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## **The Power to Destroy: Discriminatory Property Assessments and the Struggle for Tax Justice**

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**The Power to Destroy:  
Discriminatory Property Assessments and the Struggle for Tax Justice**

Work in Progress

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Abstract: High assessments on African American-owned land became a common, if often invisible, feature of Jim Crow governance. Discriminatory modes of property taxation served as a weapon of social control, an instrument of land speculation and redevelopment, and a vehicle for the unequal distribution of public services. This essay traces the strange career of the property tax from the period of Reconstruction to the age of Jim Crow, situating racial differentials in the assessment and collection of ad valorem taxes within the broader framework of white supremacist governance, and provides a case study of property tax discrimination in civil rights-era Mississippi. In the summer of 1966, black residents of the town of Edwards, Mississippi, launched a boycott of local businesses in response to a series of discriminatory actions by town officials and local employers. The following year, Edwards's board of supervisors retaliated by grossly inflating the assessed value on almost all black-owned homes in the town, an action that was ultimately upheld by the US Supreme Court in the *Bland v. McHann* (1972) decision. While mostly forgotten by scholars and left out of histories of the civil rights movement, the Edwards boycotts and resultant fallout shed new light on several key issues of importance to the history and geography of racism, state power, and the black freedom struggle in America. In particular, this essay argues, the actions of Edwards town officials reveals the bureaucratization of Jim Crow and the emergence of more subtle, and ostensibly legal, mechanisms of administering racial privilege. Conversely, the story of Edwards's black community, and its efforts to secure a more equitable distribution of tax revenues, testifies to the importance of fiscal policy and administrative reform and in the long black freedom struggle.

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The shorthand formulas through which tax officials must apprehend reality are not mere tools of observation. By a kind of Heisenberg principle, they frequently have the power to transform the facts they make note of.

James C. Scott, *Seeing Like a State*

It is no revelation that the power brokers fashion their massive financial empires through the loopholes of a tax system designed specifically to protect the vested interests of the few at the expense of the many.

*Mississippi Property Tax: Special Burden for the Poor* (1973)

In the fall of 1966, the African American residents of the small town of Edwards, Mississippi, launched a boycott of white-owned businesses in response to a litany of injustices, including: lack of sewer lines, paved sidewalks, and street lights in their neighborhoods; town officials' indifference to a chemical plant that emitted toxic fumes on the black side of town; and its decision to sell the town swimming pool to a private, whites-only club immediately following court-ordered desegregation. With the support of the Delta Ministry, a civil rights organization with offices just outside of town, Edwards's black community maintained the boycott for several months, at considerable damage to the town's economy.

The following year, most of the town's black property owners received sharp increases in their property taxes; the town assessor had gone through the assessment rolls and systematically raised the value of black-owned property. (The few black residents who chose not to join the boycott did not receive new assessments.) In response, black property owners filed a lawsuit against the town in federal court. During the course of the first trial, attorneys for the taxpayers presented a series of findings that demonstrated how these higher assessments could not have been due to anything but race. A statistical sociologist

at nearby Tougaloo College took photos of white and black-owned homes throughout the town that received the same assessments. The differences in actual property value were shocking—the dilapidated homes of the rural black poor were deemed of equal value to recently built ranch houses owned by whites. Yet despite the over-abundance of evidence of intentional discrimination, the federal district court ruled in favor of the town. The case ultimately died when the U.S. Supreme Court declined to hear the case, determining that the plaintiffs had no standing in federal court since a “plain and speedy” resolution was, in their estimation, possible on the state level.

The property tax has justly received many pejorative labels over the course of American history. It has been called “the worst tax.”<sup>1</sup> Its administrators have been derided as the most corrupt, incompetent, and unfaithful of public servants. Its inherently subjective nature has made it the subject of endless contestation, so much so that in 1937 Congress felt compelled to pass legislation that established the principle of pay-first-then-litigate so as to prevent the cities and counties dependent on it from going broke. But of all of the negative labels observers have pinned to the property tax, one stands out as particularly inaccurate: its arbitrariness. Before states enacted sweeping reforms to the administration of property assessments beginning in the 1960s, the process of determining property assessments was anything but. A given property’s assessments clearly—and consistently—reflected the status of its holder.

In all but thirteen states, the position of tax assessor was an elected position; only eight states required assessors to obtain professional certification to hold the job.<sup>2</sup>

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<sup>1</sup> Glenn W. Fisher, *The Worst Tax? A History of the Property Tax in America* (Lawrence, Kan., 1996).

<sup>2</sup> A 1972 survey of state tax administration systems found that the following states mandated the appointment of assessors: Alaska, Delaware, Georgia, Hawaii, Iowa, Kansas, Maryland, North Carolina,

Beholden only to the voting public and given virtually free reign over their duties, assessors systematically under-valued property and adjusted assessment rates downward for key constituents and, in order to compensate for these tax breaks, over-valued property and adjusted rates upward on those who lacked political influence or bargaining power. As a result, high assessments on African American-owned land became a common, if often invisible, feature of Jim Crow governance. Throughout the twentieth century, discriminatory modes of taxation served as a weapon of social control, an instrument of land speculation and redevelopment, and a vehicle for the unequal distribution of public services. Beginning in post-World War II American cities and continuing to this day, the chief mechanism of property tax enforcement—the tax lien—has spawned a lucrative and highly exploitative industry in tax buying, one that has thrived in the midst of economic crisis and preyed on struggling homeowners.<sup>3</sup>

Thanks to a number of important works published in recent years, we have a greater understanding of how tax policies shaped the social and political development of

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Pennsylvania, South Carolina, South Dakota, Tennessee, and Virginia. The following states required assessors to be certified to hold the position: Georgia, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, and North Carolina. See United States Advisory Commission on Intergovernmental Relations, *The Property Tax in a Changing Environment: Selected State Studies* (Washington, 1974), 299-301.

<sup>3</sup> See Jack Healy, "Tax collectors put squeeze on homeowners: Buying up city debts, private firms are quick to foreclose to make a profit." *International Herald Tribune*, Aug. 19, 2009; Fred Schulte, "Wall Street Quietly Creates a New Way to Profit from Homeowner Distress." Center for Public Integrity, Dec. 9, 2010,

<http://www.iwatchnews.org/2010/12/09/2263/wall-street-quietly-creates-new-way-profit-homeowner-distress>; Aldo Svaldi, "Lien Cuisine: Investors are gobbling up chances to make money at auctions by buying liens on overdue property taxes." *Denver Post*, Nov. 17, 2006.

Frank S. Alexander, "Tax Liens, Tax Sales, and Due Process." *Indiana Law Journal*, 75 (2000), 747-807; Arthur D. Little Inc. *A Study of Property Taxes and Urban Blight*. Washington: Government Printing Office, 1973; Kenneth Baar, "Property Tax Assessment Discrimination against Low-Income Neighborhoods." *Clearinghouse Review*, 15 (Oct. 1981), 467-86; Edward Greer, "Racial Biases in the Property Tax System." *Review of Radical Black Political Economics*, 7 (1975), 22-32; Lee Harris, "Assessing Discrimination: The Influence of Race in Residential Property Tax Assessments." *Journal of Land Use*, 20 (Fall 2004), 1-60; William S. Hendon, "Discrimination against Negro Homeowners in Property Tax Assessment." *American Journal of Economics and Sociology*, 27 (April 1968), 125-32;

modern America.<sup>4</sup> These works have contributed to an already rich body of scholarship on race and real estate in twentieth-century America. From these works, we have learned how property law, the real estate industry, and housing policies have influenced struggles for economic and educational opportunity and political power in twentieth-century America, and shaped the very meaning and significance of race. The “redlining” of minority neighborhoods by the Federal Housing Administration, as numerous scholars have shown, legitimated and wove into federal programs the racist practices of the real estate and home financing industries. State policies reinforced the notion that the value of real property was firmly tied to the race of its occupants (and neighbors) by making the eligibility of neighborhoods for the host of amenities and services provided by the New Deal state dependent on its racial homogeneity. Together, these studies have reinforced the notion that, historically, black-owned property was not only considered of lesser value, it threatened to depress the value of surrounding properties.<sup>5</sup>

When it came to the assessed value of property for the purposes of taxes, though, the racial logic of the market was turned on its head. In the hands of local officials, African

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<sup>4</sup> See Isaac William Martin, *The Permanent Tax Revolt: How the Property Tax Transformed American Politics* (Stanford, Calif., 2008); Daniel Martinez HoSang, *Racial Propositions: Ballot Initiatives and the Making of Postwar California* (Berkeley, 2010); Robert O. Self, *American Babylon: Race and the Struggle for Postwar Oakland* (Princeton, 2003); Bruce J. Schulman, *The Seventies: The Great Shift in American Culture, Society, and Politics* (Cambridge, Mass., 2001); Sheldon Pollack, *Refinancing America: The Republican Antitax Agenda* (Albany, 2003); Jack Citrin and Isaac William Martin, eds., *After the Tax Revolt: California's Proposition 13 Turns 30* (Berkeley, 2009); Ballard C. Campbell, “Tax Revolts and Political Change,” *Journal of Policy History*, 10 (Jan. 1998), 153-79.

<sup>5</sup> See Arnold R. Hirsch, *Making the Second Ghetto: Race and Housing in Chicago, 1940-1960* (New York, 1983); Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York, 1985); Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton, 1996); Robert O. Self, *American Babylon: Race and the Struggle for Postwar Oakland* (Princeton, 2003); Amanda I. Seligman, *Block by Block: Neighborhoods and Public Policy on Chicago's West Side* (Chicago, 2005); Kevin M. Kruse and Thomas J. Sugrue, eds., *The New Suburban History* (Chicago, 2006); Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton, 2006); David M. P. Freund, *Colored Property: State Policy and White Racial Politics in Suburban America* (Princeton, 2007); Beryl Satter, *Family Properties: Race, Real Estate, and the Exploitation of Black Urban America* (New York, 2009); Andrew W. Kahrl, *The Land Was Ours: African American Beaches from Jim Crow to the Sunbelt South* (Cambridge, Mass., 2012); and N. D. B. Connolly, *A World More Concrete: Real Estate and the Remaking of Jim Crow South Florida* (Chicago, forthcoming 2013).

American-owned real estate lacking in basic services provided to other neighborhoods and poor quality, white-forsaken farmland became a valuable asset. Through adjusting fractional rates of assessment on certain properties or entire classes of property holding citizens, assessors' offices could shift the relative tax burden from one segment of the population to another in an almost imperceptible fashion. From the dawn of emancipation and the emergence of black landownership in America, the assessor's office became an important institution for carrying out the work of racism. And it remained one in the wake of the civil rights revolution, insulated by layers of bureaucracy and virtually immune to legal challenge. The effects of high property taxes and underhanded forms of discrimination and exploitation were slowly devastating and contributed in no small measure to many of the most vexing obstacles African Americans faced—and continue to face—in the struggle for equality.<sup>6</sup> Discriminatory methods of property assessment steadily drained African American communities of wages and frustrated their efforts to build wealth through home ownership. It ate away at struggling black farmers annual yields and ability to hold onto the land, and prevented countless others from the opportunity to become independent landowners. When black-owned real estate suddenly became valuable as a result of demographic and economic change, property assessments facilitated the process of expropriation and displacement, and played a pivotal role in the precipitous decline of black landownership in the second half of the twentieth century.<sup>7</sup>

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<sup>6</sup> On the racial wealth gap in America, see Dalton Conley, *Being Black, Living in the Red: Race, Wealth, and Social Policy in America*. Berkeley: University of California Press, 1999; and Melvin L. Oliver and Thomas R. Shapiro. *Black Wealth/White Wealth: A New Perspective on Racial Inequality*. New York: Routledge, 1997.

