

Dr. Rufus S. Craft (left) and Kansas Supreme Court Chief Justice Samuel Austin Kingman (right). Craft image courtesy of the Internet Archive, www.archive.org.

Dr. Craft and Justice Kingman: Defining the Right to Challenge Government in Gilded Age Kansas

by David Ress

For years before he finally pulled up stakes and left town, Dr. Rufus S. Craft squabbled with the Jackson County Board of Commissioners over money. The commissioners challenged his accounting for public funds during his 1865–1866 term as county treasurer. He fired back an accusation that they had made an illegal payment to the incompetent first cousin of the late Senator James H. Lane sometime after the senator’s suicide. Craft lost both arguments and within a few weeks had hied off to the Big Blue River, where he had previously scouted mill sites, to flip a large tract of land to the colonists from upstate New York who would found the town of Blue Rapids. Craft himself would settle there before too much more time passed. As a prominent citizen of Jackson County, a member of its first board of commissioners, and one of the first settlers, he had assumed that he was well within his rights to go to court to block what he was convinced was an improper use of money. The Kansas Supreme Court said he was not.¹

In doing so, the high court took an early step away from what was not yet the mainstream of American jurisprudence, declaring that an individual could not appoint himself or herself to act on behalf of a community in court. To Craft, it seemed obvious that he might do so. He paid taxes and, like any taxpayer, simply did not question that he had a right to see that they were used appropriately. Yet his argument was not purely a commercial one of value received for payment made. He could act for all his neighbors because, in a view he shared with many of his contemporaries, it was a duty of citizenship to participate in civic life and ensure its virtuous conduct. The chief justice of the Kansas Supreme Court, Samuel Austin Kingman, disagreed. Justice Kingman believed that government could not function if every citizen could sue to block every action or compel officials to take actions that they had opted not to take. Government officials were agents of the citizen, and within the institutions of government and Election Day lay the mechanisms to correct their missteps; it was by following the proper path, and eventually by voting, that citizens did their civic duty. What underlies

David Ress is an honorary research associate at the University of New England (Australia) and a journalist who has worked in Montreal, London, and Nairobi and currently works in Newport News, Virginia. He is the author of Governor Edward Coles and the Vote to Forbid Slavery in Illinois, 1823–1824, and the forthcoming Municipal Accountability in the American Age of Reform: The Gadfly at the Counter, 1870–1920.

1. *Craft v. Board of County Commissioners of Jackson County Kansas*, 5 Kan. 518 (Kansas Supreme Court, 1870); and Emma E. Forter, *History of Marshall County, Kansas: Its People, Industries, and Institutions* (Indianapolis, IN: B. F. Bowen & Co., 1917), 505–06.

the case of Craft and the Jackson County commissioners is a fundamental question of an individual's place in a community and his or her ability to direct its course. What makes the case important, if unfortunately neglected outside old legal arguments about standing to sue, is both its early date and the place in which it was conducted. Two different views of democratic governance clashed in the courtroom of a still unfinished capitol.

One view, Craft's, was of a kind of direct democracy in which civic-minded individuals ought to be able to set things right. The other, Kingman's, was of a representative democracy that might need to protect itself from the whims of individuals, particularly of those such as Craft who were prominent residents of the kind of small Kansas hamlets both men called home. Craft was a model of the high-minded, and usually very high-status, reformers who jostled with urban political machines, established settlement houses, and campaigned for temperance. Kingman's views would be reflected in the much later short-ballot and city-manager movements that sought better-functioning municipal government through streamlined elections and an appointed chief executive. It would be Kansas, however, and not the more fevered battlegrounds of America's fast-growing cities, that would see one of the earliest tilts toward favoring the authority of representative government over the civic duties of an engaged individual.

Both Craft and Kingman came from tiny communities. Craft's Holton had just 490 residents. The quarter of the county in which Kingman's Hiawatha was located had a population of just under 1,600. Local government was surprisingly extensive, however. Holton and Hiawatha each had a mayor, five councilmen, a clerk, police court judge, treasurer, and city attorney. Hiawatha also had an assessor as well as an elected director, a clerk, and a treasurer for its schools. It would have been hard for anyone to say there was a gap between the citizens and their officials. To recall Craft's suit and Kingman's ruling is to remember that such an early, decisive legal decision dictating the distance between citizen and city hall came from a clash of opinions formed in communities that had not yet built a city hall.²

2. *Ninth Census of the United States: Statistics of Population* (Washington, DC: Government Printing Office, 1872), vol. 1, 143–44 (Table III, "Population 1870–1850, in each state, by civil divisions less than counties").

Kingman's ruling was simple. In order to sue for a court order to block an act of government, individuals had to show not only that they were affected or had an interest in the issue but also that the impact on them or their interest at stake was particular to them. Individual citizens, that is, could not simply step up on their own to sue on behalf of everyone in their community. "The law seems to rely on the interests of the members of the board to protect the interests of the county," held Justice Kingman. It was not up to an individual "in his own name" to "interfere in behalf of the interests of society" because "society acts through and by its properly constituted agencies," he wrote. "The remedy . . . is by a prosecution instituted by the state in its political character, or by some officer authorized by law to act in its behalf, or by some of those local agencies created by the state" to run a community's affairs. Kingman's always carefully chosen language—"seems to rely" and "interfere"—is quite suggestive here.³ First, it indicates a hesitancy about his conclusion. Second, Kingman was suggesting that the good doctor was simply trying to make trouble.

Nevertheless, Craft, no stranger to the Kansas Supreme Court, forced the court's attention for the first time to the particularly difficult issue of the citizen reformer and his or her ability to direct the ministerial actions of government from outside. This was a somewhat different question than judges and politicians had faced with earlier reform movements. Early-nineteenth-century campaigns against liquor, for penal reform and universal education, and to abolish slavery—the movement that had brought both Craft and Kingman to Kansas—had focused on social policy, not the mechanics of government. Their issues were humanitarian ones, focused on what a society could do for its people—educate its children, free its slaves, and reform its prisoners and drunkards. What resulted were actions ranging from Massachusetts's 1852 compulsory education law (the first in the nation) to the Emancipation Proclamation and the Thirteenth Amendment to abolish slavery.

