' conceptions of citizenship and of the law in the early decades.
of the last century. Residents of the city understood that their right to bring such actions was grounded in their status as taxpaying citizens. As taxpayers they had a vested interest in how well government worked and, consequently, the right and the motivation to protect and further those interests through litigation. Moreover, the fact that Schieffelin and the other leaders of the Citizens Union were prepared to entrust to the courts important issues that would have a direct impact on public policy and municipal administration suggests that, for the most part, they regarded the legal system as an honest broker of significant disputes, and the law and the courts as responsive to the public’s interest in good government. Its litigation program represented an alliance of legal and political activism of unparalled vigor.

Political Reform at the Turn of the Twentieth Century

The emergence of numerous reform organizations during the last two decades of the nineteenth century provides the context and background for the Citizens Union’s activities in the next century. The reform efforts precipitated by the Tweed administration scandals and the reform organization largely responsible for Tweed’s ouster, a nonpartisan committee of seventy, had been short-lived. With the resurgence of Tammany Hall by 1880, renewed reform efforts began in earnest. Many reform organizations were established in the ensuing years, including the City Reform Club, The City Club of New York (which claimed thousands of members by 1895), and the Citizens Union. In addition, businessmen and professionals pursued reform through other existing civic and professional organizations such as the Chamber of Commerce and the New York County Bar Association.

The various associations of reformers shared two important characteristics. First, although hardly a unitary lot, the reformers tended to be what would later become known as
progressives. They generally favored expanding the regulatory functions of government in order to promote the public welfare and progressive change in American society.\textsuperscript{16} Most also embraced another key element of progressivism – “an ideological commitment to professionalization, scientific rationalization, and administrative governance.”\textsuperscript{17} In the context of municipal reform, this meant that these reformers espoused a business model of government and the application of the “municipal research idea” to government, which would become formalized with the creation of the New York Bureau of Municipal Research in 1905. “The Progressives, viewing reform primarily as an administrative process,” endeavored “to replace men and measures with methods of administration” and to professionalize municipal government.\textsuperscript{18}

Second, the three most important political reform organizations in New York City all had occasion to invoke the coercive power of the law to advance their reform objectives. In 1890, the City Reform Club filed a lawsuit to enforce laws aimed at preventing election fraud.\textsuperscript{19} Ten years later the City Club brought charges against a district attorney, whom they considered a corrupt and pliable tool of Tammany, in an effort to have him removed from office.\textsuperscript{20} In 1907, the Citizens Union pressed charges against a borough president for maladministration in office and supported a lawsuit instituted by the state attorney general to invalidate the official’s re-election.\textsuperscript{21} By the time the Citizens Union launched its sustained taxpayers’ litigation program in 1909, New York City’s political reformers had established a tradition of resorting to the law and to the courts to achieve their goals.

The City Reform Club was the first of this generation of reform organizations to be constituted. According to one historian, New York City Assemblyman Theodore Roosevelt was the impetus for the formation of the Reform Club on October 10, 1882, as a response
to the resurgence of Tammany. Roosevelt held an organizational meeting at his home and invited prominent young Republican men for the purpose of devising some means to purify local government of corruption and graft. The stated goal of the club was to promote the election of “honest and capable representatives” to municipal offices. In a letter to the New York Times on October 14, however, Roosevelt resigned his membership, having concluded that the club’s membership should not include present or future public officeholders, in order to preserve the integrity of the organization and demonstrate a nonpartisan interest in municipal politics.22

Over the next few years this group of business and professional men formed a committee on political information to inquire into the workings of city departments. To educate the citizenry about problems in local government, the City Reform Club conducted a series of lectures on municipal reform. In 1886, Roosevelt’s friend and former classmate, Richard Welling, was elected to the executive committee and served as the club’s treasurer. Welling’s presence reinvigorated the club’s leadership and caused a shift in its focus. Over the next ten years the club compiled and published the voting records of New York City’s representatives in the State legislature, a process that was later assumed by New York City Club, and thereafter by the Citizens Union.23 Perhaps the most significant project of the Reform Club for Welling, John Jay Chapman and his cousin William Jay Schieffelin (who joined the club in 1889) was the club’s efforts to police New York City saloons during the municipal elections of 1887, 1888 and 1889, in order to detect and prevent election law violations.24

The context for the reformers’ efforts was the political function and culture of the city’s saloons. Historian Michael Lerner has highlighted “the legendary connections between
saloons and Tammany Hall that characterized New York City politics in the late nineteenth and early twentieth centuries.” In New York City the close “links between corrupt political machines and the alcohol trade” were notorious. Many Tammany elected and appointed officials were themselves saloon owners. In 1890, for instance, nearly half of the city’s aldermen owned saloons. Saloons served not only as headquarters for Tammany politicians but also places where they purchased votes in exchange for free food and drink and enlisted vagrants to cast more than one ballot in the same election. The New York City saloon had been the site of immense graft and voter fraud for decades.25

The reformers sought to target these practices by invoking the excise laws, which regulated the sale of liquor.26 The specific excise law on which they relied, the enforcement of which historically had been lax to say the least, required all saloons within one quarter of a mile of a polling place to be closed on election day. The purpose of this proscription was to deter the purchase of votes with liquor or other inducements.27

In the weeks preceding municipal elections the club appointed neighborhood saloon “watchers” who took careful notes on excise law violations and incidents of voter bribery. During the 1887 election the Reform Club compiled evidence of “false registration, false voting, bribery of voters, and [voter] intimidation.” The evidence was submitted to New York City District Attorney Martine immediately following the election. A month later, according to a New York Times editorial, the authorities’ failure to launch an investigation into the fraudulent activities documented by the club was “puzzling the wits of all honest citizens.” The editorial questioned why the district attorney appeared disinterested in the fact that “election frauds [were] committed and every law for the protection of the ballot box [was] violated in this city.”28
The Reform Club’s “abundant evidence” against Tammany leaders included the rounding up of “thieves and tramps” and lodging them in boarding houses where they were registered under bogus names and paid to vote for a particular candidate. Among the “fraudulent devices” utilized during the election “were the organizations formed for the purpose of selling the votes of its members to the highest bidders.”

Martine, citing an immense work load comprising what he considered to be more serious crimes, took no action and, in this same election, won a six-year term as Judge of the General Sessions. In the spring of 1887, the new district attorney, John R. Fellows, finally presented the Reforms Club’s evidence to a grand jury. After months of political posturing and several grand juries, in October 1888, it was finally concluded that although election fraud clearly had been committed, no one could be prosecuted. In January 1889, Richard Welling of the Reform Club noted that the repeated delays by the district attorney had allowed one of the accused saloon owners enough time to flee to Canada.

Despite such legal setbacks, the Reform Club was determined to continue monitoring municipal elections. During the fall elections in November 1888, the club again recorded a number of excise law violations against more than 150 saloons. As before, district attorney Fellows delayed action until forced by public opinion, in June 1889, to make some attempt at resolving the matter. The district attorney, however, merely gave lip service to the media and to the Reform Club, for as late as September 1889, all efforts to bring charges against election law violators had been unavailing.

Exasperated by their unsuccessful attempts to bring to justice those who had violated the excise law on election day, Welling and the Reform Club renewed their efforts. Schieffelin later recalled that the club sent out notices to licensed saloon owners who
operated within the proscribed limit of a polling place. On election day, club members serving as election watchers brought surveyors' steel measuring tapes and measured the distance between the saloon entrance and the polling place. If the saloon was within the quarter-mile-limit, the club members would enter the saloon and buy a drink to confirm the violation. The club's crusade against excise violations amassed evidence against between eighty and one hundred saloon keepers. Following the election they submitted their evidence to the excise commissioners who, according to Schieffelin, "laughed at [the] charges."  

Welling and the Reform Club exhorted the district attorney to bring charges against the commissioners who, according to the *New York Times*, were acting as "friends and protectors of saloon keepers" who had violated the election laws. In April 1890, Assistant District Attorney Henry Stapler, assisted by City Reform Club counsel Lewis L. Delafield, obtained indictments against the excise commissioners, charging them with malfeasance in office. During the trial a minor flaw in the indictment forced the court to direct the jury to acquit the defendants on this particular indictment, but the Court allowed the district attorney to reindict the commissioners.  

Concomitantly, Welling, as a "resident and taxpayer of the city of New York," brought an action to obtain a writ of mandamus to compel the excise board to render a decision upon a complaint he had filed against a saloon owner named Scheuplein for serving liquor on election day in 1889. The commissioners had repeatedly delayed hearing and acting on his complaint, although he and the witnesses were prepared to proceed. Judge Barrett found that the commissioners clearly had neglected their duty in not deciding these cases in a reasonable time. According to Barrett, this was "plain negligence, and it was subversive of the law...and the writ should therefore issue with costs." The commissioners
appealed Barrett’s decision, arguing that Welling had no right “either individually or as a citizen’ to a judicial determination of any question by the commissioners.” The appellate judge concluded that the commissioners’ appeal “overlooks the fact that under the statute the board is required to act ‘upon the complaint of any resident’ of the city.” Based on this and other arguments, it affirmed the earlier order. Refusing to relent, the commissioners appealed further, but the court affirmed the decision and awarded Welling costs. Following this victory, Welling and the Reform Club’s counsel, Charles W. Barnes, again asked the excise commissioners to render decisions in nine 1889 election fraud cases. Schieffelin, a member of the Reform Club and an election watcher in 1889, was the principal witness in one case. Despite the presentation of what the New York Times described as “convincing” evidence, the commissioners ruled that there had been no violation of the election laws, a decidedly unsatisfactory result from the Reform Club’s perspective.

In 1892, the Court of Appeals upheld the second set of indictments that Stapler had brought against the excise commissioners in 1891. The decision required the commissioners to stand trial for malfeasance with the possibility of being sentenced to a year in jail if convicted. In the meantime, the state legislature, under pressure from Tammany state senator George Plunkitt, had amended the statute that held excise commissioners accountable for their actions and had made their failure to act punishable by incarceration. Under the new bill excise commissioners found guilty of failing to perform their official duties would only be fined $250.00 and removed from office rather than face a prison term.

The Reform Club’s persistent legal actions may not have had the results for which it had hoped, but the club did force Tammany to change its tactics on election day to some extent in 1890. According to a New York Times article, during the November elections that
year “hardly a saloon within one-quarter of a mile of a polling place was open.”

Although the City Reform Club had mixed results from its attempts to purge elections of corruption, it was successful in blocking the construction of a “speedway” (more commonly known as a race track) along the west side of Central Park. In 1892, Senator Plunkitt was again at work trying to slip bills through the New York state legislature without attracting too much attention. This time Plunkitt’s stealth bill provided for the conversion of the west side of Central Park from 59th to 110th Streets into a public race course with taxpayers’ dollars. Schieffelin later observed that “in those days” it was fashionable for “rich men” to “enjoy driving fast horses and trying to pass each other on the road.” Members of New York’s upper crust, including Cornelius Vanderbilt, Schieffelin’s father, and prosperous Tammany leaders drove their fast trotters “all the way up to Jerome Avenue, beyond Harlem River in order to have a stretch of broad highway with no cross streets.” The bill was passed very quickly and quietly. According to the media, the governor signed the bill into law a mere ten minutes after its passage in the assembly.

When the race track statute became public, the New York Times observed that it “would have been difficult for the powers that be in this city and in Albany to have offended the people of New York more grossly than by passing [this] law to turn the entire west section over to a few owners of race horses and taint the rest of the Park with the evil presence of the crowd that a race track would surely attract.” In response to the public outcry the City Reform Club called for a mass meeting to demand the repeal of the act, declaring that “the Park was created for the whole public, and should never be despoiled or diminished for the benefit of any class.” By the time the meeting was held public demands for repeal of the law had increased considerably, due in part, according to Schieffelin, to Park
Commissioner Gallop ordering “white cotton strips tied around the trunks of all the trees that were to be cut down to make room for the speedway.” A few days later various groups submitted more than 7,000 signatures protesting the speedway. Another club member, John Jay Chapman, placed a coupon in the newspaper asking for $1.00 donations to cover protest movement expenses. According to Schieffelin, within a few days they had “received $8,000 in one dollar bills.” The sheer volume of individuals protesting the proposed race track prompted the New York Times, claiming to quote Lord Brougham, to write that “the thunders of heaven are sometimes heard to roll in the voice of a united people.” Many called for the resignation of the park commissioners. With the money raised by Chapman a group of one hundred citizens hired a train to travel to Albany and demand the repeal of the speedway law. The magnitude of the citizen protest weighed heavily on the elected representatives in Albany. On the last day of the legislative session, April 14, 1892, the law was repealed. The effect of this coalescing of various classes and political groups to effectuate change also had a marked influence on Schieffelin, who noted that one lesson he learned from this episode was that “public opinion was all-powerful when aroused in a just cause.”

The public unity inspired by the speedway victory, however, did not produce sufficient energy to spur City Reform Club members to pursue more pressing municipal reform. The Reform Club’s fundamental problem was that it lacked a formal organizational structure and enough members committed to continue the fight. After five years of legal wrangling over the election law violations, club treasurer Richard Welling had lost much of his earlier enthusiasm. According to one historian, internal dissensions over the club’s inability to bring about municipal change ultimately led to its demise. Several key leaders, including Edmond Kelly, resigned because they disagreed with the “uncompromising
idealism” of the older and perhaps more traditional members. Kelly, an “able exponent of collectivism, in fact a socialist,” felt that the city needed a new reform organization, one that would reach out to the recent immigrants and working-class citizens of New York and offer them an alternative vision for the city’s future. The City Reform Club continued to lose members, and by 1894 it was no more.

The mid-1890s witnessed a “rising sentiment for non-partisanship in city affairs” and calls for “good, honest city government” in New York City amidst the progressive movement that was then gathering steam across the nation. The astute Kelly took advantage of this energy by persuading concerned leaders in a number of reform organizations to come together under the City Club of New York moniker. The purpose of the more formalized City Club was “to aid in securing permanent good government for the City of New York through the election and the appointment of honest and able municipal officers and the establishment of a clear and stable system of laws relating to the city.” Welling and others also demanded the deletion of the word “reform” from any name the organization might adopt, arguing that there was “a fatal implication of personal superiority in the word.” According to the organizers, “nobody likes to be ‘reformed.’ Nobody with sense assumes the rôle of ‘reformer.’” The emergence of this new organization allowed Welling to turn his efforts to a municipal reform movement led by upper-class, urban professionals.

The City Club concentrated on two important aspects of the progressive agenda – promoting good government and reforming legal institutions, particularly courts. In furtherance of the first objective, the City Club sought to organize Good Government Clubs in every assembly district throughout New York City. Many of the younger members, shaped by the emerging social science initiatives at Columbia University, saw the
professionalization of government as one means of eliminating, or at least reducing, rampant corruption, graft and favoritism. These clubs were dedicated to “securing honesty and efficiency in the administration of city affairs, ...severing municipal from national politics, and...procuring the election of fit persons to city offices.” The City Club maintained that the efforts of Good Government Clubs “made possible the election of a reform Mayor, William L. Strong, in 1894.” The City Club also became the “focal point” of Fusion Party activity.54

The City Club’s good government efforts were hampered, however, by the growing chasm between what historian Sven Beckert has termed the “self-conscious upper class in New York City” and the immigrant, working class. Illustrative is an 1897 incident in which three well-dressed club members forayed into the “regions near Second Avenue” to proclaim the virtues of honest government. The crowd they addressed was not particularly receptive to the message or the messengers and pelted “the three musketeers” with “rotten eggs, rotten vegetables, rotten mud and everything else that was rotten and could be picked up and thrown.” The event exemplifies the difficulty that upper-class reformers had communicating with and constructively engaging the average man on the street, many of whom were immigrants, and their limited ability to understand and embrace the needs of the workers and those less fortunate than themselves. To the extent that one goal of reform organizations such as the City Club was “to weaken the institutional underpinnings of political mobilization independent of elite support,” a capacity that the Tammany machine embodied, some degree of conflict between the reformers and the lower classes was inevitable. 55

The other component of the City Club’s progressive agenda, the reform of legal institutions, had two main targets. The first was Asa Bird Gardiner, the district attorney for New York County, whom the City Club deemed incompetent at best and a corrupt Tammany
political hack at worst. Gardiner had long been contemptuous of municipal reform organizations and was known for proclaiming “To hell with reform!” in an 1897 speech at a Democratic Party meeting in Harlem. The club launched a “series of far-reaching investigations, one of which led to the presentment of charges against” Gardiner in 1899, which asserted that he had used his power “as prosecuting officer to set the criminal law in motion against any citizen who venture[d] to criticise [sic] Tammany officials in language that hurts their feelings.” Governor Roosevelt ultimately dismissed Gardiner, although for reasons unrelated to the City Club’s charges. The episode is significant, though, because it demonstrated the reformers’ willingness to invoke legal processes to advance their goals.56

The second object of the City Club’s legal energies was the magistrate, or police, courts. Court reform was consistently at the forefront of reformers’ agendas throughout the nation during the Progressive-Era. Progressives targeted local courts because, as historian Michael Willrich has contended, they “were the true laboratories of progressive democracy, flexible instruments of public welfare and social governance on a scale not matched again until the New Deal.”57 Progressive-Era court reform often took two main forms – making judges more accountable to the people and, therefore, more likely to embrace and uphold the progressive platform, and improving the quality, integrity and efficiency of the judicial branch and its administration.58

It was through the magistrate courts that New York’s immigrant and working-class populations generally first came in contact with the judicial system. Legal scholars have argued that the officials in such courts act as “gate keepers” or “watch dogs” and control people’s access to the law and the justice system.59 The magistrate courts’ interaction with local citizens would certainly have shaped New Yorkers’ perceptions of the legal system.
In June 1905, City Club secretary Lawrence Veiller submitted a report to the club’s trustees calling for a “thorough and searching investigation” of the magistrate courts. He recommended that the inquiry study not only the methods and forms of procedure in vogue in these courts but also...the treatment of citizens by the Court employees and attendants, the propriety of the decisions and the attitude of the judges toward persons brought before them; the sanitary conditions of the buildings in which the courts are held; the conduct of attendants and police officers; the relations of the clerks to the judges; the adequacy of the number of courts in relation to the volume of business transacted and the need of new courts; the amount of revenue received from fines, etc.; the method of keeping court records, and other questions which may be concerned in such inquiry.60

Veiller argued that this was the most significant project the club could undertake in light of what he believed to be the “failure of the judges... to sustain arrests made by policemen,” the “lack of sympathy and support on the part of these courts” for the police department and other city departments, and the fact that the magistrate courts “stand to our large foreign population as examples of American government.”61

The City Club’s leadership accepted Veiller’s recommendations and, in July 1905, solicited club members to participate in such an investigation of the magistrate courts. The solicitation asserted that there “is no branch of our municipal government which so vitally affects the welfare of the great masses of the City’s population as the conduct of these lower courts of criminal jurisdiction... That there are many abuses in connection with their administration there can be no question.”62 Upon receiving the investigative committee’s report, the club trustees anticipated preparing and introducing appropriate legislation “to meet any evils which may be found to exist” and taking such other action “as may be necessary to secure appropriate reforms in administration.”63 In 1907, the club formalized its efforts to “look after the administration of justice in the minor courts” when it created a
The City Club was important in the history of New York City reform activities because it became something of a focal point for those efforts. Previously, the interconnectedness and overlapping of New York City’s myriad reform organizations and their memberships had obscured and diluted the potency of any particular group. As historians have observed, progressives tended to view social and economic problems as challenges to be met or ills that required treatment. What made the period unique was the multifarious programs that progressives created to respond to the societal ills that some perceived as threats to “polite culture and society” and others regarded as the difficulties presented by modernity. The City Club became the sinew that knit all these elements together and lent some degree of cohesiveness to reform efforts in New York City. Its members organized and reorganized committees to attack, in a focused and concerted way, problems of class, social and economic injustice, and political corruption.

**The Citizens Union’s First Decade**

A third major New York City reform organization was the Citizens Union. Initially, it was a non-partisan political party created by the City Club in 1897 to participate in the municipal election that year. The City Club hoped that the Citizens Union would consolidate Greater New York City’s numerous and diverse anti-Tammany groups into a political force that would liberate the city from mismanagement and corruption. The organizers of the Citizens Union sought to capitalize on several concomitant changes in New York’s municipal organization. First, the 1894 state constitution called for the separation
of municipal elections from state and national election cycles. This change allowed local
groups to unite and focus their energies on municipal concerns without the influence and
demands of state and national campaigns. Second, the Greater New York charter was
scheduled to take effect on New Years Day, 1898. The charter enlarged the city from one
borough, Manhattan, to five boroughs, the Bronx, Queens, Brooklyn, Staten Island
(Richmond) and Manhattan. This change gave city officials control of an immense
municipal bureaucracy, comprising 35,000 employees serving a population of almost
3,250,000. The “good government” men were convinced that the time was ripe for
“concerted action” to unite New York’s citizens into a cohesive political body. Lastly,
City Club members believed that, as a consequence of the past education efforts of good
government clubs in the five boroughs, many citizens were now ready to put their
knowledge into action.

The nascent Citizens Union proposed to “rid the city of ... organized piracy” carried
out by the Tammany machine. To this end, they established nine guiding principles and
objects. These included holding municipal elections separately from state and national
elections so that the city’s “affairs may be managed upon their own merits uncontrolled by
national or state politics,” selecting public officials “solely with reference to their
qualifications” and in accordance with impartial enforcement of civil service law
requirements, better schools and rapid transit facilities, enforcement of the eight-hour labor
law, and the application of “business methods to municipal affairs.”

These objectives reflected the business model of government and the social and
economic legislation for which progressives advocated. As evidenced by its support of the
eight-hour day statute, the Citizens Union aimed to reach across class and party lines to
create a broad basis for municipal reform. It nominated Republican and Columbia University President Seth Low as its reform candidate for mayor. The Citizens Union's leadership recognized that if they were to have any chance of achieving victory they would need to create an efficient political operation of their own to contend with the Tammany machine.\(^72\)

During the 1897 election campaign the Citizens Union president, R. Fulton Cutting, focused on working-class New Yorkers. Cutting recognized that the City Club drew its principal support from the educated and wealthy members of society but believed that electoral victory would be attained only through listening and responding to the needs and aspirations of the working masses. To this end the party spent a considerable amount of time wooing labor leaders from the United Garment Workers, the Knights of Labor, and the Granite Cutters' Union.\(^73\)

The Citizens Union's 1897 electoral strategy caused it some loss of support among the more affluent classes in general and from Republicans in particular. Several factors accounted for this development. Citizens Union members held firm to their belief that local elections must be independent of state and national politics and, therefore, eschewed calls for a fusion with the local Republican party, despite pleas for such cooperation from Theodore Roosevelt. Moreover, Republican businessmen regarded the Citizens Union's call for public franchise reform an untenable, marked by faulty economics and contrary to their individual financial interests. One Republican leader declared that franchise reform was a "socialistic demand" that would compel the business community to support Tammany.\(^74\)

While Cutting sought to reach across class lines in 1897, the Citizens Union candidate failed to garner enough support among its base of middle- and upper-class voters.\(^75\) The divisions between the Citizens Union and other anti-Tammany forces resulted
in the very outcome they most feared – a Tammany Democratic victory. John Jay Chapman later opined that "the worst enemy of good government is not our ignorant foreign voter, but our educated domestic railroad president, our prominent business man, our leading lawyer."  

There was plenty of blame to go around for the election loss, but many in the Citizens Union saw Low's strong second place as an encouraging sign.

The Citizens Union Executive Committee, pleased with the political inroads made thus far, voted in 1898 to continue it as a permanent organization. Nevertheless, changes were needed if the Citizens Union was to achieve political success. The Union reorganized, acknowledging the "importance of having one ticket" by finding common ground with those who, regardless of political party affiliation, "demand the separation of Municipal from state and national politics and a Civic Administration without spoils, favoritism or political tyranny."  

Over the next two years the Citizens Union concentrated on building a political organization based on the local assembly district unit. It also decided to participate in statewide elections in 1898, an action that marked a brief aberration from one of its founding principles and "a rather extraordinary excursion of the Citizens Union into the field of State politics." The Citizens Union's leadership justified this departure from its first "guiding principle" by explaining to voters that "the restriction of the Union's influence to the selection of local city officials seriously hampers its efforts to improve the management of city affairs." This was because the "control exercised by the State Legislature...over purely municipal matters has demonstrated the insufficiency of any effort for home rule that does not secure the selection...State officials completely independent of faction or party dictation."  

This proposal caused a rift among the membership, and many prominent members abandoned the Citizens Union, particularly those who supported the nomination
of Republican Theodore Roosevelt for governor. The excursion into politics was short lived and the effort costly. After 1900, the Union chose to limit its political activity to local candidates.80

As the campaign of 1901 approached, the Citizens Union sought to collaborate with the Republican Party and other anti-Tammany political groups in New York City, partly in recognition of the fact that “it could not unaided expect to terminate Tammany control.” This less rigid and more practical approach allowed the Citizens Union to ally with the Republicans and the Jeffersonian Democrats (Democrats not affiliated with the Tammany machine), and they nominated Seth Low again for mayor on a fusion ticket.81

The Van Wyck administration was riddled with controversy and corruption. Governor Roosevelt had removed Van Wyck’s District Attorney, Asa Gardiner, from office the previous year. Controversies during Van Wyck’s tenure erupted regularly, including the indictment of administration officials, the “discovery of evidence of police connivance with... gamblers,” and persistent charges of bribery.82 The Tammany mayoral candidate, Edward Shepard, an honest reformer himself, was badly tarnished by the Van Wyck administration, and Low defeated him by more than 30,000 votes.83

Low was sworn in as mayor of New York City in January 1902. Faced with the daunting task of reform, Low initially turned to the Citizens Union for guidance.84 During his two years in office, however, the Low administration was often at odds with the Union. For example, in a 1902 committee meeting one member, Stebbins, suggested that the Low administration’s employment of “inefficient and unqualified persons” in city office was an “intolerable condition... involving our entire city, bringing odium, emphatic criticism and severe condemnation upon the political movement know as the fusion movement of 1901.”85
The “strong undercurrent of dissatisfaction with the Low administration” continued to grow, although the Union supported his re-election in 1903. Tammany, sensing tension within the fusion ticket, “executed a clever coup” by placing several fusion candidates on the Democratic ticket alongside its mayoral candidate, Congressman George B. McClellan. 86

McClellan’s victory forced the Citizens Union to reexamine its reason to exist. As historian Augustus Cerillo has suggested, Low’s defeat signaled the end of the reign of the older generation of wealthy, elite reformers and ushered in an era of new younger “progressives” more interested in the professionalization of municipal government than the character of the elected officials. 87 While the Citizens Union had made some inroads in reforming city administration during Low’s tenure, such as the enforcement of the Tenement Laws, the creation of new city parks and schools, and opening municipal board meetings to the press, it was frustrated with the bickering and infighting between the anti-Tammany groups. 88 As a result, the Citizens Union decided to withdraw from fusion politics and shift its focus. First, it established a permanent Committee on Legislation as a watchdog to study pending legislation and existing laws and to propose amendments to state laws that affected the city. 89 Next, the Union spearheaded efforts, for which a generation of progressives would advocate, to nominate and elect non-partisan judges “based on the concept that the administration of justice required …judges uninfluenced by political considerations.” 90 This change in direction, from traditional party politics to municipal reform, opened doors previously closed. Mayor McClellan, reelected to a second term in 1905, indicated a desire to work with the Citizens Union to improve the quality of city government and the judiciary. 91

In 1906, as part of this shift in focus, the Citizens Union organized the Bureau of City
Betterment (renamed the Bureau of Municipal Research the following year), headed by Henry Bruere, to promote a business model of municipal government and to investigate various city departments. The Bureau, with the assistance of city comptroller Herman A. Metz, issued a report on the workings of city agencies in the Borough of Manhattan entitled “How Manhattan Is Governed.” The probe uncovered compelling evidence that the administration of the Borough President, John E. Ahearn, was “inefficient and wasteful.” McClellan launched the inquiry by appointing a political outsider, John Purroy Mitchel, as a commissioner of accounts to work with the city’s corporation counsel, William B. Ellison, charging them “with the duty of considering the condition of the Borough President’s office in detail.”

Over the next few months the battle between Ahearn and the investigating body escalated. In the fall of 1907 the commissioners’ findings were sent to Governor Hughes. On December 9, 1907, following a six-week hearing, Hughes determined that there was sufficient evidence to sustain the request for Ahearn’s removal for “breach of duty” and removed him from office.

The drama continued, however, when on December 19 the borough aldermen re-elected Ahearn as Manhattan Borough President. The City Club president, the Bureau of Municipal Research, and the Citizens Union resolved to take further legal action. Leading members of all three groups contemplated bringing a taxpayers’ action to seek Ahearn’s removal. Ultimately they decided that the proper course of action was to support the state attorney general’s decision to file a quo warranto action to test Ahearn’s right to hold office. Finally, on October 29, 1909, the Court of Appeals ruled that Ahearn, having been lawfully removed from office by Governor Hughes, was disqualified for the entire term of
that office and that, consequently, his subsequent appointment by the board of alderman to fill his own unexpired term was null and void.  

The fact that the Citizens Union was thinking of filing a taxpayers’ suit in the Ahearn situation demonstrates that this option was on the table and being considered by the Union’s leadership as early as January 1908. Since quo warranto had proven effective in a similar case concerning the mayor of Kansas City, Kansas who, like Ahearn, had been removed from office and thereafter re-elected, the Citizens Union opted to let the attorney general pursue this path to justice. Clearly, however, the Union was thinking about the taxpayers’ action as a means to challenge and remedy unlawful actions of municipal officials, and it filed its first such action (Schieffelin v. McClellan) the following year.

By 1908, then, the three principal political reform organizations in New York City had all sought legal intervention, in one form or another, in their battles for good government during the previous two decades. Certain common threads connect the election fraud cases initiated by Welling and the City Reform Club in 1890, the City Club’s actions to remove District Attorney Asa Gardiner at the turn of the century, and the Citizens Union’s involvement in Ahearn’s removal. In all three cases the objects of the reformers’ legal attacks were Tammany officials who were dragging their heels in order to obstruct and stymie efforts by good government organizations to clean up city government. In each instance the goo-goos, as the opponents of good government referred to the reformers, having found other approaches unavailing, resorted to various types of legal action – a proceeding for a writ of mandamus to compel the excise commissioners to do their duty and decide the election fraud complaints; bringing charges against Gardiner to have him removed by the governor; and obtaining Ahearn’s removal from office by the governor and, when the
aldermen thumbed their noses at this action by re-electing Ahearn, supporting the attorney general’s action for a writ quo warranto to void the re-election. A generation of New York City reformers, including much of the Citizens Union’s leadership as of 1908, had been a part of these diverse experiments in invoking the law to further political reform and, consequently, had come to see the alliance of political activism and legal activism as both natural and efficacious. It was with these antecedents in mind that the Citizens Union launched its taxpayers’ litigation program.

The Citizens Union’s Taxpayers’ Litigation Program

Three key developments in the years 1907 and 1908 were largely responsible for the Citizens Union’s new emphasis and reliance on litigation as a tool of reform. First, the success of the Bureau of City Betterment in exposing wasteful and corrupt practices in city departments had convinced Citizens Union President Robert F. Cutting that the Bureau should be an independent organization with a more prestigious name. In 1907, the Bureau separated from the Citizens Union and Cutting resigned in December 1908, in order to head the renamed Bureau of Municipal Research.99 Second, the frequency with which reformers had resorted to the courts to advance their agendas made the Union’s leadership realize that an honest, qualified and independent (especially from the Tammany machine) judiciary would aid their reform efforts. Accordingly, in 1907 the Citizens Union intensified efforts in this regard and “investigate[d] the records of judicial candidates and conducted an active independent campaign for the election of those found to be worthy.” Lastly, with the departure of Cutting, the Citizens Union elected executive committee member William Jay Schieffelin as the new chairman.100
Schieffelin was born in New York City in 1866. A descendent of United States Supreme Court Justice John Jay, he was deeply rooted in New York’s elite and its business communities. In 1889, Schieffelin received a Ph.D. in chemistry from a university in Munich, Germany. Upon his return to the United States he married Cornelius Vanderbilt’s granddaughter and began working at the Schieffelin family’s pharmaceutical business, and in 1906 he became its president.101 Citizens Union member Julius Henry Cohen later observed that although Schieffelin came from a long line of aristocrats he “remained simple.” Moreover, Schieffelin had “great admiration” for the work done by organized labor in the garment industries, and he was known to invite labor leaders and socialist members of the Citizens Union to dinner meetings at his home on Fifth Avenue.102

Rooted in Huguenot traditions on the “duty and privilege” of Christians “to take part in public affairs” and to serve their community and nation, Schieffelin was committed to confronting the social, economic and political problems of New York City.103 He embraced many of the progressive ideals espoused by New York social reformers of that era.104 Upon Schieffelin’s return from graduate school in Germany his cousin, John Jay Chapman, strongly encouraged him to join the City Reform Club. He did so, thus embarking on a journey into reform politics that lasted more than sixty years. Schieffelin opposed his father and his wife’s grandfather by playing a “conspicuous” role in the movement to prevent the construction of the Central Park race track, was a founder of the City Club in 1892, worked for the election of fusion mayor William Strong in 1894, and had long been a part of the Citizens Union’s leadership. He was also a leader in other beneficent organizations, including the American Mission to Lepers, the Tuskegee Institute, and the American Bible Society. Schieffelin served as president of the Citizens Union from 1908 to 1941 and on its
executive committee for more than fifty years.\textsuperscript{105}

Upon becoming chairman, Schieffelin implemented a number of changes in organization and in policy. First, he strengthened the executive committee “at the expense of the representative character of the body” because, he had concluded, the Union needed to be more efficient and effective. Schieffelin also wanted the Citizens Union to focus more on shaping state legislation, which directly impacted the structure and operation of city government and thereby concretely advanced or stymied the Citizen’s Union’s reform activities, and less on participating in fusion politics, which had not proven especially effective in furthering its reform agenda. Consequently, he expanded the Committee on Legislation and made its work a priority.\textsuperscript{106} The Committee on Legislation not only studied proposed legislation but also lobbied for or against it.\textsuperscript{107} Finally, he initiated the taxpayers’ litigation program that was to play such a prominent role in the Citizens Union’s reform efforts for more than two decades.

Schieffelin’s first foray into the world of taxpayers’ litigation occurred in 1909, in the case of Schieffelin \textit{v.} McClellan. Earlier that year the New York City Board of Estimate and Apportionment had granted a fifty-year franchise to the South Shore Traction Company to construct and operate a trolley line through the borough of Queens and over the new Queensborough Bridge into Manhattan. On June 8, the Public Service Commission refused to approve the franchise because it conferred on the trolley company what amounted to a fifty-year monopoly of the principal thoroughfare from Queens to the new bridge. The Board of Estimate challenged the Commission’s action in court and obtained an order in the Appellate Division, New York’s intermediate appellate court, holding that the Commission had no authority to second-guess the terms of the franchise.\textsuperscript{108}
Schieffelin likely agreed with the Public Service Commission’s observation that “the time has passed when cities of this state, either to obtain a premature advantage of low fares or to encourage sales of vacant real estate, should contract away the welfare of future generations,” inasmuch as this sentiment echoed the Citizens Union’s “pay-as-you-go policy” — that government operations should be paid for through current taxes or short-term bonds rather than long-term debt that would burden future generations — that prompted many of its taxpayers’ actions. Accordingly, Schieffelin brought a taxpayers’ suit under section 51 of the General Municipal Law, which provided that a taxpayer may maintain an action “to prevent any illegal official act” on the part of municipal officers or to “prevent waste or injury to or to restore and make good any property, funds or estate” of a municipal corporation, in which he sought to restrain the Board of Estimate from granting the franchise to the South Shore Traction Company. Julius Henry Cohen, then counsel to the Citizens Union and later its vice chairman, and Albert S. Bard, a member the Citizens Union’s executive committee, represented Schieffelin in these proceedings. The trial court granted Schieffelin’s request for an injunction on December 11, and the defendants appealed. In a 3–2 decision, the Appellate Division reversed, ruling that the procedures by which city authorities had granted the franchise were governed by section 74 of the city charter rather than by section 92 of the Railroad Law, that the city had complied with the requirements of the city charter and that, therefore, the injunction should be dissolved. New York’s highest appellate court, the Court of Appeals, dismissed Schieffelin’s appeal on the procedural ground that not all necessary parties were before the court.

This initial clash between the Citizens Union and New York City officials reflects several recurring themes in taxpayers’ litigation. The Citizens Union undertook to restrain
the city from engaging in what the Union (and two members of the Appellate Division) deemed an illegal official act. City officials, who had regarded the Public Service Commission's refusal to approve the franchise as an "attempt to usurp the power conferred by law upon the Board of Estimate and Apportionment in granting franchises for the use of streets," continued to defend in Schieffelin's lawsuit the parameters of their authority and their discretion.\textsuperscript{112} The courts, while recognizing the right of taxpayers to obtain injunctive relief for unlawful acts of local officials, declined to intervene where the challenged action may have been imprudent but was not found to be illegal.

The \textit{McClellan} lawsuit also highlights another aspect of the Citizens Union's taxpayers' litigation program - many of its taxpayers' suits focused on the issues that preoccupied Americans in the first three decades of the twentieth century. In these years one of the greatest challenges confronting America's rapidly growing cities was how to move large numbers of people from one place to another. The dramatic (and perhaps traumatic) technological change accompanying, and the massive public expenditures necessitated by, the construction of municipal mass transit systems captured the attention of the Citizens Union and other New York City reform organizations. Not surprisingly, five of the Citizens Union's taxpayer's actions involved rapid transit construction.\textsuperscript{113} Over the course of two decades the Citizens Union litigated with city officials about how rapid transit systems in New York City would be operated and funded, beginning with the \textit{McClellan} lawsuit in 1909 and ending with the \textit{Walker} case in 1928.\textsuperscript{114}

The dramatic urbanization of America in these years likewise insured that questions relating to municipal personnel and human resources would assume a prominent place in public discourse and in the legal efforts of reformers. In antebellum America, cities had been
relatively few and relatively small, and staffing municipal bureaucracies had been a far simpler matter. By the turn of the twentieth century, however, American cities had become increasingly complex political, economic and social organisms. Consequently, the manner in which municipalities hired, compensated and provided pensions for their employees had a tremendous impact on citizen taxpayers and became a focal point of American political life and political reform. Personnel issues were the subject of at least nine Citizens Union taxpayers' actions in the 1920s. In *Schieffelin v. Enright* and *Schieffelin v. Warren*, Wallstein challenged the legality of the pension payments to Police Commissioner Enright, and in *Schieffelin v. Berry* took aim at Mayor John Hylan's pension. In the *Doolan* case Schieffelin enjoined the unlawful reinstatement of a police officer. The Citizens Union also filed taxpayers' suits to litigate the validity of the payment of police captains' salaries (*Schieffelin v. Lahey* and *Schieffelin v. Kelliher*), raises for municipal court judges (*Schieffelin v. Leary*), and the reimbursement of attorney's fees to a police inspector (*Schieffelin v. Henry*), as well as the manner in which the office of police building superintendent was to be filled (*Schieffelin v. O'Brien*). Cronyism and political patronage were to some extent endemic to the Tammany machine, particularly under Hylan. The existence of such conditions, combined with the emerging importance of city personnel matters, galvanized the Citizens Union's litigation program. Municipal administration came to be front and center in both American politics and in the Citizens Union's legal efforts.

