

# THE “INVISIBLE GOVERNMENT” AND CONSERVATIVE TAX LOBBYING 1935–1936

MARJORIE E. KORNHAUSER\*

“[M]ost legislation is fathered not by parties but by minority groups, and these groups maintain their pressure without ceasing.”<sup>1</sup>

## I

### INTRODUCTION: LOBBYING AND TAXATION IN AMERICAN DEMOCRACY

Tax-collecting and lobbying may not be the oldest professions in the world, but both surely are strong competitors for next oldest. This universality—in both time and geography—attests to the essential roles taxation and lobbying play in all types of societies. Taxation’s ubiquity occurs because, in the long run, it provides governments the surest stream of necessary revenues. Lobbying’s universality derives from the human desire to obtain benefits from those in a position to bestow such favors. When the benefit directly affects a person’s wallet—as taxation surely does—the incentive to lobby is immense.

In the United States, tax lobbying is nearly irresistible because both taxation and lobbying hold special places in American democracy and the American psyche. Anti-tax sentiment has deep-seated historic and mythic ties to American conceptions of democracy, liberty and patriotism.<sup>2</sup> The link began with cries of “No Taxation without Representation” at the nation’s birth and remains strong today. Further strengthening the anti-tax and patriotism bond is the belief that taxes destroy federalism. Lowering taxes, in this view, starves the twin-headed beast of centralization and bureaucracy and prevents the federal government from stepping into unconstitutional state functions. Another link is a common belief that low taxation spurs that most American of traits and goals—individual enterprise and economic growth.

Lobbying, like taxation, has an American twist. Commentators as far back as Tocqueville have noted that Americans, more than other nationalities, organize

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\* John E. Koerner Professor of Law Emerita, Tulane Law School. Special thanks to libraries and librarians everywhere—especially Kim Glorioso at Tulane Law School, Jeff Suchanek at the University of Kentucky Library, Gregory Jackson at the Glencairn Museum, and Marge McNinch while at the Hagley Museum.

1. Frederick Lewis Allen, *Behind the Campaign*, 173 HARPER’S MAG. 470, 470 (June 1, 1936).

2. Marjorie E. Kornhauser, *Legitimacy and the Right of Revolution: The Role of Tax Protests and Anti-Tax Rhetoric in America*, 50 BUFF. L. REV. 819 (2002); Marjorie E. Kornhauser, *The Consistency of Conservative Tax Policy*, 108 NW. U. L. REV. 825, 831 (2014).

politically because they hope to convince the people of their own views and then govern in “their name.”<sup>3</sup> There are numerous ways to influence legislation: legal or illegal; open or hidden; direct—appeals to legislators—or indirect—through shaping public opinion. No matter its form, organized special interest activity—the nub of lobbying—is still at “the heart of what is most distinctive about democracy in America.”<sup>4</sup>

Lobbying is so fundamental to American democracy that the First Amendment enshrines its core components—the ability to speak one’s mind and associate with other similarly inclined individuals. In theory, interest group lobbying promotes the healthy marketplace of ideas necessary to a functioning democracy. For example, lobbying—at least theoretically—not only improves legislation by raising issues from various perspectives, but also ensures that everyone has the opportunity to be heard.

Lobbying, however, can also undermine democracy. Lobbyists can distort the legislative process by exerting undue influence. One of the most pernicious aspects of lobbying is that often neither legislators nor the public know they are being lobbied. They are unaware that they are presented with biased information or misinformation, under the guise of objective fact, or subtly guided by skillfully persuasive materials and speakers. Americans have long tried to limit this dangerous downside of lobbying through a variety of mechanisms such as restricting financial contributions to political action groups and regulating lobbyists. Congress has evidenced its ongoing concern in numerous investigations of lobbying and through repeated legislative attempts to regulate lobbyists and restrict political financial contributions.<sup>5</sup>

Taxation provides fertile ground for lobbying. Tocqueville confirmed this when he used the contentious tariffs in the 1830s as an example of his belief that “the liberty of association for political purposes is unbounded” in this country.<sup>6</sup> Earlier, in Federalist Paper No. 10 James Madison commented that “there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice [than in taxation].”<sup>7</sup> This ability of the majority to inflict crushing financial burdens on the minority through taxation means that it is especially important to protect the rights of the minority to be heard on tax issues. Yet this clash of interests often results in the minority using class-based rhetoric about “soaking the rich” rather than rationality to oppose tax legislation.<sup>8</sup> The reality of tax legislation shows that

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3. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA*, bk. 1, ch. 12 (1835), <http://www.gutenberg.org/ebooks/815> [<https://perma.cc/QZ68-HJTV>].

4. KAY SCHLOZMAN & JOHN TIERNY, *ORGANIZED INTERESTS AND AMERICAN DEMOCRACY* 4 (1986).

5. See, e.g., R. ERIC PETERSEN, CONG. RESEARCH SERV., RL33065, *CONGRESS AND PRESSURE GROUPS: LOBBYING IN A MODERN DEMOCRACY* 99–161 (1986).

6. TOCQUEVILLE, *supra* note 3, ch. 12.

7. *THE FEDERALIST* NO. 10 (James Madison).

8. See, e.g., *Pollock v. Farmer’s Loan & Trust Co.*, 157 U.S. 429, 596 (1895) (Field, J., concurring)

lobbying by a powerful minority can lead to tax legislation furthering their interests, not the majority’s. The repeal of the estate tax in 2001, however temporary, is an instance of this phenomenon.<sup>9</sup>

By the early twentieth century, lobbying in America had expanded and changed significantly. More lobbying occurred because government had expanded and now reached more people. New types of groups began to lobby. These groups were organized by common beliefs and ideologies rather than by traditional principles of vocation or geography. All types of lobbyists began placing great emphasis on indirect means to influence legislation. Rather than just contacting legislators, they now also focused on shaping public opinion and motivating voters to pressure their representatives to vote certain ways.

Lobbying also changed because new knowledge and technology created infrastructure that allowed lobbyists to reach and influence more people more effectively than ever before. By the early twentieth century, industrial and technological advances had transformed the mass media, just as it had radically changed most other aspects of American life. Lobbyists could reach the public through newspapers, periodicals, and even films that had national reach. By the mid-1920s, commercial radio existed, creating eager listeners in homes throughout the country. Lobbyists used the radio to sell their views just as advertisers did.<sup>10</sup> They also used the same modern advances in psychology and the art of persuasion to do so. This ability to persuade—or manipulate—the public was further enhanced by the growing concentration of media outlets by national chains.<sup>11</sup>

The ubiquity of the mass media in general and the radio in particular had both positive and negative implications for democracy. On the positive side, educational programs, political speeches, and debates were broadcast nationally and government dispensed information.<sup>12</sup> On the negative side, as two experts

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(pitting rich against poor); *Jensen v. Franchise Tax Bd.*, 178 Cal. App. 4th 426 (Cal. Ct. App. 2009) (upholding constitutionality of a 1% tax on incomes greater than \$1 million); President George W. Bush, *Remarks Announcing the Tax Cut Plan and an Exchange with Reporters*, 36 Weekly Comp. Pres. Doc. 6 (Feb. 12, 2001), <https://www.gpo.gov/fdsys/pkg/PPP-2001-book1/pdf/PPP-2001-book1-doc-pg52.pdf> [<https://perma.cc/YCK3-9LYJ>] (“I’ve heard all the talk about class warfare and this only benefiting the rich.”); Jim Puzanghera, *Millionaire Tax Sought by Obama is Panned by GOP as “Class Warfare,”* L.A. TIMES (Sept. 18, 2011), <http://articles.latimes.com/2011/sep/18/news/sc-dc-tax-millionaires-20110919-9> [<https://perma.cc/3E5C-CQXV>].

9. MICHAEL J. GRAETZ & IAN SHAPIRO, *DEATH BY A THOUSAND CUTS: THE FIGHT OVER TAXING INHERITED WEALTH* 12–23 (2005).

10. The first national broadcasting system, NBC, was organized in 1926. By 1927, 23.6% of American households owned radios. By 1930, 45.8% did, and by 1935 practically everyone did. PAUL STARR, *THE CREATION OF THE MEDIA: POLITICAL ORIGINS OF MODERN COMMUNICATIONS* 354 (2004).

11. *Id.* at 398.

12. *E.g.*, *Educational News and Editorial Comment*, 40 SCH. REV. 641, 647 (1932); Geddes W. Rutherford, *Radio as a Means of Instruction in Government*, 27 AM. POL. SCI. REV. 264 (1933). The *You and Your Government* series of lectures was broadcast in the 1930s by the American Association of Political Science, National Advisory Council on Radio in Education and the National Municipal League.

stated in 1933, “the presence of a communication system so all-pervading should lead to its use for the deliberate control of individual behavior.”<sup>13</sup>

Many scholars believe opposition to the Underwood Tariff Bill of 1913 marks the start of modern lobbying concerns.<sup>14</sup> President Wilson called for an investigation of the large, “insidious” lobby that opposed it.<sup>15</sup> Some claimed that the powerful special interests were an “invisible” government.<sup>16</sup> As Senator Lee S. Overman (D-NC) noted, the tariff lobbying differed from “old-fashioned lobby in that it worked through an artificially created public sentiment.”<sup>17</sup> Rather than using “personal appeals” to Senators like old style lobbyism, the “new lobby . . . is an organized activity to mold public sentiment and bring pressure to bear on Senators from every quarter. It is insidious to the extent that these publicity campaigns are often misleading, and are often based upon misrepresentation.”<sup>18</sup>

By the mid-1920s Congress was extremely concerned about lobbying’s manipulation of the public and undue influence on legislation. In 1924 alone it conducted, in the words of the *New York Times*, a “blizzard” of “investigations”—including on topics still investigated today, such as the Veterans Bureau, stock exchange practices, Soviet propaganda, and immigration.<sup>19</sup> The *New York Times* claimed at least twenty-six ongoing investigations—although a few months later *Time Magazine* listed only eleven ongoing investigations.<sup>20</sup> Investigations of the partisan administration of the Bureau of Internal Revenue were also contemplated and the investigation of pro-Mellon tax plan propaganda was authorized, although it never occurred.<sup>21</sup>

Lobbying to repeal the estate tax in 1927, however, did lead to renewed efforts to regulate lobbying and to a major Senate lobbying investigation in 1929.<sup>22</sup> No legislation resulted, but one focus of the investigation was tax

13. MALCOLM M. WILLEY & STUART A. RICE, *COMMUNICATION AGENCIES AND SOCIAL LIVES* 212 (1933).

14. See, e.g., Edgar Lane, *Some Lessons from Past Congressional Investigations of Lobbying*, 14 PUB. OPINION Q. 14–32 (1950).

16. Maintenance of a Lobby to Influence Legislation: Hearings Before the Subcomm. of the S. Comm. on the Judiciary, 63rd Cong. (1913); Wilson Denounces Tariff Lobbyists, N.Y. TIMES, May 27, 1913, at 1.

16. John Callan O’Laughlin, “*The Invisible Government Under Searchlight*,” 48 AM. REV. REVS. 334 (1913), [https://books.google.com/books?id=tiwIAQAIAAJ&pg=PA338&lpg=PA338&dq=They+are+the+invisible+government+behind+the+visible+government.+Beveridge&source=bl&ots=GYCnZl6uYK&sig=sGCpPaGO9AZZp\\_f\\_Zh3rcpLoNY8&hl=en&sa=X&ved=0ahUKewiWjMau5O3WAhWL8YMKHcmWBvMQ6AEIMDAE#v=onepage&q=They%20are%20the%20invisible%20government%20behind%20the%20visible%20government.%20Beveridge&f=false](https://books.google.com/books?id=tiwIAQAIAAJ&pg=PA338&lpg=PA338&dq=They+are+the+invisible+government+behind+the+visible+government.+Beveridge&source=bl&ots=GYCnZl6uYK&sig=sGCpPaGO9AZZp_f_Zh3rcpLoNY8&hl=en&sa=X&ved=0ahUKewiWjMau5O3WAhWL8YMKHcmWBvMQ6AEIMDAE#v=onepage&q=They%20are%20the%20invisible%20government%20behind%20the%20visible%20government.%20Beveridge&f=false) [https://perma.cc/ZRV7-97UX].

17. *Hold Lobby Exists, But of a New Kind*, N.Y. TIMES, June 6, 1913, at 2.

18. *Id.*

19. *Investigation Blizzard Sweeps Capital*, N.Y. TIMES, Feb. 24, 1924 at XX 5.

20. *Id.*

21. *Id.*

22. *Lobby Investigation: Hearings Before the Subcomm. of the S. Comm. on the Judiciary*, 71st Cong. (1929–1932); E. PENDLETON HERRING, *GROUP REPRESENTATION BEFORE CONGRESS* 240–41 (Lord Baltimore Press 1929).

lobbying, especially by a number of special interest organizations managed by J. A. Arnold, a man with a somewhat shady history of managing such groups.<sup>23</sup> These groups, including the American Taxpayers’ League, claimed to be nonpartisan groups interested in helping the “common man.” In reality, they supported traditional conservative policies and used traditional conservative rhetoric about stopping the centralization of federal power and growing governmental bureaucracy; stopping socialism; and class legislation.<sup>24</sup> The Investigation found these groups deceptive and ineffective, and called them “reprehensible . . . [The] type of lobbying against which the public ought to be protected by appropriate legislation.”<sup>25</sup> Scholars and commentators worried that groups like these were too effective. They feared that the growing ubiquity of lobbyists and their use of the media to manipulate public opinion created an “invisible” or “third house” of government that exerted a dangerous and undemocratic influence on the legislative process.<sup>26</sup>

This intense concern continued into the 1930s. Congress and scholars worried about all lobbying, but especially indirect lobbying of Congress in a variety of forms such as having “college professors on their payrolls to influence public opinion” or by getting investors or the public to “flood Congress with letters and telegrams” objecting to a particular bill.<sup>27</sup> They particularly worried about lobbying by the newer type of single-issue and/or ideology-based interest groups that often concealed their donors, biases, and aims behind neutral or patriotic sounding names—such as the American Liberty League. Writing in 1936 about more recent American Taxpayers’ League activities, the economist George Soule said that the 1929 Investigation’s judgment about the inefficiency of the American Taxpayers’ League may have been “unjust” because in “recent months” it “had an influence far outweighing its numerical importance in a democracy.”<sup>28</sup>

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23. See generally ISAAC MARTIN, RICH PEOPLE’S MOVEMENTS: GRASSROOTS CAMPAIGNS TO UNTAX THE ONE PERCENT (2013); M. Susan Murnane, *Selling Scientific Taxation: The Treasury Department’s Campaign for Tax Reform in the 1920s*, 29 LAW & SOC. INQUIRY 819 (2004).

