Edwin R. A. Seligman

Essays in Taxation

Chapters I thru V

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Preface to the Eighth Edition

This book was originally published in 1895, and the favor with which it was received has rendered necessary a new edition every two or three years. Owing partly to the pressure of other occupations and partly to a shrinking from the arduous labor which would have been required to keep the presentation up to date, these successive editions contained but slight changes. Now however, after the lapse of almost eighteen years, the progress of the world, both in fiscal facts and in economic theory, has been so marked as to render any further delay impossible if the book is to remain a half-way satisfactory interpretation of actual conditions.

I therefore determined to subject the volume to a careful revision and, where necessary, to rewrite entire sections or even chapters. Moreover, in the interval, not a few of my addresses and articles on germane topics have appeared; and it seemed opportune to incorporate a selection from these into the book, even at the risk of some inevitable repetition in a few pages here and there. As a consequence, the thirteen chapters of the earlier editions have grown to twenty-one; and this together with the additions to the remainder of the work has resulted in a volume of almost double the size of the original. To a large extent, therefore, the present edition may be regarded as a substantially new work.

To recount here the names of the many friends who have assisted me in various ways in the preparation of this volume would be impossible. But I desire to make especial mention of Mr. A. C. Pleydell, the secretary of the New York Tax Reform Association, who has been good enough to read the entire proof of this edition, and to favor me with many suggestions out of the abundance of his rich experience in practical tax reform.

Edwin R. A, Seligman.
Columbia University, New York, March, 1913.

Chapter I—The Development of Taxation

To the citizen of the modern state, taxation, however disagreeable it maybe, seems natural. It is difficult to realize that it is essentially a recent growth and that it marks a comparatively late stage in the development of public revenue; it is more difficult to realize that each age has its own system of public revenue, and that the taxes of to-day are different from those of former times; it is still more difficult to perceive that our ideals of justice in taxation change with the alteration in social conditions. Not only the actual forms of taxation, but the theories of taxation as well, vary with the economic basis of society. Fiscal conditions are always an outcome of economic relations. This is true even where the direct influence of political causes is traceable, for political changes are in the last resort dependent on economic changes. Finance and economics are inextricably intertwined. Like all the facts of social life, taxation itself is only an historical category.

I. Voluntary and Compulsory Payments

At the beginning of history there is no such thing as a state. Whether we accept Hobbes' theory of the *helium omnium contra omnes*, or the more modern clan theory of the origin of society, there is no public household, because there are no recognized public needs. But even in the original man there are possibilities of social development, Man, as Aristotle tells us, is a social and political animal. Centuries of hard experience strengthen the social instinct and contribute to form primitive society, until finally a real political life emerges.

Gradually from either physical, ethical or religious causes a leader evolves. The oldest or the wisest or the bravest—at all events, the one possessed of some peculiar characteristic—becomes the leader of the horde, the clan or the tribe. He acts as the great priest, great judge or great warrior, often combining all three qualities. There are no financial needs, because the only consideration is that of defence; and every man contributes to the defence in his own person. The leader himself subsists on the booty of war.

But with the growth of society and the expansion of the clan into the larger community, the public needs develop. Administration begins. Roads, bridges and fortifications are constructed, and the prince

or king must now not only maintain order, but must be assured of a revenue to support his household and to distribute favors to his retinue. All his followers, being roughly equal, now support him by gifts, whether of labor or of property. In all primitive societies voluntary offerings constitute the first form of common contributions, and every man feels the necessity of upholding the political and military organization by his own personal efforts.

The king's needs now increase. They are chiefly personal needs, except in so far as expenditures are made for the purposes of internal peace and external defence. But in order to ensure his position, the king endeavors to secure his revenues elsewhere. He develops the subsidies and tributes of the allied and conquered nations, and amasses treasure filched from abroad. Part of this he distributes among his followers; part he retains to increase his own possessions. The private property of the king differentiates itself from the public property, which was originally common to all. The monarch now increases his revenues and domains through the acquisition of lucrative prerogatives of all kinds. Certain activities come to be looked upon as within his peculiar province. The king's peace must be kept—any infraction must be paid for in fines and penalties; not only crimes, but torts, have their public side. Nobody can harm an individual without breaking the king's peace, and having to pay for it. Commerce begins, and weights and measures and money are needed. The royal rights of coinage arise; and as the kingship becomes stronger, the rights of escheat, of wreck, of confiscation develop, until finally the various royal prerogatives bring in a substantial revenue.

Voluntary payments have in the meantime ceased. As society advances, what was at the outset freely given comes to be paid by the individual from a sense of moral obligation. But with the weakness of human nature, in the face of a diversity of interests, even the feeling of duty soon fails to produce an adequate revenue. The moral obligation slowly becomes a legal obligation, keeping pace with the crystallization of social usage and custom into primitive law; the voluntary offerings become compulsory contributions. But the compulsory contributions are still largely personal services, connected with the common security. Such was the early mediæval *trinoda necessitas*, the liability to military service, to watch and ward, and to

the repair of the bridges and fortifications. The first forced contribution of the individual to the maintenance of the common welfare is always seen in this rude attempt to assess every one according to his ability to bear the common burden—his faculty. This faculty consists in the enforced participation in the administration. But there is not yet any idea of taxation of property. The contribution is personal, and is limited to a few well-defined objects. The individual's faculty is found in his person, not in his property, because there is practically no private property. And the contributions are, for the most part, not regular, but spasmodic.

As civilization gradually advances, private property develops, and the primitive equality slowly disappears. The interchange of commodities takes place on a larger scale. The old revenues are no longer adequate, and it becomes necessary for the monarch to supplement them by broadening the field of these compulsory contributions of service. In other words, the need of taxation arises. But a direct tax is still out of the question. Public opinion will not yet admit its necessity. The taxation of property is scarcely less impossible than the taxation of the person. It is regarded as a badge of disgrace for the freeman—a nota captivitatis, as the Romans at first called it—because only conquered enemies have to pay this arbitrary impost. The king, therefore, must endeavor to effect his object covertly. He must go to work in a roundabout way, and hide the tax in a variety of disguises. He either gradually extends his lucrative prerogatives, or alleges that the charges are simple returns for governmental services. He grants protection or privileges to individuals, and requires some payment in return. Thus begins the period of fees and charges, which the individuals are willing to pay and which gradually reconcile the public to the idea of governmental charges.

Before long, however, the monarch feels able to throw off all disguises, and limits the amount of his exactions only by the degree of his rapacity. Thus the fees and tolls change into taxes on exchange and transportation; thus the people become accustomed to the "customs"; thus the "evil duties" and the excises grow apace; thus the payments become veritable "impositions." In other words, the community enters upon the stage of indirect taxation.

This explains why it is so difficult for the idea of direct taxation to force its way into popular favor. The earliest manifestations of the

taxing power are generally merciless and brutal. They are apt to react on the public consciousness and to stunt the growth of any feeling of obligation. It is not until public morality has so far developed as to introduce more lenient and more refined processes of indirect taxation that we discover a growing willingness on the part of the individual to pay direct taxes. Another reason for the later appearance of direct taxation is that the indirect taxes are often paid without the contributors being really conscious of it. They are jealous of their own and not public-spirited. They are willing to give only that the loss of which they do not feel. But whatever be the reason, it is clear that when this final stage—possible only after centuries of laborious and continued exertion—has been reached, we enter upon a new phase in the history of finance. The readiness to share in the public burdens out of one's property presupposes a far higher social ethics and a far more complex society than was possible in the simple conditions when every one was willing to take part in the defence of the village or the repair of the roads. Interests have now become specialized. It needs a far greater sense of civic obligation to submit cheerfully to direct property taxation than was necessary in primitive times for the putting forth of mere personal exertions. Even to-day the full import of this obligation is only inadequately grasped. Until within a few years it was deemed necessary to base the theoretical justification of taxation on fanciful doctrines of contract, of protection and the like. And even at the present time, those who cheerfully seek to contribute their share to the common burden form the exception, not the rule. But even the imperfect recognition of this duty implies a highly developed political consciousness. The method of taxing every one according to his property is the first rough attempt of a property-owning community (as over against a primitive community) to assess each member according to his relative ability. The introduction of the direct property tax is a vast step forward in the development of social ethics.