Within days of filing the lawsuit against Mayor McClellan, Schieffelin instituted a taxpayers' action against the city of New York and its commissioner of bridges, James Stevenson, to enjoin them from awarding a contract for the construction of a new municipal building. In 1907, the state legislature had enacted a statute which authorized the
construction of new offices, removed from the borough president of Manhattan the control of the project otherwise conferred upon him under the city charter, and transferred it to the commissioner of bridges. Schieffelin had several objections to the proposed contract. First, he argued that certain contract specifications prevented fair competition among bidders, especially one clause that, he alleged, gave preference to the use of hollow tile bricks instead of concrete blocks. Schieffelin saw the hand of Tammany behind this contract provision because the largest manufacturer of hollow tile bricks in the United States at that time was National Fireproofing Company of Pittsburgh, whose general counsel was Daniel F. Cohalan and whom the New York Times characterized as the “Grand Sachem of Tammany Hall.”

On December 20, the trial judge issued a temporary injunction. One week later the court heard arguments on Schieffelin’s request for a permanent injunction. In his January 1910 decision, Justice Dowling noted that “before a plaintiff in a taxpayers’ action can be given relief by way of an injunction against the acts of an official it must first appear that the acts complained of are without power or that collusion, fraud or bad faith amounting to fraud exists.” He went on to deny the requested injunction, holding that the 1907 statute was constitutional and a valid exercise of the legislature’s power and that none of the contract provisions were illegal. Although Dowling expressed some personal concerns about the wisdom of “ousting the superintendent of buildings of his power” to oversee this particular project and about the plans for the building’s foundations, he declared that “the courts will not interfere merely to substitute their judgment or discretion for that of the municipal officers whose duty it is to perform an act whose propriety is questioned.” He emphasized that it “is neither the right nor the duty of the court to substitute its judgment for that of the persons charged with the responsibility for the conduct of public affairs.” Absent an illegal
act, there was no basis for granting injunctive relief.

There is no record of the Citizens Union’s reaction to the adverse rulings it received in the *McClellan* and *Stevenson* cases, although its leadership was likely disappointed not to have prevailed on the merits. They could not have been too disenchanted with the legal system, though, since the Citizens Union resorted to the courts in a score of other taxpayers’ suits during the next two decades. The fact that its executive committee continued to entrust important public policy issues to the New York courts indicates that the leadership felt that, although they had lost both cases, it was worth trying again.

Between 1911 and 1917, the Citizens Union instituted only one taxpayers’ action, and that lawsuit was brought not against New York City officials but against state election officials. This period of quiescence was likely attributable to the character of the municipal administrations governing during those years, that of Democratic Mayor William Jay Gaynor (1910 – 1913) and of Fusion Mayor John Purroy Mitchel (1914 – 1917). Although Gaynor was Tammany’s nominee, he was a respected judge and a reformer who embraced good government principles and proved to be relatively independent of Tammany. Mitchel was the Citizens Union’s own candidate, having been nominated by the Citizens Municipal Committee and Fusion Nominations, Inc., two umbrella organizations that included the Citizens Union, the City Club, and other reform-minded organizations and individuals and whose stated purpose was “to promote the nonpartisan election of honest, efficient and independent public officers within the City of New York and to that end to use any and all lawful and proper political means therefor, including the nomination and election of candidates.” Mitchel, an advocate of the business model of government, made considerable improvements in government administration during his tenure. The Citizens
Union's overall satisfaction with the Mitchel administration was reflected in a resolution it adopted on April 20, 1914, shortly after a failed assassination attempt on Mitchel, in which it declared that the “Citizens Union’s support of the candidacy of the Honorable John Purroy Mitchel for Mayor last fall has been amply justified by the splendid record of his administration” and that “[t]hrough the failure of the attempt on his life… the continuance of the City administration on its present high plane of ability and efficiency is assured.”

In these circumstances, the Citizens Union had little need to invoke the taxpayers' lawsuit. The sole taxpayers’ action that the Citizens Union did bring during this period was Schieffelin v. Komfort, an important case in the development of taxpayers’ litigation jurisprudence in New York. In April 1914, there had been an election to decide whether to hold a convention to amend the state constitution, and the proposal had passed by a slim majority (1,253 votes out of a total vote of 310,444). The Citizens Union had collected evidence of election fraud in the Twelfth Assembly District and believed that, if those fraudulent election returns were excluded, then the proposition would have failed. The Citizens Union was not opposed to the very idea of a “non-partisan citizens’ committee to obtain the election of desirable delegates to the proposed convention.” Rather, it objected to the fact that the vote apparently had been obtained fraudulently. As the New York Times editorialized, “[t]he thought that the organic law of the State is to be revised as the result of an election tainted by fraud is intolerable.” Schieffelin therefore brought an action as a citizen and a taxpayer for an injunction to restrain state election officials from nominating and electing delegates to a constitutional convention.

The trial judge who ruled upon Schieffelin's petition in the first instance was Samuel Seabury, who later chaired the commission that investigated corruption in the New York City
municipal courts in the 1930s. Seabury expressed considerable openness to taxpayers’ suits to enjoin fraud and corruption and rejected the defendants’ contention that courts had no authority to afford relief in such situations, declaring emphatically that “the idea that courts of justice are powerless in such an emergency to grant redress enunciates a doctrine to which I am unwilling to subscribe.” Seabury saw “no reason why the door of the court should be closed to a citizen and taxpayer who asks of the court only such relief as the Constitution and justice require should be given to them.” He went on to consider the merits of the case but ruled that the statute Schieffelin challenged was constitutional and that, because a large number of votes in Kings County in favor of the constitutional convention had been erroneously omitted from the election returns, a majority had voted in favor of the proposal even if the fraudulent returns were disregarded. Accordingly, he denied Schieffelin’s petition. The Appellate Division agreed with Seabury on both points: that courts of equity did have authority to restrain election officials from electing delegates to a constitutional convention absent a majority vote in favor of a convention, and that Schieffelin had not proven that a majority had not voted in favor of a convention. Schieffelin appealed.

The New York Court of Appeals did not even reach the merits of the case but affirmed on the ground that the trial court lacked jurisdiction to grant the requested injunctive relief. The court reiterated its mid-nineteenth-century rulings in *Doolittle v. Broome County* and *Roosevelt v. Draper*, that New York courts of equity had no power to enjoin or to right a wrong unless the plaintiff’s personal rights (as distinguished from his rights in common with his fellow citizens) were affected. It emphasized that a citizen of New York could maintain a taxpayers’ lawsuit only if, and to the extent, it was authorized by statute. It held that the New York taxpayers’ acts on which Schieffelin based his action permitted such
taxpayers' actions only against municipal and county officials and not against state officers, such as the defendants in this case, and that, consequently, Schieffelin "as an individual cannot sustain this action." 128

While the Komfort decision was significant to legal scholars and others who followed the jurisprudence of taxpayers' litigation, it had little practical impact on the use of such suits by organized taxpayers to promote municipal reform. The Court of Appeals had only declared that taxpayers could not bring taxpayers' actions on behalf of the public against state government officials. It did not limit the taxpayer's established statutory right in New York to sue local government officials. Since almost all taxpayers' lawsuits were focused on the municipal and county levels of government, the taxpayers' action remained a viable and effective tool for reform organizations such as the Citizens Union, and for other organized taxpayers.

The return of Tammany machine politics precipitated a period of intensive taxpayers' litigation by the Citizens Union during the administration of Mayor John Hylan (1918 – 1925). Between 1918 and 1926 the Citizens Union filed fifteen taxpayers' actions, with Schieffelin as the named plaintiff, relating to actions taken during Hylan's tenure; it ultimately prevailed in twelve of those lawsuits. In light of the unpredictability of litigation, this was an impressive record by any means of scoring. The frequency of the Citizens Union's taxpayers' suits and the overall success with which they met demonstrates the need for and vitality of such a remedy.

The lawyer who conducted this legal onslaught of the Hylan administration was Leonard M. Wallstein, whom the Citizens Union hired to serve as its counsel in 1918. Wallstein was born in New York city in 1884 to parents of modest means. He attended New
York public schools and went on to Columbia University, receiving his undergraduate degree in 1903 and his law degree in 1906. Wallstein was a proponent of the business model of government and was active in the City Progressive Party in New York County. Following the victory of Fusion Party candidate John Purroy Mitchel in the 1913 mayoral election, Mitchel appointed Wallstein Commissioner of Accounts, and Wallstein served in that capacity from 1914 to 1917. During his tenure Wallstein labored diligently to improve and reform the mechanics of city government. His investigation of the fee system under which county sheriffs were paid disclosed that the sheriff’s fee compensation was exorbitant, and it resulted in the conversion of the compensation system for sheriffs to a straight salary commensurate with the pay received by other municipal officials. Another investigation disclosed rampant corruption and graft in the Department of Licenses and led to numerous criminal prosecutions. Of particular importance, because it precipitated the complete administrative reorganization of the affected city department, was Wallstein’s inquest of the city coroner’s office, which Wallstein characterized as “at best ... a hot-bed of incompetence and, at worst, a prolific breeding ground of corruption.” After a series of public hearings that received extensive news coverage, the coroner’s office, which had been staffed by untrained coroners, was abolished and its functions transferred to a city-wide Medical Examiner’s Office that employed trained physicians hired through the civil service examination process.

Wallstein’s experiences as commissioner of accounts reinforced his conviction that the key to good government and reform lay in improving the methods and processes of public administration, that is, in making them more efficient, honest and transparent. Consequently, when Citizens Union Secretary Rufus E. McGahan asked Wallstein if he would serve as the
Citizens Union’s legal counsel in 1918, he was “delighted to accept [the position] because it would enable me to continue in the same kind of work that I had done in the Commissioner’s office.” The Citizens Union Executive Committee sought out Wallstein to be its attorney because he was, according to Schieffelin, “a young lawyer of unusual ability and initiative,” he shared the Citizens Union’s business model approach to municipal government reform, and his work as Commissioner of Accounts made him especially qualified to be an effective watchdog of the new Tammany administration. Because the compensation he received as counsel for the Citizens Union was fairly modest, Wallstein supplemented his income through his private law practice while serving as the Citizens Union’s lawyer from 1918 to 1934 or 1935. Throughout those years Wallstein worked closely with the members of the Citizens Union Executive Committee, particularly chairman Schieffelin. Wallstein considered Schieffelin a man of lofty principles and motives, who “exercised a very fine influence.” Wallstein did feel that Schieffelin exhibited “a degree of excessive liberalism,” and he parted company with the Citizens Union in the mid-1930s when its “endorsement of Communists [for public office] became very frequent.” In the interim, however, the two worked hand-in-hand in executing the Citizens Union’s legal strategies against Tammany Hall.

The objects of Wallstein’s ire and the defendants in these taxpayers’ actions were various officials of the Hylan administration and Hylan himself. John F. Hylan was born in 1868 in Hunter, New York, a country village in the northern Catskills. He labored on his father’s farm until the age of nineteen, when he sojourned to New York City in search of opportunity. For the next nine years he worked for a railroad company, eventually becoming a licensed engineer, while studying law in the evenings. Hylan’s railroad experience may -
have contributed to his political undoing years later because it gave him a confidence in his knowledge of urban rapid transit, a perennial hot potato political issue in New York City and most other American metropolises in this era, that proved to be unwarranted. Hylan then practiced law for ten years while becoming involved in Democratic politics in Brooklyn. At this time Hylan developed a small group of what a biographer called “less scrupulous” associates, including two lawyers who had been indicted and a vaudeville performer turned politician. As a loyal Democratic machine man, he represented the antithesis of the progressive reformers of the era. In 1905 he secured an appointment as a magistrate with the support of Pat McCarren, the Democratic boss in Brooklyn. Several years later he was elected a county judge and served in that office until 1917.134

In 1917, backed by Brooklyn Democratic boss “Big Jim” Sinnott, Hylan secured the Democratic nomination for mayor. In the general election the incumbent Fusion mayor, John Purroy Mitchel, had several liabilities. First, his efforts to improve the efficiency of city government by centralizing and consolidating many municipal functions had alienated many residents in boroughs outside of Manhattan. Furthermore, Mitchel was a far better business administrator than he was a politician. Finally, the Tammany machine did what it did best, mud-throwing, in a particularly dirty campaign. Hylan won decisively in November, and he assumed office on January 1, 1918.135

Wallstein began his first assault on the Hylan administration only two months after Hylan took office in the case of Schieffelin v. Craig. Thomas L. Craig, as the New York City Comptroller, was in charge of municipal finances and expenditures and, consequently, was a frequent target of Wallstein’s taxpayers’ actions in these years. It was Craig’s $250 check that Wallstein had mounted on his office wall in 1920. Schieffelin sought an injunction to
restrain Craig and other city officials from raising more than $2 million by taxation to cover the city's share of the costs of widening Queens Boulevard, a levy that would have resulted in a $2.47 increase in the city's tax rate. The trial court denied the motion for an injunction, and the Appellate Division affirmed, observing that both parties had overlooked the fact that the legislature had amended section 217 of the city charter in 1917 to require that the funds for the Queens Boulevard project be raised by taxation. Consequently, the proposed levy did not involve waste of or injury to the city's property or in illegal official act such as would "imperil of the public interests or... produce some public mischief."136

The Citizens Union's next taxpayers' action was the one in which the trial court issued the injunction that Craig then violated by not advising his subordinates of it and allowing them to sell $1 million of stock, a violation for which Craig was later found in contempt.137 The lawsuit reflected the Citizens Union's support for the "pay-as-you-go" provision of the New York City charter, which prohibited the use of proceeds from the sale of the city's corporate stock to pay current municipal operating expenses and which had been added to the city charter in 1916 during the Fusion administration of John Purroy Mitchel.138

In a letter to Walter H. Pollock, an attorney who also represented the Citizens Union in litigation on occasion, Wallstein argued that the Hylan administration had initiated proceedings to issue corporate stock "[f]or the purpose of fictitiously reducing the tax levy with the result that current expenses of operating the city government would be paid out of the proceeds of long term bonds." In the same letter Wallstein characterized the lawsuit as one of many "instances of lawlessness" on the part of the Hylan administration that "the Citizens Union had corrected" over the years.139

The dispute was infused with political overtones and generated considerable heat in
the media. At the February 7, 1919 meeting at which the Board of Estimate approved the issuance of the stock, Wallstein and Hylan engaged in a heated exchange, with Hylan calling the Citizens Union “the biggest bunch of fakers in town” and Wallstein, “looking hard at the Mayor,” replying “with the single exception of one individual.” Craig also attacked the Citizens Union, characterizing Schieffelin’s lawsuit a “political move” to embarrass his administration. The chairman of the Public Service Commission, the agency responsible for constructing the subway system, the funding for which was the subject of the taxpayers’ action, declared that “in this city… the government is no longer one of laws but one of two men – Mayor Hylan and Comptroller Craig – who have throttled the initiative of every city department, have blocked every plan of development so far proposed, and have halted the progress of rapid transit construction.” Wallstein lost no opportunity to contrast the Mitchel administration’s adherence to the “pay-as-you-go” provision of the city charter to the Hylan administration’s disregard of it. Even Justice James C. Cropsey, the trial judge who issued the injunction, observed in his order that “[n]ow a new administration seeks to upset and undo all that has been done in the years past by prior administrations.”

For Wallstein and the Citizens Union, litigation was proving to be, like war in Clausewitz’s aphorism, a continuation of politics by other means.

The political temperature continued to rise when, in November 1919, Wallstein filed contempt proceedings against Craig for disregarding the injunction upheld by the Court of Appeals on October 21, 1919 in Schieffelin v. Hylan. The motion for contempt was based, in part, on Wallstein’s own affidavit reciting the particulars of Craig’s contumacious conduct. Following a hearing the trial court ruled that Craig had a duty to take affirmative steps to “check any further acts necessary to consummate the forbidden transaction” and that
he was "guilty of a very serious act of omission" by failing to notify city officials and his subordinates that the injunction had been issued. That the dispute was rife with political tension was obvious to Judge Manning, who observed that Craig’s perspective had been clouded by the fact that he “saw the situation through glasses blurred with the mist of political or personal antagonism on the part of those whom he may have surmised were watching his every step.” Manning went on to scold Craig, declaring that Craig was himself an experienced attorney and held “the high and responsible office of comptroller” and that, as such, “[s]urely, if anyone should be held to a strict accountability and be expected to render due obedience to injunctions and orders of the courts the comptroller is that man, but in the present instance I find that he was lamentably remiss in the discharge of his sworn duty.” In doing so, Manning articulated one of the core principles underlying the Citizens Union’s taxpayers’ litigation program, that public officials are, and must be held, accountable to the citizens whom they serve. Manning concluded that Craig’s action was not “entirely willful, but savors rather of indifference or carelessness” and, therefore, found him guilty of civil, rather than criminal, contempt and fined him $250 plus costs. Craig appealed, and the Appellate Division upheld the monetary penalties, holding that a fine for contempt may be imposed in a taxpayers’ action even though the extent to which the taxpayers’ “rights and remedies are impaired... may not be stated in money.” The Court of Appeals dismissed Craig’s appeal. Soon thereafter Wallstein received his pound of flesh in the form of Craig’s $250 personal check.

It was at about this time that Schieffelin and Wallstein increased the Citizens Union’s efforts to police graft and corruption in city government. Between 1908 and 1920 a principal focus of the Citizens Union’s taxpayers’ litigation program had been to restrain illegal
official acts involving large-scale public improvements, such as the city's rapid transit system (as in the McClellan and Craig cases) and municipal buildings (as in the Stevenson case).

With the return of old-style Tammany politics under Mayor Hylan, however, the Citizens Union leadership decided that it was time to make cronyism in city government a specific target of its political and its litigation activities.

On March 24, 1921, for example, the Citizens Union sent a letter, signed by its secretary, Walter Tallmadge Arndt, to the state legislature in Albany requesting a legislative investigation of Hylan's administration. The letter contended that the Hylan administration had "been characterized by stupidity, incompetence and the brazen exploitation of the opportunities of public office holding," as a consequence of which it had "brought the City government to its lowest level of twenty years." Although the Citizens Union laid a number of charges at Hylan's door, the chief complaints were of cronyism and corruption. Arndt wrote that

\[\text{political or personal favoritism has replaced effective public servants with incompetent satellites. In many of the [city] departments graft has proceeded without check...the Mayor himself has insisted upon the appointment to office of men of questionable previous record. In some instances such appointees have been indicted while actually holding office. The Mayor has been exposed by the Lockwood Committee as a pliant tool in the hands of...special interests.}^{143}\]

The New York legislature had previously appointed two separate committees, the Meyer Committee and the Lockwood Committee, to investigate charges of corruption in the Hylan administration, but neither committee garnered sufficient evidence implicating Hylan personally to harm him.\(^{144}\)

The charges of incompetence and cronyism, on the other hand, were beyond dispute. In 1926 the National Municipal Review noted that almost all of Hylan's appointments to city
offices were made at the behest of the Tammany organization, and Charlie Murphy, the Tammany boss, said of Hylan that "[n]o Tammany Mayor has ever been more liberal to Tammany in the matter of patronage."145 In the fall of 1921 the Citizens Union compiled a list of Hylan’s relatives, political backers and personal friends whom he had appointed to important positions in city government within five months of taking office. Among the thirty-eight named political appointees were the Commissioner and the Deputy Commissioner of Accounts, the Police Commissioner and the Deputy Police Commissioner, the Tax Commissioner, the Tenement House Commissioner, four lawyers in the city attorney’s office, numerous officials in the Fire Prevention Bureau and in the Department of Water Supply, the Inspector of Accounts and the Examiner of Accounts.146 The Citizens Union maintained that the appointment of unqualified persons to such key posts because of their political connections undermined public safety, the efficient operation of city government, and the honest administration of city finances. It also objected to the use of city tax dollars to pay the salaries and pensions of such appointees.

The first of many taxpayers’ suits initiated by the Citizens Union to restrain attempts by city officials to manipulate the retirement system for their own benefit was Schieffelin v. Enright. Enright had been a member of the police force from 1896 to January 22, 1918, when, while he held the rank of lieutenant, Mayor Hylan granted him an indefinite leave of absence and appointed him police commissioner. Later that year the state legislature, at the request of Hylan and Enright, amended the greater New York charter to allow a member of the police force who had served on the force for twenty years, and for at least six months as police commissioner, to be retired by the Mayor, placed on the pension roll, and granted the pension allowed to a chief police inspector. On December 22, 1920, Hylan issued an order
retiring Enright as a lieutenant and awarding him a chief inspector's pension of $3,750.00 annually pursuant to this new law (as opposed to a lieutenant's pension of $1,050.00 yearly). On January 24, 1921, Wallstein filed a taxpayers' suit to restrain Enright, individually and as a police commissioner, from remaining enrolled in the pension fund and from paying or receiving the pension. In a press release the Citizens Union articulated the reasons for the action as follows:

Though the amount of money is comparatively small, the Citizens Union approved the proposed litigation on the Enright pension, not only because it believes that an important principle is involved, but also because it regards this as an attempted pension grab, which is but typical of the whole attitude of the Hylan police administration, in misusing the prestige and power of public office for the private advantage of favorites.

The trial court granted Schieffelin's motion for judgment on the pleadings, and Enright appealed. The Appellate Division affirmed, ruling that Enright had ceased to be a lieutenant and a member of the police force upon accepting the position of police commissioner and that Hylan had no authority to retire him as a lieutenant. The court further held that the police pensions statutes prohibited a police commissioner, who "has practically complete control of the administration of the police pension fund," from receiving a police pension while serving as commissioner. Accordingly, the court upheld the trial court's injunction restraining Enright from keeping his name on the present role of the pension fund and from collecting any such pension. In so ruling, the court affirmed the well-settled statutory right of New York taxpayers to enjoin illegal official acts. Two years later Wallstein cited the Enright pension scheme as one among the numerous "instances of lawlessness" of which the Hylan administration was guilty and for which the Citizens Union took it to task in the
The machinations of the New York City Police Department under Police Commissioner Enright continued to provide the Citizens Union’s taxpayers’ litigation program with plenty of fodder. On March 8, 1922, Schieffelin filed a taxpayers’ suit to restrain city officials from keeping patrolman John Doolan on the police force. On August 23, 1915, then Police Commissioner Woods had found Doolan guilty of having taken a bribe to fix a case and had dismissed him. The New York City Charter allowed a dismissed officer to apply for one rehearing on the charges. Doolan did so, Mayor Mitchel granted the rehearing, and on December 17, 1917, during the last weeks of the Mitchel administration, the Police Commissioner confirmed Doolan’s dismissal after the rehearing. In October 1918, Doolan submitted a second request for a rehearing, which Mayor Hylan purported to grant under a city ordinance provision. A rehearing followed, and Commissioner Enright reinstated Doolan.

Wallstein brought the taxpayers’ action to enjoin Enright and other city officers from continuing Doolan on the police force and from paying him a salary on the ground that Doolan had been properly dismissed from the force in 1915 and illegally reinstated by the Hylan administration. The trial court denied Schieffelin’s motion for a temporary injunction, and he appealed. The Appellate Division reversed, holding that the Greater New York Charter allowed a dismissed police officer only one rehearing and that any authority purportedly conferred on the mayor in the city ordinance to consent to a second rehearing was void. Accordingly, the court declared, Schieffelin as a taxpayer had a right to commence the taxpayers’ action under section 28 of the Civil Service Law to prevent waste because “the reinstatement being unlawful, Doolan is not a member of the force, has no claim upon salary
as such, payment thereof is illegal and a waste of public funds.” The court therefore granted the injunction. ¹⁵¹

Doolan’s unlawful reinstatement was not an isolated violation but, rather, part of a larger systemic problem under the Hylan administration. The Meyer Commission, which the state legislature had appointed to investigate the administration of New York City government under Hylan, had determined that Doolan was only one of at least twenty-nine police officers who had been discharged during the administration of Mayor Mitchel and the unlawfully restored to their positions by Police Commissioner Enright and that Hylan’s Corporation Counsel had declared those reinstatements to be unlawful. Because “the mayor has done nothing to compel compliance with the law,” the Citizens Union declared in a press release, “this appeal to the courts has become necessary.” ¹⁵² The Doolan suit, then, was a test case, and a successful one for the Citizens Union. After the Appellate Division’s ruling against Doolan, Acting Police Commissioner John A. Leach dismissed from the police force twenty-one officers and two detectives who had been dismissed by Mayor Mitchel’s police commissioner and reinstated by Enright. ¹⁵³ Not willing to accept defeat on this patronage issue, Hylan sought to circumvent the court’s decision by persuading the legislature to pass the Klienfield bill, which gave the police commissioner the power to hear charges against dismissed police officers more than once and to reinstate them. ¹⁵⁴ I have found no evidence of how many, if any, of the officers dismissed by Mayor Mitchel’s police commissioner successfully availed themselves of this statute.

The twenty-fifth anniversary of the creation of the Greater City of New York precipitated the Citizens Union’s next taxpayers’ action. An early 1923 Mayor Hylan proposed to have the Board of Estimate issue $400,000 of special revenue bonds to finance
a proposed Silver Jubilee. The Citizens Union saw the event as a shameless attempt at self-
promotion by Hylan. Wallstein characterized it as nothing more than a clumsy effort by the
Hylan administration to use Greater New York City’s Silver anniversary “as the pretext for
the self-exploitation and political propaganda of the present officials at public expense…
[and the] dissipation of public money in trashy amusement and jollification for the
glorification of officials under the guise of a so-called educational exposition.”

In this particular case Comptroller Craig agreed with the Citizens Union that the proposed
expenditure of city tax monies on the celebration and the use of city workers to prepare for
it was unlawful, although Hylan’s allies accused Craig of having political, not principled,
motives. Commissioner of Accounts David Hirshfield, for example, suggested that Craig
had sided with Schieffelin and the Citizens Union on this issue and “has flirted with and has
established cordial intercourse” with the Citizens Union, the City Club and other reform
organizations in an effort to gain their support as the Fusion nominee for mayor in 1925.

In March 1923, Schieffelin filed suit, seeking an injunction restraining city officials
from issuing the special revenue bonds to finance the jubilee. The trial court ruled that the
proposed expenditure would not be for a lawful purpose and issued the injunction. Noting
that the issuance of the bonds would subject New Yorkers to “unnecessary and oppressive
taxation,” the court articulated what was by then the settled role of courts of equity in
policing illegal acts of municipal officials as follows:

Courts are, and should be, extremely loath to interfere with public officials
in the performance of their onerous and often ungrateful task; but courts must
not weakly be swayed from the performance of their duty, not always
pleasant, to curb lawlessness... Within the domain of their authorized
functioning, city officials are free from interference by courts. It is their
judgment, and theirs alone, that must control. But when they step beyond the
bounds of their allotted jurisdictions they divest themselves of legal power,
and their acts beyond those bounds have not the sanction of the mandates of the people.157

The Appellate Division upheld the trial judge’s order.158 Hylan appealed.

The New York Court of Appeals disagreed with the trial court on the municipal purpose issue, holding that the legislature had conferred upon the city the power to expend public funds on municipal celebrations and that such legislation was valid and constitutional. The Court of Appeals affirmed the issuance of the injunction, however, on the ground that the board of aldermen’s adoption of the resolution for issuing the revenue bonds was illegal because the proposed resolution had not been published five days before its adoption as required by the city charter. The court strongly defended taxpayers’ rights, declaring that a “provision in the city charter designed to give to taxpayers notice of a proposed resolution leading to the expenditure of public monies ought to be construed strictly in favor of the taxpayer.”159 Hylan’s Silver Jubilee was eventually financed, but with funds from the private sector. Hylan continued to insist that the use of city funds for the celebration would have violated no law, denouncing Schieffelin, Wallstein and the Citizens Union as obstructionists whose tactics had prevented city officials “from initiating measures helpful to the people” and who “have been singularly successful in enlisting the aid of the courts.”160 Hylan always resented the interference of judges in the administration of city affairs and tended to view them as Schieffelin’s co-conspirators.

Hylan had always taken the Citizens Union’s criticisms of his administration personally, and he rarely lost an opportunity to fire back. At an October 24, 1922 budget hearing, for example, Hylan sent for members of the press to make “disclosures of importance.” He then went on to charge that the Citizens Union had cost New York
taxpayers $500,000 by initiating the Meyer Committee investigation of his administration, accused Wallstein of personally profiting from the investigation, and suggested that Schieffelin’s pharmaceutical company sold wine and liquor in violation of the prohibition laws. In a letter to the Board of Estimate in 1924, Hylan made a stinging indictment of the Citizens Union, the City Club and other affiliated political reform organizations which, in Hylan’s words, “have been particularly obstructive of the progressive and humanitarian administration which we have been endeavoring to give to all the people, with special privilege to no class.” Hylan asserted that these groups were the “mouthpieces” of monopolies, large corporations and plutocrats and were “usually under the control and domination of cunning coteries whose machinations are unknown to the great bulk of the membership” and want to “run the city government according to their own sweet will while the public pays the bill.” Apparently believing that the best defense is a good offense, Hylan accused the Citizens Union of attempting to “hoodwink the people” with a “mass of fabrication and misleading statements.”

Early in his administration, however, Hylan made accusations against Schieffelin that went beyond the pale even in the no-holds-barred arena of New York City politics. These statements precipitated another lawsuit by Schieffelin, though it was libel suit filed by Schieffelin individually rather than a taxpayers’ action on behalf of the Citizens Union. In March 1919, Schieffelin had mailed a solicitation letter asking potential donors to “contribute to the Citizens Union to promote sanity in the City Government and to command respect for the law.” The following month Hylan sent a letter to the City Health Commissioner accusing Schieffelin & Co. of being “one of the chief narcotic drug manufacturers and dealers in cocaine, heroin, morphine and opium in New York.” Hylan
wondered at "a reformer like William Jay Schieffelin attaching his name to such a letter as this asking the people to 'promote sanity' when the cocaine and other narcotics that his drug company manufactures drive people to insanity and crime, and asking people to contribute to 'command respect for the law' when the Schieffelin narcotic drug manufacturing company... violates the law in the sale of narcotics which make criminals by the wholesale."

Schieffelin emphatically denied the allegations, characterizing Hylan's letter as a "scurrilous personal attack upon me [which] appears to be the only attempt which he can make to answer the Citizens Union's exposures of his disgraceful conduct of the city government." The Mayor's letter had the unintended consequence of increasing contributions to the Citizens Union. Nevertheless, Schieffelin retained fellow Citizens Union members Clarence M. Lewis and Walter H. Pollock to represent him in the defamation action, and he brought suit on May 2, 1919. The case never went to trial, although it went on for almost nine years, during which time Schieffelin ultimately prevailed at nearly every stage of the pretrial proceedings. Finally, on January 30, 1928, three years after Hylan left office, he issued a complete retraction of the charges against Schieffelin "in form satisfactory to Dr. Schieffelin" in which he had acknowledged that "these accusations against Dr. Schieffelin personally and against the drug corporation and the reform organization with which he was and is connected I entirely withdraw. I sincerely regret the injustice that I did." In exchange for the apology, Schieffelin agreed to terminate the libel action.

Hylan's accusations and the defamation suit in no way distracted Wallstein and Schieffelin from the Citizens Union's taxpayers' litigation program, which continued to be one of the reform organization's core activities. Meetings of the Executive Committee included regular updates from Wallstein on pending taxpayers' suits and other law-related...
activities of the Citizens Union. It was in late 1924 that Wallstein sent to Walter Pollack a four-page letter summarizing the taxpayers’ actions and other lawsuits that the Citizens Union had brought since 1918 to address and remedy lawless acts of the Hylan administration. Wallstein later observed that, as legal counsel for the Citizens Union, “it was my job primarily then to keep tabs on the Hylan administration and to keep them within the law.” He estimated that he “brought more taxpayers’ actions against Hylan and other members of the City Administration during the time of my incumbency as counsel to the Citizens Union than had ever been brought altogether in the history of the State.” From 1924 to 1930 Wallstein would bring at least nine more taxpayers’ actions for the Citizens Union against New York City officials.

Schieffelin v. Henry marked the approximate mid-point of the taxpayers’ litigation program under Wallstein, both in terms of chronology and the number of suits. The case arose out of a tawdry tale of municipal vice, graft and perjury. In 1920 Police Inspector Dominic Henry had testified before a grand jury that Assistant District Attorney James E. Smith had approached him and offered to purchase police protection for houses of prostitution and gambling places operated by Smith’s friends. Smith had incurred the ire of Hylan, Police Commissioner Enright and Henry by conducting a two-year crusade against vice, during which he had “charged that the Police Department was ‘more corrupt’ than it had ever been, and that Inspector Henry’s district was the worst policed in the city.” When Henry’s grand jury testimony was contradicted by every other witness, he was indicted for perjury. Following a trial in which Enright testified on Henry’s behalf, Henry was convicted and sentenced to a term of two to five years at Sing Sing Penitentiary. The Appellate Division reversed the conviction and ordered a new trial, but the Attorney General concluded
that he could not convict Henry on retrial and had the trial court dismiss the indictment.\textsuperscript{169}

In 1923 Hylan persuaded the state legislature to enact a statute authorizing the city to reimburse Henry for the attorneys fees and expenses that he had occurred in defending himself in the criminal proceedings in 1920 and 1921. The Citizens Union promptly brought a taxpayers’ suit to restrain city officials from reimbursing Henry. The trial court ruled that “there is no constitutional power to reimburse public officers for expenses incurred in defending criminal prosecutions for official acts or omissions, unless a statute provides therefor in advance.” Accordingly, the court granted Schieffelin’s motion for an injunction on the ground that the retroactive statute violated the state constitution “as a mere gift of city money for other than a public purpose.”\textsuperscript{170} The Appellate Division and the New York Court of Appeals both affirmed, without opinion, the trial court’s decision.\textsuperscript{171} In this one of many battles involving the New York City Police Department, the Citizens Union had prevented another illegal expenditure of public funds by the Hylan administration.

Commissioner Enright’s police department prompted yet another taxpayers’ suit by the Citizens Union in 1924 in the matter of \textit{Schieffelin v. Lahey}. William J. Lahey had been a member of the New York City police force from 1888 to January 24, 1918, at which time he held the rank of police captain. On that day, less than one month into the Hylan administration, Enright granted Lahey a leave of absence and appointed him second deputy police commissioner. Lahey continued to serve in that capacity until September 1920, when Enright restored Lahey to the rank of captain and assigned him as Chief Inspector.

The Citizens Union, relying on the Appellate Division’s 1922 decision in \textit{Schieffelin v. Enright}, contended that Lahey had vacated his office as police captain and that his reinstatement to the uninformed police force was unlawful. Schieffelin therefore filed a
taxpayers’ suit to enjoin Lahey from receiving, and city officials from paying him, compensation as a police captain detailed as a chief inspector. The trial court ruled in Schieffelin’s favor, holding that upon accepting the position of deputy police commissioner Lahey had resigned as a police captain, that the civil service commission rules pursuant to which Enright had purported to restore Lahey to the office of police captain conflicted with the provisions of the city charter and hence were void and that, as such, Lahey’s present tenure of office as chief inspector was illegal. Accordingly, the court granted Schieffelin’s motion for judgment on the pleadings and issued the injunction.172

The lawsuit dragged on for another two years. In 1925, the Appellate Division affirmed the trial court’s decision.173 The following year, however, the New York Court of Appeals reversed the lower court’s orders in a four to three decision. The Court of Appeals upheld the rulings that Lahey had vacated his office as police captain when he accepted the appointment as deputy commissioner in 1918, but the four-member majority concluded that Lahey’s reinstatement as a police captain in 1920 was authorized by a municipal civil service rule and that he had been properly restored to duty as a police captain under that rule. Lahey was thus allowed to retain his position as Chief Inspector.174 Wallstein and Schieffelin could at least console themselves with the knowledge that three members of the Court of Appeals had agreed that Lahey’s reinstatement was not authorized by statute and hence was unlawful and that they would have affirmed the judgments in Schieffelin’s favor.175

Public policy regarding rapid transit in New York City, which had precipitated the taxpayers’ actions in Schieffelin v. McClellan (1909) and Schieffelin v. Craig (1918), returned to the fore during Hylan’s second term (1922–1925). In the early 1920s New York courts had repeatedly enjoined efforts by New York City to operate municipal bus lines on
the ground that such activities were beyond the city’s power. Hylan, therefore, sought to have the state legislature enact special legislation authorizing New York City to operate buses but was unsuccessful. The Citizens Union opposed municipal operation of bus lines on both legal and fiscal grounds. Louis Marshall, a member of the Citizens Union and the lawyer who had successfully represented a stockholder in a private transit company in a taxpayers’ action for an injunction, maintained that the city had lost millions of dollars operating ferries and that if “Hylan is allowed to try out his theories on the buses the taxpayers will suffer to the tune of anywhere from fifty to one hundred million dollars. The thing will just not work.” Years later Wallstein observed that, with respect to municipal operation of bus lines, the “view of the Citizens Union was that there was no authority for it and that it would be a wasteful enterprise which would cost the taxpayers great sums of money – I may say that subsequent events have proved that municipal operation of transit facilities is not very prudent or successful.”

Because the city’s pleas for special legislation went unheard in Albany, Comptroller Craig convinced the New York City Municipal Assembly to enact four local laws authorizing the city to establish and operate a bus line. Hylan opposed this action because New York City Corporation Counsel George R. Nicholson had opined that the local laws were illegal and Hylan anticipated (correctly) that the matter would be tied up in the courts for several years.

In early 1925 Schieffelin and Wallstein did indeed commence a taxpayers’ suit to enjoin city officials from dispersing public monies under the authority of the four local laws. It was consolidated for trial with a taxpayers’ action brought by Louis Marshall on behalf of Stuart Browne, President of the United Real Estate Owners Association, with the same objective. Hylan resorted to his now-familiar characterization of the Citizens Union as an
obstructionist group, declaring that

> while I don’t think Comptroller Craig’s theory is sound... nevertheless we could proceed upon the Craig bills and put buses on the streets of the city for the benefit and service of the people, had it not been for the intervention and interferences of so-called reformers and uplifters like William J. Schieffelin, who uses his Citizens Union to block everything beneficial to the people.181

The trial court judge, Justice Wagner, denied the motions for an injunction and dismissed both Schieffelin’s and Browne’s complaints, a decision that Craig hailed as “an emancipation proclamation for the people of the City of New York” and “the greatest step forward in home rule since the Civil War.”182 Schieffelin and Browne appealed, however, and the Appellate Division, in a unanimous decision, reversed the trial court and reinstated the injunctions.183

The city appealed, but the Court of Appeals affirmed the decision in the taxpayers’ favor, ruling that neither the State Constitution nor the Home Rule Law authorized the city to engage in the business of a common carrier and to operate municipal buses and that, as such, the four local laws were invalid. The Court of Appeals noted that the state legislature had consistently and intentionally denied to the city the power to engage in the business of municipal transit. The court noted that “as a result of injunctions against the operation of municipal bus lines which had been granted by the courts, repeated applications had been made to the legislature in behalf of the city of New York to enlarge the city’s powers and that all bills directed to that end had been rejected.”184 This observation reflected, at least in part, the Citizens Union’s view of the rapid transit dispute as a power struggle between city officials and citizen-taxpayers. Historically, a fundamental purpose of the taxpayers’ action had been to prevent municipal corporations and municipal officers from exceeding their lawful powers. This tension between city officials and taxpayers was exacerbated by the Hylan administration. After Justice Wagner had ruled against Schieffelin in the Mills case,
Wallstein "went to see him and told him that I thought he had made a political decision, that it was orthodox Tammany Democratic doctrine at that time – this was during the Hylan administration – to extend the powers of the City as vastly and widely as possible. I said I thought he was wrong." Power and politics consistently infused the conflict between the Citizens Union and the Hylan administration. The intersection of law and politics in the Citizens Union’s taxpayers’ litigation program was especially dynamic during this period.