24. E.g., American Taxpayers’ League, *Socialism in Our Tax System—Why Taxes?* (Bulletin 82 March 7, 1928) (estate tax and graduated income tax are illegal confiscations of property); American Taxpayers’ League, *Tax Reduction Program* (May 15, 1927); John J. Raskob Papers, Acc. 473, File 72 American Taxpayers’ League, Hagley Museum & Library; *Will Fight State Rights Usurpation*, HARTFORD COURANT, May 6, 1927, at 1 (federal estate tax is an example of “growing tendency of the Federal Government to exercise control and jurisdiction over the States in a manner not contemplated by the Constitution.”).

25. THADDEUS CARAWAY & ARTHUR ROBINSON, LOBBYING AND LOBBYISTS, S. REP. NO. 43, pt. 4 at 6 (1929) (preliminary report); *Denounces Arnold In Lobby Report*, N.Y. TIMES, Dec. 21, 1929, at 4.

26. HERRING, *supra* note 22, at 41. Accord Edward B. Logan & Simon N. Patten Fellow, *Lobbying*, Supplement, 144 ANNALS AM. ACAD. POL. & SOC. SCI. 1 (1929).

27. *President*, BOSTON GLOBE, July 4, 1935 at 5.

28. George Soule, *Liberty League Liberty I: Liberty in Politics*, NEW REPUBLIC, Aug. 26, 1936, at 63, 66. See also *Anti-Lobby War Turns Spotlight on Capital’s “Invisible Government,”* WASH. POST, May 5, 1935, at B9.

Soule's comments were part of a series of articles he wrote about another Senate lobbying investigation—popularly called the Black Investigation, after its chair, Hugo Black (D-AL).<sup>29</sup> This Investigation arose because of the intense lobbying surrounding the Public Utility Holding Company Act of 1935 (the Wheeler-Rayburn Bill).<sup>30</sup> Its second set of hearings, however, begun in March 1936, expanded to covering other lobbying activities, including tax-related lobbying, and continued into 1938.<sup>31</sup> These later stages of the Black Investigation concentrated on a small number of groups often called “patriotic” societies. As Soule wrote, these groups were “formed to defend something that is variously called ‘the American system,’ ‘the constitution,’ or more simply, ‘liberty.’”<sup>32</sup> Soule noted that their goals and “opinions and tactics” were so similar that he was justified in calling it “Liberty League Liberty” after the American Liberty League—largest of the groups being investigated.<sup>33</sup> The American Taxpayers’ League was one of its predecessors, he claimed. So, too, was the Sentinels of the Republic, which the Senate had also investigated in 1929.

Many patriotic groups, like the Sentinels of the Republic, originated in a wave of post-World War I conservatism. They were a response to the “Red Scare”—a fear of socialism, communism and other radical leftists and anarchists stirred up by the Bolshevik Revolution abroad and labor strikes and race riots at home.<sup>34</sup> The groups—though differing in particulars—shared the same broad conservative values of upholding the constitution, individual rights, states’ rights, free enterprise, and limited federal government, as Soule noted. Not surprisingly then, by the mid-1930s, these patriotic groups opposed Roosevelt and New Deal policy and legislation. Consequently, many viewed the Black Investigation’s focus on these groups as a partisan attack on New Deal opponents. Some even called the Investigation an “Inquisition,” or as a 1936 *L. A. Times* editorial stated, a witch hunt.<sup>35</sup>

The group’s similarities extended beyond the common principles mentioned by Soule. The similarities even extended beyond common tactics, which relied

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29. *Investigation of Lobbying Activities: Hearing Before the S. Special Comm. to Investigate Lobbying Activities*, 74th Cong. (1936) [hereinafter Black Investigation]. Hearings occurred between July 1935 and 1938.

30. 15 U.S.C. § 79 (1935). The House had started an investigation, too, but the Black Investigation quickly became the more important one.

31. *Compromise on Utilities Near*, BOSTON GLOBE, July 11, 1935, at 24; See Arthur Krock, *In Washington: Senate Lobby Inquiry is Now Expected on Familiar Lines*, N.Y. TIMES, July 11, 1935, at 20.

32. George Soule, *Liberty League Liberty I: Liberty in Politics*, NEW REPUBLIC, Aug. 26, 1936, at 63.

33. *Id.*

34. The 1919 and 1920 raids by Attorney General Mitchell Palmer on leftists and anarchists were an example. See, e.g., *A Byte Out of History – The Palmer Raids*, FBI (Dec. 28, 2007), [https://archives.fbi.gov/archives/news/stories/2007/december/palmer\\_122807](https://archives.fbi.gov/archives/news/stories/2007/december/palmer_122807) [<https://perma.cc/MFU5-CUP3>].

35. Arthur Sear Henning, *Terror Spread Among Enemies By New Dealers*, CHI. TRIB., Feb. 9, 1936, at 1; *Along the Potomac with Carlis Bergeron: Investigation or Propaganda?*, WASH. POST, July 17, 1935, at 7; *Editorial, The War on Business*, L.A. TIMES, Mar. 6, 1936, at A4; *Lobby Probe Termed “Black Inquisition,”* ATLANTA CONST., Apr. 23, 1936, at 17.

heavily on use of the media to influence public opinion. They were also generally relatively small and, despite their claims to representing the common man, were often composed of a small number of wealthy individuals and businesses. In fact, membership among groups overlapped significantly: the Black Investigation found that in an eighteen month period, a very small number of wealthy families and related business entities had contributed about \$1 million to fourteen of these groups.<sup>36</sup> As the *Christian Science Monitor* wrote, a small number of wealthy people were “important” in shaping public opinion and played an important role in the presidential election.<sup>37</sup> In other words, it recognized the significant consequences this type of lobbying had for democracy.

This Article describes the 1935–1936 tax activities of two of the groups the Committee investigated—the Sentinels of the Republic and the American Liberty League. Although both liberal and conservatives then and now attempt to influence legislation and elections by shaping public opinion in many areas, the Article concentrates on taxation because of its fundamental relationship to democracy. Although these two groups—like many today—often did not affect any specific tax legislation, they helped shape the general outlines of what tax laws and policies are politically possible. They constrain tax policy by conveying over time a consistent message using remarkably similar means.

The message—still conveyed today—is a simple one: high taxes endanger American democracy in three important ways: (1) they infringe freedom and individual liberty which are the bedrock of the American way of life, (2) they hamper economic growth, private enterprise, and prosperity which are foundational to American life, and (3) by allowing the federal government to expand its functions and bureaucracy, they undermine the federal system of government and enable a bloated central government to act unconstitutionally.<sup>38</sup> Over time, conservative groups have used similar rhetoric and methods to convey these themes. Then and now, they used the media to influence voters by delivering biased (mis)information, or “fake” news to the masses without clearly specifying the source of the information.

There are other similarities between then and now. First, the eras share many general conditions: economic uncertainty, divisive politics, and large social upheavals. They even both occur(ed) around presidential elections in which actual results overturned widely held political expectations (*Landon v. Roosevelt*; *Clinton v. Trump*). Tax legislation was a priority and very much contested in both time periods. Additionally, in both periods, new forms of mass communications allowed wider and more effective dissemination of this

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36. 80 CONG. REC. 10492-3 (June 20, 1936), *\$925,000 Gifts Listed in Final Lobby Report*, WASH. POST, June 21, 1936, at M5; *Income Is Revealed of Lobbying Groups*, N.Y. TIMES, June 21, 1936, at 2.

37. *Rich Groups Seen Main Support of Opinion Molders*, CHRISTIAN SCI. MONITOR, June 22, 1936, at 13; see, e.g., *New Deal Foes Aid Sentinels*, BOSTON GLOBE, Apr. 18, 1936, at 22 (showing the overlapping members).

38. See, e.g., Marjorie E. Kornhauser, *The Consistency of Conservative Tax Policy*, 108 NW. U. L. REV. 825 (2014).

information. Back then it was radio and film; now it is social media like Facebook and Twitter. Then and now, individuals and groups more-or-less anonymously contribute large sums of money to be used in often subtle or invisible ways to influence public. Given these similarities, it is not surprising that in both eras concern about lobbying's deleterious effects on the democratic process increased.

The Article proceeds as follows: Part II discusses the tax activities of the Sentinels of the Republic. Part III discusses tax activities of the American Liberty League. Part IV concludes with a few "back to the future" remarks that describe how the techniques used by the Sentinels of the Republic and the American Liberty League in the 1930s still exist—augmented by modern technology—as do the problems they create for tax legislation and democracy generally. After briefly restating the problem and possible solutions, Part IV focuses on one method—education—that can help counter their effects.

## II

### SENTINELS OF THE REPUBLIC

#### A. Brief History

Established in 1922, the Sentinels of the Republic reflected conservative fears of socialism and expanding federal bureaucracy fueled by World War I. Like other conservative patriotic groups formed in the 1920s and 1930s, the Sentinels' purpose was to preserve the principles of the Constitution and a republican form of government. Its Articles of Incorporation elaborated: the Sentinels aimed to stop "[f]ederal encroachment upon the reserved rights of the states," stop socialism, and "prevent concentration of power in Washington through the multiplication of administrative bureaus under a perverted interpretation of the General Welfare clause."<sup>39</sup> Despite the absence of taxation from this list, the Sentinels—like other conservative groups—always believed that taxation was intertwined with the fight to preserve the Constitution and protect states' rights. In its 1936 Address to the Republican and Democratic National Platform Committees, for example, it recognized that taxes funded government programs and were necessary but only to the extent they funded limited, constitutional functions of the federal government. Beyond that, the Address stated, "[t]he use of taxes as a means of coercion or of distribution of wealth or for oppression of groups is a prostitution of the taxing power."<sup>40</sup>

Taxation was even a part of the Sentinels' first—and long lasting—campaign against the Sheppard-Towner Maternity and Infancy Protection Act of 1921,

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39. Certificate of Incorporation, Sentinels of the Republic Records, 1922–1944 (on file with the Williams College Archives and Special Collections, MC57 Series I, Volume 1, Records: 1922–44). *See also, e.g., Unite to Support the Constitution*, N.Y. TIMES, Oct. 1, 1922, at 33.

40. Address by the Sentinels of the Republic to the Platform Committees of the Republican and Democratic Parties (1936) in ALEXANDER LINCOLN PAPERS, 1919–1940, 7 (A-109, Box 1 Folder 3, Schlesinger Library, Radcliffe Institute, Harvard University, Cambridge, Mass).

which they claimed violated the Tenth Amendment by giving states federal funds to provide care to reduce maternal and infant mortality. As one of its members, Mrs. Randolph Frothingham, alleged in her suit challenging the Act, the federal government’s taxing power was conterminous with the limited powers of Congress enumerated under the constitution.<sup>41</sup> Therefore, since the Act’s purpose was not an enumerated power, the use of the taxing power to raise revenues for that purpose was also unconstitutional. In 1923, the Supreme Court dismissed the case, without considering its merits, holding that she as a taxpayer had no legal grounds to sue.<sup>42</sup> The result of the case, largely still true today, is that taxpayers do not, as taxpayers, have the ability to challenge a program’s constitutionality simply because their taxes help fund the program. The case did not decide the underlying issue of the scope of the federal government’s taxing power, and conservatives then and now continued to debate it.

Two Sentinel policies in 1926 specifically related to tax: it opposed “[a]ny Amendment to permit Federal taxation of State instrumentalities[]” and it opposed “the use of the Federal taxing power to compel or influence the action or policy of any State respecting its methods or extent of taxation.”<sup>43</sup> In 1928, it favored the repeal of the federal estate tax.

In the early 1930s, the Sentinels also occasionally discussed taxation as part of their belief that the federal government was too large and powerful and was diminishing state power. In October 1931, in the first of a series of weekly series sponsored by the Sentinels, Senator Hiram Bingham (R-CT) gave a talk titled *Too Much Government*. He reminded people that everyone—not just the wealthy—ultimately bore the burden of government spending. Using the theme already articulated so well in the 1920s fight for tax reduction, Bingham appealed to the common man by stating that the wealthy shift their taxes to the poor. In the end, he claimed, “the burdens of government” rest on the person “who toils” and not the wealthy. Even if a tax appears to be solely on the wealthy, they pass it on to others. The wealthy, he said, do not even have enough money to pay all the taxes put on them by post World War I taxation. He further asserted that taxation can endure “only because [the wealthy] can shift the load to other shoulders.”<sup>44</sup>

Two weeks later, Major General James G. Harbord, the president of RCA and a Sentinels board member, spoke on the radio about taxes at all levels of

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41. *Massachusetts v. Mellon*, 262 U.S. 447 (1923). The Sentinels were still fighting the Act in the 1930s. A member testified at the Black Investigation that the Maternity Act was a major focus before the New Deal. Black Investigation, *supra* note 29, at 2062 (1936) (Testimony of David F. Sibley).

