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“NO TAXATION WITHOUT REPRESENTATION” IN THE AMERICAN WOMAN SUFFRAGE MOVEMENT

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“No taxation without representation” has lasting appeal as a political catchphrase. But the impact of the motto is limited if it is not accompanied by striking actions or persuasive arguments. In this Note, I examine the problems that American woman suffragists encountered when they tried to put “no taxation without representation” to use, both in the realm of action and the realm of debate. In short, suffragists had difficulties committing to a widespread tax resistance strategy; they were forced to admit that the taxation argument led logically only to taxpayer suffrage, not to universal suffrage; and they struggled with resulting uncertainty over the wisdom of using “no taxation without representation” rhetoric at all. I also show how these weaknesses were mitigated, to some extent, by the introduction of the federal income tax late in the game. This Note, therefore, explains why the taxation argument was often passed over by suffragists and is rarely studied in the secondary literature, while at the same time highlighting the fascinating historical role it played, nonetheless.

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INTRODUCTION

A recent resurgence of “no taxation without representation” rhetoric has brought the motto to the forefront of American consciousness. The debate over voting rights continues for residents of Washington, D.C., where license plates bear the phrase “Taxation Without Representation.”¹ Recent tax day protests employed Boston Tea Party symbolism, predictably sparking debate over the applicability of the “no taxation without representation” argument.² In a similar vein, a “Tea Party” was recently registered in Florida to compete against the more traditional political parties.³

These modern applications of the “no taxation without representation” argument inspire curiosity about past applications. How much impact has the argument historically had on broad social and political movements? This Note examines one such movement—American woman suffrage.

Given the continuing popularity of the “no taxation without representation” catchphrase, one might expect American woman suffragists to have pounced on every opportunity to deploy it. But although many suffragists occasionally mentioned taxation, it was certainly not a focal point of the movement as a whole. Extended discussion of taxation was relatively rare. Most “no taxation without representation” arguments were buried within laundry lists or reduced to simply those four words (or some simple variation) with no further explanation. And only a handful of suffragists leveraged “no taxation without representation” into tax resistance.

On the other hand, American suffragists had a long time to discuss and debate every aspect of their campaign—it was seventy-two years from the 1848

1. Some continue to place pressure on President Obama to fit his vehicles with the political plates, which President George W. Bush replaced while in office. *See, e.g.,* Yunji de Nies, *Today's Q's for O's White House*, ABC NEWS, June 29, 2009, <http://blogs.abcnews.com/politicalpunch/2009/06/todays-qs-for-os-white-house-.html>.

2. *See, e.g.,* Judson Berger, *Modern-Day Tea Parties Give Taxpayers Chance to Scream for Better Representation*, FOX NEWS, Apr. 9, 2009, <http://www.foxnews.com/politics/2009/04/09/modern-day-tea-parties-taxpayers-chance-scream-better-representation/>; Ira Stoll, *Time for a Tea Party?*, FORBES, Apr. 14, 2009, <http://www.forbes.com/2009/04/14/tea-party-gingrich-republican-government-opinions-contributors-market.html>; Linton Weeks, *Why Protest Big Government with Tea on Tax Day?*, NAT'L PUB. RADIO, Apr. 15, 2009, <http://www.npr.org/templates/story/story.php?storyId=103109964>.

3. *See* Florida Tea Party, <http://www.floridateaparty.us> (last visited Jan. 23, 2010).

Seneca Falls convention to the ratification of the Nineteenth Amendment in 1920. Suffragists produced such a massive amount of printed material during this time that even a secondary argument resulted in a huge array of source material. Taxation was a minor aspect of the suffrage movement only *relative* to other arguments.

Consequently, it is somewhat surprising that taxation in the American woman suffrage movement has been treated at length in the literature only twice before: in Carolyn C. Jones's article *Dollars and Selves: Women's Tax Criticism and Resistance in the 1870s*,⁴ and in a chapter of Linda K. Kerber's book *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship*.⁵ The former concentrates on the ways suffragists reformulated "dollars" arguments into "selves" arguments by metaphorically referring to pay inequity and household work, to take two examples, as "taxation." The latter is an insightful descriptive history of the taxation argument in the suffrage movement, using as its main example the Smith sisters' tax resistance.⁶

In this Note, I expand on this prior literature, focusing on *why* the taxation argument, which at first blush seems so promising, played such a (relatively) minor role in the American suffrage debate.⁷ In addition to exploring this question, my research is important for several other reasons. First, the American woman suffrage movement provides a rich historical case study in the use of this rhetoric. The stories and arguments arising at the intersection of tax and woman suffrage are intelligent and entertaining, well worth study in their own right. These stories also provide a unique lens through which to view other important issues of the time, such as class, race, federalism, and, of course, tax and gender.

Finally, although I do not pretend to consider the entire corpus of woman suffrage primary material, I bring to light (in both the main text and the footnotes) numerous primary sources not discussed in prior scholarship. One major contribution of this Note is, in fact, the culling through of massive amounts of primary source material for taxation-based arguments and ideas. This Note, at its heart, organizes and analyzes the results of this effort. I therefore continue to fill the gap in the literature recognized by Jones and Kerber.⁸

4. Carolyn C. Jones, *Dollars and Selves: Women's Tax Criticism and Resistance in the 1870s*, 1994 U. ILL. L. REV. 265.

5. LINDA K. KERBER, *NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP* 81-123 (1998). Other literature on the American woman suffrage movement often mentions tax protests or tax resistance, but usually only in passing.

6. *See infra* Part I.B.

7. My research adds to the efforts of Jones and Kerber. Unlike Jones, I focus on true, nonmetaphorical taxation. And although Kerber engages in some analysis, and although this Note engages in its share of description, I present a more elaborate analysis of the taxation-suffrage discourse, delving into its limitations, its logical nuances, and its special relationship with the federal income tax.

8. Both Jones and Kerber point out this gap. *See* KERBER, *supra* note 5, at 87 (referring

The Note proceeds in four parts. In Part I, I examine real incidents of tax resistance. By exploring the limitations of the tax resistance strategy, I explain the scarcity of such incidents.

Given the limitations of tax resistance, suffragists instead devoted energy towards formulating an airtight taxation-based argument for woman suffrage. Because “antis” carefully fought back against every link in the logical chain of this argument,⁹ suffragists were forced to develop complex defenses and responses. Part II analyzes this debate. Ultimately, I arrive at the same conclusion as many of the debaters: the taxation argument leads logically only to taxpayer suffrage, not universal suffrage.

In Part III, I examine the meta-debate in light of this weakness: Should suffragists use the “no taxation without representation” argument? Or does taxpayer suffrage halt progress towards universal suffrage? Neither suffragists nor antis could agree on where they should stand with regard to taxpayer suffrage. This uncertainty necessarily weakened even further the impact of the “no taxation without representation” argument.

Finally, in Part IV, I recognize the potential and actual changes wrought in the taxation debate and meta-debate by the advent of the Sixteenth Amendment in 1913, which legitimized the federal income tax. Before this, most references to “taxes” are to state and local property taxes. I show how the emergence of the federal income tax significantly strengthened suffragists’ taxation arguments, and posit that taxation therefore became a much more important argument in the last few years before suffrage was obtained. To my knowledge, this wrinkle has not yet been discussed in any other scholarship.

I. ACTION AND COMPLIANCE

Some suffragists took the “no taxation without representation” sentiment at face value: being denied the right to vote, they refused to pay their taxes. I use the term “tax resistance” to refer to such outright refusals to pay taxes owed. Suffrage leaders occasionally called for widespread tax resistance and often praised those who heeded the call. Despite this, tax resistance was a fairly unusual phenomenon. In this Part, I describe tax resistance efforts and explain the many factors that made real tax resistance uncommon.

A. *Calls to Action*

Based on the simple proposition that there should be no taxation without

to tax protests and tax resistance as “largely forgotten”); Jones, *supra* note 4, at 269 (“Although women’s history scholars have mentioned tax protests and refusals to pay in the woman suffrage movement, relatively little analysis has been devoted to these issues.”).

9. Suffragists and antisuffragists at the time often referred to antisuffragists as “antis.” This Note adopts the usage.

representation,¹⁰ woman suffragists attempted to inspire women to engage in tax resistance. In 1852, two particularly strong calls to action came from Elizabeth Cady Stanton and Lucy Stone at the third National Woman's Rights Convention. A letter from Stanton emphasized the nobility of tax resistance while recognizing the "suffering" tax resisters were bound to face:

Should not all women, living in States where woman has a right to hold property, refuse to pay taxes, so long as she is unrepresented in the government of that State?

Such a movement, if simultaneous, would no doubt produce a great deal of confusion, litigation and suffering, on the part of woman; but shall we fear to suffer for the maintenance of the same glorious principles, for which our forefathers fought, and bled, and died. Shall we deny the faith of the old revolutionary heroes . . . by declaring in action, that taxation without representation is just? Ah! no; like the English Dissenters, and high-souled Quakers, of our own land, let us suffer our property to be seized and sold—but let us never pay another tax, until our existence as citizens, our civil and political rights, be fully recognized.¹¹

Stone also emphasized the need to endure the severe hardships of tax resistance in order to achieve the suffragists' goals:

[I] urge[] upon woman, the duty of resisting taxation, so long as she is not represented. It may involve the loss of friends, as it surely will that of property. But let them all go: friends, house, garden-spot, all. The principle at issue requires the sacrifice. Resist; let the case be tried in the courts; be your own lawyers; base your cause on the admitted self-evident truth, that "taxation and representation are inseparable." One such resistance, by the agitation that would grow out of it, will do more to set this question right, than all the Conventions in the world. . . .

. . . [S]isters, the right of suffrage will be secured to us, *when we ourselves are willing to incur the odium, and loss of property*, which resistance to this outrage on our rights will surely bring with it.¹²

Similar calls to action are scattered throughout the documented history of the movement,¹³ although later statements usually did not point out the dangers

10. For the underlying complexities of this proposition, see *infra* Part II.

11. Letter from Elizabeth C. Stanton (Sept. 6, 1852), in *THE PROCEEDINGS OF THE WOMAN'S RIGHTS CONVENTION, HELD AT SYRACUSE, SEPTEMBER 8TH, 9TH & 10TH, 1852*, at 30, 30 (Syracuse, J.E. Masters 1852).

12. Lucy Stone, Statement (Sept. 8, 1852), in *THE PROCEEDINGS OF THE WOMAN'S RIGHTS CONVENTION, HELD AT SYRACUSE, SEPTEMBER 8TH, 9TH & 10TH, 1852*, *supra* note 11, at 34, 34-35.

13. See, e.g., 2 *HISTORY OF WOMAN SUFFRAGE* 538 n.‡ (Elizabeth Cady Stanton et al. eds., Rochester, Charles Mann 1887) ("Resolved, That the best means of agitating at the present hour is . . . for all property-holding women to refuse to pay another dollar of tax until their right of representation is recognized."); Parker Pillsbury, Statement at the Ninth National Women's Rights Convention in New York (May 1858) (suggesting that women "hold their next Convention at the ballot-box" and "[i]f their votes were refused, let them look the tax collectors in the face and defy them to come for taxes"), in 1 *HISTORY OF WOMAN SUFFRAGE* 671, 671 (Elizabeth Cady Stanton et al. eds., New York, Fowler & Wells 1881); *Women's Tax Fight Will Be Passive*, N.Y. TIMES, Dec. 30, 1913, at 18 (describing Dr.

of tax resistance with the force of these early examples, perhaps because these dangers were already known, or perhaps because of the dampening effect of such reminders.

The 1873 centennial of the Boston Tea Party provided a particularly meaningful opportunity to urge real tax resistance. At the New York Woman's Suffrage Society's celebration of the occasion, Lillie Devereux Blake urged women to refuse to pay their taxes, expressing a desire for an "anti-tax association in [New York] City which would guide them to this issue."¹⁴ Indeed, local antitax leagues were springing up across the country, from San Francisco¹⁵ to Chicago.¹⁶

B. Action

These cries for action did not go entirely unheeded. There were several women who decided to flatly refuse their tax collectors' demands. Stone took her own advice in 1858, returning her unpaid tax bill to the tax collector of Orange, New Jersey.¹⁷

The most famous tax resisters were arguably the elderly Smith sisters from Glastonbury, Connecticut. Beginning in 1873 and continuing until Abby's death in 1878,¹⁸ Julia and Abby Smith obstinately refused to pay their property taxes. Their age,¹⁹ their intelligence,²⁰ and their relatively large tax debt made

Anna Howard Shaw's "appeal to suffragists to refuse to pay taxes until they obtain the right to vote").

14. *The New-York Woman's Suffrage Society*, N.Y. TIMES, Dec. 17, 1873, at 5. Amusingly, Blake "did not advocate the proposition that women should refuse articles upon which they were unjustly taxed . . . by throwing them overboard, but she thought the time had come when the tax collectors themselves might be thrown over." *Id.* Susan B. Anthony also spoke on the subject of tax resistance. *Id.*

15. *Id.*

16. By 1910, Chicago was home to a No Vote No Tax League. Mary Grey Peck, *Woman Suffrage in the United States*, in 7 THE WOMAN CITIZEN'S LIBRARY 1641, 1679 (Shailer Mathews ed., 1913).

17. Letter from Lucy Stone to Mr. Mandeville, Tax Collector (Dec. 18, 1858) ("Enclosed I return my tax bill, without paying it. My reason for doing so is, that women suffer taxation, and yet have no representation, which is not only unjust to one-half the adult population, but is contrary to our theory of government."), in 1 HISTORY OF WOMAN SUFFRAGE, *supra* note 13, at 450 n.*, 450 n.*.

18. KERBER, *supra* note 5, at 111.

19. Julia was eighty-one and Abby was seventy-six in 1873. See JULIA E. SMITH, ABBY SMITH AND HER COWS, at front matter (Arno Press photo. reprint 1972) (1877).

20. Although Abby did most of the public speaking, see KERBER, *supra* note 5, at 112, Julia was arguably the more accomplished—she was the first woman to translate the Bible into English. See Frances Ellen Burr, *Appendix* to 1 ELIZABETH CADY STANTON ET AL., THE WOMAN'S BIBLE 149, 149 (New York, European Publishing Co. 1895). See also the following anecdote in *An Original Family*, HARTFORD DAILY TIMES, Dec. 11, 1875, reprinted in SMITH, *supra* note 19, at 62, 63, which, although admittedly inaccurate, is highly entertaining:

There is an anecdote of Miss Julia to the effect that she was traveling once in a stage, in

them particularly sympathetic characters. The official reaction to their resistance—a sale of their cows by public auction—made for a good story and added to their fame. The pair also had time to spare for self-promotion. They regularly entertained reporters,²¹ and Julia gathered newspaper accounts of their saga in a “scrap book” that she published in 1877.²² These numerous newspaper stories resulted in a constant stream of mail addressed to the sisters,²³ and their story even inspired the occasional poem.²⁴ Often compared to Revolutionary heroes, Julia and Abby were also likened to religious martyrs.²⁵

Stephen and Abby Kelley Foster, Sarah E. Wall, and Dr. Anna Howard Shaw rounded out the ranks of famous tax resisters. The Fosters’ resistance, also in the 1870s, resulted in the auction of their home.²⁶ Perhaps they were inspired by Sarah E. Wall, who, like the Fosters, was from Worcester, Massachusetts. Her tax resistance lasted for more than twenty-five years,²⁷

which for fellow-travelers she fo[u]nd a certain chancellor, accompanied by one of his learned friends. As the story goes, they, wishing to converse on some private business, began to talk in French, and were surprised to hear from the unknown woman the remark, “Excuse me, but I understand French.” They then resumed their conversation in Latin, but were soon again interrupted by the remark, “Excuse me, gentlemen, I know the Latin.” A good deal astonished, this time, they looked at the unknown in silence, and then once more fell to conversing, but this time in Greek. “If you’ll excuse me,” said the unknown woman, “I also understand the Greek.” Thoroughly amazed, the chancellor (so runs the story) turned to her with the exclamation, “Who the d---I are you?”