After the Civil War, many reformers turned their attention to the processes of government. In part, this shift was because governments, particularly city and county governments, had taken on more tasks. The shift of focus was sparked by anger over the flamboyant corruption evident in the excesses of William M. Tweed's Tammany Hall machine in New York and several scandals

3. *Craft v. Board of County Commissioners* at 521, 522.

associated with the administration of President Ulysses S. Grant. Reformers demanded changes to the structure and operation of government, such as civil service commissions, municipal home rule, and, eventually, the direct election of senators and women's suffrage. Based on many of these contests—as, for instance, when the wealthy New Yorkers of the Committee of Seventy and the brilliant cartoons of Thomas Nast in *Harper's Weekly* finally managed to topple "Boss" Tweed in 1871—it can be easy to conclude that reform and resistance to reform were a matter of position in society.⁴

This theme has, in fact, been central in the historiography of the period, particularly since Richard Hofstadter's classic *Age of Reform*. The many portraits of the Mugwump, as the well-off but out-of-date heir to a republican ideology or the wealthy do-gooder clashing with the immigrant voters of a city political machine, reinforce this interpretation.⁵ Part of what is intriguing about this first Kansas case to define an individual's ability to force government to function properly, a case that still defines the somewhat out-of-step Kansas law in this regard, is how alike the two central actors, Craft and Kingman, were. If the Mugwump were not such an urban, East Coast figure, either of the two Kansans could quite easily be cast as one.

Both men had moved to Kansas in the late 1850s, and each quickly rose to prominence in his small frontier community. Craft came to Kansas to set up on his own as a doctor after practicing for several years with his uncle John Hines in Missouri; he arrived in Jackson County just as it was being organized in 1859.



This 1880 photograph shows the east and west wings of the Capitol in Topeka, Kansas. Ten years earlier, two different views of democratic governance clashed in the unfinished structure's courtroom. The fundamental question underlining *Craft v. Board of County Commissioners of Jackson County, Kansas*, was that of an individual's place in a community and his or her ability to direct its course.

Ever impatient (he had lied about his age to enlist in the Fourth Indiana Infantry to fight in the Mexican War), he was not yet thirty when he settled in the hamlet of Holton. He was almost immediately elected as one of Jackson County's first county commissioners, and in 1862, he was

4. Kenneth D. Ackerman, *Boss Tweed: The Rise and Fall of the Corrupt Pol Who Conceived the Soul of Modern New York* (New York: Da Capo Press, 2005), offered a lively and detailed account of Boss Tweed's rise and fall.

5. The nature and motivation of reformers and reform movements is a central theme in the historiography of this period. Hofstadter's classic, *The Age of Reform*, proposed a "status revolution" or the loss of influence and power by the small-town and merchant or professional elites who had dominated their communities before the late-nineteenth-century transformations brought by industrialization and business consolidation. Richard Hofstadter, *The Age of Reform* (New York: Random House, 1955). Other key works exploring these themes and often challenging Hofstadter's thesis include Daria Frezza, *The Leader and the Crowd: Democracy in American Public Discourse, 1880–1941* (Athens: University of Georgia Press, 2007); Mark Wahlgren Summers, *Party Games: Getting, Keeping, and Using Power in Gilded Age Politics* (Chapel Hill: University of North Carolina Press, 2004); Michael McGerr, *A Fierce Discontent: The Rise and Fall of the Progressive Movement in America, 1870–1920* (New

York: Free Press, 2003); Nancy Cohen, *The Reconstruction of American Liberalism, 1865–1914* (Chapel Hill: University of North Carolina Press, 2002); Robert Miraldi, ed., *The Muckrakers: Evangelical Crusaders* (Westport, CT: Praeger, 2000); David Tucker, *Mugwumps, Moralists of the Gilded Age* (Columbia, MO: University of Missouri Press, 1998); Kevin Mattson, *Creating a Democratic Public: The Struggle for Urban Participatory Democracy during the Progressive Era* (University Park: Pennsylvania State University Press, 1998); Steven J. Diner, *A Very Different Age: Americans of the Progressive Era* (New York: Hill & Wang, 1998); Leon Fink, *Progressive Intellectuals and the Dilemmas of Democratic Commitment* (Cambridge, MA: Harvard University Press, 1997); Robert H. Wiebe, *Self-Rule: A Cultural History of American Democracy* (Chicago: University of Chicago Press, 1995); Eldon Eisenach, *The Lost Promise of Progressivism* (Lawrence: University Press of Kansas, 1994); Alan Dawley, *Struggles for Justice: Social Responsibility and the Liberal State* (Cambridge, MA: Belknap Press



Dr. Craft and Chief Justice Kingman both came from small communities. Craft's hometown of Holton, the county seat of Jackson County, had just 490 residents. The quarter of Brown County containing Hiawatha, county seat and Kingman's hometown, had a population just under 1,600. Jackson and Brown counties are clearly visible in this northeast section of an 1870 map of Kansas, as is Blue Rapid in Marshall County where Craft moved in 1872. Courtesy of Wichita State University Libraries, Special Collections and University Archives, Wichita, Kansas.

elected to the state legislature.⁶ Kingman, a Massachusetts native who had settled in Kentucky, where he served as a county attorney, a county clerk, and a two-term member of the state legislature, moved to a Brown County farm

in 1857. He soon moved to town, however, and practiced law in Hiawatha. His neighbors elected him to represent them in the Wyandotte Convention, which drafted the constitution that, after three earlier attempts, finally secured Kansas its statehood. At the convention, Kingman was chairman of the committee dealing with the judiciary and was an outspoken, and eventually successful, advocate for a homestead exemption to protect settlers' homes from being taken to satisfy creditors' claims. "The commercial interests of the country . . . subjected the farms and homes of the people to be sold under execution, and so nearly converted our people into a class of nomads,"

of Harvard University Press, 1991); Joseph Gusfield, *Symbolic Crusade: Status Politics and the American Temperance Movement* (Urbana: University of Illinois Press, 1986); John Buenker, *Urban Liberalism and Progressive Reform* (New York: W. W. Norton, 1978); Gerald McFarland, *Mugwumps, Morals and Politics, 1884–1920* (Amherst: University of Massachusetts Press, 1975); Daniel J. Boorstin, *The Americans: The Democratic Experience* (New York: Random House, 1973); Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900–1916* (New York: Free Press, 1963); and John Higham, *Strangers in the Land: Patterns of American Nativism 1860–1920* (New Brunswick, NJ: Rutgers University Press, 2002).