42. *Mellon*, 262 U.S. 447, 480.

43. Special Legislative Policies Recommended by the Executive Committee and Adopted by the Sentinels of the Republic at the Annual Meeting (1926) (on file with the Schlesinger Library, Radcliffe Institute, Papers of Alexander Lincoln, Box 1, Folder 4).

44. SEN. HIRAM BINGHAM, *TOO MUCH GOVERNMENT 2* (Oct. 4, 1931). Certificate of Incorporation, Sentinels of the Republic Records, *supra* note 39, Series 2, vol. 9 (does not say who he is quoting).

government.<sup>45</sup> The broadcast, later published as a pamphlet called *Sugar Coating Your Taxes*, stated that expanding government inevitably led to increased taxes. These, in turn, would result in the sale of farms and homes to pay the taxes.<sup>46</sup> Moreover, he warned, “Mounting taxes and governmental expenditures drive capital into tax free Government bonds, and all taxable property will eventually pass to Government ownership. It is the beginning of the end.”<sup>47</sup>

The Sentinels’ opposition to federal old age pensions in the 1930s also noted the connection between taxation and the constitutional role of the federal government. It believed social welfare programs were the domain of the states. Consequently, not only would a federal pension program unconstitutionally encroach upon the states, but a federal program

would mean the establishment of another huge bureaucratic agency in Washington, with the usual waste, extravagance and political corruption. . . . Even in these days of wild spending, the cost to taxpayers would be appalling.<sup>48</sup>

Despite all this activity, the Sentinels were largely unknown until early 1935 and its first—and only—battle focused specifically on tax. Raymond Pitcairn, its new national chair, launched a campaign to repeal the publicity provision of the Revenue Act of 1934 which required income taxpayers to submit a form containing certain tax information. The form would then become available to the public.<sup>49</sup> The Sentinels began a pink slip campaign, named after the color of the form, to repeal the publicity feature which they opposed on the grounds that it violated individual liberty and the constitution.

Pitcairn knew that Congress would not repeal a law it had passed the previous year unless there was a lot of public pressure to do so. Thus, in order to succeed, he needed to gain the attention of the masses—who did not pay income tax—and convince them that they should care. He used his “genius for organization, and

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45. *Retired Judge is Named to Sentinels’ Committee*, WASH. POST, Sept. 18, 1931, at 16.

46. MAJ. GEN. JAMES G. HARBORD, *SUGAR COATING YOUR TAXES* 3 (1931). These were broadcast on NBC’s “blue” network. *Id.*

47. *Id.*

48. Sentinels of the Republic, *Federal Old Age Pensions* (1934) (on file the Schlesinger Library, Radcliffe Institute, Papers of Alexander Lincoln, Box 1, Folder 3). See also Meeting of the Executive Committee (1935). *Id.*

49. For a discussion of the campaign, see Marjorie E. Kornhauser, *Shaping Public Opinion and the Law: How a “Common Man” Campaign Ended a Rich Man’s Law*, 73 LAW & CONTEMP. PROBS., no. 1, 2010, at 123. Pitcairn was a veteran of the lobby to end prohibition, which many in the mid-1930s viewed as the most effective to date. *E.g.*, Harold B. Hinton, *Lobbies Face Inquisitors*, N.Y. TIMES, July 7, 1935, at E7. Many wealthy people favored repeal partly because of the belief that revenues from liquor taxes would allow the repeal of the income tax and also because it represented an unconstitutional extension of federal powers and infringement on individual liberty. *E.g.*, Memorandum to National Directors of the Association Against the Prohibition Amendment from W.H. Stayton, chairman (Nov. 27, 1933) (on file with Hagley Library, John J. Raskob Papers, Accession #473, File 102). Against Prohibition Amendment Box 2 of Correspondence 1931-35, Folder 1933. Pitcairn had an additional reason to fight prohibition: religion. As a Swedenborgian, he believed that individual and religious freedom were tied together and individuals had a religious duty to try to change any law that restricted freedom. JENNIE GASKILL, *BIOGRAPHY OF RAYMOND PITCAIRN* 111 (1977). The same motives undoubtedly drove his campaigns as Sentinels national chair.

for mobilization of public opinion” which he had exhibited in his prior campaign to repeal prohibition.<sup>50</sup> To catch the attention of the common man, and the news, Pitcairn used publicity stunts such as having “pretty girls” give people stickers protesting the provision.<sup>51</sup> The provision, he stated, was not just an invasion of privacy but un-American.<sup>52</sup> He also attempted to stoke public anxiety. The publicity about wealth and income, he claimed, would increase kidnapping—something much in the news because the Pink Slip campaign was conducted amidst the Lindbergh baby kidnapping trial.<sup>53</sup> The campaign ended successfully in spring 1935 with the repeal the pink slip.<sup>54</sup>

Pitcairn then turned his “genius” towards a major campaign to further its core goal: protecting the constitution. For several years, the Sentinels and other conservative groups had been criticizing the Roosevelt administration for destroying the constitution, the American way of life and preventing economic recovery through its illegal programs and high taxes. In fall 1934, for example, it had joined other conservative groups in a celebration of Constitution Day.<sup>55</sup> Now the Sentinels via Pitcairn were ready to launch an elaborate effort to turn average Americans against New Deal programs that they thought were benefiting them. The key to this was convincing people that they were bearing the costs of the New Deal’s wasteful and unconstitutional programs that were destroying the constitutionally mandated federal system of government. In August 1935, Pitcairn set out the problem and the solution in *Who Foots the Tax Bill?*:

Politicians say that ‘average voter’ gets a ‘free ride’ on government programs while ‘the rich manufacturers and big corporations pay the fare. What they haven’t told is that no matter who gets the original bill, the cost is passed on to the ultimate consumer—which means you and your family. . . . What politicians can do is cut down the reckless expenditures which make high taxes necessary.’<sup>56</sup>

In October 1935, the Sentinels officially launched its campaign to protect the Constitution with a Constitutional Exhibit in Philadelphia.

## B. Hidden Taxes and the Sentinels’ Constitutional Exhibit, Generally

The newspapers had many names for the campaign, including “Anti-New Deal Exhibit.”<sup>57</sup> Although the Sentinels may have thought that name was too

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50. See Arthur Sears Henning, *Satirical Show Hits New Deal; Chicago-Bound*, CHI. TRIB., Oct. 25, 1935, at 13.

51. *The Pink-Slip Strike, as Told by Raymond Pitcairn, National Chairman, Sentinels of the Republic*, SAT. EVENING POST, June 8, 1935, at 23, 48.

52. *Week in Business: Sentinel Spies Pink Tax Slip, Sees Red*, NEWSWEEK, Feb. 16, 1935, 34–35.

53. Kornhauser, *supra* note 49, at 123, 140–41 (2010).

54. “*Pink Slip*” *Repeal Is Voted by Senate*, N.Y. TIMES, Mar. 29, 1935, at 1.

55. *Constitution Day Commemorated in Philadelphia Monday*, BOSTON GLOBE, Sept. 16, 1934, at B3.

56. Raymond Pitcairn, *Who Foots the Tax Bill?*, 2 (1935) (on file with the Glencairn Museum Archives, Raymond & Mildred Pitcairn Papers, Public Life, Politics, Box 6—Sentinels of the Republic, folder 3, Bryn Athyn Historic District Archives, Glencairn Museum).

57. *Sentinels Send Anti-New Deal Exhibit South*, CHI. TRIB., Jan. 15, 1936, at 7. Three days earlier,

strong, it did accept the label “Political Spotlight” as well as other labels newspapers gave it: “Safeguard-the-Constitution Rally,” “Beat-Bureaucracy Movement,” and “Educational Exhibit.”<sup>58</sup> In other words, the ultimate goal of the constitutional campaign was the same as that of the Pink Slip campaign before it: protect the Constitution, convince the masses to adopt conservative views about the role of government, and motivate voters to petition their legislators about them. The Constitution campaign, however, did not focus on a single provision; rather it broadly addressed what conservatives viewed as the central issues of the day: the wastefulness and unconstitutionality of the Roosevelt administration’s programs. The campaign’s purpose, as Pitcairn said on the eve of the campaign, was to show “how much three years of experiment at Washington have cost average citizens both in money and by invasion of their individual rights.”<sup>59</sup>

The Sentinels were not alone in their efforts to convince the masses that they bore the burden of Roosevelt’s expansive governmental functions. By 1935 many regular Republicans and even some former Democrats<sup>60</sup> stressed this point. In fact, the effect of hidden taxes on the common man was a major component of the 1936 Republican presidential campaign.<sup>61</sup> Republicans tried to personalize the issue by telling the public the amount of taxes included in the price of everyday goods such as bread, the radio, and cigarettes.<sup>62</sup>

Some conservatives, like B.C. Forbes, the founder and editor of *Forbes Magazine*, dramatized the issue. His 1936 book *Tax Tyrannies* began with the question: “Upon whom do taxes actually fall?”<sup>63</sup> It concluded that taxes were “Enemy Number One against restoration of better times,” primarily due to federal expenditures.<sup>64</sup> The final sentence proclaimed: “Taxation, formerly vexation, threatens to become ruination.”<sup>65</sup> In between, he presented short word pictures to give the reader a visual image of the real cost of Roosevelt’s programs—including a \$15 billion debt that “will have to come out of the hides and pockets of toiling taxpayers”<sup>66</sup>:

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however, the conservative Chicago Tribune, for example, called it a “motor Tour to Uphold Constitution.”

58. Unique in Public Affairs, 1 (Jan. 1936) (on file with the Glencairn Museum Archives, Raymond & Mildred Pitcairn Papers, Public Life, Politics, Box 6 –Sentinels of the Republic, folder 3, Bryn Athyn Historic District Archives, Glencairn Museum).

59. *Sentinels to Show New Deal Results*, WASH. POST, Oct. 13, 1935, at 2 (quoting Pitcairn).

60. John Raskob, former Democratic National Chair, was one example of a Democratic who turned against the New Deal programs. See *infra* note 115 and accompanying text.

61. For a fuller description of the hidden tax campaign, see Marjorie E. Kornhauser, *Remembering the “Forgotten Man” (and Woman): Hidden Taxes and the 1936 Election*, in 4 STUDIES IN THE HISTORY OF TAX LAW ch. 13 (John Tiley ed., 2010).

62. See, e.g., *Text of Governor Landon’s Attack on Roosevelt Debt and Taxes*, N.Y. TIMES, Aug. 27, 1936, at 9.

63. B. C. FORBES, *TAX TYRANNIES* at 1 (1936).

64. *Id.* at 57.

65. *Id.* at 60.

66. *Id.* at 53.

Picture the mighty Empire State Building, the tallest in the world, solidly covered with one-dollar bills, from sidewalk to summit, front, back and sides, roofs and twofers, every inch of its outside area.

That would look like a lot of money, wouldn't it?<sup>67</sup>

Then came the clincher: The daily deficit of the Roosevelt administration, he said, would cover the building in twenty-four hours; four years of the debt would cover it about 1,767 times.<sup>68</sup>

The Sentinels' campaign's uniqueness stemmed not from its message, but from its techniques. Its January 1936 Bulletin stated that the campaign's goal was to show “graphically” the huge amount of money “squandered” by the Roosevelt bureaucracy, “the effect of such waste on the average worker's income, cost of living and taxes,” and Roosevelt's attempts “to ignore or change the Constitution.”<sup>69</sup> “Graphic” was an understatement. This campaign was a multimedia extravaganza built on the rhetorical and entertainment-oriented techniques Pitcairn had deployed so successfully in the Pink Slip campaign. Although speeches and pamphlets were used, the point of the campaign was to convey its message “with clarity, satire, and good humor.”<sup>70</sup>

The campaign opened with a six day exhibit at the Garrick Theatre in Philadelphia on October 14, 1935 with more than 30,000 attending.<sup>71</sup> Every evening, prominent people such as former Senator Hiram Bingham (R-CT), former Senator and current Representative James W. Wadsworth (R-NY), Colonel Henry Breckenridge (Wilson's Assistant Secretary of War) and Colonel R. R. McCormick (publisher of the Chicago Tribune) lectured on the Exhibit's theme.<sup>72</sup> Pitcairn apparently enhanced the talks with people planted in the audience who would shout comments like “The communists will save the world.”<sup>73</sup>

The daily exhibit also conveyed the Sentinels' message in a more entertaining manner—one that garnered a great deal of publicity. The entertainment began at the entrance to the exhibit. There, a huge sign stated that the federal government incurred \$10 million of debt daily. It asked “Who Will pay this Bill? Look and see[.]”<sup>74</sup> When people looked down as directed by the sign, a mirror reflected the image of the viewer. The Exhibit used other types of media as well. For example,

67. *Id.*

68. *Id.*

69. Unique in Public Affairs, *supra* note 58.

70. *Sentinels to Show New Deal Results*, WASH. POST, Oct. 13, 1935, at 2 (quoting Pitcairn).

71. Unique in Public Affairs, *supra* note 58.

72. *To Satirize New Deal by Animated Movies*, N.Y. TIMES, Oct. 14, 1925, at 5. The other two speakers were William Guthrie, former president of the New York State Bar and Lewis Douglas, former Director of the Budget. *Id.*

73. Interview with Leon Rose, son of Don Rose, Author of *American Fire Brigade* (Mar. 4, 2003). Rose was a teenaged office boy in Pitcairn's office at the time of the campaign.

74. Unique in Public Affairs, *supra* note 58. See also Henning, *supra* note 50.

a full stage allegorical painting presenting the White House, capitol, and the Supreme Court building representing the three functions of American constitutional government. This scene dissolved into a picture of these building almost obscured by fantastic architectural superstructures giving shelter to queer agencies of government with alphabetical names.<sup>75</sup>

The Exhibit also contained still cartoons and even had moving pictures. There were short movie clips of some of the speakers such as Col. Henry Breckenridge.<sup>76</sup> Most notable, however, was its animated cartoon, discussed below.