<sup>7</sup> See Robert S. Browne (dir.), *Only Six Million Acres: The Decline of Black Owned Land in the Rural South*. New York: Black Economic Research Center, 1973; Leo McGee and Robert Boone, eds. *The Black Rural Landowner—Endangered Species: Social, Political, and Economic Implications*. Westport, Conn.: Greenwood Press, 1979; Barbara Phillips and Joseph Huttie Jr. *Mississippi Property Tax: Special Burden for the Poor*. Jackson, Miss.: Black Economic Research Center (Southern Office), 1973; Dolores Barclay and Todd Lewan.

And when African American landowners threatened the status quo and fought to secure their civil rights, sudden and capricious hikes in property taxes via selective re-assessment served as an effective, and legal, form of intimidation.

In short, the property tax bankrolled Jim Crow. Conversely, the struggle for a more just and equitable system of taxation stood at the heart of African Americans' struggles to dismantle the bureaucratic underpinnings of white supremacy. To date, though, the prevalence of property tax discrimination against African Americans, its corrosive effects on black struggles for political and economic empowerment, and its broader implications for the study of race and the state, have proven as invisible to historians as it was, by design, to many of its victims. Instead, historical treatments of race and taxes invariably falls into one of the following categories: white suburban resistance to metropolitan school integration; white backlash against the Great Society and New Deal liberalism; or the role of racist imagery in the rise of the political Right, from Reagan's infamous "welfare queen" to, more recently, the Republican Party's racially coded division of the American citizenry into tax "makers" and "takers." Race has not been absent from this scholarship, but black people, as historical subjects, have.<sup>8</sup> When it comes to taxes in American history, African Americans have been cast, almost without exception, as recipients of government welfare, but never as taxpayers.<sup>9</sup> And while tax assessments have served as a useful resource for

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"Torn from the Land: AP Documents Land Taken From Blacks Through Trickery, Violence and Murder." Associated Press (Three-part investigative series, published Dec. 2001)

<sup>8</sup> Several important works have looked at white Americans' changing attitudes toward taxes during the civil rights era See Kevin M. Kruse, "The Politics of Race and Public Space: Desegregation, Privatization, and the Tax Revolt in Atlanta," *Journal of Urban History*, 31 (July 2005), 610-33; and Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton, 2006), esp. 121-47, 225-50; and Self, *American Babylon*.

<sup>9</sup> Studies of African American property owners sometimes mention that blacks paid, on average, more in property taxes (whether directly through property ownership or indirectly through rent) than whites. See, for example, Andrew Wiese, *Places of Their Own: African American Suburbanization in the Twentieth Century*



scholars seeking to reconstruct the extent and value of black landholdings, these figures are often accepted at face value, as a true and accurate representation of the value of those properties.<sup>10</sup> Yet, as a growing body of literature in other social scientific fields has shown, public officials have routinely exploited legal loopholes in the tax administration process to provide generous subsidies to targeted homeowners. One political scientist has even gone so far as to claim that the practice of fractional assessments, which allowed assessors to selectively undervalue certain properties, constituted a “hidden social policy” equivalent to federal mortgage loan guarantees, home mortgage interest deductions, and other policies that contributed to the spectacular rise of homeownership in post-World War II America.<sup>11</sup>

Through a study of boycotts in Edwards, Mississippi, and its aftermath, this essay seeks to assess the assessor, and bring this and similarly situated administrators of local governance and state policy out of the shadows and into the histories of Jim Crow and civil rights in America.<sup>12</sup> More broadly, it points toward new approaches to understanding how Jim Crow worked through bureaucratic institutions and ostensibly race-neutral forms of observation and measurement.<sup>13</sup> Operating outside of the formal realms of law and public

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(Chicago, 2004), 213. Other scholars have cited structural causes of racial disparities in property taxes, including the lower tax bases of many majority-black suburban municipalities, which led to comparatively higher property tax rates for comparable public services. See, for example, Mark Schneider and John R. Logan, “Suburban Racial Segregation and Black Access to Local Public Resources,” *Social Science Quarterly*, 63 (Dec. 1982), 762-70; and John M. Stahura, “Characteristics of Black Suburbs, 1950-1980,” *Sociology and Social Research*, 71 (Jan. 1987), 135-38.

<sup>10</sup> See for example Loren Schweninger, *Black Property Owners in the South, 1790-1915* (Urbana, 1990), appendix 4, pps. 271-80.

<sup>11</sup> Isaac William Martin, *The Permanent Tax Revolt: How the Property Tax Transformed American Politics* (Stanford, 2008), 7.

<sup>12</sup> For studies that detail the corruption, incompetence, and susceptibility to political influence that has historically characterized assessors’ offices, see Robert Kuttner, *Revolt of the Haves: Tax Rebellions and Hard Times* (New York, 1980), esp. 109-130; Diane B. Paul, *The Politics of the Property Tax* (Lexington, Mass., 1975).

<sup>13</sup> On how racial categories and relations of power were constituted and reinforced through bureaucratic institutions and basic processes of government, see Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York, 2009), esp. 131-62; Thomas A. Guglielmo, “Red Cross, Double Cross: Race and America’s World War II-Era Blood Donor Service,” *Journal of American History*, 97 (June 2010), 63-90.

policy, its administrators largely anonymous, and their methods deliberately opaque, property assessments offer a telling example of how Jim Crow functioned within and took on the characteristics of bureaucracies, becoming embedded in the most basic of governmental functions in ways that proved far more resistant to attempts to identify, untangle, and eradicate.

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The power to tax played a prominent role in shaping the politics and policies of Reconstruction. On the South Carolina and Georgia Sea Islands, Union military officers enacted land confiscation policies via tax law enforcement, levying land taxes and then seizing abandoned property for nonpayment.<sup>14</sup> Tax sales of abandoned properties to northern land speculators and, to a far lesser extent, freedmen, served as the legal mechanism for land redistribution. Under Reconstruction governments, land taxes aimed to provide revenue for the realization of progressive reforms and as a means of social and economic restructuring. White and black Republicans fought to win control over the offices that determined and administered fiscal policies. High taxes on land, Republican officeholders argued, not only provided the revenue needed to implement the dramatic expansion of public school systems and infrastructure improvements, but also served, as Eric Foner notes, “as an indirect means of weakening the plantation and promoting black ownership.”<sup>15</sup> In Mississippi, black Republicans succeeded in winning control over several county boards of supervisors, which set local tax rates and distributed tax revenue. In Marshall, Yazoo, Warren, Madison, Amite, Wilkinson, Hinds and Issaquena counties, majority black supervisory boards financed public infrastructure improvements—building

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<sup>14</sup> See Willie Lee Rose, *Rehearsal for Reconstruction: The Port Royal Experiment* (Indianapolis, 1964).

<sup>15</sup> Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York, 1988), 376.

and repairing bridges, roads, and public buildings—and expanded public school systems through sharp increases in property taxes on their counties' largest landowners.<sup>16</sup>

But while sharp increases in land taxes aimed to prevent land speculation and force uncultivated land held by wealthy white former planters onto the market, its most lasting effect was to further galvanize poor whites to rise in opposition to Reconstruction. Prior to emancipation, southern state and local governments generated the bulk of its revenue through taxes on slaveholdings. The shift from taxing slaves to taxing land fell hardest on the small landholder, who had previously been exempted from most forms of direct taxation. Land taxes, J. Mills Thornton argues, “drove ... white small farmers into the arms of the Redeemers.”<sup>17</sup> Seeking to claw its way back to power, the defeated white southern aristocracy was quick to perceive poor whites' anger over new taxes and used the issue to manufacture grassroots opposition to Reconstruction governments. In counties across the South, large landowners started and funded Taxpayers' Conventions, which aimed to build poor white opposition to Republican governments by couching the tax issue in populist terms that linked racist opposition to black political power to fiscal conservatism.<sup>18</sup>

During the brief period of Presidential Reconstruction, we begin to see attempts by white former slaveholders to introduce and implement a new model of taxation designed to ensure black subjugation. With the backing of President Andrew Johnson, former Confederate states attempted to establish a dual tax structure that tied funds devoted to African American schools and public services to tax revenues derived from black taxpayers.

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<sup>16</sup> See Board of Supervisors Handbook Lawyers Committee for Civil Rights Under the Law, June 1967, Charles Horwitz Papers, Box 1, Folder 23: Freedom Information Service Records (handbooks), 1967, Mississippi Department of Archives and History.

<sup>17</sup> J. Mills Thornton, “Fiscal Policy and the Failure of Radical Reconstruction in the Lower South,” in *Region, Race, and Reconstruction: Essays in Honor of C. Vann Woodward*, ed. J. Morgan Kousser and James M. McPherson (New York, 1982), 350.

<sup>18</sup> Foner, *Reconstruction*, 415-16.

The infamous black codes enacted by former Confederate states used tax laws to reduce freedmen and women to a condition of virtual slavery. Mississippi, for instance, enacted a law that levied a special tax on African Americans to pay for the care of the poor and the infirm. Those who failed to pay the tax were found guilty of vagrancy, arrested, and hired out to former slaveholders.<sup>19</sup>

What historian J. Mills Thornton described as a “vigorous campaign [by whites] throughout the South to expend on black schools only those school taxes actually paid by black citizens” would resume following the end of Reconstruction.<sup>20</sup> Among other procedural reforms aimed at establishing a dual tax structure were laws passed by several southern state legislatures in the late nineteenth century that mandated the division of land tax books by race. The segregation of direct tax payments ensured that revenue for colored schools would not exceed African Americans’ direct contributions to the state’s coffers and served as a convenient justification for gross disparities in funding after the fact.<sup>21</sup> Southern states succeeded not merely in exempting white tax dollars from funding “colored” schools, but also in forcing African American taxpayers to subsidize white education. In the state of Virginia, one study found that, during one year, African Americans contributed a total of \$507,305 in direct taxes, yet the state allocated only \$489,228 for African American education. Similarly, in North Carolina, tax receipts from

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<sup>19</sup> Robert Cruden, *The Negro in Reconstruction* (Englewood Cliffs, NJ, 1969), 64, 22.

<sup>20</sup> See Thornton, “Fiscal Policy and the Failure of Radical Reconstruction in the Lower South,” 377.