21. See, e.g., *The Glastonbury War*, BOSTON POST, Jan. 21, 1874, reprinted in SMITH, *supra* note 19, at 21, 22; *A Visit to the Misses Smith and Their Cows*, NANTUCKET INQUIRER & MIRROR, Apr. 4, 1874, reprinted in SMITH, *supra* note 19, at 35.

22. SMITH, *supra* note 19, at 8. Julia also decided to publish her Bible translation around this time, presumably both because of and in furtherance of her newfound fame. See Julia E. Smith, Letter to the Editor, *The Smith Bible*, SPRINGFIELD UNION, Nov. 27, 1875, reprinted in SMITH, *supra* note 19, at 61.

23. See *The Glastonbury War*, *supra* note 21, at 23.

24. See, e.g., *The Sister Smith’s Cows: To the Men of Glastonbury*, WOMAN’S J., July 4, 1874, reprinted in SMITH, *supra* note 19, at 44, 45. This poem reads, in part:

Our lowings deep, in exile bound,
Shall yet be heard the world around,
Our frantic bellowings proclaim
The wrongs of Woman and your shame;
Proclaim, so far as justice goes,
Ye are the age’s Pharaohs.
Ye lords of Glastonbury!

25. See Jones, *supra* note 4, at 286-87 (“[The] story of the sale of the cows of the Misses Smith . . . read like some of the stories over which I used to weep, when a child, of women whose property was confiscated, and who were persecuted and hunted down for religion’s sake.” (quoting Mary A. Livermore, *Women and Taxes—Letter from Mrs. Livermore*, 5 WOMAN’S J. 25 (1874))).

26. DOROTHY STERLING, AHEAD OF HER TIME: ABBY KELLEY AND THE POLITICS OF ANTISLAVERY 368-69 (1991).

27. H.W. BLAIR ET AL., DEBATE ON WOMAN SUFFRAGE IN THE SENATE OF THE UNITED STATES, 2D SESSION, 49TH CONGRESS, DECEMBER 8, 1886, AND JANUARY 25, 1887, at 65 (Wash., D.C., n. pub. 1887) (“[H]ere is another woman I wish to show you, Sarah E. Wall, of Worcester, Mass., who, for the last twenty-five years, has resisted the tax gatherer when

beginning in 1858.²⁸ In 1863, her efforts gave rise to the most direct judicial decision on the matter of women's tax resistance: the Massachusetts Supreme Court case *Wheeler v. Wall*. This decision squarely and succinctly denied that suffragist tax resisters had any legitimate legal claim to relief from taxation.²⁹ This decision did not dissuade Wall from continuing in her refusals to pay.

In 1915, at the age of 70, Dr. Anna Howard Shaw made the news with a tax resistance incident. Her "little yellow suffrage car" was taken for sale to cover her unpaid tax debts.³⁰ It is a striking reminder of the passage of time and progress of technology that the cows of the Smith sisters had become the automobile of Dr. Shaw.³¹

Only a handful of other tax resisters appear in the records of the movement: for example, Marietta Flagg, another suffragist from Worcester, Massachusetts;³² Mrs. J.S. Weeden of Wisconsin;³³ Ellen Van Valkenburg of California;³⁴ Mary Harrington of New Hampshire;³⁵ Lou J.C. Daniels of Vermont;³⁶ "Mrs." Belle Squire of Illinois;³⁷ and an unnamed woman "in the habit of barricading herself in her house whenever the tax collector made his appearance."³⁸ Undoubtedly there were others.³⁹

he came around." (quoting Susan B. Anthony)).

28. HARRIET H. ROBINSON, *MASSACHUSETTS IN THE WOMAN SUFFRAGE MOVEMENT* 242 (Boston, Roberts Bros. 2d ed. 1883).

29. *Wheeler v. Wall*, 88 Mass. (6 Allen) 558, 558 (1863) ("The personal estate of an unmarried woman is liable to taxation in this commonwealth, although by the constitution [of Massachusetts] women are not allowed to vote."). The fact that Wall was unmarried strengthened her claim, since her property was indisputably hers.

30. *Hitches Her Auto to Star of Fame: Dr. Anna Howard Shaw Puts Her Little Yellow Car Up Against Boston Tea Party*, N.Y. TIMES, July 14, 1915, at 9 [hereinafter *Hitches Her Auto to Star of Fame*]. The car had recently been presented to her as a gift. *Id.* Yellow was the color of the suffrage movement.

31. Shaw did, however, need to take two weeks off—"her first . . . in three years"—to learn to drive. *Id.*

32. See Jones, *supra* note 4, at 277.

33. Susan B. Anthony, *Speech in Defense of Equal Suffrage (1873)*, in 2 CLASSICS OF AMERICAN POLITICAL AND CONSTITUTIONAL THOUGHT 40, 45 (Scott J. Hammond et al. eds., 2007).

34. *Id.*

35. Jones, *supra* note 4, at 269 n.8 (citing ELLEN DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA, 1848-1869*, at 49-50 (1978)). Harrington's furniture was seized, and when her community did not support her efforts, she reluctantly began paying her taxes again. *Id.* Harrington also worked off some of her taxes on the roads. See *infra* note 68.

36. 6 THE HISTORY OF WOMAN SUFFRAGE 654 n.1 (Ida Husted Harper ed., 1922).

37. "Mrs." Belle Squire was remarkable in that she continued to refuse to pay her back taxes after Illinois granted woman suffrage, arguing that "[t]he fact that Illinois has given us suffrage since the tax was levied has no bearing on the case." "Mrs." Belle Squire Votes, but Won't Pay Her Taxes, CHI. DAILY TRIB., Oct. 9, 1913, at 9.

38. *The New-York Woman's Suffrage Society*, *supra* note 14.

39. *Id.* (reporting that Susan B. Anthony "supplemented the list furnished by Mrs. Blake, of interesting ladies who declined any advances by the Government in the matter of

C. Compliance

Despite these role models, tax resistance never blossomed into the large-scale, coordinated movement that Stanton and Stone originally envisioned. In this Subpart, I identify and analyze a number of factors that weakened the tax resistance strategy and made true tax resistance a rarity.

1. Reluctance

Contrary to other accounts of their efforts, the tax resisters discussed above were often unwilling to fully commit to the “suffering” and “sacrifices” predicted by Stanton and Stone. Figures like the Smith sisters and Dr. Shaw provided positive publicity for the suffrage movement, but a more committed effort might have resulted in even greater media impact. Furthermore, the failure of ordinary women to engage in tax resistance is unsurprising given the reluctance of even the most celebrated American tax resisters to fully dedicate themselves to the strategy.⁴⁰

The Smith sisters, despite their fame and their label as martyrs, were particularly hesitant to accept the full consequences of tax resistance. For example, they admitted that they were willing to pay twelve percent interest on their tax debt indefinitely, an arrangement that came to an end only when the Glastonbury tax collector insisted that they make good on the entire debt.⁴¹ Being willing to pay the interest on taxes owed demonstrates a certain compliance and a partial recognition of the legitimacy of the underlying tax. This could have come across as taking advantage of a technical distinction rather than standing fully for a principle. One of the many remarkable things about the sisters, however, was how cleverly they could spin a story: they turned their earlier interest-paying arrangement into yet another grievance against the Glastonbury officials, asserting that they had not been properly warned of the change in policy.⁴² Still, it is not clear what they would have done differently had they been warned; the incident is much better explained as an example of the sisters’ reluctance to fully act on their principles.

Another unique example of half-hearted tax resistance comes from Lou J.C. Daniels. Beginning her resistance upon learning that “the Representative of her district had voted against the suffrage bill in the Legislature,” she

levying taxes”).

40. Note that I do not mean to imply that tax resisters *should* have been more committed to braving all of the potential consequences of tax resistance; I am merely suggesting that they *could* have been.

41. Abby H. Smith, Letter to the Editor, *SPRINGFIELD REPUBLICAN*, Jan. 6, 1874 (“We had no idea, then, that [the tax collector] had brought an attachment with him to execute it that very day, for he had always before told us we might let the tax be, as long as we pleased, by paying 12 per cent interest. But now, he said, the law must be executed”), reprinted in SMITH, *supra* note 19, at 13, 13.

42. See *The Glastonbury War*, *supra* note 21, at 26.

naturally ended it “[w]hen the town elected a Representative who supported woman suffrage.”⁴³

A more frequent indication of reluctance among tax resisters was their practice of buying back their own property when it was sold at auction. The Smith sisters arranged for their tenant to buy back their cows, and they used their own money when the cows were auctioned a second time. Again, they spun this in their favor, describing the disappointment of the men who had come to the auction with the unneighborly desire to buy the cows for less than a fair price.⁴⁴ Stephen Foster would routinely buy back the home he shared with Abby Kelley Foster, and the city, no doubt anticipating this, never evicted them. This frustrated the dramatic effect of newspaper headlines such as “Abby Kelley is Homeless” by proving them inaccurate.⁴⁵ Dr. Shaw’s car, too, was purchased by friends and returned to her.⁴⁶ Like paying interest on tax debts, this meant that the suffragists’ money was still funding their tyrannical government. The symbolism of their tax resistance remained largely intact,⁴⁷ but they lost much of their claim to martyrdom.

The Smith sisters further demonstrated their unwillingness to step into the role of martyrs after they were unable to carry out their plan to buy back a tract of land that was sold cheap for taxes.⁴⁸ Suddenly the game was not so fun—they realized that their protest might result in a large, irretrievable loss. Although they had never brought suit against the city for any of the other less tangible wrongs they had endured, the sisters launched a full-blown legal assault to get their land back. Again, this shows that even the most renowned American tax resisters were only willing to suffer so much—when the dust settled, they wanted the status quo, more or less. And the Smiths were, in the end, successful in this regard, winning their case⁴⁹ not on principle but on technicality.⁵⁰ They chose not to use the lawsuit as a platform to fight for their

43. 6 THE HISTORY OF WOMAN SUFFRAGE, *supra* note 36, at 654 n.1. At that point, she apparently “considered the lesson sufficient.” *Id.*

44. See *The Glastonbury War*, *supra* note 21, at 26-27.

45. See Mass Moments, Worcester Puts Fosters’ Home Up for Auction, <http://massmoments.org/moment.cfm?mid=58> (last visited Apr. 21, 2009); see also Jones, *supra* note 4, at 269 & n.93.

46. *Dr. Anna H. Shaw, Suffragist, Dies*, N.Y. TIMES, July 3, 1919, at 13.

47. Also, the practice of buying back their own property did allow suffragists like the Fosters to continue their tax resistance year after year. See Mass Moments, *supra* note 45.

48. Abby Smith & Julia Smith, Letter to the Editor, NEW HAVEN UNION, June, 1874, reprinted in SMITH, *supra* note 19, at 43, 43.

49. The case was heard three times. SMITH, *supra* note 19, at 94 (“The first [suit] was before the Glastonbury magistrate, and was decided in their favor. The second one . . . was the collector’s appeal from that decision, and was decided against them. The third one,—November, 1876, and in the same court, but with another Judge (McManus)—was decided in their favor.”).

50. The sisters’ main argument was that, by law, their personal property should have been sold before their land. The tax collector claimed that he did not see any personal property in their home for him to sell. This made for some entertaining testimony, such as

vote as well as for their land. Indeed, the report of the case that Julia Smith chose to publish in her book contains commentary that berates the opposing side for bringing up the suffrage question at all.⁵¹

This was not the only time that tax resisters resorted to legal intricacies to protect their private interests—Anna Howard Shaw did, too. She did not set out to be a tax resister, but rather tried to be, instead, a tax *avoider*. Upon closer inspection, her automobile ordeal was simply the victory of a determined Pennsylvania tax assessor. Only when she was forced to admit defeat did she accept her role as a tax resister.

Shaw was initially prepared to resist only the act of “mak[ing] out a detailed statement of all her ‘personal property, mortgages, stocks, and bonds with minute details.’”⁵² In refusing to fill out the form, she was following her own earlier suggestion that women “make their passive protest and decline to aid the Government in levying upon them by refusing to render an account of their property.”⁵³ The tax assessor’s response to Shaw’s “passive protest” was to “assess[] her for \$30,000”—an absurdly large amount, according to Shaw.⁵⁴ The tax assessor was calling her bluff. Would she fold by ending her protest as planned and pay the excessive property tax? Or would she go all in, and resist? Reluctant to take either approach, Shaw tried to concoct a third: walk away from the table and avoid the tax.

First she tried to lower the assessment, obviously more willing, at this point, to “aid the Government . . . [by] render[ing] an account of [her] property.” When this failed, she immediately tried to avoid paying personal property taxes in Pennsylvania altogether by “chang[ing] her legal address to

the following:

Q. [Counsel for the Smiths] Did you see any personal property there at that time?

A. [Tax collector] Their house has some furniture in it.

Q. There is some furniture in it, then?

A. I have always found it so when I have been there.

Q. It is fully furnished, is it not?

A. I believe there is some furniture in the rooms I have been in.

Q. I asked if the rooms were not fully furnished?

A. My ideas on furniture may not conform to other people’s ideas.

Id. at 81.

51. *Id.* at 90 (“Where does woman suffrage come in? It has no more connection with the case than man suffrage, or Kamschatka has.”).

52. *Hitches Her Auto to Star of Fame*, *supra* note 30 (quoting the “legal paper” making the request).

53. *Women’s Tax Fight Will Be Passive*, *supra* note 13. A stronger version of this was practiced by Virginia Minor, who wrote to the tax assessor that “I honestly believe and conscientiously make oath that I have not one dollars’ [sic] worth of property subject to taxation. . . . My property is denied representation, and therefore can not be taxable.” Letter from Virginia L. Minor to David Powers, President, Bd. of Assessors (Aug. 26, 1879), in 3 HISTORY OF WOMAN SUFFRAGE 607, 607 (Elizabeth Cady Stanton et al. eds., Rochester, Charles Mann 1887).

54. *Hitches Her Auto to Star of Fame*, *supra* note 30. Lack of accuracy or uniformity in assessment was a chronic problem in the administration of personal property taxes at the time. See EDWIN R.A. SELIGMAN, ESSAYS IN TAXATION 20-22 (8th ed. 1913).