In January, the Sentinels took the show on the road, beginning with Florida.<sup>77</sup> There were three different formats.<sup>78</sup> In big cities such as Chicago, it presented a "Complete Show" in theaters and included evening lectures. In other cities and large towns, it used a "standard show" in "civic buildings, fraternal halls, motion picture houses and the like." Finally, a caravan traveled to rural areas across the country in "a self-contained motor unit" showing the "Show-on-Wheels" "in public open-air centers, parking lots, etc." By mid-April the movie had been shown in about twenty towns.<sup>79</sup>

The Sentinels supplemented the Exhibit with traditional print media. For example, Thomas F. Cadwalader, a lawyer and chair of the Executive Committee emphasized the crucial role of taxation in the battle for American democracy and against "irresponsible centralized power."<sup>80</sup> "Taxation," he wrote

is a necessary evil, but tends constantly to become a menace to economic freedom. On account of this menace, our forefathers rebelled against Great Britain. If we submit to crushing taxation to support an irresponsible bureaucracy, we throw away everything for which the Revolution was fought. We dishonor the memory of Valley Forge.<sup>81</sup>

Pitcairn wrote short pieces and captions for cartoons that addressed all areas the exhibit dealt with, including taxes. *There's No Free Ride on Taxes* addressed what he called "probably the most common . . . political promise," namely that the "average worker" would not pay any taxes. Hidden federal taxes, he wrote, had risen in 1935 to almost \$70 per family.<sup>82</sup> Other politicians made similar statements, but they did not have accompanying cartoons. This one illustrated how the taxes nominally levied on producers were passed to retailers and

75. Henning, *supra* note 50.

76. *Id.*

77. *Constitution Caravan Starts Southern Tour*, CHRISTIAN SCI. MONITOR, Jan. 15, 1936 at 5; *Sentinels Send Anti-New Deal Exhibit South*, CHI. TRIB. Jan. 15, 1936, at 7.

78. *Sentinels Send Anti-New Deal Exhibit South*, CHI. TRIB., Jan. 15, 1936, at 7; Unique in Public Affairs, *supra* note 58.

79. Black Investigation, *supra* note 29, at 2050 (1936) (Testimony of David F. Sibley).

80. A Statement by Thomas F. Cadwalader (1936) (on file with the Schlesinger Library, Radcliffe Institute, Papers of Alexander Lincoln, Box 1, Folder 4). Cadwalader had been a Democrat but opposed Roosevelt and his New Deal on constitutional grounds. *May Fight Roosevelt*, N.Y. TIMES, July 29, 1936, at 2.

81. A Statement by Thomas F. Cadwalader (1936) (on file with the Schlesinger Library, Radcliffe Institute, Papers of Alexander Lincoln, Box 1, Folder 4).

82. *Id.*

ultimately the consumer.<sup>83</sup> Occasionally, Pitcairn specifically addressed women. He told housewives, for example, “No matter on whom the tax-creators and tax-eaters attempt to load the cost, the bill is finally paid out of her thin purse.”<sup>84</sup> He addressed working women in a cartoon of a woman typing at a desk. The caption says the woman mistakenly believes that her boss pays all the taxes. Not true, it continued, as “more than 100 different taxes are stitched” into the dress she bought.<sup>85</sup>

Pitcairn frequently sent articles and editorials about the exhibit specifically or its general message and philosophy to about 1900 small newspapers. At the start of the campaign in October 1935 the Sentinels claimed its “Messages Upholding the Constitution and Urging a Return to Sound, American Principles in Government” appeared in more than 1,300, mostly small, newspapers across the country.<sup>86</sup> By March 1936, Pitcairn had sent over thirty items on topics such as *The ‘Personal Touch’ In Taxes* and *What Is the Constitution?*<sup>87</sup> Newspapers and magazines published these items because they knew the owners liked getting free material they could use as their own.<sup>88</sup>

Sometimes the press did write its own materials. The Campaign received a lot of press coverage because its techniques made it newsworthy. Other conservatives might say the same thing, but none rivaled the way the Sentinels said it. In January 1936, the Sentinels themselves attributed the Campaign’s success to its use of “the most striking effects of the Front Page the Screen, the Advertising Art and the Political Cartoon—with all their possibilities of humor, satire and direct human-interest appeal.”<sup>89</sup> The most striking—and controversial—method it used was an animated film, the Amateur Fire Brigade, which at least one newspaper called the “first successful adaption of the political cartoonist’s art to the motion picture screen.”<sup>90</sup>

### C. Animated Film and The Amateur Fire Brigade

The biggest attraction at the Constitutional exhibit was its animated film. As a *Boston Globe* Editorial stated:

The ever-resourceful Sentinels of the Republic have hit upon an idea of political campaigning which should help to make politics quite enjoyable. They propose to go

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83. Raymond Pitcairn, *The Triple Pass* (1936) (on file with the Schlesinger Library, Radcliffe Institute, Papers of Alexander Lincoln, Box 1, Folder 3).

84. Raymond Pitcairn, *Budget-Balancer No. 1—The Housewife* (1936) (on file with the Schlesinger Library, Radcliffe Institute, Papers of Alexander Lincoln, Box 1, Folder 3).

85. Raymond Pitcairn, *The Woman Pays* (on file with the Schlesinger Library, Radcliffe Institute, Papers of Alexander Lincoln, Box 1, Folder 3).

86. Sentinels of the Republic, *A Report of Progress* (1935) (on file with the Glencairn Museum Archives, Raymond & Mildred Pitcairn Papers, Public Life, Politics, Box 6—Sentinels of the Republic, Folder 3, Bryn Athyn Historic District Archives, Glencairn Museum).

87. *Id.*

88. Black Investigation, *supra* note 29, at 2068.

89. Unique in Public Affairs, *supra* note 58.

90. *Movie Cartoon on New Deal Is Displayed Here*, CHI. TRIB., Feb. 1, 1936, at 6.

forth against the New Deal by way of the animated comic cartoon in the movies.<sup>91</sup>

The Exhibit had several animated cartoon films. One, called “A Day with the Tax-Payer . . . Hour by Hour,” showed hidden taxes on items taxpayers used or purchased daily—the bus, groceries, cigarettes, insurance, and bread.<sup>92</sup> Another “Animated Motion Picture Cartoon” called “The Sentinels’ Scrapbook” showed taxes on everyday items such as clothes, the telephone, beer, cars, the radio and the movies.<sup>93</sup>

The most attention-getting and controversial film however, was the animated cartoon, “The Amateur Fire Brigade.” The *New York Times* summed up the film neatly:

The picture depicts the efforts of the fire company, with leaking buckets and a pump that needs priming with \$1,000,000 in taxes every minute, to put out a fire in the home of Uncle Sam and Ma Liberty. The fire has spread after the Democratic donkey, entering the kitchen to eat from the pork barrel, upsets a “pan of recovery” on the stove.<sup>94</sup>

Although the totally useless Amateur Fire Brigade, manned by Brain Trusters, failed to douse the fire, Ma Liberty did so with buckets of “Common Sense” and “Economy.”<sup>95</sup> In the course of the film the viewer saw scenes such as “Brain Trust Poker—Taxpayers Wild!”<sup>96</sup> where the piles of chips being used are labeled “Income Taxes,” “Tariffs” and “Internal Revenues”<sup>97</sup> and Brain Trusters building a house of “alphabetical blocks” labeled with the acronyms of various New Deal programs.<sup>98</sup>

A *Boston Globe* editorial commented on the ambiguity of some of the scenes in the film. It mentioned as an example the frame showing the fire hose failing to work because \$1,000,000 of new taxes was need every minute to “prime it properly”:

True, there may be some puzzled wonder as to just what the inference is about \$1,000,000 more taxes a minute than are already available to the Government. Does that mean that the Sentinels endorse an addition to the tax burden to that amount? Or is the meaning of the cartoon simply that the house should be allowed to burn down anyway?<sup>99</sup>

The *Boston Globe* was correct in the sense that the exact message of that frame might be unclear, but the general message was not: there are too many taxes paying for too many programs—programs that were not even working.

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91. *Editorial, For President: Walt Disney*, BOSTON GLOBE, Oct. 1, 1935, at 16.

92. Unique in Public Affairs, *supra* note 58.

93. *Id.*

94. *To Satirize New Deal by Animated Movies*, N.Y. TIMES, Oct. 14, 1935, at 5.

95. Don Rose, *The Amateur Fire Brigade*, 9 (1935) (on file with the Glencairn Museum Archives, Raymond & Mildred Pitcairn Papers, Public Life, Politics, Box 6—Sentinels of the Republic, Folder 3, Bryn Athyn Historic District Archives, Glencairn Museum).

96. Unique in Public Affairs, *supra* note 58.

97. *Loyalty Show Opens Monday for Week's Run*, CHI. TRIB., Feb. 5, 1936, at 4.

98. *Movie Cartoon on New Deal Is Displayed Here*, CHI. TRIB., Feb. 1, 1936, at 6.

99. *Editorial, For President: Walt Disney*, BOSTON GLOBE, Oct. 1, 1935, at 16.

Despite the blurry message, the Editorial stated that the film was “bound to stimulate interest in the campaign.”<sup>100</sup> And it did. Even the Black Investigation was interested in it.<sup>101</sup>

The *Amateur Fire Brigade* garnered so much attention because the use of animated film for political purposes was unusual. In fact, it was probably the first animated film to do so.<sup>102</sup> The novelty created great controversy. Such a physically large caricature projected on a large screen proved unsettling to some people—including potential donors—even though they were used to small, newspaper-sized cartoons.<sup>103</sup> The Sentinels edited the film because of the reaction and eliminated the image of the President.<sup>104</sup>

The novelty of the political cartoon also created problems in showing the film in public, but this controversy only increased interest and gave the film free publicity. In February 1936, as the show traveled north from Florida, censors tried to ban the film in places such as Chicago and Cleveland, which was where the Republican convention was to be held that summer. They claimed the film was “disrespectful” to the president and the office of the presidency.<sup>105</sup> Supporters replied with claims of free speech, especially since the president as a candidate was fair game.<sup>106</sup> Eventually the film played in Chicago because its board of censors stated it was “silly” to ban “an animated cartoon.”<sup>107</sup> The Ohio film censorship board also approved the film once the president’s image was replaced by one of the Brain Trusters, but the Sentinels were still having trouble showing the film because of local opposition.<sup>108</sup>

After all the razzle-dazzle and publicity of the Constitutional Exhibit and traveling show, the Sentinels continued to push its agenda, but it received little public attention. Occasionally the papers mentioned its activities in the lead up to the 1936 presidential election. In June, for example, newspapers commented on the Sentinels’ request for an “all American platform” at the forthcoming Republican National Convention.<sup>109</sup> This platform followed the Sentinels’ usual

100. *Id.*

101. See Black Investigation, *supra* note 29, at 2067 (testimony of David F. Sibley); *id.* at 2089 (testimony of Roland Preisman).

102. *Movie Cartoon on New Deal Is Displayed Here*, CHI. TRIB., Feb. 1, 1936, at 6.

103. Black Investigation, *supra* note 29, at 2067 (testimony of David F. Sibley); *id.* at 2089 (testimony of Roland Preisman).

104. Letter from Pitcairn to Lincoln, Feb. 24, 1936 at 3 (on file with the Schlesinger Library, Radcliffe Institute, Papers of Alexander Lincoln, Box 7, Folder 43).

105. *Animated Cartoon Barred by Censors*, TIMES-PISCAYUNE, Feb. 12, 1936, at 10; *Anti New-Deal Film Halted by City’s Censors*, CHI. TRIB., Feb. 7, 1936 at 1; *Bars Film Cartoon of President*, N.Y. TIMES, Feb. 11, 1936 at 6; *Constitution Issue Urged By Bingham*, HARTFORD COURANT; *Sentinels Plan To Fight Ban Put On Movie In Ohio*, CHI. TRIB., Feb. 14, 1936, at 12.

106. *Editorial, Political Censorship in Ohio*, CHI. TRIB., Feb. 15, 1936, at 10.

107. *Anti-New Deal Movie Comedies Open Here Today*, CHI. TRIB., Feb. 10, 1936 at 4.

108. Letter from Pitcairn to Mrs. John Balch, Secretary (1936) (on file with the Schlesinger Library, Radcliffe Institute, Papers of Alexander Lincoln, Box 7, Folder 33).

109. Arthur Evans, *East Demands Landon Give In On Gold, Tarif*, CHI. TRIB., June 10, 1936, at 4.

principles including maintaining states' rights (and therefore ending federal control of social security and child labor for example), balancing the budget, ending bureaucracy, and "Cessation of the uses of taxes for coercion or oppression of groups."<sup>110</sup>

Just before the election the Sentinels published *More Sentinel Features*, which urged Americans to vote to protect the nation's form of government.<sup>111</sup> Six cartoons illustrated what was at stake. Three of them entailed hidden taxes. *Feeding the Kitty* showed a puzzled boy on the floor surrounded by kittens with the caption: "There are more than 50 taxes levied on every quart of milk on the way from producer to consumer."<sup>112</sup> In *Ladies First* a Brain Truster, identified by the academic cap used to portray these intellectuals, hands "tax Bills" from his pouch to shocked women. In the caption, Pitcairn told the shocked ladies that higher taxes and prices drain their income and resources. *Feeding the Tax Kitty*, *Ladies First*, and *In the Sweat of Labor* all mentioned in their accompanying captions that everyday people were paying taxes.