<sup>21</sup> Virginia amended its constitution in 1891 to require that taxes levied on property owned by whites and blacks be recorded separately. See Tipton Ray Snavely, *The Taxation of Negroes in Virginia* (Charlottesville, 1916), 81. Virginia officials later stated that its separate white and “colored” land tax books were “intended as a basis for the apportionment of the school tax ... in proportion to the amount of taxes contributed by [whites and blacks] respectively.” The deliberate underdevelopment of public institutions via property underassessment persisted in the desegregated South, especially in rural counties where privileged whites fled en masse to new private schools and public schools became de facto black. One study of the 1970s tax revolts noted that, “Throughout the South, conservative assessors opposed to increased funds for public schools often kept new schools from being built simply by restricting the tax base through low assessments.” Kuttner, *Revolt of the Haves*, 116.

black citizens for one year totaled \$429,197, while statewide expenditures on black schools was only \$402,539. In Georgia, the disparity between tax contributions and tax returns was even more striking: \$647,852 in total receipts, only \$506,170 in total expenditures.<sup>22</sup> As the author of the study, Charles L. Coon remarked, “if we assume the race division of funds,” then (contrary to the prevalent assumption of whites and the feverish pronouncements of race-baiting politicians) “the Negro school is not very much of a white man’s burden.”<sup>23</sup> As progressive reformers swept into southern statehouses in the early twentieth century, African Americans’ contributions to white education increased. Historian James Anderson notes that tax appropriations for building schoolhouses sharply increased, yet virtually none of these higher revenues went to African American education. “The money is actually being taken from the colored people and given to white schools,” an exasperated Booker T. Washington vented.<sup>24</sup> A dual tax structure gave rise to a form of double taxation in black communities, whereby African Americans were forced to donate land and money to support their own schools in lieu of funding from the state.<sup>25</sup>

Ironically, it was black Americans’ fervent desire to own their own homes and farm their own land, and belief in the fairness of the American system and the rewards that came to those who played by its rules, that exposed them to the most abusive practices of Jim Crow bureaucracies. That faith in the promise of citizenship via landownership was on full display in the five decades following emancipation, when black Americans went from being property to owning over fifteen million acres of land, mostly in the South. “As much as any

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<sup>22</sup> Charles L. Coon, *Public Taxation and Negro Schools* (Cheyney, Penn., Committee of Twelve for the Advancement of the Interests of the Negro Race, 1909), 6, 7.

<sup>23</sup> Coon, *Public Taxation and Negro Schools*, 9.

<sup>24</sup> Washington quoted in James D. Anderson, *The Education of Blacks in the South, 1860-1935* (Chapel Hill, 1988), 156.

<sup>25</sup> See Anderson, *Education of Blacks in the South*, 183-84.

group of Americans in this nation's history," the legal scholar Thomas J. Mitchell contends, "these [African American] landowners embraced the republican ideal of the rural smallholder and widely distributed ownership, and believed that only through such ownership could real economic and political independence be achieved." Black landowners were more likely to vote, seek to play a role in civic affairs, and serve in leadership positions within black communities.<sup>26</sup> Because of this, as other scholars have noted, African American landowners—and landowning communities—were often singled out for violence and abuse at the hands of the state and private parties.<sup>27</sup> By virtue of their status as landowners, they also became subject to bloodless forms of bureaucratic exploitation. Among others, African American landowners could expect to have their property assessed above its market value and taxed at comparatively higher rates than whites.

Beginning in the 1890s, state legislatures passed reforms mandating general reassessments of all land at regular intervals. In Virginia between 1891 and 1900, for example, the average annual increase in tax revenue from African Americans was eight times as much as whites, who saw their average tax burden actually decrease during several of these years.<sup>28</sup> In 1895, a general reassessment in Virginia resulted in a 2.2 percent reduction in the total assessed value of white-owned land, followed by an additional 3.7 percent reduction the following years. In contrast, the assessed value of African American land increased throughout the decade.<sup>29</sup> These disparities were the

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<sup>26</sup> See William E. Nelson Jr., "Black Rural Land Decline and Political Power," in McGee and Boone, eds., *Black Rural Landowner—Endangered Species*.

<sup>27</sup> On the history of white terrorism of black landowners and the violent forced removal of African Americans from the land, see Elliot Jaspin, *Buried in the Bitter Waters: The Hidden History of Racial Cleansing in America* (New York, 2007); James W. Loewen, *Sundown Towns: A Hidden Dimension of American Racism* (New York, 2005); *Banished*, dir. Marco Williams (Center for Investigative Reporting and Two Tone Productions, 2007).

<sup>28</sup> Tipton Ray Snavelly, *The Taxation of Negroes in Virginia* (Charlottesville, 1916), 53-54

<sup>29</sup> Snavelly, *Taxation of Negroes in Virginia*, 54.

result of the systematic over-valuation of black-owned land by appraisers working for county assessors' offices. In Brunswick County, Virginia, for example, African American landowners (despite being confined to the most remote, least productive, and least valuable land in the county) saw their land valued for tax purposes at an average of \$17.50 per acre; appraisals of white-owned land averaged \$15.47 per acre. Comparatively higher rates of taxation by black landowners, of course, did not translate into higher rates of funding for black schools, but instead served to widen those disparities. In Brunswick County, blacks paid one-fourth of the county's total property taxes, yet received one-sixth of its school funds.<sup>30</sup>

Devolution of the collection and allocation of revenues from property taxes from the state to the local level facilitated and obscured discriminatory practices. Throughout the nineteenth century, local assessors enjoyed free reign over methods of appraising value and over the rates of assessment on different types of property. Several states attempted to curb abuses and curtail assessor autonomy by establishing tax commissions whose duties included supervising and assisting local assessors.<sup>31</sup> The enforcement powers of these commissions, though, varied, and both systemic undervaluation selective over-valuation of property remained the rule. This was due in large measure to the fact that most property tax revenues went back to the state.<sup>32</sup> A system of locally elected assessors collecting revenue for the state led assessors to undervalue as much as possible their county's property so as to reduce the cost of state government for their constituents and shift the burden of taxation elsewhere. The deficiencies in this model led many states to

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<sup>30</sup> Figures calculated using information provided in "Inequalities of Educational Opportunities in Brunswick County," *Norfolk Journal and Guide*, March 12, 1927, p. 12.

<sup>31</sup> By 1918, 35 states had established permanent tax commissions. See Teaford, *Rise of the States*, 50.

<sup>32</sup> In 1902, Teaford found, property taxes produced 53% of all state tax receipts.

look to new sources of revenue. Between the 1880s and 1920s, states began implementing new forms of taxation, such as license and franchise fees, corporate taxes, capital gains taxes, and income taxes. As states implemented increasingly effective methods of tax collection, they came to rely less on the property tax.<sup>33</sup> Following the fiscal crisis onset by the Great Depression, when property tax delinquency rates soared and means of collection broke down, states ceased relying on local property taxes for revenue. By 1942, property taxes constituted 4.4% of all states' total revenues.<sup>34</sup> By contrast, the property tax during these same years became the lifeblood of local governments.<sup>35</sup> For tax reformers, removing the property tax from state budgets promised to end the practice of county assessors competing to undervalue property in order to lower their constituents' relative tax contributions to state government. In fact, it simply changed the incentive to undervalue to include only those property owners most influential to an assessors' electoral success and, as a consequence, gave rise to a new incentive to overvalue other, less influential constituents to make up the difference.

Federal legislation designed to curb corporate tax abuses along with several key judicial decisions proved equally important. Because of the potential for volatile and endless litigation over assessors' subjective determinations of value, federal courts had long been reluctant to interfere in state and local property tax procedure. Over the first

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<sup>33</sup> The collection of income taxes was revolutionized following the successful reforms implemented by Wisconsin in 1908, which required employers to report employee incomes, shareholder dividends, and interest payments to bondholders, and established a powerful state commission. No longer dependent on local administrators or the honesty of taxpayers, Wisconsin's tax revenues rose dramatically, and provided a blueprint that other states soon emulated. Teaford, *Rise of the States*, 55-58.

<sup>34</sup> Teaford, *Rise of the States*, 132.

<sup>35</sup> By the 1920s, over 90 percent of revenues for cities with populations over 30,000 came through property taxes. See David T. Beito, *Taxpayers in Revolt: Tax Resistance during the Great Depression* (Chapel Hill, 1989), 1-2. On how the property tax became a real estate tax, see *ibid.*, 3-4. For a brief, general overview of the history of the property tax in America, see John Joseph Wallis, "A History of the Property Tax in America," in *Property Taxation and Local Government Finance: Essays in Honor of C. Lowell Harriss*, ed. Wallace E. Oates (Cambridge, Mass., 2001), 123-47.



half of the twentieth century, Congress and the federal judiciary placed explicit constraints on taxpayers' right to appeal tax assessments, and provided local assessors added protection against the threat of federal interference or lawsuit in federal court. In *Matthews v. Rodgers* (1932), the Supreme Court ruled that federal courts could not grant anticipatory adjudication of local tax cases when an adequate state remedy was available. The decision also established the notion that the federal rights of taxpayers could be preserved without federal interference in state tax systems. The timing of the decision was fortuitous, for by the early 1930s, the entire apparatus for ensuring the timely collection of property taxes (and, by extension, the solvency of local governments) was on the brink of collapse.

Property tax delinquencies proliferated in the early 1930s while the pool of tax lien buyers evaporated. Tax auctions, designed to help cities and counties recoup lost tax revenue, failed to attract bidders. Those who had come in years past seeking to acquire tax certificates through which they could charge interest on delinquent taxpayers knew that those who had fallen into default lacked the means to buy it back, which would in turn saddle them with real estate that had plummeted in value and which they would now be responsible for paying taxes. In Mississippi, tax titles for one-fourth of the land in the entire state went up for sale in one day; virtually all of those titles reverted to state and local governments for lack of buyers. On the Great Plains, besieged farmers staged hostile takeovers of tax auctions, buying delinquent properties for the bare minimum and returning title to owners.<sup>36</sup> To compound the fiscal hardship on local governments, foreign

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<sup>36</sup> See Bieto, *Taxpayers in Revolt*, 9.

corporations routinely withheld payment of property tax bills by contesting their assessments in federal court, a luxury not available to a citizen of the state.

In response to this crisis of taxing authority, Congress passed the 1937 Tax Injunction Act. Subsequently written into the U.S. Code under section 1341, the Act states that federal district courts “shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy, and efficient remedy may be had in the courts of such state.”<sup>37</sup> The Act, as House and Senate committee reports on the bill reveal, intended to help keep local governments from going broke by preventing corporations from withholding tax payments via litigation. It also aimed to level the playing field between citizens and corporations, by closing a loophole that, in practice, allowed the latter to use the mere threat of a lawsuit to bargain down their tax bill.<sup>38</sup> The Tax Injunction Act instead established the principle of pay-first-then-litigate. Subsequent decisions by the Court reaffirmed that section 1341 prevented interference in the collection of taxes, but not in the ability of a taxpayer to sue in federal court afterward.<sup>39</sup>

Though intended to curb corporate power, the Tax Injunction Act, as well as the legal precedents that led federal courts to take a “hands off” approach to local tax disputes, expanded the discriminatory powers of local assessors. The Tax Injunction Act established a high threshold for victims of discriminatory taxation to prove that federal intervention in local tax assessment practices was warranted. So long as a “plain, speedy, and efficient

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<sup>37</sup> Section 1341, 28 USC 1341, quoted in Frederick C. Lowinger, “The Tax Injunction Act and Suits for Monetary Relief,” *University of Chicago Law Review*, 46 (1978-1979), 736n1.