6. Forter, *History of Marshall County, Kansas*, 506; and William J. Cutler, "Jackson County, Part 5: Holton," in *History of the State of Kansas*

(Chicago: A. T. Andreas, 1883), <http://www.kancoll.org/books/cutler/jackson/jackson-co-p5.html#HOLTON>.

he told the convention. The answer, he said, was to return to the traditional view that a home could not be seized “so that every man or woman, if he plants a tree or she cultivates a rose—that both may beautify and adorn their homes as they may choose, and have the benefit of the protection of the law.” In an interesting echo of the unusually advanced language that the Leavenworth Constitutional Convention had adopted for women’s rights a year earlier, Kingman added that “if we put it in the power of the husband or the fortunes of trade to convey by lien or mortgage, the grasping creditor will take away the homestead” and leave women homeless. He also convinced the convention to exempt the first \$200 of a family’s property from taxation.⁷

Acknowledged as a leader at the Wyandotte Convention, Kingman was elected an associate justice of the Kansas Supreme Court when Kansas was admitted as a state. Although defeated in 1864 when running on the Union Republican ticket headed by Solon Thacher, a fellow convention delegate who had forcefully argued against the exclusion of African Americans from settling in Kansas, Kingman won election as chief justice in 1866 and was reelected in 1872, at which point he moved permanently to Topeka. Craft, too, would soon tire of the small town where he had settled.⁸

As it happened, 1872 was the year that Craft, twice defeated in supreme court battles with the county commissioners, finally decided he had had enough of Jackson County and moved west to Blue Rapids. With his younger brother and a partner, C. E. Olmstead, he had in 1865, the year before taking office as Jackson County treasurer, scouted mill sites in what was then still barely settled territory west of Holton. Craft’s report on the Big Blue River convinced his partners that a spot where it was

joined by the Little Blue River was ideal for the ambitious mill they planned. There, the river current hit a forty-foot-high rock bluff on the southern bank, and rapids formed over a solid-rock river bottom for a distance of about eight hundred feet. After securing a tract of 287 acres, including water-power rights to the critical stretch of the Big Blue River for his partners, Craft bought seventy acres for himself. The partnership sold its land to a colony of fifty families from Genesee County, New York, for \$15,000 a few months after Craft’s disappointments before Kingman and the Kansas Supreme Court in 1870. The colonists who founded the town of Blue Rapids built a sturdy cut-stone dam at the rock bluff while Craft and his partners spent \$30,000—nearly \$600,000 in current dollars—erecting a four-story stone mill with five stone burrs capable of grinding 1,200 bushels of wheat a day, roughly the yield of 100 acres.⁹

Craft, in other words, played with serious money. His fuss over the \$352 he believed Jackson County’s commissioners had improperly paid to Isaac Lane had little to do with any important pecuniary interest of his own. Lane, the town eccentric, who Craft alleged had been “shown to be irresponsible,” was a former Campbellite preacher turned freethinker who had set up a farm and a place to hide runaway slaves in the late 1850s on what would later become part of Holton’s townsite. Lane remained there for decades until his neighbors packed him off as a pauper to an asylum many years after Craft had moved west. The two men had not been involved in business with one another. Craft was merely peeved that the county intended to pay Lane and went to court to block it.¹⁰

When he sued, Craft was already battling the commissioners on a different matter. When his term as county treasurer ended in 1866, he submitted a final settlement of accounts claiming that he was owed \$58.09. The commission paid him that sum and then took a second look. It found “sundry errors, false credits and charges of which [the commissioners] were wholly unaware” and demanded repayment. Craft refused. The commission

7. “Proceedings and Debates of the Convention,” in *Kansas Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention Which Framed the Constitution of Kansas at Wyandotte in July, 1859* (Topeka: Kansas State Printing Plant, 1920), 318; Robert Stone, “The Sources of the Wyandotte Constitution,” Appendix D-2, in *Kansas Constitutional Convention*, 699; John A. Martin, “The Wyandotte Convention,” Appendix C-2, in *Kansas Constitutional Convention*, 669; Joseph G. Watters, “Samuel A. Kingman,” *Kansas Historical Collections, 1905-1906* 9: 46-47, 49-50, 52, 58; and Frank W. Blackmar, ed., *Kansas: A Cyclopaedia of State History, Embracing Events, Institutions, Industries, Counties, Cities, Towns, Prominent Persons, Etc.*, vol. 2 (Chicago: Standard Publishing, 1912), 74-75.

8. Waters, “Samuel A. Kingman,” 47

9. Forter, *History of Marshall County*, 506; William J. Cutler, “Marshall County, Part 8: Blue Rapids,” in *History of the State of Kansas*, http://www.kancoll.org/books/cutler/marshall/marshall-co-p8.html#BLUE_RAPIDS; and “Kansas Wheat History,” National Agricultural Statistics Service, October 2016.

10. *Craft v. Board of Commissioners* at 518; “A Queer Kansan,” *Recorder-Tribune* (Holton), November 5, 1896; and “Proceedings of the Board of County Commissioners,” *Recorder-Tribune*, October 14, 1897.



Drawn by T. M. Fowler in 1879, this birds-eye view of Hiawatha highlights the town's many churches and railroad depot. Kingman moved to a Brown County farm from Kentucky in 1857, relocating to Hiawatha soon thereafter to practice law. He represented the county in the Wyandotte Convention of 1859, which drafted the constitution that secured Kansas its statehood in 1861. Despite his election as chief justice of the Kansas Supreme Court in 1866, Kingman did not leave Hiawatha until 1872, two years after his ruling in the Craft case.

sued, and a judge from outside the county found that Craft had not accounted for \$767.07 that he had received and that he had kept \$162.80 as fees to which he was not entitled. In response, Craft filed a bill of exceptions and said he had collected the money for various school districts and townships within the county. For support, he called Jacob Hixon, chairman of the board of commissioners, who said, somewhat ambivalently, that when Craft had presented his final account in 1866, he had "supposed the settlement was all right, and correct." Oddly, Craft made his argument that he held the money for townships and schools only after the district court judge had ruled against him. Oddly, too, Hixon had not testified at that trial. Craft asked for a new trial, the district court judge refused, and he appealed to the Kansas Supreme Court. In a decision issued two months before Kingman rejected Craft's claim that he, as a taxpayer, might represent all taxpayers in challenging an allegedly illegal payment by the commissioners, the high court upheld the county's view that the money belonged to it and that it was owed an accounting. Counties, the court held, could act on behalf

of school districts, townships, and other subordinate public bodies.¹¹

Kingman had summarized Craft's own challenge to the commissioners as a matter of whether any citizen might sue to compel officials to do their duty. That was not quite the way Craft's attorney, J. H. Keller, presented the issue, however. Keller argued on three tracks. The first was the precedent established by the Ohio Supreme Court, declaring that individuals could seek an injunction to prevent an injury to the public (the opinions in fact did not say that). The second was that a Kansas statute allowed any taxpayer to challenge a tax levy. The third was based on another Kansas statute that addressed the legal steps required to compel the return of "any fees obtained from or allowed against a county, when not authorized by law" because the statute specified that such action

11. *Commissioners of Jackson County v. Craft*, 6 Kan. 145 (Kansas Supreme Court, 1870) at 146, 151.

could be carried out by a county attorney “or other person prosecuting.”¹² The statutes, that is, spoke not directly to a general right of any citizen to seek an injunction against elected officials but rather to an affected taxpayer’s right to challenge a tax levy or of an “other person”—not any person—to sue an entity other than a county itself for fees the county had to pay.