Between 1924 and 1928, the Citizens Union had a second go-around with the Hylan Administration in the courts regarding the payment of police captains’ salaries, the same issue that had been litigated in Schieffelin v. Lahey. On June 23, 1923, Police Commissioner Enright had promoted three lieutenants (William Kelliher, Patrick Brady and Edward J. Quinn) to the rank of captain, even though there were then no known vacancies and, therefore, they were not assigned until later. The three had been on the eligible list for police captain, which expired on the date of their appointment. A Brooklyn taxpayer, Roscoe Brown, instituted a taxpayers’ action on behalf of the Civil Service Reform Association to vacate the appointments. H. Elliot Kaplan, the Association’s attorney, argued that the Police Captains’ case is more important than appears on the face of it. The principle involved [is] the right of any department head to make gerundive appointments; that is, may appointments of public employees be made long after the eligible list on which their names appear has expired and ceased to exist? If department heads can do so, it would be an easy means for them to invade the merit system law by appointing favorite employees from an eligible list on the eve of its expiration.

The trial judge agreed, observing that to “permit the appointing power, on the eve of the enforced death of such a list, to take men therefrom and assign them to a then non-existent vacancy, the time of which was entirely speculative, would be to open the way to grave evasions of the civil service law.” Accordingly, the court granted Brown’s motion for an
injunction and restrained the payment of the three captains' salaries.\textsuperscript{189}

Not to be deterred, Enright persuaded the state legislature to pass a statute to furnish relief to the three captains, whom Enright then appointed under this special legislation.\textsuperscript{190} While this special legislation was pending, Enright had intentionally passed over three other lieutenants who were at the top of the eligible list.\textsuperscript{191} It was this type of manipulation of the civil service system for the benefit of political favorites that the Civil Service Reform Association and the Citizens Union strove to eradicate. Schieffelin and Wallstein then filed a taxpayers' suit to enjoin payment of the three captains' salaries. The trial court granted the injunction, on March 20, 1925, ruling that the statute was unconstitutional because it violated, by evading, the civil service requirements for promotion under the State Constitution.\textsuperscript{192} The ruling was affirmed on appeal.\textsuperscript{193}

This was not, however, the end of the matter. In 1926, the New York Court of Appeals clarified the law regarding police force vacancies in the case of \textit{Schieffelin v. Lahey}, holding that when a police captain accepted a promotion to commissioner, he automatically vacated his office as captain.\textsuperscript{194} Based on this ruling, the lawyer representing Kelliher, Brady and Quinn moved to modify the March 20, 1925 injunction on the ground that on June 26, 1923, the day on which they had originally been appointed, there were three captains who were serving as Deputy Police Commissioners and, therefore, had vacated their offices as captains, so vacancies did indeed exist.\textsuperscript{195} On June 2, 1928, the trial court modified the injunction "to limit its operation to restraining the payment of salaries as captains to Kelliher, Quinn and Brady under their reappointment pursuant to the unconstitutional act of 1924."\textsuperscript{196} This meant that the three captains were entitled to be paid under their initial June 23, 1923 appointments, the appointments that had been voided in the \textit{Brown v. Craig} lawsuit.
Accordingly, the three captains were awarded four years of back pay ($13,500 each), so the Citizens Union ultimately lost this battle.\textsuperscript{197}

By the time Kelliher and his colleagues prevailed, John Hylan had long since departed the New York City political scene. In early 1925 the prevailing political winds took a decided shift against Hylan following the release of Justice John V. McAvoy’s report to Governor Smith on transit conditions in New York City. Ironically, the independent judicial inquiry had been initiated as a result of Hylan’s charge that the Transit Commission was to blame for the sorry state of New York’s subways. Following a fifteen-day evidentiary hearing conducted at the office of the New York City Bar Association, however, McAvoy placed most of the blame for subway congestion and delays in constructing new lines on Hylan.\textsuperscript{198} Opponents of Tammany Hall quickly made political hay with McAvoy’s report. Samuel Koenig, Chairman of the New York County Republican Committee, J. Irving Walsh, President of the Real Estate Board of New York, and Louis Marshall, the Citizens Union member who had represented the plaintiffs in the injunction action regarding city bus lines, all cited the report as evidence of Hylan’s culpability for the “existing deplorable” conditions of the municipal subways. Wallstein characterized the report as a finding that the Hylan administration had been deliberately and consciously guilty of treason against the people of the city, has... purposely kept the public in suffering... and has capitalized the people’s agony for the power and profit of place. Hylanism is now authoritatively exposed in all its ugly nakedness. Just public indignation may be depended on to inflict the appropriate penalty upon the leader and all those who have abetted him in his terrible public betrayal.\textsuperscript{199}

The charges of treason likely referred to the fact that Hylan had intentionally promoted bus lines, in which his relatives and Tammany favorites had various ownership interests, at the expense of subway construction.\textsuperscript{200}
The political impact of the McAvoy report was profound. At the time the report was issued the *New York Times* predicted correctly that it would prompt Tammany Hall to abandon Hylan and prevent his renomination. The Tammany-backed candidate for mayor, State Senator James J. Walker, defeated Hylan in the Democratic primary and went on to win the general election in November 1925. In a March 1926 biographical sketch of Hylan, the National Municipal Review concluded that “in the end [the transit question] encompassed his undoing.” Joseph McGoldrick, a political science professor at Columbia University, made the same assessment two years later.  

Although the Citizens Union had endorsed Walker for State Senator in 1924, it did not do so in the 1925 mayoral race and instead backed the Republican ticket headed by Frank Waterman. The Citizens Union regarded Walker as a “Tammany regular” and argued that “the Tammany Democratic ticket, despite the improvement that has resulted from the elimination of Hylan, holds no promise of giving the City an administration of its affairs on a non-partisan basis of efficiency and economy.” The Citizens Union did not expect that the replacement of Hylan with Walker would change the essential nature of Tammany Hall’s “character, tradition and practices” but that “it merely means that Tammany has again broken one of its own creatures, grown too powerful,... for factional reasons.” The Citizens Union’s hopes for a reform administration headed by Waterman, however, were dashed at the polls in November.

The Citizens Union’s taxpayers’ litigation arising out of actions of the Hylan administration continued long after Hylan left office. The first such post-Hylan taxpayers’ suit involved Hylan himself and recently-retired police Commissioner Richard Enright in what became known as the Hylan and Enright “pension grabs.” Enright had resigned on
December 29, 1925, two days before Mayor-elect Walker was to be inaugurated, so that Hylan could pass upon Enright’s pension application. When Hylan left office on December 31, he submitted his pension application pursuant to two local laws that he had signed in 1925. Before a month had passed, Wallstein had filed taxpayers’ suits on behalf of Schieffelin against both Hylan and Enright based on the Citizens Union’s belief that the special legislation authorizing the two pensions was invalid and that “the last-minute attempts of Mayor Hylan and Police Commissioner Enright to attach themselves substantially and permanently to the city payroll is generally resented by the public.” Hylan had indeed been subject to considerable criticism in 1925 as the local laws, which would make him eligible for a pension to which he would not otherwise have been entitled, worked their way through the New York Municipal Assembly. The day after Schieffelin filed the lawsuits he received a letter from a fellow New Yorker characterizing Hylan’s and Enright’s pensions as “a disgraceful robbery of the people’s money” and requesting that the Citizens Union initiate legal proceedings to stop payment of the pensions.

The two local laws at issue in the Hylan pension case certainly smacked of special legislation. One reduced the minimum age of retirement of the city employee group that included Hylan from sixty to fifty-five and the other increased the basis of the pension payment from the employee’s last ten-year average salary to the last five-year average salary. The effect of the two amendments was to enable Hylan to receive a pension when he retired on December 31, 1925, for which he otherwise would not have qualified (he was then fifty-seven) and to increase the amount of his pension benefit. Moreover, the local laws affected not only Hylan but also approximately 100 other city employees and were expected to cost the city and city taxpayers an additional $3 million annually. Supreme Court Justice
Joseph Proskauer granted Schieffelin’s motion to enjoin city officials from paying any pension whatsoever to Hylan. The Appellate Division affirmed the decision in Schieffelin’s favor, ruling that the two local laws, which conflicted with and purported to supersede the relevant pension statutes enacted by the state legislature, were therefore invalid. In doing so the court relied on the New York Court of Appeals’ decision in Schieffelin v. Mills, another case in which the Citizens Union successfully challenged the validity of local laws enacted by the Municipal Assembly (in that case authorizing the city to operate municipal bus lines) because they conflicted with state statutes. Preventing municipal officials from exceeding the bounds of their lawful authority was a consistent policy objective of the Citizens Union and a frequent purpose of taxpayers’ suits in general. Of equal concern to the Citizens Union was the fact that the two local laws substantially increased the cost of the retirement system and, hence, imposed a significant burden on city taxpayers. Hylan felt that “he had been ‘singled out’ by the Citizens Union to have his pension held up” and appealed. The Court of Appeals affirmed the lower court decision on October 19, 1926.

The proceedings in the Enright pension case were far more protracted. In 1920 Enright had attempted to retire from the police force and draw a pension under section 355-a of the Greater New York Charter while still serving as police commissioner, but the Citizens Union had prevented him from collecting a pension at that time in the case of Schieffelin v. Enright. In 1924 the state legislature passed a bill, section 14-b of the General City Law, that authorized Enright to retire on a pension in the amount of $5,000 annually. Schieffelin asked the court to restrain the new police commissioner and other city officials from paying any pension to Enright on the ground that section 14-b was unconstitutional special
legislation. The trial court agreed, ruling that the statute was a special and local law that violated the Home Rule Amendment of the State Constitution and issued the injunction.\(^{211}\)

In June 1928, the Appellate Division affirmed the lower court’s decision, concluding that section 14-b “could not very well apply to any but Enright. It was a deliberate attempt to enact special legislation of the kind which has frequently been condemned by the courts.”\(^{212}\) The following year, however, the Court of Appeals modified that judgment. It agreed that section 14-b was unconstitutional special legislation but concluded that, because Enright had now retired as police commissioner, section 355-a of the Greater New York Charter applied to him and entitled him a pension under that statute, that of a chief inspector. Since a chief inspector’s pension was only $3,750 per year, though, the Court of Appeals did enjoin any pension payment to Enright in excess of that amount.\(^{213}\) The Citizens Union was thus only partly successful in derailing the Enright “pension grab.”

The last two Citizens Union taxpayers’ suits arising out of legislation enacted during the Hylan administration were Schieffelin v. O’Brien and Schieffelin v. Leary. The first case involved the manner in which a senior management position in the police department, a seemingly never-ending source of grist for the Citizens Union taxpayers’ litigation mill, was to be filled. The second was directed at efforts by the New York Municipal Assembly to increase the salaries of municipal court judges.

In the O’Brien matter, Schieffelin and Wallstein filed a petition to enjoin the payment of the salary of Thomas E. O’Brien, the police department building superintendent. In 1895 the police department had established a Bureau of Repairs and Supplies, supervision of which was not an independent office but a duty assignment at the pleasure of, and revocable by, the police commissioner. O’Brien had served as bureau chief since the office was
created. In 1923, the state legislature, being not satisfied with this situation and desiring to give the police building superintendent a more secure tenure in office, added section 276-e to the New York City Charter which created the office of police department building superintendent whose salary was $5,000 annually and who could not be removed except in the manner prescribed for all police officers. At that time O'Brien held the rank of lieutenant with a salary of $3,300 per year. Police Commissioner Enright did not require O'Brien to take the civil service examination mandated for all civil service positions but merely appointed O'Brien to the office.214

Schieffelin filed suit, contending that section 276-e created a new office that could only be filled through the competitive examination process pursuant to the statutory and constitutional provision for promotion in the civil service. The trial court dismissed Schieffelin's complaint, and the Appellate Division affirmed.215 The Court of Appeals, however, agreed with Schieffelin that the position was one that had to be filled after competitive examination, reversed the lower court decisions and awarded Schieffelin judgment plus costs in all courts.216

The O'Brien decision marked another victory for the Citizens Union in its battle against political patronage in municipal government. One of the governing principles of New York City political reformers in general and of the Citizens Union in particular was that municipal government should be staffed and run by those persons who were the most qualified and who were selected because of what they knew rather than whom they knew. In one of its founding documents, the 1897 Declaration of Principles and Objects, the Citizens Union had declared:

We demand that the Civil Service requirements of the Constitution and laws
of this State be impartially enforced by such methods as will insure a
d practical and reasonable test of fitness and the selection of subordinate
officers upon their merits, irrespective of political influence, so as to afford
a fair chance to every citizen, without regard to race, religious belief, or
political affiliations.217

In a 1931 publication the Citizens Union reiterated its continuing commitment to “cooperate
with other agencies in resisting efforts to undermine the merit principle in the Civil
Service.”218 Indeed, the Citizens Union had cooperated with the Civil Service Reform
Association (CCRA) in at least three successful taxpayers’ actions brought by the CCRA
against the Hylan administration.219 The Citizens Union litigated such civil service issues
so frequently precisely because such litigation directly promoted its fundamental purpose,
as stated in the first paragraph of its 1897 Constitution, of “securing the honest and efficient
government of the City of New York.”220

The case of Schieffelin v. Leary, the last of more than fifteen taxpayers’ suits that the
Citizens Union initiated against Hylan administration officials, likewise implicated a core
Citizens Union objective, an independent and honest judiciary. In 1915 the New York
legislature had promulgated the New York City Municipal Code which, among other things,
fixed the salary of municipal court judges at $9,000 per year. In 1925, the New York City
Municipal Assembly enacted two local laws which conferred upon city officials the authority
to fix and increase the salary of every person whose compensation was paid by the city, a
class that included municipal court judges. This legislation represented yet another effort by
the Hylan regime to expand the power of municipal government under the Home Rule Act.
The following June the Municipal Assembly increased the annual salary of the forty-nine
municipal court judges from $9,000 to $10,000.

The Citizens Union immediately filed a taxpayers’ action against one of the affected
judges, Timothy A. Leary, to test the validity of the law. A panel of Appellate Division judges unanimously ruled in Schieffelin’s favor and issued an injunction restraining city officials from paying the salary increase to Leary and the other municipal court judges. The court construed the local laws as applying only to officers and employees of the city government and not to judicial officers who, although paid by the city, were a part of the State’s judicial system. The court further ruled that to the extent that the local laws purported to grant such authority to the city Board of Alderman it conflicted with the State municipal court code and, therefore, was unconstitutional because it violated the City Home Rule Law and the State Constitution. Wallstein hailed the decision, declaring that it was of “far-reaching importance and paves the way for a complete reorganization of the Municipal Court system of New York.” He further observed that the

greatest effect of the decision is to emancipate the judicial system of the State … from the meddling control of the local authorities… It will aid legislation introduced to bring about comprehensive reorganization of the Municipal Court which will enable that court to regain the respect of the bench and bar, a reorganization already too long delayed because of differences of opinion as to where the power to fix the salaries of the Judges was vested. All obstacles in the way of reform are now removed with the elimination of the municipal authorities from a voice in the salary question.

Wallstein’s sentiments on this issue reflected Citizens Union policy, which from its inception had advanced keeping politics out of the courts. In 1910, for example, the Citizens Union had opposed John Delany in the Democratic primary for a judicial position. In a pamphlet entitled “Keep the Courts Out Of Politics,” the Citizens Union declared that “partisan political considerations should have no place in the selection of judges.” It went on to argue that Delany’s record “has not been such as to ensure that independence, impartiality and predominant concern for the public welfare which should distinguish our
judiciary,” and that “it was largely because of his usefulness to the [Tammany] machine” that Delany had been given the nomination “as a reward.” In 1917, the Citizens Union had opposed the Dowling Bill, which would have changed the manner in which judges were elected and which Citizens Union Executive Committee member Albert S. Bard characterized as “an act to facilitate partisan combinations and the jockeying of elections for judges.” Lead articles in *The Searchlight*, the Citizens Union’s news publication, often addressed the subject of an independent judiciary. For example, the October 22, 1922 edition’s front page story, entitled “Politics and the Courts,” exhorted New Yorkers to “rebuke attempts to play politics with the courts” and condemned instances of nepotism in judicial appointments and “the use of judicial office as a party spoils.” In 1930, the Citizens Union strongly advocated for the Hofstadter-Moffat Bill because it “would eliminate political party machinery entirely from the process of nomination as well as of election of judges,” and the Citizens Union “pressed actively its campaign to relieve the courts and the judiciary of partisan domination.” The Citizens Union’s efforts in this regard and the *Leary* taxpayers’ suit helped provide the critical political mass that led to the Seabury Committee’s investigation of the Magistrates Courts in 1932.  

Between 1927 and 1930 Schieffelin and the Citizens Union litigated its last two taxpayers’ suits, both of which challenged actions of municipal officials in the administration of Mayor James J. Walker (1926 - 1932). In *Schieffelin v. Walker* the Citizens Union challenged a new municipal policy that the Board of Estimate adopted in 1927 regarding the method of raising funds for the construction of subways because it increased the taxpayers’ relative share of such costs. Schieffelin and Wallstein prevailed before the trial judge and in the Appellate Division.  

The New York Court of Appeals reversed, however, concluding
that regardless of whether the new policy was “wise or unwise,” a matter with which “we have no concern,” the Board of Estimate had the legal authority to implement the policy. The Walker case was at least the fifth taxpayers’ action in which the Citizens Union litigated issues relating to rapid transit construction.

Schieffelin v. Goldsmith was the last taxpayers’ action filed by Wallstein on behalf of the Citizens Union. In it, the Citizens Union sought an injunction to restrain the city comptroller from paying salaries to two temporary municipal court justices who had been appointed pursuant to a 1929 amendment to the New York City Municipal Court Code that, the Citizens Union maintained, was unconstitutional. The trial court denied Schieffelin’s request, but the Appellate Division reversed and granted his motion for an injunction. The Court of Appeals in turned reversed the Appellate Division, ruling that the new statute did not create an unauthorized method of selecting judges. Thus, Wallstein was unsuccessful in his effort to characterize the payment of these judicial salaries as an illegal official act or a waste of municipal property.

Evaluating the Citizens Union’s Taxpayers’ Litigation Efforts

By the time the Goldsmith lawsuit was concluded, the Citizens Union taxpayers’ litigation program had spanned almost a generation and the administrations of five New York City mayors. It had been launched during the Progressive Era and continued on through the onset of the Great Depression. Its scope and duration demonstrate the central role of the taxpayers’ suit in the Citizens Union’s political reform efforts. Furthermore, these taxpayers’ actions illuminate a number of important features of American society during these decades.

At a strategic level, the increased utilization of taxpayers’ suits represented a
fundamental shift in emphasis on the part of the Citizens Union and of other political reform
groups, such as the Civil Service Reform Association, who followed suit. During the first
decade of its existence the Citizens Union had devoted most of its resources to traditional
political activity aimed at electing officials possessing a high degree of integrity and
competence and to research and education intended to promote a business model of
government. The election of one-term Mayor Seth Low in 1901 and the systemic changes
introduced by the Bureau of Municipal Research are representative of these efforts. After
Schieffelin assumed the leadership of the Citizens Union in 1908, however, it increasingly
relied on the law, in the form of both litigation and legislation, to achieve its objectives.
Having experienced only modest success with direct political activity, persuasion, and public
education, after 1908 the Citizens Union sought to enforce and promote change and
improvements in municipal government through the coercive power of the law. It did so in
two ways – by changing laws through the efforts of its Legislative Committee and by
enforcing compliance with the law through the taxpayers’ litigation program. The Citizens
Union did not entirely abandon its political and educational activities in these years, but it
did, especially between 1918 and 1930, allocate considerably less time and energy to them
and much more to its legal efforts.

The magnitude and effectiveness of the Citizens Union’s taxpayers’ litigation
program are also noteworthy. Schieffelin instituted more than twenty taxpayers’ suits
between 1908 and 1930, fifteen of which arose out of actions of officials in the Hylan
administration. The Citizens Union ultimately prevailed in twelve of those fifteen Hylan-era
lawsuits, thereby preventing a plethora of illegal official acts and expenditures.

The frequency of Citizens Union taxpayers’ actions during the Hylan administration
and the absence of any during the term of Fusion Party Mayor John Purroy Mitchel reflect another feature of the taxpayers’ suits – they provided a means by which political outsiders could promote reform in government and hold local officials accountable. The need for such a remedy was greatest when city government was controlled by the Tammany machine and run by individuals disposed to exceeding the bounds of the law. The watchdog function and the coercive nature of the taxpayers’ action are implicit in Wallstein’s recognition that, as legal counsel for the Citizens Union, “it was my job to keep tabs on the Hylan administration and to keep them within the law.”

The Citizens Union used the taxpayers’ suit with great effect to combat corruption in municipal government and to force local officials to heed the law or made to answer if they failed to do so.

The scope and success of the Citizens Union taxpayers’ litigation program are likewise evident in the degree to which it helped to bring about political change, in two principal ways. First, court decisions in individual cases shaped and affected the course of public policy in municipal affairs in New York City. In some instances, the Citizens Union blocked proposed actions by city officials such as funding with taxpayers’ dollars the Silver Jubilee, the subject of the 1923 litigation in Schieffelin v. Hylan. Other taxpayers’ suits had a broader and more systemic impact. The lawsuits that targeted what Wallstein often referred to as pension schemes served the prophylactic function of making the city’s retirement system more open and honest. Compelling city officials to adhere to the “pay-as-you-go” provision of the city charter in cases such as the 1919 taxpayers’ action in Schieffelin v. Hylan was a centerpiece of the Citizens Union’s political agenda. The injunction that Schieffelin obtained in the 1925 case of Schieffelin v. Mills was instrumental in preventing the city from operating municipal bus lines and in checking the Hylan administration’s
efforts to expand the city’s powers generally under the Home Rule Law. The legal relief obtained by the Citizens Union in these cases always had particular consequences, by altering or precluding specific actions of city officials, and often had more generalized structural ones.

Second, the taxpayers’ suits were a factor in the political demise of John Hylan at the end of his second term. Hylan had won the 1922 mayoral election by the largest plurality in New York City’s history. Only three years later he was defeated in his party’s primary. Admittedly, the Citizens Union could not claim sole credit for Hylan’s political defeat. By 1925 Hylan had a host of political liabilities and woes, and the rapid transit issue was an especially irritating thorn in his side. The cumulative effect of the Citizens Union’s many victories in taxpayers’ suits, which received extensive press coverage and laid open the political workings of Hylan’s administration, was not insignificant. Moreover, the Citizens Union’s 1925 taxpayers’ litigation on the subject of rapid transit (Schieffelin v. Mills), along with the related taxpayers’ action brought by the United Real Estate Owners Association in Browne v. City of New York, certainly crystalized public discontent with Hylan’s handling of the mass transit problem. Even a somewhat sympathetic biographer in the National Municipal Review observed that rapid transit in New York City at that time was “physically, legally and politically a dreadful mess” and that “[i]n the end it encompassed [Hylan’s] undoing.” For the Citizens Union, the taxpayers’ action proved to be a valuable tool for change.

Schieffelin’s taxpayers’ lawsuits also shed light on the issues that dominated American public life and municipal politics in the early twentieth century. As a consequence of decades of unparalleled and mostly unregulated urban growth, by 1900 “[m]ost municipal
governments...were strained beyond their capacity to provide urban dwellers with adequate services and efficient administration.” Two of the thorniest subjects were municipal transit and municipal personnel. With respect to the first, for nearly twenty years and in five separate taxpayers’ actions, starting with Schieffelin v. McClellan in 1909 and concluding with Schieffelin v. Walker in 1928, the Citizens Union litigated matters regarding the finance and operation of rapid transit systems. As to the second, during the 1920s alone Schieffelin filed at least nine taxpayers’ suits involving personnel issues. He challenged pension payments (in the Enright, Warren and Berry cases) and litigated the legality of judges’ raises (Leary), police captains’ salaries (Lahey and Kelliher), a police inspector’s reimbursement for legal fees (Henry), a policeman’s unlawful reinstatement (Doolan) and the appointment of a police building superintendent (O’Brien). Two of the most prominent public policy issues of this period were at the vanguard of the Citizens Union’s legal agenda.

Finally, the taxpayers’ litigation program of the Citizens Union tells us much about Americans’ notions of citizenship and their view of the role of law in American society in this era. The fundamental three-way connection between citizenship, the paying of taxes, and the right of taxpaying citizens to invoke legal processes in order to hold government officials accountable was manifested in the goals and operation of the Citizens Union’s taxpayers’ litigation program and, indeed, in that very description of the reformers’ legal efforts. It not only embodied the vital relationship between law and political reform movements but, through its execution over two decades, enhanced that relationship. The fact that the leaders of the Citizens Union were willing to submit these disputes to the courts for resolution demonstrates their confidence that the judicial branch of government would, for the most part, fairly and impartially decide, according to the rule of law, important matters
of public policy involving both malversation and well-intentioned but nevertheless unlawful acts of public officials in the executive and legislative branches. The taxpayers’ suits represented, to quote James Willard Hurst, “a demand for positive help from the law” on the part of the Citizens Union and evinced its expectation that the law would in fact “help positively to bring things about” in the political and public policy realms.232 Schieffelin and Wallstein were not so naive as to believe that politics never informed judicial decisions, but they trusted the courts as an institution that would generally serve as an honest broker of disputes between citizens and their government.

In the second and third decades of the twentieth century the Citizens Union utilized the taxpayers’ action to a then unprecedented degree to promote its political and public policy objectives. By the 1920s the taxpayers’ suit, if not the tactic of choice, was certainly a principal tactic chosen by the Citizens Union to further its agenda. This alliance between law and political reform movements, between legal activism and political activism, was to intensify and bourgeon dramatically during the next decade, as Americans made widespread and frequent use of the taxpayers’ suit in response to economic and social crisis created by the Great Depression. The magnitude and relative success of the Citizens Union’s taxpayers’ litigation program had demonstrated the viability of the taxpayers’ suit as instrument of political reform and good government, and taxpayers and taxpayers’ associations made considerable use of this reform tactic in the 1930s.
1. I have chosen to drop the possessive in the name Citizens Union because that, and not Citizen’s Union, is how the organization identifies itself.


15. For example, Albert S. Bard, a prominent attorney and member of the Citizens Union executive committee, was instrumental in getting the New York County Bar Association to take actions promoting an independent and qualified judiciary. “The Mail and Express,” Jan. 14, 1903, Albert S. Bard Papers, Manuscripts and Archives Division, Humanities and Social Science Library, The New York Public Library (hereinafter HSSL/NYPL); New York County Bar Association Resolution, 1905, Bard Papers. For a more critical view of the role of New York elites in reform movements in this period see Sven Beckert, *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850 - 1896* (New York: Cambridge University Press, 2001) 317 - 322. Beckert argues that the increase in reform efforts in the 1880s by the New York City bourgeoisie was mobilized by a perceived need to improve government efficiency, lower taxes, and undermine the power of the two political parties in local government. The end result would force politicians to depend more on resources of the elite rather than the political machines. See also John Louis Recchiuti, *Civic Engagement*, 98 - 99; David C. Hammack, *Power and Society: Greater New York at
the Turn of the Century (New York: Russell Sage Foundation, 1982), xix, 140 - 142.


19. See notes 36 to 41 below.

20. See note 56 below.

21. See notes 92 to 96 below.


23. Muccigrosso, “The City Reform Club,” 242 - 243. The “small blue” pamphlet compiling the voting records of members of the State Assembly who came from New York City, according to Schieffelin, often prompted threats of libel suits from elected officials. Reminiscences of William Jay Schieffelin (1949), 11 (OHRO/CUL).


26. In this context, an “excise law” is “a law regulating, restricting or taxing the manufacture or sale of intoxicating liquor.” Henry Campbell Black and West Publishing Company, Black's Law Dictionary; Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern, 4th Ed., Rev. By the Publisher’s Editorial Staff (St. Paul, Minn.: West Publishing Co., 1968), 672.

27. People v. MeaUm, 133 N.Y. 214, 30 N.E. 828 (1892); Welling v. Meakim, 24 Abb. N. Cas. 379 (1890); Muccigrosso, “The City Reform Club,” 244.

28. NYT, December 13, 1887, 2 and 4; Muccigrosso, “The City Reform Club,” 244; A partial record of election frauds perpetuated against voters in the Eighth Assembly District appears in the NYT, December 11, 1887, 9.

29. NYT, December 11, 1887, 9.

30. NYT, March 29, 1888, 8. NYT, December 16, 1887, 4. The NYT claimed that over District Attorney Martine’s six-year tenure “5,000 excise cases” had accumulated, but none were prosecuted. NYT, October 11, 1888, 9. Another article ridiculed a statement made by Martine that he would not bring the election fraud cases before the Grand Jury because the evidence presented by the Reform Club was “too verbose” and because they had treated him “with discourtesy.” NYT, December 14, 1887, 5. The Times published numerous articles and editorials criticizing Martine’s lack of action in these cases. NYT, December 13, 1887, 2, 4; December 14, 1887, 5; December 15, 1887, 9; December 16, 1887, 3, 4.
31. See the following *NYT* articles and editorials for a more complete account of the various problems confronting the Reform Club, the new district attorney and the grand juries – December 16, 1887, 4; March 29, 1888, 4, 8; May 5, 1888, 5; October 11, 1888, 9.

32. *NYT*, March 12, 1889, 8 and April 27, 1889, 4.

33. *NYT*, March 27, 1889, 4, 8; June 21, 1889, 4; June 23, 1889, 4; June 26, 1889, 8; Sept. 15, 1889, 4; Sept. 15, 1889, 16.

34. *NYT*, December 12, 1889, 9; Muccigrosso, “The City Reform Club,” 244; Reminiscences of William Jay Schieffelin (1949), 11 (OHRO/CUL).

35. *NYT*, Dec. 12, 1889, 9; May 17, 1890, 4; March 30, 1891, 8; March 31, 1891, 3; April 1, 1891, 9; April 2, 1891, 8.

36. Mandamus literally means “we command” (Latin). It is the name of a writ “which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, ...commanding the performance of a particular act therein specified, and belonging to his or their public, official or ministerial duty...” *Black’s Law Dictionary*, Revised Fourth Edition, 1113.


39. *People ex rel. Welling v. Meakim et al*, 10 N.Y.S. 161 (1890). In a last-ditch effort, the excise commissioners turned to the Court of Appeals, only to be rebuffed with a judgment affirming the lower court and awarding Welling costs. *People ex. rel. Welling v. Meakim et al*, 123 N.Y. 660, 26 N.E. 749 (1890).

40. *NYT*, November 17, 1891, 8. In his oral history interview with Dean Albertson in 1949, William Jay Schieffelin remarked that his early experiences with the City Reform Club and the City Club helped shape his perspective on the use of legal action to effectuate change in city government. Schieffelin was encouraged to join the club in 1889 by his cousin, John Jay Chapman, who had characterized the group as a club of “about a dozen young college graduates, nearly all lawyers, who are the only people in town who have the guts to stand up and fight Tammany.” Reminiscences of William Jay Schieffelin (1949), 10 - 12 (OHRO/CUL).

41. Muccigrosso, “The City Reform Club,” 245; *NYT*, Nov. 17, 1891, 8.

42. *NYT*, April 27, 1892, 8; *People v. Meakim et al*, 133 N.Y. 214, 30 N.E. 828 (1892).

43. *NYT*, April 27, 1892, 8; Muccigrosso, “The City Reform Club,” 245.

44. *NYT*, March 30, 1891, 8.

45. See Roy Rosenzweig and Elizabeth Blackmar, *The Park and the People: A History of Central Park* (New York: Cornell University Press, 1998) for a chronicle of the disputes over the role of Central Park in the life of New Yorkers and for an in-depth discussion of Frederick Law Olmstead’s design, the shifting uses and the cultural impact of Central Park.


48. *NYT*, March 19, 1892, 1 & 2; Reminiscences of William Jay Schieffelin (1949), 14 & 15 (OHRO/CUL); *NYT*, March 23, 1892, 8; *NYT*, March 26, 1892, 4; *NYT*, April 15, 1892, 4; Reminiscences of William Jay Schieffelin (1949), 14 & 15 (OHRO/CUL); Muccigrosso, “The City Reform Club,” 250.


53. Good Government Clubs and its members were also known as Goo-Goos, a term that reform opponents originally intended as derisive but that, according to Schieffelin, later became one of respect. Reminiscences of William Jay Schieffelin (1949), 23 - 24 (OHRO/CUL).


56. The City Club, A Brief History, 1950, Albert Bard Papers, (HSSL/NYPL); NYT, October 14, 1897, 2; NYT, April 6, 1899, 1; October 31, 1899, 2; November 1, 1899, 14. November 22, 1899, 5; September 13, 1900, 7; September 14, 1900, 14; December 23, 1900, 1; December 28, 1900, 1.

57. Willrich, City of Courts, xxvi.


61. Ibid...


64. George Mcaneny to Albert S. Bard, January 26, 1907, Albert Bard Papers, (HSSL/NYPL).


67. According to historian Gerald Kurland “of the 165 founder of the Citizens Union, 40 were lawyers, 28 businessmen, 24 merchants, 20 professional men, 14 bankers, 11 labor union leaders, 6 manufacturers; 2 were classified as workingmen, and 20 were not classified by occupation.” Kurland, “The Amateur in Politics,” 356, n. 4.


75. Ibid., 378, 382.

76. John Jay Chapman, Practical Agitation (New York: C. Scribner’s Sons, 1900), 46.

77. Many in the Citizens Union believed that the candidacy of Henry George, a Jeffersonian Democrat and popular progressive, would pull the Democratic middle class vote away from the Tammany candidate. George, however, died in his sleep three days before the election and the void gave Tammany candidate Robert Van Wyck the votes he needed to defeat Seth Low. Van Wyck (Democrat) garnered 233,997 votes, Seth Low came in a distant second at 151,540 and the Republican candidate trailed at 101,863 votes. Kurland, “The Amateur in Politics” 377, 380 - 381; “The Best Administration New York Ever Had,” Campaign Book of the Citizens Union, Sept. 1903, 7 - 8.

78. “A Quarter Century of the Citizens Union,” 10; Meeting of the Citizens Union Executive Committee, Sept 10, 1900; Meeting of the Citizens Union Central City Committee, Sept. 24, 1900, Citizens Union Papers (RBML/CUL).


80. Ibid.

81. Ibid., 12.

82. NYT, October 7, 1901, 2; March 13, 1900, 1.


85. Meeting of the City Committee, March 24, 1902, Citizens Union Papers (RBML/CUL).


88. Ibid., 56.


93. NYT, January 25, 1907, 4; April 18, 1907, 1; April 12, 1907, 6; "A Quarter Century of the Citizens Union," 17-18. John Purroy Mitchel (future mayor of New York City) was a Good Government Club member and a graduate of Columbia Law School. Recchiuti noted that Mitchel's role in the investigation launched his political career. Recchiuti, Civic Engagement, 107-108, 111.


95. NYT, December 20, 1907, 18; December 21, 1907, 6; March 7, 1909, 10. Quo Warranto literally means "by what authority" and refers to a proceeding against one "who claimed or usurped any office, franchise, or liberty, to inquire by what authority he supported his claim, in order to determine the right." In this context, it was a method for trying the title to Ahearn's public office and for "preventing a continued exercise of [his] authority unlawfully asserted." Black's Law Dictionary, Revised Fourth Edition, 1417.


97. NYT, January 27, 1908, 14.

98. See notes 108 to 112 below.


101. Reminiscences of William Jay Schieffelin (1949), 2, 10 (OHRO/CUL); "Wm. Jay Schieffelin for City Council," pamphlet, c.1933, Citizens Union Papers (RBML/CUL). In this latter publication Schieffelin claimed that, as chairman of the Citizens Union since 1908, he had "brought 22 actions to make city officials obey the law, and won 18."


103. Schieffelin's views on the obligation of Christians to apply their faith in "their business and professional and political lives" were the subject of a speech he gave to the Huguenot Society of America, "Christianity and Politics," An Address given by Dr. William Jay Schieffelin on April 13, 1925, Citizens Union Papers (RBML/CUL).

104. For example, in the 1890s Schieffelin followed with interest the efforts of Dr. Parkhurst, a young Presbyterian minister, to eradicate "commercialized vice." In his sermons Parkhurst often addressed frequent newspaper accounts of police corruption regarding houses of ill repute. He was subsequently subpoenaed by a grand jury which accused him of making false charges. Parkhurst responded by hiring a lawyer to collect evidence. Soon he presented the grand jury with a "sheaf of affidavits" and called on it to act. The grand jury indicted the police commissioner and various heads of the police department. The depth of the corruption was brought to the attention of the state legislature, which passed a joint resolution authorizing an investigation with Senator Lexow as chairman of the investigating committee. The Lexow investigation, according to Schieffelin, was one of the "milestones in the fight against corruption in New York City." Reminiscences of William Jay Schieffelin (1949), 15-17 (OHRO/CUL).

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107. For example, Committee Chairman Albert S. Bard and the Citizens Union were involved in the campaign for the direct Nomination Bill. J.O. Hammit, Secretary of the Committee on Legislation to Albert S. Bard, Chairman, January 4, 1909, Albert S. Bard Papers (HSSL/NYPL).

108. NYT, February 7, 1909, C4; May 8, 1909, 9; June 9, 1909, 6; June 12, 1909, 6; June 25, 1909, 9; July 14, 1909, 14.


110. New York has a three-tier system for its courts of general jurisdiction. At the lowest level are the trial courts, which are incongruously named Supreme Courts, a term normally associated with a jurisdiction's highest court of last resort. The Appellate Division courts are the state's intermediate courts of appeals and handle appeals from the Supreme Courts in their respective geographical jurisdictions. Litigants dissatisfied with the rulings of Appellate Division courts may then seek to appeal those rulings to the New York Court of Appeals, the state's highest appellate court.

111. Schieffelin v. McClellan et al, 135 A.D. 665, 674, 120 N.Y.S. 215 (1909); The two dissenters maintained that the two statutes were consistent with each other, that both governed the granting of such franchises, that the Board of Estimate and Apportionment had complied with the city charter but not with the Railroad Law and that, as such, “the board was proceeding in an illegal way... and... the action can be maintained.” Ibid., Schieffelin v. McClellan et al, 197 N.Y. 610, 91 N.E. 1120 (1910).

112. NYT, June 12, 1909, 6.


114. Similarly, in the last decades of the nineteenth century the introduction of electric lights in United States cities had precipitated a number of taxpayers' actions. See, for example, Talcott v. City of Buffalo, 125 N.Y. 280, 26 N.E. 263 (1891); Blood v. Manchester Electric Light Company, 68 N.H. 340, 39 A. 335 (1895).


116. NYT, December 21, 1909, 8; December 22, 1909, 20; December 24, 1909, 16. Schieffelin was also dubious about a proposed change to the plans for the building's foundation by which only three quarters of the foundation would be constructed on bedrock and the fourth would rest upon sand.