This historical process is well illustrated by etymology. If we look at the various terms applied to what we to-day call a tax, we shall find every shade of the development reflected not only in the words used in former centuries, but in those still employed to-day. There are no less than seven different stages in this etymological growth.

The original idea was that of gift. The individual made a present to the government. We see this in the mediæval Latin term *donum* and in the English *benevolence*, which was used far into the middle ages. The second stage was reached when the government humbly implored or prayed the people for support. This is the meaning of the Latin *precarium*, used for many centuries on the continent, as well as of the German Bede (from *beten*, to pray). The *Landbede* was the term applied to the land tax in the German states until quite recently. With the third stage we come to the idea of assistance to the state. The individual felt that, if not making a gift, he was at least doing the government a favor. This idea is expressed in the Latin *adjutorium*, the English aid and the French *aide*, which was at one time used for all kinds of taxes. The same idea is discernible in the English *subsidy* and *contribution*. It has survived in the German term for a tax, *Steuer* (*steuern*, to help), and in the Scandinavian *hjelp*. In France contribution is even to-day commonly used as synonymous with tax.

The fourth stage of development brings out the idea of sacrifice by the individual in the interest of the state. He now surrenders something for the public good. This is seen in the old French *gabelle*, in the modern German *Abgabe*, and in the familiar *Itahan dazio*. In each case the citizen gives or sacrifices something. With the fifth stage the feeling of obligation develops in the taxpayer. The English duty was not originally restricted to its present narrow meaning in the United States. Here it is usually applied to import taxes and sometimes to the internal revenue taxes. But even to-day in England the term includes some of the most important so-called direct taxes, like the inheritance tax and the income tax. It is not until the sixth stage is reached that we meet the idea of compulsion on the part of the state. We see this in our impost or imposition, as well as in the French *impot* and the Italian *imposta*. Although we limit the term to a certain kind of tax, the French use it as the generic epithet *par excellence*. The same idea is seen in the German *Auflage* (something "laid on") and *Aufschlag* (something "clapped on"), frequently used at present for certain indirect charges on commodities.

With the seventh and final stage we reach the idea of a rate or assessment, fixed or estimated by the government without any reference to the volition of the taxpayer. We see this in the mediaeval English scot (to be "at scot and lot"), which is nothing but the Ger-

man *Schoss* or the Scandinavian *skatt*. It is seen in the German *Schatzung* (or estimate), which was used until about a century ago. Above all, it is recognized in our tax (*taxare*, to fix, to esthnate), the French *taxe*, the Italian *tassa* and the English *rate*. It is worthy of note that in the middle ages "tax" always meant a direct tax, for which a regular assessment list or schedule was made.

II. Direct versus Indirect Taxation

With the introduction of direct taxation, the progressive increase of public revenues becomes far easier. This is fortunate, for with the advance of civilization the public expenditures grow apace. For a long time, as we have seen, almost the only aims of government are security and defence. But as economic conditions develop and various classes of society differentiate, more attention must be paid to matters of general welfare. Expenditures for commerce, industry and transportation arise. The need is felt for better roads, for more canals, for improved methods of communication through the postal service. Then the less material ends of government are recognized. Education must be provided, hospitals and asylums must be erected, and the sanitary conditions must be looked after. Finally comes the immense growth of the modern state, with its new functions due partly to the industrial revolution, partly to the growth of democracy, partly to the recognition in legislation of the preventive as against the repressive principle. These new functions mean fresh expenditures; and these expenditures mean increased taxes. Thus the characteristic mark of the modem age is taxation as against the more or less self-sufficing public economy of former times.

Direct taxation, as we have seen, generally forms the last step in the historical development of public revenues. At first regarded entirely as an extraordinary means of support, it gradually assumes the character of an ordinary form of revenue. In the early days of classic antiquity the direct tax was used only in very exceptional exigencies and was, in fact, regarded as a compulsory loan, to be repaid in the future. It was not until after the establishment of the Roman Empire, for instance, that the regular direct taxation of Roman citizens began. And the same process may be observed throughout the history of many mediaeval states down to the most recent period of European and American history.

In some cases, however, this historical process assumes a slightly different form. It depends entirely on the economic conditions and on the relative importance of the various social classes. For instance, it is incontrovertible that certain kinds of indirect payments always come first, as has been explained above. But when the people understand that indirect charges on commodities increase their price and thus form veritable taxes, it sometimes happens that more opposition is shown to indirect than to direct taxation. In such cases direct taxes furnish the ordinary revenue, and it is only after a severe struggle that indirect taxes are introduced.

This process can be clearly traced in the history of mediaeval and modem revenue. In democratic communities, where the legislation is influenced by the mass of the people, we commonly discern a tendency to oppose indirect taxes on consumption. In the early mediaeval towns the democratic instincts were strong, because of the more equal distribution of property. We accordingly find that the revenue system was based largely on direct payments, and that the populace rebelled against indirect imposts. But on the continent, where aristocratic influences gradually became powerful enough to break down the communal liberty and democracy, the mass of the people were ground down by taxes on the necessaries of life, while the wealthier or governing classes practically escaped. When the democratic upheaval took place, as in the Italian towns, we find an attempt to reintroduce the old order of things and to reach the wealthy by a system of direct taxes. But with the downfall of the mediaeval democracy, the property and income taxes disappeared, while the *octroi* and municipal indirect taxes again came to the front. Only in England, where the democratic instincts maintained themselves somewhat more strongly, and where the powder of the aristocracy was held in check by a strong monarchy, do we find continued opposition to the general excises and to local taxes on the necessaries of life. It was with the greatest difficulty that the excise system was introduced. And the same feeling was awakened under similar conditions on the other side of the Atlantic, when Hamilton initiated his system of indirect taxation or internal revenue in the federal fiscal system of the United States. "The time will come," said one of the members of Congress in 1790, "when the poor man will not be able to wash his shirt without paying a tax." With the advent of the modern democ-

ratic state, we notice the same tendency. Indirect taxes, says Lassalle, are taxes on labor. Hence the efforts of modern democracy in England, in Switzerland and in America to confine indirect taxes on consumption and exchange within the narrowest limits.

On the other hand, there is a counter-tendency which has frequently been overlooked. Curious as it may seem, indirect taxes were advocated in the later middle ages as the means of introducing not inequality, but equality, of taxation. This was owing to the fact that the privileged classes on the continent had succeeded in securing virtual immunity from taxation. The nobles were largely exempted from the land tax, while the clergy and the wealthier citizens in general were able to a large degree to purchase freedom from the tax burdens. What was more natural than that the statesmen and tax reformers should attempt to make them pay something through taxes on their expenditure, which they could not well escape? Their plan, it is true, no longer took the shape simply of taxes on the necessaries of life; it was now expanded into the single tax on all expense which would reach the rich as well as the poor. This was the idea of Colbert; and it has been the idea from the time of Hobbes and Petty of all enthusiasts for indirect taxation in England, and of many writers in Germany, in France and in Italy. To-day we are clamoring for the abolition of indirect taxation; formerly the reformers clamored for a single universal indirect tax. The explanation, as we see, is simple.