After the election, the Sentinels disappeared into obscurity except for an occasional mention, often in connection with the conservative rights' desire to stay out of World War II.<sup>113</sup> They disbanded in 1944.<sup>114</sup>

### III

#### AMERICAN LIBERTY LEAGUE

##### A. Brief History

The American Liberty League was formed in August 1934 by a group of wealthy conservatives unhappy with Roosevelt and his administration. It included many Democrats who had voted for Roosevelt in 1932, such as the 1928 Democratic presidential nominee Al Smith, former Democratic Party chair (and du Pont and General Motors officer) John Raskob, and wealthy businessmen such as Edward F. Hutton, several du Ponts, and Alfred Sloan of General Motors.<sup>115</sup> Its central goal, like that of the Sentinels', was to uphold and defend

110. *Id.* See also *Census: Are Questions on Income Legal? Extent of Questions Violation of Privacy*, CHRISTIAN SCI. MONITOR, Feb. 28, 1940, at 3 (arguing against adding question regarding income for privacy reasons); Raymond Pitcairn, *Your Taxes—Direct and Indirect*, LAKE BENTON VALLEY NEWS, Oct. 2, 1936, at 1, available at <http://news.google.com/newspapers?nid=1018&dat=19361002&id=CLckAAAIBAJ&sjid=zA8GAAAIBAJ&pg=465,423801> [<https://perma.cc/7T6N-N6UZ>] (stating that hidden taxes are passed on and paid out of the average worker's wages in the price of goods).

111. Letter to Members (1936) (on file with the Schlesinger Library, Radcliffe Institute, Papers of Alexander Lincoln, Box 1, Folder 3).

112. *Id.*

113. *Peace Group Assails Roosevelt*, WASH. POST, Oct. 11, 1940, at 2.

114. Sentinels of the Republic Records (Williams College Archives & Special Collections, 1922–1944), <http://archivesspace.williams.edu:8081/repositories/2/resources/128> [<https://perma.cc/XV7E-9XX6>].

115. *The Liberty League*, LITERARY DIG., Jan. 19, 1935, at 7; see generally GEORGE WOLFSKILL, THE REVOLT OF THE CONSERVATIVES: A HISTORY OF THE AMERICAN LIBERTY LEAGUE, 1934–1940

the constitution. Its charter stated the League:

(1) will teach the necessity of respect for the rights of persons and property as fundamental to every successful form of government, and (2) will teach the duty of government to encourage and protect individual and group initiative and enterprise, to foster the right to work, earn, save and acquire property, and to preserve the ownership and lawful sue of property when acquired.<sup>116</sup>

The similarities of the goals, and some of the membership, were such that the two groups briefly contemplated merging in 1934.<sup>117</sup>

From its formation, the League, unlike the Sentinels, was newsworthy. In its first two years, it made headlines almost daily.<sup>118</sup> This publicity did not arise from widespread popular support although its membership was larger than the Sentinels. Nor did it occur because of spectacular events like the Sentinels’ Constitution Exhibit. Rather, the attention derived from the noteworthiness of members like Smith and the du Ponts and from the almost constant barrage of lectures, pamphlets and radio talks the League produced. It spent over \$1 million between August 1934 and November 1936—and that is not counting the value of the free press and radio time it received.<sup>119</sup> Most of its funding came from a very small number of wealthy contributors. In 1936, at its height of publications, about two-thirds of its money came from thirty men, with the du Ponts giving 25% of it.<sup>120</sup>

The American Liberty League claimed it was non-partisan, just as the Sentinels did. Indeed, it claimed it “will be happy to have the support of President Roosevelt.”<sup>121</sup> It also noted that the “dangerous” tendencies that it opposed had begun before the Roosevelt administration.<sup>122</sup> Nevertheless, given the League’s constant criticism of the New Deal and its un-American policies, most people viewed it as anti-Roosevelt. It was one of the dozen or so patriotic anti-Roosevelt groups targeted by the Black Investigation in 1936.<sup>123</sup>

(1962). For consistency, this article uses the contemporary spelling “du Pont” throughout; however, “duPont” was also frequently used in the past.

116. American Liberty League, *A Statement of Its Principles and Purposes 2* (1934) (quoting charter) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46> [<https://perma.cc/M3UR-34KU>]. The two organizations, however, did differ somewhat in their particular interests. The League, for example, was not interested in the Sentinels’ continued activities against child labor rules. Black Investigation, *supra* note 29, at 2047 (Testimony of David F. Sibley).

117. Black Investigation, *supra* note 29, at 2066.

118. WOLFSKILL, *supra* note 115, at 56.

119. *Id.* at 61–67. It was not unusual for groups to get free radio or press time. For example, the American Taxpayers’ League was on NBC radio for seventy-seven weeks, and never paid a penny. Black Investigation, *supra* note 29, at 1653, 1665 (Testimony of J. A. Arnold).

120. WOLFSKILL, *supra* note 115, at 61.

121. American Liberty League, *A Statement of Its Principles and Purposes 3* (1934) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

122. Jouett Shouse, *Progress vs. Change 4* (1934) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

123. 80 CONG. REC. 10493 (1936).

The League basically acknowledged that its ultimate goal was lobbying. Of course, it did not say that was its purpose, but rather defined it as an exercise in democracy:

The American Liberty League was formed to provide the means by which citizens of this country may express prompt and effective protest against any and every encroachment by the Federal Government upon the personal liberty which is guaranteed by the Constitution.<sup>124</sup>

The League gave the “average citizen,” who the League claimed was silenced by the recognition of the inadequacy of individual protest, “the means for collective expression of public opinion.”<sup>125</sup> Of course, the League omitted saying that it was also trying to shape that public opinion.

The League recognized that taxation was key to the shaping and expressing of that opinion. If people were “tax-conscious” then they would take “a greater interest in government.”<sup>126</sup> In fact, some League members favored an income tax because it would make people aware that they were paying taxes—unlike the hidden taxes most people paid now—and this would make voters more sensitive to taxes.<sup>127</sup> Taxes were integral to the League’s belief that property rights were really individual rights of freedom.<sup>128</sup> It said that New Deal taxes for non-revenue raising purposes like redistributing wealth took property from individuals and were part of New Deal actions that were more destructive to liberty than actions by Mussolini, Hitler, and Stalin.<sup>129</sup>

From its inception the League linked taxation to economic and constitutional problems. Shortly after its formation, its pamphlet *A Statement of Its Principles and Purposes* used patriotic rhetoric to tie taxation to the Roosevelt administration’s unconstitutional expansion of government under the guise of helping the people:

Our forefathers separated themselves from the mother country because they felt that taxation without representation was tyranny. Today large groups are being taxed for the benefit not of the whole people or for the support of the government alone, but for the direct benefit of other specific groups and classes.<sup>130</sup>

124. Ethan A. H. Shepley, *The National Lawyers Committee of the American Liberty League 2* (Doc. 74) (1935) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

125. *Id.*

126. *The President’s Tax Program: An Analysis of a Transparent Political Gesture 11* (Doc. 47) (1935) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

127. *Id.* See *infra* for discussion about hidden taxes.

128. Jouett Shouse, *Progress vs. Change 11* (1934) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

129. American Liberty League, *Shall We Have Constitutional Liberty or Dictatorship? 9* (Doc 120) (1936) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

130. American Liberty League, *A Statement of Its Principles and Purposes 5* (1934), (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

To some members, the income tax lay at the heart of the current problems. As the secretary and organizer of the League, W. H. Stayton wrote to Pierre du Pont, a major donor, the “unconstitutional seizure of power” occurred “principally because of economic troubles” and “the most important factor in bringing about our present economic troubles is the Sixteenth Amendment. Until that Amendment has been modified, the very foundations of our government are in danger.”<sup>131</sup> He believed that ultimately the Amendment would have to be repealed or at least modified so that income taxes could be used only to pay existing debt.<sup>132</sup>

That project, Stayton noted, was a long-term one. The immediate issue, he stated, was the same one other conservatives were facing: making the “little fellow” aware that they were paying for the government’s programs and wasting money by means of taxes hidden in everyday items.<sup>133</sup> A 1934 letter by the publicity director set out the goal in terms familiar to the Sentinels and others. He believed all the League’s publicity had to be “so written and directed that it will appeal to the ‘little fellow’ and will interest him in becoming a supporter.”<sup>134</sup> They had to

be specific about what the waste of money by the Federal Government means to him and his children. Let’s make clear the fact that his personal security and future happiness depends upon the ability of all citizens to pursue their businesses with a reasonable hope of profit.<sup>135</sup>

This included showing the “little fellow” that opposing “excessive tax burdens” didn’t just help the rich, but helped him, too:

Point out that even though his wage or salary is in such a low bracket it is untouched by income levies, he pays exhorbitant [sic] taxes when he buys tobacco, gasoline, food and clothing, when he pays his rent or electric light and fuel bills. Dramatize it—he works about three months out of the year to pay the cost of ‘governing’ him.<sup>136</sup>

Although the League generally did not focus on tax, it did stress the critical connection between taxes and the current threat to liberty. Specifically, it believed—as did other conservatives—that high taxes hampered economic recovery and funded inefficient, often unconstitutional bureaucracy and programs. These endangered economic and individual rights and threatened the very foundations of the American way of life, including its democratic form of government. Its 1935 pamphlet *Expanding Bureaucracy* mentioned tax only in its first sentence. That one sentence, however, was the foundation for the remaining ten pages that elaborated on its subtitle *A Study of an Expensive Violation of Campaign Pledges, Menacing to the Rights and Liberties of Citizens*:

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131. Letter from W. H. Stayton to Pierre du Pont (1935) (on file with Hagley Museum & Library, Pierre du Pont Papers, Longwood Manuscripts, Group 10, File 771, Box 1294).

132. *Id.*

133. Letter from Brooks Darlington to Pierre du Pont 2 (1934) (on file with Hagley Museum & Library, Pierre du Pont Papers, Longwood Manuscripts, Group 10, File 771, Box 1294).

134. *Id.*

135. *Id.* at 3.

136. *Id.*

The mushroom growth of the Federal bureaucracy during the past two years represents . . . an unjustifiable burden on the taxpayers and a menace to the liberties, rights and welfare of individual citizens and business enterprises.<sup>137</sup>

Sometimes the League made relatively sophisticated links between New Deal policies and taxpayers. Such was the case with its June 1936 pamphlet *Socialization of the Electric Power Industry*, which was subtitled *An Analysis of New Deal Policies and Projects Designed to Destroy Private Industry at Tremendous Cost to the Taxpayer*. The pamphlet related details about how the “socializing of the electric industry,” by projects such as the TVA, cost taxpayers a huge amount of money because of subsidies.<sup>138</sup> Alabama, for example, “resented” that the TVA not only paid less tax to it than local power companies did, but that property taxes had increased because “thousands of acres of land” taken by the TVA no longer paid them.<sup>139</sup>

The League, however, also repeatedly made less nuanced appeals to the masses. These emphasized that the “little fellow” paid for all the government programs despite New Deal rhetoric about taxing the rich. John W. Davis, a League member and 1924 Democratic presidential candidate, stated this succinctly in a 1936 speech. The “blessing” government provided, he said, “usually proves to have been taken from the unforgotten pocket of the forgotten taxpayer.”<sup>140</sup>

The pamphlet *Wealth and Income*, published the next month, laid this out more clearly. Its subtitle explained: *A Factual Analysis of a Situation Frequently Obscured by Misinformation and Attempts to Arouse Class Prejudices*.<sup>141</sup> The Roosevelt administration, it claimed, “invoked” the power of taxation to “promote a redistribution of wealth.”<sup>142</sup> Breaking up concentrations of wealth and income and then redistributing it, however, could not possibly help anyone—there just was not enough to go around. The only thing that could improve the American way of life was more production under a free enterprise system—including freedom from government restrictions.<sup>143</sup>

The League frequently cited the Roosevelt administration’s use of the taxing power as an example of the New Deal’s unconstitutionality. The Administration

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137. American Liberty League, *Expanding Bureaucracy* 2 (Doc. 57) (1935) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

138. American Liberty League, *Socialization of the Electric Power Industry* 3 (Doc. 127) (1936) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

139. *Id.* at 6.

140. Speech of John W. Davis, *The Redistribution of Power* 13 (Doc. 93) (1936) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

141. American Liberty League, *Wealth and Income* (Doc. 98) (1936) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

142. *Id.* at 4, 15.

143. *Id.* at 16–18.

“attempted the expansion of the taxing power from its intended purpose of providing revenue into an instrument of social and industrial control and as a punitive weapon to impose ‘voluntary’ submission.”<sup>144</sup> “Who could have imagined that we should in this country have adopted the theory of taking the money and property from those who own it, and redistributing it through the process of taxation?”<sup>145</sup>

The League’s discussion of hidden taxes was part of its efforts to convince the “little fellow” to turn against New Deal programs because of the tax burdens it put upon them. The government was spending “The People’s Money,” as the title of one 1935 speech proclaimed.<sup>146</sup> League President Jouett Shouse was even more specific in a 1936 radio talk. He claimed that in the fifteen minutes he was speaking the government spent \$114,000.<sup>147</sup> That money, however, did not belong to either Congress or Roosevelt, but to the people.

It is your money. You have to pay the taxes to raise it. You are burdened with the debt in connection with it. The value of anything you own is affected by that debt and those taxes.<sup>148</sup>

By “you” he meant the “people with medium incomes and moderate savings”—and not the rich as the Administration claimed.<sup>149</sup> People would pay not just through indirect, or hidden, taxes on goods and services, but “sooner or later” income taxes—which now applied to only the wealthy—would have to be broadened to “include more people and smaller incomes.”<sup>150</sup> Because Congress was spending the people’s money, the people “have the right to demand that those in charge of the Government budget shall turn from their reckless course and no longer waste our money in useless expenditures.”<sup>151</sup>

The League even had a few pamphlets that focused entirely on the Roosevelt Administration’s unsound and unconstitutional tax policy. One month after Roosevelt’s June 1935 Tax Message to Congress, the League responded with a nineteen page “analysis.”<sup>152</sup> In his message, Roosevelt recommended changes in

144. Raoul E. Desvernine, *The Need for Constitutional Growth by Construction or Amendment* 15 (Doc. 119) (Apr. 3, 1936). *Accord Fitzgerald Hall, A Federal Union—National and State Responsibilities* (Doc. 123) (Apr. 20, 1920) (on file with the University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967).