118. Ibid. at 612, 610.


122. April 20, 1914 minutes of meeting of the City Committee of the Citizens Union, Citizens Union Papers (RBML/CUL).

123. NYT, August 1, 1914, 8; August 14, 1914, 10.

124. NYT, August 1, 1914, 8; August 14, 1914, 10.


126. Schieffelin v. Komfort, 163 A.D. 741, 149 N.Y.S. 65 (1914); NYT, August 28, 1914, 8.

127. See chapter 1, notes 12 to 14 and 42.

128. Schieffelin v. Komfort, 212 N.Y. 520, 529 - 530, 536, 106 N.E. 675 (1914); NYT, October 24, 1914, 12. Interestingly, two of the attorneys who represented Schieffelin in the Komfort case were or later became prominent figures in New York political reform movements - Albert S. Bard, a member of the Citizens Union’s Executive Committee, and Fiorello LaGuardia, the future Fusion Party mayor.


135. Ibid., 159-160.

136. Schieffelin v. Craig, 183 A.D. 515, 524, 170 N.Y.S. 603 (1918); NYT, February 24, 1918, 39; March 5, 1918, 22; May 4, 1918, 17.


138. Schieffelin v. Craig, 188 A.D. 197; NYT, February 14, 1919, 12; February 22, 1919, 8.


140. NYT, February 8, 1919, 5; February 16, 1919, 23; March 27, 1919, 12; February 14, 1919, 12; February 22, 1919, 8.


Schieffelin v. Hylan, 236 N.Y. 254, 140 N. E. 689 (1923); NYT, July 14, 1923, 5.

NYT, June 30, 1923, 10.

Schieffelin's taxpayers' litigation program was not without consequences for him personally. Following one action the New York City Fire Commissioner "slapped 21 violation upon [a] building owned by Schieffelin & Co."

Reminiscences of William Jay Schieffelin (1949), 25 - 26 (OHRO/CUL)

ATT, April 16, 1919, 5; April 17, 1919, 10; April 19, 1919, 5; April 25, 1919, 14; May 3, 1919, 15; October 31, 1919, 17; February 5, 1920, 22; Schieffelin v. Hylan, 205 A.D. 360, 199 N.Y.S. 691 (1923); Schieffelin v. Hylan, 210 N.Y.S. 557, 125 Misc. 264 (1925).


January 3, 1924 and January 14, 1924 minutes of the Citizens Union Executive Committee, Nicholas Kelly Papers (HSSL/NYPL).


NYT, May 15, 1920, 2; May 26, 1920, 2.
169. NYT, May 26, 1920, 2; June 12, 1920, 8; June 16, 1920, 1; June 23, 1921, 16.


176. NYT, March 6, 1923, 23; July 20, 1923, 1.

177. NYT, July 29, 1923, 11.


179. NYT, November 18, 1924, 1; January 21, 1925, 5; March 4, 1925, 1.


181. NYT, January 21, 1925, 5.


186. See notes 165 - 168 supra.

187. NYT, March 22, 1924, 17.

188. Ibid.


191. NYT, May 4, 1924, 1.


194. See notes 167 - 168 supra.

195. NYT, July 23, 1927, 11.

197. NYT, September 20, 1928, 20.


199. NYT, February 9, 1925, 1.


202. Citizens Union Secretary to Hon. James J. Walker, October 24, 1924, Citizens Union Papers (RBML/CUL); Press Release from Walter Tallmadge Arndt, Citizens Union Secretary, October 5, 1925, Citizens Union Papers (RBML/CUL); Report of the Secretary Transmitting the Recommendation of the Citizens Union Executive Committee, September 23, 1925, Citizens Union Papers (RBML/CUL); Press release from Walter Tallmadge Arndt, October 5, 1925, Citizens Union Papers (RBML/CUL).

203. “Pension Grab Halted,” The Searchlight, April 1926, Citizens Union Papers (RBML/CUL); NYT, April 8, 1925, 3; April 16, 1925, 6; April 25, 1925, 8; W. E. Jarvis to William J. Schieffelin, January 29, 1926, Citizens Union Papers (RBML/CUL).

204. NYT, April 8, 1925, 3.


208. NYT, June 5, 1926, 1.


228. Ibid., 62.


230. Ibid., 164.


CHAPTER III

"MR. TAXPAYER VERSUS MR. TAXSPENDER:"
TAXPAYERS’ ASSOCIATIONS, POCKETBOOK POLITICS AND THE LAW
DURING THE GREAT DEPRESSION

In November 1933, perhaps the bleakest year of the Great Depression, journalist Hal Steed of Atlanta, Georgia published in the Saturday Evening Post, a popular national magazine, a two-part article, "Adventures of a Tax Leaguer," in which he related his experiences in the taxpayers’ association movement that was sweeping the United States. He described the financial squeeze in which middle-class property taxpayers had found themselves, observing that

[until January, 1932 when I became a civic uplifter, I was just another property owner, paying my steadily mounting tax bill without protest. As early as 1928 I had felt a suspicious calm in the business atmosphere. The banks began to tighten up; mortgagees refused to renew their loans at the old figures. In 1929, when I paid my taxes, I found myself with only a small surplus. In 1930 and 1931, my rentals, thanks to bankrupt tenants, were not enough to pay my taxes. Meanwhile, my assessments were being raised. Taxes, for the first time in my life, became a problem.

Because nearly all other real estate owners were in the same predicament, the local real estate board decided to call a meeting of property owners to discuss the subject of taxes. When Steed arrived at the meeting he immediately "sensed a different attitude. I was conscious of a certain determination born of desperation." Attendees expressed considerable frustration with the fact that they had reduced expenses in their own business operations during the past few years in order to remain financially viable but that, in contrast, city and county governments had expanded their staffs and run deficits. The taxpayers decided to form a
"Taxpayers League whose members could speak a language at the polls that the politicians would understand."²

The tax leaguers adopted a platform "calling for efficient government and lower taxes."³ By April 1932, the organization had more than three thousand members.⁴ The group pursued a variety of tactics and programs. It was largely unsuccessful with traditional political activity at the polls. The members discussed the possibility of a tax strike, in which property owners would refuse to pay their property taxes, but did not call for one. The Taxpayers League had its greatest success through what Steed described as a conciliatory approach, in which the organization examined the operations of city and county governments and then pressed local officials for operational and fiscal reforms. Steed expressed satisfaction that "[t]hrough conferences, agreements and persuasion, we came into 1933 with a city tax reduction of $3,000,000 and an additional one from the county of $750,000." In Steed’s view, such reforms and relief were attainable "when good citizens get together."⁵

The “determination born of desperation” and the resulting concerted political activity of Atlanta taxpayers were hardly isolated phenomena at the time. On the contrary, they were representative of a groundswell of populist taxpayer political action that swept the nation in the early 1930s. The proliferation of local taxpayers’ associations during these years was dramatic and unprecedented. As late as 1927 one study estimated the total number of such organizations at forty-three.⁶ Only six years later, Edward M. Barrows, a frequent contributor to the *National Municipal Review*, wrote that the multiplication of these local taxpayers’ associations from scores into thousands in the last few years is a fact well known to most students of American civic trends.... A study of such sources as are available and authentic indicates that there are not less than three thousand and probably
not more than four thousand such local groups now in action, and that there number is rapidly increasing ... 7

In August 1932, Howard P. Jones, the secretary of the National Municipal League’s Committee on County Government and later editor of the National Municipal Review, warned that “there has gone sweeping across the country like a prairie fire an irresistible demand that the cost of local government be reduced, no matter how that reduction be accomplished.” Jones went on to estimate that “county taxpayers’ organizations were being formed this spring at the rate of one a day throughout the nation – a fact all the more remarkable when it is realized that these were relatively spontaneous.” 8 Milwaukee Mayor Daniel W. Hoan, who in a radio program sardonically characterized them as “‘cut the cost of government’ leagues,” rued the fact that “[t]axpayers’ leagues have sprung up or grown strong all across the country during the present depression.” 9 According to historian David Beito, “[r]eliable estimates place the number of taxpayers’ organizations at well over 1,000.” 10 In 1938 the Tax Policy League conducted a survey in an effort to create a register of taxpayers’ associations and identified 522 state and local ones. 11 Although precise figures are somewhat elusive, clearly the number of taxpayers’ organizations and their memberships grew exponentially throughout the nation between 1930 and 1934. Beito has suggested that “[m]easured in numbers of organizations, the tax revolt of the 1970s and 1980s looks puny by comparison.” 12

This surge in organized taxpayer activity was a direct consequence of, and a response to, the economic crisis of the Great Depression. As Hal Steed candidly acknowledged, the fiscal crunch caused him and other American taxpayers to think for the first time about the burden of taxes and the cost of government. In a similar vein, in 1933 political scientist
Thomas H. Reed observed that “[i]t has been said that the depression made us tax conscious.”13 Steed also noted that it “was only when business let down” that the average taxpayer began to question the cost of local government and that “[i]t is only in periods of stress that reform is born and thrives. It would have been impossible to organize a Taxpayers League back in 1926.”14 The concurrence of a rise in taxpayers’ assessments and a decline in their rental income and real wages impelled them to action. Although the taxpayers’ organization movement may have drawn on a long-standing American tradition of opposition to big government, it was the economic collapse of the Great Depression that catalyzed and provoked widespread organized taxpayer opposition.15

**Nature and Importance of Taxpayers’ Associations**

Taxpayers’ associations were a principal vehicle by which middle-class Americans came together to engage in political and legal activism in the 1930s; they were, as historian Anthony Badger has observed, “[s]ome of the most effective grass-roots …organizations” of the depression era.16 Pressure from taxpayers’ organizations took a variety of forms and achieved significant results. Nearly all taxpayers’ organizations experimented with the types of activities in which Steed’s Atlanta Taxpayers’ League engaged. In a 1933 study, Chicago attorney Claude R. Tharp examined how local taxpayers’ associations promoted efficient local government. They conducted investigations of government operations and audits of government finances, made recommendations to public officials, educated the public, sponsored legislation that promoted good government, and opposed legislation that threatened the public treasury. Tharp concurred with Dr. T. S. Adams, an academic who
specialized in government finance, that "voluntary organizations of taxpayers are necessary in control of government costs," and he concluded that "[t]axpayers' associations have developed beyond the experimental stage and now play an important role in the fiscal affairs of the majority of states." Taxpayers' associations also applied political pressure throughout the nation by filing scores of taxpayers' actions to restrain unlawful spending or other illegal acts of local public officials. Finally, taxpayers brought fundamental structural change at the ballot box, securing the passage in twenty states of constitutional amendments limiting the amount of property taxes. The degree to which Americans participated in taxpayers' organizations in this period was unprecedented and remains unsurpassed, and the influence of taxpayers' associations was both profound and diffuse.

Despite its importance, tax resistance in the 1930s is a relatively neglected aspect of American history. The politics of the New Deal and of political protest movements such as those spearheaded by Father Coughlin and Huey Long have garnered the lion's share of attention in political histories of this era. This examination of taxpayers' associations during the Great Depression will help to rectify this imbalance and demonstrate why organized taxpayer activity warrants further scholarly attention.

The nature of Depression-era taxpayers' organizations highlights a number of salient features of American society and of political protest and civic engagement in the United States. The taxpayers' league was, first, an economic phenomenon. The taxpayers' association in Depression-era America was a complex, multifaceted organism -- part political action group, part legal advocacy entity, part public education instrument, part social club, but at its core it was an economic creature because its raison d'être was economic -- to
reduce taxes. Its diverse political, legal, educational and legislative activities had a common objective, which was to contain and, where possible, to lighten the burden on tax-paying members. The astounding proliferation of taxpayers’ organizations and the enormous expansion of their activities in response to the economic catastrophe of the Great Depression is further evidence of their essentially economic nature.

Second, taxpayers’ associations were primarily a middle-class phenomenon. Although some wealthy taxpayers, including individuals and large business enterprises, belonged to or otherwise supported taxpayers’ leagues, it was mainly those Americans in the economic middle ground between the wealthy and the propertyless poor who organized, led and sustained taxpayers’ associations. Americans on the rungs in the middle of the economic ladder most acutely felt the pinch of paying taxes during the Great Depression. The middle class tended to be overlooked by the Roosevelt administration, which focused on revitalizing industry and creating jobs for the unemployed, yet it was this group from which the most was asked to pay for the cost of government and its recovery efforts. Taxpayers’ associations multiplied and attained considerable success in these years because they were supported by such a large swath of middle-class Americans.

A third important feature of the taxpayers’ association movement was its spontaneous, indigenous and local character, which was apparent to contemporary observers. The populist impulse behind tax resistance during the 1930s was powerful and national in scope. Early in the decade House Majority Leader Rainey declared that the tax “rebellion is general.... The sentiment against heavy local taxes and heavy cost of government is the most conspicuous present manifestation of politics in the United States.”22 Although
organized tax protests emerged throughout the nation, they did not represent a coordinated, national movement but, rather, a local, grassroots one, in which citizens engaged in what historian Meg Jacobs has termed “state-building from the bottom up.” Howard P. Jones found the speed with which taxpayers’ associations proliferated and their nation-wide distribution especially remarkable in light of their spontaneity, and he noted that “[t]here were few paid organizers, traveling the highways and byways, to weld such groups together.” Commentators on local government finances, such as Edward M. Barrows and Murray Seasongood, noted that “[t]axpayers’ organizations... have sprung up like mushrooms” throughout the country. Barrows characterized taxpayers’ organizations as “amateur” and concluded that “[t]hey are no part of any ‘national movement,’ though they represent public opinion in an even truer sense, for they personify the popular thought of thousands of communities crystallizing into national sentiment.” He further observed that taxpayers’ associations were “organizations of voters within a given political area that are formed to deal primarily with problems of taxation and all its implications within the boundaries of that political area” and that “the campaign to reduce taxes consists of many minute, independent local efforts.”

This is not to say that there was no attempt to coordinate the efforts of tax resisters, but such attempts were few and did not alter the fundamentally local character of the movement. The only instance of formal interstate taxpayers’ association collaboration that Claude Tharp identified in his 1933 study was the Western Taxpayers’ Association, comprising associations in twelve western states that met annually “to discuss tax problems of common interests.” In November 1931, American Taxpayers,’ Inc., an organization
based in New York City, launched the *American Taxpayers’ Quarterly*, a journal that purported to speak on behalf of the American taxpayer because he “is himself largely inarticulate.”28 This journal did not speak long, however, since this first issue was apparently also the last. The taxpayers’ association movement remained a decentralized, bottom-up one. As late as 1938 the Tax Policy League observed that “many of these [taxpayers’] organizations are small local groups, many of which spring up overnight and speedily pass out of existence,” and that “no register of such groups had ever been compiled.”29 Such indigenous political and civic movements are typical in the American political system, in which local government and principles of federalism occupy key places.

Organized taxpayer activity in the 1930s is also important because it reflects the complex interaction between obligations and rights in Americans’ conceptions of citizenship. Because “a citizen is one who rules and is ruled in turn” in the United States, there exists a “reciprocal relationship between state and citizen” in which Americans both “exercise the rights and bear the obligations of citizenship.”30 Depression-era Americans recognized that a principal obligation of citizenship was paying taxes. That obligation, however, was accompanied by a concomitant right to hold government accountable for how it spent taxes and to insist on good government. Sometimes this right was characterized as a duty. For example, Merle Thorpe, the editor of *Nation’s Business* who in 1932 gave sixteen radio addresses under the general title “In Behalf of the Delinquent Taxpayer – Present and Prospective,” stated that “[i]t is on the books that we must pay taxes. But it is just as much the obligation of citizenship that we should find out where our money goes and why.” Thorpe went on to commend citizens who participated in taxpayers’ associations and other
organizations committed to fiscally responsible government, "who recognize their duties of citizenship in its highest sense; if need be, to give some of their time and some of their energy to the enormously important business of governing themselves well." More often, though, the people's prerogative to ensure that tax dollars were prudently spent was framed as a right of citizenship. The Teaneck, New Jersey Taxpayers' League, for instance, claimed that it was created in 1929 when local government finances had "reached a crisis" and, as a result, "the people of Teaneck awoke to the principles set forth in the Declaration of Independence that whenever any form of government becomes destructive, it is the right of the people to alter it and to institute a new government, laying its foundations on such principles, and organizing its powers in such form, as to them seem most likely to effect their safety and happiness."

This dual characterization of the interest that Americans had in the operation of their government as a privilege or right, on one hand, and as a duty or obligation, on the other, may well reflect the fact that in the 1930s the culture of citizenship in the United States was beginning to evolve from one in which obligations were emphasized to one in which rights were ascribed greater importance. Christopher Capozzola has argued that "throughout American history, a citizenship of obligation has always coexisted with one of rights" but that as late as the early 1920s a culture of obligation remained ascendant because the United States was still "[b]ereft of institutions at the local or national level to create and nourish a meaningful culture of rights" and that it was only in the last half of the twentieth century that a "rights-based vision of citizenship" came to play a prominent role. The economic crisis of the Great Depression compelled Americans to think hard about how government was run
and financed, what good government expert Edward M. Barrows termed “the present recrudescence of public interest in matters of government,” and to emphasize their rights as citizens regarding these matters and that taxpayers’ associations were an important instrument through which they asserted those rights.\textsuperscript{34} The sheer magnitude of the taxpayers’ association movement and the extent to which Americans invoked and enforced those rights through such organizations in turn contributed to and encouraged the transition to a more rights-based conception of citizenship. In this sense, the taxpayers’ association movement was both derivative, a product of its times, and constitutive, helping to transform Americans’ notions of citizenship.

Americans at the time understood the integral connection between citizenship and taxpayers’ organizations and that the latter were products of and pragmatic exercises in citizenship. For Hal Steed, the Atlanta Taxpayers’ League and its successes were what one expected to occur “when good citizens get together.”\textsuperscript{35} A 1932 editorial in the \textit{National Municipal Review} observed that “[c]itizens’ organizations are springing up in many cities and demanding material cuts in city budgets,” and it praised those “[w]ise political officials [who] are cooperating with irate citizens.”\textsuperscript{36} Barrows likewise described taxpayers’ associations as “citizens’ tax-reduction organizations.”\textsuperscript{37} Citizenship in its broadest sense encompasses legal status, membership rights and obligations, and civic involvement, and all of these attributes were represented in the taxpayers’ associations of the 1930s.

The taxpayers’ association movement of the 1930s also deserves further investigation because the central place of law and litigation in that organized taxpayer activity reveals important features of American society and American legal history but has largely been
overlooked by law and society scholars. That decade witnessed an increase in taxpayers’ lawsuits against local government officials which, like the dramatic proliferation of taxpayers’ organizations, was a direct consequence of the economic devastation wrought by the Great Depression. Taxpayers’ associations in the 1930s, as had the Citizens Union in New York City in the previous two decades, utilized the taxpayers’ suit as a tactic of choice to promote their objectives. Though taxpayers’ litigation was not always an unmitigated success from the taxpayers’ perspective, for the most part it furnished an efficacious means, and courts an effective forum, for controlling government expenditures and alleviating the tax burden on citizens. Taxpayers’ associations also invoked the law to advance their agendas in a number of ways other than litigation. Organized taxpayers were instrumental in the enactment of numerous constitutional and statutory tax limitation measures during the 1930s. In addition, their legislative programs and research activities convinced state and local legislative bodies throughout the United States to adopt a plethora of reforms relating to public administration and finance. As a consequence, during the decade state and local governments increasingly reflected and practiced the business model of government for which reformers had advocated for more than a generation.

Finally, the taxpayers’ association movement in the Great Depression is significant because it is representative of the ever-present tension between taxpayers and tax spenders in American history and sheds light on critical questions that Americans have confronted from the American Revolution to the present. How should the operation of federal, state and local governments be funded? What revenue-raising mechanisms are most fair and equitable? What is the appropriate level of government services? How big or small should
government be? One consequence of the crisis in taxation in the early 1930s was that the ensuing “[c]onflicts over taxation brought to light differing conceptions of the state’s proper role in society.”38 On one hand were those who favored the expansion of government; on the other were those who believed that the “price of government should undergo the same measure of deflation” as the economy and, therefore, advocated for smaller, or at least less expensive, government.39 Most tax resisters belonged to the second group.40 Taxpayers were not, however, uniform in their anti-big-government attitudes. In Berlin, New Hampshire, for example, the members of the Berlin Taxpayers’ Association created the Berlin Farmer-Labor Party, whose platform called for the public ownership of utilities – a story detailed in the next chapter.41 Moreover, some taxpayers’ associations opposed policies that would cripple state and local governments or unduly cut back the delivery of government services.42 Nevertheless, the conflict between expanded-government sentiment and small-government sentiment was a central dynamic of the tax resistance movement of the Great Depression. This tension represents an element of continuity in the political history of the United States, appearing in contexts ranging from the clashes between Federalists and Jeffersonians on the role of the federal government to the debate about the proper congressional response to the credit-market crisis in the fall of 2008. This aspect of the Depression-era taxpayers’ association movement, then, has ongoing relevance for students of American political history.

**Taxpayers’ Associations as of 1930**

On the eve of the Great Depression the taxpayers’ association had been on the scene
in the United States for two or three generations. It was, however, still a relatively incipient and anemic institution that operated on the periphery of American civic life. A 1927 study identified only forty-three such organizations in the entire nation. In 1932, the National Association of Real Estate Boards’ records indicated that “on January 1, 1930, there were just 33 organized groups of taxpayers in the entire country.” An on-line search of newspaper archives in the 1920s reveals that most of the organized taxpayer action that was reported in the print media occurred in the western United States, including Nevada, New Mexico, Texas, and, especially, California and Utah. The Fresno, California Taxpayers’ Association was a particular beehive of activity. Organized taxpayer efforts, though, were the exception, not the rule and can hardly be said to have constituted a movement, much less a sustained or nation-wide one.

Furthermore, prior to 1930 the formation and undertakings of taxpayers’ associations were sporadic or episodic, usually responses to immediate local or regional problems and stresses. The creation of the Taxpayers’ League in Lawton, Oklahoma in October 1905, for instance, was “the outgrowth of the storm sewer contract, which the taxpayers viewed as an unnecessary burden, and one of the prime objects of the organization is to bring an action… to enjoin the city from proceeding….” In the same year the citizens of Reading, Pennsylvania came together to form the Reading Taxpayers’ League in the context of the “general distrust of city councilmen which exists among the people” as a consequence of allegations in open court that a local corporation had won a municipal contract by bribing the councilors. A local fiscal crisis in Adams County, Mississippi in 1921, prompted the Adams County Taxpayers’ League to investigate the administration of county affairs and the
League’s published report “stir[ed] up [the local] citizens.”49 Four years later taxpayers in Milwaukee, Wisconsin established the Northwest Taxpayers’ Association for the “purpose...[of] oust[ing] Mayor W. Hoan and several other city officials, who they charge ‘played politics’ in the naming of the new fire chief.”50 Perhaps the most notable example of regional dynamics giving rise to organized taxpayer measures was the proliferation of taxpayers’ associations in the states of the former Confederacy during Reconstruction.51 The conditions that encouraged organized taxpayer activity generally were short-lived and localized and, consequently, such activity in those decades shared those same temporal and geographic characteristics.

**The Crisis of the Great Depression**

The onset of the Great Depression completely transformed this economic, political and civic landscape. The American economy, the incomes of most Americans, and the revenues of many American businesses shrank far more precipitously than government expenditures in the early 1930s, producing an increasingly onerous and unbearable tax burden. This scope and magnitude of the problem was apparent to Americans from all walks of life and an incessant theme of American public discourse.

In a 1933 article entitled “Taxation Nears a Crisis,” William B. Munro painted a bleak picture of systemic dysfunction in American taxation. Munro, a professor of history and government at the California Institute of Technology, a former president of the American Political Science Association and the author of several books on public administration, argued that the “tax situation in the United States has reached a stage of seriousness which
the average citizen does not appreciate. The burden of national, state and local taxes has become one of the most formidable obstacles in the path of economic recovery.” Munro endeavored to quantify the manner in which the “incubus” of taxation had grown:

In 1929 the national income of the United States... was estimated to be about $85,000,000,000. Our total tax bill for that year was estimated at about $10,000,000,000. In other words, the entire levy of 1929, lumping together all federal, state and local assessments, amounted to about 12 percent of the national income. For the year 1932... this national income has dropped to about $40,000,000,000, or less than half what it was three years ago, while the total amount levied in taxes receded only about 10 percent. It ran to almost $9,000,000,000 for the year, which means that itdevoured over 20 percent of the national income.52

He argued that governments “do not begin by determining that public expenditures must be trimmed into line with the existing revenues” but that, instead, “for the greatest part they proceeded to bridge the gap by piling on more taxes. Consequently the taxes go up at the very time that people as a whole can least afford to have them go in that direction.”53

Munro accurately identified the crux of the taxation dilemma but probably missed the mark in surmising that average Americans did not comprehend its seriousness. The very real difficulty that many Americans experienced in paying their taxes and otherwise making ends meet made them acutely aware of the tax burden and illustrated the aphorism that experience is often the best teacher. Contemporary sources bear this out. In an address to the Kentucky General Assembly on March 4, 1932, Melvin A. Traylor, president of the First National Bank of Chicago, observed that the cost of government had become “an unbearable burden on the backs of American citizens” and that the magnitude of the tax burden “has brought disaster to thousands of taxpayers in every part of the country.”54 Various speakers in a series of radio addresses and roundtable discussions in the Government Series sponsored by the
National Advisory Council on Radio in Education in 1932 and 1933 emphasized the point. In one, the Honorable Murray Seasongood, the president of the National Municipal League, observed that the "American taxpayer is bearing an intolerable burden." In another, political scientist Thomas Reed noted that the "taxpayer is groaning under his burden. He would like to lighten it." In a third, Dr. Lent D. Upson declared that the "embattled taxpayer... is harassed by private worry." When he addressed the National Conference on Government in November 1933, Seasongood reiterated that the "taxpayer is resentful; he revolts at the heavy needless burden he is made to bear."

Other business leaders echoed this sentiment. Chicago attorney Claude Tharp undertook his 1933 examination of methods of controlling the cost of local government through taxpayers' associations and consolidation of government precisely because public awareness of the tax crisis had become so pervasive and prominent. He began his study by noting that "[t]he problem of mounting tax burden of local government and methods of control have been the occasion of much discussion for the past two years." He went on to declare that

[as] the demands for government services increased, the waste involved in the vast number of local governmental units, often duplicating each other, became more noticeable and burdensome... resulting in unreasonable demands upon the resources of the Taxpayer... .Taxpayers are now awakening to the deficits of the present financial systems, and it seems a most opportune time to analyze and evaluate existing methods of controlling finance that are in use in the various states.

In a January 1933 radio address sponsored in part by the American Taxpayers League, F. Robertson Jones, general manager of the Association of Casualty and Surety Executives, likewise declared that "[t]he American people have suddenly become aware of the crushing
tax burden which has been saddled upon them during a decade of spendthrift government. In October 1931, Edgar C. Rust, chairman of the Massachusetts division of the New England Council, “called upon leading business executives of the state to join in a campaign to prevent further handicap to business, through augmented tax burdens, by the widespread creation of local taxpayers’ associations.” In his letter to the council members, Rust argued that “[t]he present burden of taxation in Massachusetts is rapidly approaching, if it has not already passed, the economic limit…. If taxes go beyond this economic limit, that is, the ability of the community to pay, the result is the depreciation of property values, crippling of industry, unemployment and the flight of capital in industry.”

The following summer John C. Percival, while speaking to the local Kiwanis Club in Lowell, Massachusetts about the objectives of the recently formed Lowell Taxpayers’ Association to which he belonged, claimed that “[t]ax burdens have reached a confiscatory stage to an alarming degree” and that taxpayers must organize “in a determined effort to relieve the taxpayer of some of his burdens that he may retain ownership of his property.” Twenty-two local taxpayers’ associations in Massachusetts came together to form the Middlesex County Taxpayers’ Association in early 1933, during what they described as “these times of stress” for taxpayers in which “the taxpayer…is already bearing more than he is able in the matter of taxes.”

The tax crisis was omnipresent in the United States in the early 1930s and palpable to almost every adult.

Although the economic pain of the Great Depression was inflicted on nearly all Americans, the broad swath of the middle class felt the burden of property taxation most acutely. The propertyless poor, who did not own real estate subject to property taxation, had
no compelling reason to participate in organized taxpayer activity, and there is no evidence that they did so to any meaningful degree. For the most part, property taxes did not consume a substantial portion of the disposable income of the wealthy, so the “tax burden” was not that onerous for them. Some members of the business elite, such as Nation’s Business editor Merle Thorpe, supported the efforts of tax resisters because those business leaders were philosophically opposed to big government. Large business property owners were also involved in some taxpayers’ associations, including the Kentucky Tax Reduction Association. The vast majority of organized taxpayers, however, were from the broad middle class. Typical members of taxpayers’ associations included small business owners, landlords who owned one or perhaps a few commercial or residential properties, farmers, homeowners, people engaged in trades and in clerical occupations, and realtors. The 30,000-member Association of Real Estate Taxpayers (ARET) in Chicago, for example, was comprised mainly of people of modest means, such as the owners of small businesses (restaurants, drug stores, plumbing outfits, laundries, grocery stores, photography studios, and so forth), persons engaged in clerical and sales employment, and unskilled, semi-skilled and skilled workers. ARET’s largest single group of members was skilled blue-collar workers (carpenters, painters, plumbers, electricians, tailors, machinists and mechanics in particular). Hal Steed’s Atlanta Taxpayers’ League was similarly representative of middle-class tax resistance. Merchants, an automobile dealer, the owner of several office buildings, other “real estaters and property owners,” small, struggling landlords like Steed, and a loan agent were among its members, although they did enlist a wealthy retired “dry-goods jobber” to serve as chairman. The taxpayers’ association movement of the 1930s was
fundamentally a middle-class undertaking, impelled by the anxieties, concerns and interests of middle-class Americans.

One consequence of this serious tax crisis was a rapid and substantial increase in organized taxpayer activity between 1930 and 1933.\textsuperscript{68} The number of taxpayers’ associations and the extent of their activities grew astronomically in these years. Edward M. Barrows wrote in the \textit{National Municipal Review} in May 1933, that taxpayers’ organizations “are hurrying into action everywhere.”\textsuperscript{69} At almost the same time the Governmental Research Association, “an organization of individuals professionally engaged in governmental research” and based in Chicago, found that “taxpayers [are] organizing now in all parts of the country.”\textsuperscript{70} The National Municipal League’s Committee on Citizens’ Councils for Constructive Economy similarly determined that “[e]very local government in the country today is being subjected to terrific pressure...from organized taxpayer groups hit hard by the depression.”\textsuperscript{71}

The widespread proliferation of taxpayers’ associations was proceeding full force by 1932. Early in his radio address sponsored by the National Advisory Council on Education in Radio, Murray Seassignood observed that “[t]here can be no doubt of the strength and sincerity of taxpayer sentiment for economy. Taxpayers’ organizations have sprung up all over the country to enforce demands for economy.”\textsuperscript{72} Dr. Lent D. Upson stated that “[a]ll over the country big and little industrialists and bankers, shop-keepers and home-owners, are being marshaled into regiments of economy leagues, tax reduction associations, and other agencies for united action.”\textsuperscript{73} In October 1931, the New England Council was advocating the extensive creation of local taxpayers’ leagues because by that time such organizations had
already "been found the most effective means of dealing with the [tax] situation."74

By mid-1933, taxpayers’ associations likely numbered in the thousands. Claude Tharp identified thirty-nine state taxpayers’ associations operating in thirty-three states and the District of Columbia as of 1933.75 This number did not include organizations at the municipal and county level, where the real growth was occurring, because, as Tharp observed, “local governments [were] the largest spenders of public funds.”76 Lowell Taxpayers’ Association officer John C. Percival, in his July 1932 speech to the local Kiwanis Club in Massachusetts, had noted that “[i]n Massachusetts there are now taxpayers’ associations in over 14 cities and towns...with many additional associations now in the process of formation.”77 Indeed, eight months later there were twenty-two taxpayers’ associations in Middlesex County, Massachusetts alone, which collaborated to form the Middlesex County Taxpayers’ Association.78 According to the Governmental Research Association, whose findings were well researched and generally reliable, there were 140 active taxpayers’ associations just in Massachusetts in October 1933, an increase of 60 from September 1932, and the largest, the Worcester Taxpayers’ Association, had more than 10,000 members.79 At the annual meeting of the Minnesota Taxpayers’ Association on February 27, 1934, “[f]ifty-seven counties sent delegates to the convention” and the Association’s secretary “reported 70,000 enrolled members in eighty of eighty-seven counties in the state.”80 As of late 1935, New Haven Taxpayers, Inc. in Connecticut, which had been organized as a municipal research agency in July 1933, had 1,760 dues-paying members, representing far more than one-third of the city’s property owners.81 By December 1936, the New Jersey Taxpayers’ Association had evolved from a “small group of citizens” to a “large
and powerful organization composed of county and local taxpayers’ associations affiliated with the parent organization from 250 communities.” In 1932, there had been only 74 local taxpayers’ associations in New Jersey. By 1933, the Tennessee Taxpayers’ Association had established county taxpayers’ associations in 63 of the state’s 95 counties, and New Mexico had local taxpayers’ organizations in almost every county. During the 1930s, the taxpayers’ association movement became one that was nation-wide and of enormous magnitude.

One rough indicator of the extent and intensity of taxpayers’ association activity is the extent to which it was covered in the print media. Such news coverage in the Lowell Sun in Lowell, Massachusetts is illustrative. Between 1909 and 1911, that newspaper mentioned taxpayers’ associations 114 times in articles covering the activities of taxpayers’ organizations throughout the nation. From 1912 to 1926, there is not one reference to taxpayers’ associations. Between 1930 and 1936 they are mentioned over 1,200 times.

**Purposes and Objectives of Taxpayers’ Associations**

The overarching purpose for which taxpayers organized was, obviously, to reduce their tax burden. A letter from an Iowa farmer, quoted in the January 1933 issue of the National Municipal Review, expressed the taxpayer’s mindset at its most basic level:

> My taxes are more than twice what they were a few years ago. My products sell for about a third of what they used to bring.... We buy fewer clothes, make fewer improvements (or none), buy fewer groceries, use our car less and longer – and so on with every item under my personal control. I would also like to buy less government.... At least I would like to pay less for whatever government I have to have.

Wheeler McMillan, in whose article the Iowa farmer was quoted, declared that “[f]armers
are not very particular as to what devices are adopted for reducing taxes, just so taxes are
reduced.\textsuperscript{87} One means to this end was the enactment of constitutional or statutory tax
limits.\textsuperscript{88} Another was, according to the Massachusetts division of the New England Council,
for taxpayers “to exert a measure of control over public expenditures.”\textsuperscript{89}

To accomplish this second objective taxpayers’ associations sought to make local,
county and state government both cheaper and better, or, as the Fitchburg Massachusetts
Taxpayers’ Association put it, they had “the double object of reducing the cost and increasing
the efficiency of… government.”\textsuperscript{90} Taxpayers’ organizations consistently espoused these
dual objectives. The Lowell Taxpayers’ Association, for instance, was formed “for the
purpose of fostering, encouraging and promoting a non-partisan interest and a study of the
activities of federal, state, county and municipal agencies, as such activities may affect the
taxpayers of Lowell. Furthermore, by cooperating with such agencies strive to assist in
effecting economy and efficiency.”\textsuperscript{91} The twenty-two taxpayers’ associations of Middlesex
County, Massachusetts declared that it is “the purpose of these associations to cooperate with
the Local Taxpayers’ Associations of Massachusetts to reduce state and county governmental
costs without impairing necessary and efficient public service.”\textsuperscript{92} The Arizona Taxpayers’
Association organized to “cooperate with and assist private citizens, and public officials in
eliminating waste and extravagance from the conduct of public affairs, and to bring about the
practice of genuine economy consistent with efficiency throughout every department of
government.”\textsuperscript{93} The theme of “genuine economy consistent with efficiency” manifested itself
repeatedly in the statements of goals and principles of taxpayers’ organizations.

Taxpayers’ leagues sought to attain these general aims through a variety of specific
objectives. Claude Tharp argued that "[o]ne of the first objectives of a taxpayers’ association should be the directing of its efforts toward securing a sound budgetary and accounting system for the state and localities." When the New Jersey Taxpayers’ Association was urged to endorse a tax strike in 1933, it refused to do so and instead "reiterated[d] our determination to work unceasingly...for the relief of the overburdened taxpayer, by searching for new ways to reduce public expenditures.... To accomplish the objectives of the Association” it called for the passage of legislation to provide “absolute control” of government expenditures, to require budgeting for all state expenses, to improve management of the state highway department, to reform public debt processes, and to limit public debt. It also urged the state legislature to adopt a “pay-as-you-go” policy in government, consolidate municipalities where possible, reduce public education costs and regulate local government finances, among other things. Some or all of these same specific goals appeared in the platforms and statements of principles of taxpayers’ organizations throughout the nation.

The Moderate/Collaborative Activities of Taxpayers’ Associations

The policies, programs and activities of taxpayers’ associations were diverse and extensive. Claude Tharp examined organized taxpayer activity at the state level as of 1932. He found that the main functions of taxpayers’ associations were (1) research and investigation, (2) use of the information thus obtained to educate the public and government officials and to shape public policy regarding government administration, (3) active engagement in the budget processes of state and local governments, and (4) a vigorous
legislative program to promote good and affordable government. In these efforts, organized taxpayers sought to cooperate and collaborate with local government officials and engage them constructively to promote economy and efficiency in government and thereby lighten the tax burden.

The research activities of taxpayers' associations were foundational in that they formed the basis for many of their other efforts. The larger organizations maintained paid staffs of accountants, lawyers and other professionals to investigate subjects relevant to controlling government finance. The Arizona Taxpayers' Association had auditing and legal departments that analyzed state, county and municipal budgets in order to cut costs. Moreover, "[p]roposed bond issues are investigated and the influence of the Association is used to defeat those which appear unnecessary or excessive." The California Taxpayers' Association had more than thirty studies in progress concerning, for example, budgeting, bonding and accounting processes, and it had recently been appointed to the State Advisory Council of the Tax Research Bureau "to enable taxpayers to participate actively in an official study being made for the guidance of the legislature." In 1932, many tax levies in Montana were reduced as a result of the Montana Taxpayers' Association's examination of levies across the state and its subsequent recommendations. The same year the Tennessee Taxpayers' Association completed three surveys on local government finance, and its work product was apparently sufficiently impressive that the governor selected the Association's staff to act as a fact-finding body for the state legislature. Tharp noted that since 1915, the New Mexico Taxpayers' Association had been "the only agency for assembling the material for the budget submitted to the legislature by the Governor" and that it was also involved in
the formation of local government budgets. Many of the state taxpayers' organizations shared their professional staffs with local associations, especially at budget time, including those in California, Indiana, New Jersey, Louisiana and Utah.99

Local taxpayers' associations likewise participated in the preparation of county and municipal budgets. A "carefully planned program of economy" prepared by the Washington County Taxpayers' Association in Tennessee led to a substantial budget reduction.100 A. C. Rees, secretary of the Utah Taxpayers' Association, boasted that the Association had "succeeded in having all local budgets analyzed by the local taxpayers and, in the case of all larger units, to have definite demands made upon public officials for reduced expenditures. Despite the unprecedented shrinkage in assessed valuations, the old levies have been maintained, or reduced."101 Harry Miesse declared that in Indiana it had been "possible through the operation of county associations of taxpayers for members to watch the preparation of budgets, attend local hearings which are required by law -- and advise with their own local officials as to what expenditures are proper and what are not."102 Cooperation with and confrontation of public officials during the budget process was an important component of taxpayers' associations' agendas.