Craft in effect joined two pathways to court together to support his belief that his status as a taxpayer—a large, prominent taxpayer—entitled him to a day in court. “It was the purpose of the law . . . to throw a safe-guard around the tax payer, to protect him from fraud which might be otherwise perpetrated upon him, if he were left entirely at the mercy of the county commissioners as in this case,” Craft’s lawyer argued.¹³ It was being a taxpayer, not merely a citizen, that mattered in Craft’s view. He argued the same point fifteen years later when, undeterred by his failure to block Lane’s payment, he sued the treasurer of Marshall County, William Lofinck. In the later lawsuit, Craft sought to block the collection of countywide taxes levied to pay for bonds that refinanced a bridge built for the Blue Rapids colonists to whom he had sold land and also financed a bridge five miles downstream at the town of Irving, which has since vanished. Craft argued that a division of townships after the incorporation of Blue Rapids in 1872 meant his property could not be taxed to pay for the refinancing bonds. (Those bonds had been issued in 1881 to repay a Cleveland savings and loan association that had been left in the lurch in 1876 when Blue Rapids stopped paying interest on its debt.) Craft won this case.¹⁴

On Craft’s mind, both in 1870 and in 1885, was his status as a man who paid money to the county, not his status as a resident of a county he was shortly to leave. With the pending demand from the commission for a sum that would account for more than one-fifth of his share of the proceeds from the sale of land to the Blue

Rapids colonists, which he hoped to invest in the mill, Craft had grounds to think more of his own interests than of his neighbors in Jackson County. The issue with his challenge, as with the commission’s challenge of his own accounts as county treasurer, was money, not the nature of democratic governance or the right of an individual to speak for a community. But to get to court, Craft needed to establish his right to sue—what lawyers call *locus standi*, or standing to sue. Usually this means would-be plaintiffs must show a concrete injury, a link to an action of the defendant, and that a favorable court decision would redress the wrong.¹⁵ Craft argued that the Kansas statutes on tax levies and the recovery of improper county government payments gave him, and any taxpayer, another claim to standing to sue. He believed the Ohio cases cited by his lawyer said the same. The Kansas statutes and the Ohio cases alike allowed him to present himself as a disinterested citizen, as perhaps he sincerely thought he was, rather than as a man engaged in a battle with the same county commissioners over money they said he owed them.

Kingman did not seem to see—for he did not comment on—the applicability of the Kansas law. After hearing the commissioners’ case against Craft, he might well have been skeptical that the doctor was truly a disinterested citizen concerned only with the county’s good in his own case. Looking, then, to Keller’s characterization of the Ohio cases and brushing aside the lawyer’s rhetoric about protecting a taxpayer, Kingman read the argument as centering on the ability of any individual (and not only any taxpayer, as Craft’s lawyer argued) to protect the public from a wrongful act.

This interpretation came easily to the judge, for in his view, when it came to protecting individuals from the excesses of power, all men and women had a right to go to law. A central element of his argument for the homestead exemption was to ensure that women could protect their property interest in their home despite the folly or improvidence of their husbands. In the same term of court during which he and his two fellow justices heard the county’s dispute with Craft over his accounting, he ordered Indian Agent Albert Wiley to pay the Sac chief

12. *General Statutes of Kansas*, Chapter 80, section 253, Chapter 25, section 39. C. F. W. Dassler’s 1876 compilation, which includes case law and legislative amendments to the 1868 codification, does not mention *Craft v. Board of Commissioners* or any amendments related to it. C. F. W. Dassler, *The General Statutes of Kansas* (St. Louis, MO: W. J. Gilbert, 1876–1877), 1:691, 2:228.

13. Keller cited *McArthur v. Kelley*, 5 Ohio 139 (Ohio Supreme Court, 1831), *Jordan Anderson and wife v. the Commissioners of Hamilton County*, 12 Ohio St. 635 (Ohio Supreme Court, 1861), and *Putnam v. Valentine*, 5 Ohio 187 (Ohio Supreme Court, 1831). The first two cases challenged eminent domain actions, and Putnam’s was a dispute over a road.

14. *Rufus S. Craft et al. v. William Lofinck, Treasurer*, 36 Kan. 365 (Kansas Supreme Court, 1885) at 366, 367.

15. For standing in cases involving a public interest, see Louis Jaffe, “Standing to Secure Judicial Review: Public Actions,” *Harvard Law Review* 74 (May 1961): 1265–1314; and Steven L. Winter, “The Metaphor of Standing and the Problem of Self-Governance,” *Stanford Law Review* 40 (July 1988): 1371–1516.

Keokuk \$1,000 and a man named Man-a-to-wah \$500 in damages from an illegal arrest and beating in November 1868. Wiley had argued that he had merely been enforcing an order from Acting Commissioner of Indian Affairs Charles Mix that no delegation from the Sac and Fox reservation in Kansas be allowed to travel to Washington. Mix's order, ensuring him peace from expected complaints about the small size and delayed issue of annuities and long-standing concerns about the inferior soil and water of the Kansas reservation, had actually said that no funds had been appropriated to cover a delegation's travel expenses that year. Keokuk told Wiley that he was using his own funds, but Wiley arrested him and Man-a-to-wah anyway. "Still, no offense is charged known to any system of laws of which we have any knowledge," Kingman wrote in his opinion in this case. "Nor does it make any difference that the party injured is an Indian. . . . His rights are regulated by law, and when he appeals to the law for redress, it is not in the power of any tribunal to say, 'You are an Indian, and your rights rest on the arbitrary decrees of executive officers, and not in the law.'"¹⁶ There was no special status when suing to right an abuse of power, in Kingman's view.