But this does not yet answer the question why excise taxes were actually introduced into England, as elsewhere, in the seventeenth century. The fact is that tax reformers cannot do much good if economic conditions are not ripe for their proposals. It must be confessed that according to the experience of history most reforms, in finance at least, are due to selfish reasons; they are the necessary outcome of changes in economic relations and of the efforts of each class, whether it be the small or the large class, to gain some advantage for itself. The classic home of the excise tax or indirect tax on business and trade is Holland. It is well known that Holland, during the sixteenth and seventeenth centuries, had become the leading financial and trading nation of Europe. In the other countries wealth was still centered in the landed interests, and the whole system of taxation was largely dominated by feudal aristocratic ideas. The direct taxes were land taxes, because wealth consisted chiefly of land;

but the landed proprietors sought to escape the burden by assessing real property as low as possible and by putting taxes on the necessaries of life of the poorer classes. In Holland, on the other hand, wealth was now largely centered in the moneyed interest. The great traders and merchants did not relish any direct taxation of trading capital, and therefore devised a system of indirect taxation of business which would, as they thought and hoped, be shifted to the community in general, and to the poorer classes in particular. Thus developed the stamp taxes, the excise taxes, and the whole host of indirect taxes for which Holland was noted.

The seventeenth century marks the rise of the trading class in England; "the glorious revolution" was a revolution not so much of the people as of what the Socialists love to call the "bourgeois." Puritanism and commercialism went hand in hand,[1] and the downfall of the Stuarts not only put an end to feudalism, but weakened the fiscal ascendency of the landowner—an ascendency to which another serious blow was given by the abolition of the Corn Laws, and whose final overthrow in England, as elsewhere, is fast approaching. The indirect taxes of the seventeenth century were thus the outgrowth of the effort on the part of the commercial classes to escape the burdens which the landowners were desirous of placing on them. The selfish designs of the capitalists and the unselfish ideas of the tax reformers went hand in hand to widen the scope of indirect taxes. And as the trading class developed in the other countries, the system of excise spread with it.[2] It was not until the democratic movement of the nine-

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[1] This aspect of Puritanism has more recently been studied in detail by Professor Max Weber in a series of suggestive articles "Die protestantische Ethik und der 'Geist' des Kapitalismus" in the Archiv für Sozialwissenschaft und Sozialpolitik, vols, xx and xxi (1905).

[2] A word may be said, in passing, about our present attitude toward indirect taxes. There is a prodigious amount of cant on this topic. Many thinkers are apt to make common cause with the socialists and the single-taxers in demanding the complete abolition of the so-called indirect taxes. This is a mistake. There is nothing inherently bad about an indirect tax, nor is there anything inherently good about a direct tax. It depends entirely upon what kind of direct or indirect tax it is. A direct tax on the laborer is not necessarily good because it is direct; an indirect tax on the luxury of the rich is not necessarily bad because it is indirect. It happens, indeed, that most of the indirect taxes of the past have been devised by the powerful in order that their burden might fall on the weak; but it is by no means impossible to frame a system of

teenth century, when the system of excises was recognized as a burden on the poorer classes, that the number of commodities subject to excise was gradually reduced.

III. The Forms of Direct Taxation

"We have seen the economic relations which condition the interworking of direct and indirect taxation. Let us now endeavor to learn how these economic conditions affect the growth of direct taxation itself.

In primitive society, there is a certain rough equality in the personal status and the personal abilities of the individual. Hence the idea of the poll or capitation tax, which is the first rude manifestation of the equities of taxation. The members of a club to-day pay equal dues, because their interests are supposed to be equal. Club life does not cover the whole of human activity, but only a very small portion of it. So, in the same way, as long as economic conditions are primitive, the social obligations of the members of the clan or the state are conceived to be equal. But as the social conscience develops, more stress is laid on other elements of ability to pay than on mere number. Not only do men differ in strength, in mental vigor and in opportunities, but inequality of possessions grows greater. And with differences in property, the old feeling of equal obligation weakens. The poll tax becomes unjust and is gradually abolished. A certain phase of this primitive feeling sometimes persists for a long time, especially in democracies where political equality is still based on the fiction, of economic equality. We find poll taxes as adjuncts to other taxes long after the justification of a single poll tax has disappeared. But it has now assumed a political significance, as in Switzerland and in some of the American commonwealths, where its payment is made a condition of the suffrage. Even this tends to become a farce to the extent that the payment of the tax is assumed by the political parties. The economic basis of the poll tax has entirely vanished and it tends to be replaced by the property tax.

The first property taxes are entirely in harmony with the facts of early industrial life. It is a matter of common knowledge that the

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taxes on consumption which will supplement other taxes and do substantial justice to all. The elaboration of this point must be reserved for another place.

early period of almost every civilization is marked by two chief facts, the preponderance of agriculture and the existence of slavery. As Rodbertus has pointed out,[1] this leads to a fundamental distinction between ancient and modern economic theories. In modern civilization we have not only a quantitative division in wealth, but also a qualitative difference. That is, not only are there rich and poor, but there are landowners, capitalists, employers and laborers. In early civilization there was a quantitative but no qualitative distinction in wealth. Property consisted chiefly of land and the landowner's household, including slaves and beasts of burden. There was no important capital—or at all events, no industrial capital—apart from this landed property, and hence there were no distinct shares in distribution. But Rodbertus errs in predicating of Greece in general and designating by the Greek name an economic system which is characteristic of all early civilizations. It was as true of the slave-holding states in the American Union, and of the mediæval manorial system, as it was of the early Hellenic civilization. Wherever we find only agriculture and slavery, there we have this inseparable mass of collective property, not yet split up into its constituent parts.

The importance of this for finance lies here: since we have only this general collective property, and since this property consists practically of land and the means to till the land, the direct property tax must take the shape either of the land tax or of the tax on the cattle or slaves or implements used in agriculture. These are practically tantamount to each other. For the produce of two given portions of land will vary about in proportion to the value of the land, together with the amount of slaves and cattle necessary to till it. Everywhere at first, therefore, the direct property tax is found to be either the land tax or the tax on agricultural capital.[2] It is the only practicable and the only just form of taxation at this early period.

It is, however, important to notice that the property which is now taxed is not so much property in land as property in the produce of

[1] "Untersuchungen auf dem Gebiete der Nationalökonomie des klassischen Alterthums," in Hildebrand's *Jahrbücher für Nationalökonomie und Statistik*, iv., p. 343 et seq.

[2] In some of the early mediaeval tax systems, these were specifically termed cattle and land taxes. So the *Vieh- und Klauensteuer* in Germany.

land. Whether we have the primitive village community or only the system of common cultivation, the earliest private property consists of the produce of the soil. The first attempt, therefore, to take account of the gradations in the tax-paying ability of the individual is seen in the tax on gross produce—the tithe, or any other portion of the produce, or on mere quantity of the land irrespective of value. Since land itself is not private property, since land is not bought or sold, the faculty of the taxpayer can be measured not by the value of the land, but by the value of its produce, which is in some proportion to the quantity of the land. Moreover, in early agriculture, where tilling is extensive and where expenses of cultivation vary but little, the tax on gross produce is a fairly accurate test of ability to pay.

With the advance in population and the necessity of more intensive agricultural methods, owing to the decay of the primitive communal system and the growth of private property in land, it becomes possible to measure the productivity of land in terms of property. Thus the land taxes of this newer stage of culture are property taxes, even though the value of the property is fixed sometimes according to selling value, sometimes according to arbitrary estimates of quality. But where the survivals of primitive conditions are strong, the value is still measured in terms of yield or produce, either actual or computed. In the early middle ages, for instance, land taxes were not based directly on the selling value, because, although land was private property, it was not bought or sold. The lands had rental value, but no selling value, and the tax was assessed not so much on the market value as on the produce of land. When the American colonies were founded, private property in land was well established and the land taxes there very soon became property taxes, although we not infrequently find examples of the taxation of gross produce rather than of property.[1] With the progress of cultivation and the advance in population, the tax on gross produce is supplanted by the property tax on market value.