The legislative program was a core activity of taxpayers' associations for two reasons. First, many of the specific aims of taxpayers' associations, such as instituting sound accounting and budgeting systems for state and local governments or improving processes related to incurring public debt and issuing bonds, could be achieved only by enacting new laws or changing old ones. Second, often the unnecessary or excessive expenditure of public funds, such as imprudent public works programs or public contracts awarded without
competitive bidding, could be prevented only by promulgating or stopping new legislation.

The necessity of an effective legislative program was self evident to the leaders of taxpayers' associations. In a 1928 address to the National Tax Association, A. C. Rees had emphasized that

> good legislation promotes economy and efficiency in government. In this field, the taxpayers' association can wield a tremendous influence... by contacting with the legislators during the entire course of the session, assisting them to analyze proposed legislation, preparing digests, supplying data and in general serving as an official advisory council to the legislature.\textsuperscript{103}

Speaking to the same body three years later, Harry Miesse, the Indiana Taxpayers' Association secretary, placed greater stress on the importance of organized taxpayers sponsoring and opposing legislation. A taxpayers' association, he insisted, should not "sit meekly and watch the introduction of bills in the legislature to make it easier for the public to be plundered." It must "watch every bill introduced, study its possibilities, and then oppose it with all the vigor possible if it threatens a raid on the public treasury. Watching pending legislation, supporting good bills and fighting bad ones has been part of the program of the Indiana Taxpayers' Association."\textsuperscript{104} Tharp also highlighted the significant legislation-shaping activities of the other state taxpayers' associations, including those in Arizona, California, Kansas, Massachusetts, Minnesota, New Jersey, Tennessee and New Mexico.\textsuperscript{105}

Finally, taxpayers' organizations performed a vital educational function by disseminating relevant information to the public and to public officials. Their officers spoke to civic clubs and chambers of commerce, gave radio addresses and issued press releases. Many taxpayers' associations had their own publications. The California Taxpayers' Association published a monthly magazine entitled \textit{Tax Digest}. The New Jersey Taxpayers'
Association issued a monthly “Taxe gram” as well as weekly bulletins. In Wisconsin the Wisconsin Taxpayers’ Alliance prepared a semi-monthly magazine named *The Wisconsin Taxpayer*. These publications were generally regarded as reliable sources of information regarding public finance. In 1934, for example, the Governmental Research Association described *The Wisconsin Taxpayer* as a “wealth of information and valuable data with reference to Wisconsin’s state and local government... as well as many interesting governmental facts and developments in other states.”

Taxpayers’ associations after 1932 expanded the scope and intensity of the activities that Tharp had identified. In the mid-1930s there were many more taxpayers’ organizations, and those established before 1930 did much more of the same things because the exigencies of the economic crisis required it. Research and investigation continued to be a central, and perhaps the most common, activity of organized taxpayers. In 1933, the Lake County Taxpayers’ Association in Gary, Indiana conducted a study of county employee salaries to serve as the basis for proposing a general reduction in those salaries if necessary. The New Mexico Taxpayers’ Association undertook a survey of property assessments in Santa Fe County “as a demonstration of a method which might be applied by taxing authorities in establishing a scientific basis for assessing property;” the survey claimed that the absence of a scientific system had produced significant disparities in property assessments. The Kentucky Tax Reduction Association, established in December 1932, examined local government in six counties, one of which was to be used as the basis for proposing a new county budget law. Partly as a result of that Association’s efforts, in early 1934 the Kentucky legislature passed a county budget statute that required uniform budgets for all
counties and established budget commissions in every county. In Tennessee the Hamilton County Taxpayers’ League studied certain city departments and prepared reports of its findings, which “contained many specific suggestions for achieving greater efficiency and economy.” The Tennessee Taxpayers’ Association’s survey of Campbell County produced detailed recommendations for improving budgetary, purchasing and accounting systems. The California Taxpayers’ Association completed a survey of all departments in Alameda County government, a budget study “at the request of the Santa Anna city council, to effect a 20% reduction in the city’s 1933-34 budget,” studies regarding the administration of the juvenile home and welfare department in Santa Barbara County, population estimates to aid in projecting government expenditures and revenues, and an extensive examination of administration and finances of Los Angeles County. Other research and investigation projects of taxpayers’ organizations in 1933 reported by the Governmental Research Association in the National Municipal Review included those of the Taxpayers’ Research League of Delaware, the Taxpayers’ League of St. Louis County in Minnesota, the Utah Taxpayers’ Association, the New Bedford (Massachusetts) Taxpayers’ Association, the Wisconsin Taxpayers’ Alliance, and the Pierce County Taxation Bureau in Tacoma, Washington.

The research activities of taxpayers’ associations accelerated in subsequent years. The Taxpayers’ Research League of Delaware embarked on an ambitious research program to assess the public highway system, administrative procedures in county offices, methods of financing bonds for construction projects, state government costs, municipal financial data, and the state tax system. In Connecticut the New Haven Taxpayers’ Association
formulated and began “a comprehensive program of research” concerning all city departments and functions with a view toward making recommendations designed to promote efficiency and economy in government.\footnote{116} The Tennessee Taxpayers’ Association and the Hamilton County Taxpayers’ Association engaged in a joint survey of the county’s finances and administration and produced a 151-page report whose recommendations for “improving the administrative machinery” and for “effecting economies and retrenchment,” if implemented, would reduce county expenses by ten percent.\footnote{117} The Tennessee Taxpayers’ Association increased its research activities significantly in 1934, and a summary of its projects for that year is published in the January 1935 edition of the \textit{National Municipal Review}.\footnote{118} There was also a spike in the investigative efforts of the Lake County (Indiana) Taxpayers’ Association, which examined the finances and budgets of the county and four cities and planned “much more thorough investigations of the proposed budgets for local units” in 1935.\footnote{119} In New Bedford, Massachusetts the local taxpayer’s association made a thorough study of tax abatements, with the goal of making abatement procedures more equitable, and it also published a report on the city’s financial condition that “pointed out how impossible it was to restore any pay cuts this year and was effective in forestalling such action.”\footnote{120} The Stark County Tax League in Canton, Ohio made recommendations to the governor on county reorganization based on its research of county governments, and it analyzed the impact of a tax-limitation amendment that reduced the maximum property tax rate by one-third.\footnote{121} The state taxpayers’ association in New Jersey “expanded its work in the field of local activities and its program of analytical research on public administration problems” and published reports, many of which were distributed to more than 300 civic
organizations, on a plethora of subjects, including the city manager form of government, highway policy, tax exemptions, the operation of the civil service, public welfare, public employee pensions, property tax delinquencies, consolidation of municipalities, tax limits, and proposed new taxes. Taxpayers' organizations in Louisiana, Woonsocket, Rhode Island, Wisconsin and New Mexico also carried out considerable research activities in 1934.

In 1935, the California Taxpayers' Association commenced a study, after just completing one that advocated the establishment of a state-wide police force, to “determine what constitutional and statutory changes are necessary in order to establish an appropriate state police system.” The Taxpayers' League of St. Louis County published a report highlighting excessive per-pupil costs in Duluth, Minnesota schools and the fact that the school board's operating budget had exceeded the 20-mill statutory tax limit. It also studied the “problem of public debt and the decreasing proportion of local revenues that are available for operating expenses after debt payments have been made.” It used the information generated by the first study to litigate a declaratory judgment action that established the tax limit as binding on the school district, and it marshaled the evidence produced by the second one in a lawsuit in which it was “successful in preventing the city from adding additional bonds to the outstanding debt by attempting to issue bonds under emergency powers when in fact no 'emergency' existed.” The Tennessee Taxpayers' Association continued to expand its research programs. After the state legislature asked the governor to have all state government departments audited, the governor requested the Association to supervise this project. It selected a public administration and financing consulting firm to head the study.
and it furnished its research services at no charge. The final report "revealed many opportunities for securing greater economy and efficiency in the conduct of the state’s business." In 1935, the Association also developed a comprehensive financial plan for the governor to present to the legislature, completed its fourth annual survey of state government finances, and undertook an investigation of public finances in each of Tennessee’s 95 counties and in 145 municipalities.\textsuperscript{126} Research projects were also carried out by state taxpayers’ associations in Kentucky, New Jersey and Wisconsin and by local organizations in Worcester, Massachusetts, Fort Wayne, Indiana, Utica, New York, Santa Clara, California, and Woonsocket, Rhode Island.\textsuperscript{127}

The research, investigation and public education activities of taxpayers’ organizations proceeded full throttle in the ensuing years of the decade, all with the same overall objective. The director of the New Bedford Taxpayers’ Association reported in May 1936, that the "Association has continued its work of fact-finding and fact presentation, to the end that efficiency in government may be obtained."\textsuperscript{128} Between legislative sessions the Wisconsin Taxpayers’ Alliance “devoted most of its efforts to supplying taxpayers and citizens with information about ways and means by which their governments may be improved.”\textsuperscript{129} In June 1937, the Fitchburg, Massachusetts Taxpayers’ Association declared that in its “five years of service to taxpayers and public officials alike, the association has endeavored to promote efficiency in governmental administration by presenting scientific solutions to public problems.”\textsuperscript{130}

Good government research remained high on the agendas of taxpayers’ organizations because, in their view, experience had proven its efficacy. In 1936, M. W. Madden, the
research director of the Lake County Taxpayers’ Association in Gary, Indiana, opined that “[t]he need for unbiased governmental research organizations has been satisfactorily demonstrated in many parts of the country. Sporadic individual appeals and protests are seldom heeded, and only by organized efforts can taxpayers hope to hold governmental costs at sane levels.” The Tennessee Taxpayers’ Association contended that the improvements in state government administration resulting from its research activities had enabled Tennessee to close the fiscal year ending June 30, 1936, “with a continuation of about the same $5,000,000 annual reduction in expenditures that has occurred for three successive years.” The same year the Taxpayers’ Research Association of Fort Wayne, Indiana reminded taxpayers that local taxes had been reduced 40% from 1931 to 1936 and asserted that “a major factor in this reduction of local governmental expenditures has been the work of the Taxpayers’ Research Association, which was organized… to fight waste and extravagance with an array of facts and analyses by which adequate budgets for good local government at the lowest possible cost could be scientifically determined.”

In 1937, the Fitchburg, Massachusetts Taxpayers’ Association maintained that its research efforts during its five-year existence had “been a major factor in the improvement of governmental administration” in the city.

The other most prominent activity of Depression-era taxpayers’ associations was their legislative programs. Through these programs organized taxpayers exercised both hard, or direct, legislative power and soft, or indirect, legislative power. “Hard” legislative efforts refer to those activities directed at improving the laws affecting state and local government finance and administration by changing them and opposing laws on those subjects that
taxpayers' associations deemed imprudent, ill-advised or otherwise contrary to the interests of taxpayers. Those laws were embodied in state constitutions, state statutes, local laws and ordinances, and municipal charters. Taxpayers' associations often worked closely with legislative bodies (state legislatures, county commissions, city councils, boards of selectmen, and so forth) in crafting new laws and revising existing laws, and they also were instrumental in obtaining public and legislative support for the approval or enactment of such laws. On other occasions they worked to defeat proposed legislation. Such "hard" legislative efforts were aimed at the law itself, as it related to the management and finance of government.

"Soft," or indirect, legislative efforts were aimed not at the law itself, but at influencing, independently of the law, those policies, processes, procedures and operations of government units, and actions of public officials, that could be influenced apart from the law. Taxpayers' associations endeavored to do so through a combination of cooperation, collaboration, negotiation, advocacy and confrontation with public officials. The ends to which these means were directed were the perennial twin goals of economy and efficiency in government. Perhaps the area in which taxpayers' associations exercised "soft" legislative power with the greatest effect was in the budget processes of municipalities, counties and states. They also achieved considerable success in implementing improvements in government administration and operations.

The larger taxpayers' organizations, by virtue of their greater resources, generally had the most extensive and effective legislative programs. The Kentucky Tax Reduction Association, organized in December 1932, drafted and sponsored nine bills dealing with county and local government in the 1934 state legislative session, five of which were
“enacted into law and afforded the means of saving the taxpayers of Kentucky an estimated $5,000,000 a year.” One of these measures was a new county budget law that established a uniform budget process for all counties. After this law was passed, the Association’s staff worked with state officials in preparing the budget reforms to be used by the counties pursuant to the legislation. Another statute abolished the office of county jailer and transferred the jailer’s functions to the county sheriff, resulting in an estimated savings of more than $600,000 annually. In the 1936 legislative session the Kentucky Tax Reduction Association defeated an attempt of the jailers’ association to have this measure repealed.¹³³ A third measure, requiring annual audits of county finance records, had resulted in “substantial sums... being returned to local treasuries” by 1935. During the 1934 legislative session the Association also helped prevent the passage of a number of bills which, “if passed, would have done serious damage to the cause of good county government,” according to John W. Manning of the University of Kentucky, who failed to identify these supposedly nefarious bills.¹³⁴ The Kentucky Tax Reduction Association exerted hard legislative power to get important measures enacted into law and to prevent the passage of other bills as well as soft legislative power to assist in implementing the county budget law.

The state taxpayers’ association in neighboring Tennessee worked closely with the state legislature, especially in connection with budgetary matters and appropriations bills. The Tennessee Taxpayers’ Association assisted the legislature in drafting the appropriations bills enacted in 1933, which reduced state government expenditures by 35% from the prior year, and the 1935 biennial appropriations act, “assure[d] a continuation of most of the large reductions in the cost of government originally provided through the 1933 appropriations
The Association was also involved in the installation of the state’s new central accounting system in the fall of 1935. In the 1937 legislative session it expanded its legislative efforts to the subject of county government administration.  

Taxpayers’ organizations played an important part in securing the adoption of the manager form of government in many localities. In Nebraska, for instance, the Association of Omaha Taxpayers, formed in February 1932, was “instrumental in securing the adoption of several important reform measures” in 1934, including a manager form of government for Douglas County. City and county manager plans for government were a critical component of the business model of government, one premise of which was that government units would be better and more professionally run or managed by individuals with professional training and expertise in public administration and than by non-professional elected officials.

Reformers who advocated for a business model of government argued that government administration had become an increasingly complex and demanding business requiring the application of “practical business methods” and “techniques of business management in government” by skilled professionals. Consequently, manager plans for local government were a centerpiece of the agenda of good government organizations. In January 1935, the National Municipal Review touted Douglas County’s adoption of a county manager plan of government as a model for other places. The National Municipal League believed the manager form of local government to be essential to “the solution” of “the problem of curtailing budgets without abandoning services.” It would be a great improvement over what it called, in 1933, “inefficient, archaic forms of government” typical of most municipalities and counties.
In 1936, the California Taxpayers' Association, established in 1926, "played an important role in the enactment of the 5% expenditure limitation law." It was also actively involved in efforts to streamline local government in Los Angeles County and was represented on the Committee on Governmental Simplification.\textsuperscript{139} That same year the Taxpayers' League of St. Louis County in Duluth, Minnesota sponsored and secured voter approval of an amendment to the city charter establishing a tax rate limit, and it also persuaded county officials to implement many of its recommendations for improving purchasing and accounting procedures.\textsuperscript{140} The Minnesota Taxpayers' Association, the Montana Taxpayers' Association and the Massachusetts Federation of Taxpayers' Association also had active legislative programs.\textsuperscript{141}

The New Jersey Taxpayers' Association had a vigorous and comprehensive hard legislative program, scrutinizing all bills introduced in the state legislature and preparing proposed legislation. It was particularly effective in bringing public pressure to bear on legislators. In 1934, it "led the opposition to a sales tax, and on this occasion organized the largest meeting of citizens ever assembled at Trenton to attend a public hearing conducted by a committee of the legislature. The legislation was defeated." Two years later it advocated revisions to the state's proposed local budget act and "was able to convince the legislators of the wisdom of its arguments and was successful in having the bill held in committee until the objectionable features," which would have substantially increased local tax rates, were stricken. It also succeeded in continuing a freeze on the salaries of municipal and county employees through its ability "to convince the legislators, at the public hearing on the question, of the insurmountable financial burden which would result... if such
suspensions were not continued.\textsuperscript{142}

The indirect legislative efforts of the Worcester Taxpayers' Association in Massachusetts are representative of such activities by large local taxpayers' associations. Organized in 1931, by 1935 it had nearly 12,000 members. It organized and directed "a strong popular demand for continued economy toward city hall," successfully opposing the restoration of public employee salary reductions, persuading local officials to install modern inventory and cost accounting systems, and obtaining larger shares of federal funds for the city. It also "made the most militant campaign in the history of the city to compel the city council to reduce the budget" in 1935. According to the Association's executive director, it prevented "fourteen unnecessary police department appointments made by the outgoing mayor," saving the taxpayers $30,000 annually, and put a halt to a number of proposed Public Works Administration (PWA) projects because, it maintained, they would have required the city to incur substantial debt and the "maintenance of these new buildings and other projects would impose a large permanent cost on the local taxpayers." The Worcester Taxpayers' Association also endeavor to shape state legislation, but the exercise of such hard legislative power took a back seat to its soft legislative activities.\textsuperscript{143}

The legislative program of the Taxpayers' Association of New Mexico included significant hard and soft efforts. The Association's director worked with state legislative commissions to recommend needed legislation. The Association also participated in drafting a variety of new legislative measures and facilitated their passage. Among these was a statute allowing taxpayers to pay delinquent taxes in installments, and the Association "conducted an intensive campaign to acquaint taxpayers with this provision and it is believed

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that this effort was responsible for the collection of a large amount of delinquent levies.” The Taxpayers’ Association of New Mexico promoted good government legislation and then worked hard to make it effective. In 1935, the state legislature passed an act consolidating state revenue collection agencies, a measure that it had advocated for several years. Another principal activity of the Association was assisting in the preparation of local government budgets and representing taxpayers at public hearings on budgets.¹⁴⁴

Numerous other local taxpayers’ associations had vital legislative programs during the mid-1930s. Local organizations drafted and facilitated the passage of state legislation affecting state and local government and of municipal ordinances in their own communities. Through the legislative process, collaborative efforts, and public pressure, they exerted a powerful influence on the content and amount of state and local government budgets and of contracts entered into by local and county government units. In a host of ways, organized taxpayers at the local level in Fitchburg, Springfield and New Bedford, Massachusetts, Chattanooga, Tennessee, San Jose, California, Utica, New York, New Haven, Connecticut, Gary, Indiana, and elsewhere promoted efficiency and economy in government, lowered their tax burdens and shaped their communities.¹⁴⁵

The Aggressive Activities of Taxpayers’ Associations

The research, education and legislative activities were the traditional functions of taxpayers’ associations in the United States, and they remained at the center of organized taxpayer action in the 1930s. The crisis of the Great Depression, however, made the programs of taxpayers’ associations more multidimensional and gave them a sharper edge.
The taxpayers' associations examined by Tharp in 1932 had emphasized a non-partisan, cooperative approach. Although contention between taxpayers and tax spenders on these subjects was to some extent inevitable, pre-1930 taxpayers' associations were likely to highlight collaboration rather than confrontation. In the early 1930s, though, confrontation assumed a more prominent role in the taxpayers' association movement. This sharper edge took a number of forms – traditional, and sometimes more overtly partisan, political activity; a greater push by taxpayers for tax limits; a new receptivity to tax strikes (which were the nuclear bombs in the organized taxpayers' arsenal of tactics); and an increased reliance on litigation as a means to control government expenditures and to restrain unlawful acts of public officials. Organized taxpayers had employed these tactics, especially traditional political activity and taxpayers' lawsuits, in the past, but after 1930 they did so more commonly and extensively. In a sense, in these years the taxpayers' association movement had something of a contrapuntal tenor to it, with cooperative efforts and energies comprising the major key and conflictive ones being the minor, but still important, key.

Prior to 1931, taxpayers' associations largely eschewed traditional political activity, especially of a partisan nature. Leaders of taxpayers' organizations and those who examined them maintained that taxpayers' associations should encourage good people to run for office and work collaboratively with elected officials to promote economy and efficiency in government but that they should not participate in electoral politics. In Claude Tharp's estimation it was imperative that "[a] taxpayers' association... declare its intention to remain non-political" and that "no one group representing a certain... political party dominates."

A.C. Reese, while secretary of the Western Taxpayers' Association, declared in 1928 that
the duty of promoting good legislation regarding state and local government “must now be
assumed by some representative, non-political organization, such as a taxpayers’
association.” Three years later Harry Miesse, the Indiana Taxpayers’ Association’s
secretary, insisted that a taxpayers’ association

must be non-partisan in theory and in fact. Its greatest strength will come
through enlisting the membership and active participation of representatives
of all political parties to the end that they may sit down together as citizens
and as taxpayers rather than as partisans, and consider what is wisest and best
as a whole. Because of its non-partisan character, a taxpayers’ association
must remain aloof from political campaigns.

These sentiments represented the dominant world view among organized taxpayers through
1930 or so. Taxpayers’ associations participated in political campaigns only infrequently and
when they did so they tended to emphasize the non-partisan nature of their efforts. When all
five candidates favored by the Teaneck Taxpayers’ League were elected to the city council
in the 1930 election, for instance, the League later stressed that all five were “non-partisan
candidates” and that the “League did not have among its members a single person then active
in partisan politics.”

In the early 1930s there was a moderate, though not seismic, shift in the attitudes of
organized taxpayers toward traditional political activity. Some actions took the form of
indirect educational efforts with respect to elections. The Minnesota Taxpayers’ Association,
for example, prepared and distributed to candidates for state and local office a questionnaire
on taxation and then published the candidates’ responses in newspapers and furnished them
to local taxpayers’ organizations. It also prepared and published tax platforms for state
legislature candidates. Officials and candidates for elective office solicited support from
taxpayers’ associations at election time. The Worcester Taxpayers’ Association proclaimed
that in the 1935 city election “the candidates of both parties strove to outdo each other in stressing their interest in the taxpayer..., and it was impressed upon the political aspirants that the path to success at the polls was along the idea of pledging economy during the campaign.” Likewise, the three gubernatorial candidates in New Jersey felt compelled to address the New Jersey Taxpayers’ Association at its annual meeting during the 1934 campaign.

Taxpayers’ leagues also actively promoted their own candidates and tickets for state and local office. New Jersey was a relative hotbed of such political activity. The Newark Taxpayers’ Association contributed to the ouster of four of the five incumbent city commissioners in the 1933 election. Two of the victorious candidates, Reginald Parnell and Austin Waldron, had accused four of the incumbent commissioners of “graft and corruption in the government, and pledg[ed] a $2.50 tax rate,” and they had “received their unusual independent vote from supporters in the Newark Taxpayers’ Association, of which they were among the principal organizers.” In the same election cycle the Audubon Taxpayers’ Association conducted but lost “a spirited fight” against the Republican organization in the Audubon borough election. In the fall of 1933, the Citizens and Taxpayers’ Association of Asbury Park, New Jersey, put forth a slate of candidates for five vacancies on the city council, and all five won.

The rough-and-tumble politics of the New York City metropolitan area were even rougher than usual for the Taxpayers and Rentpayers Association of West New York, New Jersey during the 1935 city election campaign. The Association had initiated a fusion movement against the local Democratic machine to unseat the five Democratic city
commissioners in the May 14 municipal election. On the night of April 17 there was an attempt to murder Irwin Rubinstein, the leader of the fusion movement and legal counsel to the Association. As Rubinstein drove home on dimly lit Broadway Street a sedan with four men in it forced his vehicle to the curb. One man got out of the car, put a pistol through the driver’s window of Rubinstein’s vehicle and fired two shots, but as he did so Rubinstein struck the assailant’s arm and the shots went wild. Rubinstein drove away and narrowly escaped. He carried on the political battle, and the anti-Democratic fusion movement “carried all its five candidates to victory.”

Hal Steed’s Atlanta Taxpayers’ League expressed some ambivalence about the extent to which it should engage in political activity. Steed favored a cooperative approach—“[m]y idea was to conciliate them, not fight them.” Others “insisted that we go into politics,” declaring that “[t]he elections will be coming on soon...[W]e must pick our candidates.” For a time the tax leaguers adopted something of a compromise stance, seeking to have input in the election of state legislators who had the power to enact “our proposed reforms, notably consolidation of local governments,” but not taking sides in local elections. When an effort to recall the public works superintendent whom the League supported was made, however, the League went into high gear politically, elicited the largest voter registration ever at the time, and “[w]e taxpayers won.” Steed and other moderates headed off a tax strike by convincing taxpayers that the “remedy is not in striking, but in orderly cure at the polls.” Although the League’s experiments with vote control were not all that successful, it engaged in traditional political activity when appropriate.

The Berlin Farmer-Labor Party is one of the best examples of the connection between
organized taxpayer political activity and political party formation. Citizens in Berlin, New Hampshire organized the Berlin Taxpayers’ Association in 1933, when they learned that the city tax collector had misappropriated tax monies and the mayor and city council were not prepared to do anything about it. The Association then instituted a taxpayers’ action and prevailed in the trial court. These events provided the critical mass for the Association and other civic organizations to come together and create the Berlin Farmer-Labor Party. Its candidates for mayor and three city council seats were elected in 1934, and in the 1935 election the Farmer-Labor Party gained control of city government. In this case organized taxpayer protest had developed into organized political protest and resulted in the creation of a third political party.  

Intense and widespread advocacy of tax limits was another facet of the more adversarial relationship between taxpayers and tax spenders in the early and mid-1930s. Most such measures aimed to limit the property tax rate. Some, though, limited the amount of the property tax levy. Michigan, for example, amended its constitution in 1934 to limit the total amount of property taxes to 1.5% of the assessed valuation. The imposition of tax limits through state constitutions represents what journalist James Ring Adams termed the “third wave” of the tax revolt.

Taxpayers’ associations themselves were not, however, in the vanguard of this tax limitation movement. Rather, its principal impetus came from organized real estate interests, in particular the National Association of Real Estate Boards and its affiliated divisions at the state and local level, whose members had a direct and significant interest in capping taxes on their real estate. Agitation for tax limits was not an explicit element of the programs
and activities of most taxpayers’ associations. Indeed, at least one, the Stark County Tax League in Ohio, complained that the adoption in November 1934, by Ohio voters of a further reduction in the tax limit would shrink revenues faster than a commensurate reduction in the cost of government could be achieved. Such opposition to tax limits suggests that taxpayers’ organizations were not simply anti-tax entities. Rather, they sought to balance the level of necessary government services against the taxpayers’ ability to pay for those services. Still, many of the members of the real estate organizations that backed the tax limit movement also belonged to state and local taxpayers’ associations, so there was considerable support for tax limitation measures in taxpayers’ associations even if there is little evidence that most openly promoted them. In any event, the taxpayers themselves, whom the taxpayers’ associations represented, clearly and overwhelmingly supported constitutional and statutory tax limits, as is demonstrated by the fact that voters approved such revisions in at least twenty states during the 1930s, including those in Washington, Michigan, Ohio, Nevada, West Virginia, Indiana, New Mexico, Oklahoma, Arkansas, Minnesota and Nebraska.

As one might expect, tax spenders were vehemently opposed to tax limitation measures. Many political scientists, other public administration experts, and tax officials harshly criticized tax limitation laws as unduly rigid, throttling the delivery of services by state and local government, and ineffective in reducing the overall tax burden, which was merely shifted from owners of real estate to other taxpayers. Indeed, the National Municipal League, a nation-wide citizens organization committed to good government, devoted almost the entire November 1935 issue of the National Municipal Review to the
negative consequences of real estate tax limitation.\textsuperscript{165} Nevertheless, taxpayers, while rejecting some tax limitation measures, endorsed many others during the Great Depression.

The most militant weapon in the taxpayers' association's arsenal was the tax strike, in which taxpayers refused to pay their property taxes unless and until certain demands, usually relating to budget cuts or other government cost reduction measures, were met. Tax strikes ranged from brief, isolated episodes to extensive and extended ones. The following incident described in the \textit{National Municipal Review} is typical of spontaneous, short-lived efforts of tax strikers:

The primitive urge of the tax striker has not yet been completely dissipated, if the recent disturbance in Pottsville, Pa., is any indication. Upwards of a thousand taxpayers... stormed the Schuylkill County court house, dragged out two of the county commissioners, and read the riot act on tax reduction. Unequal assessments were the cause. The county commissioners promised to hear a taxpayers' grievance committee, and the strikers were appeased.\textsuperscript{166}

At the other end of the continuum was the Chicago tax strike, which extended from 1930 to 1933 and was, according to David Beito, "the largest tax strike in the country if not in American history." The strike was organized by the Association of Real Estate Taxpayers (ARET) in Chicago. A large majority of its 30,000 members in late 1932 hailed from "relatively modest backgrounds" and were small shopkeepers and other small business owners, skilled blue-collar workers, and persons employed in clerical and sales occupations. At the height of the strike in 1932, a majority of real property taxes in Chicago were unpaid, and the city narrowly averted bankruptcy. The tax strike fizzled out in 1933 only after ARET lost several state court lawsuits that weakened it and it dissolved into two warring factions.\textsuperscript{167}

Although there were no other Depression-era tax strikes of the magnitude of the Chicago strike, they were seriously considered in many cities and implemented on occasion.
Leaders of the Taxpayers' Advisory Council in Milwaukee suggested a tax strike in 1932, but backed off after voters approved a tax-limitation measure in the November election. That same year in New York City, the West Side Taxpayers' Association passed a resolution encouraging taxpayers to withhold their taxes and the Greater Brooklyn Property Owners Association (GBPOA) initiated a tax-strike campaign. The momentum for a tax strike dissipated, however, in the face of stiff opposition from another taxpayers' organization, the New York Real Estate Board, dissension among the tax strike advocates, and the adoption by Mayor James Walker of a more conciliatory approach on taxation matters. In Atlanta the taxpayers' plight was sufficiently desperate that Hal Steed believed that "[a]n insurrection is brewing" and "that a tax strike was by no means improbable." The moderate wing of the Taxpayers' League of Atlanta and Fulton County succeeded in defusing the situation with a plea for moderation, agreeing that the public officials who were responsible for high taxes and high government debt "should be starved out. But if you try to starve them by refusing to pay your taxes, you will also starve innocent and deserving persons. You will starve policeman, firemen and teachers who are serving us, and, for the most part, had nothing to do with our plight." Tax strikes, like tax resistance generally, were not targeted at core government functions or essential levels of government services. Rather, they were aimed at spending that was wasteful or not truly necessary, such as that occasioned by redundancy in government services, inefficiency in government operations, and non-essential programs.

The specter of tax strikes continued to loom over local governments through 1933. At a conference of the American Bankers Association in January speakers warned that "[t]axpayers' strikes may result from failure to reduce the cost of government and
Professor H. W. Dodd of Princeton University declared that “[t]he taxpayers are in an angry mood,” and Massachusetts state senator Samuel H. Wragg insisted that “unless the tax burden is lightened ‘there are possibilities of taxpayers’ strikes.” On January 19, 1933, the North Bergen (New Jersey) Taxpayers’ and Civic Association threatened a taxpayers’ strike unless $180,000 was slashed from the 1933 city budget. Two weeks later the city commission reduced the budget by $119,000. That budgetary concession apparently was not sufficient, because the Association still declared a property owners tax strike in effect on February 24, 1933. Rudolph J. Welti, the Association’s president, announced that “all of the 1,000 members of the organization would support the tax-paying holiday and that 5,000 other property owners of the city [of the 8,000 taxpayers] would join the movement.” He further explained that the association “was advising the property owners to deposit the amount of their taxes” in an escrow account “pending the outcome of the strike”... [and] that the strike would continue until the taxpayers’ demands for budget reductions were met.

At the annual meeting of the New Jersey Taxpayers’ Association in June 1933, there were calls for a tax strike unless the state legislature acceded to the Association’s demands for reductions in the state budget. Irwin Rubenstein, the attorney for the West New York Taxpayers’ Association who was to foil the attempt on his life two years later, proposed a tax strike resolution, but the measure “failed after a sharp debate.” The Association’s president warned that “[t]his is a very controversial question containing a considerable amount of dynamite.... I feel it would be a great mistake to adopt so radical a measure.” A director of the Association warned that “[w]hen respected citizens countenance a tax strike
they are undermining the essential services of government.... [F]or this organization to resolve we will stop paying taxes is too radical." These comments belie the stereotype of the taxpayers’ organization as a conservative, anti-government entity. They do not reflect a libertarian mindset but a measured and responsible view of the taxpayers’ relationship to government and of their responsibility to pay for essential government services. They also acknowledge the taxpayer’s duty to pay taxes, the obligation side of the citizenship coin. Most state taxpayers’ associations espoused similar values and adopted a similarly cautious approach to the subject of tax strikes.

In Jersey City, New Jersey, what began as a tax strike in early March 1933, had evolved into a third-party political movement by April. On March 1, the Jersey City Taxpayers’ Association declared its intention to call a tax strike unless the Democratic administration of Mayor Frank Hague cut the city budget by almost fifty-five percent. The Association did not specify the programs or services that it proposed to cut but only the overall level of the budget reduction. Two other taxpayers’ organizations were formed almost immediately to oppose this draconian demand. The Association stated that it “has a potential strength of 20,000. We are about to enter upon a tax strike after every effort to come to harmonious and sensible understandings with a headstrong city government has failed.” The threat apparently carried little weight, for the city commission adopted the proposed budget without any reduction on March 10. On March 21, the Association adopted a resolution urging a tax strike by its members. At about the same time “[r]esentment over the passage of the Jersey City budget last week without the sharp reductions advocated by the Jersey City Taxpayers’ Association led yesterday to the formation of a fusion movement
of Republicans and independent Democrats… to run against Mayor Frank Hague and the Hague candidates at the city election in May.” One of the fusion candidates was Daniel E. C. Somers, an official of the Association. Hague was the vice chairman of the Democratic National Committee and had been involved in Jersey City government for seventeen years. Despite winning a position at the top of the ballot, all five fusion candidates were trounced by the Hague administration incumbents. The *New York Times* observed that “[i]t was evident that the defeated Fusion candidates in Jersey City were at a loss to account for the size of the vote rolled up by Mayor Frank Hague and the other incumbent commissioners.”

This political drubbing stood in stark contrast to the success of the candidates backed by the Newark Taxpayers’ Association in the Newark city elections on the same day.  

Not surprisingly, both the act and the threat of a tax strike elicited strong opposition on a number of fronts. Such radical action was antithetical to the conservative mindset of business leaders. Businessmen, bankers, municipal bond dealers, and investors in municipal bonds found the notion of tax strikes unsettling and feared that they would cause irrevocable damage to the municipal credit market. Melvin A. Traylor, the president of the First National Bank of Chicago and a leader of the forces that sought to break the Chicago tax strike, maintained in 1932 that the “tax dodger who declines to assume his fair proportion of the cost of government, and the tax striker who refuses to pay taxes levied and assessed against him, constitute the great menace to American governments today.” They threatened, he claimed, to cause “the general collapse of municipal credit, which rests solely upon the confidence of the investor in the willingness of the citizen to pay, and the ability of the Government to enforce the collection of revenue sufficient for its needs.”  

The following
year Frank H. Morris of Lehman Brothers echoed Traylor, declaring that "if tax strikes become general, we would have in the municipal bond market the equivalent of what happened in 1929 in the stock market."\[177\]

To the public officials who depended on a regular and predictable stream of tax revenues, tax strikes were anathema. Daniel Hoan, the Socialist mayor of Milwaukee and philosophically a proponent of big government, considered such organized tax resistance a threat to the Republic itself. In a one-act radio play sponsored by the National Municipal League entitled "Mr. Taxpayer versus Mr. Taxspender," Hoan and Luther Gullick, a professor of municipal government at Columbia University, engaged in a spirited discussion about the "problem of high taxes and tax reduction." Hoan strongly defended the need for active government intervention in the devastated Depression-era economy. "Much as we dislike to pay our tax bills," Hoan declared,

> [t]he fact is that government ... has stood like the Rock of Gibraltar during this frightful depression to save us the agonies of complete chaos. While banks bailed, factories closed, shops went bankrupt, pyramided utilities collapsed, the government was expected to function with more vigor and energy than ever.... Is it not high time to call the attention of the citizens of this country to the fact that they are playing with dynamite when they so recklessly undermine and destroy faith in this Republic and all its agencies.... The operation of government is as necessary as it is to have a home to live in unless we are to concede that we should slip back the to the level of savages. ...If then, it is true that to have progress we must have efficient public service, it behooves every good citizen to take part in civic and governmental affairs and improve that government and when the time comes to pay the bill, to do so with a sense of civic duty.\[178\]

Hoan's insistence on the necessity for forceful government action to reduce unemployment, stimulate consumer demand and provide a bulwark against a deflating economy anticipated the arguments made by British economist John Maynard Keynes three years later in his
seminal work, The General Theory Of Employment, Interest and Money, and that underpin much of the discussion about the economic stimulus legislation enacted in February 2009.\textsuperscript{179} In a 1933 radio forum on the "Secrets of Municipal Credit," New York State Comptroller Morris S. Tremaine warned that "[a] taxpayer strike would double the cost of borrowing" by state government.\textsuperscript{180} Tax strikes were a threat to the operation and to the very legitimacy of government. Consequently, government officials opposed them vigorously and often reminded taxpayers that a principal obligation of citizenship was paying taxes.

Political scientists and other good government experts and reformers also decried tax strikes. Luther Gullick, the director of Columbia University's Institute of Public Administration, played the role of the taxpayer in the simulated radio debate with Hoan but nevertheless regarded tax strikers as a threat to the body politic. In a 1932 radio roundtable discussion he opined that taxpayers' associations could promote economy and efficiency in government in a number of constructive ways but warned that "a taxpayers' strike, or the threat of a strike, is dangerous business. Its first effect is to wreck the credit of the community, jack up the interest rates that must be paid for borrowed money, and perhaps bring on payless pay days for schoolteachers, policemen and firemen."\textsuperscript{181} Gullick elaborated on this theme in his discussion with Hoan, questioning the loyalty and patriotism of the tax slacker, "who can, but doesn't pay his taxes cheerfully and promptly [and] is just a plain traitor to his city and town." He argued "that a tax strike costs twenty cents on the dollar on taxes, as over against the normal and legitimate methods open to the citizen of expressing his demands for tax reduction."\textsuperscript{182} Public administration professionals frequently emphasized the dire practical consequences and the radical nature of tax strikes and encouraged taxpayers
to engage in more moderate and, in the professionals' view, more effective efforts to alleviate their tax burden.

The threat posed by tax strikes and tax delinquencies was of sufficient concern to good government experts that in September 1933, the National Municipal League launched "a nation-wide 'Pay Your Taxes' campaign to educate the average citizen throughout the country to the importance of paying his taxes in this critical period if municipal credit is to be preserved and essential local government services continued." The League was a voluntary association of citizens organized in 1894 to promote reform in municipal government. Consequently, it had a direct and vital interest in the extent to which tax delinquencies threatened the financial viability of state and local governments. Thomas Reed, a professor of government at the University of Michigan who shared Gullick's dim view of tax strikes and tax limits promoted by organized taxpayers, was selected as the chairman of the National Pay Your Taxes Campaign (NPYTC). The NPYTC was essentially an intensive, large-scale public relations campaign designed to make "the taxpayer understand his responsibility for the tone of government" and his civic duty to pay for government. It was backed not only by public employees and good government organizations but also by many in the private sector, to which the financial health of state and local government mattered greatly. An editorial comment in the October 1933 National Municipal Review described campaign's methods in glowing terms:

The idea of a nation-wide drive against tax delinquency is penetrating businesses and industry clear to the man on the street. In various newspapers, arresting "Pay Your Taxes" advertisements are appearing, sponsored not by the tax gathering powers but by banks and leading industrial institutions. They recall the days of Liberty Loan drives. Telephone, radio, screen appeals in motion picture houses, volunteer house to house campaigns by the
unemployed – and by civic employees anxious to avoid this status – all are parts of the unique public movement. More than that, the New York Bureau of Municipal Information reports “sermons given in churches about the Restoration of Faith in Local Government.”