<sup>38</sup> Lowinger, “Tax Injunction Act,” 741.

<sup>39</sup> Daan Braveman, “FAIR Assessment and Federal Jurisdiction in Civil Rights Cases,” *University of Pittsburgh Law Review*, 45 (1983-1984), 356.

remedy” was on the books, the state could argue that charges of discrimination must be adjudicated on the local level.

The variety of informal practices embedded in the system but not codified in law made the challenge of fighting unfair assessments that much harder. Chief among those quasi-legal practices was the fractional assessment. Prior to the tax reforms of the 1960s and 1970s, virtually every assessor in the country assessed the value of property at a fraction of its appraised (or, true) value. Assessment rates not only varied from state to state, but from county to county.<sup>40</sup> In Mississippi, for example, the median rate of assessment in the state as a whole was, in 1965, 13.9 percent of market value, but in some counties fractional assessments were in the single digits, while others assessed properties at 30 percent of the market value and above.<sup>41</sup> But while the practice was pervasive and highly localized, it had no legal standing. In fact, over half of the states had uniformity clauses dictating that all property should be taxed at its true value.<sup>42</sup> Even in states that permitted the practice but set a minimum fraction, assessors went lower.

If applied equally to all property, the fractional assessment had no practical effect on the tax bill one received each year, since cities and counties adjusted the rate of taxation in accordance with the total assessed value of all property. A jurisdiction that assessed property at a high fraction or at full value would have a correspondingly low tax rate, while one that assessed property at a low fraction would have a high rate. Either way, in theory,

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<sup>40</sup> See United States Advisory Commission on Intergovernmental Affairs, *The Property Tax in a Changing Environment: Selected Case Studies* (Washington, 1974), 8-9.

<sup>41</sup> Wilber, “Current Issues in Mississippi Government,” 19.

<sup>42</sup> Uniformity clauses were first adopted by new slaveholding states in the west in the 1820s and 1830s as a check on the power of non-slaveholding white majorities to tax slave property at a higher rate than other forms of property. Designed at a time when property taxes covered all forms of property, these clauses became increasingly treated as superfluous once the property tax became a de facto real estate tax, and were unenforced. On the origins of uniformity clauses and its relation to debates over slavery in antebellum America, see Robin L. Einhorn, *American Taxation, American Slavery* (Chicago, 2006), esp. 202-205.

the bill would be the same, since the rate is ultimately determined by revenue needs. The problem with fractional assessments was not that they lacked uniformity across the nation or within a state, but rather that they allowed all sorts of chicanery to escape without notice or challenge. For while the practice of assessing property at a fraction was pervasive and, for taxpayers, expected, the actual fraction used by a given assessor was often left to the taxpayers' imagination. Neither the appraisal nor the fraction used to calculate a property's assessment appeared on the tax bill, just the assessed value. Since everyone was given an assessment that was below the property's market value, it was hard for property owners to tell whether they were receiving a relatively higher or lower assessment than others. Since individuals were often reticent to divulge their effective tax rate, much less inquire about others, the tax incidence resulting from a given assessors' practices were a thing of mystery and idle speculation. Rather than challenge a tax bill and risk the very real possibility of having it adjusted upward, most taxpayers preferring to imagine that they were the one getting a deal. Social and residential segregation reinforced this code of silence. A homeowner tended to have his property assessed at a similar fraction as his neighbor, a black landowning farmer the same as another farmer across the county, and so on. Only through investigative research would a given property owner discover that he was assessed at a higher fraction than others, much less uncover a racial pattern to fractional variations. For a black person living in the Jim Crow South, the downsides to even carrying out such an investigation often outweighed any possible benefits. Indeed, the very complexity of fractional assessments and lack of transparency helped, as Kenneth

K. Baar points out, “to conceal errors and inequity, and protect[ed] [assessors] from a feared swarm of assessment appeals.”<sup>43</sup>

The fractional assessment did not merely cover up incompetence. It also served as a tool for rewarding the powerful and punishing the powerless by allowing assessors’ offices to subtly, almost imperceptibly, shift the burden of taxation from the former onto the latter. One study of a rural Mississippi county’s tax records found wild variations in the fractional assessments of the same types of properties—some as low as 5% while others as high as 105% of market value—that reflected the race and economic standing of the owners.<sup>44</sup> In one county in Mississippi, researchers found that property owned by wealthy and influential whites received assessments between 25 and 50 percent below the standard rate, while the poor often received assessments that closely approximated appraisals.<sup>45</sup>

Assessors did not win elections by stressing their technical expertise, nor did they win re-election by administering tax assessments in a fair and equitable fashion. Rather, they kept their jobs by keeping taxes low for those who helped get him into office, and offsetting those budgetary shortfalls by raising taxes on those who lacked political influence. The peoples’ expectations for the assessor were reflected in the qualifications needed to become an assessor: none. In most states prior to reforms, anyone could run for assessor; once in office, the assessor was usually required to receive some basic training for the job. In Mississippi, assessors had to attend a weeklong training session each summer in

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<sup>43</sup> Kenneth K. Baar, “Property Tax Assessment Discrimination against Low-Income Neighborhoods,” *Urban Lawyer*, 13 (Summer 1981), 342.

<sup>44</sup> Press Release re: tax structure in Miss., November 21, 1972, folder 11, box 34, Black Economic Research Center Records, Schomburg Center for Research in Black Culture (New York Public Library).

<sup>45</sup> Barbara Phillips and Joseph Huttie Jr., *Mississippi Property Tax: Special Burden for the Poor*, research report, Black Economic Research Center (New York, 1973), 35.

the state capital of Jackson.<sup>46</sup> The composition of the Mississippi's assessors was what you would expect. One study concluded, "the assessor is sorely lacking in professional training, poorly staffed, underpaid, confused, misdirected, and unsupported in his or her efforts to do the job according to conscience and the laws of the state."<sup>47</sup>

Few practices better exemplified this incompetence-by-design than the habitual failure of assessors to update the tax rolls each year, and instead copy the previous years'. In theory, assessors were supposed to keep abreast of changing land values and make adjustments accordingly. If a farmer put some acres into cultivation that previously lay fallow, or if he built a row of workers' houses on land where crops used to grow, it was the assessor's job to make note of those change in the land's use and recalculate its value. Similarly, the assessor was supposed to reappraise the value of a house that added a new wing, a cotton plantation that built a new gin house, or any other improvement to a piece of taxable property. But, if he wanted to succeed at his job, the assessor often chose to ignore those changes and improvements.

Neglecting to update the tax rolls essentially pegged a property's assessment to its value at time of purchase, regardless of improvements to the land or added construction, or escalating market value. These became known as "sleeper" properties; its value is frozen in time, only to be "awoken" when sold. This practice resulted in small acreages being assessed at obscenely higher values than a county's most fertile and productive farms, and put up-and-coming farmers at another competitive disadvantaged to their older, more established counterparts. It represented a hidden—but massive—tax subsidy to those who

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<sup>46</sup> In Mississippi, tax assessors were not required to have any professional training to run for office, and were only required to attend a one-week training session run by the State Tax Commission each year. See Wilber, "Current Issues in Mississippi Government," 20.

<sup>47</sup> *Ibid.*, 13.

possessed lots of land and held it for a long time, ensuring that a county's tax incidence would fall heaviest on the young and poor. Some tax law and policy scholars refer to this practice of copying rolls as evidence that the pre-reform assessment process offered homeowners a layer of protection from the shocks of a volatile marketplace. Ever attentive to the anxieties of voters, assessors implicitly assured homeowners that their property taxes would remain static and predictable.<sup>48</sup> Of course, this practice only worked when real estate values were going up. During the Great Depression, tax revolts erupted across the country, as angry homeowners protested tax bills that failed to account for the precipitous drop in property values.<sup>49</sup> When land values remained static, unchanging assessment roles still harmed small landowners by steadily widening the wealth gap and ensuring that public finances would remain low and disproportionately paid for by them.

It was no coincidence that the most inactive assessors in the nation were those representing rural southern counties. As late as 1973, at least eighteen counties in Mississippi had never had a full appraisal of all of its property, only nine had conducted an appraisal since 1960, and of those nine, only six had done so since 1965. Seven counties had no appraisal records whatsoever.<sup>50</sup> One report on the inequitable tax burden on the black and poor in Mississippi remarked, "It's just easier to copy last year's mistakes, and of course, last year's mistakes become this year's injustices."<sup>51</sup> Unsophisticated and downright lazy public officials were less a product of a rural southern culture and folkways and more a source of its ruling class's strength, their incompetence deliberately obscuring

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<sup>48</sup> Isaac William Martin argues that, by implicitly guaranteeing that property values would remain artificially low, the fractional assessment subsidized homeownership and provided homeowners with a layer of protection from the threat of economic shock or personal hardship. See Martin, *Permanent Tax Revolt*, 7-8.

<sup>49</sup> See Beito, *Taxpayers in Revolt*.

<sup>50</sup> *Ibid.*, 16.

<sup>51</sup> Phillips and Huttie, *Mississippi Property Tax*, 16.

just how modern and sophisticated methods of control had, by the mid-twentieth century, become. Indeed, the lack of record keeping and absence of routine surveys of changes in properties' status exemplified the highest stage of Jim Crow bureaucracy.

Even counties that routinely reassessed properties often did so in a manner that reflected the racial biases of assessors and the second-class citizenship of black landowners. In his seminal study *Preface to Peasantry*, social scientist Arthur F. Raper found that, as rural land prices plummeted in the largely agricultural, plantation-dominated Greene County, Georgia, during the 1920s, racial disparities in the assessed valuation of land for tax purposes rose. Whereas in 1919, property tax assessments on white and black-owned land were roughly equal, by 1934 black landowners were paying far more in taxes on comparable acreage than whites. In what could be called "affirmative action" for whites and "benign neglect" for blacks, the assessors' office had taken the initiative to begin reevaluating white-owned property, but had neglected to do so for blacks. They did so not so much out of racial loyalty as much as fear of being held accountable by his electors. At the time, county assessor was still an elected position in most Georgia counties. In possession of the franchise, even small white landowners could freely challenge their assessments and expect to receive due consideration. In contrast, the African American property owner "cannot go to the Black Belt courthouse office and demand a tax-valuation adjustment from a county official he did not help to elect [and] he is equally impotent should he wish to help unseat some office-holder for lack of proper consideration to him."<sup>52</sup> Black property owners living under the shadow of Jim Crow instead learned to avoid attracting the attention of the assessors' office. The case of the

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<sup>52</sup> Arthur Raper, *Preface to Peasantry: A Tale of Two Black Belt Counties* (Columbia, S.C., 2005 [1936]), 136.



Edwards, Mississippi, boycotts of 1966 underscores why black landowners learned to fear and loathe the assessor, and how the issue of tax justice became a key battleground in local freedom struggles throughout the rural South.