But now comes a change in the forms of economic life—a change that inevitably produces an effect on the public conscience and on

[1] For details sec the article on "Income Taxes in the American Colonies," *Political Science Quarterly*, vol. x. (ISO), pp. 233, 234. This is reprinted in Seligman, *The Income Tax*, 1911, part ii, chap. i.

the accepted ideas of justice. In the first place, with increasing prosperity we find a gradual increase in the simpler kinds of personal property. The landowner's family gradually accumulates money, clothing, and luxuries. If the general property tax is still to continue a fair evidence of individual ability to pay, personal property must be taken up into the assessment lists. And this, in fact, everywhere occurs. Not only the real estate, but also the growing personal estate, is now regarded. At first this personalty consist of tangible, visible objects not easily concealed, and constituting a fair index of the citizen's prosperity. The existence of this scanty stock of personalty will, however, still be in harmony with the early economic system. It is still the landowner who owns the personal property, and it is fitting that there should still be only the general property tax. The economic system has not yet materially altered.

The next change, however, inaugurates a widely different stage. The primitive family group or manorial system decays. Slavery is gradually broken down by manumission or abolition. The commercial instinct grows stronger, and trade is no longer limited to the interchange of superfluities between adjacent households. What Aristotle decries as the gainful pursuits become common occupations. Capital develops and free laborers appear. The original undifferentiated mass of property splits up into separate parts. The landlord is no longer the property lord. Personal property, in the shape both of productive capital and of unproductive wealth, increases at a continually accelerating ratio. Finally, as in our modern industrial system, the movables outrank the immovables. Realty is completely overshadowed by personalty, in both extent and influence. *1

Now begins the contest between the landed and the moneyed interest, between rent and profit. The landowners in mediaeval times, like the farmers in our own time, vainly attempt to expand the original property tax so as to include all these new forms of property. The capitalist and moneyed class either seek to shift the burden by devising the indirect tax of which we have spoken above, or they attempt to escape the burden entirely through evasion or through lax administration of the property tax. Where the differences in wealth become striking and the lower classes are politically powerless, the landed proprietors and the traders combine to throw the burden on the agricultural laborers and the urban artisans, although they may still

struggle between themselves as to the division of the remainder of the burden. Where aristocratic conditions prevail less strongly, as in America up to the present time, the laborer fares better, but the contest between the farmer and the city resident assumes a more acute form. The history of modern taxation is largely the history of these class antagonisms.

IV. Changes in the Basis of Taxation

In the meantime the test or standard of individual ability has itself undergone a change. With the growing differentiation of society, the productive powers of the various classes themselves differ. Moreover, there are now many forms of earnings which are derived not from property, but from industry. And since it is difficult to capitalize industry, it is the product of the industry which now becomes of importance. But there is a decided difference between this new system of taxes on product, and the original system which preceded the first property tax. In the original system the tax was on gross produce or on mere quantity of land. The land tax was either the tithe or some definite part of the estimated produce. Now the tax is on net produce. Allowance is made for expenses of cultivation. Two pieces of land may yield the same amount, and yet the outlay in the one case may have been considerably more than the other. To take net, instead of gross, product marks another step forward in the evolution of the idea of ability to pay. In a state of complete mobility of capital and labor, it perhaps makes no difference whether we take the market value or the net product of a piece of property; for the selling price of property tends to equal the capitalized value of the revenue derived therefrom. But in actual life, where we often find limitations to this absolute mobility, there may be a divergence between the capitalized value of the produce and the actual value of the property. Thus we find almost everywhere a movement to replace the property tax by a system of taxes on net product—on the product of land, of capital, of business, of labor, etc. This was the stage reached in Europe toward the end of the eighteenth and the beginning of the nineteenth century.

Relatively good as this system was, it was soon seen not to be entirely satisfactory. It failed to respond to modern economic conditions. It looked at the produce of the source of industry, rather than at the recipient of the earnings; it was a tax on things, rather than on

persons; it abstracted from the personal situation of the taxpayer; it made no allowance for indebtedness. Just as the tax on gross produce was defective because it paid no attention to expenses of cultivation, so the tax on net produce, while in itself an improvement, was nevertheless faulty because it paid no attention to what may be called the personal expenses of cultivation, i.e. the interest on indebtedness.

Thus it is that in recent decades the tendency has arisen to substitute personal taxes for the older real taxes, and to assess the individual rather than the thing; or, stating it in simpler language, to put revenue or income in the place of proceeds or earnings as the test of taxation. Just as a man's ability to support himself or his family is seen in his income or revenue, so, in the same way, it is recognized that the test of a man's ability to support the state is to be found in this same income or revenue. From the modern point of view, it is the duty of the citizen to support the government according to his capacity to support himself. Income or revenue may not, indeed, be an ideal test;[1] for there is no absolute test which can exactly gauge all the varying personal circumstances of each individual. But it is the best workable test that governments can secure, and it is in harmony with the test imposed on the individual by the force of social opinion in regard to his duty to his own family. For this reason modern states are everywhere changing their revenue systems, so that the taxes shall correspond, as nearly as possible, to the revenues of the citizens. But precisely because the income tax is a personal rather than an impersonal tax or a tax on things, it involves administrative difficulties and presupposes an advanced stage of social morality and political probity. Where this stage has not yet been reached, it may be better to continue the system of taxes on product which form a very rough approximation to the revenue of the taxpayer, than to attempt a system of income taxes which strive to reach the revenue more closely. Furthermore, as we shall see in a subsequent chapter, there are certain considerations which militate against the exclusive adoption of individual faculty as the all-controlling norm of taxation. But whatever may be the momentary demand of expediency, or the influence of countervailing considerations, the line of development is

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[1] For some of the difficulties connected with the theory of the income tax see Seligman, The Income Tax, 1911, Introduction, §4, et seq.

evident, and the ultimate result must necessarily harmonize with the facts of economic and social relations.

Let us test the theory of development as laid down in the above pages by a reference to the history of taxation in America. It is well known that the primitive revenues of the colonies were composed largely of voluntary payments, of subsidies or allowances from abroad, of quit-rents, and of occasional fees and fines of early justice. But it has usually been overlooked that when the voluntary offerings turned into compulsory contributions, the tax systems in the various colonies were quite different.

The New England colonies were democratic communities where almost every one owned some land, and where the distribution of property was fairly equal. We therefore find as a characteristic mark of New England, in addition to the primitive poll tax, the tax on the gross produce of land either actual or computed according to the quantity or quality of the land. This slowly grew into a real property tax, which soon expanded into what was nominally a general property tax. And this itself was supplemented by a tax on town artisans and others who subsisted on the produce not of their property, but of their exertions. To the property tax was now added the "faculty" tax.[1]

In the Southern colonies, which were aristocratic in their economic substratum, the land tax played an insignificant role, because the large landowners naturally objected to bearing the burdens. After the introduction of slavery it became difficult to retain even the poll tax, which when laid on slaves is practically a property tax on the slave owner. Hence we see a system of indirect taxes, mainly on exports and imports, falling with special weight on the poorer consumers.