New York.”⁵⁵ Shaw was trying to take advantage of the fact that the property tax laws of the time “permit[ted] personal property to follow the taxpayer’s legal residence.”⁵⁶ This oft-exploited rule, cited by contemporaneous experts as one of the major problems with the tax system of the time,⁵⁷ provided an easy way to avoid personal property taxes in a particular locale.⁵⁸ Notice that a change in legal residence for tax purposes to a state that had already granted woman suffrage could have been a clever way for women to live by the “no taxation without representation” principle.⁵⁹ Shaw did not have this in mind, however; New York did not grant woman suffrage until 1917, two years after the incident.

Shaw’s mortgages, stocks, and bonds were thus protected from the Pennsylvania tax assessor. In technical terms, this was because the “[i]ntangible property . . . ha[d] its situs with its owner.”⁶⁰ But the situs of tangible personal property was not always changed so easily—“tangible property that cannot be . . . withdrawn [at the will and whim of the owner] has its situs in the state where it is located.”⁶¹ We know that the automobile was located in Delaware County, Pennsylvania, because this is where it was seized. Determining the situs of personal automobiles was a relatively new legal question. The case could be made that because cars were so mobile, their situs should move with the residence of their owners.⁶² But the tax assessor saw it differently—here was valuable, tangible personal property located within his

55. CAROLINE KATZENSTEIN, *LIFTING THE CURTAIN: THE STATE AND NATIONAL WOMAN SUFFRAGE CAMPAIGNS IN PENNSYLVANIA AS I SAW THEM* 122 (1955).

56. *Thinks Localities Should Tax Realty: Prof. E.R.A. Seligman Would Take Such Power Away from the State*, N.Y. TIMES, Oct. 19, 1915, at 9.

57. *Id.*

58. *Id.* (“A man’s legal residence is in a place other than where he earns his money or where he lives most of the year. It is practically impossible to reach a man who can evade taxations as easily as that.” (quoting Edwin R.A. Seligman)). This was not the first time that Shaw had used such a tactic. She did something similar, in protest, after her vote had been refused on the subject of school appropriations. In 1888, Shaw relayed the anecdote:

Said I: “Gentlemen, you will never tax me again in Massachusetts.” They laughed at me and said I could not help it; but I could. . . . [T]he next day I put my property in such a shape that it has never been taxed in Massachusetts since, and it never will be taxed there if I live there until the angel Gabriel blows the last trumpet.

NAT’L WOMAN SUFFRAGE ASS’N, *REPORT OF THE INTERNATIONAL COUNCIL OF WOMEN* 313 (Wash., D.C., Rufus H. Darry 1888) (quoting Anna Howard Shaw).

59. Some women had this idea. *See, e.g., Women to Migrate to Suffrage Lands*, N.Y. TIMES, Dec. 19, 1915, at 13 (“A band of women has been formed in New York who say they will desert this state because of failure to win suffrage, and move on to the West and take up residence and pay taxes on their personal property into the treasuries of other States.”).

60. *Lamberton’s Estate*, 48 Pa. C. 567, 568 (Butler County Ct. 1920). The situs of personal property determines where it can be taxed.

61. *Id.*

62. *See, e.g., Taxing Non-Residents*, 17 HORSELESS AGE 441, 443 (1906) (expressing outrage at California’s attempt to tax the automobile of a “non-resident[] temporarily sojourning” to the state).

jurisdiction, fair and square.⁶³ The fact that a car is, by nature, mobile and easy to seize probably made his decision all the easier.⁶⁴ This was a pyrrhic victory,⁶⁵ however, as the taking of the “little yellow motor named Eastern Victory”⁶⁵ provided Shaw with obvious symbolic ammunition in the larger struggle for suffrage. Even if Shaw purposefully left the car for him to take, this analysis reveals her to have been less committed to tax resistance than her story initially suggests.

2. *Alternatives*

As the above stories show, tax resisters developed tactics (such as buying back property or avoiding taxes on legal technicalities) to lower the costs of tax resistance. However, the potential costs were still high, and avoiding them could be difficult, expensive, or uncertain. The availability of easier alternatives gave women a way to vent their “taxation without representation” frustrations without having to engage in tax resistance. These alternatives were all types of “resistant compliance,” to borrow a phrase from Jones.⁶⁶

One form of resistant compliance that was not necessarily easier than tax resistance was “working out” highway and road taxes through physical labor. There are occasional accounts of women fulfilling these tax obligations by digging tree stumps⁶⁷ or by “spreading sand and gravel.”⁶⁸ These women were making two orthogonal statements.⁶⁹ First, they proved the equality of women who, even outside of their domestic sphere, were just as able as men.⁷⁰ On the

63. Railroad cases provided some support for the tax assessor’s conclusion. *See, e.g., Pullman’s Palace Car Co. v. Pennsylvania*, 141 U.S. 18, 26 (1891) (finding that Pennsylvania could tax “specific [Pullman] cars which at a given moment were within its borders”).

64. Again there is an amusing comparison to the Smiths’ cows, which were much more difficult to seize. *See Glastonbury Affairs*, BOSTON DAILY ADVERTISER, Jan. 13, 1874, reprinted in SMITH, *supra* note 19, at 15, 15 (“[The cows] were quite ‘contrary’ in their behavior toward strangers. . . . The tax-collector had a troublesome time driving them to a neighbor’s and impounding them in his yard.”).

65. *Hitches Her Auto to Star of Fame*, *supra* note 30 (quoting Anna Howard Shaw).

66. Jones, *supra* note 4, at 268.

67. Sojourner Truth, Address (May 10, 1867) (“Well, there was women there had a house as well as I. They taxed them to build a road, and they went on the road and worked. It took ’em a good while to get a stump up.”), in PROCEEDINGS OF THE FIRST ANNIVERSARY OF THE AMERICAN EQUAL RIGHTS ASSOCIATION, HELD AT THE CHURCH OF THE PURITANS, NEW YORK, MAY 9 AND 10, 1867, at 66, 67 (H.M. Parkhurst ed., New York, Robert J. Johnston 1867).

68. 1 HISTORY OF WOMAN SUFFRAGE, *supra* note 13, at 247 (citing THE UNA (1853)); *see also* Jones, *supra* note 4, at 268, 275 n.33 (reporting that Mary Harrington, Lydia Sayer Hasbrouk, and a woman from Maine all worked off their taxes).

69. The orthogonality of these messages echoes the still-live debate between equality feminism and difference feminism.

70. Truth, *supra* note 67, at 67 (“Now, that shows that women can work. If they can dig up stumps they can vote. (Laughter.) It is easier to vote than dig stumps. (Laughter.)”).

other hand, working on the roads was, to some, simply not an acceptable task for women. The suffragists wanted to show these people that women needed the protection of the vote.⁷¹ “If you don’t want to see your wives and daughters working the roads like this,” the female workers seemed to say, “then let them vote.” As powerful as these messages were, however, working the highways was a perfectly legitimate way for women to pay their road taxes—hence its categorization as a form of resistant compliance.⁷²

A much more frequent alternative to tax resistance was paying taxes with an attached protest.⁷³ Dr. Harriot K. Hunt’s long-term application of this strategy was the most celebrated example. Beginning in 1852,⁷⁴ and continuing until her death in 1875, she filed a protest along with her yearly tax payment.⁷⁵ She was proud of her protests, but she also appreciated that paying her taxes helped put her on an equal plane with men. Because she purchased her taxable property with her own earned income, paying taxes meant that the state recognized her as a successful economic entity. She therefore proclaimed, “I am glad to pay my taxes, am glad that my profession enables me to pay them”⁷⁶ Other women, too, had principled reasons for protesting rather than resisting. Lydia Maria Child wanted her taxes to go towards the greater

Indignation about this message is the most likely reason that Mary Harrington met with such “severe prosecution” from her neighbors when she worked the roads. *See* Jones, *supra* note 4, at 268.

71. Jones makes the same point. Jones, *supra* note 4, at 283 (“Women tax protesters who worked off their road taxes, were making the point that government’s exactions could force women out of their homes and out of traditional types of work for Anglo-American women.”).

72. *See* 1 HISTORY OF WOMAN SUFFRAGE, *supra* note 13, at 247 (“[Two women] presented themselves to the surveyor of the highway with hoes in their hands, and demanded to be set to work. The good surveyor was sorely puzzled; such a thing as women working out their taxes, had never been heard of, and yet the law made no provision against it. He consulted his lawyer, who advised him that he had no power to refuse.” (citing THE UNA (1853))).

73. This strategy was officially recommended by the National American Woman Suffrage Association. PROCEEDINGS OF THE TWENTY-FIFTH ANNUAL CONVENTION OF THE NATIONAL AMERICAN WOMAN SUFFRAGE ASSOCIATION, HELD IN WASHINGTON, D.C., JANUARY 16, 17, 18, 19, 1893, at 86 (Harriet Taylor Upton ed., Wash., D.C., Stormont & Jackson 1893) (“Resolved, That we urge all women to enter protest, at the time of paying taxes, at being compelled to submit to taxation without representation.”). “No taxation without representation” demonstrations were also popular.

74. Harriot K. Hunt, Address (Sept. 7, 1853), in PROCEEDINGS OF THE WOMAN’S RIGHTS CONVENTION, HELD AT THE BROADWAY TABERNACLE IN THE CITY OF NEW YORK, ON TUESDAY AND WEDNESDAY, SEPT. 6TH AND 7TH, 1853, at 60, 61 (New York, Fowler & Wells 1853).

75. PHEBE A. HANAFORD, DAUGHTERS OF AMERICA 536-37 (Augusta, Me., True & Co. 1883).

76. Hunt, *supra* note 74, at 61. Observers did not always see it this way. *See, e.g.,* CAROLINE H. DALL, *The United-States Law, and Some Thoughts on Human Rights* (“[Hunt] has not quite had the heart, as I wish some woman had, to let them sell her household gods [sic] over her head, for non-payment of taxes”), in WOMAN’S RIGHTS UNDER THE LAW 116, 149 (Boston, Walker, Wise, & Co. 1861).

good, and so she continued to pay them under protest as “an outright gift from my own good will.”⁷⁷ For others, however, including a written protest with their payment was a second-best, less risky alternative to tax resistance.⁷⁸

Delaware’s Mary A. Stewart employed an interesting variation on this type of protest. With twenty years of “pa[y]ing] tax under protest” already under her belt, in 1880 she recounted a recent conversation with the tax collector.⁷⁹ She allegedly told him, “[I]f I ever pay another tax I intend to have the protest written and make the tax-gatherer sign it before I pay the tax, and if he will not sign that protest then I shall not pay, and there will be a fight at once.”⁸⁰ Presumably, the signature would merely signify receipt of the protest, so we can imagine that most tax collectors would have readily complied with her demand. But protest with the threat of resistance was, in theory, at least a marginally stronger strategy than protest alone.

The “Tax Paying Woman’s Pledge,” which was circulated in Wisconsin in the early 1900s, also expressed a conditional commitment to tax resistance:

We, the tax paying women of Wisconsin, hereby agree to do what we can by protest and argument to emphasize the fact that taxation without representation is tyranny as much for American women today as it was for American colonists in 1778. And we also pledge ourselves that when 5,000 or more women in Wisconsin shall have similarly enrolled we will simultaneously take action by whatever method may seem best in accordance with official advice from the Wisconsin Suffrage Association to the end that public attention may be thoroughly and effectively called to the injustice and injury done to women by taxing them without giving them any voice as to how their money should be employed.⁸¹

The authors of this pledge imagined that the “simultaneous[.] . . . action” would be a coordinated tax resistance effort.⁸² These Wisconsin suffragists may have

77. Jones, *supra* note 4, at 266 n.2 (quoting L. Maria Child, *Mrs. L. Maria Child on Taxation*, 6 WOMAN’S J. 276 (1875)).

78. For example, Jones quotes E.W.H., a working mother who felt “compelled” to pay her taxes because “it will not do to run any risk of losing a home.” *Id.* at 266 n.2 (quoting E.W.H., *Fifty Years Taxation Under Protest*, 6 WOMAN’S J. 113 (1875)). Some women were unable to engage in tax resistance because they did not pay taxes. *See, e.g.*, 4 THE HISTORY OF WOMAN SUFFRAGE 241 (Susan B. Anthony & Ida Husted Harper eds., 1902) (quoting a Tennessee woman who would “see the tax collector dead and very cold before I will pay Mr. A.’s poll tax out of my sister’s property”; the speaker, however, had no authority to refuse to pay a tax her *sister* owed); Letter from Susan B. Anthony to E.B. Foote (July 2, 1873) (“[M]y one regret now is that I am not possessed of some real estate here in Rochester so that my name would be on the tax list, and I would *refuse to pay the taxes thereon*, and then I could carry that branch of the question into the Courts.”), in 2 HISTORY OF WOMAN SUFFRAGE, *supra* note 13, at 941, 941.

79. Mary A. Stewart, Statement Before the Committee on the Judiciary, U.S. Senate (Jan. 23, 1880), in 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 53, at 158, 159.

80. *Id.*

81. Theodora W. Youmans, *How Wisconsin Women Won the Ballot*, 5 WIS. MAG. HIST. 3, 18 (1921).

82. *See Rebellion in Wisconsin*, N.Y. TIMES, May 22, 1903, at 8 (“Later, when 10,000

been taking a cue from organized labor, realizing the value of collective action. It does not appear that the women ever put this tax resistance plan into action, however; perhaps they never received enough names.

A final, more aggressive alternative to tax resistance was paying taxes, then suing to recover them.⁸³ This was Ellen Clark Sargent's approach in 1900. Although she lost the case before the Superior Court of San Francisco and did not appeal, the affair at least provided her with a forum for her suffrage arguments.⁸⁴ With such a range of alternatives to tax resistance, it is not surprising that only a small number of women risked the real thing.

3. *Discouragement*

Another factor affecting the popularity of tax resistance was the fact that suffragists occasionally discouraged it.⁸⁵ Although tax resisters were usually met with fame and support from the suffrage community, at times this was not the case.

Sometimes the problem was the identity of the tax resister. Stephen Foster was criticized for his refusal to pay taxes, and his wife's efforts were often described with nary a mention of his own.⁸⁶ Part of the issue with Stephen seemed to be his past as an abolitionist; he came across, to some, as an

[sic] names have been secured to a pledge, the women will refuse to pay taxes . . .").

83. One woman stopped short of a lawsuit, instead simply demanding that the Treasury pay her back. See MIMI ABRAMOVITZ & SANDRA MORGEN, TAXES ARE A WOMAN'S ISSUE: REFRAMING THE DEBATE 42 (2006) ("Having paid this unlawful Tax under written protest for forty years, I am entitled to receive from the Treasury of 'Uncle Sam' the full amount of both Principal and Interest." (quoting Susan Peck Fowler, Letter to the Editor, VINELAND EVENING NEWS, Dec. 16, 1907)).

84. The case was argued by her son, George C. Sargent. He asked for his mother's right to vote or a return of her taxes in the alternative, and he "quoted the most eminent authorities to prove that taxation and representation are inseparable." 4 THE HISTORY OF WOMAN SUFFRAGE, *supra* note 78, at 504, 505. Compare this to the Smiths' lawsuit, discussed *supra* notes 48-51 and accompanying text.