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The fight began, like many struggles of the civil rights era, at a place of play. In 1944, the small town of Edwards, Mississippi, located roughly 20 miles west of the state capital Jackson in Hinds County, cut the ribbon on a new public swimming pool. Seven years later, the town added two tennis courts to the facility. Supported by public funds, the park was open to white residents free of charge. The town's black population was barred from entry. That was until the passage of the 1964 Civil Rights Act, which outlawed discrimination in public facilities and places of public accommodation. Using a tactic employed by numerous towns and cities throughout the country, the following spring the town's Board of Aldermen called a meeting and passed a motion to sell the swimming pool and grounds to a hastily formed private corporation, the Edwards Recreation Club, which subsequently reopened the facility and began accepting applications for membership. The Club's president was the brother of the town's mayor, Clark E. Robbins, and several of its board members were public officials.<sup>53</sup> The following summer a group of African American teenagers, led by 17-year-old Irene Thompson, applied for membership. All four of their applications were rejected. Afterward, Thompson and roughly 30 black teenagers began picketing at the club's front entrance.<sup>54</sup> A few miles from downtown Edwards, the Delta

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<sup>53</sup> See "White v. City of Edwards," *Race Relations Law Reporter*, 11 (Winter 1966), 1994-96.

<sup>54</sup> Mary White, as guardian and next friend of Irene Thompson, a minor, et al, v. City of Edwards, Hinds County, Mississippi, Civil Action No. 3973, Aug. 9, 1966, Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder 1: Court Documents: Statement, Memorandum, and answer to defendants Dates: 1965-1966, MDAH.

Ministry, a civil rights organization created by the National Council of Churches to assist black Mississippians in literacy, voter registration, community mobilization, and economic development, had established a base of operations at Mt. Beulah, a former college-academy situated on a 23-acre campus. Leading the operations there was civil rights attorney and organizer Charles Horwitz.<sup>55</sup> Less than a month after the four black teenagers had applied for membership, and weeks after they began picketing, organizers from the Delta Ministry joined forces with local blacks to launch a boycott of white-owned businesses in town.

While the sale of the town pool to a private company sparked the protests and, later, a class-action lawsuit against the town, it was far from the only grievance aired by blacks on the streets of Edwards. The resale of the pool to the town and its operation on a nondiscriminatory basis was just one of eighteen demands boycott organizers presented to town officials. The black sections of town lacked paved streets, sidewalks, street lights, garbage service, or adequate sewage and drainage facilities. Town officials treated black citizens with contempt. The mayor kept a sign that read “We’d rather fight than change” prominently displayed in his office window, and made a point of being unavailable to meet with black citizens groups. The woman who collected water bills was fond of cutting off service to black customers for the slightest delay in payment, which was often since she failed to maintain normal office hours. Garbage collectors only provided curbside service to white residents, while the town’s maintenance crew neglected to maintain the town’s black cemetery. Area employers only hired blacks for the lowest-paying, most menial positions. To make matters worse, the town had recently approved the location of a

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<sup>55</sup> On Mt. Beulah and the Delta Ministry, see Mark F. Newman, *Divine Agitators: The Delta Ministry and Civil Rights in Mississippi* (Athens, Ga., 2004).

chemical plant adjacent to the black section of town. On several occasions in the previous years, accidents at the plant had resulted in the emission of toxic fumes into black homes.<sup>56</sup>

The cessation of spending by over sixty percent of the town's 1,600 residents threatened to not only cripple local businesses but also decimate the town's finances, which were heavily dependent on the sales tax. In addition to boycotting businesses, nearly all African American maids who worked in white homes walked off the job. (By the end of the summer, only 1 in 5 had returned to work.) As the boycott got underway, white officials launched retaliatory measures. First, the mayor imposed a 7 pm curfew on all businesses, a move designed to prevent African Americans, most of who worked late into the evening, from shopping at "Negro cafes and Negro-owned groceries."<sup>57</sup> The ploy failed. Boycotters stepped in and launched a shuttle service to grocery stores in Jackson, Vicksburg, and the neighboring town of Raymond, and appealed the curfew to the federal district court, which invalidated it in September 1966.<sup>58</sup> Mississippi State Sovereignty Commission investigator Erle Johnston remarked, "This action seems to have caused more resentment in the Negro community."<sup>59</sup> Police arrested persons listed as speakers at upcoming rallies in support of the boycott on trumped-up charges.<sup>60</sup> Others spoke in their stead. Highly organized, disciplined, and determined to enact change, the boycotters pushed many merchants to the

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<sup>56</sup> Minutes of meeting of mayor and board of aldermen, Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder: Bland v. Angelo Evidence: Land Assessment and Questionnaires, 1966 and ?, MDAH; Erle Johnston Jr., Edwards, Miss. Investigation, Aug. 25, 1966, SCR ID 2-55-12-18-1-1-1, Mississippi State Sovereignty Commission, MDAH.

<sup>57</sup> *Ibid.*; clipping, n.d., Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder 2: Evidence 1966, MDAH.

<sup>58</sup> A. L. Hopkins, Investigation in Edwards, Mississippi, to determine whether or not known subversives are participating in the boycott of the white business establishments, Oct. 6, 1966, SCR ID 2-55-12-26-1-1-1, MSSC, MDAH.

<sup>59</sup> Johnston, "Edwards, Mississippi, Investigation," Aug. 25, 1966.

<sup>60</sup> At the height of the boycotts that summer, Hinds County sheriffs arrested James Wilkes on charges of operating a café without a proper beer license after receiving a copy of a leaflet that listed him as the first speaker at a rally scheduled for that evening. See Clipping, n.d. [1966], Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder 2: Evidence 1966, MDAH.

brink of bankruptcy. Correspondence among investigators for the Mississippi State Sovereignty Commission indicated that the boycott was “crippling” local businesses. Quietly, merchants pleaded with town officials to broker a compromise.<sup>61</sup> Publicly, they took out their frustrations on their former customers. Violent assaults on protesters became common as the long summer of discontent dragged on. On August 11, 1966, white merchant S. K. Askew assaulted Aaron Lee, one of many persons picketing his store. (Lee, not Askew, was arrested for assault and battery.)<sup>62</sup>

In September 1966 district court judge Dan Russell dismissed the class-action lawsuit filed by black Edwards residents against the town, ruling that the official reason for the sale of the pool to a private company (supposed complaints from elderly citizens of subsidizing the costs of a facility they did not use) was bona fide, and therefore any discrimination on the part of the private operators was not covered by the Fourteenth Amendment.<sup>63</sup> That same month, Irene Thompson began her freshman year at the University of Michigan. White officials confidently predicted that, with the start of the school year, the youth-led boycotts would come to an end. They were wrong. Throughout the summer and into the fall, growing numbers of community members lent their time, their businesses, and their homes to help keep the boycott alive. Farm worker Percy Bland turned his property into a rest station, his family members dispensing food and water to weary picketers.<sup>64</sup> Frank Moore, a worker at a nearby lumber yard, shuttled local blacks to stores in neighboring towns, worked closely with organizers at Mt. Beulah, and delivered

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<sup>61</sup> Tom Scarborough, “Edwards, Mississippi,” Aug. 29, 1966, SCR ID 2-55-12-16-1-1-1, MSSC, MDAH.

<sup>62</sup> Charles Horwitz, affidavit, Oct. 14, 1969, Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder: Bland v. Angelo Opposition to Defendant’s Motion Dates: 1970, MDAH.

<sup>63</sup> “White v. City of Edwards,” *Race Relations Law Reporter*, 11 (Winter 1966), 1994-96.

<sup>64</sup> Affidavit, Percy Bland, July 6, 1970, Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder: Bland v. Angelo Opposition to Defendant’s Motion Dates: 1970, MDAH.

fiery speeches at rallies and strategy sessions. One report by the MSSC described him as having “quite a bit of influence with the more militant group of Negroes,” and noted he “agitates the local Negroes every chance he gets.”<sup>65</sup> Narissa Allen, who operated a barbeque joint located across from the town’s stockyards, emerged as a vocal leader and her restaurant served as an organizational base for the movement. Preventing the use of her business establishment for organizing and strategizing became one of the principle motives for the town’s curfew ordinance. In their efforts to sow dissension among the local black community, town officials worked hard to paint Allen as someone who, along with the white attorneys and organizers at Mt. Beulah, was exploiting local unrest to her own advantage. Pamphlets authored by the Bi-Racial Committee for Truth (a front for white officials and business leaders) and distributed throughout the town’s black neighborhoods said Allen and Horwitz “are once more trying to use YOU to feather their own nest.”<sup>66</sup>

White officials’ cynical warnings fell on deaf ears. In mid-September, African Americans organized a run on the local bank, withdrawing \$2,000 in savings and checking accounts.<sup>67</sup> In October, MSSC investigator reported that the boycott remained “almost 100% effective.” The local furniture store “was doing absolutely no business,” the gas station was losing \$100 per week, the theater had been forced to close, and the laundromat’s weekly revenues dropped from \$200 to \$15.<sup>68</sup> At the same time, organizers implemented plans for an independent black grocery store and food cooperative in town, which became the basis for the formation of Freedomcraft ventures, a project that aimed to

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<sup>65</sup> A. L. Hopkins, “Continued investigation of the boycott in Edwards, Mississippi,” Oct. 27, 1966, SCR ID 2-55-12-29-1-1-1, MSSC, MDAH.

<sup>66</sup> Bi-Racial Committtee for Truth, “Citizens of Edwards,” pamphlet, Aug. 1966, SCR ID # 2-55-12-44-1-1-1, MSSC.

<sup>67</sup> Johnston, “Edwards Boycott,” Sept. 19, 1966, SCR ID 1-115-0-5-1-1-1, MSSC, MDAH.

<sup>68</sup> A. L. Hopkins, Investigation in Edwards, Mississippi, Oct. 6, 1966, SCR ID # 2-55-12-26-1-1-1, MSSC.

open a series of co-ops throughout the state that would manufacture and sell products such as candles, candies, and pralines, among others, for local and national markets.<sup>69</sup>

By late October 1966, with town officials still refusing to make any written concessions, Frank Moore announced (as MSSC investigator Hopkins reported) that the boycott “will remain in effect until these demands are met or until the next election when the local Negroes will defeat the present white officials and any other white candidates who might seek office by vote of three to one.”<sup>70</sup> In statewide elections on November 8, 1966, African Americans in Edwards demonstrated their new voting power, casting 438 votes for Mississippi Freedom Party candidate for U.S. Senate Clifton R. Whitley (compared to 305 votes cast for incumbent senator James O. Eastland), and in the Congressional race, casting 441 votes for MFD candidate Emma Sanders to Congressman John Bell Williams’s 353 votes. Prior to the 1966, no more than 550 voters had ever turned out for an election in Edwards. MSSC investigator A. L. Hopkins commented, “It is now evident that the Negroes can out vote the white people by quite a majority in any city election in Edwards.”<sup>71</sup> Shortly thereafter, town officials formally agreed to pave streets and add sewer lines in black neighborhoods, and raise the hourly wage of garbage workers to \$1.25 an hour, in exchange for an end to the boycott. While the boycott was devastating to local merchants, for the town, any fears of lost revenue were put to rest when the State Tax Commission stepped in and awarded it the additional sales tax revenues from the supermarket where the boycotters shopped.<sup>72</sup>

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<sup>69</sup> “Delta Ministry Plans Progress,” *New York Amsterdam News*, July 8, 1967, 27.