The movement gained momentum quickly and produced results in short order. In February 1934, Wade S. Smith, the National Municipal Review’s contributing editor for taxation and government, reported that “Pay Your Taxes” campaigns continued to provide an effective weapon against tax delinquencies in cities with pressing financial difficulties,” including Columbus, Ohio, Houston, Texas and Tacoma, Washington. The National Municipal League published a campaign manual for use by local Pay Your Taxes campaign committees. Some taxpayers’ associations, such as the state taxpayers’ organization in New Mexico, supported the campaign. In August 1934, the National Municipal Review declared that the “[r]esults secured by the campaign during the past year,” including the reduction of delinquencies and restoration of municipal credit, “had been highly successful,” and it vowed to continue the campaign.

By late 1934 tax strikes had waned for a number of reasons. First, and perhaps most important, the tax strike was a radical approach with destructive potential that most Americans were not prepared to embrace. Moreover, actual tax strikes had not proven all that effective and often resulted in considerable public backlash. Finally, the National Municipal League’s Pay Your Taxes Campaign succeeded to a large extent in diverting the energies of tax resisters into more constructive and more cooperative channels for advancing their agendas. By September 1934, the National Municipal Review was reporting that tax protesters throughout the nation “seem definitely to have lost their old tax strike enthusiasm.”
In addition to lobbying, political campaigns, and tax strikes, the fourth and final sharp weapon in the Depression-era taxpayers' association's arsenal was the taxpayers' lawsuit. Taxpayers turned to this remedy when they deemed it necessary to invoke the coercive power of the law to enforce economy and efficiency in local government. Taxpayers brought such lawsuits most often to restrain the unauthorized expenditure of public funds, to require the return of taxpayer dollars already improperly paid out and to enjoin other unlawful municipal acts such as the illegal issuance of municipal bonds. When taxpayers believed that town, city and county governments were not adhering to constitutional and statutory provisions regarding local government finance and operation, they turned to the courts to force compliance.

Because the reported information regarding taxpayers' actions is so diffuse, it is impossible to measure with precision the number of such suits brought annually in the 1930s, compared to the 1920s. For several reasons, though, we can be sure the number of taxpayers' suits instituted during the 1930s increased sharply. First, such litigation was expensive, so it was most often undertaken or sponsored by organized groups, which multiplied exponentially between 1931 and 1935. Second, the information gleaned from the Decennial Digests, rough and imprecise though it is, suggests that there was a surge in taxpayers' actions in the 1930s. For example, in the five-year period between 1923 and 1927 there were 105 reported taxpayers' suits, whereas in the five-year period between 1933 and 1937 there were 146, a 39% increase. Third, a revived interest in taxpayers' actions among legal commentators during the Great Depression suggests an increase in the frequency of such suits. The June 1937 Harvard Law Review took a positive view of taxpayers' actions.
It observed that “[r]ecent attempts to enjoin governmental expenditures have brought into renewed prominence the problem of defining the scope of suits by taxpayers against officials mismanaging public property or funds.” It concluded that

[...]he taxpayers’ suit must then be understood as not only a means of vindicating individual rights but as a governmental device to safeguard the legal restrictions on state and local governments, which, if not subjected to the careful scrutiny of the individual taxpayer, might well become dead letters.... The overwhelming acceptance of such suits is in keeping with the distrust of the executive and administrative self-restraint in the use of the spending power and with the readiness to allow the courts to assume the role of arbiter in the governmental scheme.¹⁹⁴

In contrast, the Iowa Supreme Court’s 1933 decision in *Wertz v. Shane*, holding that a taxpayer was authorized to prosecute suits “to recover for the state funds wrongfully expended if the proper officials refuse to act,” elicited criticism from the *Illinois Law Review* because “such suits might be employed merely to discredit honest officials. Individuals or factions could contest the execution of an administrative policy which appeared odious to them, and unduly hamper officials whom a majority had elected.”¹⁹⁵ The commentators’ differing perspectives of taxpayers’ actions show the spectrum of opinion about the desirability of such suits. The first commentator also reflects the view of consensus legal historians that courts acted as honest brokers or arbiters of citizens’ disputes with their governments.

Bell County, Kentucky provides an interesting case study of the litigation programs of taxpayers’ associations during the Great Depression. Established by the state legislature in 1867, Bell County is in southern Kentucky in the region of the Cumberland Gap and the Cumberland River.¹⁹⁶ It abuts the far southwestern corner of Virginia and Tennessee’s northern border. In the 1930s the principal cities of Bell County were Middlesboro and
The Taxpayers’ League of Bell County was formed in 1930 “by a number of businessmen to correct the abuses attending in the administration of Bell County’s financial affairs and the illegal expenditures of the taxpayers’ monies, and wants every taxpayer in the county to become a member.” Those abuses included the misappropriation of public funds by officials, the refusal by public officials to allow regular audits of government financial records, and what taxpayers considered wasteful or excessive expenditures of tax dollars for employee salaries and other things. In an “Open Letter To Taxpayers” in the Middlesboro Daily News, the League urged all county taxpayers to join because “it will show that you still have the interest of the county and its citizens and good government at heart.” It “built up an extensive membership of taxpayers” in the county. The League’s stated objectives were to curb unlawful and injudicious expenditures of public funds and to take such legal steps as in its judgment appeared necessary to protect the monies raised by taxation for public purposes; to audit or have audited public records of Bell County, and to publish reports of the same; to employ such agencies, including the engagement of legal talent, as might be necessary to promote the end sought; and generally to do all things leading to the ultimate purpose of the organization, such as would tend to elevate the government to a higher plane.

It promised “to see that when money is collected from the taxpayers it will be spent for the purposes for which it was levied.”

Taxpayers’ litigation was the centerpiece of the League’s agenda and the taxpayers’ action its principal weapon. In its March 1931 “Open Letter To Taxpayers” the League boasted that it had “been instrumental in having some suits brought against former officials to recover” public funds and that “[e]ight suits are now pending to recover about $60,000.00, and every citizen should be interested in these matters.” At its May 25, 1931 meeting, the
League adopted a resolution declaring that one of the League’s main objectives was to insure that public officials “honestly and faithfully perform[ed] their duties, regardless of politics and political pressure” and that investigations by the League had revealed “that many of the officers are not complying with their legal duties.” The resolution went on to “unhesitatingly condemn these practices” and instructed the League’s attorneys “to prepare and file such actions as may be necessary to compel the proper performance by the public officials of Bell County of the duties imposed upon them by law.” Some taxpayers’ actions were thereafter brought by the League itself, while others were instituted by officers of the League on its behalf, much as William Jay Schieffelin had done in carrying out the Citizens Union’s taxpayers’ litigation program in New York City. In both cases, the plaintiffs were represented by attorney Martin T. Kelly, a central figure in the League’s taxpayers’ litigation program, much as Leonard Wallstein had been in the Citizens Union’s legal efforts.

One of the League’s earliest taxpayer cases was initiated by James Hoskins and other members of the League’s executive committee in December 1930, against James Helton, the former Bell County Sheriff, to recover monies wrongfully withheld by Helton. The taxpayers claimed that Helton had refused to remit to the county and the board of education approximately $42,000 in taxes he had collected as sheriff, that the taxpayers had demanded that county and school officials institute suit to recover the funds, and that these public officials had not only refused but “had been hostile to the efforts of the taxpayers of Bell County to compel the sheriff to comply with the law....” The trial court dismissed the taxpayers’ petition on the ground that they lacked the legal capacity to prosecute such an action. The Kentucky Court of Appeals reversed, ruling that the taxpayers had a right to
maintain the action since the petition alleged that "the sheriff is retaining money that he should have paid over, and that the fiscal court has failed and refused to correct the matter and is averse to doing so." The court declared that the "taxpayers should not be left without remedy, for they are the real parties in interest, and they have a right to demand that the account be settled and judgment entered for the county for the amount due." In so ruling Kentucky's highest court reiterated the settled principle that taxpayers were entitled to enforce causes of actions belonging to local government where public officials wrongfully refused to do so.

In 1931, the League, through several of its members, brought a taxpayers' suit against the city of Middlesboro, its mayor, and commissioners to compel them to allow the plaintiffs and their accountant to inspect and audit the city's financial records. An audit the previous year by the city's auditor had revealed that a number of the county officers "were short in their accounts," and the League had vowed to push for "a thorough investigation to the end." The trial court judge denied the taxpayers' petition on the ground that "inasmuch as the city had had an audit made... that it should be sufficient." The taxpayers appealed, and the Kentucky Court of Appeals reversed, holding that, "[s]ubject to... reasonable rules and regulations,... the taxpayers have the right at any time to inspect the records of the city with a view of making an audit and discovering the truth as to its financial affairs and the manner in which the public business is conducted." Such lawsuits promoted transparency in government and accountability of public officials, two principal objectives of proponents of a business model of government for more than a generation.

The following year representatives of the Taxpayers' League filed a taxpayers' action
against the Middlesboro board of commissioners to recover for the city treasury excess salaries paid to the commissioners. In 1922, the voters of Middlesboro had adopted a commission plan of government. The city charter for which they voted also provided that each member of the board of commissioners would receive an annual salary of $900. In 1929, the commissioners enacted an ordinance increasing their compensation, which prompted the taxpayers' suit. The Bell County Circuit Court dismissed the petition, but the Court of Appeals reversed, ruling that the electorate had fixed the commissioners' compensation in the city charter, that therefore "the city commissioners did not have the power to increase their compensation, however much it may have been deserved," and that the plaintiffs were entitled to recover for the use and benefit of the city the illegal excess salaries paid to the officials. The court grounded its decision on "the supremacy of the voice of the people," declaring that "the will of the electorate...must be given full force and effect....Municipal councils...are but the servants of the people and when the people register their will in respect to things directly submitted to them, that will is controlling." As the court observed, the case presented "a novel and important question with respect to the limitations on the power of the board of commissioners... by reason of the referendum under which that method of government was adopted."

It would appear that nepotism in county government prompted the Taxpayers' League next lawsuit. In 1930, George Vanbeber, the county judge, had appointed Ed Vanbeber clerk to the county judge. The League brought suit against both Vanbebers and the Bell County fiscal court to recover monies paid to Ed Vanbeber as clerk and to enjoin further payment of his salary, alleging that he had not attended to his duties as clerk and had only been present
a total of fifteen days. In this action the League’s efforts were unavailing. The Court of Appeals affirmed the trial court’s dismissal of the petition, ruling that a citizen and a taxpayer could not maintain an equitable action for injunctive relief where, as in Vanbeber’s case, there were specific remedies at law available. It is unclear what those other remedies were or whether the taxpayers thereafter pursued same through litigation.

The Taxpayers’ League had better luck the next year, again putting a stop to an attempt to increase a public official’s salary. In February 1931, the Bell County fiscal court voted to increase the fiscal court clerk’s salary from $60 monthly to $100 monthly, pursuant to which order the clerk, J. M. Pursifull, was paid $100 per month in 1931, 1932, and 1933. The League filed a taxpayers’ suit challenging the fiscal court’s order. The Kentucky Court of Appeals affirmed the trial court’s order awarding “judgment for the use and benefit of the county for the excess of $40 a month” because the state constitution prohibited such a change in the clerk’s compensation.

The Bell County group’s taxpayers litigation program was highly effective. It prosecuted taxpayers’ actions in a coordinated and vigorous manner. In the Hoskins case the League elicited a reminder from Kentucky’s highest court that “taxpayers should not be left without remedy,” a premise underlying taxpayers’ actions since their inception almost a century earlier. In a libel action brought by the League against Sun Publishing Company, the publisher of The Pineville Sun, the Court of Appeals called attention to “the very commendable things which [the League] had undertaken, and to some degree accomplished.” The Taxpayers’ League’s considerable clout is evidenced by the fact that in 1933 the county attorney of Bell County felt obliged to seek the League’s approval of a
proposal by the county fiscal court to borrow funds to pay county expenses that had accrued the previous year.\textsuperscript{218} Organized taxpayers in Bell County, like those throughout the nation, were ready, willing and able to resort to the courts when they believed that doing so was necessary to protect taxpayers' rights and to compel public officials to adhere to the law.

Organized taxpayers resorted to all four aggressive activities, whose common characteristic was their adversarial nature, during the Great Depression. Tax strikes were infrequent after 1934 for reasons already discussed. The push for tax limitation measures continued throughout the decade but slowed after 1935. One explanation for this trend is that taxpayers came to realize that the criticisms of tax limits as unreasonably rigid and not particularly efficacious were, to some degree, justified. The most probable one, though, is that tax limitation had its limits, that is, taxes could be restricted only so much without causing the engines of state and local governments to seize up completely. Between 1930 and 1935, organized taxpayers succeeded in enacting scores of tax limitation measures throughout the nation, so by 1936 further limitation was not all that feasible.

Moreover, these tax limitation laws had produced a host of unforeseen and undesirable consequences. Obviously, when enacted "[l]ocal officials were faced with the dilemma of how to obtain sufficient revenues for operating purposes."\textsuperscript{219} In the short term they often were unable to do so, resulting in a dramatic curtailment of local government services, as occurred in West Virginia and Ohio, among other states. In the longer term public officials found replacement revenues from other sources, such as taxes on business revenues and alcoholic beverages, the effect of which was not to reduce the public's overall tax burden, but merely to shift it from one class of taxpayers, owners of real estate, to others.\textsuperscript{220} By
arbitrarily restricting the revenue-raising capacity of government units, tax limits also undermined municipal credit.\textsuperscript{221} The National Municipal League was highly critical of tax limitation laws. In a November 1935 editorial in the \textit{National Municipal Review} it argued that “[w]herever tried, such laws have resulted in a practical breakdown of local government and a chaos in municipal finance.... [T]ax limitation represents probably the most serious immediate menace with which local self-government and sound public finance is faced at the present time.”\textsuperscript{222} Simone E. Leland of the Illinois Tax Commission likewise maintained that the adoption of tax limitation proposals would “have disastrous effects upon governmental activity in Illinois amounting to chaos and the complete breakdown of many services in various sections of the state.... [T]hese schemes have so frequently curtailed government service and produced fiscal chaos that the plan has been permanently discredited.”\textsuperscript{223}

While tax strikes and tax limitations lost momentum, traditional political activity and taxpayers’ lawsuits continued unabated throughout the decade. This was likely attributable to several factors. First, they had often proven effective. Furthermore, the party politics in which taxpayers engaged were, for the most part, moderate or somewhat left-of-center but not far left (e.g., Communist) or otherwise radical. The nominees of the Teaneck Taxpayers’ League purported to be “non-partisan candidates,” and the other political party activity in New Jersey took the form of fusion or other independent movements.\textsuperscript{224} In Berlin, New Hampshire, third-party political activity took the form of the Farmer-Labor Party.\textsuperscript{225} More specific information about the political affiliations of taxpayers’ association members is not readily available, but none of the political party activity by organized taxpayers had a radical tenor to it. Third, taxpayers’ suits, for their part, had been among the panoply of remedies
available to American citizens who relied on the rule of law for almost a century. Although such party politics and taxpayers' suits were aggressive and adversarial in quality, they were still part of the American civic and legal mainstream.

The connection between the more confrontational tactics are also noteworthy. In Jersey City tax strike agitation metamorphosed into a fusion political movement directed at overthrowing the Democratic machine headed by Mayor Frank Hague. In New Hampshire the taxpayers' suit brought by the Berlin Taxpayers' Association began a chain of events that led to the formation of the Berlin Farmer-Labor Party. In each case the energies released by these aggressive efforts by taxpayers' associations generated the requisite critical political mass for the creation of a third-party political movement. In Duluth, Minnesota, the Taxpayers' League of St. Louis County participated in a lawsuit to enforce a statutory tax limit against a local school district. There was a considerable degree of interaction and interplay between the various hard tactics of taxpayers' associations, and they reinforced one another to some degree.

The use by organized taxpayers of different and sharper tactics after 1930 is not to suggest that taxpayers' associations abandoned their previous, less confrontational measures. On the contrary, taxpayers' associations continued to rely primarily on the traditional activities of research, public education, and constructive engagement with public officials. Still, after 1930 the taxpayers' association movement expanded into new activities and was characterized by a greater degree of heterogeneity, complexity and nuance.
Impact and Importance of Depression-era Taxpayers’ Associations

Evaluating the effectiveness of taxpayers’ associations during the Great Depression is an equally complex and nuanced undertaking. To some extent such an evaluation depends on how, and from whose perspective, one measures and defines effectiveness. If success is measured by the degree to which organized taxpayers attained their goals of promoting economy and efficiency in government and lightened tax burdens, then it was relatively effective. In 1931, the New England Council had already concluded that “local taxpayers’ associations have been found the most effective means in dealing with” the burgeoning tax burden. In late 1933, George L. Leffler, a professor of finance at the University of Toledo, examined “the burden of taxation” in six northeastern states (New York, Michigan, Illinois, Wisconsin, Ohio and Indiana), found, among other things, that “the influence of strong, well-organized taxpayers’ associations have forced economy in 92 percent of the taxing units of” Indiana. He predicted that, in these states, “the burden of taxation will be much reduced in 1933,” and concluded that “the campaign for reduced taxation has made marked progress during 1933 toward its goal. Reduced budgets and tax limiting laws are the order of the day.” That same year Claude Tharp argued that taxpayers’ associations had made important contributions to the cause of efficient and less costly government.

As one might expect, taxpayers’ organizations regularly touted the efficacy of their policies and programs. The Worcester Taxpayers’ Association reported that its third year of work, 1934, “saw a reduction in property taxes in Worcester for the second successive year,” from approximately $11.4 million in 1932 to $9.7 million in 1934. In 1935, the Association of Omaha Taxpayers’ Inc. asserted that it had “been instrumental in securing the adoption
of several important reform measures,” including a county manager plan of government. The Taxpayers’ Research League of Delaware likewise claimed that it had a hand in “important and constructive measures enacted by the legislature.” The local taxpayers’ association in New Haven, Connecticut quantified the value of its research activities, claiming that “[e]very dollar spent in research by this agency resulted in the formulation of definite recommendations for saving about $30 annually in a normal year in the operation of city services.” Although such reports are admittedly self-serving, they appear to be mostly accurate. Many state taxpayers’ associations played an important part in the enactment by their state legislatures of worthy reform measures concerning government operations and finance.

Public officials, bankers and, to a lesser extent, experts on government, took a less sanguine view of the impact of taxpayers’ organizations. Mayor Hoan of Milwaukee rarely missed an opportunity to deride “tax dodger leagues.” Based on his experience in Milwaukee he considered the demands of taxpayers’ associations for economy and budget cuts as unreasonable and unrealistic. He maintained that such reductions in public spending would impair the ability of government to “furnish … community services that we can’t get along without,” and believed that “[o]ur citizens have thoughtlessly rallied to the cry that if taxes can be drastically cut somehow their troubles will be solved.” Frederick L. Bird, the director of municipal research for Dun & Bradstreet, rued the negative effects that tax limitation measures had on municipal credit. Wade S. Smith contended in January 1934, that although recent legislation enacted in a number of states forgiving interest and penalties on past-due taxes had been adopted at the urging of taxpayers “to induce the tax defaulter to
pay up, in nearly every instance they have had just the opposite effect and have encouraged further tax delinquency.\textsuperscript{234} Sidney Demers, the manager of the Buffalo Municipal Research Bureau, had “no quarrel with those taxpayers’ associations whose work is based on research…” but condemned any type of “militancy” by organized taxpayers, insisting that the “claim of any group less than that of the people themselves to dictate to the elected officials their course of action, under threat or duress of any kind, is outside the constitution and the laws, and is nothing less than mob rule.”\textsuperscript{235} Thomas Reed likewise approved of those taxpayers’ groups organized “for the purpose of finding the facts and passing reasonable judgments on them” but feared that the more extreme tax reduction and tax limitation efforts would wreak havoc on state and local governments.\textsuperscript{236}

Most experts in public administration likewise saw in taxpayers’ associations the potential for both good and evil but concluded that their promise outweighed any peril they posed. For good government professionals, the question was whether organized taxpayers would devote their energies to constructive or destructive ends.\textsuperscript{237} While he was president of the National Municipal League Murray Seasongood framed the issue as follows:

\begin{quote}
There can be no doubt of the strength and sincerely of taxpayer sentiment for economy…. The question is, shall this sentiment be mobilized and directed toward an intelligent and discriminating economy which preserves the good while eliminating the bad, separates the essential from the non-essential service, and actually makes government better, or shall it be left under uninformed and fanatical leaders in the newly-discovered cause of economy to pass away in empty vaporings or to disrupt administration, destroy essential services, and bring government itself into contempt.\textsuperscript{238}
\end{quote}

Seasongood and other experts on government generally regarded the collaborative activities of taxpayers’ associations, especially their research and legislative programs, as forms of constructive economy and maligned tax strikes and tax limits as species of destructive
economy.

Others also emphasized the importance of intelligent and informed taxpayer action and found great potential in such efforts directed at working with, not against, government officials. Luther Gullick of Columbia University opined that “[i]f a taxpayers’ or civic organization is willing to get at the facts painstakingly and think intelligently about their government, such an association can be of tremendous value.”\textsuperscript{239} National Municipal League Secretary Howard P. Jones saw in the emerging taxpayers’ association movement “an opportunity before those interested in local government that has never existed before and may never come again....” There is at present citizen interest, energy and enthusiasm regarding problems of local government which, directed into intelligent channels, may work wonders” by generating the public support necessary to modernize and refashion the structures and operations of state and local governments throughout the nation.\textsuperscript{240} Edmond M. Barrows, though, recognizing that taxpayers’ associations “provide at once menace and opportunity,” was encouraged by their increasing embrace of intelligent and balanced legislative and research programs. He urged that such organizations obtain appropriate information and attention “from their better trained co-workers in the field of civic advance,” that is, good government experts. Consequently, he concluded that taxpayers’ associations were allies “for the advocates of governmental reconstruction” and that they “are after simplicity, sound financing, and centralized responsibility in local government. In these efforts they are on solid ground.”\textsuperscript{241} By and large, good government experts in the 1930s assessed taxpayers’ associations favorably, most likely because the lion’s share of organized taxpayer activity was of the constructive economy type.
Many tax spenders also concluded that taxpayers’ associations were not driven as much by anti-big-government fervor as they had feared. Admittedly, there was an undercurrent of such sentiment in the taxpayers’ association movement. Some of its supporters in the business community, like Nation’s Business editor Merle Thorpe, who Beito described as representing “the dwindling hard-core anti-big-government wing of the organized business community,” were truly of a libertarian ilk. At the grass roots level many shared the desire of the Iowa farmer who “would also like to buy less government” and the belief of the West Virginia Taxpayers’ Association that “the price of government should undergo the same measure of deflation as every other branch of human activity.” Although these opinions likely reflected some degree of preference for smaller government, they were fundamentally about the cost, not the size, of government. Most organized taxpayers simply wanted some relief from their onerous tax burdens. To this end they sought to eliminate unnecessary services and wasteful spending and to promote economy and efficiency in government. The activities of taxpayers’ organizations like Hal Steed’s Atlanta Taxpayers’ League were mainly devoted to constructive economy measures, not destructive ones. For the most part, taxpayers’ associations responsibly balanced their right to press for lower taxes against their obligation to pay their fair share of the cost of a reasonable level of government services. The National Pay Your Taxes Campaign was so successful because organized taxpayers were not libertarian ideologues. Anti-big-government sentiment was a minor component of the taxpayers’ association movement, not a major one.

With the benefit of two generations of hindsight, taxpayers’ associations during the Great Depression may properly be seen as largely effective and as having exerted a profound
influence on both American government and on the fabric of American civic life. Tax strikes were admittedly a dangerous and radical gambit, and that is precisely why they were rarely employed. Tax limitation measures were crude instruments of tax relief policy, but in scores of states and localities they did in fact achieve the goal of alleviating the citizen’s tax burden. Taxpayers’ associations were also successful in promoting better and less costly government through taxpayers’ actions in the courts and through an array of traditional political activities.

The programs of taxpayers’ organizations that had the most significant and enduring impact, though, were their extensive legislative and research efforts. Through these activities organized taxpayers in every state and in hundreds of communities across the country transformed the manner in which state and local governments were organized, operated and financed. They informed and influenced, often to a very considerable degree, thousands of decisions and actions by state and local legislative and executive bodies and resulted in the enactment of innumerable measures affecting the administrative structure of government and the means and methods of public finance and public administration. Their cumulative impact was enormous. Many of the features of modern public administration that we now take for granted at the turn of the 21st century and for which proponents of the business model of government had advocated since at least 1900 only gained widespread acceptance and adoption when concerted pressure for such measures was brought to bear on public officials by millions of organized taxpayers through their voluntary associations. Such reforms included, among many others, the county and city manager plan of government, transparent and scientific systems of budgeting and accounting, consolidation of government departments and functions, and the increasing professionalization of public administration.
generally.

Prior to the Great Depression, the institutions of state and local government evolved largely in an ad hoc manner, without much forethought from a public administration perspective. County governments were formed when population density attained a certain level. Government departments and bureaucracies were created by elected officials to meet a particular, usually acute, need or to advance a particular agenda, not on the basis of long-term planning or the application of business management principles to public entities. The 1930s was a watershed decade in this regard. For the first time the influence of the business model of government extended widely and powerfully beyond the halls of academia, the National Municipal League and other non-governmental professional associations to state and local governments across the nation. Henceforth, the structures of state and local government developed to a lesser degree on an ad hoc basis and to a greater degree as a result of thoughtful planning informed by professional expertise.

This is not to say that taxpayers' associations are entitled to all the credit for such reforms. Good government reformers, business leaders, and public officials themselves made important contributions. Still, it was taxpayers' organizations that played a crucial and, I argue, an indispensable part in the process of refashioning state and local government across the United States in these years. In doing so, they fulfilled their promise, envisioned by Barrows and other good government reformers, of being not only advocates of government reconstruction but agents of such change.

The programs and activities of Depression-era taxpayers' associations were also important because they represented various manifestations of, in historian Meg Jacobs'
formulation, "pocketbook politics." Almost all taxpayers were consumers of government services, and all helped to pay for those services with their own taxes. The taxpayers' association movement, at its most fundamental level, was a protest by consumers of government services against the escalating cost of the services as evidenced by their escalating tax burdens. Each of the programs of taxpayers' organizations, directly or indirectly, aimed in some way to lighten that burden. Organized taxpayers brought these concerns to their legislative bodies, to the polls and to the courts in order to facilitate economy and efficiency in government and to reduce or at least limit their taxes. Like the progressives who, according to Jacobs, "transformed their agenda of mass purchasing power into a program of national recovery and reform during the Great Depression of the 1930s, pushing it from the margins to the center of political debate," so too did taxpayers' associations in the 1930s force their agenda of government reconstruction and tax reduction from the periphery to the hub of political debate throughout the United States.244

The taxpayers' association movement also had long-term impacts on American civic life and conceptions of citizenship. For one thing, Americans became far more knowledgeable about and involved in their government. Americans had always interacted with public officials and the institutions of government, but before the Great Depression such interaction was more sporadic and superficial, usually provoked by and limited to particular issues and problems. As a result of the crisis of the Great Depression, however, citizens of the United States engaged (usually constructively, occasionally destructively) their state and local governments and public officials to a far greater extent. Admittedly, not all Americans did so, for many had all they could do to put food on the table, much less agitate for better
and less costly government. There was, though, an increasing level of citizen-government engagement and, consequently, of citizens' understanding of how their governments did function and should function. This process in turn informed Americans' notions of citizenship, both by further integrating ordinary citizens into the fabric of American public life and by promoting a more rights-based vision of citizenship in the United States.

The necessity for such constructive engagement with local government on the part of the organized taxpaying citizens was apparent to contemporary observers of the taxpayers' association movement and to taxpayers' organizations. In 1933, Clyde L. King of the Agricultural Adjustment Administration insisted that, among the "prerequisites to that wholesome and responsive government we call democracy" and to combating political patronage and corruption in government, was "[a] better informed citizen."245 National Municipal League secretary Howard P. Jones maintained that citizen organization was essential to achieving progress in county government, declaring that

[m]ost important of all... is the increased citizen interest in public affairs resulting generally from the depression and specifically from the desire to reduce taxes.... In America nothing can be accomplished without citizen interest. Organization follows interests, action follows organization, and gradually, slowly, cumbersomely... the bit of leaven leavens the whole lump....

A 1935 editorial in the National Municipal Review exhorted citizens to organize to further good government, arguing that it "is idle to think good government can be protected by the spontaneous desire of each individual citizen acting alone" and that "the only way... to make the average citizen feel he has a part in local government is through organization."247 Later that year Thomas H. Reed seconded that emotion, contending that "[w]ithout citizen organization, permanent citizen organization, good government is impossible."248
Taxpayers' organizations expressed similar views about the duty and the right of citizens to engage constructively public officials in order to promote good government. Paul Reynolds, the director of the Wisconsin Taxpayers' Alliance, wrote that the motto of the Alliance could be phrased, "[w]e will never have good government until the people take an active interest in government affairs." The local taxpayers' league in Duluth, Minnesota maintained that "a democratic form of government requires that every citizen should spend the maximum time possible in doing his part to ensure that his government does the best job possible." Americans' ideas about citizenship were energized and reshaped by the taxpayers' association movement of the 1930s.

Finally, one sees in the taxpayers' organizations of the 1930s the dynamic interaction between law and society in America. The vast majority of organized taxpayers' programs somehow implicated and invoked the law. Taxpayers petitioned, persuaded and otherwise agitated to procure the passage of dozens of tax limits nation-wide. They instituted scores of taxpayers' actions in order to bring the coercive power of the law to bear on public officials and require them to comply with laws relating to state and local government finance and administration. The research and legislative programs of taxpayers' associations were instrumental in producing a large body of new legislation that, for the most part, improved the quality and efficiency of government. Time and again taxpaying citizens successfully resorted to the law to refashion state and local governments and thereby appreciatively shape their environment to their ends. Conversely, the law substantially framed and shaped the interactions between taxpayers and public officials. The formative and constitutive power of the law is evidenced by the very fact that citizens were required to rely on it so often to
achieve their objectives. The Depression-era taxpayers’ association movement thus demonstrates the reciprocal flow of influence between law and society, between legal institutions and ideas and civic institutions and ideas.

These forces and dynamics vigorously percolated up through the American social fabric in hundreds of communities across the nation during the Great Depression. The next chapter focuses on how their confluence in one small city in northern New Hampshire forged a viable third-party political movement. It tells one particular story of the intersection of law, notions of citizenship, pocketbook politics and political reform, in which legal activism and political activism, the prerogatives of United States citizens, came together and led to the formation of the Berlin Farmer-Labor Party.

2. Ibid. Years later Steed identified Atlanta as the unnamed city in which his adventures had occurred. David T. Beito, *Taxpayers in Revolt: Tax Resistance During the Great Depression*, (Chapel Hill: University of North Carolina Press, 1989), 16.


13. Thomas H. Reed, “Organizing to Save Our Communities,” *NMR*, 22, no. 7 (July 1933), 310.


18. See notes 192 to 218 below


27. Tharp, *Control of Local Finance*, 16 - 17.


34. Edward M. Barrows, “A Challenge To Reform,” 223.


36. *NMR*, 21, no.2 (February 1932), 77.


41. See Chapter 4 notes 73, 90.

42. See notes 92, 162, 169, 173, 189 below.


44. *The Lowell Sun*, Lowell, Massachusetts, July 18, 1932, 2.


46. Ibid, see numerous articles in the *Fresno Bee*, Fresno, California.


51. See Introduction, notes 30 to 40.

52. William B. Munro, "Taxation Nears A Crisis," *Current History* 37:6 (March 1933), 656.

53. Ibid, 661 - 662.


56. "Redrawing the Boundaries of Local Government," 1, reprinted in Reed, *Government In A Depression*.

57. "Reorganizing County Government," 1, reprinted in Reed, *Government In A Depression*.


63. Ibid, March 21, 1933, 2.

64. Beito, *Taxpayers in Revolt*, 141; Merle Thorpe, "In Behalf of the Delinquent Taxpayer."


68. See notes 6 to 12 above.


70. Governmental Research Association, "The Search For Facts in Government," *Supplement to The National Municipal Review*, 22, no. 6 (June 1933), 305, 301, 302.

71. National Municipal League, Committee on Citizens' Councils for Constructive Economy, "A Citizens’ Council, Why and How?", (New York, 1933), 1. Likewise, the Forward to two articles on real estate tax delinquencies in the legal periodical *Law and Contemporary Problems* affirmed that "accentuation of the tax burden by the depression has led to the organization of important pressure groups working for a variety of measures which may be subsumed under the slogan, 'relief for real estate.'" "The Collection of Real Property Taxes," *Law and Contemporary Problems*, 3,

73. “Reorganizing County Government,” 2, reprinted in Reed, Government in a Depression.

74. The Lowell Sun, October 8, 1931, 5.

75. Tharp, Control of Local Finance, 6,30 - 31.

76. Ibid., 2.

77. The Lowell Sun, July 18, 1932, 2.

78. Ibid., March 21, 1933, 2.


80. Ibid., 23, no. 5 (May 1934), 276.

81. Ibid., 24, no. 12 (December 1935), 712.

82. Ibid., 25, no. 12 (December 1936), 751 - 752.

83. Tharp, Control of Local Finance, 23.

84. Ibid., 24 - 25.


87. Ibid.

88. See notes 158 to 165 below.

89. The Lowell Sun, October 8, 1931, 5.

90. Robert M. Paige, “Governmental Research Association Notes,” NMR, 23, no. 9 (September 1934), 489. In his investigation of taxpayers’ associations Claude Tharp described this strategy as comprising efforts “to reduce expenditures and reorganize governmental structure with a view to introducing features of control and economy.” Tharp further argued that “[e]ntering activities about expenditures and control of government costs is the most direct and effective approach.” Tharp, Control of Local Finance, 1, 10.

91. The Lowell Sun, July 18, 1932, 2.

92. Ibid., March 21 1933, 2.

93. Rudolph Kuchler, “Reports of Western Taxpayers Associations,” The Tax Digest (November 1932), 401, quoted in Tharp, Control of Local Finance, 11.

94. Tharp, Control of Local Finance, 17.
96. For example, the Teaneck, New Jersey Taxpayers' League, whose "only declared object... was to secure and maintain a non-partisan, efficient municipal government," adopted thirteen principles to achieve that end, including the "[r]eduction of taxes by efficient, progressive and economical government," institution of a city manager form of government, the "[e]mployment of qualified, disinterested and efficient public servants," a civil service system for subordinate employees, the semi-annual publication of detailed municipal financial statements, the "comprehensive planning and execution of public improvements... without extravagance," and no construction of highway, sewer and water projects "without financial protection to the general taxpayer." Teaneck Taxpayers' League, "Teaneck's Most Progressive 12 Years, 1929 - 1941." In July 1936, the California Taxpayers' Association declared that its future of objectives were:

1. Improvement in the auditing, budgeting and reporting procedures of the state and local governments of California.
2. Maintenance of present limitations on existing tax rates.
3. Passage of measures for the control of the issuance of bonds.
4. Reduction in the number of independent taxing bodies.
5. Establishment of a more efficient and economical system of education through the reduction of the present number of school districts.
8. Effective control of the expenditures for unemployment relief and centralization of investigation of all relief applicants by trained, not political, relief workers.
9. Establishment of a more efficient and effective system of rural police by the adoption of a state police system.
10. A continuous program to arouse citizen interest in government

Paige, "Governmental Research Association Notes," NMR, 25, no. 7 (July 1936), 434.

97. Tharp, Control of Local Finance, 6, 11 - 28.

98. Ibid., 17 - 18.


100. Ibid., 24 - 25.


102. Harry Miesse, "The Functions of an Association of Taxpayers in Connection with the Control of Public Expenditures," Address Before the Twenty-fourth National Tax Conference, 1931, 254, quoted in Tharp, Control of Local Finance, 10.


104. Miesse, "The Functions of an Association of Taxpayers," 256, quoted in Tharp, Control of Local Finance, 16.

105. Tharp, Control of Local Finance, 17 - 18, 22- 25.

106. Other publications included The Taxpayers' Magazine, the monthly publication of the Arizona Taxpayers' Association, and the New Mexico Taxpayers' Association's bi-monthly New Mexico Tax Bulletin.

107. Ibid., 12 - 14.

109. Ibid., 22, no. 12 (December 1933), 622 - 623.


112. Ibid., 22, no. 8 (August 1933), 398.

113. Ibid., 23, no. 6 (June 1934), 333 - 334.

114. Ibid., 22, no. 5 (May 1933) 252; 22, no. 8 (August 1933), 399, 400; 22, no. 9 (September 1933), 459, 460; 22, no. 11 (November 1933), 566.

115. Ibid., 23, no. 1 (January 1934), 37.

116. Ibid., 23, no. 3 (March 1933) 182; 23, no. 7 (July 1934), 402.

117. Ibid., 23, no. 6 (June 1934), 335.

118. Ibid., 24, no. 1 (January 1935), 54 - 55.

119. Ibid., 24, no. 2 (February 1935), 131 - 132.

120. Ibid., 23, no. 10 (October 1934), 557.

121. Ibid., 23, no. 11 (November 1934), 635.

122. Ibid., 23, no. 12 (December 1934), 707.

123. Ibid., 23, no. 1 (January 1934), 37; no. 2 (February 1934), 126; no. 4 (April 1934), 230; no. 12 (December 1934), 708; 24, no. 5 (May 1935), 283 - 284.

124. Ibid., 24, no. 1 (January 1935), 56.

125. Ibid., 24, no. 3 (March 1935), 186 - 187; 24, no. 7 (July 1935), 409 - 410.

126. Ibid., 24, no. 10 (October 1935), 546 - 548.

127. Ibid., 24, no. 2 (February 1935), 131; no. 3 (March 1935) 187; no. 4 (April 1935), 237 - 239; no. 5 (May 1935), 283; no. 7 (July 1935), 412; no. 10 (October 1935), 549; no. 11 (November 1935), 655; no. 12 (December 1935), 710.

128. Ibid., 25, no. 5 (May 1936), 304.

129. Ibid., 25, no. 6 (June 1936), 381.

130. Ibid., 26, no. 6 (June 1937), 325.

131. Ibid., 25, no. 9 (September 1936), 549; no. 10 (October 1936), 631; no. 11 (November 1936), 683 - 684.

132. Ibid., 26, no. 6 (June 1937), 325.

133. Ibid., 22 no. 12 (December 1933), 623; 24, no. 2 (February 1935), 130 - 131; Paul Wager, "County and Township Government," *NMR*, 23, no. 5 (May 1934), 281 - 282; Paige, "Governmental Research Association Notes," *NMR*, 25, no. 5 (May 1936), 302.