85. Needless to say, antis also tried to discourage tax resistance. See, e.g., Jones, *supra* note 4, at 269 n.9 (explaining that Mary Harrington was dissuaded from further tax resistance after harsh comments in the local paper); *Rebellion in Wisconsin*, *supra* note 82 ("[The tax resistance plan] has been approved by prominent women lawyers of Wisconsin interested in the women's suffrage movement. This is about the worst thing that could be said about the women lawyers of Wisconsin."). Perhaps the most effective form of external discouragement, however, was when officials ignored tax resisters or excused them from paying taxes. In some ways, this made tax resistance easier, but it also stripped it of meaning. Of what use is resistance if nothing is pushing back? See, e.g., BLAIR ET AL., *supra* note 27, at 65 ("[T]he assessor has left [Sarah Wall's] name off the tax-list, and passed her by rather than have a lawsuit with her." (quoting Susan B. Anthony)); SALLY G. McMILLEN, SENECA FALLS AND THE ORIGINS OF THE WOMEN'S RIGHTS MOVEMENT 186 (2008) ("The city of Worcester delayed taking action [against Abbey Kelley Foster and Stephen Foster], for seizing this aging couple's possessions could turn them into martyrs for a cause.").

86. Jones, *supra* note 4, at 278.

insincere gadfly.⁸⁷ Others argued that as a man who *was* represented, his tax resistance was illogical.⁸⁸ Stephen must have been cognizant of this point, but in order for his wife to meaningfully resist *her* taxes on their jointly owned property and real estate, he also had to resist.⁸⁹

The perceived militancy of tax resistance was also a problem. Many American suffragists were self-consciously trying to conduct a less militant campaign than their British counterparts, who boasted a larger, more organized contingent of tax resisters. Abby Kelley Foster herself admitted that she thought that “her resistance to taxation without representation in Worcester had put the cause back ten years, in the same way that the presentation in reality of any accepted abstract truth always puts back its final victory.”⁹⁰

There was some question as to exactly how militant tax resistance was. The following passage from a *New York Times* article illustrates the slippery slope of militancy on which tax resisters might find themselves:

Dr. Anna Howard Shaw . . . denied last night that “militancy” was involved in her appeal to suffragists to refuse to pay taxes until they obtain the right to vote. Dr. Shaw asserted that she advocated only a passive resistance to the Government’s agents.

“ . . . I have urged [women] to adopt a course of passive resistance like the Quakers instead of aggressive resistance. I say to the Government, ‘you may pick my pocket because you are stronger than I, but I’m not going to turn my pockets wrongside out for you. You will have to turn them out yourself.’ . . .”

It was suggested to Dr. Shaw that she might have to pay a fine of from \$20 to \$1,000 if she refused to make returns to her tax assessor or failed to pay her assessments.

“Well, I will not pay the fine,” said Dr. Shaw.

“But suppose you should be held in contempt, what then?”

“I should go to jail, of course,” replied Dr. Shaw.

“And if you were put in prison for contempt for refusing to pay your tax assessments, would you start a hunger strike?” Dr. Shaw was asked.

“Most assuredly, no,” she said.⁹¹

The reporter was right to ask where—and how—suffragists would draw the line. After all, hunger strikes were also, in some technical sense, a form of “passive resistance.”

In the early 1870s, another possible problem with the tax resistance strategy was its potential incompatibility with the New Departure strategy. This approach urged women to vote on the theory that the United States Constitution

87. *Id.* at 278, 280.

88. *See id.* at 278 n.60 (citing a WOMAN’S JOURNAL article entitled “Is Not Stephen Foster a Voter?”).

89. *See* STERLING, *supra* note 26, at 367. Most other tax resisters, including the Smiths and Shaw, were unmarried. Lucy Stone married Henry Blackwell in 1855, but she retained her own property and kept her maiden name.

90. Jones, *supra* note 4, at 279 (quoting *Eighth Anniversary—New England Woman Suffrage Association*, 7 WOMAN’S J. 181 (1876)).

91. *Women’s Tax Fight Will Be Passive*, *supra* note 13.

already granted them this right. However, some states—including Massachusetts, Delaware, Pennsylvania, and Georgia—still required voters to have paid taxes in order to qualify to vote.⁹² Tax resisters in these states therefore would have been legitimately turned away at the polls.

Suffrage leaders apparently did not notice this inconsistency, urging women nationwide to simultaneously “vote at every election” and “refuse to pay another dollar of tax.”⁹³ Perhaps they were not bothered because the two strategies were at least philosophically consistent. Because at this time women were refusing to pay state and local taxes, they were not refusing to support the *federal* government, and it was the federal constitution that they thought guaranteed their voting rights. And although it was often said that “taxation and representation go hand-in-hand,” what was really meant was only “no taxation without representation,” not its converse. Nevertheless, tax resistance was not an ideal strategy to pair with the New Departure.

* * *

Stanton, Stone, and the Wisconsin women hoped for a large-scale tax resistance effort that would strain the system enough to force some real change. But women who did not pay taxes could not participate, and neither could some women who were dedicated to the New Departure strategy. Many women found it easier to simply protest or engage in other alternatives to tax resistance, and some tax resisters were only partially committed to the strategy. Furthermore, tax resistance—especially on a large scale—may have seemed too militant to many American suffragists. Tax resistance was therefore more of a curiosity, providing some propaganda value through famous figures like the Smiths, but not achieving success as a widespread movement.

Having explained some of the limitations of tax resistance, I turn in the next Part to a different use of the “no taxation without representation” catchphrase—as a starting point for argument and debate.

II. DEBATE

While tax resisters and protesters usually declared simply “taxation without representation is tyranny” or “no taxation without representation,”

92. M.D. NAAR, *THE LAW OF SUFFRAGE AND ELECTIONS* 15, 37, 40, 50-51 (Trenton, Naar, Day & Naar 1880); *see also id.* at 189 (“[T]he payment of a tax can be made a prerequisite to the right to vote . . . in those states whose constitutions contain provisions of that character.”).

93. 2 *HISTORY OF WOMAN SUFFRAGE*, *supra* note 13, at 538 n.‡ (“*Resolved*, That the best means of agitating at the present hour is for all women to insist on their right of representation by actually presenting their votes at every election, and for all property-holding women to refuse to pay another dollar of tax until their right of representation is recognized.”).

other women directed their energies towards perfecting the logic of the argument. As writer John Neal put it in 1852: “[H]ow is a mother to lay the foundations of political knowledge . . . unless the great principle for which our fathers bled, with all its consequences, that taxation and representation must go together, be *understood* by her, as well as *acknowledged*?”⁹⁴

While protesters and resisters were fighting mainly with their tax collectors, these women debated amongst themselves and against antis. The structure of the suffragists’ taxation argument, in its most general form, was:

Premise 1. Taxation without representation is tyranny.

Premise 2. Women are taxed.

Premise 3. Women are not represented.

Conclusion. Therefore, the treatment of women is tyrannical.

Corollary. Assuming tyranny should be avoided, women should be allowed to vote.

In this Part, I step through each proposition in turn.

A. *Premise 1: Taxation Without Representation Is Tyranny*

In order to try to prove the truth of Premise 1, suffragists used a few different approaches. The most direct approach was to argue that representation flowed from taxation as a natural right. In other words, they argued that Premise 1 was true because of fairness or justice. For example, Alice Stone Blackwell⁹⁵ wrote that “it is right and fair . . . that those who must pay taxes should have a vote as to the size of the tax and the way it shall be spent.”⁹⁶ They highlighted the injustice of the situation by giving examples of expenses—such as legislators’ salaries and, early in the movement, funding for public colleges—that were paid with women’s tax money but that benefited

94. Letter from John Neal (July 28, 1852), in *THE PROCEEDINGS OF THE WOMAN’S RIGHTS CONVENTION, HELD AT SYRACUSE, SEPTEMBER 8TH, 9TH & 10TH, 1852*, *supra* note 11, at 24, 24.

95. Daughter of Lucy Stone and Henry Blackwell.

96. ALICE STONE BLACKWELL, *WHY WOMEN SHOULD VOTE*, reprinted in *WOMAN SUFFRAGE: ARGUMENTS AND RESULTS* (photo. reprint 1971) (1910); see also, e.g., *EMINENT OPINIONS ON WOMAN SUFFRAGE* 36 (“Every right goes with a duty. Women pay taxes . . . , and they ought to have a vote.” (quoting Emil G. Hirsch)), reprinted in *WOMAN SUFFRAGE: ARGUMENTS AND RESULTS*, *supra*; 1 *HISTORY OF WOMAN SUFFRAGE*, *supra* note 13, at 825 (“[N]atural and political justice . . . determine that rights and burdens—taxation and representation—should be co-extensive”); *OFFICIAL PROGRAM: WOMAN SUFFRAGE PROCESSION* (Harriet Connor Brown ed., 1913) (“Because it is just that those who must pay taxes should have a vote as to the size of the tax and the way it should be spent.” (emphasis omitted)), reprinted in 1 *AMERICAN FEMINISM: KEY SOURCE DOCUMENTS 1848-1920*, at 343, 347 (Janet Beer et al. eds., 2002); C.C. Burleigh, Address (“[W]here there is no exemption, but a full apportionment of the burden, and, at the same time, no one representation, *no representation*, the absurdity of injustice has reached its climax.”), in *PROCEEDINGS OF THE WOMAN’S RIGHTS CONVENTION HELD AT THE BROADWAY TABERNACLE IN THE CITY OF NEW YORK, ON TUESDAY AND WEDNESDAY, SEPT. 6TH AND 7TH, 1853*, *supra* note 74, at 64, 66.

only men.⁹⁷

Antis pushed back on the claim that there was a natural link between taxation and representation. They argued that the natural link was instead between taxation and protection (and other benefits): “There is nothing unjust in requiring all citizens who can afford it to contribute to the support of the government, whether they vote or not. They get in exchange for their taxes the government’s protection to life, liberty and property and all the other benefits of a well-ordered society.”⁹⁸

Suffragists responded by turning to history.⁹⁹ By appealing to the authority of revolutionary heroes, suffragists argued that even if representation for taxpayers was not a *natural* right, it was an *American* right.¹⁰⁰ They pointed

97. See, e.g., *Hearing Before the Select Comm. on Woman Suffrage, United States Senate, on the J. Res. (S.R. 53) Proposing an Amendment to the Constitution of the United States Extending the Right of Suffrage to Women, 57th Cong. 10 (1902)* [hereinafter *Hearing*] (statement of Mariana W. Chapman) (“We ask for [the jewel of justice] as taxpayers, because we help to maintain the expense of this great Capitol and other buildings, and to pay the salaries of those who serve in them.”); LUCRETIA MOTT, *DISCOURSE ON WOMAN* (1850) (“Women’s property has been taxed, equally with that of men’s, to sustain colleges endowed by the states; but they have not been permitted to enter those high seminaries of learning.”), reprinted in 1 *AMERICAN FEMINISM: KEY SOURCE DOCUMENTS 1848-1920*, *supra* note 96, at 17, 35; Lillie Devereux Blake, Statement at the House of Representatives (Jan. 24, 1880) (“[G]entlemen, the very furniture here, the carpet on this floor, was paid for with our money.”), in 3 *HISTORY OF WOMAN SUFFRAGE*, *supra* note 53, at 163, 166. Alice Duer Miller reflected on this type of hypocrisy in a clever poem:

Father, what is a Legislature?
 A representative body elected by the people of the state.
 Are women people?
 No, my son, criminals, lunatics and women are not people.
 Do legislators legislate for nothing?
 Oh, no; they are paid a salary.
 By whom?
 By the people.
 Are women people?
 Of course, my son, just as much as men are.

ALICE DUER MILLER, *ARE WOMEN PEOPLE? A BOOK OF RHYMES FOR SUFFRAGE TIMES* 3 (1915).

98. Frederick Dwight, *Taxation and Suffrage*, reprinted in *SELECTED ARTICLES ON WOMAN SUFFRAGE* 119, 119 (Edith M. Phelps ed., 2d rev. ed. 1912); see also HELEN KENDRICK JOHNSON, *WOMAN AND THE REPUBLIC: A SURVEY OF THE WOMAN SUFFRAGE MOVEMENT IN THE UNITED STATES AND A DISCUSSION OF THE CLAIMS AND ARGUMENTS OF ITS FOREMOST ADVOCATES* 77-78 (new & enlarged ed. 1913) (“In return for the taxes paid, women get just what men get,—namely, roads, gas, water, schools, etc.”); KERBER, *supra* note 5, at 114-16 (identifying three taxation theorists of the era—Thomas M. Cooley, John Dillon, and Edwin R.A. Seligman—who promoted the protection-support “pair”). Note that this left open the question of what is paired with representation, if not taxation. Some antis argued that a military “service tax” filled this role. See, e.g., JOHNSON, *supra*, at 75 (“[T]he state lays, upon men alone, a service tax, and with that tax goes representation, or the vote.”).

99. See Jones, *supra* note 4, at 270 (“The dollars argument used history as a metaphor.”).

100. See, e.g., THOMAS W. PALMER, *UNIVERSAL SUFFRAGE: SPEECH IN THE SENATE OF*

out that “[t]he King and Parliament also proposed to tax the colonists for their own protection; but the colonists wholly failed to see . . . that the tax was any less tyrannical in consequence. They preferred to determine for themselves exactly how, when, and where such protection should be exerted.”¹⁰¹ Suffragists quoted Benjamin Franklin,¹⁰² Sam Adams,¹⁰³ James Otis,¹⁰⁴ and the Declaration of Independence.¹⁰⁵ They compared tax resisters to American revolutionaries¹⁰⁶ and proclaimed that they “propose[d] no new theories.”¹⁰⁷

THE UNITED STATES, FRIDAY, FEBRUARY 6, 1885 (Wash., D.C., G.P.O. 1885) (“If the right of . . . the taxed to a voice . . . is not a natural right, it is nevertheless a right to the declaration and establishment of which by the fathers we owe all that we possess of liberty. They declared taxation without representation to be tyranny”); Joseph Warren Keifer, Speech to the U.S. House of Representatives (Dec. 19, 1883) (“Taxation without representation led to the separation of the colonies from the mother country. . . . Revolution and war made representation and taxation correlative.”), in 4 THE HISTORY OF WOMAN SUFFRAGE, *supra* note 78, at 32, 34; *see also* Mariana W. Chapman, *Women as Capitalists and Taxpayers* (“The indissoluble connection between taxation and representation was the very mainspring of English conceptions of freedom.” (quoting Edward Lecky)), in REPORT OF HEARING BEFORE THE COMMITTEE ON WOMAN SUFFRAGE 16, 17 (Wash., D.C., G.P.O. 1898).

101. WILLIAM I. BOWDITCH, TAXATION OF WOMEN IN MASSACHUSETTS 60 (Cambridge, John Wilson & Son rev. ed. 1875); *see also id.* at 16-17 (“Neither did it make any difference [to our forefathers] for what purpose the tax was levied. The colonists denied the right to tax them even for their own military defence . . .”).

102. *See, e.g.*, Ida Husted Harper, SUFFRAGE: A RIGHT (1906), *reprinted in* 1 AMERICAN FEMINISM: KEY SOURCE DOCUMENTS 1848-1920, *supra* note 96, at 193, 197.

103. *See, e.g., id.* at 198.

104. *See, e.g.*, Victoria C. Woodhull, Lecture on Constitutional Equality (Feb. 16, 1871), in A HISTORY OF THE NATIONAL WOMAN’S RIGHTS MOVEMENT FOR TWENTY YEARS, at L1, L8 (Paulina W. Davis ed., New York, Journeymen Printers’ Coop. 1871).