<sup>70</sup> A. L. Hopkins, Report, Nov. 4, 1966

<sup>71</sup> Hopkins, Continued investigation of the boycott in Edwards, Mississippi, Nov. 9, 1966

<sup>72</sup> Erle Johnston Jr., Edwards Boycott, Nov. 23, 1966; and Charles Horwitz to Alsee Irving, Feb. 6, 1967, Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder: Correspondence 1966-1968, MDAH.

Among the many threats whites leveled at boycotters, one would prove particularly well suited for the new legal landscape of civil rights era Mississippi. On one summer day in the middle of the boycott, town aldermen Sam Tupper approached Alga “Bum” Stevens and David Magee, two of the leaders of the boycott, and warned, “You all are going to pay for [the boycott]. Your taxes are going to be doubled.”<sup>73</sup> Indeed, they were. In October 1966, as the boycott continued, Mayor Clark Robbins, Town Assessor Ruth Harrell, and the Board of Aldermen met to revise the land assessment rolls for the year. Rather than copy the previous year’s rolls, as had been done in years past, Harrell combed through the rolls and selectively raised assessments on African American participants in the boycott. The degree of adjustment roughly correlated with a homeowner’s level of participation or leadership in the boycotts and protests. In the end, they raised assessments on 237 lots owned by blacks (39 black-owned lots did not receive an increase). Overall, black property owners saw the assessed value of their holdings increase \$131,800 over the previous year, a 52.6 percent jump. By contrast, town officials raised assessments on only 34 white-owned lots, and in each case, for improvements made to the property in the past year. Sam Tupper, the alderman who had threatened protesters with higher taxes, decreased the assessment on his home from \$2,500 to \$1,000.<sup>74</sup>

On November 19, 1966, a public notice indicating that assessment rolls had been “equalized” appeared in the local white newspaper, the *Edwards Hummer*, as required under law. Property owners were given 10 days to inspect the rolls in person at the town hall and file a written objection. The governing body was not required to notify the

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<sup>73</sup> David Magee, Oct. 1969, Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder: Bland v. Angelo Affidavits 1969-1970, MDAH.

<sup>74</sup> Bland v. Angelo, complaint, Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder: Bland v. Angelo Complaint and Verification, 1968-1969, MDAH.

persons or businesses whose assessment had been changed from the previous year.<sup>75</sup> At the completion of this ten-day period, the municipality held a final meeting, at which time it finalized assessments and began issuing tax bills. (Taxpayers did not receive their tax bills until after the assessment rolls were finalized.) Taxpayers wishing to contest their property tax bill had to file an appeal in county circuit court within twenty days after finalization. After this twenty-day window closed, the Mississippi taxpayer had no legal standing to contest their assessment.<sup>76</sup>

Both the deadline to object to an assessment prior to finalization and to appeal a tax bill after finalization passed without notice. Town officials waited to mail tax statements until after the statutory window for appeals in county court had closed. Only then did African American homeowners realize that Tupper's promise to raise boycotters' taxes was no idle threat. As Charles Horwitz recounted in his affidavit, "I first learned that the aldermen had raised taxes on property owned by Negroes when Mr. Percy Horton came to my office and reported to me that his taxes had been raised. I inquired of Mr. Horton if he had made improvements on his property to justify the increase, and he said he had not. I asked him if he knew why his taxes had been raised. He replied to me that Mr. Sam Tucker, an alderman at the time, had explained to him at the time, 'You all got messed up with that boycott, so you have to pay more taxes.'<sup>77</sup> Indeed, only those who got "messed up" with the boycott received higher bills. Among those who received the sharpest spikes were: Percy Bland, who offered his home as a place of rest for picketers; Mary Blue, who brought food to picketers three to four times a week; Willie V. Crump, who spoke at most of the mass

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<sup>75</sup> Sect. 1858 Miss. Code 1942

<sup>76</sup> Miss. Code Sect 3742-17

<sup>77</sup> Horwitz affidavit.



meetings and often functioned as the master of ceremonies at events; Alsie Irving, who gave several impassioned speeches at mass meetings; Lizzie Richardson, an active participant in marches and boycott meetings who also brought food to picketers; Henry Thompson, who marched on the picket line and was described as “very, very active” in the protests; and Charles Williams, who organized the selective buying campaign that began in September 1966 after the picketing ended.<sup>78</sup> By contrast, those African American homeowners who did not receive higher assessments were, without exception, those who, as Horwitz described, “[were] regarded as Toms in the Negro community for various reasons: opposing the boycott, violating the boycott, refusing to come to Freedom meetings and known to confide to whites about confidential matters involving the Negro community.”<sup>79</sup>

With the statutory window for appeals in county court closed, individual taxpayers could only contest their assessments by proving the taxes were illegal in state court. Here, they encountered a host of obstacles. Mississippi state courts did not allow for class action lawsuits in tax cases, did not permit an injunction against the collection of illegal taxes or suspension of tax collection based on a charge of illegality, and penalized a taxpayer who loses an appeal the full amount of the contested amount plus 10 percent and court costs.<sup>80</sup> Instead, attorneys Horwitz, George Peach Taylor, and Frank R. Parker, with the support of the umbrella organization the Lawyers Committee for Civil Rights Under the Law, made the risky decision to challenge the assessments as a violation of section 1983 of the 1871 Civil

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<sup>78</sup> Bland v. Angelo, Complaint, Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder: Bland v. Angelo Complaint and Verification, 1968-1969, MDAH.

<sup>79</sup> Horwitz to Mrs. Gray, Jim Lewis, Re: Tax bills in Edwards, Miss., Jan. 16, 1969, Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder: Correspondence, 1967-1969, MDAH.

<sup>80</sup> *Bland v. McHann*

Rights Act, which guaranteed citizens relief from violations of their constitutional rights by state actors, in federal court. In 1967, a group of homeowners who had participated in the protests and boycotts and who subsequently received higher assessments on their homes filed a class-action lawsuit against town officials. To win in federal court, the plaintiffs would have to make the case that section 1341 of the Tax Injunction Act, which prevented taxpayers from filing suit in federal court if a “plain, speedy, and efficient” remedy was available in state court, did not apply. The actions of Edwards town officials came at a moment when federal courts were wrestling over the question of whether proof of disparate impact qualified as impermissible public action under the equal protection clause. While the disparate impact of town assessments was not in doubt, lawyers for the town counted on being able to disprove any clear intent to discriminate, a tactic that would become the hallmark of future attempt to preserve discrimination in the post-Jim Crow legal landscape. Since the town had done the bare minimum as required under state law, and since public officials had been careful not to publicly refer to the race of the affected taxpayers in any official proceedings, the plaintiffs had to prove that the assessments were discriminatory on the basis of visual and statistical evidence, and that the state’s appeals process fit the definition of inadequate under the Tax Injunction Act.

To prove the discriminatory nature of the assessments, the Lawyers Committee legal team employed the services of James Loewen, at the time a young sociologist at Tougaloo College in Jackson, Mississippi. Loewen conducted a study of assessed properties in town that was designed to prove that the assessments could not have been based on any other factor besides the race of its owner. All black properties were numbered consecutively. Using a random numbers table, twenty of these properties were selected

and categorized by assessed value. The same procedure was done for all white-owned properties until the team had twenty white-owned homes that received the same assessments as the black-owned homes. A research team consisting of students from Tougaloo took photographs of all sides of each selected house (careful to avoid capturing the image of any of its residents) and provided a detailed description of the property according to a specific set of criteria. Loewen then brought in an outside appraiser who did not know the town and who was ignorant of the race of the owners, and asked him to compare two properties from the same assessment category and determine which home was worth more and by how much, known as a binomial test. The results of this study were, by the standards of statistical science, conclusive. In each case, the outside appraiser assigned a higher appraised value to the white owned home, in many instances by a wide margin. Based on this study, Loewen found “conclusive evidence of bias ... due to race or correlate, boycott, e.g.”<sup>81</sup>

Edwards’s legal team deployed a number of arguments aimed at disproving discriminatory intent. Intentionally sidestepping the issue at hand, they argued that, since the town had also increased the millage from 13 to 15 mills, technically, every resident received a higher tax bill in 1967. Alderman V. J. Angelo testified that the fiscal crisis caused by the boycotts had required the town to raise assessments on properties that had historically been undervalued. These undervalued homes just happened to be black owned. This justification, though, was slightly contradicted by those offered by other officials, who testified that the adjustments were based on improvements made to the

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<sup>81</sup> Procedures for Appraisals (in Loewen's Study), 1969, Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder 10 Bland v. Angelo Notes n.d., MDAH; notes on testimony, James W. Loewen, 1967, Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder: Bland v. Angelo Evidence: Land Assessment and Questionnaires, 1966 and ?, MDAH.

properties or changes in acreage (neither of which were applicable to any of the affected properties).<sup>82</sup> On cross-examination, though, Mayor Robbins and aldermen Angelo and Emrick admitted that all of the changes made to the assessment rolls were done “without any formal on-site inspections to observe any construction or improvement to provide a basis for changing assessments, without any professional outside appraisals or surveys.”<sup>83</sup> Ultimately, town officials simply pled ignorance, admitting that they could offer no “specific reason or reasons for each such increase.”<sup>84</sup> Attempting to further cloud the issue, town officials argued that the protestors’ demands for paved streets and sewer lines necessitated the higher assessments on properties in affected neighborhoods. This argument was also fatally flawed. For one, the cost of such improvements is raised through special assessments that are applied to a property separately and for a predetermined period of time. These were raises to the regular annual assessment. Secondly, and more importantly, at the time the town selectively raised assessments on black-owned homes, it had not even received the recommendations of the consulting firm it had hired to conduct a survey to determine the needs and costs of such a project. The town board had only passed a resolution, as part of the agreement to end the boycott, declaring its intention to extend sewerage lines “throughout the town.” Indeed, a few of the African American homeowners

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<sup>82</sup> Report on Edwards Tax Assessments, Feb. 2, 1967, Lawyers Committee for Civil Rights Under the Law, TO 35, Box 19, Series: Unlawful Taxation, Folder 22 Bland v. Angelo Reference Material, 1967-1970, MDAH; “Real Estate Taxes in Edwards Investigated for Unequal Assessments, Attorneys Investigating,” *Edwards [MS] MFDP Black and White Hummer*, Jan. 25, 1967, Charles Horwitz Papers, Box 2, Folder 69: Political Party Records, Mississippi Freedom Democratic Party Records Hinds County FDP—Edwards and Bolton groups, 1966-1967, n.d., MDAH.