At the same time, even if Craft did not feel that his own status gave him a special right to proceed, his disputes with the county commissioners had given him an unusually high profile at the state supreme court. Kingman's decision rejecting Craft's appeal of the county's demand for the funds he had mishandled during his time as treasurer preceded his rejection of Craft's challenge of the payment to Lane by just two months. The Kansas Supreme Court was not all that busy: Kingman would not need to move from Hiawatha to Topeka for another two years. And, as attorney Leander Stillwell recalled of his first venture before the high court the same year that Craft fought his battles, the chief justice paid close attention to the personalities in his court. Stillwell had just failed to convince the high court to keep the Neosho County seat in Osage Mission. "I had to go home to that little town on the Neosho river and tell my people that their temporal sun had set; that the game was up, and the last ditch reached," he recalled years later. "Judge Kingman came . . . spied me sitting in my corner, in my loneliness and woe." The chief justice invited Stillwell to come to his office to chat.

"I tried to beg off, saying that his time was important, he was doubtless busy, etc., but the good old man silenced all my objections at once. . . . He lit his old corn-cob pipe, put his feet, encased in coarse-white-yarn socks and old carpet slippers, on the seat of an adjacent chair. . . . I think when he saw me in the court-room he realized and perfectly well understood my intense disappointment at the result of my case."¹⁷

Whether he kept tongue in cheek or not with respect to Craft's motives, Kingman's position on his lawsuit was clear. "It is true that every citizen has a deep interest in the good order and moral character of the community of which he is a member," he wrote, but "the law only interferes when such wrongs directly and immediately affect the person, character or property of the individual." Despite the vested interest that all citizens have in the proper conduct of community business, "it is beyond [the law's] scope, and would require more than human abilities to measure, and a greater than human power to redress all evils arising from unjust or immoral deeds," Kingman ruled. "The unfavorable influence which the allowance of an unjust claim must necessarily have in the community of which the plaintiff is a member, is an injury for which there is no redress in the courts; society must correct this evil by the influence of an enlightened public opinion, brought to bear upon its offending members."¹⁸

The issue was practical, in part. If any claim for a county payment, like that of Isaac Lane for \$352.50, could be blocked by a taxpayer's lawsuit, "then all may," Kingman wrote. Moreover, even in a case where "it is probable" that some demands for payment "would not bear a strict legal investigation," or even though "it is possible there are many such," it was up to the elected board to correct matters. "If this is not sufficient, the remedy may be found in the next election; or if the case is flagrant, a prosecution by the proper public officer may prove effective," Kingman wrote.¹⁹ That is, a delegation of authority, and of trust, was necessary for the sake of efficient government and the social peace that comes when neighbors cannot bring personal animus to communal affairs. If the elected board or elected officers of a community could not ensure the proper handling of public funds, or proper representation of the community's interests, it was up to

16. *Albert Wiley v. Keokuk*, 6 Kan. 94 (Kansas Supreme Court, 1870) at 96-97, 109, 110; and *Albert Wiley v. Man-a-to-wah*, 6 Kan. 111 (Kansas Supreme Court, 1870).

17. Leander Stillwell to Joseph Waters, "Samuel A. Kingman," 63-64.

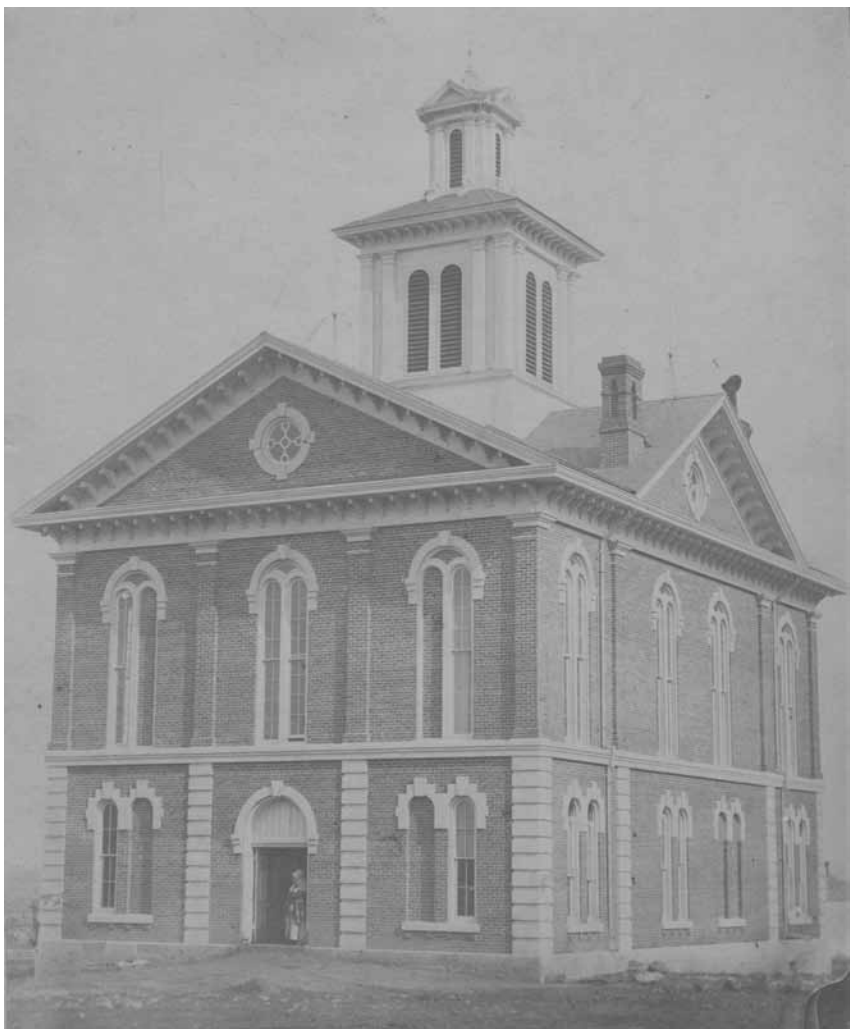
18. *Craft v. Board of Commissioners* at 520.

19. *Ibid.* at 521, 522.

the voters to fix matters at the next election by replacing those officials. Kingman's fundamental theory of governance, therefore, was of representative government as opposed to the direct democracy he would have known in his hometown of Worthington, Massachusetts (which to this day is still governed through an annual town meeting). His opinion argues for a delegation of, and deference to, authority that was evidently a new notion to Craft—and, as it would emerge, to many others.