105. *See, e.g.*, Adella Hunt Logan, *Woman Suffrage*, COLORED AM. MAG., Sept. 1905, *reprinted in* 2 PUBLIC WOMEN, PUBLIC WORDS: A DOCUMENTARY HISTORY OF AMERICAN FEMINISM 163, 163 (Dawn Keetley & John Pettegrew eds., 2002); *see also* CARRIE CHAPMAN CATT, AN ADDRESS TO THE LEGISLATURES OF THE UNITED STATES (1919) (“Woman suffrage became an assured fact when the Declaration of Independence was written. . . . The Hon. Champ Clark announced that he had been a woman suffragist ever since he ‘got the hang of the Declaration of Independence.’”), *reprinted in* 1 AMERICAN FEMINISM: KEY SOURCE DOCUMENTS 1848-1920, *supra* note 96, at 431, 435.

106. For such comparisons, the Smith sisters were again the most popular. Phoebe Couzins, one of the first female lawyers in the United States, gives a particularly artistic comparison:

A most suggestive picture, one which aroused the intensest patriotism of the colonies, was that of a woman pinioned by her arms to the ground by a British peer, with a British red-coat holding her with one hand and with the other forcibly thrusting down her throat the contents of a tea-pot, which she heroically spewed back in his face; while the figure of Justice, in the distance, wept over this prostrate Liberty. Now, gentlemen, we might well adopt a similar representation. Here is Miss Smith of Glastonbury, Conn., whose cows have been sold every year by the government, contending for the same principle as our forefathers—that of resistance to taxation without representation. We might have a picture of a cow, with an American tax-collector at the horns, a foreign-born assessor at the heels, forcibly selling the birthright of an American citizen, while Julia and Abby Smith, in the background, with veiled faces, weep over the degeneracy of Republican leadership.

Phoebe W. Couzins, Statement Before the House of Representatives (Jan. 24, 1880), in 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 53, at 170, 172-73; *see also* KERBER, *supra* note

They pointed out that “the same declarations of tyranny were raised by Congress in the lengthy discussions upon enfranchising the negro.”¹⁰⁸ They identified woman suffrage victories in other countries, especially in Britain, as embarrassments for America.¹⁰⁹

Antis argued that even if “taxation without representation is tyranny” were true in *some* or *most* cases, that it was not true in *all* cases. For examples, they turned to minors and aliens.¹¹⁰ Suffragists retorted that there were good reasons for withholding the vote from these groups—minors were “intellectually . . . unfit to govern,”¹¹¹ while aliens lacked sufficient “interest in our institutions.”¹¹² And “[t]hese objections certainly cannot apply to women, natives of the city, all whose property and interest are here, and who have accumulated, by their own sagacity and industry, the very property on which they are taxed.”¹¹³

Suffragist Carrie Burnham mistakenly manufactured a fascinating variation on the “taxation without representation is not always tyranny” argument. In New Departure fashion, she paid her taxes in September of 1871, was denied

5, at 108 (“[T]he tea of 1873 was the milk of the Smith Alderneys.”); *Sam Adams and Miss Abby H. Smith*, HARPER’S WKLY., Feb. 7, 1874 (“Taxation without representation is tyranny, exclaims Miss Smith. Sam Adams says Amen.”), reprinted in SMITH, *supra* note 19, at 28, 29.

107. Address to Congress (May 10, 1866), in 2 HISTORY OF WOMAN SUFFRAGE, *supra* note 13, at 168, 169; see also *Hearing*, *supra* note 97, at 5 (statement of Harriet May Mills) (“This great principle, of course, is not a new one to us. But there are people in these days who say that all those great declarations of the fathers are outgrown. . . . [W]e can not certainly believe that the principles for which our fathers died will ever be outgrown.”).

108. Woodhull, *supra* note 104, at L8.

109. See, e.g., *Woman Suffrage: Hearing Before the Comm. on the Judiciary of the H.R.*, 57th Cong. 17-18, 20 (1902) (statement of Florence Fenwick Miller) (“I hope you, as members of a republic, will be ashamed to hear that the monarchy of England . . . [acknowledges that the] person who pays the tax, whether a man or woman, is clearly entitled to have a voice in the expenditure of the taxation.”); CATT, *supra* note 105, at 440 (“Surely men of the land of George Washington will not require a longer time than those of the land of George the Third to discover that taxation without representation is tyranny no matter whether it be men or women who are taxed!”).

110. They occasionally mentioned residents of Washington, D.C., as well.

111. E.B. TAYLOR ET AL., MINORITY REPORT (1886), reprinted in 4 THE HISTORY OF WOMAN SUFFRAGE, *supra* note 78, at 82, 83.

112. Letter from Harriet K. Hunt to Frederick U. Tracy, Treasurer, City of Boston (1852), in PROCEEDINGS OF THE WOMAN’S RIGHTS CONVENTION, HELD AT THE BROADWAY TABERNACLE IN THE CITY OF NEW YORK, ON TUESDAY AND WEDNESDAY, SEPT. 6TH AND 7TH, 1853, *supra* note 74, at 61, 61.

113. *Id.*; see also George William Curtis, Statement at the Constitutional Convention in Albany, N.Y. (1867) (“The capacity for making laws is necessarily assumed when women are permitted to hold and manage property and to submit to taxation.”), in 2 HISTORY OF WOMAN SUFFRAGE, *supra* note 13, at 282, 301; Charles Hall Davis, *Shall Virginia Ratify the Federal Suffrage Amendment?*, 5 VA. L. REG., N.S. 354, 357 (1919) (“It is absurd to tell a woman who works for her living and pays taxes to the government that her only sphere of activity is the home, and that she might neglect that if allowed to vote.”).

her place at the polls in October, and sued the election officers.¹¹⁴ The defendants demurred, asserting, inter alia, that Burnham's was a case of *damnum absque injuria*.¹¹⁵ Although they did not explain their usage of the doctrine, they probably meant it as shorthand for the election officers' immunity from liability as quasi-judicial officials. As an 1879 treatise explains, "[i]f the citizen has had a fair and honest exercise of judgment by the [election] officer, it is said that this is all the law gives him; and although the judgment may be erroneous, and the party injured, it is *damnum absque injuria*, and no action lies."¹¹⁶

But Burnham appears not to have been aware of this usage of *damnum absque injuria*. She replied to the demurrer with indignation:

I pay taxes, direct and indirect, State and National, and is it no injury to deny me, a citizen, this fundamental right "to choose whom I shall pay?" If "taxation without representation" was "tyranny" for our Fathers—"a virtual disfranchisement of every civil right"—a "robbery"—an "injustice"—and "iniquitous" under the old English law—"the substratum of all our jurisprudence"—and "in violation of the rights of the Negro as a citizen of the United States"—by what logic is it less "tyranny," less "iniquitous," less an "injury" and "a disfranchisement" of my "civil rights" to take from me my hard earnings for the support of this government, and deny me personal representation therein?¹¹⁷

Burnham clearly took the concept of "loss without injury" at face value. She thought that the defendants were asserting that women's taxation without representation was tyranny of a trivial nature.¹¹⁸ Her reaction to this imagined argument is captivating, despite her mistake.

114. CARRIE S. BURNHAM, ARGUMENT BEFORE CHIEF JUSTICE READ, AND ASSOCIATE JUSTICES AGNEW, SHARSWOOD AND MERCUR, OF THE SUPREME COURT OF PENNSYLVANIA, IN BANC 5-6 (Philadelphia, Citizen's Suffrage Assoc. 1873).

115. Usually translated as "loss without injury," this legal doctrine could apply for many different reasons, and to anything from "opening [a] window" in a house that will "destroy the privacy of his neighbor," EDWARD P. WEEKS, THE DOCTRINE OF DAMNUM ABSQUE INJURIA CONSIDERED IN ITS RELATION TO THE LAW OF TORTS § 47, at 60 (San Francisco, Sumner Whitney & Co. 1879), to speaking slanderous words when no one is around to hear them, *id.* § 52, at 65.

116. *Id.* § 109, at 210-11. Weeks notes that "the authorities are not agreed" on this point. *Id.* at 210. But in Pennsylvania, at least, election officers enjoyed the immunity. See WM. HARDCASTLE BROWNE, 1 THE LAW OF NEGLIGENCE IN PENNSYLVANIA 542 (Philadelphia, George T. Bisel 1896) ("An election officer who honestly and conscientiously rejects a legal vote is not responsible in damages for the consequences of his mistake. It is absolutely necessary that malice should be proved in order to sustain such a charge against an election officer." (citing *Moran v. Rennard*, 3 Brewster's Rep. 601 (C.P. Chester County 1870))). In Burnham's case, the court's opinion did not rely or comment on the *damnum absque injuria* argument in holding for the defendants.

117. BURNHAM, *supra* note 114, at 74-75.

118. Indeed, Burnham was correct insofar as the doctrine could *potentially* apply to trifling injuries. WEEKS, *supra* note 115, § 11, at 15 ("Cases of trifling injury, where no action can be maintained, are properly cases of *damnum absque injuria*."). But, again, it is unlikely that the defendants in Burnham's case were using the doctrine in this sense.

B. Premise 2: Women Are Taxed

No one denied the simple premise that at least some women were taxed. But suffragists spent a lot of time and ink trying to show that a *large* percentage of women were *heavily* taxed.¹¹⁹ This had two purposes: first, to extend the “no taxation without representation” argument to as many women as possible, and second, to emphasize how egregious the “tyranny” was. This second point was occasionally bolstered by tongue-in-cheek speculation that women were so heavily taxed because they were more honest about the value of their assets.¹²⁰

Recall that from 1848 to 1913, direct taxes were, for the most part, limited to state and local property taxes.¹²¹ Due to changes in the status of women generally, suffragists were able to make their case that more and more women were taxed in this manner, some heavily. Harriet May Mills explained that women in 1902 were taxed more heavily than women “in the old days” because the former could own property, even if married, and because more occupations were open to them.¹²² Suffragists were therefore able to excuse the founders’ inattention to women’s suffrage,¹²³ although they did also enjoy pointing to one founder, Richard Henry Lee, who believed in women’s right to vote.¹²⁴

119. See, e.g., *Hearing*, *supra* note 97, at 5 (statement of Harriet May Mills) (“The other day in our convention we took a vote to determine the number of women present who paid taxes. All who paid taxes were asked to rise, and out of some 300 women all save 20 rose, showing the great proportion of women who to-day are directly assisting in the support of the Government.”); BOWDITCH, *supra* note 101, at 71 (“[W]omen paid more than one-twelfth of all the sums raised by taxation, and very nearly one-eleventh of the entire tax on property in 1870.”); *id.* at 23 (“In Newton, one woman paid as much tax as 1,424 of the men.”); 4 THE HISTORY OF WOMAN SUFFRAGE, *supra* note 78, at xxxi (“Statistics show further that one-tenth of the millionaires are women and that they are large property holders in every locality.”); Carrie C. Catt, *Will of the People*, 43 FORUM 593 (1910) (“In the one state of New York, women hold [taxable] property in total valuation considerably higher than that held by all the Colonists at the time of the Revolution.”), reprinted in SELECTED ARTICLES ON WOMAN SUFFRAGE, *supra* note 98, at 44, 44.

120. See, e.g., *Hearing*, *supra* note 97, at 5 (statement of Harriet May Mills) (“In Chicago the largest schedules of personal tax that were filed recently were filed by two women . . . I suppose that does not mean that they necessarily had the largest amount of personal property, but they confessed to all they had. [Laughter.]”); see also Charles W. Chesnutt, *Women’s Rights*, 10 CRISIS 182, 182 (1915), available at <http://asp6new.alexanderstreet.com/was2/was2.object.details.aspx?dorpid=1000992967> (“The burden of taxation, generally speaking, falls more heavily upon [women], perhaps because they are more honest in returning their personal property for taxation, or less cunning in concealing it.”).

121. Other direct taxes included road taxes, poll taxes, the Civil War income tax, and the 1894 federal income tax. For the effect of the 1913 federal income tax, see *infra* Part IV.

122. *Hearing*, *supra* note 97, at 5 (statement of Harriet May Mills).

123. See also Harper, *supra* note 102, at 202 (“The women of those early days were usually married as soon as they were old enough, and by the laws no wife could own a dollar’s worth of real or personal property, not even the clothes she wore. . . . Thus she had no claim for representation on account of taxation.”).

124. See, e.g., 1 HISTORY OF WOMAN SUFFRAGE, *supra* note 13, at 33 (“In 1778, only

But despite these changes in the status of women, many still did not fit under the umbrella of direct taxation. Suffragists therefore looked for other modes of taxation that affected a wider variety of women. They often mentioned the higher prices of goods due to tariffs.¹²⁵ Less frequently, they used the label “tax” for “marketplace pay differentials”¹²⁶ and for social and domestic duties.¹²⁷ Jones thoroughly discusses these metaphorical extensions of the “tax” concept. As she points out, some suffragists rejected these inclusive definitions of taxation for racist or classist reasons, wishing to distinguish themselves as property-holding taxpayers from the working poor.¹²⁸ At the end of the day, most suffragists conceded that only *some* women were taxed.

Meanwhile, antis argued that taxes were not assessed against individual women but rather against family units.¹²⁹ Antis also pushed back both on the extent of direct taxation¹³⁰ and on the indirect taxation argument.¹³¹

two years after the Declaration of Independence was adopted, . . . Hannah Lee Corbin, of Virginia, the sister of General Richard Henry Lee, wrote him, protesting against the taxation of women unless they were allowed to vote. He replied that ‘women were already possessed of that right’ . . .”).

125. See, e.g., BOWDITCH, *supra* note 101, at 18 (“[T]he women of Massachusetts today cannot . . . escape the taxation imposed by Congress. . . . Incredible as it may seem, and foolish as it is, even bread, butter, flour, potatoes, &c., all are taxed. It is difficult, indeed, to find what is not taxed.”); Woodhull, *supra* note 104, at L10 (“I am taxed in every conceivable way. For publishing a paper I must pay I must pay high prices for tea, coffee and sugar I am compelled to pay extravagant rates of fare wherever I travel”); see also Jones, *supra* note 4, at 300-01.

126. Jones, *supra* note 4, at 292.

127. *Id.* at 292-94.

128. *Id.* at 302-03, 306; see also KERBER, *supra* note 5, at 109 (“Claims based on taxpaying slid invisibly into expressions of class pride.”); Helen M. Gougar, Speech to the Senate Committee on Woman Suffrage (Mar. 7, 1884) (“I do ask you, in the face of this immense foreign immigration, to enfranchise the tax-paying, intelligent, moral, native-born women of America.”), in 4 THE HISTORY OF WOMAN SUFFRAGE, *supra* note 78, at 37, 37; Hunt, *supra* note 74, at 61 (“Going into the Assessor’s office, I saw a tall, thin, weak, stupid-looking Irish boy. . . . [T]his hopeful son of Erin was made a citizen of the United States, and he could have a voice in determining the destinies of this mighty nation, while thousands of intellectual women, . . . no matter . . . what amount of taxes they paid, were forced to be dumb!”); Parker Pillsbury, Address (May 1867) (“Women here in New York worth thousands and hundreds of thousands in gold . . . are humbly petitioning their coachmen, their footmen and gardeners, the discharged State-prison convicts, the idiots and lunatics, all of whom may and often do exercise the right of the ballot, to permit them also to share with them in making and executing the laws.”), in PROCEEDINGS OF THE FIRST ANNIVERSARY OF THE AMERICAN EQUAL RIGHTS ASSOCIATION, HELD AT THE CHURCH OF THE PURITANS, NEW YORK, MAY 9 AND 10, 1867, *supra* note 67, at 32, 39.