<sup>83</sup> *Bland v. McHann*

<sup>84</sup> Charles Horwitz to Jim [no last name], Feb. 4, 1967, Charles Horwitz Papers, Box 1, Folder 2: General Correspondence, 1967, MDAH

who received sharp spikes in their assessments were already connected to the town's sewerage system.<sup>85</sup>

Despite the town officials' naked duplicity, Edwards's black homeowners still faced innumerable obstacles to simply proving the merits of their case, much less their standing in federal court. The inherently subjective nature of assessments allowed town officials to fall back on the argument that they were merely "equalizing" the assessments after years of undervaluing black-owned homes. The plaintiffs could have produced expert appraisal evidence to demonstrate that these homes had not been undervalued, but the defense could easily counter with its own expert evidence. In the end, the plaintiffs relied on the striking visual evidence and findings from Loewen's study, along with the testimony of those boycotters who were threatened with higher taxes, to make the case that these adjustments could not have been due to any factor other than the race of the home's owner.

The opinion of U.S. district judge Harold Cox in *Bland v. McHann* was swift and unequivocal. Cox not only dismissed the charge that Mississippi failed to provide an adequate remedy, labeling their appeals process "perfectly expeditious and valid," he also ruled in favor of the defendants on the merits of the case. He dismissed as inconclusive statistical evidence that demonstrated a racial pattern to property assessments and testimony of threats issued by town officials to boycotters. And he concluded that the plaintiffs had failed to present "any evidence which impugned the honesty, or integrity, or fairness of any member of the Board of Aldermen ... [or] the Mayor[.]" Cox used the

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<sup>85</sup> *Ibid.*

decision as an opportunity to declare that “malady” of racism “has been uprooted and removed in its entirety ... from the jurisprudence of Mississippi.”<sup>86</sup>

One of the reasons Cox cited for dismissing the case on its merits underscores the pernicious powers of assessors to generously reward some property owners, and exploit and discriminate against others, without notice or the threat of legal sanction through routine—and widely used—accounting practices. Edwards, like all Mississippi jurisdictions, assessed property at a fraction of its value. But since the practice was informal and technically in violation of the state-mandated 100 percent legal assessment standard, a taxpayer could not challenge an assessor’s decision to selectively raise assessments on certain properties up to one-hundred percent. Unless a litigant was contesting the use of fractional assessments in general, courts were free to ignore the practice and instead focus squarely on whether a taxpayer’s assessment exceeded the property’s true value. This is the tactic Cox adopted when determining the merits of the taxpayer’s case. In his decision, Cox cited a black-owned home valued at \$3000 that had been assessed at \$1000, and a home worth \$4000 assessed at \$1500, as proof that no property owner had been taxed excessively. That all of the town’s white-owned properties had also received assessments even further below true value was immaterial, since the plaintiffs were not challenging the practice of fractional assessments.<sup>87</sup> By providing assessors wide latitude in determining what a property owner owed, and providing public officials legal cover after the fact, the fractional assessment embedded discrimination in accounting practices.

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<sup>86</sup> *Bland v. McHann*, p. 13a

<sup>87</sup> *Bland v. McHann*, p. 11a.

The plaintiffs appealed the decision to the Fifth Circuit Court of Appeals. The Court vacated the district court's judgment on the merits of the case, which it ruled "inappropriate ... [and] went beyond the issue," but determined that Mississippi's remedy met the bare minimum standards of adequacy and the taxpayers were thus not entitled to injunctive relief. The court's opinion concluded, "Taxpayers' complaints that the Mississippi remedy is inadequate appear in reality to be an argument that a better remedy would be available in the federal courts."<sup>88</sup> In such a scenario, federal restraint and deference to the states must prevail. The ruling further established that violations of section 1983 do not override the "longstanding judicial policy and congressional restriction of federal jurisdiction in cases involving state tax administration[.]" In order for a victim of tax discrimination to get a hearing in federal court, the Court ruled, he must first "assert his federal rights in the state courts" by making the case to Mississippi that its own appeals process was inadequate.

The Supreme Court declined to hear the case and upheld the fifth circuit's ruling. The Court ground its decision not to intervene in a decision rendered earlier in the term. In *Lynch v. Household Financial Corporation* (1972), the Supreme Court rejected the distinction between personal rights and property rights, which had previously been used by litigants to argue that section 1983 protected only personal, not property, rights. This ruling seemed to suggest that charges of discrimination in matters of taxation would now fall under civil rights statute. But in a footnote to the decision, the Court reaffirmed the federal policy against intervention in state tax affairs. In effect, the Court granted the

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<sup>88</sup> In this part of the decision, the Court affirmed the ruling in *Charles R. Shepherd Inc. v. Monaghan* (1958), which provided that, even if a tax was improperly collected, the federal court cannot restrain its collection so long as the state provides the taxpayer a means of recovery.

property tax an exemption, and designated the right of property owners to a fair system of taxation as a civil right not protected by federal civil rights laws.

*Bland v. McHann*, one of the attorneys for the taxpayers argued, provided opponents of civil rights “a new weapon in the arsenal of contrivances available for racial discrimination and for the suppression of dissent.”<sup>89</sup> In practical terms, the decision, legal scholar Michael J. Bednarz commented, “relegated the class of hundreds of blacks to the doubtful remedy of bringing individuals law suits in Mississippi state courts to protect their federal section 1983 rights.”<sup>90</sup> Subsequent decisions extended the protections from threat of federal lawsuits under civil rights law that *Bland* afforded to local property tax collectors. In *Fulton Market Cold Storage Co. v. Cullerton* (1978), the seventh circuit court of appeals ruled that assessors could be held personally liable for damages under section 1983, but only if it could be proved that they had intentionally violated taxpayers’ civil rights, further closing the door on charges of discrimination grounded in evidence of disparate impact and narrowing its definition to mere intent.

With the courts unwilling to scrutinize the insidious forms of discrimination embedded in tax administrative practices, blacks in Mississippi and elsewhere turned to politics. By the early 1970s, black organizers and activists in the South took notice of the shocking decline of black landownership. Between 1950 and 1969, African Americans lost over 6.5 million acres of land, much of it in the South. Owners of over 15 million acres in 1910, by the end of the twentieth century, African Americans would own less than 2 million. The Emergency Land Fund, an organization that grew out of black economist

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<sup>89</sup> *Bland v. McHann*

<sup>90</sup> Michael J. Bednarz, “Comity Bars Federal Damages for Section 1984 Discriminatory State Tax Assessments,” *Boston University Journal of Tax Law*, 1 (1983), 162.



Robert Browne's Black Economic Research Center, fanned across the South throughout the 1970s, documenting the legal mechanisms of black land loss.<sup>91</sup> A significant amount of black-owned land, researchers found, was lost via tax sales, the final stage in a process of exploitation and dispossession that began with grossly inflated property taxes and ended with delinquency and forfeiture. More often than not, those properties sold at tax sales were highly coveted by speculators and developers, with the road leading to the auction block paved with fraud and deception.<sup>92</sup> Writing in the BERC publication *Review of Black Political Economy*, William E. Nelson Jr. described tax sales as "no more than grand theft of black land. Taking advantage of the lack of knowledge and sophistication of black land owners, which officials have often manufactured tax delinquency circumstances through unethical and illegal means." Until African Americans won control over these local offices, Nelson concluded, such practices would continue. "[B]lack control over positions such as county sheriff, tax collector, and assessor is an essential prerequisite for the eradication of the kind of chicanery by whites underlying the steady decline of black land ownership."<sup>93</sup>

In the heavily black majority Claiborne County, Mississippi, African Americans seemed uniquely poised to do just that. The county's history was steeped in violence, labor repression, and land theft. Historian Emilye Crosby found, "stories of blacks losing land through fraud and violence permeate Claiborne County's oral histories." New Deal farm programs, combined with the collapse of the region's sharecropping economy in the 1930s, though, led to steady gains in black landownership. The Farm Security Administration's

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<sup>91</sup> See Black Economic Research Center, *Only Six Million Acres: The Decline of Black-Owned Land in the Rural South* (New York, 1973).

<sup>92</sup> See Phillips and Huttie, *Mississippi Property Tax: Special Burden for the Poor*. See also *Black Land Retention in Southeast Virginia: A Study Prepared for the Black Economic Research Center*. Aug. 31, 1972. Black Economic Research Center Records (Schomburg Center for Research in Black Culture, New York Public Library).

<sup>93</sup> William E. Nelson, "Black Political Power and the Decline of Black Landownership," *Review of Black Political Economy*, 8 (Spring 1978), 261-62.

Tenant Purchase Program provided a narrow window of opportunity for black tenant farmers to purchase small plots of land before the program was shuttered with the onset of World War II. Between 1930 and 1945, Crosby found, black landowning farmers in the county tripled in number, from 64 to 186, and averaged 266.7 acres per farm.<sup>94</sup> The county's system of property taxation, though, worked to limit the impact of these strides toward self-sufficiency and economic mobility. While the county's white landowners were lavishly rewarded with perpetually minimal property tax bills, new landowning blacks struggled to pay exorbitant tax bills.<sup>95</sup> For striving, and newly franchised, black farmers in this and many other rural counties, the most consequential elections were not for president, governor, or senator, but rather for sheriff and assessor. In the face of violence and intimidation, members of the newly formed chapter of the NAACP in the county seat Port Gibson, along with the Mississippi Freedom Democratic Party, conducted an aggressive voter registration drive throughout 1965 and 1966. In the 1967 county elections, blacks fielded a slate of candidates for offices, and went into the elections with a 3,000 to 1,600 edge over whites in registered voters. Despite widespread fraud and intimidation, black voters showed up to vote, and helped elect African American candidates to the county board of supervisors, chancery clerk, justice of the peace, and coroner.<sup>96</sup> And in 1971, African American voters helped elect Evan Doss Jr., the African American son of a prominent local minister, county tax assessor, the first African American to occupy this

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<sup>94</sup> See Emilye Crosby, *A Little Taste of Freedom: The Black Freedom Struggle in Claiborne County, Mississippi* (Chapel Hill, 2005), 16-17, 53, 54.

<sup>95</sup> African Americans constituted 76 percent of Claiborne County's total population in 1970.

<sup>96</sup> Crosby, *A Little Taste of Freedom*, 229-30.

position in the state's history. Doss promised to fully reassess and equalize rates on all properties in the county.<sup>97</sup>

Ultimately, the county's board of supervisors, which set the assessor office's budget, staff, and salaries, and had the power to alter or reject any of its assessments, would determine whether Doss could fulfill his campaign pledge. Thanks to gerrymandering, only one African American sat on the five-person board of supervisors. In Mississippi, as one study noted, "the assessor is at the mercy of [the board of] supervisors because of their all-encompassing powers on the county level." Assessor and supervisor usually worked as a team, as was the case in Edwards. But following Doss's election, Claiborne County's supervisors invoked and enforced its authority. Before Doss assumed office in January 1972, the board slashed his budget to \$13,874, less than half the previous year's budget, \$10,000 of which constituted Doss's salary. Undeterred, Doss began investigating the county's tax records. He soon discovered there were no records--no information on how past assessors determined property values, and no records of property lists, which show changes in a property's value over the years. It seemed as if appraisals and assessment rates had been determined at random. But, with the assistance of volunteers from the New York City-based Black Economic Research Center, Alcorn College, the Harvard Law School, and the Scholarship, Education, and Defense Fund for Racial Equality, Doss did discover that there *was* an order to the madness. Low- and middle-income landowners in Claiborne County were, on average, assessed at 25% of the appraised value of the land (which was, they also learned, priced far above its value on the open market), while the county's wealthiest and largest landowners were assessed at 10% of the land's appraised value.