145. James A. Reed, *Shall We Have Constitutional Liberty or Dictatorship?* 13 (Doc. 120) (1936) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

146. Dr. Walter E. Spahr, *The People’s Money* (Doc. 51) (1935) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

147. Jouett Shouse, *You Owe Thirty-One Billion Dollars* 6 (Doc. 125) (1936) (on file with the University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

148. *Id.* at 8.

149. *Id.* at 9.

150. *Id.*

151. *Id.*

152. American Liberty League, *The President’s Tax Program* (Doc. 47) (1935) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/>

the estate, gift, corporate and individual income taxes to break up concentrations of wealth and power and to redistribute the wealth more fairly.<sup>153</sup> The plan was—at least in part—a response to pressure from Huey Long’s Share Our Wealth program,<sup>154</sup> and may have been more symbolic than actual.<sup>155</sup>

The League excoriated Roosevelt’s plan on social, political, economic and legal grounds. The plan was

directed against fundamentals of the American system of government and would tend to destroy the incentive to individual initiative, infringe upon rights guaranteed by the Constitution, and further shatter confidence of business, already weakened by misguided efforts to attain social reform in the guise of schemes for recovery.<sup>156</sup>

Roosevelt, the League claimed, was using the “revenue clause of the Constitution for a purpose both reprehensible and of doubtful validity”—that is, “to attain political and socialistic ends,” instead of raising revenue.<sup>157</sup> After criticizing specific tax proposals, the pamphlet concluded by reasserting that Roosevelt’s goal was “political” rather than revenue-raising. His plan was not just unsound, but “unwise and dangerous,” “socialistic” and would alter the form of government.<sup>158</sup> In short, the “nonpartisan” League ended with its own political note.

Roosevelt’s 1936 tax message to Congress drew an eighteen-page response from the League. As in 1935, it did not ignore the harm the plan would do to economic recovery, but the pamphlet focused on the constitutional harm. The proposals, which would produce little revenue, would be “a dangerous use of the taxing power to accomplish social ends and to promote a redistribution of wealth and income”; they would “array class against class by inflaming the people of the country against large corporations and great wealth.”<sup>159</sup> All of this would be “at a tremendous cost to the taxpayers.”<sup>160</sup> In short, the pamphlet stated that Roosevelt’s plan was an unconstitutional use of the taxing power. For example,

[t]he effect of the [undistributed profits] tax would be to discourage individual initiative and to regiment industry. Through the taxing power the Federal Government would accomplish regulation which would be impossible under the commerce clause of the Constitution. It would be a step toward the type of control prevailing under European dictatorships.<sup>161</sup>

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?id=xt7wwp9t2q46.

153. Franklin D. Roosevelt, President of the U.S., Message to Congress on Tax Revision (June 19, 1935), <http://www.presidency.ucsb.edu/ws/?pid=15088> [<https://perma.cc/P5AL-BPA6>].

154. W. ELLIOT BROWNLEE, FEDERAL TAXATION IN AMERICA 72 (1996).

155. MARK LEFF, THE LIMIT OF SYMBOLIC REFORM 136–40 (1984).

156. The President’s Tax Program, *supra* note 152, at 3.

157. *Id.* at 7.

158. *Id.* at 18–19.

159. American Liberty League, The President’s 1936 Tax Proposals 3–6 (Doc. 112) (1936) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

160. *Id.* at 7.

161. *Id.* at 8.

The pamphlet devoted an entire section to this “Improper Use of Taxing Power.”

A few months later, the League published a pamphlet that explicitly addressed this very point. In *Social and Economic Experiments Under the Guise of Taxation* the League claimed that Revenue Acts of 1935 and 1936 were

of significance not because of their relatively minor effect upon the budget situation but because of their bearing upon theories of government. Through the power of taxation the New Deal has sought to experiment with economic theories, regiment industry, penalize big business, redistribute wealth and otherwise interrupt and obstruct the free flow of individual initiative and business activity which are vital essentials in the American constitutional system.<sup>162</sup>

“The administration’s tax program is intended to facilitate the type of economic planning which requires Government control of industry.”<sup>163</sup> This included the “punitive tax on undistributed profits of corporation [which] weakens the authority of the management of corporations,” and redistributive taxes on wealth, “such as high surtaxes and estate taxes [which] are also methods of enforcing a planned economy.”<sup>164</sup> New industries (such as the automobile industry) and small corporations were hurt because they needed to reinvest earnings; large corporations were hurt by graduated income taxes which were economically unsound and aimed at “bigness.”<sup>165</sup> New Deal taxes—although “ostensibly aimed at wealthy individuals and large corporations”—burdened “ordinary citizens” because corporate taxes were passed on to consumers, high tax rates destroyed capital and “retarded” economic recovery.<sup>166</sup>

In sum, the New Deal’s tax laws unconstitutionally used the taxing power to further centralize the government and “furnish[ed] evidence that the New Deal pattern of government is not in harmony with American institutions.”<sup>167</sup> The core beliefs of this and other American Liberty League pamphlets—if not all the specifics or exact rhetoric—remain central to conservatives today.

#### IV

#### CONCLUSION: BACK TO THE FUTURE

The Sentinels of the Republic and the American Liberty League did not achieve their ultimate goals, but their actions—like those of other conservative groups of the 1920s and 1930s—reverberate today. It is true that they failed to change the course of the 1936 election or prevent the adoption of major New Deal tax objectives like the undistributed profits tax. Nevertheless, their methods

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162. American Liberty League, *Social and Economic Experiments Under the Guise of Taxation* 3 (Doc. 129) (1936) (University of Kentucky Special Collections, Jouett Shouse Papers, 1899–1967), <https://nyx.uky.edu/fa/findingaid/?id=xt7wwp9t2q46>.

163. *Id.* at 9.

164. *Id.*

165. *Id.* at 11–14.

166. *Id.* at 19–20.

167. *Id.* at 20.

of indirectly influencing politics by shaping public opinion have endured. Their usage (especially the Sentinels) of new communications methods, including radio and film, advanced the political use of mass media to lobby the public. Today, interest groups lobby the public with techniques that are basically identical except now modern technology and knowledge about cognitive behavior have increased their power and range.

The rhetoric these groups used strengthened an already existent marriage of patriotic rhetoric to taxation. This, in turn, solidified an emotional approach to public discussions about tax policy that bonds low taxation to ideas about American democracy and American ideals of individualism and economic growth. This is especially true for conservatives who continue to talk about “starving the beast” and thereby saving individual liberties, the American form of a federalist democracy, and promoting economic growth, to boot. Liberals also make emotional tax appeals, but they stress the egalitarian aspects of American democracy. They want to tax the rich to redistribute wealth and decrease inequality. Neither type of rhetoric promotes reasoned discussions about tax. On the conservative side, feel-good rhetoric about economic growth, for example, overlooks real questions about whether that is true at all, and if true, what type of tax reform and what type of economic growth.<sup>168</sup> On the liberal side, rhetoric about high taxes on the rich diverts attention from examining spending policies that increase or decrease inequality.

The country cannot afford rhetoric that detracts from reasoned debate because it needs a rational tax policy more than ever. The centrality of tax to a functional government can only become more important because taxes will inevitably rise. This is so because, generally, as societal wealth increases, so does taxation. People want more—and better—services from government. Economists even call this phenomenon a “law.”<sup>169</sup> Many polls support it. They show that a sizeable number of people would support increased taxes for increased government services. An April 2017 Pew survey, for example, not only showed that 48% of respondents wanted more government services but also that similar percentages would pay higher taxes for increased government spending in areas such as health, veterans’ benefits, and defense.<sup>170</sup> So what can—or

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168. Kate Davidson, *Tax Cuts’ Link to Growth Is Tenuous*, WALL ST. J., Oct. 2, 2017, at A2; William Gale & Andrew Samwick, *Effects of Income Tax Changes on Economic Growth*, TAX POL’Y CTR. (Sept. 9, 2014), <http://www.taxpolicycenter.org/publications/effects-income-tax-changes-economic-growth> [https://perma.cc/UV2F-CGSV]; Howard Gleckman, *Will A Corporate Tax Cut Really Increase US Jobs and Wages?*, TAX POL’Y CTR. (Oct. 5, 2017), <http://www.taxpolicycenter.org/taxvox/will-corporate-rate-cut-really-increase-us-jobs-and-wages> [https://perma.cc/L47M-KNHR].

169. David Leonhard, *Our Coming Tax Increase*, N.Y. TIMES (Sept. 7, 2017), <https://www.nytimes.com/2017/09/07/opinion/trump-tax-increase.html> [https://perma.cc/JXL8-VMD2] (citing Paul N. Van de Water, *Federal Spending and Revenues Will Need to Grow in Coming Years, Not Shrink*, CTR. BUDGET & POL’Y PRIORITIES (Sept. 6, 2017), <https://www.cbpp.org/sites/default/files/atoms/files/9-6-17bud.pdf> [https://perma.cc/7JA4-KYSD]).

170. *With Budget Debate Looming, Growing Share of Public Prefers Bigger Government*, PEW RES. CTR. (Apr. 24, 2017), <http://www.people-press.org/2017/04/24/with-budget-debate-looming-growing->

should—be done?

This section briefly reexamines the problem and suggests partial solutions. It focuses on education, specifically tax literacy aimed at the general public. Although the section specifically addresses federal tax, state and local taxation faces the same issues.

#### A. The Problem, Briefly Restated

At the beginning of the Senate Lobbying Investigation in 1935 the *New York Times* stated “most . . . complicated” laws were “perhaps more a product of lobbyists” than of Congress.<sup>171</sup> Lobbyists—then and now—use indirect methods as well as direct ones to influence legislation. These efforts to shape public opinion and encourage voters to pressure legislators worry many inside and outside of Congress because of their potential to secretly shape public minds with biased (mis)information presented as objective facts. The ability to subtly shape public opinion today exceeds that of the past because of the confluence of several factors: (1) increased ability to manipulate/persuade the public based on research in areas such as behavioral economics, (2) increased ability to reach a wider public audience and more quickly because of new technology, and (3) the numerous ways small numbers of wealthy people now can anonymously contribute large amounts of money directly or indirectly to political efforts.

Political speech addressed to the public is often short on detail and long on rhetoric. These characteristics commonly occur in the tax area because the public perceives tax as difficult (math aversion), painful (they are taking my money) and dull (too technical). Consequently, a 1924 *New York Times* statement about tax reductions is no less true today: the masses find it easier to “listen to clever phrases,” and find it “tiresome to examine critically into a matter than concerns them only as it concerns the public generally.”<sup>172</sup> Behavioral psychology and economics use concepts like framing, triggers, and schema (mental shortcuts) to explain why people listen to these phrases and are influenced by them (often unconsciously). Unfortunately, just knowing the scientific explanations does not eliminate their effect. To illustrate this point, watch Dan Ariely’s Ted Talk about irrational behavior.<sup>173</sup>

Recent political events confirm that the public’s ability to distinguish between real news and fake news or opinion has not kept up with the ability to quickly and widely disseminate it. For example, bots originated approximately 20% of internet messages sent the month before the 2016 election and these were then

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share-of-public-prefers-bigger-government/ [https://perma.cc/T3PH-29UV].

171. Turner Catledge, *The Ways—and the Wiles—of the Lobby*, N.Y. TIMES, July 28, 1935, at 16.

172. *Open Week’s Drive For Tax Reduction*, N.Y. TIMES, Apr. 6, 1924, at E1.

173. Dan Ariely, *Are We in Control of Our Own Decisions?*, TED TALKS (Dec. 2008), [https://www.ted.com/talks/dan\\_ariely\\_asks\\_are\\_we\\_in\\_control\\_of\\_our\\_own\\_decisions/up-next](https://www.ted.com/talks/dan_ariely_asks_are_we_in_control_of_our_own_decisions/up-next) [https://perma.cc/7JF6-47U4].

re-tweeted or sent on by others.<sup>174</sup> The internet and the extensive reach of social media means that groups with patriotic names now can generate fake public support far beyond the telegrams, letters, exhibits, and radio used by groups like the Sentinels of the Republic. Stand Up America, for example, has a bot that facilitates sending faxes to legislators opposing Trump policies.<sup>175</sup> At the opposite end of political spectrum, one day after President Trump thanked “Nicole Mincey” for her support, Twitter suspended “Nicole’s” account because of evidence that it was a fake.<sup>176</sup> Some studies show that fake news was retweeted or republished just as much as real news during the 2016 presidential campaign.<sup>177</sup> Special Counsel Robert Mueller’s investigations into Russian meddling to influence the election and the grand jury’s February 2018 indictments suggest that the earlier estimates may be too low.<sup>178</sup> More recent studies show that false news appears to spread even more rapidly than truths.<sup>179</sup> Months after the election, almost half of those who voted for him believed he won the popular vote in the election.<sup>180</sup>

The events leading up to the passage of the Tax Cuts and Jobs Act of 2017<sup>181</sup> illustrate the effects of mass media and rhetoric on the tax legislative process. Republicans had urged tax reform throughout the eight years of the Obama administration. During the 2016 election campaign Donald Trump and the

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174. Abby Phillip, *The Curious Case of ‘Nicole Mincey,’ the Trump Fan Who May Actually be a Bot*, WASH. POST (Aug. 7, 2017), [https://www.washingtonpost.com/politics/the-curious-case-of-nicole-mincey-the-trump-fan-who-may-actually-be-a-russian-bot/2017/08/07/7aa67410-7b96-11e7-9026-4a0a64977c92\\_story.html?undefined=&utm\\_term=.ce59cca20900&wpisrc=nl\\_most&wpm=1](https://www.washingtonpost.com/politics/the-curious-case-of-nicole-mincey-the-trump-fan-who-may-actually-be-a-russian-bot/2017/08/07/7aa67410-7b96-11e7-9026-4a0a64977c92_story.html?undefined=&utm_term=.ce59cca20900&wpisrc=nl_most&wpm=1) [https://perma.cc/73MX-9QMY].