Finally, in the middle colonies, above all in New Netherlands, the conditions were neither democratic nor aristocratic. There was no such approach to equal distribution of wealth as in New England, and no such preponderance of the landed interest as in Virginia. We find the dominance of the moneyed interest or of the trading classes, who brought with them Dutch instincts and Dutch methods. Accordingly, there was no system of poll and property taxes as in New England,

[1] For details as to the American "faculty" taxes, see Seligman, *The Income Tax*, 1911, pp. 367 et seq.

and no system of indirect taxes on exports and imports as in Virginia. The fundamental characteristic of this system was the introduction of the excise system or indirect taxation of trade, which was borrowed from Holland, just as we find the excise system introduced from Holland into England and the other European countries during the seventeenth century. Each section, therefore, had a fiscal system more or less in harmony with its economic conditions. It was not until these conditions changed during the eighteenth century that the fiscal systems began somewhat to approach each other; and it was not until much later that we find throughout the country a general property tax based not on the produce, but on the market value, of the property.

The same divergence of economic conditions explains what is to-day the most marked distinction in the United States between the fiscal systems of the North, the South and the West. In the Southern states up to the civil war, the interests of the large landed proprietors were still dominant. Under the federal constitution, it was impossible for them to levy import or export duties. For a time, therefore, land, as the only source of wealth, had to defray the public charges. In the absence of industrial centres, there was little opportunity for taxation of personal property. As the need of increased revenues was felt, the landed interests attempted to secure this revenue from the few ordinary occupations carried on outside of the farms and estates. In other words, the license or privilege system was established, which levied a fixed charge on well-nigh every occupation. It was not until after the middle of the century that the general property tax was introduced; but even to-day the license or privilege taxes yield a large share of the public revenue.

In the Northern states, on the other hand, where the business interests were more powerful, the license or privilege system never attained such a firm foothold. But with the breakdown of the general property tax, the attempt of the general public to secure a taxation of the moneyed interests has taken the form of taxation of corporations and of capital. There are plainly visible the beginnings of a system of taxation of net product. Finally, in the Western states, where the economic conditions are as yet more primitive, there have been only sporadic attempts to alter the general property tax, which there is still to a great extent a tax on real estate. But with the gradual unification

of economic conditions, which is slowly taking place throughout the entire country, we may expect that the systems of taxation will become more nearly uniform, until the results of modern industrial and democratic development will finally appear here, as they are appearing in other parts of the world. The recent attempt to introduce a federal income tax, however defective the measure may have been, is a significant evidence of the trend. That this attempt will ultimately be followed by others, not necessarily precisely similar, but yet indicative of the same general movement, is by no means improbable.

From the above survey one fact stands out prominently. Amid the clashing of divergent interests, and the endeavor of each social class to roll off the burden of taxation on some other class, we discern the slow and laborious growth of standards of justice in taxation, and the attempt on the part of the community as a whole to realize this justice. The history of finance, in other words, shows from one point of view, at least, the evolution of the principle of faculty or ability in taxation—the principle that each individual should be held to help the state in proportion to his ability to help himself. In the earliest indirect payments there was no idea of equity, but only of force. But with the advance of civilization and social ethics, we reach the first stage of rude equality in the poll tax. Step by step the revenue system advanced to successively higher planes. Expenditure, property, product—each of these in turn was considered the test of individual capacity and obligation toward the state; until finally in modern times revenue or income has come to be regarded as the most equitable and the most practicable measure of individual and social faculty. To arrange a system of taxation a large part of which at least shall, on the whole, correspond as closely as possible to the net revenues of individuals, and which shall take into account the variations in taxpaying ability, has thus become a demand of modern civilization. But unless this system is in harmony with the external structure and the internal conditions of modem economic life, it is foredoomed to failure. If the history of taxation teaches any one lesson, it is that all social and moral advance is the result of a slow process and that while fiscal systems are continually modified by the working out of ethical ideals, these ideals themselves depend for their realization upon the economic forces which are continually transforming the face of human society.

Chapter II—The General Property Tax

There is perhaps no single feature of our modern tax system that is commonly thought to be more thoroughly American than the general property tax. The proportional taxation of all property is held to be the result of an instinctive feeling original to and thoroughly ingrained in the minds of the American people. And yet it may be said that few institutions have evoked of late more angry protests and more earnest dissatisfaction than this very tax. The reason is plain. As long as prosperity was general and the public expenses were small, taxation was light and its burden was scarcely felt. But during the last few decades, with the complicated demands of modern civilization, public expenditures, both local and national, have increased to such an extent as to exert a sensible pressure on the population. The problems of public revenue have been pushed to the front. The expressions of discontent with various phases of the financial system have become numerous and loud. But for the most part the discussion has been superficial and the conclusions reached have been inadequate.

The opponents of the general property tax have confined themselves to a portrayal of its practical shortcomings. No one has hitherto attempted to give the deeper reasons why the property tax is unsuited to the present generation, or to discuss the subject in its wider relations to the science of finance. It is proposed in this chapter to show that the property tax is by no means original to America, but that it has gone through precisely the same evolution in many other places. It is further proposed to prove that the property tax is as destitute of theoretical justification as it is defective in its practical application. And it is proposed, finally, in subsequent chapters, to discuss the reforms of our direct taxation—some of them partly completed, some projected, and some hitherto neglected.

I. Practical Defects

The defects of the general property tax may be treated under five heads.[1]

[1] In a monograph by the present writer entitled *Finance Statistics of the American Commonwealths* (Publications of the American Statistical Association, Dec. 1889)

1) *Lack of uniformity, or inequality of assessment.* The property tax with us is an apportioned, not a percentage tax. According to the latter method, the tax would be levied on the individual by means of a fixed percentage of all property. According to the actual method, the total amount to be raised by the state is first ascertained and is then apportioned to the various subdivisions according to the appraised valuation in each. The final rate of taxation throughout a state is obtained by adding the local tax to the state tax. The rate of taxation ought therefore to vary only with the local needs, and would indeed so vary if property were everywhere assessed uniformly. As an actual fact, however, this is far from being the case. In most of the commonwealths the tax laws provide for the assessment of property at its "fair cash value." And in all the states it is expected that the valuation shall everywhere be made at a uniform rate. Yet it is a notorious fact that in scarcely any two contiguous counties is the property—even the real estate—appraised in the same manner or at the same rate. In regard to the manner, it frequently happens that corporation property, e.g. the roadbed of a railway, is assessed in one county at an immense sum per mile and is treated in the adjacent county like a piece of grazing land.[1] In regard to the rate, the assessors follow the practice sanctioned by local usage, or decide by mere caprice. The official reports abound with complaints or open confes-

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may be found a large number of citations from the commonwealth financial reports for the preceding year. The reader is referred to that publication for the verification of statements for which no special authority is adduced in these pages. See especially pp. 401-417. Many facts and figures may also be found in Ely, *Taxation in American States and Cities*, 1887. See also, for some striking statistics, T. G. Shearman, *Taxation of Personal Property*, *impracticable, unequal and unjust*, 1895.

For the two decades that have elapsed since this chapter was originally written, facts in abundance testifying to the defects of the general property tax will be found in most of the official state reports on taxation. See chap. XX, below. Cf. also the valuable articles and addresses in the (five) *Reports of the Conferences of The National Tax Association,* 1907-1911 (Columbus, 1908-1912). See especially the "Report of the Committee on Causes of Failure of General Property Tax" in the Fourth Conference, Columbus, 1911, pp. 299-310. At the second conference the name of the organization was changed to International Tax Association, but at the fifth conference the original name was resumed.