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<sup>97</sup> *Ibid.*, 248-49. On black struggles for political power in post-Jim Crow Mississippi, see *After Freedom Summer*

Residents with homes valued at more than \$25,000 were paying less in property taxes than those living in homes valued at less than \$10,000.<sup>98</sup>

Mississippi was one of a number of states where the practice of assessing different types of property at different rates was common. (The practice was later written into law when the state enacted property tax reforms in the early 1980s.) Under classification schemes, assessors taxed commercial and industrial properties at higher rates than residential, and residential higher than agricultural. Agricultural land not in production was classified as uncultivable, and taxed at a very low rate. While classification promised to alleviate the tax burden of homeowners and small farmers, in practice it more often allowed large landowners to avoid paying taxes on highly profitable lands. During its investigation of tax irregularities in Claiborne County, the BERC and affiliated groups found that some of the county's richest and more productive farmlands were classified as "uncultivable." As with other assessment models, classification not only afforded opportunities for the wealthy to skirt taxes, but also for speculators and developers to collude with assessors to force property onto the market. In South Carolina (another state where informal classification systems were written into law), African American landowners in the booming coastal real estate market along the coastal sea islands in the 1970s and 1980s reported instances of their property being reclassified from agricultural (which was taxed at a much lower rate) to residential, even though it continued to be used for farming. Once classified as residential, the land was not only taxed at a higher rate, but the assessor was entitled—indeed obligated under law—to peg the land's value based on

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<sup>98</sup> Phillips and Huttie, *Mississippi Property Tax*, 47-58.

its potential (as opposed to its current) use.<sup>99</sup> Given the high value of residential property on the islands, this resulted in as much as a 1,100 percent increase in property tax bills. The justification for these reclassifications were often highly dubious, to say the least; a mere statement from a county official that he observed the land not under cultivation would suffice. For the property owner, their only recourse was to appear before an appeal board composed mainly of officials who were either personally or financially invested in future real estate development projects.<sup>100</sup>

In Claiborne County, the board was determined to prevent Doss from uncovering and then publicizing the extent of land misclassified and the prevalence of other shenanigans used by the county's largest landowners to avoid paying taxes. After learning of Doss's investigative work, the board of supervisors ordered Doss to immediately approve the previous year's tax rolls. Doss appealed to the state's governor, William Waller, who had endorsed property tax reform in his most recent campaign, for assistance. The governor did not respond to Doss's request. Next, he contacted the State Tax Commission, the agency charged with checking county tax rolls for irregularities and possible fraud. The commission, which long ago abdicated its duties to ferret out irregularities and enforce uniform standards, declined to act and later assisted the county's board of supervisors in its efforts to stymie Doss. With his staff budget at nil, Doss

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<sup>99</sup> Real estate law scholars have noted that provisions requiring assessments to be based on potential rather than actual use have been instrumental in the mass displacement of poor landowners from booming real estate markets. In effect, assessments based on potential use are self-fulfilling prophecies. It virtually ensures that the land will achieve its potential by forcing its current occupants to scramble to meet outrageous tax bills, sell under duress (invariably at below market value), or have a lien placed on their land. See Faith Rivers, comments on panel "Public Trust: Where Has it Been and Where is it Going?," at the conference "Bridging the Divide: Public and Private Interest in Coastal Marshes and Marsh Islands," University of South Carolina School of Law, Sept. 7-8, 2006, accessible at: <http://video.sc.edu/law/bridging2.mov>

<sup>100</sup> John P. Smith, "Cultural Preservation of the Sea Island Gullahs," *Rural Sociology*, 56 (Summer 1991), 295. See also Healy, *Competition for Land in the American South*; and Harold R. Washington and Paris Favors Jr., "Forty Acres, No Mule," *North Carolina Central Law Journal*, 5 (1973-1974).

announced in the fall of 1972 he did not have the resources to issue automobile tags to county drivers, one of the basic duties of the assessors' office. In response, the state's attorney general filed an injunction seeking to have Doss removed from office for dereliction of duties. Again, volunteers stepped in to help Doss issue all of the tags before the court-ordered deadline. Outside support also trickled in. In 1973, Doss's office received a \$4000 technical assistance grant from the Medgar Evers Fund so it could continue to perform its minimal duties required under law.<sup>101</sup>

As Doss struggled to bring good governance to a county where anti-democratic chicanery and incompetence-by-design had been the rule, the county's remaining white officials scrambled to maintain white supremacy in a post-Jim Crow legal landscape. As was the case in Edwards, the board of supervisors carefully avoided any actions that signaled discriminatory intent. Doss, county supervisors claimed, was not "being discriminated against on account of his race." The "failure ... to provide him with adequate public funding" was solely due to fiscal and budgetary concerns. Given that "the U.S. Supreme Court increasingly seems to require a showing of purposeful or intentional discrimination," one exasperated attorney for the BERC remarked, the chances of successfully challenging these obstructionist measures on equal protection grounds were uncertain at best.<sup>102</sup>

Doss instead appealed to the county's voters, holding press conference and town hall meetings, where he explained his predicament and attempted to rally support. In response, the county's board of supervisors orchestrated a smear campaign against Doss. They enlisted one of the county's black ministers to publicly denounce Doss and question

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<sup>101</sup> "Evers Fund Saves Black Tax Man," *Norfolk Journal and Guide*, May 26, 1973, p. C1.

<sup>102</sup> Phillips and Huttie, *Mississippi Property Tax: Special Burden on the Poor*, 57.

his competency for the job. And they spread rumors among the county's black electorate that Doss planned to raise *their* taxes. This was a tactic commonly used by opponents of tax reform and modernization, since it played to all taxpayers' mistaken assumption (both victims and beneficiaries alike) that fractional assessments meant that everyone received a discount on their tax bill. Black property owners in Claiborne County did not succumb to these fears, though, and instead flooded county board of supervisor meetings to formally object to their assessments, as allowed under law, and request reappraisals. At an annual statewide meeting of county assessors, Doss presented three resolutions calling for county supervisors to support assessors in their efforts to equalize taxes. All three resolutions were voted down, with opponents privately admitting they feared retribution from boards that determined their salary and budget.

By 1973, Doss spoke openly about the possibility of "a taxpayer's revolt in Claiborne County."<sup>103</sup> Instead, change came through the ballot box. The following year volunteers secured over 1,800 signatures on a petition to either begin reassessment of properties or put the issue before voters. After the measure was placed on the ballot, white officials had Doss arrested on trumped-up charges and sentenced to 90 days in prison and a \$1,000 fine for allegedly refusing to issue license tags to two white county supervisors. Following his arrest, Doss told reporters, "I am the victim of two things: being black, and doing my job. My arrest and conviction are actions intended to stop me politically, stop me, a black official, from achieving equal taxation in Claiborne County."<sup>104</sup> The ruse failed to intimidate black voters, who in November 1974 passed a referendum for the reassessment and equalization of the county's property taxes. African Americans' tax revolt in Claiborne

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<sup>103</sup> Phillips and Huttie, *Mississippi Property Tax*, 57.

<sup>104</sup> "Jailed Miss. Assessor Charges Harassment," *Baltimore Afro-American*, Nov. 30, 1974, p. 5.

County succeeded in bringing down a system that had conspired to reinforce white supremacy and economic inequality via tax administration, and established the principle and the means of ensuring equitable taxation in the heart of the Deep South.

It did not, however, help inspire a wave of tax revolts in black America. What was most remarkable about Clairborne County's tax revolt was the level of awareness of systemic assessment discrimination among the black electorate. Indeed, while property tax discrimination was prevalent, grassroots reform movements in African American communities were rare. This was due in large measure to the invisibility of assessment discrimination. In American cities, a history of racial terrorism and state-sanctioned discrimination had resulted in African Americans being grossly underrepresented among the nation's property owners. Only a small percentage of black Americans actually received an annual property tax bill; the rest suffered assessment discrimination indirectly in the form of exorbitant rents. Among those who did own property, many were unaware that they were receiving comparatively higher assessments on the same properties as whites.

But even when unfair assessments became apparent, the appeals process, which was deliberately opaque, cumbersome, and costly, offered only disincentives to victims who wished to lodge an appeal or challenge assessments in court. In fact, the appeals process, as tax scholar Diane B. Paul concluded, functioned "to weed out all but the most determined property owners."<sup>105</sup> Statistics showed that, throughout the 1960s and early 1970s, the vast majority of successful appeals concerned high-value property. The individual who sued in order to obtain a reduction in an assessment to a uniform level would have to prove discriminatory intent or demonstrate a clear discriminatory pattern. A

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<sup>105</sup> Paul, *Politics of the Property Tax*, 38.



successful public action against an unfair system of taxation, meanwhile, only resulted in the raising of other everyone else's taxes and thus provided no direct benefits to the taxpayer and carried considerable risks.

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When it came to tax assessments, the formal rules that governed property valuation, and prevailing notions of race and real estate, were suspended, and the contradictions and underlying interests of the state were revealed. The property tax derived its power, though, from its ability to conceal and obscure those interests and contradictions. Because of the way property taxes were administered, victims of unfair assessments could sense but rarely prove its existence, while its beneficiaries could enjoy but at the same time deny (and, as often, be ignorant of) its existence. Over time, low property taxes became, for its beneficiaries, rights worth defending, and for most of its victims, a bewildering bureaucratic labyrinth that promised to frustrate any attempts to contest. For black Americans, in particular, punitive and exploitative property tax bills became something suffered in silence or spoke of anecdotally, and only rarely made the central focus of a movement, much less *the* movement. That was not because property tax discrimination did not inflict grave harm to African Americans' struggle for equality. The subtle, invisible nature of assessment discrimination, and the seemingly futility of legal challenge to discriminatory assessments, combined to make the property tax a powerful force in the manufacturing of race inequality by the state, and contributor to the profound—and persistent—differentials in wealth and property ownership between white and black Americans today. The hidden benefits white Americans derived from discriminatory methods of property assessment--and African Americans' uphill and, among historians,

unsung struggles for justice in taxation—adds a new dimension to the study of black economic vulnerability in history and contemporary America, one that recognizes African Americans as taxpayers and not, as racist critics throughout the ages have insinuated and liberal defenders have too often assumed, mere tax recipients. For the historian, recognizing that property assessment discrimination happened (and continues, in many new forms, to happen) forces a more fundamental reevaluation of many of the conceptual and methodological tools that have shaped the study of race and real estate, and provides a new model for measuring racism.



*On the left, the home of Zeith Tupperfield (white) and on the right, Sam Jordan (African American). Both properties received \$1,000 assessments in the 1967 Land Assessment Roll for Edwards, Mississippi. In 1966, Jordan's property was assessed at \$500.*