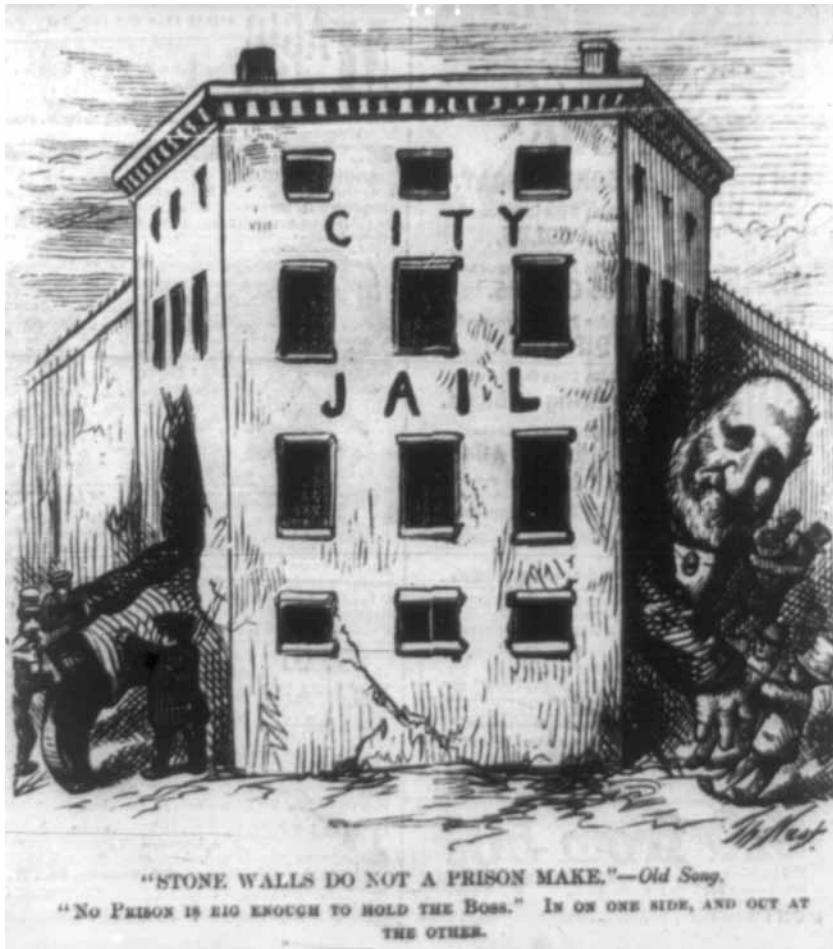
Craft's Holton, like Kingman's Hiawatha, may have been a tiny community, barely a dozen years old, but the question the doctor posed to the judge and his two fellow justices about the nature of the relationship between individual and institution was very much at issue, and unresolved, at this time. The rapid growth of American cities and American business corporations in the years after the Civil War meant that political and economic life were becoming more complicated. The informal mechanisms of small-scale politics and commerce did not work as well as they might have a few decades earlier. Even the confusion over Craft's accounting for the money that he had collected as a county officer and was responsible for disbursing to townships and schools reflects that problem. Kingman's decision describes a separation of citizen and community government that Craft had not seen; a separation that it would have been hard for a founder of that community government, a member of the first board of commissioners, to feel; a separation that a man who had just sold land to a group of colonists to found their own new community would have had a hard time understanding.

Elsewhere, at least for a time, the response to the increasing complexity of community life would be to cleave to an older ideology of civic virtue and the direct participation by citizens in the government of their communities. In Iowa, the state supreme court had already held that a citizen, simply by virtue of being a citizen, might sue to fix a perceived wrong. Iowa's landmark case involved an allegation that the district court judge in Floyd County had corruptly approved an election to change the



This 1874 photograph depicts the Jackson County Courthouse in Holton, completed two years earlier. A prominent citizen of Jackson County, a member of its first board of commissioners, and one of its first settlers, Rufus Craft nonetheless fought several legal battles with the Jackson County Board of Commissioners over money. Craft argued that as a resident and tax payer of Jackson County, he had every right to go to court over what he believed was an improper use of money, claiming such actions affected the entire community. Samuel Kingman and the Kansas Supreme Court disagreed, and Craft lost his argument and the case.

county seat to an unincorporated area where he owned land. Judge David Ripley had also acted as attorney for the county when it requested the election and had signed the petition requesting the election. Ripley argued that the man who challenged the deal had no standing to sue. Iowa Supreme Court Justice William G. Woodward disagreed, writing that "his position as a citizen, and his interest as such in the public welfare, entitle him to present a petition to restrain a public officer from an act which would be



In suing the Jackson County commissioners, Craft forced the court to examine the issue of the citizen reformer and their ability to direct the actions of government from outside. In contrast to earlier reform movements focusing on social policy, Gilded Age reformers shifted their attention to the workings of government, sparked by anger over the rampant corruption of William “Boss” Tweed’s Tammany Hall political machine in New York City. The force of this reform current ultimately toppled the Tweed Ring, though Tweed himself proved difficult to keep behind bars, as this 1872 cartoon by Thomas Nast illustrates. Courtesy of the Library of Congress, Prints and Photographs Division, Washington, D.C.

a public wrong.”²⁰ Kingman, while recognizing the Iowa decision, felt it did not apply. Cases from other states showed that the proper course was for a state attorney general to pursue a case on behalf of a citizen, he wrote. That is, the citizen had to ask and the attorney general had to agree to pursue a public interest case.²¹

20. *Collins v. Ripley, County Judge*, 8 Iowa 129 (Iowa Supreme Court, 1858) at 130, 131.

21. *Craft v. Board of Commissioners* at 524.