[1] In New York, for example, two adjoining counties made a difference of $24,000 per mile in assessing the same railroad. Other counties varied $20,000 per mile. Report of the Slate Assessors, 1879, p. 19.

sions that property is assessed all the way from par to one twenty-fifth of the actual value. In one county the property is listed at its full worth; in the next county the assessment does not exceed a tithe of its value.[1] That this is a glaring infraction of the fundamental rule of equality in taxation is apparent. As between counties it leads to under-valuations which give an entirely fallacious view of the public resources; as between individuals it results in gross injustice. A tax rate of a given amount on one may be double, quintuple, or decuple the nominally equivalent tax on another. The first constitutional injunction—that of uniformity of taxation—is flagrantly violated. Assessors are compelled openly to disregard their oaths, or to incur certain defeat at the next election.[2] There is no pretence of complying with the law.

An escape from these evils has been sought in the creation of boards of equalization. A number of commonwealths[3] have attempted to correct the undervaluation of the county officials by giving a state board power to alter the valuations (or in some cases, as Nebraska, the rates) in the hope of securing uniformity. In a few states, like New York, Ohio, Tennessee, Utah and Wyoming, the power extends only to the equalization of real estate assessments. In some cases, the board may charge the valuation of classes of property separately, and in still fewer instances, like Connecticut, Indiana, Maine, New Hampshire and South Carolina, the assessment of

[1] *Biennial Report of the Auditor of Public Accounts of Nebraska*, 18S6, p. 4. In New York the range is from 100 to 18 per cent. Report of the State Assessors, 1883, p. 3. In Illinois the range is from 100 to 5 per cent. *Report of the Revenue Commission of Illinois*, 1886, p. ii.

[2] Report of the Assessors of New York, 1886, p. 20. The report for 1884, p. 4, speaks of the assessors' open "intent to ignore the law." In one case an assessor objected to a certain declaration, and asserted that it would be necessary to swear the merchant. The latter answered: "If you swear me, I'll vote against you next time." *West Virginia Tax Commission*, Preliminary Report, 1884, p. 13.

[3] State boards of equalization are found in Arizona, California, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Colorado, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia, Wisconsin and Wyoming. Alabama, Arkansas and Oregon have tax commissions with equalizing powers. In some states the boards of equalization have to deal only with the assessment of corporate property.

minor districts. But in most cases its function is confined to the equalization of county assessments, while county boards deal with the assessments of local districts, and ordinarily also have power of review over the assessments of individuals.[1] In several cases, while these may raise, they may not reduce, the aggregate as returned by the local assessors; in other cases their power extends only to real estate; in still other cases they may raise or lower the assessment of separate classes of property as well.

The efforts of both state and county boards, however, have been very imperfectly successful. The composition of the boards is such as to render any comprehensive scrutiny of the county returns almost impossible. Even were the boards to be ideally constituted, the local jealousies and bickerings would still continue to prevent any just distribution of the burdens.[2] The officials themselves confess that such distribution cannot be secured under the present system.[3] Boards of equalization are thus at best mere makeshifts,—clumsy attempts to accomplish the impossible. As it has been drastically put: "A people cannot prosper whose officers either work or tell lies. There is not an assessment roll now made out in the state that does

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[1] County boards of equalization exist in most of the states, even when state boards are unknown. Thus in Delaware, Florida, Maryland, Mississippi, Nevada and Texas there are county boards, but no state boards. On the other hand, in Connecticut, Maine, New Hampshire and West Virginia there are state boards but no county boards. Finally in Georgia, Louisiana, Massachusetts, Vermont and Virginia, there are neither state nor county boards. For details see Carl C. Plehn, *Revenue Systems of State and Local Government*, in the *Twelfth Census Report on Wealth, Debt and Taxation*, Washington, 1907, p. 629 et seq. In the above statement the facts have been brought down to date [1912].

[2] "The strife between counties to reduce assessments has not ceased and in all probability will not, as long as assessors are elected, or selfishness be a passion in the human breast." *Report of the California State Board of Equalization*, 1885 and 1886, p. 4.

[3] "No board of officials, however diligent or however conversant they may be with the subject, can make an equalization which to themselves will be absolutely satisfactory." *Annual Report of State Assessors of New York,* 1887, p. ii. From ocean to ocean the same complaint is found.

not both tell and work lies."[1] As long as this is true, boards of equalization are of little avail.

2. *Lack of universality*, or failure to reach personal property. This defect although the most flagrant, perhaps requires the least comment; for it is so patent that it has become a mere byword throughout the land. The escape of personal property is noted almost from the beginning of the existence of the property tax in the American colonies. Thus in Massachusetts Bay as early as 1651 we find an interesting account of the difficulty experienced in ascertaining certain personalty, followed by a resolution to the effect that

> "To the end that all publicke charges may be aequally borne, and that some may not be eased and others burdened and it being found by experience that visible estates in land, corn, cattle are, according to order, wholly and fully taxed, but the estates of marchants, in the hands of neibours, straungers, or their factors, are not so obvious to view, but, uppon search, little of theire estates doe appeare, beinge of great valew, so that the law doth not reach them by that rule of taxing visible estates,—it is therefore ordered. … that all marchants, shopkeep.s and factors shall be assessed by the rule of common estemation, according to the will and doome of the assessors. … having regard to theire stocke and estate, be it psented to view or not.[2]"

This was evidently not of much use, for we soon after find an admonition to the officials to see "that so many estates, though more obscure and difficult to find out, may bear their due and just pportion with such estates as are more obvious and ca' not be hid."[3]

What was true in a certain measure at this early date has become still more true of recent years. Personal property nowhere bears its just proportion of the burdens; and it is precisely in those localities where its extent and importance are the greatest that its assessment is the least. The taxation of personal property is in inverse ratio to its

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[1] M. I. Townsend, in *Proceedings and Debates of the Constitutional Convention of New York*, 1867-68, iii., p. 194.5. Cf. the first *Report of the (New York) Commissioners to revise the Laws for His Assessment and Collection of Taxes,* 1871, p. 33.

[2] *Records of the Governor and Company of Massachusetts in New England,* edited by N. B. Shurtleff, Boston, 1853, vol. iii., p. 221.

[3] Ibid., vol. iii. p. 426.

quantity; the more it increases, the less it pays. The reason is plain. So far as it is intangible, personal property escapes the scrutiny of the most vigilant assessor; so far as it is tangible, it is purposely exempted in its chief form, as stock in trade, in our commercial centres. In the mad race for wealth it is considered dangerous for the local assessors in large cities to list the merchant's capital, with the possible result of driving it away to localities more favored by their financial officers. It is scarcely necessary to give figures to substantiate these statements; but a few facts, taken from the official documents, national, state and municipal, may be of interest.

The tenth census of the United States asserts that from 1860 to 1880 the assessed valuation of real estate increased from 6,973 millions of dollars to 13,036 millions, while that of personal property decreased from 5,111 to 3,866 millions. In 1890 the assessed valuation of real estate had grown to 18,956, while that of personal property was 6,516 millions. Scarcely more than three decades earlier in California personal property was assessed in 1872 at 220 millions of dollars, in 1880 at 174 millions, and in 1887 at 164 millions,—a net decrease in fifteen years of 56 millions. Real estate increased during the same period from 417 to 791 millions. Personal property paid 17.31 per cent, real estate 82.69 per cent of the taxes. By 1893, although the assessed value of real estate was 1,000 millions, that of personalty was only 173 millions. In Illinois in 1882 personal property paid 22.01 per cent of the taxes, in 1894 only 17.26 per cent. In Cook County (including Chicago), personal property paid only 14 per cent; in Kankakee County, only 11 per cent. In Iowa, while the real estate valuation in 1893 increased over that of the preceding year by 32 million dollars, the assessed valuation of personal property actually decreased. In New York the figures are as follows:

	Real Estate	Personal Property
1813	$ 476,999,000	$ 118,602,000
1859	1,097,564,000	307,349,000
1871	1,599,930,000	452,607,000
1888	3,122,588,000	346,611,000
1893	3,626,645,000	411,413,000

1911	9,639,001,868	482,499,193 [1]

The proportion paid by personal property has decreased steadily almost every year, until according to the last figures it pays but five per cent of the state taxation, as against ninety-five falling on real estate. In forty years the valuation of real estate has increased 8 billions; that of personalty has increased only 30 millions. In the District of Columbia the valuation was in 1878: realty 83 millions, personalty 17 millions; in 1894 realty had increased to 160 millions, personalty had decreased to 11 millions. In New Jersey, in 1887, in one township the real estate was assessed at $272,232, the personal property at $591; in another the figures were $2,274,900 and $47,150 respectively. Perhaps the most remarkable figures are found in the large cities. In Cincinnati the valuation in 1866 was: realty, $66,454,602; personalty, $67,218,101. In 1892 the realty had increased to $144,208,810; the personalty had decreased to $44,735,670. In Monroe County, New York, in which the city of Rochester is situated, the realty was assessed in 1892 at $132,202,478; the personalty at $8,408,803. Finally, in the city of Brooklyn in 1893 real estate was assessed at $486,497,186, while personalty was valued at $19,123,170. Personal property, in other words, paid a little more than three per cent of the whole tax on property. In 1895 the proportion fell still lower,—to one and twenty-three hundredths per cent.

These striking figures become ridiculous when it is remembered that in our modern civilization the value of personal property far exceeds that of real estate, as understood by the taxing power. It is true that the legal distinction between real and personal property fluctuates in the various commonwealths; but in the eyes of the assessors real estate generally includes only land and the fixtures thereto, all the other forms of wealth being regarded as personal property. In Massachusetts and a few other states it is indeed provided that mortgages of real estate shall be regarded and taxed as interests in real estate. But even if mortgages were counted as real estate, and even if (as is nowhere done) other certificates of owner-

[1] A part of this prodigious difference between real and personal property is due to the placing of considerable personalty like bank stock and mortgages in special classes.

ship in realty were also counted as real estate, it would still remain true that personal property constitutes the greater part of the national wealth. For personal property does not denote merely movable objects. It includes money, public obligations and the vast mass of intangible property represented by securities of corporations, of which only a small portion are certificates of ownership in realty. Above all, personal property includes the entire and ever-increasing annual products of agriculture and industry—the gigantic mass of modern wealth devoted mainly to consumption, but existing as the stock in trade of individuals. Even in our western commonwealths, where the communities are still mainly agricultural, it is an acknowledged fact that the personalty exceeds the realty. The auditor of Washington tells us that, if a true valuation could be reached, it is "clear and incontestable that the wealth of the territory in personal property, for the purposes of taxation, would largely predominate over that of real estate."[1] And if this is true of the far West, how much greater must be the relative proportion of personalty in the busy marts of the East.[2] Yet the more differentiated the industry and the more predominant the personalty, the less does the latter contribute; until in the foremost state of the Union realty pays more than nine-tenths and personalty less than one-tenth; while in its second largest city realty in 1893 paid ninety-nine hundredths and personalty only one hundredth of the tax. The later figures are even more striking.

The taxation of personal property, therefore, is in inverse ratio to its quantity. The more it increases, the less it pays. The general property tax thus sins against the principle of universality of taxation even more than against the principle of uniformity. In the middle ages whole classes were exempt by express provision of the law; in our time and country whole classes are exempt by the inevitable working of the law. It is the law which is equally at fault in both cases.

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[1] *Report of the Territorial Auditor to the Legislative Assembly*, 1887, p. 94. Cf. Biennial Report of the Auditor of Iowa, 1881, p. 8, and that of the Comptroller of Idaho, 1887-88, p. 74, to the same effect.

[2] Cf. *New York State Assessors' Report*, 1880, and *Comptroller's Report*, 1889, p. 33: "I am sure that the actual value of the personal property legally liable to taxation exceeds that of the real estate."

3. *Incentive to dishonesty*. One of the worst features of the general property tax is that any attempt to enforce the taxation of personalty by more rigid methods results in evasion and deception. The property tax necessarily leads to dishonesty, and this for two reasons. In the first place, under our system, whole classes of personalty are exempt from state taxation. The most familiar examples are imported merchandise in the original package; United States bonds, notes, checks and certificates; property *in transitu*; goods produced in another state sent on commission; deposits in savings banks, etc. The temptation for the taxpayer to convert his property temporarily into these classes is generally irresistible. Not only does the law i hold out to individuals inducements to practise fraud, but it sustains them in its commission.[1] Secondly, wherever any pretence is made of enforcing the tax on personalty, and especially where the taxpayers are required to fill out under oath detailed blanks covering every item of their property, the inducements to perjury are increased so greatly as to make its practice universal. The honest taxpayer would willingly bear his fair share of the burden; but even he cannot concede his obligation to pay other men's taxes. When an effort is made to introduce still more drastic methods by the employment of so-called "tax-inquisitors" or "tax-ferrets," as until recently in Ohio and Iowa, and still in Indiana, Kentucky and Oklahoma, the situation becomes still worse. The only result of more rigid execution of the law is a more systematic and widespread system of deception. Official documents tells us that "instead of being a tax upon personal property, it has in effect become a tax upon ignorance and honesty. That is to say, its imposition is restricted to those who are not informed of the means of evasion, or, knowing the means, are restricted by a nice sense of honor from resorting to them."[2] The tax commission of New Hampshire declares that "the mere failure to enforce the tax is of no importance, in itself considered, in comparison with the mischief wrought in the corrupt-

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[1] In People *ex rcl*. Ryan, 88 N. Y. 142, the Court of Appeals held that the assessors were bound by a transaction which the court itself declared to be "a device to escape taxation." In 1892, however, a law was passed in New York requiring applicants for reduction of assessment to make oath that they had not incurred debts for the purpose of avoiding taxation.

[2] *Report of the Commissioners of Taxes and Assessments in the City of New York*, 1872, p. 9.

ing and demoralizing influences of such legislation."[1] The Illinois commission asserts that the system is "debauching to the conscience and subversive of the public morals—a school for perjury, promoted by law."[2] The Connecticut commission maintains that the resulting "demoralization of the public conscience is an evil of the greatest magnitude."[3] A later New York report states that "it puts a premium on perjury and a penalty on integrity."[4] The Ohio commission tells us that "it results in debauching the moral sense and is a school of perjury, imposing unjust burdens on the man who is scrupulously honest."[5] The Cleveland commission of 1895 says that "the existing system is productive of the gravest injustice; under its sanction, grievous wrongs are inflicted upon those least able to bear them; these laws are made the cover and excuse for the grossest oppression and injustice; above all and beyond all, they produce in the community a widespread demoralization; they induce perjury; they invite concealment. The present system is a school of evasion and dishonesty. The attempt to enforce these laws is utterly idle."[6] The West Virginia commission tells us that "the payment of the tax on personalty is almost as voluntary and is considered pretty much in the same light as donations to the neighborhood church or Sunday-school."[7] The New Jersey commission tells us that "it is now literally true that the only ones who pay honest taxes on personal property are the estates of decedents, widows and orphans, idiots and lunatics."[8] Every annual report of the state comptrollers and assessors complains bitterly

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[1] *Report to the Legislature.* By Hon. George Y. Sawyer, 1876, p. 16.

[2] *Report of the Revenue Commission,* 1886, p. 8.

[3] *Report of the Special Commission on Taxation*, 1887, p. 27. Cf. the *New Jersey Tax Commission Report*, 1880, p. 11.