129. See, e.g., Mary K. Sedgwick, *Scientific Aspects of the Woman Suffrage Question*, 20 GUNTON’S MAG. 333 (1901) (“The whole agitation [for suffrage] is founded upon a misapprehension of the social unit, which is not the individual but the family”), reprinted in SELECTED ARTICLES ON WOMAN SUFFRAGE 243, 245 (Edith M. Phelps ed., 1910); see also *infra* Part II.C. (discussing whether women were already represented by the men in their families).

130. E.g., ANTI-WOMAN SUFFRAGE: DON’T FAIL TO READ THIS (1893), available at

C. Premise 3: *Women Are Not Represented*

Whether or not women were already represented sans suffrage was the subject of substantial debate. Antis argued that “women who are taxed are represented by their relatives, by their potent influence, and by men’s sense of justice, amounting even to chivalry.”¹³²

The claim that women were represented by their male relatives was heartily dismissed by suffragists. First, they pointed to the many women who, like the Smith sisters, had no husbands, fathers, brothers, or other relatives to represent them.¹³³ They also argued that some men would be called upon to represent more than one woman,¹³⁴ and this compounded the deeper philosophical problem that men could not represent multiple wills with one vote.¹³⁵ Antis tried to respond that, philosophy aside, enfranchising women

<http://womhist.alexanderstreet.com/colostuff/doc19.htm> (“[T]he percentage of women paying taxes is much smaller than that of men, and . . . there are 100 women who pay no taxes where there is one woman who does . . .”).

131. *E.g.*, Mrs. Gilbert E. Jones, *Impediments to Woman Suffrage*, 190 N. AM. REV. 158 (1909) (“The suffragists frequently assert that all women are tax-payers because of our system of *indirect* taxation. . . . [But] [n]o woman who is economically *dependent* on her husband or father or whoever may be supporting her may properly be said to pay [indirect] taxes. The man supporting her pays them for her or she pays them with his money. So far as this argument is concerned she should therefore be eliminated, and the question should be confined to the woman who pays direct taxes.”), *reprinted in* SELECTED ARTICLES ON WOMAN SUFFRAGE, *supra* note 129, at 272, 277-78.

132. William Crosswell Doane, *Why Women Do Not Want the Ballot*, 161 N. AM. REV. 257 (1895), *reprinted in* SELECTED ARTICLES ON WOMAN SUFFRAGE, *supra* note 129, at 263, 265 (emphasis removed).

133. *See, e.g.*, Marion McB. Schlesinger et al., *Arguments in Favor of Woman Suffrage* 4-5 (1905) (“Even if the head of every family had as many votes as there were women who wished him to represent them, there would still remain thousands of unattached, but fully taxed members of the community not represented.”), *reprinted in* 1 AMERICAN FEMINISM: KEY SOURCE DOCUMENTS 1848-1920, *supra* note 96, at 173, 176-77.

134. Another poem by Alice Duer Miller sums up this argument perfectly:

I’m in a hard position for a perfect gentleman,
I want to please the ladies, but I don’t see how I can,
My present wife’s a suffragist, and counts on my support,
But my mother is an anti, of a rather biting sort;
One grandmother is on the fence, the other much opposed,
And my sister lives in Oregon, and thinks the question’s closed;
Each one is counting on my vote to represent her view.
Now what should you think proper for a gentleman to do?

MILLER, *supra* note 97, at 20-21 (stanza two only); *see also* *Hearing*, *supra* note 97, at 5 (statement of Harriet May Mills) (“Some people say that this property is all represented by the men, and that they cast the votes for us. Gentlemen, in my State of New York there are 40,000 more women than men; and is it not a great burden to put upon the men to ask them to represent not only themselves, but 40,000 more women than the double of themselves?”).

135. *See, e.g.*, Margaret Noble Lee, *Bishop Doane and Woman Suffrage*, 15 ARENA 642 (1896) (“[P]olitical representation of one sex by another is in its nature impossible. A vote is the expression of a will; two wills make two votes, and if but one vote be cast, injustice is done either to the strength of two wills or the individual judgment of the one not expressed. . . . If the man change his vote at the persuasion of his wife, she is represented,

was not worth the extra administrative expense, especially since most of them would just vote like their husbands anyway.¹³⁶ In reply, some suffragists appealed again to colonial history for the idea that “virtual” representation was unacceptable under any circumstances,¹³⁷ while others assured antis that enfranchisement would pay for itself because women would help lower taxes overall.¹³⁸ And some suffragists argued that women would not vote like their husbands, particularly because men and women had fundamentally different interests not just as individuals, but also as groups.¹³⁹

So much for women’s representation by their relatives—what about representation by their “potent influence”? Clergyman James Monroe Buckley wrote that “[t]he property rights of women are better protected now than they

but he is not, which is as unjust as the ordinary situation to-day, in which this evil is rare.”), reprinted in *SELECTED ARTICLES ON WOMAN SUFFRAGE*, *supra* note 129, at 134, 137.

136. See, e.g., Ellen Mudge Burrill, *Some Practical Aspects of the Question* (“The effect of woman suffrage upon the tax rate must also be considered. . . . Take the expenses for the primary and state elections. The total cost to the Commonwealth in 1914, merely for the preparation, printing, and shipping of ballots, was \$50,046.17. I am informed that if women were given the ballot, a conservative estimate would add 50% to this figure.” (citation omitted)), in *ANTI-SUFFRAGE ESSAYS BY MASSACHUSETTS WOMEN* 43, 46 (1916); see also Susan E. Marshall, *In Defense of Separate Spheres: Class and Status Politics in the Antisuffrage Movement*, 65 *SOC. FORCES* 327, 335 (1986) (“[Antis] insisted that wives would merely duplicate their husbands’ preferences. . . . This notion of ‘shadow suffrage’ was invoked to argue that extending the vote to women would require increased taxation with no compensatory gain in electoral wisdom.” (citation omitted)).

137. See, e.g., ELIZABETH CADY STANTON, *ADDRESS IN FAVOR OF UNIVERSAL SUFFRAGE FOR THE ELECTION OF DELEGATES TO CONSTITUTIONAL CONVENTION: BEFORE JUDICIARY COMMITTEE OF THE LEGISLATURE OF NEW YORK, IN THE ASSEMBLY CHAMBER, JANUARY 23, 1867*, at 7 (Albany, Weed, Parsons & Co. 1867) (“When the American Colonies complained that they ought not to be taxed unless they were represented in the British Parliament, it would have been rather a singular answer to tell them that they were represented by Lord North, or even by the Earl of Chatham.” (quoting Senator Anthony of Rhode Island)); see also KERBER, *supra* note 5, at 94 (“Patriots absolutely rejected the concept of virtual representation. . . . A century after the Revolution, the Smith sisters and their colleagues found the analogy easy to draw.”).

138. See, e.g., Ella S. Stewart, *The Ballot for the Women of the Farm* (1913) (“Women have been trained to make one of their dollars go as far as a man’s five-dollar bill. After they begin choosing business agents of government, they will have greater power to secure proper expenditures. . . .”), reprinted in 1 *AMERICAN FEMINISM: KEY SOURCE DOCUMENTS 1848-1920*, *supra* note 96, at 339, 339; Elizabeth Cady Stanton, *Women in Business: A Reason in Favor of Universal Suffrage*, *GENEVA COURIER* (Geneva, N.Y.), June 13, 1894 (“I really believe the expenses would decrease one half, under the judicious management of women and the taxes, consequently, would be far less arduous.”), reprinted in 3 *MILLER NAWSA SUFFRAGE SCRAPBOOKS, 1897-1911*, at 1, 1, available at <http://memory.loc.gov/ammem/collections/suffrage/millerscrapbooks/>.

139. See, e.g., Henry B. Blackwell, *Objections to Woman Suffrage Answered*, *WOMAN SUFFRAGE LEAFLET* (Boston, Mass.), Mar. 1896 (“Men cannot represent women, because they are unlike women. Women as a class have tastes, interests and occupations which they alone can adequately represent. Men specially represent material interests; women will specially represent the interests of the home.”), reprinted in 1 *AMERICAN FEMINISM: KEY SOURCE DOCUMENTS 1848-1920*, *supra* note 96, at 155, 155. This argument would have been problematic for women trying to eradicate the idea of separate spheres.

could be if she were actively engaged in politics,” illustrating this with an anecdote in which a woman convinced leaders of both political parties to vote against the paving of a street. He commented that the woman “did not appear to perceive that if she had been a voter her influence would have been confined to members of her own party.”¹⁴⁰

Suffragists scoffed, asking whether men would like to trade places with them if women had such great political power.¹⁴¹ They argued that even strong influence was not enough: that “[r]epresentation in any sense worth the name has as its essential characteristic the responsibility of the representative to those he represents.”¹⁴² They asked whether the Revolutionaries would have been content with “‘potent influence’ in Parliament.”¹⁴³

As for men’s chivalry, suffragists simply did not trust it. They responded with skepticism to the claim that a legislator “is the representative of the inhabitants of his district, whether they be voters or not, whether they be men or women.”¹⁴⁴ One group of suffragists wrote that “[i]t is only women’s interests . . . that are supposedly so safe in legislator’s hands, for when a state legislature is in session, the interests of railroads and large corporations, for example, are looked after by agents on the spot.”¹⁴⁵ Furthermore, men kept proving themselves unwilling to respond to what some considered women’s most urgent demands: peace and temperance.¹⁴⁶

140. J.M. Buckley, *Wrongs and Perils of Woman Suffrage*, 48 *CENTURY* 613 (1894), reprinted in *SELECTED ARTICLES ON WOMAN SUFFRAGE*, *supra* note 129, at 220, 230; see also Joseph E. Brown, Speech to the U.S. Senate (Jan. 25, 1887) (“[I]t has been said that the present law is unjust to woman [because] . . . she is taxed without representation. *That is a great mistake.* It may be very doubtful whether the male or female sex in the present state of things has more influence in the administration of the affairs of the government and the enactment of the laws by which we are governed.”), in 4 *THE HISTORY OF WOMAN SUFFRAGE*, *supra* note 78, at 93, 97.

141. See 4 *THE HISTORY OF WOMAN SUFFRAGE*, *supra* note 78, at 97 n.† (“Would any man be willing to exchange his influence for that of a woman in the affairs of government?”); see also Lee, *supra* note 135, at 136 (“[O]ne is tempted to inquire whether [Bishop Doane] would be willing to vest his vote in his relatives, merge it in his potent influence, or waive it, confiding to man’s sense of justice . . .”).

142. Lee, *supra* note 135, at 136; see *id.* (“[The colonists] knew that representation without responsibility is mockery.”); see also STANTON, *supra* note 137, at 7 (“Representation implies a certain delegated power, and a certain responsibility on the part of the representative toward the party represented.” (quoting Senator Anthony of Rhode Island)).

143. Lee, *supra* note 135, at 136.

144. REPORT OF THE SELECT COMMITTEE (N.Y. 1854), reprinted in 1 *HISTORY OF WOMAN SUFFRAGE*, *supra* note 13, at 616, 617.

145. Schlesinger et al., *supra* note 133, at 176.

146. Nancy R. Allen, Statement to the Committee on the Judiciary, U.S. Senate (Jan. 23, 1880) (“Our city council is composed almost entirely of saloon-keepers, brewers and men who patronize them. There are some good men, but they are in the minority, and the voices of these women [who pay taxes] are but little regarded.”), in 3 *HISTORY OF WOMAN SUFFRAGE*, *supra* note 53, at 160, 160; Nat’l Woman Suffrage Ass’n, Declaration of Rights for Women, July 4, 1876 (“Deploring war, with all the demoralization that follows in its

Some antis tried to dispense with the whole issue by claiming that the “no taxation without representation” mantra was never meant to imply an *individual* right. To put it in their words, while “[t]he colonists declared that taxation without *representation* was tyrannical . . . [,] [t]he suffragists pretend they said that taxation without *votes* was tyrannical.”¹⁴⁷ Women taxpayers *were* represented, antis continued, because their community was represented, whether this was their geographical community¹⁴⁸ or the community of property holders or taxpayers.¹⁴⁹

Suffragists seemed unsure about how exactly to respond. Jones notes this reaction from Thomas Wentworth Higginson: “Supposing for instance that these ladies [the Smiths] owned the western quarter of the township, and that they were separated by a stream or lake from the more thickly settled portion, they could set up a very pretty parallel to the position of the Americans in 1774.”¹⁵⁰ As inspired as the analogy is, it relies on a hypothetical, and it does not generalize well. But Higginson himself had another, more effective approach: he denied the historical accuracy of the antis’ claim, concluding that it was “beyond dispute[] that the Revolutionary patriots carried their statements more into detail than is generally supposed, and affirmed their principles for individuals, not merely for the state as a whole.”¹⁵¹ Carrie Chapman Catt took a slightly more moderate approach, conceding that the Revolutionaries did not originally mean to pair taxation with individual voting rights, but adding that “[v]ery soon, however, when the new constitutions were being formulated, [‘taxation without representation is tyranny’] was interpreted to apply to

train, we have been taxed to support standing armies, with their waste of life and wealth. Believing in temperance, we have been taxed to support the vice, crime and pauperism of the liquor traffic.”), in 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 53, at 31, 32; Ernestine L. Rose, Address (Oct. 1851) (“Her property may be consumed by taxes to defray the expenses of that unholy, unrighteous custom called war, yet she has no power to give her vote against it.”), in 1 HISTORY OF WOMAN SUFFRAGE, *supra* note 13, at 237, 238.

147. Dwight, *supra* note 98, at 119; *see also* Marion A. Burton, Letter to the Editor, *Taxation of Women: Not a Valid Reason for Demanding the Ballot*, N.Y. TIMES, Jan. 1, 1914, at 14 (“Many suffragists are fond of the expression ‘no taxation without representation.’ It is a neat phrase, but if they studied their history they would find that the phrase as originally used did not mean in any sense that the payment of taxes carried with it a vote.”).

148. *See* KERBER, *supra* note 5, at 113 (“When taxation and representation were linked in the writings of the theorists of the founding generation the reference was normally to the representation of towns in state legislatures or of states in Congress, not of individuals by their representatives.”).

149. *E.g.*, Jones, *supra* note 131, at 277 (“Tax-payers are represented in every state in the Union. Legislators are responsible to tax-payers, but there is no reason or precedent for the proposition that legislators must be responsible to *every* taxpayer in order to avoid taxation without representation and it cannot be turned into an *individual* right.”).

150. Jones, *supra* note 4, at 281 (quoting T.W. Higginson, *Tea and Milk*, 5 WOMAN’S J. 41 (1874)) (alteration in original).