135. Paige, "Governmental Research Association Notes," *NMR*, 22 no. 8 (August 1933), 398; 24, no. 10 (October 1935), 546 - 547; 25, no. 2 (February 1936), 113; 25, no. 10 (October 1936), 631.


137. Ibid., 24, no. 11 (November 1935), 654; 23, no. 5 (May 1934), 275; Editorial Comment, *NMR*, 24, no. 1 (January 1935), 4.

138. *NMR*, 22, no. 10 (October 1933), 490.

139. Ibid., 25, no. 7 (July 1936), 434; 23, no. 6 (June 1934), 334.

140. Ibid., 25, no. 7 (July 1936), 434 - 435.

141. Ibid., 24, no. 6 (June 1935), 361; 25, no. 11 (November 1936), 683; 24, no. 9 (September 1935), 486; 23, no. 1 (January 1934), 37.

142. Ibid., 23, no. 12 (December 1934), 707; 25, no. 12 (December 1936), 751.

143. Ibid., 24, no. 3 (March 1935), 187 - 188; 25, no. 6 (June 1936), 382 - 383.

144. Ibid., 25, no. 7 (July 1936), 435; 24, no. 5 (May 1935), 283 - 284; 26, no. 11 (November 1937), 552.

145. Ibid., 22 no. 10 (October 1933), 529; 22 no. 7 (July 1933), 348; 23, no. 1 (January 1934), 35; 23, no. 9 (September 1934), 489; 23, no. 10 (October 1934), 557; 24, no. 10 (October 1935), 549; 25, no. 9 (September 1936), 548; 25, no. 10 (October 1936), 630; 25, no. 11 (November 1936), 680; 26, no. 1 (January 1937) 46; 26, no. 4 (April 1937), 208; 26, no. 7 (July 1937), 373; 26, no. 12 (December 1937), 614.


151. Ibid., 25, no. 6 (June 1936), 382.

152. NYT, May 24, 1934, 20.

153. NYT, May 10, 1933, 4.

154. NYT, October 12, 1933, 22; November 8, 1933, 9.

155. NYT, April 18, 1935, 2; April 19, 1935, 16; May 15, 1935, 10.

157. See chapter 4, for a thorough treatment of the Berlin Taxpayers's Association and the Berlin Farmer-Labor Party in the 1930s.


160. Ibid., 39. According to Adams, this third wave began during Reconstruction and continues to the present day.


165. *NMR*, 24, no. 11 (November 1935), 607 - 634.


168. Ibid., 22 - 23, 28 - 32.


171. *NYT*, January 19, 1933, 36; February 2, 1933, 2.

172. *NYT*, February 24, 1933, 18. There is no indication in the *New York Times* or other contemporary sources as to how long the strike lasted or how it turned out.


174. *NYT*, March 1, 1933, 18; March 8, 1933, 14; March 11, 1933, 7; March 16, 1933, 3; March 21, 1933, 4, 7; April 27, 1933, 4; May 9, 1933, 13; May 10, 1933, 4; May 11, 1933, 4.

175. See note 153 above.


177. *NYT*, October 11, 1933, 37.

178. "Mr. Taxpayer versus Mr. Taxspender," *NMR*, 22, no. 8 (August 1933), 359, 364.


182. “Mr. Taxpayer versus Mr. Taxspender,” 364.

183. *NMR*, 22, no. 9 (September 1933), 406.


186. “Editorial Comment,” *NMR*, 22, no. 10 (October 1933), 490.


188. Ibid., 23, no. 3 (March 1934), 185.

189. Ibid., 24, no. 6 (June 1935), 356.

190. Ibid., 23, no. 8 (August 1934), 446 - 447. See Beito, *Taxpayers in Revolt*, 101 - 139, for an extended discussion of the National Pay Your Taxes Campaign.


192. I endeavored to tabulate this data by extracting it from the Third, Fourth and Fifth Decennial Digests of the American Digest System, *Municipal Corporations*, Keys 987 - 1000 (7), but found that many of the taxpayers’ suits of which I was aware were not reported there and that, consequently, any such compilation would not prove accurate.


199. Ibid., July 29, 1931, 4, and notes 203 to 215 below.

201. Taxpayers' League of Bell County v. Sun Publishing Company, 256 Ky. 37, 38, 75 S.W.2d 564 (1934); Middlesboro Daily News, March 27, 1931, 7.

202. Ibid.

203. Ibid.


205. For example, in September 1931, the members of the League's executive committee brought suit against the Pineville Board of Education seeking to set aside the purchase of an athletic field, and in January 1933, representatives of the League filed suit against the Middlesboro Board of Commissioners to recover excess salaries paid to the mayor and commissioners. Middlesboro Daily News, September 11, 1931, 2; January 17, 1933, 1, 6.

206. See Hoskins v. Helton, 252 Ky. 616, 67 S.W.2d 975 (1934); Taxpayers' League of Bell County v. Vanbeber, 252 Ky. 282, 66 S.W.2d 526 (1933); Pursifull v. Taxpayers' League of Bell County, 257 Ky. 202, 77 S.W.2d 783 (1935); Motch v. City of Middlesboro, 242 Ky. 653, 47 S.W.2d 56 (1932); Allen v. Hollingsworth, 246 Ky. 812, 56 S.W.2d 530 (1933); Middlesboro Daily News, Sept 11, 1931, 2, reporting on Vicars v. Pineville Board of Education.


210. Motch v. City of Middlesboro, 242 Ky. 653, 656, 47 S.W.2d 56, 57 (1932).

211. Allen v. Hollingsworth, 246 Ky. 812, 56 S.W.2d 530, 534, 531, 533 (1933).

212. Ibid., 56 S.W.2d at 530; Middlesboro Daily News, January 17, 1933, 1,6.

213. It is unclear from the court's opinion how, if at all, the two Vanbebers were related, but it is not unreasonable to assume that they were related.

214. Taxpayers' League of Bell County v. Vanbeber, 252 Ky. 282, 66 S.W.2d 516 (1933).


216. See Chapter 2.

217. Taxpayers' League of Bell County v. Sun Publishing Company, 256 Ky. 37, 75 S.W.2d 564 (1934). The League did not prevail in this defamation action: the court concluded that the newspaper's statements were not libelous.

218. Ibid.


225
224. See notes 149, 153 to 155 above.

225. See note 157 above and Chapter 4.

226. The Lowell Sun, October 8, 1931, 5.


228. Tharp, Control of Local Finance, 16 - 27, 76, 84.

229. Paige, “Governmental Research Association Notes,” NMR, 24, no.3 (March 1935), 187; 24, no. 11 (November 1935), 654; 24, no. 7 (July 1935), 414; 24, no. 12 (December 1935), 712.

230. See notes 133 to 145 above.

231. The Milwaukee Leader, August 24, 1932, 10, quoted in Beito, Taxpayers in Revolt, 22.

232. “Mr. Taxpayer versus Mr. Taxspender,” NMR, 22 no.8 (August 1933), 361, 365.


236. Thomas H. Reed, “Organizing to Save Our Communities,” NMR, 22 no. 7 (July 1933), 311.


242. Beito, Taxpayers In Revolt, 141.

243. See notes 86 to 87 and 39 above.


245. Clyde L. King, “Political Patronage Threatens Democracy,” NMR, 22 no. 10 (October 1933), 497.


247. “Citizens Must Organize,” NMR, 24, no. 4 (April 1935), 195 - 196. The type of organization for which the National Municipal League advocated was a non-partisan citizens’ council, but the sentiments apply with equal force to other citizens’ organizations such as taxpayers’ associations.
248. *NMR*, 24, no. 12 (December 1935), 663.

249. Paige, "Governmental Research Association Notes," *NMR*, 26, no. 9 (September 1937), 455.

250. Ibid., *NMR*, 24, no. 7 (July 1935), 410.
On a cold day in February 1934, while sitting in his basement law office in Berlin, New Hampshire, attorney Arthur J. Bergeron held in his hand an envelope from the New Hampshire Superior Court containing its decision regarding the first prominent legal case of his career. The court’s ruling in this matter would either reshape the political landscape in New Hampshire’s northernmost city or condemn the city to continued oppression by a corrupt political machine.¹

Bergeron, forced to return to his home town for economic reasons after graduating from Harvard Law School in 1933, had been desperate for work. Earlier that year a group of residents, outraged by the city tax collector’s misappropriation of tax revenues and the corruption of city leaders who had declined to hold the tax collector accountable, had sought legal redress. Organized as the Berlin Taxpayers’ Association, they approached several prominent local attorneys for legal counsel but were politely rebuffed. Desperate and frustrated, the Taxpayers’ Association brought these concerns to Bergeron who, with few demands on his nascent law practice and persuaded of the egregious injustice presented by the case, enthusiastically agreed to serve as its attorney.

To Bergeron’s relief that February day, the Coos County Superior Court had sustained his petition on behalf of the Taxpayers’ Association, holding “that any taxpayer or
body of taxpayers might take up the prosecution of the case.” The court’s decision provided Bergeron with a victory and forced the city tax collector to resign from office and face criminal proceedings instituted by the State of New Hampshire for embezzlement of public funds. This litigation proved the catalyst for the formation of the Berlin Farmer-Labor Party, which was swept to power in a populist tide in the 1934 city elections.

The story of the taxpayers’ association and Farmer-Labor Party in Berlin is a multifaceted tale, reflecting both the particular history and circumstances of the city and the broader contours and context of America during the Great Depression. It illustrates how law, pocketbook politics and citizenship coalesced around organized taxpayer activity and metamorphosed into a third political party. When Berlin citizens thought that city officials were indifferent to the tax collector’s thievery, they formed a taxpayers’ association and, in October 1933, filed a taxpayers’ action against city officials. Before the end of the year they had also organized the Coos County Workers Club and, in February 1934, in the immediate aftermath of the superior court ruling in the taxpayers’ suit, launched the Berlin Labor Party, which changed its name to the Farmer-Labor Party four months later. The causal link between taxpayer organization and litigation, on the one hand, and the creation of this third political party, on the other, was direct and tangible. The lawsuit showed Berlin taxpayers that, as some scholars have argued, “[l]itigation provides one way for marginalized social actors to insist on the legitimacy of their demands for inclusion, equal treatment, and respect” and that “[l]aw facilitat[es]… political change.” Bergeron and his cohorts, having “used [the law] whenever it looked as if it would be useful,” would likely have agreed with James...
Willard Hurst’s assertion that “the central principle of our legal order... [is] that law exists for the benefit of people and not people the benefit of the law.”

If litigation was the vehicle used by the people of Berlin to achieve their political reform objectives, then pocketbook politics was the engine of that vehicle. The economic dimension of citizenship infused the political reform impulses in Berlin. The core issue for the reformers was the consumer’s purchasing power. In an editorial in the first issue of the Coos Guardian, a weekly newspaper that purported to speak on behalf of all citizens “who have a just cause and to whom it can be of assistance” and whose motto was “vox populi, vox Dei” (“the voice of the people is the voice of God”), Bergeron declared that the publication’s “raison d’être” was to address “the real issues affecting our bread and butter,” “such as matters affecting commodity prices, wages, taxation, etc.” The Coos Guardian lamented the fact “that wages are lagging behind the cost of living” and was “so bold as to doubt the success that is claimed for the NRA [National Recovery Administration],” whose “whole policy,” the Guardian maintained, “was to go easy on profits and pay out in wages so that the country’s purchasing power might be restored.” By July 1934, Bergeron had concluded that the NRA’s “‘wage before profit’ policy to effectuate an increase in the general purchasing power has been discarded.” Just prior to the March 1934 city election the Farmer-Labor Party declared its belief “that wages have gone as low as can be and yet permit a working man’s family to live.... Hence labor should be protected from any further deflation of wages.” The Guardian attributed the Farmer-Labor Party’s success in that election to such wage and price concerns, observing that because “[t]he standard of living of the people
has gone down continually with the prolongation of the depression,” they had “registered a vote of ‘protest’ against the ones in authority locally much in the same manner that they voted ‘against’ Hoover.” The connection between citizenship and participation in the mass consumer economy was explicit in the party platform, which included demands on behalf of “the consumer, who is every citizen....”

Berlin’s Farmer-Labor Party also practiced pocketbook politics when it came to the consumption and cost of local government services. In its March 1934 platform it noted “[t]hat the city must practice economy in this depression is no news any more than the fact that real estate under our taxation system is overburdened. Taxes must be lowered and the sooner the better....” Accordingly, it pledged that “[s]trict economy ... be practiced in all City expenditures in view of reducing taxes to within the real estate values and revenue” and that “[a]ll necessary payroll economies... be practiced on the higher paid employees and not inflicted on the rank and file of the departments....” The latter plank of the platform was a response to the fact that, under the Democratic city administration that the Farmer-Labor Party was hoping to oust, “when employment is to be curtailed and wages reduced, they begin at the foot of the ladder. The man who is getting only enough to buy the necessities of life is slashed; those at the top overlooked or cut slightly.... We believe that economy at the top is in order as being more just and also more of a saving.” In this respect the Berlin Farmer-Labor Party reflected both its populist “vox populi, vox Dei” motto and the bottom-up political reform efforts typical of taxpayers’ organizations.

Finally, the organized taxpayer activity and political reform activity in Berlin reflect
the rights-based vision of citizenship that was becoming increasingly ascendent. Both the taxpayers' association and the Farmer-Labor Party were fundamentally about advocating for the rights of the citizenry. The taxpayers' action was brought to establish the right of taxpayers "to enforce the rights of the City" where the city refused to do so, and the Guardian vowed that "[t]he proceedings of the Taxpayers are going ahead and that will either get the City the money or the public the truth." Bergeron argued that the taxpayers' association "was formed with the idea of providing concerted action of the taxpaying members in safeguarding their interest" and for "the purpose" of promoting those interests.

Likewise, the overarching object of the party was to advance and enforce the rights of the people including, among others, "the right of workers to organize" and the rights of all citizens to "economic justice" and to "justice and opportunity." Although Bergeron acknowledged that "it is the duty of the good citizen to vote," he maintained that citizens should fulfill that civic obligation with a view to facilitating political change, that is, to "overthrow the present administration and install one of their own." Edward Legassie, President of the Coos County Workers Club and a prominent member of the Farmer-Labor Party, also "thought it a necessity to form a party made up of working men primarily because it alone could best look after its interests." Even the party's 1936 campaign songs exhibited rights consciousness. One song, adapted to the tune "When Johnny Comes Marching Home," declared

Oh, we are the workers of the state, Hurrah, Hurrah
We've worked from early until late, Yes sir, Yes sir.
And now we're standing for our rights
And if we must we’ll surely fight...\textsuperscript{21}

Berlin taxpayers and Farmer-Labor adherents mainly conceived of citizenship with reference to rights, not obligations.

\textbf{Midwestern Antecedents}

By the time the Farmer-Labor Party gained traction in Berlin it had been a feature of American political life for almost a generation. It had its deepest roots in Minnesota. In the late 1910s Minnesota farmers in the Red River Valley had faced an economic crisis brought on by falling crop yields, massive overhead and lagging prices. Farmers there, following the example of their neighbors in North Dakota, had formed the Farmers Non-Partisan League. The League, however, focused only on the agricultural needs of the predominantly Scandinavian farmers and did not bring about much-needed economic change. By 1918, the League endeavored to broaden its political base and win the support of urban workers in the Twin Cities. The workers felt that they had nothing to lose by supporting agrarian legislation in exchange for the farmers' support of the labor platform. This coalition was originally a marriage of convenience, but it solidified rapidly and attained political power in 1930 with the election of Minnesota Farmer-Labor Party head Floyd Olson as governor.\textsuperscript{22}

Under the tutelage of Governor Olson, the state’s powerful Farmer-Labor Party attracted the attention of “radicals” who were seeking to form a third national party. These intellectuals were Marxist thinkers “with carefully guarded images of respectability” who sought to gather together widely dispersed populist elements and to form a balanced political
reform movement. Olson was the glue that kept the several factions of his party united. He was at home in any situation, able to relate comfortably with workers, intellectuals, and an array of ethnic groups from Jews to Germans.²³

During his first years in office Olson had successfully implemented several radical yet effective reforms, including the “establishment of ‘co-operative’ business enterprises in a variety of fields, new environmental legislation [and] increased public ownership of utilities.” He also ardently supported farmer and labor union activities, as exemplified in 1934, when he declared martial law to protect striking truckers from strikebreakers.²⁴

The 1934 Minnesota Farmer-Labor Party platform declared that the party was “opposed to state ownership and operation of small business” and proclaimed “the party guardian and protector of small business ‘from destructive competition and monopolistic institutions.’” The platform also called for “(1) operation of idle factories, (2) extension of the mortgage moratorium law, (3) exemption of homestead taxation, (4) additional taxes on large incomes and inheritances, (5) unemployment, sickness and accident insurance, and (6) extension of municipal authorities to sell power outside city limits.” The platform attracted “radicals” who saw themselves as “thinking people” rather than “blind followers” of “irresponsible demagogues.”²⁵ It was Olson’s approach to reform, combining both caution with radicalism and calling for a restoration of those fundamental American ideals embodied in the Constitution, that earned Olson the respectability that made him admired among reform leaders.²⁶

The Farmer-Labor movement enjoyed its greatest political strength in the Midwest.
In the eastern United States, only in Berlin, New Hampshire, did the Farmer-Labor program attract widespread popular support and experience victory at the ballot box. The particular economic, cultural and political circumstances present in Berlin at the onset of the Great Depression allowed the Farmer-Labor ideology to take root and ultimately thrive there for a brief period in the mid-1930s. Only by understanding the development of Berlin during the seventy-five years prior to the Depression can one truly appreciate the nova-like phenomenon of the Berlin Farmer-Labor Party.

**The Berlin, New Hampshire Context**

The city of Berlin, New Hampshire is located in the heart of the White Mountains in the Northern Appalachian Mountain range. The mountains form a natural barrier, dividing the northern third of the State of New Hampshire from the southern portion. The high altitude of the mountains in this region affects temperature, the amount of precipitation and thus ground water, and the average number of sunny and overcast days. These climatic conditions in turn helped shape the character of the region. In addition, passenger travel through the mountain notches was often difficult, if not impossible, thereby isolating the region's population from the rest of the state and the nation.

Situated on the pitch of the Androscoggin River, Berlin became the center of the pulp and papermaking industry in New England. For several decades after its chartering in 1829, Berlin saw little economic activity apart from a few small farms. By 1850, however, three developments had changed the economic landscape of the Androscoggin Valley. The first
was the introduction of the turbine engine that, when integrated into dams in the river, could generate power for mills. The second was the coming of the railroad in 1852. The third was the availability of a new immigrant population in the United States, ready and willing to relocate for the promise of work.

A group of Portland, Maine businessmen, including John B. Brown, Josiah S. Little, Nathan Winslow and Hezekiah Winslow, recognized that the construction of a railroad line through Berlin, coupled with the availability of the new turbine technology, made the Androscoggin River Valley an ideal place in which to locate a highly-productive sawmill with the means to get its product to market. In 1852, they formed a partnership under the name H. Winslow and Company which, in 1868, changed its name to Berlin Mills Company. That same year John Brown sold his stock to William Wentworth Brown (no relation) of Portland, Maine. In the 1880s W. W. Brown, along with other family members, purchased the remaining stock and acquired complete control of the Berlin Mills Company.

W. W. Brown rapidly expanded and diversified the production facilities over the next twenty years, building chemical, pulp, and papermaking mills. During this period a second group of investors, owners of the Boston Globe and the New York Tribune, built Glen Manufacturing Company, a pulp and paper mill designed to produce newsprint. In 1898, International Paper Company purchased Glen Manufacturing Company. 27

By the early twentieth century, Berlin Mills Company, which during World War I changed its name to Brown Company because of domestic hostility towards anything German, had become the most prominent pulp and papermaking operation in Berlin and a
leader in the pulp and papermaking industry nationally. In 1915, Brown Company built a separate research and development facility, the first in the industry. During the 1920s the company’s research and development department employed more than one hundred scientists and technicians, who produced hundreds of patents. By 1929, Brown Company owned mills from Canada to Florida, employed more than nine thousand people and had assets exceeding seventy-five million dollars. Just to provide the mills with wood, over 4,000 men were employed each winter.28

The arrival of the railroad in 1853 had dramatically and permanently transformed the cultural landscape of the region. Over the next seventy-five years the population increased precipitously, peaking in 1930 at 20,018. According to the census that year 80 percent of Berlin’s inhabitants were immigrants or children of immigrants, 57 percent of French-Canadian heritage.29 The people who arrived to work in the mills and the ancillary businesses brought with them their particular ethnic identity. Initially this divided the various immigrant groups, who chose to live in neighborhoods with others of like background, creating ethnic ghetto communities. Over time, however, the remoteness of the Northern Forest, combined with its long, harsh winters, resulted in a partial coalescing and blending of these immigrant groups, forging a new cultural identity unique to the region.30

In 1929, Berlin reached it social, economic and cultural apogee. In his January 1929 inaugural address Mayor Edward R. B. McGee proclaimed his optimistic vision of Berlin’s future, stating that “the finances of the city are in excellent shape, and there is no need for us to enter a retrenchment program, for we are happily in a position to make further progress
for the betterment of our city and its citizens.” He also reminded the residents that the centennial celebration planned for July “is a proud event in the history of Berlin” and called on every person participating in the event to make it “something that will attract the attention of the whole country to our wonderful city and the success which it has achieved in the past one hundred years.”

The centennial “Grand Historical Pageant” documented Berlin’s history and culture and its social and economic achievements, painting a picture of ethnic harmony and economic promise. Even labor unions, once very active in Berlin earlier in the decade, had all but disappeared by 1929 as the booming economy and resultant prosperity diminished workers’ grievances and rendered labor unions increasingly irrelevant.

When Berlin celebrated its centennial in the summer of 1929 it was a city with a robust economy and a vibrant culture, New Hampshire’s fourth largest city and the largest in the northern two-thirds of the state. It was the first in the state to have electric lights, the power for which was generated by the hydroelectric power station from the Furbish Forest Fiber Mill. The city boasted seven banks, numerous profitable businesses, three ‘state-of-the-art’ theaters with a combined seating capacity of more than 3,500, a symphony orchestra, and a band. A street railway system connected Berlin to the town of Gorham, eight miles to the south. Berlin was home to numerous fraternal, civic, athletic and service organizations representing its multicultural heritage. The city boasted that “Berlin in her schools as in her mills is a leader and all over the North American Continent the Berlin school system is known, named and imitated.” Finally, the city’s largest employer, Brown Company, had
acquired an international reputation through its research facility and its innovative products. As Berlin embarked on its second century, its residents had every reason be proud of its accomplishments and to anticipate continued prosperity and a bright future.36

The Onset of the Great Depression

By early 1930, however, the city of Berlin had begun to experience some of the aftershocks of the stock market crash in October 1929. On February 1, 1930, J. E. Parent, the overseer of the poor, reported that:

This has been a very expensive year for this department due to several causes:
1st –Our increase in population.
2nd –Slackness of work.
3rd –Difficult for men past middle age to secure employment in the mills of our City.
4th –Our present Liquor Laws, for violation of which heads of families are sent to the House of Correction.37

He concluded by explaining that despite his efforts to be economical, “he could not let the poor suffer” and thus had spent more than twice what was budgeted. He also requested a “larger appropriation for this department and a substantial increase in salary” (his current salary was $350 for the year).38

The city’s recently reelected mayor, in his 1930 inaugural address, confirmed the desperate unemployment situation. Mayor McGee maintained that Berlin was now “faced with a serious problem, perhaps the most serious that any City Government of Berlin has been confronted with for many years, …the problem of the unemployed….With a large
number of men out of work, there is no real prosperity, and surely no good feeling.” He went on to suggest that there “lives not the man or woman who would accept aid...if work of any kind could be obtained. The average citizen does not seek assistance...unless absolutely compelled to so do.” Alluding to President Herbert Hoover’s proposed solutions to the Depression, McGee called for the city to “enter upon a program of public improvements, with a view of relieving the unemployment situation.” Because the finances of Berlin were still “in excellent condition” and the cash on hand was “the largest in the history of the City,” it appeared to be in a “position to carry out needed improvements.” In conclusion McGee commended members of the council and departments for giving “freely of their time for the benefit of the City, without regard to political affiliation,” a situation he hoped would continue.39

In 1931 Berlin’s second largest employer, International Paper Company, closed its local mill, leaving many men unemployed and with little hope of obtaining other work. The city elected William E. Corbin, superintendent of Brown Company’s Cascade Paper Mill, to the office of mayor. In his inaugural address Mayor Corbin painted a bleak economic picture for Berlin. He noted “the over-drafts in our Public Works and City Poor Department, which was caused largely by the business depression which has [a]ffected us and made it impossible for many men to secure employment,” as a result of which there could “be no real prosperity in our City.” The mayor further observed that “Real Estate has suffered a severe loss” in the form of dramatically reduced values and that, therefore, taxpayers needed “some relief, either by lower valuation or lower tax rate.”40
Unlike International Paper Company, Brown Company appeared to have avoided disaster in the early 1930s. Residents of Berlin perhaps believed that the city's unemployment and financial crisis would be assuaged by electing a nationally respected Brown Company superintendent and bank president as mayor. Corbin's business acumen, however, could not prevent the 1931 international monetary crisis from undermining Brown Company's bonds and sending the company into a deadly financial tailspin. In January 1932, the city's Public Works Department reported that "the unemployment situation had been very critical. Brown Company found it necessary to curtail expenses and production, which resulted in many men being without work. There being no other industry to employ them, they looked to this Department for work." Having the capacity to put to work only a small percentage of the unemployed, the Public Works Department was "able to place about two hundred men in jobs outside of the City." The January 1932 report of the overseer of the poor stated that the number of families collecting aid had almost tripled, producing a 266 percent increase in welfare expenditures compared to 1930.41

In two short years Berlin had gone from a prosperous, full-employment city to one with massive unemployment and underemployment. The experience of Philip Glasson, a long-term Brown Company employee whose career with the company spanned six decades, exemplified the wrenching changes and economic dislocation that most of Berlin's inhabitants underwent during the Great Depression. Because he was a college graduate with technical skills still in demand, even in the employment market of the Depression, Glasson's story is not as forlorn as those of many unskilled or less educated persons. Nevertheless, his
correspondence, records and papers, generated and maintained in connection with both his professional and political lives, provide an authentic view of life in Berlin during the dark decade following the stock market crash.

Glasson, a graduate of the Massachusetts Institute of Technology in chemistry, came to work for the Brown Company Research and Development Department in the late 1920s. By 1931, Glasson had become the research librarian for Brown Company at a salary of fifty dollars per week.\textsuperscript{42} That same year the company discontinued payment of dividends on its preferred stock and substantially increased its borrowings from banks.\textsuperscript{43} In March 1931, the company cut Glasson’s wages by 10 percent and laid off all the unmarried men. The following autumn Brown Company cut wages by another 10 percent and terminated all of the married men without children.\textsuperscript{44} The forests were silent during the winter of 1931 to 1932 because the Woods Department could not finance its winter logging operations.\textsuperscript{45}

By spring of 1932, still unable to halt its downward spiral, Brown Company was forced to institute a third 10 percent wage decrease. This time Glasson was given a six-month leave of absence. Financially strapped, he and his young family were forced to move in with his parents in Vermont. At the end of his leave of absence Glasson returned to Berlin to find that there was still no work. He applied for and obtained a job as a technician with Brown Company at $18 a week, which was less than the wages paid to high school graduates in 1930. Relieved to have secured any employment, Glasson moved his family into an unheated tenement.\textsuperscript{46} Four months later the Research and Development Department made additional cutbacks and implemented a four-day work week, forcing Glasson and his family
to subsist on twelve dollars per week. To help make ends meet, Glasson’s wife tilled a plot at the community “supply” gardens where she grew vegetables for the family.\textsuperscript{47} That same year, forced to segregate assets as security for bank loans and to reduce its common stock account from twenty million to ten million dollars without changing the number of shares, Brown Company started down a road from which there would be no return.\textsuperscript{48}

Simultaneously, the city of Berlin confronted its first budgetary crisis. Brown Company, financially unsound as a result of imprudent business decisions, was able to pay the city only 49 percent of its real estate taxes in 1932.\textsuperscript{49} The fiscal crunch was further compounded by the December 1931 collapse of the Guaranty Trust Bank, in which Tax Collector John Labrie had deposited city funds in the amount of seventy-five thousand dollars into his own account for personal gain. Mayor Corbin and the city council requested that the city solicitor bring suit against Labrie and the bonding company, Fidelity and Deposit Company of Maryland, to enforce the city’s claim to the thirty-five thousand dollar tax collector bond.\textsuperscript{50} Mayor Corbin, cognizant of the need to turn his attention to the faltering Brown Company, did not seek reelection.

\textbf{The Taxpayers' Association and the Taxpayers' Suit}

The public realization that this once proud city had been brought to its knees was humiliating and emotionally devastating. Forced to borrow from local banks to pay for the increasing needs of the unemployed, Berlin had become New Hampshire’s neediest city.\textsuperscript{51} As a consequence, the citizens began searching for scapegoats. Newly elected Mayor Ovide
J. Coulombe was a prominent lawyer and a member of Berlin’s elite. In his 1932 inaugural address Coulombe insinuated that the city’s financial troubles had occurred because of the substantial amount spent annually on “men who are loafing,” thereby depleting the city coffers. “Let them build a sidewalk in front of my house” in exchange for public relief, the mayor declared.52 A month later Coulombe and the city council, retreating into executive (non-public) session, voted to dismiss the suit against the bonding company and to release Labrie from liability. Almost as if to agitate purposely Berlin’s working-class citizens, Mayor Coulombe then reappointed Labrie as city tax collector.53 Infuriated by this course of events, a group of citizens organized the Berlin Taxpayers Association and resorted to the legal system to obtain justice.

The association’s leaders sought to retain several well-established Berlin attorneys, all of whom declined to represent the organization. Fortunately for the taxpayers, however, a young lawyer, Arthur Bergeron, had just returned to Berlin. Bergeron hailed from a French-Canadian neighborhood and had been educated in its parochial schools. A gifted student, he had been encouraged to pursue a college education and graduated with honors from Dartmouth College, in 1929, and from Harvard Law School, in 1932. His combination of legal and bilingual skills appealed to many New York City law firms, but they too were severely affected by the Depression and could offer to pay new associates only fifteen dollars per week. Unable to subsist on this income in New York City, Bergeron returned to Berlin. With few other clients and intrigued by the legal complexities involved in the Taxpayers Association’s request, he agreed to take the case.
In October 1933, Bergeron filed on behalf of the Taxpayers' Association a petition in the Coos County Superior Court requesting:

leave to prosecute an action at law, originally begun by the City of Berlin against the Fidelity and Deposit Company of Maryland, to recover upon its bond given as surety for John A. Labrie, tax collector of Berlin, which the petitioners allege the City of Berlin illegally, unlawfully, and fraudulently, without right, by vote duly recorded, voted to drop and so instructed the City Solicitor, and that thereupon the City Solicitor entered on the docket "Voluntary nonsuit; no costs."54

In the city government's response to the taxpayers' petition, Mayor Coulombe identified himself as "a lawyer of many years practice," implying that he had more experience and knowledge than Bergeron. Coulombe also alleged that those involved with bringing the petition were:

organized by an agile, poll-taxpaying political agitator [presumably referring to Bergeron] and . . . .were recruited by him from the ranks of political enemies of the present administration, who are opponents because of personal, fancied grievances; and that said petition brought by them was not brought in good faith but for political purposes to try to discredit the administration.55

On February 6, 1934, the superior court ruled in favor of the Berlin Taxpayers Association, resulting in a settlement agreement with Fidelity and Deposit Company in June. Labrie, represented by former Mayor Coulombe, resigned, and the State of New Hampshire prosecuted him for misappropriation of public funds.56

The criminal prosecution of Labrie highlights the remedial function that the taxpayers' lawsuit served. In October 1934, the State indicted him on twelve counts of embezzlement by a public official. As part of a negotiated plea, Labrie pleaded guilty to all
twelve indictments and was sentenced to four years in the state prison. The taxpayers’ litigation had brought Labrie’s embezzlements to the public’s attention and had resulted in his prosecution. The suit had proved an effective tool in combating corruption in local government and in holding public officials accountable.

During this same period the mayor and city council met with Governor Winant, a close friend of the Browns, to discuss Brown Company’s situation. In an unprecedented move the Governor traveled to Washington, D. C., to confer with the board of the Reconstruction Finance Corporation (RFC). It was agreed that the RFC and the city would enter into a self-liquidating contract with Brown Company to finance the cutting of wood necessary for the company’s operation for one year by utilizing the city’s unemployed men. Under the plan the RFC loaned money to the city, which used the funds to finance the company’s logging operations. In turn, Brown Company repaid the “loan” by purchasing wood from the city in increments, based on the Company’s market demands for wood and its ability to pay for it.

Creation of the Farmer-Labor Party

The taxpayers’ association litigation and the implementation of the RFC/city timber purchase arrangement occurred contemporaneously with the organization of the Coos County Workers Club. In late 1933, one hundred and fifty workers in Berlin, agitated by corruption, business bankruptcy and continued unemployment, united under the National Recovery Administration (NRA) guidelines and formed the Coos County Workers Club. By January
1934, the club had four thousand members. Attorney Bergeron processed the necessary legal work for the organization. Bergeron's family members had been Republicans for three generations, but in 1933 the city government was controlled by a Democratic Party machine that shamelessly dispensed, or withheld, favors based on political considerations. As Bergeron later observed in 1942:

> When I started to practice law in 1933...[i]t was difficult to get genuine consideration unless one was a pretty good Democrat... The "right" people got all the jobs, the contracts, the work and the favors but the Republicans did not seem to be the right people...An attitude of defeatism prevailed and the Democrats became accepted as "unbeatable." 60

Bergeron had observed, through the Labrie case, the corruption in the present city administration and in the local media. Consequently, he joined with the Workers Club and others to "launch an independent political party in the coming city elections." To accomplish this goal, in February 1934, the Workers Club began publishing a newspaper, the Coos Guardian, with Bergeron as editor. His editorial in the first edition, entitled "Raison D'etre," declared that the purpose of the Guardian was to "advocate and further enlighten the public" on "topics of true social value, interest and significance." The Guardian distinguished itself from other contemporary newspapers that merely told mothers "how to rear babies that their fathers cannot support or instruct farmers as to the proper soil in which to sow seeds... although they cannot sell their crops." Bergeron identified the Guardian as the "official mouthpiece of the Coos County Workers Club, the veterans, the farmers, the taxpayers and all other individuals or groups who have a just cause." Clearly he was laying a foundation for a future political movement.

247
Dissatisfied with the “conditions, systems and practices” at city hall, the Coos County Workers Club and others formed the Labor Party (later renamed the Farmer-Labor Party) and entered the political arena in February 1934. Inspired by third-party political movements in New York City, the Labor Party maintained that it would conduct a “moneyless election,” allowing voters to vote according to their consciences and giving them the opportunity to “clean house.”

An editorial in the *Guardian* claimed that “perhaps the reason why Labor should enter and stay in politics is best explained in a little poem we have in our scrapbook:”

```
Have you ever been to Crazy Land
Down on the Loony Pike?
There are the Queerest People there—
You never saw the like.

The ones that do the useful work
Are poor as poor can be,
And those who do no useful work
live in luxury.

They raise so much in Crazy Land
Of food and clothes and such.
That those who work don’t have enough
Because they raise too much.

They’re wrong side to in Crazy Land,
They’re upside down with care,
They walk around upon their heads
With feet up in the air.
```

*Author unknown*

The *Guardian* urged the men and women of Berlin to vote, arguing that “the class of people who had the least to do with bringing about the depression nevertheless has to suffer the most, simply because they are not in control of the government.”

The Labor Party advanced a program of political reform and pocketbook politics. It
promised to put before the public a platform to reform city government and to elect an administration that would not allow self-advancement or profit through political or official connections. The Berlin Labor Party platform pledged, among other things, the following:

1. All deliberations, debates and discussions of the City Council to take place publicly in the Councilroom and not in the back room in secret or executive sessions.
2. A full itemized statement of all salaries and wages paid by the City of Berlin to be published....
3. A two-platoon [shift] system be installed in the Berlin Fire Department.
4. All business of the City to be conducted without favoritism [or] fear ....
5. Strict economy to be practiced in all City expenditures in view of reducing taxes....
7. To strive for adequate and substantial relief from the state....
11. Full cooperation to be extended to the Brown Company in negotiating necessary State loans but with a wage saving provision providing for an adequate minimum wage for all labor involved in or to result from such loans.

This last item, cooperation with Brown Company, was a consistent theme in Farmer-Labor Party policy. The March 1, 1934 issue of the Coos Guardian, in which the Farmer-Labor Party platform was introduced to the people of Berlin, observed that “we all understand that should the local mills change hands even, let alone closing, that we would all be the losers” and, consequently, maintained that the “City Government should cooperate in weathering the present difficulties as much as possible.”

In response to the formation of the Labor Party, Democratic Governor Winant requested that the Republican candidate for mayor withdraw because of an alleged conflict of interest, intimating that this conflict would interfere with and jeopardize the financial arrangement that the state had established with the city to assist Brown Company. Many believed that this would force Republicans to support the reelection of Democratic Mayor
Coulombe. The attempt backfired, however. Despite Winant’s attempt to influence the election in Berlin, the Labor Party candidate, Daniel Feindel, won the March 1934 mayoral election, and three Labor Party candidates were elected to the City Council. The success of the Berlin Labor Party attracted the attention of the Boston Sunday Globe, which observed that if the Party should “begin missionary work in other industrial centers of the State, the old party leaders would have something to think about.” 68

Nevertheless, the profound changes for which the Labor Party had hoped did not materialize because Feindel failed to implement, or even support, the party platform. Why this happened is unclear, but for whatever reason the new mayor appears to have betrayed his party’s confidence.69 Undaunted by Feindel’s anemic leadership, however, the Labor Party gathered further momentum.

Around this time employees of the Parker-Young Company paper mills in nearby Lincoln, New Hampshire—also a devastated pulp and paper mill community—requested Berlin Labor Party President Edward Legassie and attorney Bergeron to address a gathering of workers. Legassie was from Lincoln and his family worked in the Parker-Young mills. Lincoln was a one-industry company town, and in 1934 that industry, as in Berlin, was facing receivership. The men voted to form the Lincoln Workers Club and to comply with the NRA codes. Although the Berlin Labor Party was encouraged by the reform movement’s success at the polls, it did not have the human or financial resources to become actively involved in the propagation of the “labor gospel” in other communities. The Guardian observed that it was entirely up to the Lincoln Workers Club members to make something
out of their organization and that “it is not up to outsiders to dictate their course of action.”

During the next few months the Coos County Workers Club petitioned Brown Company for a pay increase. By 1934, the pulp and paper industry appeared to be recovering throughout the nation. Paper had become a necessity in modern America, and, with increased literacy, newspapers, books and other published materials abounded. Nevertheless, Berlin’s local story was still one of economic stagnation, and, unbeknownst to the Workers Club and the city, Brown Company would soon be in receivership. Legassie and Bergeron attended a NRA code hearing in Washington hoping to persuade the NRA to raise the pulp and paper industry wages to sixty cents per hour, but it approved only a forty-five cent per hour rate. Bergeron, frustrated with the system, remarked that “[t]he original theory behind the codes was to arrive at a restoration of prosperity or normalcy by increasing public purchasing power.... A partial redistribution of wealth is the only solution and on this was based the NRA.... [Even so i]t appears that price fixing has worked in favor of the big concerns as against the little ones . . . and the ‘wage before profit’ policy to effectuate an increase in the general purchasing power has been discarded.”