175. E.g., Kevin Roose, *Political Donors Put Their Money Where the Memes Are*, N.Y. TIMES (Aug. 6, 2017), <https://www.nytimes.com/2017/08/06/business/media/political-donors-put-their-money-where-the-memes-are.html> [https://perma.cc/9Z4B-AAH2].

176. Phillip, *supra* note 174.

177. E.g., Tim Wu, *Please Prove You’re Not a Robot*, N.Y. TIMES, July 16, 2017, at SR8.

178. E.g., Indictment, *United States v. Internet Research Agency, LLC*, 1:18-cr-00032-DLF (D.C. Cir. Feb. 16, 2018); David Z. Morris, *How Russians Used Social Media to Boost the Trump Campaign, According to Robert Mueller’s Indictment*, FORTUNE (Feb. 17, 2018), <http://fortune.com/2018/02/17/how-russians-used-social-media-election/> [https://perma.cc/WX26-T9VX]; Scott Shane, *How Russians Exploited Web To Tangle Vote*, N.Y. TIMES, Feb. 19, 2018, at A1, A10.

179. Sinan Aral, *How Lies Spread Online*, N.Y. TIMES, (Mar. 8, 2018), <https://www.nytimes.com/2018/03/08/opinion/sunday/truth-lies-spread-online.html> [https://perma.cc/3CVV-FZT5].

180. E.g., Tim Marcin, *Trump Won the Popular Vote, Nearly Half of his Voters, Republicans Falsely Believe*, NEWSWEEK (July 26, 2017), <http://www.newsweek.com/trump-won-popular-vote-half-voters-believe-poll-642284> [https://perma.cc/T6YK-XEWQ]. This is a fast-evolving issue. For example, since the first edit, there have been many more revelations about Facebook’s role in spreading misinformation as well as congressional testimony by Mark Zuckerberg, some self-policing by Facebook, as well as increased calls for some regulation. See, e.g., Jack Nicas, *Facebook to Require Verified Identities for Future Political Ads*, N.Y. TIMES (Apr. 6, 2018), <https://www.nytimes.com/2018/04/06/business/facebook-verification-ads.html> [https://perma.cc/936H-9PZW]; Scott Shane, *What Mark Zuckerberg Will Be Grilled on at the Congressional Hearing*, N.Y. TIMES (Apr. 9, 2018), <https://www.nytimes.com/2018/04/09/us/politics/mark-zuckerberg-congressional-hearings-topics.html?action=click&contentCollection=Technology&module=RelatedCoverage&region=EndOfArticle&pctype=article> [https://perma.cc/H6DA-VNYP].

181. Tax Cuts and Jobs Act, Pub. L. 115-97, 131 Stat. 2054 (2017).

Republicans promised tax reform to help the middle class and boost the economy. These are catchphrases policy conservatives have used for decades—although “middle class” now replaces the “common man” of the 1930s. After the election the rhetoric stayed the same, but the first tax proposal finally revealed in late September 2017 still lacked specificity, despite the ample time to craft details. It was so imprecise that it “provide[d] as many questions as it does answers.”<sup>182</sup> When an analysis of the plan attempted to determine the effects on the middle-class taxpayers the plan claimed to help by using details from earlier Republican plans, Republicans complained. Perhaps the upside of this surreal situation was that it momentarily united thoughtful right and left think tanks; the right-leaning American Enterprise Institute defended the analysis of the left of center Tax Policy Center, which wrote the report.<sup>183</sup>

Ascertaining whether the September proposal helped the middle class was not simply a matter of deciding which analytical method to use. Determining whether tax reform helps the “middle class” is always difficult because people have different conceptions of the term.<sup>184</sup> Moreover, people—especially politicians—frequently use the term rhetorically, without specifying which particular income group they have in mind. The 2017 tax reform process complicated matters because Republicans did not reveal crucial details of their plan until just before the vote, even basic information such as tax rates and brackets.<sup>185</sup> In fact, Senators received the final conference bill—which was 500 pages long—“just hours” before the vote.<sup>186</sup> So chaotic was the process that the bill had handwritten changes in the margin.<sup>187</sup> This lack of specificity meant that politicians were forced to rely on rhetoric more than ever.

Rhetorical duels create obstacles—sometimes unsurmountable ones—to the enactment of sound tax policy. Voters often do not know enough to demand more and simply respond to the bombast. In rhetorical-laden atmospheres,

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182. Julie Hirschfeld Davis & Alan Rappeport, *Trump Hails Tax Plan as “Revolutionary Change” for Middle Class*, N.Y. TIMES (Sept. 27, 2017), [https://www.nytimes.com/2017/09/27/us/politics/trump-tax-cut-plan-middle-class-deficit.html?emc=edit\\_na\\_20170927&nl=breaking-news&nid=7485548&ref=headline](https://www.nytimes.com/2017/09/27/us/politics/trump-tax-cut-plan-middle-class-deficit.html?emc=edit_na_20170927&nl=breaking-news&nid=7485548&ref=headline) [<https://perma.cc/SSC9-7QC8>]; see also *Trump Backs Steep Cuts in Taxes*, WALL ST. J., Sept. 28, 2017, at 1 (plan is a “framework”).

183. Sahil Kapur, *Republicans Push Back on Group’s Study of Tax Proposal*, BOSTON GLOBE, Oct. 1, 2017, at A5.

184. Bryce Covert, *\$250,000 a Year is Not Middle Class*, N.Y. TIMES, Dec. 28, 2015, at A19; Heather Long, *Is \$100,000 Middle Class in America?*, WASH. POST (Oct. 25, 2017), [https://www.washingtonpost.com/news/wonk/wp/2017/10/25/is-100000-middle-class-in-america/?undefined=&utm\\_term=.11960b348bab&wpisrc=nl\\_most&wpm=1](https://www.washingtonpost.com/news/wonk/wp/2017/10/25/is-100000-middle-class-in-america/?undefined=&utm_term=.11960b348bab&wpisrc=nl_most&wpm=1) [<https://perma.cc/F34R-4A5X>].

185. Alan Rappeport & Jim Tankersley, *A Day Before Presenting Their Tax Plan Republicans Still Wrestle With Key Details*, N.Y. TIMES (Oct. 31, 2017), <https://www.nytimes.com/2017/10/31/us/republican-tax-cut-plan-house.html> [<https://perma.cc/BR4J-YW7K>].

186. *Republicans Pass Sweeping Tax Rewrite 51-49*, N.Y. TIMES (Dec. 1, 2017), <https://www.nytimes.com/2017/12/01/us/politics/senate-tax-bill-debate-vote.html> [<https://perma.cc/F4WA-PLFB>].

187. Crasher, *Senator Jon Tester (D-MT) Hilarious Reaction to the #GOPTaxBill*, YOUTUBE (Dec. 1, 2017), <https://www.youtube.com/watch?v=8kge38yFQuo> [<https://perma.cc/F8TC-JF7F>].

Congress is encouraged to push through ideological bills without proper procedures that might improve substance. Senator John McCain had noted the problem when he cast the decisive veto on one of the Republicans' many doomed health care bills in summer 2017. He pleaded for a "return to regular order" in the legislative process.<sup>188</sup> Similarly, some pleaded, unsuccessfully as it turned out, for a return to order after Trump's vague September 2017 tax proposal.<sup>189</sup> For taxation, legislative order includes a detailed proposal, hearings, discussions and input, including revenue estimates, from experts, the CBO, and the Joint Committee on Taxation. Obviously, this never happened with the 2017 tax act.

However, even a transparent, orderly process with specific details is problematic if voters do not understand the issues. And a huge number of American voters do not. They do not understand fundamental income tax concepts or even the most basic particulars of their own tax liability. Polls show, for example, that almost half of Americans (46%) do not know what tax bracket they are in.<sup>190</sup> A similar number do not even know what a tax bracket is,<sup>191</sup> and over 40% do not know the purpose of a W-4.<sup>192</sup> According to the IRS, approximately a million taxpayers do not even claim the tax refunds to which they are entitled.<sup>193</sup> Imagine, then, how few voters know the difference between a tax deduction and a tax credit or understand the meaning of marginal tax rate—both concepts that are crucial to understanding the income tax.

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188. *Full Text of John McCain's Senate Floor Speech: "Let's Return to Regular Order,"* USA TODAY (July 25, 2017), <https://www.usatoday.com/story/news/politics/2017/07/25/full-text-john-mccains-senate-floor-speech/509799001/> [https://perma.cc/7UWQ-FZLT].

189. Bruce Bartlett, *I Helped Create the GOP Tax Myth. Trump is Wrong: Tax Cuts Don't Equal Growth*, WASH. POST (Sept. 28, 2017), [https://www.washingtonpost.com/news/posteverything/wp/2017/09/28/i-helped-create-the-gop-tax-myth-trump-is-wrong-tax-cuts-dont-equal-growth/?undefined=&utm\\_term=.610387469ee9&wpisrc=nl\\_most&wpmm=1](https://www.washingtonpost.com/news/posteverything/wp/2017/09/28/i-helped-create-the-gop-tax-myth-trump-is-wrong-tax-cuts-dont-equal-growth/?undefined=&utm_term=.610387469ee9&wpisrc=nl_most&wpmm=1) [https://perma.cc/53GC-5CGZ].

190. Marjorie E. Kornhauser, *People Don't Like Paying Taxes. That's Because They Don't Understand Them*, WASH. POST (April 14, 2017), [https://www.washingtonpost.com/posteverything/wp/2017/04/14/people-dont-like-paying-taxes-thats-because-they-dont-understand-them/?utm\\_term=.d91571188653](https://www.washingtonpost.com/posteverything/wp/2017/04/14/people-dont-like-paying-taxes-thats-because-they-dont-understand-them/?utm_term=.d91571188653) [https://perma.cc/NRU9-FCCG]; Danielle Kurtzleben, *We Asked People What They Know About Taxes*, NPR (Apr. 17, 2017), <https://apps.npr.org/documents/document.html?id=3671669-NPR-Ipsos-Tax-Poll> [https://perma.cc/9AW4-3CZL]; Tina Orem, *Americans Don't Know Much About Taxes*, NERDWALLET (Feb. 15, 2017), <https://www.nerdwallet.com/blog/taxes/americans-dont-know-much-about-taxes-or-that-they-might-get-them-done-for-free/> [https://perma.cc/TMJ4-DNY9].

191. Orem, *supra* note 190.

192. Kevin Voigt, *Survey: Americans Missing Out on Free Tax Software, Don't Know Basic IRS Facts*, NERDWALLET (Feb. 15, 2017), <https://www.nerdwallet.com/blog/taxes/americans-missing-out-on-free-tax-software-dont-know-basic-irs-facts/> [https://perma.cc/BLL3-34XN].

193. *IRS Has Refunds Totaling \$1 Billion for People Who Have Not Filed a 2013 Federal Income Tax Return*, IRS (IR-2017-50 Mar. 1, 2017), <https://www.irs.gov/newsroom/irs-has-refunds-totaling-1-billion-for-people-who-have-not-filed-a-2013-federal-income-tax-return> [https://perma.cc/SAF2-HL56]. The same is true for the most recent year for which refunds will expire: 2014. *IRS: Refunds Worth \$1.1 Billion Waiting to be Claimed by Those Who Have Not Filed 2014 Federal Income Tax Returns*, IRS (IR-2018-44 Mar. 8, 2018), <https://www.irs.gov/newsroom/irs-refunds-worth-one-point-one-billion-dollars-waiting-to-be-claimed-by-those-who-have-not-filed-2014-federal-income-tax-returns> [https://perma.cc/26A8-UURY].

## B. The Way Forward

Completely removing the barriers to a rational tax policy that manipulation of public opinion creates may be impossible, but several changes may weaken them. These include: 1) return to an orderly legislative process; 2) control fake news through a variety of means such as laws, regulations, and social norms about lobbying and media,<sup>194</sup> and 3) increase taxpayer literacy. The first change injects more facts and analysis into the process. The second aims to reduce the amount of manipulation and make lobbying more transparent. The third facilitates voters’ ability to discriminate between fact and fiction and to more easily understand the issues.

Less rhetoric, less misinformation, and more widely disseminated facts would increase the chances of more efficient, equitable, and rational tax policy. An orderly, open tax legislative process would encourage more analysis of proposals. Laws, regulations and social norms could decrease the opportunities that politicians, lobbyists, and other interested parties have to manipulate public opinion. Everyone presumably would use less emotionally-based rhetoric to manipulate the public if it were less effective. These goals are more easily stated than achieved. Congressional attempts to accomplish them through laws concerning registration of lobbyists and limitations on campaign financing have had limited success. Recent headlines about the failure of Trump associates to register as lobbyists show that plenty of room for improvement exists.<sup>195</sup> Similarly, Congress has failed to effectively limit campaign financing—including anonymous financing.