151. THOMAS WENTWORTH HIGGINSON, *Some Old-Fashioned Principles*, in WOMEN AND THE ALPHABET: A SERIES OF ESSAYS 254, 254 (1900).

individual men.”¹⁵²

D. Conclusion and Corollary

As we see from the above, suffragists and antis fought over every premise in the taxation argument. Suffragists maintained that the premises were all true, and therefore that the conclusion followed: the treatment of women was tyrannical. Adding the easy assumption that tyranny should be avoided, they arrived at the corollary that women should be allowed to vote.¹⁵³ Harriet Beecher Stowe summarized their position nicely: “If the principle on which we founded our government is true, that taxation must not be without representation, and if women hold property and are taxed, it follows that women should be represented in the State by their votes.”¹⁵⁴

Antis, on the other hand, either denied altogether that taxation without representation was tyranny or accepted only the weak proposition that *some* taxation without representation was tyranny. They fought strongly against the idea that women were not represented and conceded only that a limited group of women were taxed. Antis who felt confident that they had successfully disproved at least one premise were able to brush off the conclusion (and with it, the corollary): “Any one who has examined the [pro-suffrage taxation] ‘argument’ critically, and realizes what a total lack of connection there is between the dictum and the interpretation put upon it, is inclined to smile at the display of logic and to dismiss the whole matter as nonsense.”¹⁵⁵

* * *

Although most of the suffragists’ arguments discussed in this Part were fairly strong, suffragists did have to admit the weakness of Premise 2. It was very difficult to prove that *all* women were taxed in a sufficiently meaningful or sufficiently direct way. Even if suffragists were able to prove fully the other two premises, their conclusion was severely limited by this concession. Their argument—what I call the “weak taxation argument”—now looked like the following:

Premise 1. Taxation without representation is tyranny.

Premise 2. *Some* women are taxed.

Premise 3. Women are not represented.

152. Catt, *supra* note 119, at 44; *see also* Carrie Chapman Catt, *Do You Know?* 7-8, reprinted in WOMAN SUFFRAGE: ARGUMENTS AND RESULTS, *supra* note 96.

153. For fairly obvious reasons, the other possible corollary—that women should no longer be taxed—was rarely, if ever, discussed by either side as an option.

154. EMINENT OPINIONS ON WOMAN SUFFRAGE, *supra* note 96, at 12 (quoting Harriet Beecher Stowe).

155. Dwight, *supra* note 98, at 119.

Conclusion. Therefore, the treatment of *some* women is tyrannical.

Corollary. Assuming tyranny should be avoided, *some* women should be allowed to vote.

In Part III, I analyze how this weakness in the taxation argument affected the suffrage movement.

III. META-DEBATE

The weak taxation argument led naturally to taxpayer suffrage.¹⁵⁶ Suffragists were fairly successful in convincing others that *some* women—namely, taxpaying women—should be allowed to vote. Many states passed some form of partial taxpayer suffrage long before universal female suffrage, sometimes alongside or in conjunction with other modes of partial suffrage, such as school or municipal suffrage.¹⁵⁷

But the suffragists faced a problem. Their goal was universal female suffrage. Was the success of the weak taxation argument helping or hindering their progress towards this long-term goal? Would taxpayer suffrage prove that full woman suffrage was harmless or even useful? Or would it backfire? Would it be an “entering wedge” for full suffrage? Or would it become a long-term compromise, delaying full suffrage indefinitely? Both suffragists and antis struggled with whether to embrace or reject the weak taxation argument. In this Part, I explore the meta-debate.¹⁵⁸

A. *Antis Against Taxpayer Suffrage*

Antis often warned that no matter how moderate taxpayer suffrage seemed, it was a dangerous “entering wedge” for full suffrage.¹⁵⁹ I refer to this idea—

156. For the purposes of this Note, “taxpayer suffrage” means woman taxpayer suffrage.

157. To take just a few examples, Michigan granted tax-paying women the right to vote in school elections in 1867, Montana granted tax-paying women the right to vote on all questions of taxation in 1889, and Louisiana did the same in 1898. P. Orman Ray, *The World-Wide Woman Suffrage Movement*, 1 J. COMP. LEGIS. & INT’L L. 220, 226, 227, 230 (1919). Countries such as Finland and Norway also granted woman taxpayer suffrage before universal suffrage. *Id.* at 222, 231, 233.

158. Both Jones and Kerber discuss the meta-debate. I provide a more in-depth look.

159. See, e.g., 4 THE HISTORY OF WOMAN SUFFRAGE, *supra* note 78, at 468 n.* (“In the [Alabama] Constitutional Convention of 1901, an amendment providing [limited taxpayer suffrage] was adopted with great enthusiasm, but the next day, under the influence of the argument that ‘it would be an entering wedge for full suffrage,’ it was reconsidered and voted down.”); Katherine B. Lewis, Letter to the Editor, *Taxpaying Women: Their Right to Vote on Questions of Taxation*, BUFFALO COM., Apr. 10, 1906 (“The Anti-Suffragists name [the taxpayer suffrage bill] ‘a wedge for full suffrage.’ Their strong adherent, Lyman Abbott, shouts ‘a wedge, a wedge’ until the Outlook [newspaper] is black all over . . .”), *reprinted in* 4 MILLER NAWSA SUFFRAGE SCRAPBOOKS, 1897-1911, *supra* note 138, at 67, 67; *Suffrage Not Wanted*, GENEVA DAILY TIMES (Geneva, N.Y.), Mar. 16, 1905 (“[Anti-

that taxpayer suffrage would help lead to full suffrage—as the “wedge theory.” One anti “begged the members of the [New York] Senate Committee ‘not to be hoodwinked into believing [a taxpayer suffrage bill] was not a suffrage measure,’ and assured them that ‘many of the members had pledged themselves to vote for it without recognizing that it was a suffrage bill.’”¹⁶⁰ Bishop William Crosswell Doane emphasized that taxpayer suffrage would be an irreversible step towards full suffrage:

Many a man says: “Oh! let the experiment be tried; it cannot succeed; it will do no harm to pay women the courtesy of this complimentary vote, and then defeat it at the polls.” But this is an experiment too much like playing with fire to be safe. Once granted, it can never be recalled.¹⁶¹

Some antis criticized taxpayer suffrage itself, arguing that it would “create distinct class legislation for rich women”¹⁶² and lead to “an aristocracy based on wealth.”¹⁶³ For one anti, this lent credence to the wedge theory:

[T]he proposition to enfranchise those women alone who are taxpayers ought to be treated as a measure designed to increase the political power of property, rather than as one required to guard any peculiar rights of woman. . . . [A] distinction so contrary to American ideas could not long be maintained. The result would inevitably be the admission of all women to the right of suffrage.¹⁶⁴

B. Suffragists for Taxpayer Suffrage

Many suffragists favored taxpayer suffrage. But the antis’ arguments against it placed them in an awkward position. If suffragists denied that taxpayer suffrage was a wedge leading to full suffrage, taxpayer suffrage was no longer appealing. But if suffragists agreed with the wedge theory, antis could more easily defeat taxpayer suffrage bills. Some suffragists chose the former route and argued for taxpayer suffrage while denying that it was a wedge,¹⁶⁵ but most seem to have chosen the latter. They wanted to believe that

suffragist Mrs. W.W. Crannell] characterized the [woman taxpayer suffrage] bill as an entering wedge for general woman suffrage.”), *reprinted in* 4 MILLER NAWSA SUFFRAGE SCRAPBOOKS, 1897-1911, *supra* note 138, at 22, 22.

160. 4 THE HISTORY OF WOMAN SUFFRAGE, *supra* note 78, at 863 (quoting Mrs. William Putnam).

161. Doane, *supra* note 132, at 263.

162. Jones, *supra* note 131, at 277.

163. *A Lively Hearing on Suffrage Bills*, WOMAN’S J., Feb. 5-6, 1907, *reprinted in* 5 MILLER NAWSA SUFFRAGE SCRAPBOOKS, 1897-1911, *supra* note 138, at 36, 36.

164. Charles Worcester Clark, *Woman Suffrage Pro and Con*, 65 ATLANTIC MONTHLY 310 (1890), *reprinted in* SELECTED ARTICLES ON WOMAN SUFFRAGE, *supra* note 129, at 209, 211.

165. *See, e.g., Suffrage Not Wanted*, *supra* note 159, at 22 (“Those in favor of the [taxpayer suffrage] bill argued that there was no suffrage in it”); *Taxpayers’ Suffrage Hearing*, WOMAN’S J., Jan. 31, 1903 (“People sometimes feel hesitation about introducing to suffrage a ‘great horde’ of women, many of them ignorant and ill prepared; but this measure

taxpayer suffrage would lead to full suffrage for women, just as it had for men.¹⁶⁶ Elizabeth Cady Stanton expressed the utmost confidence in the wedge theory:

[T]he principle that taxation involves representation is conceded, and woman's complete enfranchisement is near at hand. . . .

. . . .

. . . If our wise men intended never to give women complete political equality, they should not have let us experiment with the ballot

Deploring the influence of literary women in France at the time of the revolution, a leading Frenchman said: "Our mistake was in letting women get hold of the alphabet; now our power is crippled, they can write us up or down as they see fit."¹⁶⁷

Notice that Stanton agreed with Bishop Doane that partial suffrage was irreversible. Some suffragists did not go so far. Henry Blackwell tried to gain votes for municipal woman suffrage by assuring antis that partial suffrage "is an experiment which can be repealed at any time by a Legislature of men alone, elected by men alone."¹⁶⁸ Blackwell writes only about municipal suffrage here, but the argument could be and was extended to taxpayer suffrage.¹⁶⁹ Suffragists who tried to gain support in this manner were generally confident that the experiment would be a success, particularly because the women voting in the experiment would be "a few rich, educated, fashionable women."¹⁷⁰

would introduce only a rather small body of those women who are already prepared for it." (quoting Charles F. Dole), *reprinted in* 3 MILLER NAWSA SUFFRAGE SCRAPBOOKS, 1897-1911, *supra* note 138, at 116, 116; *Thirteen Women Argue for Suffrage*, ALB. PAPERS, Feb. 3, 1903 ("This is not a sex suffrage; it is a tax suffrage." (quoting Harriet May Mills on a taxpayer suffrage bill)), *reprinted in* 3 MILLER NAWSA SUFFRAGE SCRAPBOOKS, 1897-1911, *supra* note 138, at 123, 123.

166. *See, e.g.*, Jones, *supra* note 4, at 306 n.198 ("As a matter of historical precedent, men of property have been first enfranchised, then other classes have been gradually introduced." (quoting H.B.B., *Woman Suffrage on a Property Qualification*, 5 WOMAN'S J. 403 (1874))); *see also* KERBER, *supra* note 5, at 94; Jones, *supra* note 4, at 306 ("[S]uffrage for taxpaying propertied women was acceptable, particularly, because it seemed to replicate the evolution of male suffrage in the United States.").

167. *Woman a Taxpayer*, GENEVA COURIER (Geneva, N.Y.), May 23, 1894 (quoting Elizabeth Cady Stanton), *reprinted in* 3 MILLER NAWSA SUFFRAGE SCRAPBOOKS, 1897-1911, *supra* note 138, at 1, 1.

168. Blackwell, *supra* note 139, at 155.

169. *See, e.g.*, *Woman Suffrage Has Champions*, Jan. 1900 (showing that a New York state lawmaker who introduced a taxpayer suffrage bill wanted to "introduc[e] woman suffrage first as a tentative measure, and to a limited degree, to be demonstrated as a success or failure before more general legislation is asked"), *reprinted in* 3 MILLER NAWSA SUFFRAGE SCRAPBOOKS, 1897-1911, *supra* note 138, at 54, 54.

170. Jones, *supra* note 4, at 306 n.198 (quoting H.B.B., *supra* note 166).

C. *Antis for Taxpayer Suffrage*

Some antis embraced taxpayer suffrage, perhaps sufficiently assuaged by arguments like Blackwell's. Taxpayer suffrage was a convenient way for politicians to hedge their bets on the controversial suffrage issue.¹⁷¹ And as more and more taxpayer suffrage bills passed, adhering to the wedge theory became problematic. If taxpayer suffrage led inevitably to full suffrage, the antis had already lost. Loathe to admit defeat, or perhaps convinced through experience that taxpayer suffrage was not as dangerous as originally supposed, they began to accept taxpayer suffrage and deny the wedge theory.¹⁷² A pro-suffrage pamphlet reports:

Last year, at the legislative hearing at Albany on [a taxpayer suffrage] bill, the spokeswoman of the "antis" said she had ascertained, by extended inquiry, that hardly any women favored taxpayers' suffrage except those who favored general suffrage for all women. At a meeting held a few weeks ago in Buffalo, the chairman of the New York State Anti-Suffrage Association, Mrs. Arthur M. Dodge, was reported in the papers as saying that about half the members of the "Anti" Association now believe in suffrage for taxpaying women.¹⁷³

The suffragists go on to attribute the antis' "conver[sion]" to the "satisfactory working" of taxpayer suffrage.¹⁷⁴ And this was probably right, in a sense. For antis, taxpayer suffrage proved itself to be "satisfactory" when it failed to lead to full suffrage.

Antis (along with some suffragists) in southern states may have had a particularly strong reason to embrace taxpayer suffrage. If some suffragists there were to be believed, then "granting suffrage to women who can read and write and who pay taxes would insure white supremacy without resorting to any methods of doubtful constitutionality."¹⁷⁵ Louisiana suffragists tried to

171. *E.g.*, Letter from James W. Wadsworth, Jr., Speaker, N.Y. State Assembly, to Anne Fitzhugh Miller (Mar. 9, 1906) ("In all frankness I must say that I am not yet persuaded that the extension of full political rights to women would be wise, and yet I would not go so far as to oppose extending to women tax payers the right to vote in local elections on matters relating to local taxes. This I believe to be a reasonable proposition."), in 4 MILLER NAWSA SUFFRAGE SCRAPBOOKS, 1897-1911, *supra* note 138, at 68, 68.

172. *See, e.g.*, *Hearing*, *supra* note 97, at 24 (statement of Alice Stone Blackwell) ("The question of letting all women vote on all questions may be debatable; but the question of letting all taxpayers vote for all officers concerned in taxation hardly seems to have two sides." (quoting the CHICAGO EVENING POST)); *id.* ("[T]he passage of the [taxpayer suffrage] bill was 'not so much a victory for woman suffrage as the perfecting of women's property rights.'" (quoting the NEW YORK TIMES)); *id.* ("As the months have slipped by we have come to feel that in neither house was the [taxpayer suffrage] bill considered as a suffrage measure, any more than the married women's property bill." (quoting the annual report of the New York Association Opposed to the Extension of Suffrage to Women)).