Even in the East, a few years after Kingman’s ruling, classic republican ideology would lead the New Jersey Supreme Court in 1879 to a view directly opposed to Kingman’s. In that matter, the former mayor of Orange, New Jersey, George Ferry, had asked to see affidavits that the city collector of taxes was required to collect before issuing tavern licenses.²² Ferry, a wealthy hat maker and fervent temperance campaigner, wanted to see how the collector enforced tavern licensing laws. When Chauncey Williams refused to show Ferry the affidavits, Ferry sued. He argued that as a citizen, he had a right to see those government records and that as a citizen, he had the right to petition for a court order—a writ of mandamus—compelling Williams to do his duty. In doing so, Ferry claimed that he had “no interest to be subserved by an inspection of these letters, except that common interest which every citizen has in the enforcement of the laws and ordinances of the community wherein he dwells.”²³

The law was not obviously on Ferry’s side. An ideology, or perhaps mythology, of politics, however, was—just as it was for Craft in his challenge of his county officials. The common law about the right of access to a public body’s records, derived almost entirely from English precedents, had imposed strict limitations on that right. These decisions, like Kingman’s in Craft’s case, all held that an individual had to have a direct personal interest at stake in order to compel access to a document.²⁴ But the English political system differed radically from New Jersey’s, New Jersey Supreme Court Justice Jonathan Dixon wrote. In English common law, the rule was that “the redress of wrongs, arising from usurpations and unlawful acts of public officers”

22. *State ex rel Ferry v. Williams*, 41 N.J.L. 332 (New Jersey Supreme Court, 1879). For Ferry, see Henry Whittemore, *The Founders and Builders of the Oranges* (Newark, NJ: L. J. Hardham, 1896), 203, 207.

23. *Ferry v. Williams* at 334.

24. Key English precedent cases cited by the New Jersey Supreme Court were *Rex v. Lucas et al.*, 103 ER 765 (Court of King’s Bench, 1808), *Rex v. Tower*, 105 ER 795 (Court of King’s Bench, 1815), *Rex v. Justices of Leicester*, 107 ER 1290 (Court of King’s Bench, 1825), and *Rex v. Justices*

had to come through the action of the attorney general—another official, that is—when they did not directly affect individuals who could take the matter to court. That rule, Dixon drily noted, “has not been generally followed in the practice” in New Jersey. “Naturally, from the more democratic character of our institutions, greater relaxation of the rule would be likely to obtain among us,” he wrote, adding that “from an early period, our courts have exercised a large discretion in annulling the illegal acts of municipal bodies and officers, and compelling the performance of their public duties at the instance of citizens.” It was an interesting point of view from a man who, as a politician in Jersey City, had drafted a charter to surrender the city’s elected public works and police boards’ functions to the state government.²⁵

For Dixon, one defining difference between English and American democracy was the ability of an individual to insist on change. The justice said if a private individual in England “seeking merely the furtherance of his own private ends” had a right to see public records, then in America, any citizen should have that right when “aiming at the accomplishment of a public purpose.” It was this point of view that motivated Craft but that Kingman simply did not see. Dixon ruled that Ferry, simply “in his capacity of inhabitant and taxpayer in the city of Orange, has such an interest in the proper observance of the provisions of the city charter for licensing saloons” and therefore had standing to sue for the licensing records.²⁶ Ferry did not need to show that he was particularly injured to make his case in court, Dixon held, in a decision that would become the law governing access to public records in much of the United States for several decades.²⁷

of *Staffordshire*, 112 ER 33 (Court of King’s Bench, 1837). For Dixon, see Richard A. Hogarty, *Leon Abbett’s New Jersey: The Emergence of the Modern Governor* (Philadelphia, PA: American Philosophical Society, 2001), 182, 187.

25. *Ferry v. Williams* at 337. For Dixon, see Richard Hogarty, *Leon Abbett’s New Jersey: The Emergence of the Modern Governor* (Philadelphia: American Philosophical Society, 2001), 182, 187.

26. *Ferry v. Williams* at 339.

27. For *Ferry v. Williams*’s impact, see, e.g., *Benjamin Brown v. Jacob Knapp, treasurer*, 54 Mich. 132; 19 N.W. 778, 779 (Michigan Supreme Court, 1884); *State ex rel. P.J. McClory v. E.I. Donovan*, 10 N.D. 203; 86 N.W. 709 (North Dakota Supreme Court, 1901); *State ex rel Thomas v. Hoblitzelle*, 85 Mo. 620 (Missouri Supreme Court, 1885); *State ex rel. Nathan K. Griggs v. Charles W. Meeker*, 19 Neb. 106; 26 N.W. 620 (Nebraska Supreme Court, 1886); *State v. Cummins*, 76 Iowa 133; 40 N.W. 124 (Iowa Supreme Court, 1888); *State ex rel. Colescott v. King* 154 Ind. 621 (Indiana Supreme Court, 1900); *Albert D. Wells v. Eugene L. Lewis, Auditor*, 12 Ohio Dec. 170 (Superior Court of Cincinnati, 1901); *Clement v. Graham*, 78 Vt. 290 (Vermont Supreme Court 1906); and *Egan v. The Board of Water Supply*

Although Kingman’s position “that a private individual cannot challenge municipal procedure and organization has been undeviatingly followed” in Kansas, it found relatively little favor elsewhere.²⁸ The editors of the *Columbia Law Review* were surprised that the Rhode Island Supreme Court held in 1942, as Kingman did in the earliest such case they could find, that taxpayers could not on their own seek a court order compelling officials to do their duty. The *Review* commented that this was “opposed to the majority view in the United States which permits individuals to obtain the writ to enforce a public right without the showing of a personal interest in the subject matter.”²⁹ In an 1881 decision upholding a Keokuk, Iowa, taxpayer’s challenge to the tax assessment that a well-connected bank had wangled from the city, the Iowa Supreme Court noted that “it may be conceded that in some other States a rule has been adopted which would deny the right of the plaintiff to maintain this action.” Citing Kingman’s ruling, the Iowa high court added, “A different rule, however, has been adopted in this state.”³⁰ In Oregon, the state supreme court ruled that a handful of Curry County taxpayers had clearly shown that the county judge and two associates had sold county property and misappropriated funds. Although the justices noted that Kingman and courts in New York had held that “wrongful acts” that “affect all members of the community alike . . . produce no such special interest to any individual as entitles him to equitable redress,” there were as many cases from other states that held that individual taxpayers could sue on behalf of their entire community.³¹ The New York legislature, in fact, enacted legislation in 1872 allowing any taxpayer to sue to block wrongful official actions, whether or not they were directly affected. According to Justice William F. Allen of the New York Court of Appeals, the legislature acted because the “utter helplessness of the taxpayer, and the

of the *City of New York et al.*, 205 N.Y. 147; 98 N.E. 467 (New York Court of Appeals, 1912).