Even if these goals had been achieved, would they be helpful? At least one commentator has suggested Congress needs lobbyists more than ever. Lobbyists provide legislators with research data and expertise that shrinking congressional staff can no longer do.<sup>196</sup> Registration may help control lobbying, but as behavioral economics has shown, transparency does not prevent all influencing public or legislative opinion. Limits on campaign financing might help, but in the age of social media, it is easy and cheap to disseminate biased opinion and misinformation. Regulation of social media—voluntarily or mandated—may limit the spread of misinformation but hacking, bots, and so forth undoubtedly means it will continue.<sup>197</sup>

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194. See, e.g., Mark Verstraete et al., *Identifying and Countering Fake News* (Arizona Legal Studies Discussion Paper No. 17-15, 2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3007971](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3007971) [<https://perma.cc/B55C-MD5G>].

195. See, e.g., Peter Baker & Matthew Rosenberg, *Michael Flynn Was Paid to Represent Turkey’s Interests During Trump Campaign*, N.Y. TIMES (Mar. 10, 2017), <https://www.nytimes.com/2017/03/10/us/politics/michael-flynn-turkey.html> [<https://perma.cc/8ED4-FDTB>].

196. Nicholas Confessore, *The Bucks Start Here*, N.Y. TIMES MAG., Sept. 3, 2017, at MM33, MM36.

197. See, e.g., Abby K. Wood, Ann M. Ravel & Irina Dykhne, *Fool Me Once: Regulating “Fake News” and Other Online Advertising*, 91 S. CAL. L. REV. (forthcoming 2018), available at <https://ssrn.com/abstract=3137311> [<https://perma.cc/TNH9-A278> ] (providing suggestions for regulating online advertising); Sapna Maheshwari, *Marketers at Last Reckon with the Bots*, N.Y. TIMES, Mar. 13, 2018, at

Behavioral economics and psychology demonstrate that techniques such as framing can counteract some unconscious biases through legislative or regulatory drafting.<sup>198</sup> Correcting for biases at the drafting stage, however, can only work if the public is amenable to some type of legislation on the topic. Effective use of emotionally charged rhetoric, however, makes it difficult for the public to accept certain tax policies. Some people still object to the refundable Earned Income Credit—which is in effect a negative income tax—as a welfare handout, for example. Would people even consider a credit that went to everyone—regardless of whether they were the “deserving” working poor? Moreover, there are ethical questions about the use of nudges as well as political questions about whether people find them acceptable.<sup>199</sup>

Education can be a powerful tool to undermine rhetoric’s power to influence the public, although it is not a failsafe solution. Many sources already provide some to the public. For example, tax, financial, and wealth management firms do so in the course of servicing their clients. On the public side, government agencies such as the IRS, Congressional Budget Office, and the Joint Committee on Taxation provide a plethora of information. Much of it is then incorporated by academics, think tanks and news media into clear analyses available to the public. Generally, however, the masses ignore tax education—except when needed to fill out their returns. Even then, however, most avoid the need to learn much by outsourcing the job.<sup>200</sup> There are a few exceptions to the rule. Thomas Picketty’s book *Capitalism in the Twenty-First Century* became a bestseller, but few people actually read beyond a few pages.<sup>201</sup>

Tax education needs a much more concentrated effort than currently exists and one with a different approach. It should be similar in depth, breadth, and resources as exists in the financial literacy area since the 2008 financial crisis. Not all educational projects work, of course, but the financial literacy research

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B1 (discussing some ways to detect and eliminate bots and fake accounts); *Twitter Suspends Russia-Lined Accounts, but U.S. Senator Says Response Inadequate*, REUTERS (Sept. 28, 2017), <https://www.reuters.com/article/us-usa-trump-russia-twitter/twitter-suspends-russia-linked-accounts-but-u-s-senator-says-response-inadequate-idUSKCN1C331G> [<https://perma.cc/FN74-6TYM>]. Throughout the writing and editing of this article, there have been almost daily revelations about the use of social media to influence public opinion and actions (that is, voting).

198. See, e.g., MALCOLM GLADWELL, *BLINK* (2005); CASS SUNSTEIN, *WHY NUDGE?* (2014); Ariely, *supra* note 173 (discussing the constancy of biases); Steve Lohr, *Why We’re Easily Seduced by False News*, N.Y. TIMES (Mar. 9, 2018), <https://www.nytimes.com/2018/03/08/technology/twitter-fake-news-research.html> [<https://perma.cc/N4ZK-B3AH>].

199. Cass Sunstein, *The Ethics of Nudging*, 32 YALE J. REG. 413 (2015); Craig R. Fox & David Tannenbaum, *The Curious Politics of the Nudge*, N.Y. TIMES (Sept. 27, 2015), [http://www.nytimes.com/2015/09/27/opinion/sunday/the-curious-politics-of-the-nudge.html?ref=opinion&\\_r=0](http://www.nytimes.com/2015/09/27/opinion/sunday/the-curious-politics-of-the-nudge.html?ref=opinion&_r=0) [<https://perma.cc/UL9Z-3EWC>].

200. Jonnelle Marte, *Stop Paying So Much for Tax Help*, WASH. POST (Jan. 26, 2015), [https://www.washingtonpost.com/news/get-there/wp/2015/01/26/stop-paying-so-much-for-tax-help/?utm\\_term=.1cc2b5409482](https://www.washingtonpost.com/news/get-there/wp/2015/01/26/stop-paying-so-much-for-tax-help/?utm_term=.1cc2b5409482) [<https://perma.cc/A36S-2UNW>] (observing that about 60% of taxpayers use tax preparer).

201. Jordan Ellenberg, *The Summer’s Most Unread Book Is*, WALL ST. J. (July 3, 2014), <https://www.wsj.com/articles/the-summers-most-unread-book-is-1404417569>.

indicates that properly designed literacy projects can affect knowledge and behavior.<sup>202</sup> The education must meet adults and children at their level of engagement and interest. The IRS has made a start in the schools with thirty-eight lessons and teachers guides for students.<sup>203</sup> A resource-challenged agency such as the IRS, however, cannot be expected to be the leader in this field, especially since its primary mission is to collect taxes. The government could create an entity to promote tax literacy similar to the President’s Advisory Council on Financial Capability.<sup>204</sup> Tax education could have an equivalent to the National Endowment for Financial Education, which provides funding and materials for financial education in the schools. A few states mention tax in their education standards, but comprehensive standards, like seventeen states have for financial literacy, would help.<sup>205</sup> Although there are a few small-scale efforts aimed at educating the masses, no large for-profit or not-for-profit firms support and provide tax literacy for average people as they do its financial counterpart.<sup>206</sup>

An effective tax literacy program needs to be well-funded, of course, but it also needs certain other features. It should reach people of all ages—future as well as current taxpayers—in easily accessible and understandable formats and places. One good place for future taxpayers to obtain tax literacy is through a strong presence in school curricula. State tax literacy standards and civic requirements can ensure this presence. The IRS is a good place for current taxpayers to receive information—not just the general information it already distributes, but also some particularized information.<sup>207</sup> For example, the IRS could include information on the instructions to the W-4 withholding form and/or

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202. Tim Kaiser & Lukas Menkhoff, *Does Financial Education Impact Financial Literacy and Financial Behavior, and If So, When?* 3 (World Bank Grp., Policy Research Working Paper No. 8161, 2017), <https://poseidon01.ssrn.com/delivery.php?ID=349115115064089009086088125088088064014063048046095065028027055004063114122116100008027102073087082029003066041080024005119000028100073072007003081068100112120089121018125065027116008102103&EXT=pdf> [https://perma.cc/TV9Y-THQT]. Their study found, for example, that the education was less effective with lower-income participants and on influencing saving behavior as opposed to borrowing.

203. IRS, UNDERSTANDING TAXES TEACHER SITE, <https://apps.irs.gov/app/understandingTaxes/teacher/index.jsp> [https://perma.cc/7XKY-E4ED] (last visited Jan. 28, 2018).

204. U.S. DEP’T OF THE TREASURY, THE PRESIDENT’S ADVISORY COUNCIL ON FINANCIAL CAPABILITY, <https://www.treasury.gov/resource-center/financial-education/Pages/Advisory.aspx> [https://perma.cc/UB3C-Y87D] (last visited Jan. 28, 2018).

205. *E.g.*, *Survey of the States*, COUNCIL FOR ECONOMIC EDUCATION, <http://councilforeconed.org/policy-and-advocacy/survey-of-the-states/> [https://perma.cc/KHX7-9Q6H] (last visited Feb. 16, 2018); *Student Standards for Social Studies: Civics*, LOUISIANA DEPARTMENT OF EDUCATION, <http://www.louisianabelieves.com/docs/default-source/academic-standards/social-studies-civics.pdf?sfvrsn=10> [https://perma.cc/UZV7-7J33] (last visited Feb. 16, 2018).

206. *E.g.*, *Better Money Habits*, BANK OF AMERICA, <https://bettermoneyhabits.bankofamerica.com/en> [https://perma.cc/SE7J-SXQ2] (last visited Feb. 16, 2018); COUNCIL FOR ECONOMIC EDUCATION, <http://councilforeconed.org> [https://perma.cc/NH2Q-8K8G] (last visited Feb. 16, 2018); *Cowin Financial Literacy Program*, TEACHERS COLLEGE, COLUMBIA UNIVERSITY, <http://cowinfinancialliteracy.tc.columbia.edu/> [https://perma.cc/62U5-LUJ7] (last visited Feb. 16, 2018).

207. *E.g.*, Marjorie E. Kornhauser, *Doing the Full Monty: Will Publicizing Tax Information Increase Compliance?*, 18 CANADIAN J. L. & JURIS. 95 (2005).

distribute annual statements that connect a person's personal tax data with explanations of terms and concepts such as marginal tax rate versus average rate. It could even start with a paragraph generally connecting taxation and spending.

Tax literacy must go beyond traditional formats and locations to attract and keep people's attention. The Federal Reserve has comics about money and banking.<sup>208</sup> The same is needed for tax. Add in games, videos, animated film, and maybe even a TV/internet show. For example, a show called *The Audit* could be a drama, comedy, mystery, or reality show.

After viewing the Sentinels' *Amateur Fire Brigade* in 1935, the *Boston Globe* proposed "Walt Disney for President" because popular characters such as Mickey Mouse would provide entertaining but meaningless appeal to the public.<sup>209</sup> Yes, it is true that media glitz can replace or blur meaningful information and real debate. But that does not always have to happen. Seven years after the *Globe's* editorial, Donald Duck—not Mickey—helped the government explain to the public why they needed to pay taxes, to pay for the war, and some basics about filling out tax returns.<sup>210</sup> Other entertainers, such as Irving Berlin, helped the government explain taxes to the public—most of whom were paying income taxes for the first time.<sup>211</sup> Entertainers like Stephen Colbert and John Oliver show that modern entertainment can be a vehicle for tax literacy, too. Consider Colbert's segments on PACs or Oliver explaining why the IRS needs a bigger budget.<sup>212</sup> Thousands of people have watched these shows on the internet after their initial broadcasts probably for the laughs but they also learned important information.

A multimedia tax literacy campaign can help break through the rhetoric, misinformation, and apathy that permeate much of what passes for current tax policy debates. Education will not improve tax policy by itself, but it can help. In fact, education is essential to democracy, according to Thomas Jefferson and other founders.<sup>213</sup> Knowledgeable voters will be less easily fooled or distracted by

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208. FEDERAL RESERVE BANK OF NEW YORK, ONCE UPON A DIME (2017), <https://www.newyorkfed.org/medialibrary/media/outreach-and-education/comic-books/NewYorkFed-OnceUponADime-WebFullColor.pdf> [<https://perma.cc/ZP6J-JEZ5>].

209. *Editorial, supra* note 91.

210. *The New Spirit*, WALT DISNEY STUDIOS (1942), <https://archive.org/details/TheNewSpirit> [<https://perma.cc/MM7T-23UM>]. Disney produced a shorter version in 1943: *The Spirit of '43*, WALT DISNEY STUDIOS (1943), [https://archive.org/details/TheSpiritOf43\\_56](https://archive.org/details/TheSpiritOf43_56) [<https://perma.cc/3D9Y-3V7X>].

211. Irving Berlin, *I Paid My Income Tax Today* (performed by Dick Robertson and his Orchestra 1942), <https://archive.org/details/IPaidMyIncomeTaxToday> [<https://perma.cc/589R-E6YP>].

212. Trevor Potter, *How Stephen Colbert Schooled Americans in Campaign Finance*, TIME (Dec. 16, 2014), <http://time.com/3600116/stephen-colbert-report-finale-super-pac/> [<https://perma.cc/VS9X-PT4B>]; Last Week Tonight with John Oliver, *The IRS: Last Week Tonight with John Oliver*, YOUTUBE (Apr. 12, 2015), [https://www.youtube.com/watch?v=Nn\\_Zln\\_4pA8](https://www.youtube.com/watch?v=Nn_Zln_4pA8) [<https://perma.cc/L35Z-348W>]; NBC News, *Stephen Colbert's Super Pac Lessons*, YOUTUBE (Mar. 20, 2015), <https://www.youtube.com/watch?v=oy7TUtlPmqk> [<https://perma.cc/WNC9-GJ9N>].

213. David Akadjian, *7 Things Our Founders Believed About Public Education*, DAILY KOS (Jan. 27, 2015), <https://www.dailykos.com/stories/2015/1/27/1360440/-7-things-our-founders-believed-about-public-education> [<https://perma.cc/D6HY-XB9Y>]; Letter from Thomas Jefferson to George Wythe

rhetoric and more likely to demand substantive debates and an orderly process. A tax-literate public will be able to judge tax proposals (and the politicians who support them) on their merits and not on emotionally appealing but vague rhetoric. Politicians should then respond to this taxpayer pressure with more substance and less rhetoric. Fearing voters' reprisals, politicians might be less likely to engage in behavior such as occurred during the writing of this Article: rushing to vote on a major tax bill that was still missing details and that few had seen until hours before the vote. This is no way to run a democracy. It's time to launch a national tax literacy campaign.