Disappointed by the failure of national Democratic Party policies, in particular the NRA, to achieve meaningful results, members of both the Coos County Workers Club and the Berlin Labor Party paid heightened attention to third-party activities nation-wide. The Coos Guardian cited the success that the Minnesota Farmer-Labor Party had enjoyed in putting “the two old political parties [Republican and Democratic] out of commission.” In 1932, the Guardian observed, the Minnesota Farmer-Labor Party had supported Franklin
Roosevelt, but with the recent deterioration of the Agricultural Adjustment Administration "that party is now outstripping Roosevelt." The *Guardian* also reported on the recently adopted platform of the Minnesota Farmer-Labor Party, which called for "government ownership of factories, mines, banks, insurance, transportation and utilities." It further noted that in "opposition to this the two old parties are now fusing, so the result of the next Minnesota elections should be interesting." Later in the year the *Guardian* again called attention to the battle taking shape in Minnesota and to the united political efforts among farmers, workers and intellectuals.

On July 10, 1934, the Coos County Workers Club, evidently persuaded by events in Minnesota, "voted enthusiastically" in favor "of presenting a full ticket to the voters of Coos County" in the next election. Since a large segment of the population outside of Berlin consisted of farmers who had also been affected by the financial crisis in Berlin, it was voted that the Labor Party, which the Workers Club backed, change its name to the Farmer-Labor Party and affiliate with that party nationally. Bergeron, disillusioned with the NRA, called the recent code hearings a "plain farce and bluff," and added that "God helps those who help themselves. So labor must help itself as no one else will." He concluded by unequivocally supporting the Farmer-Labor Party ticket and "a platform that means something."

That fall the Coos County Farmer-Labor Party proposed a platform that "realized that fundamental changes are necessary in our society, that the burden of making a living may be equalized and made more uniform in order that every one may be provided with the necessaries of life now denied to a great many of our fellow citizens." By and large, the
Coos County Farmer-Labor Party was not comprised of strident ideologues. Nevertheless, the party platform certainly was radical for its time, at least to the extent that it proclaimed that fundamental social change was imperative.

Both Glasson and Bergeron later acknowledged that many people viewed the Farmer-Labor Party in Berlin as socialist, although its progressive policies were later co-opted by President Roosevelt and embodied in post-1935 New Deal measures. Glasson, who played a key role as the Farmer-Labor Party’s secretary, claimed that he was attracted to this party because he was “searching for answers.... How could this happen? What were the remedies?” Glasson saw the Depression as “a sociological upheaval.... [S]uddenly I was sharing the workers’ problems.... [T]hese men had no protection. There was no employment insurance.... [T]hey were just let out.... [S]uddenly you realize they had nothing.” Both Bergeron and Glasson recognized that the body politic was ill and desperately in need of a cure.

The Farmer-Labor Party in Power

The Coos County Farmer-Labor Party was organized and ready with a slate of candidates for the next Berlin municipal election in March 1935. It nominated the reserved but articulate Bergeron to run for mayor. As a lawyer, Bergeron normally “talked a very deliberate language.” Glasson remembered Bergeron’s passion, however, when he addressed his neighbors in the French Canadian ‘ghetto’ in their native language. “My gosh!” exclaimed Glasson, “he was rapid fire.... [Y]ou had a whole different impression of the man,
his [exuberance] emotionally charged the people!” The predominantly French-Canadian city voted overwhelmingly in favor of the entire Farmer-Labor Party slate of candidates, giving the party control of the city government.

The euphoria of a successful campaign proved short-lived as the realities of an escalating fiscal crisis gripped the city. Bergeron and the council immediately implemented much of the Farmer-Labor platform. Following Bergeron’s inauguration all council meetings were conducted publically, as evidenced by the increased length and depth of the city reports, and the salaries paid to city employees were published. The city council also reduced departmental expenditures significantly, which generated a property tax rate reduction of eight dollars per thousand. The city again entered into a timber harvesting contract with the State of New Hampshire and Brown Company, although the city included a specific wage and board schedule in the new contract.

In the fall the city faced its foremost financial challenge when it was notified of Brown Company’s intent to file bankruptcy. The council passed a resolution granting Mayor Bergeron authority to act on behalf of the city in the reorganization proceedings. To assist the ailing firm, the city allowed Brown Company to pay its 1935 property taxes at a reduced rate. At the close of 1935, Governor Styles Bridges declared a state of emergency in the city of Berlin. The state loaned $850,000 to the city as emergency financial assistance, some of which was applied to offset the tax revenues abated for Brown Company and some of which was funneled into Brown Company to keep it operating.

During Bergeron’s first administration all of the 1934 Labor Party platform pledges
on which Bergeron had run had been fulfilled and Berlin taxpayers had realized significant
property tax relief. In the March 1936 elections, the Farmer-Labor Party candidates were re-
elected. They continued to safeguard the interests of Berlin’s workers and to cooperate with
the state, the bankruptcy court and Brown Company to achieve as favorable a resolution as
possible in the reorganization proceedings. The city renewed the Cooperative
Unemployment Wood Cutting Contact with the state and Brown Company in May 1936.
Their dedication to the ideals embodied in the local Farmer-Labor platform brought Bergeron
and the party attention across the state and the nation. By the summer of 1936 liberal groups
throughout New Hampshire were looking to Berlin for political leadership.83

In response to the apparently growing interest, the Farmer-Labor Party in Berlin
organized a series of conferences across the state in 1936 to determine the level of interest
in a third-party movement. Party leaders invited labor union representatives, Granges,
farmers, educators, Communist and Socialist Party members, and intellectuals to a meeting
to be held in Laconia. Conference delegates “represented possibly 15,000 [union] members;
one man alone [Edward Holden] representing a textile union [the United Textile Workers of
America in Manchester] with 7,000 members.”84 The conference concluded with a
unanimous agreement by the delegates to launch a state-wide party. A committee was
elected to develop a platform to be presented at the next conference.

Herbert Rudd, professor of philosophy at the University of New Hampshire, was
elected chairman of the platform committee. Rudd, “anxious to have the very best platform
possible for presentation” at the July conference, gathered the thoughts and concerns of party
members from across the state. In a pamphlet promoting the Farmer-Labor Party, Rudd underscored the need for “fundamental changes,” and contended that the party’s role was to “carry on the democratic struggle of our Revolutionary forefathers, seeking not bloody revolution but peaceful, intelligent change through the ballot.” Rudd also “spent considerable time trying to write a preamble and approach” that would clearly reflect the political and economic landscape of New Hampshire and articulate the party’s ideology.

In the final version of the preface Rudd declared:

At a time when science and invention have made possible an economy of abundance beyond all past dreams, the great mass of American citizens are subjected to lives of extreme frustration and helplessness. Such a condition makes imperative a new political party dedicated to the achievement of economic justice and ever higher standards of human welfare.

The dangers of our time have been long foreseen.

JAMES MADISON said:

“The day will come when our republic will be an impossibility because wealth will be concentrated in the hands of the few.”

DANIEL WEBSTER said:

“The freest government can not long endure when the TENDENCY OF THE LAW is to create a rapid accumulation of property in the hands of a few and to render the masses poor and dependent.”

. . .[T]he Farmer-Labor Party arises to demand a new era—fighting, not against individual millionaires or particular corporations, but against those elements in the economic and legal system and in popular psychology, which encourage monopoly and parasitic control of the nation’s resources.

Bergeron, speaking at political rallies in Newmarket and Dover, echoed these sentiments, declaring that “the principles under which this government was founded have been abandoned by those interests that have had the control of the making of our laws. The Constitution has been grossly distorted by its interpreters who have been under the control
of these same groups. Property has been placed above humanity." The state-wide platform demanded a graduated income tax, opposed a sales tax, and called for the reduction of property taxes. Like all the Farmer-Labor platforms, the New Hampshire platform called for "justice and opportunity for all classes of citizens [and] . . . decent minimum-wage standards," advocated the right of workers to organize, to engage in collective bargaining without intimidation and to strike without fear, and demanded old age pensions and public ownership of utilities. The Farmer-Labor Party platform proposed by Rudd and his committee was embraced by the state party. According to letters from several delegates, it was "quite a hit outside of the state as well." Party secretary Philip Glasson received letters of support from each New England state, New York, and even from a Minnesota party member with roots in New Hampshire.

Encouraged by this evidence of widespread support, the New Hampshire Farmer-Labor Party chose a slate of candidates to place on the ballot for the general elections in November. Although party leaders did not expect political victory, they hoped to garner 3 percent of the vote state-wide. Stearns Morse, a professor of economics at Dartmouth College, was nominated to run for the United States Senate. Dr. Anna Rudd, a physician and the wife of party chairman Herbert Rudd, was nominated for representative of the first congressional district, but she was reluctant to accept the nomination because she felt that the time was not right for a woman to enter politics. Professor Rudd and others from the University of New Hampshire feared they would lose their jobs if they ran for political office, however, "so Anna had no other option but to run."
Additional problems soon emerged from within the party. The party had nominated Bergeron as its gubernatorial candidate, but he balked at running because he was concerned that it would "interfere with his getting the [needed] aid for Berlin projects." Under pressure from Rudd, Glasson, and other party members, Bergeron agreed to campaign, although probably not with as much enthusiasm as he had demonstrated in the earlier Berlin elections.

By August the party was besieged with controversy. In Manchester Edward Holden was forced to resign as his union's delegate to the Farmer-Labor Party because the union did not approve of the Communist Party's involvement with the Farmer-Labor Party (the Communist Party had sent representatives to Farmer-Labor political conferences and gatherings and engaged in some degree of dialogue with Farmer-Labor leaders). The United Textile Workers of America was the largest union in the state and, therefore, Holden's withdrawal was a major setback. Holden remained active in the Farmer-Labor Party but later was accused of embezzlement for borrowing large sums of money and "claiming that he was receiving money from the [Farmer-Labor] party as security. Manchester might as well be forgotten in this campaign," wrote Socialist Party representative Charles Hill.

In 1936, the party's overall effectiveness in New Hampshire was hindered further by national events. In anticipation of the failure of Roosevelt's reforms to secure full economic recovery, liberals across the nation had foreseen the "gradual disintegration of the Democratic party and the emergence of a robust socialist movement capable of taking
power" in the form of the Farmer-Labor Party. By the summer of 1936, however, the momentum of third-party activity in the United States had decelerated significantly. In Minnesota, Floyd Olson, the Farmer-Labor Party’s charismatic leader, succumbed to cancer. His last act was to call upon all liberals to “unite in 1936 to re-elect Franklin Roosevelt and to prevent the election of reactionary Alf Landon.” Roosevelt appreciably swung to the left in 1935 with the “Second New Deal” reforms. Initially, this shift was not enough to win over the Left, but with their support Roosevelt launched a crusade in 1936 against “economic royalists” and on behalf of the “forgotten man” who was “ill-housed, ill-clothed and ill-fed.”

In the November elections in New Hampshire, the fledgling Farmer-Labor Party won just 1 percent of the state’s vote. The people elected as governor the popular Manchester community leader and Republican candidate, Francis P. Murphy. Rudd wrote that, while he was overjoyed at the “defeat administered to the reactionary forces of the country...it is a little difficult to know just how to make any aggressive attack for our own program while attention is focused on the Roosevelt landslide.” The state party’s overwhelming defeat at the ballot box and the eventual defection of union supporters left many Farmer-Labor leaders bewildered. Despite the disappointing state-wide electoral results, the Farmer-Labor Party in Berlin remained in power until 1938. Brown Company, having benefitted from the cooperation of Bergeron and other local leaders, experienced the beginnings of a financial recovery that would continue through the next decade.

As the economic recovery gained momentum, the Farmer-Labor Party’s political base
was increasingly undermined. In the 1938 city elections the Farmer-Labor candidate for mayor, Edward Legassie, one of the more left-leaning socialist members of the party, lost to the Democratic nominee, Matthew Ryan. The following year the Berlin electorate returned to office a more moderate Farmer-Labor Party mayoral nominee, Amie Tondreau, who served as mayor until 1943. Nevertheless, after 1938 the Farmer-Labor Party ceased to be a dynamic force for political change as its “raison d’etre” became more and more irrelevant in a burgeoning economy.

**The Legacy of the Taxpayers’ Association and the Farmer-Labor Party**

The Farmer-Laborites of Berlin were radical in their espousal of a partial redistribution of wealth as necessary to rectify the prevailing economic inequities and in their firm opposition to existing political power structures. In this respect they reflected a longstanding American tradition of hostility toward large accumulations of wealth that may be traced at least as far back as Jacksonian populism and that manifested itself politically from time to time. Fundamentally, though, the Farmer-Laborites were practical individuals, not die-hard ideologues, who were motivated primarily by a desire to mitigate the harsh economic circumstances facing their community. They sought to reform capitalism, not uproot it, and to moderate its operation and effect. Indeed, although Bergeron railed against concentrations of wealth and promoted workers rights, the Farmer-Labor Party under his stewardship never sought to undermine Brown Company but, rather, worked collaboratively with it and endeavored to put the company on a firmer foundation.
In March 1937, the party reminded taxpayers “of the pleasant and mutually profitable relations that existed between Brown Company and the City” and called on them to vote “straight Farmer-Labor” and reelect the present mayor so as to “assure full cooperation with the Brown Company in a fair and equitable manner to all concerned and protection to both wage earners and taxpayers.”¹⁰¹ Far from viewing it as the culprit for the city’s woes, the party appreciated that Brown Company’s “future is the future of the whole city” and recognized that the company represented the community’s first, best and only hope for economic recovery and stability.¹⁰² There is no evidence that even the party’s Socialist members, such as Legassie, ever cast Brown Company as a corporate villain or promoted policies that would have undermined the company.

The Berlin “radicals” desired to embrace a movement that could effect change locally yet possess credibility by being affiliated with a national movement. Similar aspirations took root in communities across America in the mid-1930s. In the East, however, only the Berlin Farmer-Labor Party achieved electoral victory. In the state of New Hampshire, Berlin was the only city confronting the bankruptcy of both its municipal government and its largest employer. Without a massive injection of state and federal aid, more than twenty thousand people would have been deprived of life’s basic necessities. In the midst of economic despair and rampant political corruption, the Berlin Farmer-Labor Party with Bergeron at the helm was able to lead the city through the Depression’s most challenging times.

The Berlin Farmer-Labor Party gave voice to taxpayers and other citizens, established
an honest and open municipal government, and became the conduit through which the state and Brown Company could implement the latter’s reorganization plan. Once this plan was up and running, the storm subsided, Berlin entered a period of economic stability and the need for “radical” change dissipated. Glasson noted that “by 1937 Brown Company got profitable again” and workers got their jobs back. The radicalism of the mid-1930s became increasingly irrelevant and the party itself was marginalized as a consequence of this partial economic recovery and the introduction of New Deal reforms that conferred additional rights upon workers.

By the 1940s the most vocal leaders of the third-party movement had returned to the “old parties.” Indeed, in 1942 Arthur Bergeron returned to his Republican roots and ran on the Republican ticket for Coos County Solicitor “at the suggestion and invitation of several Republican leaders.” He was elected for two consecutive terms and served as county solicitor from 1943 to 1946. As Bergeron observed in a different context, “this is another illustration that the radical ideals of today become the conservative principles of tomorrow.”

Organized taxpayer activity and political reform efforts in Berlin highlight the significance of local political institutions and actors in politics in the United States. Berlin’s Farmer-Labor Party movement was unique in that the party was able to accomplish a great deal locally within a few months of taking office. Moreover, although associated with the national Farmer-Labor Party, the Berlin party’s focus was on resolving the specific problems of the city. Many party members were life-long residents of this closely-knit
community and could not relate readily to the needs or problems of those in distant regions. Admittedly, the party platform was based on the Minnesota Farmer-Labor Party's platform, and its goals were echoed by many throughout the nation. Indeed, it was the coalescing of Berlin's Farmer-Labor success with the national party platform that appealed to so many in New Hampshire and the northeast. Unlike the party in Berlin, however, the state Farmer-Labor Party was divided in its interests, goals and priorities from the beginning.

In the Depression's earlier years, the Berlin Farmer-Labor Party had resembled Olson's Farmer-Labor Party. Although much of the nation was beginning to experience the first hints of economic recovery by 1936, the city of Berlin was still in a downward spiral that appeared to be accelerating. The citizens desperately needed protection from destructive economic forces, much like the farmers and truckers in Minnesota. The taxpayers also needed protection from unscrupulous public officials, like the city tax collector who had misappropriated $75,000 of the taxpayers' money. The former Democratic administration's lackluster response to this illegal official act had precipitated the taxpayers' suit and had galvanized the political reform movement. Intellectuals, such as Glasson and Bergeron, witnessed the government corruption and the elites' egregious disrespect for the taxpayers, and they sought to rectify the situation.

Bergeron successfully led the local movement in part because of his educational background, but also because of his strong ethnic ties to the city's French-Canadian community, representing 57 percent of Berlin's population and composed predominantly of mill workers. Moreover, Bergeron was a student of the New Hampshire Constitution and
would have been familiar with the provisions of part I, article 10:

Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.\textsuperscript{108}

This articulation of the peoples’ right of resistance, their right to engage in popular protest in order to reform incompetent or corrupt forms of government, was manifested 150 years later in the platforms of all the political protest movements of the Great Depression. Although Bergeron may not have referred explicitly to this constitutional provision, its content flavors much of his political speech.

The Berlin party was also representative of the populist protest movements springing up in response to the Depression. Roosevelt’s New Deal measures helped unions gain a foothold in industry, but they did not result in immediate, tangible benefits to labor such as guaranteed wage increases and job security. Frustrated at being ignored by both industry and government, the predominantly ethnic workers pursued political redress and, consequently, populist fronts were spawned across the nation. These reform movements all opposed existing power structures.

The Berlin Farmer-Labor Party, like the Minnesota Farmer-Labor Party and the other populist alliances of the era, promoted political alternatives to the “capitalist economic system they considered obsolete and cruel.”\textsuperscript{109} These groups pursued economic reforms
intended to improve the lot of the “have nots” and sought to ameliorate the harsh economic realities facing the American people. Their demands, programs and policies attracted widespread popular support and thereby influenced national policy by forcing Roosevelt and the Democratic Party to the left and by rendering it politically expedient for the Democrats to adopt or co-opt much of the reformers’ platforms. The reformers all found their inspiration in a centuries-old tradition of political resistance rooted in pocketbook politics in the United States. Berlin’s Farmer-Labor Party may have evolved as a response to a particular local situation, but it was part of a larger political dynamic.

The Farmer-Labor Party in Berlin never dominated city government after 1938. As in the rest of the nation and in the case of the other reform movements, it had gathered strength and momentum from the economic crisis and attendant social upheaval afflicting the nation after the 1929 crash. As the Democratic Party selectively adopted the reformers’ principles and programs and incorporated them in modified form into the New Deal, and as these measures to some extent mitigated the harshest symptoms of the Depression, the third-party protest movements atrophied and their popular support weakened. Nevertheless, the Farmer-Labor Party in Berlin and elsewhere and the other political protest movements of the 1930s were significant in that they influenced and informed Democratic Party domestic policy and thereby served as catalysts of political and economic change. Consequently, the reformers’ legacy was more extensive and durable than their brief “moment in the political sun” might otherwise suggest.

The endeavors of the Berlin Taxpayers’ Association represent a powerful, and
somewhat unique, fusion of political reform as both ends and means. Most of the time political reform was either the objective of taxpayers' organizations, as was the case with the Citizens Union, or the strategy they employed in furtherance of economic objectives, as was typical of nearly all organized taxpayer activity during the Great Depression. In Berlin political reform was both an objective and an instrument. The taxpayers organized to combat political corruption in city hall when the mayor and council turned a blind eye to the tax collector's malfeasance. In this regard, the political reformation of city hall was the objective, and taxpayers' litigation and third-party political activity were the strategies. At the same time, the overarching concern of the taxpayers was how to address the economic crisis of the Great Depression at the local level and obtain some measure of economic relief and stability. They chose third-party politics as the tool to achieve these economic objectives. The events in Depression-era Berlin demonstrate that, depending on the circumstances, political reform can be either or both a strategy and an objective of organized taxpayer activity.

Pocketbook politics, the law, and evolving notions of citizenship combined in the crucible of organized taxpayer activity in Berlin to produce a viable third-party political movement. The taxpayers' lawsuit and the ensuing political reform activities of the taxpayers were galvanized by the economic dimension of citizenship and by the rights-based conception of citizenship that was becoming ascendant in the 1930s. Taxpayers locked horns with tax spenders over how the latter were spending and, in the case of the tax collector, stealing public funds. The taxpayers' suit played a crucial part in generating the necessary
political critical mass for the creation of the Farmer-Labor Party in Berlin. In turn, the party engaged in pocketbook politics in order to increase the citizens’ purchasing power and to reduce their tax burden.

The populist reformers were heirs to a heritage of political resistance in general and of organized tax resistance in particular that harked back to the nation’s very origins. The protestors’ freedom to bring a taxpayers’ lawsuit, to practice pocketbook politics, and to engage in moderate, liberal, and even “radical” political expression during a time of economic and social upheaval without undermining the country’s social fabric evinced the essential strength and beauty of the American constitutional system. Indeed, the reform movements “gave evidence, in short, that the long tradition of opposition to large, inaccessible power centers, a tradition that stretched from the American Revolution to the populist revolt and beyond, would continue to survive.”110
1. A version of this chapter was published in *Historical New Hampshire*, 62, no. 2 (Fall 2008), 117 - 137.

2. Berlin Taxpayers Association v. the Mayor and City Council of Berlin, and the Fidelity & Deposit Company of Maryland, Coos County Superior Court, October term, 1933, 1.


5. See note 76 below.


9. Ibid., February 8, 1934, 3, 1; April 26, 1934, 2.

10. Ibid., July 12, 1934, 2.

11. Ibid., March 1, 1934, 3.

12. Ibid., March 22, 1934, 2.


15. Ibid., March 1, 1934, 3.

16. Ibid., May 3, 1934, 1; May 10, 1934, 2.

17. Ibid., May 17, 1934, 2.


20. Ibid., July 26, 1934, 1.


24. Brinkley, *Voices of Protest*, 227. For a more complete analysis of Olson’s career see Mayer, *The Political Career of Floyd B. Olson*.

25. As described in Mayer, *The Political Career of Floyd B. Olson*, 179


**Table 18.** Foreign Born White by Country of Birth 1930

<table>
<thead>
<tr>
<th>City</th>
<th>Total foreign-born white</th>
<th>Canadian - French</th>
</tr>
</thead>
<tbody>
<tr>
<td>Berlin</td>
<td>6,184</td>
<td>4,434</td>
</tr>
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</table>

**Table 19.** Native White of Foreign or Mixed Parentage by Country of Birth of Parents, 1930.

<table>
<thead>
<tr>
<th>City</th>
<th>Total Native White of Foreign or Mixed Parentage</th>
<th>Canadian - French</th>
</tr>
</thead>
<tbody>
<tr>
<td>Berlin</td>
<td>9,846</td>
<td>6,892</td>
</tr>
</tbody>
</table>
30. The coalescing and blending of Berlin's immigrant groups is described in oral history interviews of Berlin residents conducted by the author for the 1998 Smithsonian Folklife Festival and summarized in Linda U. Bornstein, "Northern Forest Heritage Park Interpretive Plan," (1999) 18, a copy of which is available in the Northern Forest Heritage Park collection.


32. Berlin, New Hampshire Centennial, 1-79. This publication documents industrial, business, ethnic, religious, organizational, athletic, and cultural activities.

33. John McCarthy, "Rewind," 1979. This is a time line of Berlin's labor history, produced as part of Mill on Main Street, a statewide project sponsored by the New Hampshire Humanities Council.


Table 2 - Population of Principal Cities - 1930

<table>
<thead>
<tr>
<th>City</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manchester</td>
<td>76,834</td>
</tr>
<tr>
<td>Nashua</td>
<td>31,463</td>
</tr>
<tr>
<td>Concord</td>
<td>25,228</td>
</tr>
<tr>
<td>Berlin</td>
<td>20,018</td>
</tr>
<tr>
<td>Portsmouth</td>
<td>14,495</td>
</tr>
</tbody>
</table>


36. This information is extracted from: Berlin, New Hampshire Centennial, and Illustrated Industrial Edition of Berlin.


38. Ibid.


41. Thirty-Fourth Annual Report, 122, 190 - 209; Thirty-Fifth Annual Report, 49, 127, 146 - 149, 204.


44. Glasson, interview, 1983.

45. Berlin City Reports, Journal no. 13, January 1932 to December 1934.

46. Glasson recalled that when he returned to Brown Company the only housing he could afford for his family was a "shack" built on the cinders from the mill furnace. Glasson noted that there was "no insulation...no cellar and no heating system." He remembered that "frost would form on the inside of the walls." Glasson, interview, 1983.

47. Glasson, interview, 1983.

49. Ibid. According to Brown Company business records it borrowed large sums in 1930 to build a new string mill and new administrative offices.


52. Ibid., March 28, 1932.

53. Ibid., April 1932.

54. Berlin Taxpayers Association v. The Mayor and City Council of Berlin, and the Fidelity & Deposit Company of Maryland, 1.

55. Ibid., 9, 10.

56. Ibid.; Berlin City Reports, Journal no. 13, January 1932 to December 1934, May and June 1934; Coos Guardian, May 3, 1934, 1, 2; May 10, 1934, 2; May 17, 1934, 1, 2; May 24, 1934, 1; June 14, 1934, 1. The surety company had appealed the Superior Court’s decision and, on June 28, 1934, obtained a ruling from the New Hampshire Supreme Court that the Berlin Taxpayers Association petition should be dismissed unless the taxpayers alleged the details of the fraud and proved the same at trial. Berlin Taxpayers Association v. the Mayor and City Council of Berlin, 87 N.H. 80, 173 A. 810 (1934). This ruling, however, did not derail the settlement agreement or the prosecution of Labrie.

57. State v. John A. Labrie, Coos County Superior Court, #1727 to #1738, October term, 1934.


61. Coos Guardian, February 1, 1934, 2.

62. Ibid. Emphasis added.

63. Ibid., February 8, 1934, 1.

64. Ibid., February 22, 1934, 2.

65. Ibid.

66. Ibid., March 1, 1934, 1.

67. Ibid., 3. Five years later not much had changed in this regard, as the Party matter-of-factly declared: “It goes without saying that the Labor slate is pledged to the fullest cooperation with the Brown Company. We are going through difficult times and the Brown Company’s future is the future of the whole city.” Political News, Farmer-Labor Party, March 1939.

69. *Coos Guardian*, March 29, 1934, 1; April 5, 1934, 2.

70. Ibid., April 12, 1934, 1 - 3.

71. Ibid., June 21 - July 12, 1934.

72. Ibid., July 12, 1934, 2.

73. Ibid., April 26, 1934, 2.

74. Ibid., July 5, 1934, 2 - 3.

75. Ibid. July 12, 1934, 1.

76. Farmers subsidized their incomes by logging during the winters for the pulp and paper industries. With the mill cutbacks and the depressed milk prices, they were not much better off financially than the industrial workers.

77. *The Coos Guardian*, July 12, 1934, 3. From this time, the party referred to itself interchangeably as the Berlin Farmer-Labor Party and the Coos County Farmer-Labor Party.


80. Ibid.


83. See Party Records in general.


85. Herbert Rudd to Philip Glasson, July 8, 1936, Party Records.


87. Herbert Rudd to Philip Glasson, July 8, 1936, Party Records.


91. Herbert Rudd to Stearns Morse, August 8, 1936, Party Records.

92. See Party Records.

93. Ibid.; Herbert Rudd to Philip Glasson, September 1936; Stearns Morse to Philip Glasson, September 1936; Newton Carroll to Philip Glasson, September 19, 1936, Party Records.
94. Herbert Rudd to Stearns Morse, August 8, 1936; Stearns Morse to Philip Glasson, August 11, 1936; Herbert Rudd to Philip Glasson, August 12, 1936, Party Records.

95. Edward Holden to Arthur Bergeron, July 11, 1936; Charles Hill to Philip Glasson, August 17, 1936, Party Records.

96. Charles Hill to Philip Glasson, September 8, 1936, Party Records.

97. Pells, Radical Visions and American Dreams, 300.

98. Mayer, The Political Career of Floyd B. Olson, 297.

99. Pells, Radical Visions and American Dreams, 300.


102. Ibid., March 1939.


105. Records of the Office of the County Commissioners, Coos County, West Stewartstown, NH.


108. In 1940, the New Hampshire Supreme Court observed that part I, article 10 “stated a political philosophy acted upon from the time the dependent colony became an independent state…” Trustees of Phillips Exeter Academy v. Exeter, 90 N.H. 472, 491, 27 A.2d 569, 584 (1940). For a more thorough discussion of part I article 10, and the manner in which New Hampshire citizens have invoked that constitutional provision as a legal basis for acts of civil disobedience and “justifiable dissent,” see W. Jeffrey Bolster, “The Absurdity of Nonresistance:” Reexamining Article 10 of New Hampshire’s Constitution, the “Right of Revolution,” Historical New Hampshire, 61, no. 2 (Fall 2007), 100-119.


110. Ibid., 261.
CONCLUSION

THE LEGACY AND ENDURING RELEVANCE OF ORGANIZED TAXPAYER ACTIVITY

One of the recurring themes of American political history is the engagement and often conflict, between taxpayers and tax spenders. Historically, tax spenders have been mainly concerned with maintaining what they regard as a reasonable and necessary level of government activity, and taxpayers have been more concerned with the cost of doing so. The tension between taxpayers and tax spenders was never more palpable than during the Great Depression. In 1933, the National Municipal League attempted to convey the essence of this political-civic dynamic in the "Mr. Taxpayer versus Mr. Taxspender" radio play, in which Columbia University professor Luther Gullick spoke for the taxpayer and Milwaukee Mayor Daniel Hoan spoke on behalf of public officials entrusted with responsibility for spending tax dollars. Interestingly, and in a way that still resonates with the twenty-first-century observer, Hoan synthesized the problem as follows:

There is ...a universal demand, past and present, for greater and greater governmental functioning and activity. There is, on the other hand, a widespread insistence that government shall reduce its expenses. The average citizen will furnish a list of activities a yard long of what he believes the government should undertake and the same person will bewail the fact that government should raise and spend the money necessary to meet his demands.¹

Hoan castigated "this illogical reasoning."² Hoan had a point, but, to be fair to taxpayers, most citizens did not insist on having their cake and eating it, too, but merely sought to
balance the reasonably necessary level of government services with their ability to pay for them. Still, conflict over whether and how to spend tax dollars has been a primary feature of taxpayer-tax spender engagement.

This same taxpayer-tax spender tension has been manifested in the recent debates over the federal economic stimulus package, in which some favor government spending as a way to stimulate the economy and create jobs, and others prefer tax cuts as a means to those ends. Hoan likely would have endorsed the former approach as a pocketbook politics measure, inasmuch as he contended that the role of government was to “provide wages and increased purchasing power.” The legislation that President Obama signed into law in February 2009, arguably represents the product of this collision of taxpayer and tax spender interests, since it includes both substantial government spending and significant tax reductions for most Americans. It also embodies somewhat the cognitive dissonance about which Hoan complained, because it both expands government and reduces taxes. At least for the present, Americans will fund the expansion of government activity not with taxes, but with debt, not with a “pay-as-you-go” policy of the type advocated by the Citizens Union and other reform organizations, but with a “borrow-as-you-go” one.

Organized taxpayer activity highlights the role of the taxpayer as reformer. The reform and refashioning of state and local governments was a principal purpose of taxpayers’ associations. Taxpayers in the nineteenth and twentieth centuries brought taxpayers’ suits to restrain unlawful or corrupt acts by public officials and to compel them to comply with the law in performing their duties. For the Citizens Union, the Berlin Taxpayers’ Association and others, taxpayers’ litigation was also a device that political outsiders
employed to bring about political change. Taxpayers' associations during the 1930s engaged in a wide array of reform activities that had a profound and lasting impact on American society. For 150 years, such organizations have enabled taxpayers to realize their status as political and legal actors. Organized taxpayer efforts embody a vital fusion of political activism and legal activism.

Taxpayers' associations also demonstrate the importance of local institutions in American public life and what historian Thomas Sugrue has identified as the "persistence of localism" in American politics. Taxpayer's leagues were fundamentally local civic-political organizations directed at local taxes and local problems. Even the taxpayers association movement of the Great Depression, although national in scope, was nevertheless local in its impetus and its character. For a century and a half, taxpayers' associations and taxpayers have been among "the subnational political institutions and actors" which have shaped public policy at the state and local levels.4

Americans' evolving notions of citizenship have actuated and shaped much organized taxpayer activity. Taxpayers have invoked the citizens' freedom of association to organize taxpayers' associations through which they might advance their interests. They used their obligation to pay taxes as a rationale to assert and construct a corresponding right to hold government officials accountable for how they expended public funds and operated government. When Daniel Hoan declared that "it behooves every good citizen to take part in civic and governmental affairs and improve that government and when the time comes to pay the [tax] bill...," he hit upon the essential connection between being a citizen, paying taxes and promoting political reform.5
Taxpaying citizens sought to enforce their right to good government through political, legislative, and research efforts, and through litigation. The growth of organized taxpayer activity in the twentieth century paralleled and was fueled by the evolution of a rights-based conception of citizenship and of a legal culture emphasizing individual rights. The emergence of a citizenship of rights and of a legal culture of rights after 1930 are complementary and mutually reinforcing developments.

Collective action by taxpayers also illuminates the intimate connection between law and citizenship. Being subject to, and able to derive the benefit and protection of, the rule of law is a defining, arguably the defining, characteristic of citizenship. Simone Weil, citing Montesquieu and Rousseau, has argued that “[t]he difference between a slave and a citizen is that a slave is subject to his master and a citizen to the laws. It may happen that the master is very gentle and the laws very harsh: that changes nothing. Everything lies in the distance between caprice and rule.”6 The relationship between citizenship and the law is fundamental; law is inextricably bound to citizenship, and citizenship to the law. As Weil observes, the very concept of citizenship is defined with reference to the rule of law, which is the distinguishing feature of citizenship. Hence, it is not surprising that law and litigation have played such a crucial part in organized taxpayer political activism.

Litigation, specifically the taxpayers’ action, was a principal tactic used by organized taxpayers to promote political reform and to engage in pocketbook politics. In the last half of the nineteenth century taxpayers convinced courts and legislatures to develop a body of jurisprudence that defined the nature and scope of the taxpayer’s right to sue public officials and restrain official actions. The Citizens Union and the Berlin Taxpayers’ Association
relied heavily on taxpayers' litigation to accomplish their political reform objectives. Other taxpayers' associations during the Great Depression similarly used the taxpayers' suit to facilitate economy and efficiency and to combat corruption in local government.

The extent to which taxpayers resorted to the courts was an essentially positive development. The notion of litigiousness admittedly has a negative connotation, and people can and do bring frivolous lawsuits. Notwithstanding such abuses, most litigation (and certainly most taxpayers' litigation) has not been frivolous. The ability and the willingness of citizens to call upon the coercive power of the law to enforce their rights and upon the courts to serve as arbiters of their disputes is a measure of the influence of law in a society and of the confidence of its citizens in the rule of law and in the courts as honest brokers. Thus the degree of litigiousness in a society is a barometer of an energized and vital legal culture.

Organized taxpayer activity has embodied the civic, economic and legal dimensions of citizenship. Taxpayers expressed the economic element of citizenship by engaging in pocketbook politics. They exhibited its civic component by organizing in voluntary associations to further their interests and to influence government. They reflected citizenship's legal aspect by relying on the rule of law and by invoking law and legal institutions in their reform and tax resistance efforts.

Finally, taxpayers' associations provide a rich setting in which the historian may, in legal historian James Willard Hurst's words, seek better "to understand the law...as it had meaning for workaday people and was shaped by them to their wants and visions." Through their research, legislative, litigation, and political programs, taxpayers'
organizations exercised significant influence on the law and, in doing so, on the structures of government and on American public life. As Hurst would doubtless have recognized, organized taxpayers regularly made “affirmative use of the law” in an effort to “materially control their environment” and their destinies.  

Political reform has been one of the prominent features of organized tax resistance throughout the history of the United States. The Founders declared independence pursuant to “the right of the people,” articulated in the Declaration of Independence, “to alter or...abolish...any form of government” when that government “becomes destructive” of the ends for which governments are established. A little more than 150 years later, the National Municipal Review concluded that an urgent desire to reform and refashion the institutions of government was the impetus behind Depression-era taxpayer activity. It commended the “widespread citizen interest in ways and means of achieving governmental economy” and made the following observation:

Disillusioned and cynical taxpayers are being beaten by economic necessity into the realization that waste and extravagance and inefficiency and corruption are not necessary attributes of government and that if they themselves will give to public affairs some of the time and thought – not to say money – they have wasted on the stock market, the returns will be proportionately greater, individually and socially. For government, which seems to follow on inevitably like a river, is too readily dammed by those who would irrigate their own pastures at the expense of their fellows downstream.  

Nearly all the other efforts of organized taxpayers examined evince a similar motivation. Taxpayers’ organizations have served as important instruments through which taxpaying citizens in the United States have fulfilled the function and realized the status of reformer. Although the number of taxpayer’s associations decreased somewhat after the 1930s,
they have remained numerous and a significant presence in American public life. One study identified forty taxpayers' organizations in Massachusetts alone in the mid-1960s, almost as many as there were in the entire nation forty years earlier. In the ensuing decades, taxpayers have continued to resist taxes and to press for reformation of state and local governments through taxpayers associations.

A tradition of tax resistance harks back to the nation’s founding. The intensity and scope of tax resistance and organized taxpayer activity in the twenty-first century reflect the continuing vitality of a powerful antitax sentiment in the United States. News reports of taxpayers' opposition to taxes in March 2009, sound very much like those one reads in the newspapers of the 1930s, perhaps because the nation is arguably confronting its most serious economic crisis since the Great Depression. On March 9, 2009, the day before state-wide town meetings in New Hampshire, the Associated Press reported that “keeping property taxes in check is taking precedence” over all other matters with New Hampshire voters. Three days later the New Hampshire Union Leader declared that “[t]own meeting voters this year have turned a skeptical eye toward anything that looks like unnecessary spending” and that, like the Iowa farmer quoted in the National Municipal Review in 1933, they were looking to buy less government. In Polk County, Iowa, officials are currently “bracing for an onslaught of [property tax] protests” because “[e]verybody wants a reduction right now.” Organized taxpayers in Chapel Hill, North Carolina and Hoboken, New Jersey have recently participated in large-scale property tax protests. In West New York, the site of considerable organized taxpayer activity during the 1930s, hundreds of taxpayers rallied on two occasions to protest “soaring property taxes” and to demand a spending freeze. Clearly, taxes remain

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at or near the center of American politics in 2009, and the taxpayers' association will continue to be a principal institution through which taxpayers and tax spenders contest the citizens' tax burden, the fiscal constraints on the state, and the size and role of government in the United States.
1. “Mr. Taxpayer versus Mr. Taxspender,” *NMR*, 22, no. 8 (August 1933), 359.

2. Ibid.


5. “Mr. Taxpayer versus Mr. Taxspender,” *NMR*, 22, no. 8 (August 1933), 364.


8. Ibid., 7, 33.


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