28. *Warren H. Babcock v. The City of Kansas City, Kansas, a Municipal Corporation, Joseph H. McDowell, Joseph P. Regan and Earl B. Swarner*, 197 Kan. 610; 419 P.2d 882 (Kansas Supreme Court, 1966). The rule Kingman established remains the law in Kansas, as the Kansas Supreme Court notes in its 2013 “Original Actions in Appellate Courts” handbook (citing a 1968 case rather than the *Craft v. Board of Commissioners* opinion), sections 4.5 and 4.6, <http://www.kscourts.org/pdf/Chapter4.pdf>.

29. “Mandamus: Right of Individual to Enforce a Public Right Source,” *Columbia Law Review* 43 (January 1943): 124.

30. *Collins v. Davis et al.*, 57 Iowa 256; 10 N.W. 643 (Iowa Supreme Court, 1881) at 258.

31. *Carman et al. v. Woodruff et al.*, 10 Oregon 133 (Oregon Supreme Court, 1882) at 135.

fact that he was entirely at the mercy of officials who might prove unworthy of and criminally unfaithful to their trust, became an evil calling loudly for correction.”³²

Elsewhere, the supreme courts of Nebraska, Wisconsin, and Washington State simply ignored or rejected arguments that citizens might not sue a city or county that cited *Craft v. Board of Commissioners*. While the Idaho Supreme Court would find the case persuasive and the issue would trouble the Oklahoma high court for several years, the consensus of legal opinion would settle for individuals’ right to sue.³³ Oklahoma Territorial Supreme Court Chief Justice John Burford believed that Kingman had misinterpreted the three Connecticut cases he cited in support of his opinion, since they dealt with private individuals’ rights to restrain a public nuisance rather than an action of government officials. Burford cited three other Connecticut Supreme Court decisions that specifically upheld the right of an individual to sue to restrain improper payment of public funds, improper use of a public building, and illegal contracts in declaring that Oklahoma courts ought to stop following the Craft decision.³⁴ All in all, as the *Yale Law Review’s* examination of a half century of law on taxpayers’ standing to sue, beginning with Craft’s case, concluded, “The taxpayer as one interested in the valid and orderly processes of general administration is largely an American invention.”³⁵

Why, then, did Kingman’s ruling stand apart from this tradition? One hypothesis could cast Craft in the role of challenger of established authority and Kingman as reactionary defender. Considering, however, Craft’s role as a founder of not one but two frontier communities and his prominence in the political and commercial life of both, this framing of their history seems incomplete at best. Another theory might see Craft as a kind of Kansas

Mugwump, making his last stand for the republican virtues of prudence and restraint in government and the active, direct participation of individuals in civic life. Here, the basis of Craft’s legal claim—that as a taxpayer, not just a resident, he had the right to act for the community—hints at a subtext in the historiography of the impassioned individuals of Gilded Age reform ideologies and their evolution into the cool, impartial promotion of efficiency in government that marks the Progressive Era. Craft presented his case as a simple desire for good government, and he may very well have felt that way. Kingman, listening to the county’s challenge to Craft’s accounting as he mulled over the issues raised by the doctor’s suit, may well have wondered at the motivations that brought the case before his court. He nevertheless took Craft’s word about his disinterested desire for the public good. By presenting the issue as whether any county resident could challenge any action of the county commission, the judge who had successfully argued for a \$200 exemption from taxes for Kansans of modest means broadened the question of harm and of redress to a matter larger than that Craft had suggested. Harm was not only financial injury; redress was not merely for those who had a fiscal relationship, by paying taxes, with government. Harm at the hands of government might be felt even by a man such as Keokuk. Though the law might consider Keokuk “‘a ward of the government,’ or as belonging to a ‘domestic dependent nation,’ or ‘a distinct independent political community, retaining their original natural rights,’” Kingman held that he had a right to redress for Wiley’s illegal acts of arresting and beating him.³⁶

Redress in that case came in the courts, but redress for damage to a community had to come through prosecution by the state or through a subsequent election—what the judge described as “enlightened public opinion.” Craft, wrote Kingman, “founds his right of action upon the fact that he is a resident and tax payer of Jackson county. He does not pretend that he has any interest that he does not hold in common with every other resident tax payer of the county.” Craft was challenging an action that he contended would “affect injuriously the character of the whole community, and to that extent a damage is done to every resident,” Kingman explained.³⁷ But it was not money that ought to speak in that circumstance, insisted the chief justice; it was the ballot box.

32. *Ayers et al. v. Lawrence et al.*, 59 N.Y. 192 (New York Court of Appeals, 1874) at 195–96.

33. *Ellis and others v. Karl and others*, 7 Neb. 381 (Nebraska Supreme Court, 1878); *Willard and others v. Comstock and another*, 58 Wis. 565 (Wisconsin Supreme Court, 1883); *W. L. Jones v. T. M. Reed, State Auditor*, 3 Wash. 57 (Washington Supreme Court, 1891); *Joseph Perrault v. Jeremiah W. Robinson, Mayor, et al.*, 29 Idaho 269 (Idaho Supreme Court, 1912); *Stiles, Treasurer v. City of Guthrie*, 3 Okla. 26 (Oklahoma Territorial Supreme Court, 1895); and *Harry H. Kellogg v. School District No. 10*, 13 Okla. 285 (Oklahoma Territorial Supreme Court, 1903).

34. *Kellogg v. School District No. 10* at 294–95, notes 13, 14, 15, and 16.
35. P. M., “Joinder of Taxpayers in Municipality’s Suit for Declaratory Judgment,” *Yale Law Journal* 43 (December 1933): 340.

36. *Wiley v. Keokuk* at 110.

37. *Craft v. Board of Commissioners* at 520.

The notion that the nation's fortunate had a duty to direct their communities on a path of good government continued to be an undercurrent of Gilded Age and Progressive-era reform. The force of this current would topple the Tweed Ring. In the decades to come, the frustration of urban business owners, professionals, and white-collar workers with the corruption and mismanagement of city and state political machines would lead to campaigns for the short ballot and the city-manager form of government, which constrained electoral choice, as well as for referendum and initiative, which expanded direct democracy. Many years later,

Governor Arthur Capper summed up this notion when he said he would "recommend immediate legislation giving the cities of Kansas home rule, empowering them to adopt the city manager plan of government," since "the city manager plan is a great forward step in the direction of better government."³⁸ The metamorphosis into these more elaborate models of governance from the republican notions of civic virtue that led Craft and many others to challenge Gilded Age city halls is foreshadowed in the different positions that Craft and Kingman held regarding who had the right to do what about public wrongs. KH

38. "The State's Needs," *Western Kansas World* (WaKeeney), January 20, 1917.