173. *Id.*

174. *Id.*

175. Bd. of the Nat'l Am. Woman Suffrage Ass'n, Statement (1903) (attributing this belief to southern suffragists), in 5 THE HISTORY OF WOMAN SUFFRAGE 59, 59 (Ida Husted Harper ed., 1922).

entice support by “ask[ing] for the ballot for educated and taxpaying women only,” reportedly stating that this would bring about “the only permanent and honorable solution of the race question.”¹⁷⁶

D. Suffragists Against Taxpayer Suffrage

Concerns about the taxpayer suffrage strategy led a significant number of suffragists to criticize or abandon it.¹⁷⁷ The racism associated with taxpayer suffrage was no doubt highly deplorable to many suffragists, a number of whom had previously been abolitionists. In addition, they wanted to avoid the aristocracy based on wealth of which the antis warned.¹⁷⁸ For example, Martha Cary Thomas argued that under partial suffrage, “[w]omen of property and education would combine with men of property and education to take away the vote from men without property or education.”¹⁷⁹ Professor John A. Scott of Northwestern University was particularly concerned about labor interests:

I don't care a whit for the argument that women with property should have a vote. Property will always be represented and it does not so much matter whether the property-holding women have a vote or not but it is of immense importance to those women who work for their living. . . . Women are economic entities and they should be represented. Labor without representation is as wrong as taxation without representation.¹⁸⁰

Other suffragists adopted the “all or nothing” strategy because they believed this was all that democracy would allow.¹⁸¹ And as taxpayer suffrage

176. *Id.* (quoting an unknown source).

177. *See, e.g.*, PROCEEDINGS OF THE THIRTY-SIXTH ANNUAL CONVENTION OF THE NATIONAL-AMERICAN WOMAN SUFFRAGE ASSOCIATION HELD AT WASHINGTON, D.C., FEBRUARY 11TH TO 17TH, INCLUSIVE, 1904, at 75 (Harriet Taylor Upton & Elizabeth J. Hauser eds., 1904) (“We [in Illinois] recently sent out letters to 800 organizations of women asking their opinion as to whether we should again present the tax-paying bill or a larger measure. The majority favored the larger measure.”).

178. *See, e.g.*, KERBER, *supra* note 5, at 117-18.

179. M. Carey Thomas, President, Bryn Mawr Coll., A New Fashioned Argument for Woman Suffrage, Address at the College Evening of the National American Woman Suffrage Association (Oct. 17, 1908), in 1 AMERICAN FEMINISM: KEY SOURCE DOCUMENTS 1848-1920, *supra* note 96, at 227, 246-47.

180. 5 THE HISTORY OF WOMAN SUFFRAGE, *supra* note 175, at 208 (quoting Professor Scott's Statement during the National American Convention of 1907).

181. *See, e.g.*, CAMBRIDGE POLITICAL EQUALITY ASS'N, EQUAL SUFFRAGE MEETING (1911) (“Woman Suffrage does not interest me so much because woman is a taxpayer, or because of justice, as because of democracy” (quoting Frederick C. Howe, On Suffrage, Address at the National Suffrage Convention (Feb. 9, 1906))), *reprinted in* 1 AMERICAN FEMINISM: KEY SOURCE DOCUMENTS 1848-1920, *supra* note 96, at 303, 306; Thomas, *supra* note 179, at 246 (“But why not limit the franchise for women? Why give all women the vote? Why not give it to women of property and education only? Because democracy will not have it so Because women must vote on the same terms as men or not at all.”); *All or None*, Mar. 1906 (“No matter what mistaken legislation may permit here and there, women should not be allowed to vote because they are taxpayers. That is not a democratic basis of suffrage. . . . To let women taxpayers and no other women vote is repugnant to American

proved slow in leading to full suffrage, the wedge theory undoubtedly lost some of its appeal. Perhaps Stanton was not entirely accurate, then, when she wrote in a diary entry that “[w]e suffragists are all rejoicing over a [taxpayer suffrage] bill.”¹⁸² Not all suffragists saw taxpayer suffrage as a cause for rejoicing.

* * *

Suffragists and antis alike had varying opinions on whether taxpayer suffrage was dangerous or advantageous. Much of this was due to uncertainty about the wedge theory: no one knew whether taxpayer suffrage would help lead to full suffrage or not. A fascinating study from 2001 provides some closure. It finds that “the passage of various forms of partial [woman] suffrage (school, tax, and municipal suffrage) in a state did not increase the likelihood of suffrage success in that state.”¹⁸³ According to this study, taxpayer suffrage was not the wedge that antis feared and suffragists desired.

IV. THE FEDERAL INCOME TAX

Up to this point, I have avoided discussing the federal income tax. Federal income taxes had been levied and discarded twice before 1913. The modest Civil War income tax, which began in 1862, was seen as an emergency measure, although it lasted until 1872, while the short-lived 1894 income tax was struck down as unconstitutional in *Pollock v. Farmers' Loan & Trust Co.*¹⁸⁴ The United States Revenue Act of 1913, legitimized by the newly-ratified Sixteenth Amendment,¹⁸⁵ was therefore unprecedented as a lawful, nonemergency federal income tax. In this Part, I discuss how the Sixteenth Amendment and the ensuing federal income tax affected tax resistance, the tax argument, and the meta-debate.

institutions.”), reprinted in 4 MILLER NAWSA SUFFRAGE SCRAPBOOKS, 1897-1911, *supra* note 138, at 64, 64.

182. Elizabeth Cady Stanton, Diary Entry (Apr. 29, 1901), in 2 ELIZABETH CADY STANTON AS REVEALED IN HER LETTERS DIARY AND REMINISCENCES 356, 356 (Theodore Stanton & Harriot Stanton Blatch eds., 1922).

183. Holly J. McCammon et al., *How Movements Win: Gendered Opportunity Structures and U.S. Women's Suffrage Movements, 1866 to 1919*, 66 AM. SOC. REV. 49, 61 (2001). On the other hand, “the passage of full, presidential, and primary suffrage in one or more neighboring states significantly encouraged the passage of these types of suffrage in a particular state.” *Id.*

184. 158 U.S. 601, 637 (1895); see also Cynthia G. Fox, *Income Tax Records of the Civil War Years*, 18 PROLOGUE 250, 250-52 (1986).

185. It is an interesting coincidence that for over forty years suffragists had referred to the hoped-for suffrage amendment as the “Sixteenth Amendment.” They had to change their terminology when this title was taken by the income tax amendment. See CARRIE CHAPMAN CATT & NETTIE ROGERS SHULER, *WOMAN SUFFRAGE AND POLITICS: THE INNER STORY OF THE SUFFRAGE MOVEMENT* 246 (photo. reprint 2005) (1926).

Most tax resisters and protesters began their activities before 1913, but the federal income tax did give women another type of tax to resist, and it renewed suffragists' interest in tax protests.¹⁸⁶ Such protests against the federal income tax were curtailed by World War I, however. Carrie Chapman Catt wrote:

Women have realized the dire need of huge government resources at this time and have made no protest against the tax, but it must be understood, and understood clearly, that the protest is there just the same and that disfranchised women income taxpayers with few exceptions harbor a genuine grievance against the government of the United States.¹⁸⁷

As Catt suggests, the federal income tax had a large effect on the taxation argument. First, it gave a boost to Premise 1 ("taxation without representation is tyranny"). Some suffragists argued that taxing incomes without representation was even worse than taxing property without representation. A story in the *New York Times*, which ran five days before the House approved the bill containing the federal income tax, contained British suffragette Beatrice Harraden's topical sentiment that "[i]t is a culmination of the Government's injustice and stupidity to ask that we pay an income tax on income earned by brains, when they are refusing to consider us eligible to vote."¹⁸⁸ American suffragists agreed.¹⁸⁹

The federal income tax also gave women another opportunity to prove that they should not be treated as an exception to the "taxation without representation is tyranny" maxim. They began to work for the federal government as tax collectors, giving the nation a pointed example of women's commitment and intelligence.¹⁹⁰

186. See, e.g., *To Protest Income Tax: Suffragists Who Pay It Will Object Because They Have No Vote*, N.Y. TIMES, June 3, 1914; *Women's Protests with Tax Checks*, N.Y. TIMES, June 16, 1915 ("I never became a real suffragist until I had to pay an income tax. . . . In 1776 taxation without representation started a revolution. In 1913 it started another in me." (quoting Chrystal Herne)); see also *Women's Tax Fight Will Be Passive*, *supra* note 13. But see *Women Must Pay*, WASH. POST, Dec. 29, 1913, at 1 ("[There is] a disinclination [among suffragists] to discuss the income tax and its maze of regulations or its possibilities for a suffrage fight. They all wanted to 'read up a little' on it before talking for publication.").

187. CATT, *supra* note 105, at 441.

188. *Miss Harraden Hit in Eye*, N.Y. TIMES, May 3, 1913. The United States bill passed the House on May 8, 1913. *Pass Tariff Bill By 281 to 139*, N.Y. TIMES, May 9, 1913. A federal income tax had been in force in Britain continuously since 1842. John Tiley, *The United Kingdom*, in HUGH J. AULT & BRYAN J. ARNOLD, *COMPARATIVE INCOME TAXATION: A STRUCTURAL ANALYSIS* 115, 115 (2d ed. 2004).

189. See, e.g., CATT, *supra* note 105, at 441 ("[W]omen are earning their incomes under hard conditions of economic inequalities largely due to their disfranchisement. . . . Now [their] contributions will be deflected from suffrage treasuries into government funds through taxation."); Davis, *supra* note 113, at 357 ("It is absurd to tell a woman who works for her living and pays taxes to the government that her only sphere of activity is the home, and that she might neglect that if allowed to vote.").

190. *Women to Collect Taxes: Seven Appointed on Recommendation of Suffrage Party*, N.Y. TIMES, Dec. 28, 1917.

Although it was still true that not *all* women were taxed, the levying of federal income taxes on women strengthened Premise 2, as well. The total number of women paying income taxes as single women, married women filing separate returns, or women as heads of families was 30,233 for the taxable year 1913, rising to 509,089 by 1919.¹⁹¹ In addition, it was debatable at the time whether a woman's income included on a joint return should be counted as a tax on the woman, who was not represented, or as a tax on the family, represented by her husband.¹⁹² If the former, then some number of the 272,153 joint returns filed for 1913 and the 2,800,063 joint returns filed for 1919 should also be counted.¹⁹³ It is unclear how many of these women also paid property taxes; their income tax payments would not increase the number of women taxed compared to the pre-income tax regime, but they would raise women's total direct tax burden.

As for the meta-debate, a common concern among suffragists was that wage earners needed the vote more than property owners, and therefore that to give the vote only to property owners was a mistake. Recall Professor Scott's statement that "[w]omen are economic entities and they should be represented."¹⁹⁴ Despite the fact that some wage-earning women might file joint returns or might not make enough money to be taxed, and despite the fact that some women might pay income tax only on passive or investment income, the federal income tax certainly helped to increase the intersection of the sets of "labor without representation" and "taxation without representation." This

191. *44 Pay Income Tax on \$1,000,000 or More*, N.Y. TIMES, Oct. 23, 1914 (for 1913); *Nation's Income Tax \$1,269,630,104 in '19*, N.Y. TIMES, July 25, 1921 (for 1919). Some of the increase in the number of taxpayers was due to a decrease in the exemption for a single person from \$3,000 to \$1,000, and for a married couple from \$4,000 to \$2,000, for taxable years beginning with 1917. See Roy G. Blakey & Gladys C. Blakey, *The Revenue Act of 1918*, 9 AM. ECON. REV. 214, 217-19 (1919); see also CATT, *supra* note 105, at 441 ("When the exemption for unmarried persons under the Income Tax was reduced to \$1,000, the Congress laid the tax upon thousands of wage-earning women . . .").

192. See Sedgwick, *supra* note 129 (arguing that the family, not the individual, is the relevant "social unit"); see also GEORGE E. HOLMES, FEDERAL INCOME AND PROFITS TAXES 40 (1919) ("In so far as possible the family is treated as a unit for purposes of the income tax, and the husband and wife may make joint returns."); Dennis J. Ventry, *Saving Seaborn: Ownership as the Basis of Family Taxation* 11 (U.C. Davis Legal Studies Research Paper Series, Paper No. 166, 2009), available at <http://ssrn.com/abstract=1374493> (noting how the Bureau of Internal Revenue "struggled with 'the baffling problem of whether the income of husbands and wives living together should be viewed as a unit or as separate incomes regardless of whether they chose to make joint or separate returns'" (quoting Louis Shere, Tax Revision 1937—Project No. 3, Miscellaneous and Administrative Tax Changes 4-5 (Nov. 19, 1937) (on file in OTA/DTR Files, Box 54, Folder GA-5/36.1))).

193. *44 Pay Income Tax on \$1,000,000 or More*, *supra* note 191; *Nation's Income Tax \$1,269,630,104 in '19*, *supra* note 191.

194. 5 THE HISTORY OF WOMAN SUFFRAGE, *supra* note 175, at 208 (quoting Professor John A. Scott); cf. BOWDITCH, *supra* note 101, at 27 (discussing a man who "is believed to be willing to give the suffrage to women who own property now, but not to favor extending it to those who merely earn their living from day to day, though these latter would seem to deserve and need it most").

meant that taxpayer suffrage included more wage-earner suffrage, strengthening the appeal of the taxation argument.

A final effect of the federal income tax was to provide suffragists with an argument that woman suffrage was a federal problem best solved by constitutional amendment, as opposed to a problem best left to individual states due to federalism.¹⁹⁵ Carrie Chapman Catt said it best:

[O]ur own national government has taken a step which makes the treatment of woman suffrage as a national question imperative. For the first time in our history Congress has imposed a direct tax upon women and has thus deliberately violated the most fundamental and sacred principle of our government, since it offers no compensating “representation” for the tax it imposes. . . .

. . . The national government is guilty of the violation of the American principle that the tax and the vote are inseparable; it alone can make amends. Two ways are open; exempt the women from the Income Tax or grant them the vote—there can be no compromise.¹⁹⁶

* * *

Because of the federal income tax, the taxation argument became a more desirable and accepted argument for suffragists. Although many other factors contributed more heavily to the suffragists’ victory in 1920, the small role that the federal income tax played in strengthening the suffragists’ tax-related arguments should not be forgotten.

CONCLUSION

The “no taxation without representation” argument is an often overlooked facet of woman suffrage history. To some extent, this mirrors the realities of the movement: as this Note shows, the taxation argument faced serious limitations both in the realm of action and the realm of debate. At the same time, however, the argument was a part of suffragists’ lives, whether they were resisting taxes, refraining from resisting, arguing against antis, or arguing amongst themselves.

195. For the federalism argument, see, for example, Bertha Rembaugh, *The Present Political Status of Women in the United States*, in 7 THE WOMAN CITIZEN’S LIBRARY, *supra* note 16, at 1737, 1758 (“Against this proposal [for federal action for woman suffrage] it may be argued that, under the theory of our federal government, questions concerning the internal government of the states are to be left to the states.”).

196. CATT, *supra* note 105, at 440-41. The ratification of the Sixteenth Amendment also strengthened suffragists’ confidence in the achievability of a constitutional amendment. See 5 THE HISTORY OF WOMAN SUFFRAGE, *supra* note 175, at 625 (“A circumstance greatly in . . . favor [of a federal suffrage amendment] was the shattering of the traditional idea that the Federal Constitution must not be further amended, by the adoption of two new Articles—for an income tax and the election of U.S. Senators by the voters.”).

This Note should also remind modern-day activists that a “no taxation without representation” argument cannot simply rest on the strength of the slogan. The suffragists struggled with the fact that this seemingly applicable and popular catchphrase had less impact than originally anticipated, especially in the years before the Sixteenth Amendment. Finally, at its broadest, this Note reminds us that a popular political slogan may have a rich history not only in its origin but also in its application.