[4] *Report of Counsel to Revise the Tax Laws of New York,* 1893, p. 12.

[5] *Report of the Tax Commission of Ohio*, 1893, p. 22.

[6] Report of the Special Committee of Taxation of the Cleveland Chamber of Commerce, 1890, p. 10.

[7] *Preliminary Report of the Tax Commission*, 1884, p. 10.

[8] *Report of the Commission to investigate the Subject of Taxation in the State of New Jersey.* Trenton, 1897, p. 75.

that the assessment of personalty is nothing but an incentive to perjury.[1]

4. *Regressivity*. Taxes are progressive when their increase is more than proportional to the increase of the property or income taxed, i.e. when the rate itself increases with the increase of the property. Taxes are regressive when the rate increases as the property or income decreases. The general property tax in its practical effects is often regressive, since the tax on personalty is levied virtually only on those who already stand on the assessor's book as liable to the tax on realty. Those who own no real estate are in most cases not taxed at all; those who possess realty bear the taxes for both. The weight of taxation really rests on the farmer, because in the rural districts the assessors add the personalty, which is generally visible and tangible, to the realty, and impose the tax on both. We hear a great deal about the decline of farming land. But one of its chief causes has been singularly overlooked. It is the overburdening of the agriculturist by the general property tax. What is practically a real property tax in the remainder of the state becomes a general property tax in the rural regions. The farmer bears not only his share, but also that of the other classes of society. Thus official documents tell us that "the class of property that escapes taxation most is the class of property that pays the largest dividends."[2] And in general it may be said, with our state auditors, that "the property of the small Owner, as_a rule, is valued by a far higher standard than that of his wealthy neighbor."[3] Or, as it is put by others: "In every portion of the state we find the most unproductive property, and that of the lowest real value, assessed at the highest ratio. The rule holds good that those who have to battle hardest with life for subsistence, are compelled to pay the most onerous taxes on the real value of their property."[4]

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[1] Cf. *Report of California Board of Equalization*, 1885-8(5, p. 6. For similar quotations from the reports of the new state commissioners from 1895 to the present, see *infra*, chaps, xix, xx.

[2] *Biennial Report of the Auditor of Iowa,* 1880-81, p. 6.

[3] *Biennial Report of the Auditor of Kentucky*, 1887, p. iv.

[4] *Report of the State Assessors of New York*, 1873, p. 9. Cf. *West Virginia Tax Commission, Preliminary Report*, 1884, p. 8; *Report of the Comptroller of Tennessee,* 1888, p. 16.

It is no wonder that in their desperation the small farmers should cry out for the equal enforcement of the laws taxing personalty; it is no wonder that they should attempt to stem the current in ignorance of the impossibility of the task. They have forgotten Walpole's saying, that it is safer to tax real than personal estate, because "landed gentlemen are like the flocks upon their plains, who suffer themselves to be shorn without resistance; whereas the trading part of the nation resemble the boar, who will not suffer a bristle to be pluckt from his back without making the whole parish to echo with his complaints."[1]

5. *Double taxation*. Double taxation, as we shall see later on, is of various kinds. But there is one form which is particularly applicable to the property tax, namely that of debt exemption. This is perhaps the greatest weakness of the general property tax, and the one which has given rise to the most interminable discussion.

On the one hand it is maintained that an offset should be made for all indebtedness, whether mortgage debts on real property or general liabilities on personalty. Individuals should be taxed on what they own, not on what they owe. To tax both borrower and lender is double taxation. This is the view of the Connecticut commission,[2] and the practice of most of the states accords with it. On the other hand, the majority of American investigators assert that deduction for indebtedness results practically in such injustice and deception as to be utterly unendurable. They therefore demand that there shall be no offset of debts against property. This is the view of the Massachusetts and New Jersey commissions,[3] and the practice in some states like Pennsylvania, Georgia, Kentucky, Louisiana, Maryland and Missouri.

Both these views are correct. To tax both lender and borrower for the same property is plainly double taxation, and therefore unjust. The fallacy of the contrary opinion consists in looking at the property rather than at the owner. What the state desires to reach is primarily the individual. It taxes his property simply because it considers this a

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[1] Cf. Sinclair, *History of the Public Revenue*, vol. iii., appendix, p. 79.

[2] *Report of the Commission of 1887*, p. 26.

[3] *Massachusetts Commission*, 1875, pp. 95-98; New Jersey Commission, 1880, p. 20; Commission of 1891, *Preliminary Report*, p. 10.

test of his ability to pay. But his ability is manifestly reduced *pro tanto* by his debts. His true taxable property therefore consists in his surplus above indebtedness. Otherwise one would be taxed for what he has, and another for what he has not. As it has been well put, what we want to tax is ability, not liability. This is the view accepted by all European authorities.[1] The only American scientist who holds to the contrary opinion, Amasa Walker, does so in a half-hearted way; for he bases his view on arbitrary data, confesses that much hardship will ensue, and finally concludes that the income-tax principle is the only just one.[2] To tax both property and credits, both lender and borrower, is plainly incorrect in principle and inequitable in practice.

On the other hand, it is equally true that deduction for debts is thoroughly pernicious in its operation. It is the universal testimony that no portion of the tax laws offers more temptations to fraud and perjury than this system of offsets. The creation of fictitious debts is a paying investment. In the states where such deductions are permitted, attempts to obtain immunity from taxation in this way are widespread and generally successful. And they are most successful in the case of property which already bears less than its share of the burdens. The great majority of officials cry out against debt-exemption as an utter abomination.[3]

Both methods are thus unendurable. Debt-exemption and no debt-exemption are equally bad. The states shift from one policy to the other in equal despair. We are therefore forced to the conclusion that the whole system is unsound. The fault lies not in the exemption, but in the taxation, of property. The general property tax under either of these two methods produces crying injustice. As there is no third method possible, the inference is that the injustice is of the essence of the general property tax. The New York commission, indeed, came to the conclusion that mortgage debts should be deducted from realty, but that there should be no offset for debt in the assessment of personalty.[4] This would be a legal discrimination wholly subversive

[1] Roscher, *Finanzwissenschaft*, p. 336; Wagner, *Finanzwissenschaft*, ii., p. 432.

[2] A. Walkor, *Science of Wealth* (7th edition), 339.

[3] *Report of the Commissioners of Assessment and Taxation in Oregon*, 1886, p. 9.

[4] *First Report,* 1871, pp. 60-69, 71-79. Cf. the sharp criticism in the *Massachusetts Tax Commissioners' Report*, 1875, p. 96.

of the first principles of justice. As a matter of fact, just the contrary principle prevails at present in New York and Connecticut; debts are there deductible only from personalty. There is no logical escape from one of the two methods, debt-taxation or debt-exemption; and under either plan the general property tax stands convicted by the test of experience.

Under a system, indeed, where there is no general property tax, but simply a tax on real estate, the question of taxing mortgages assumes a different aspect and must be decided independently. As that problem is discussed elsewhere in this volume,[1] it may be omitted here. But as soon as we have the general property tax and exempt mortgage debts on real estate, the exemption must consistently be accorded to all debts. And we are then immediately confronted by the dilemma just discussed.

If we sum up all these inherent defects, it will be no exaggeration to say that the general property tax in the United States is a dismal failure. No language can be stronger than that found in the reports of the officials charged with the duty of assessing and collecting the tax. Whole pages might be filled with such testimony from the various states. Only the following extracts from the New York reports are given, as samples:

> "A more unequal, unjust and partial system for taxation could not well be devised.[2]
>
> The defects of our system are too glaring and operate too oppressively to be longer tolerated.[3]
>
> The burdens are so heavy and the inequalities so gross, as almost to paralyze and dishearten the people.[4]
>
> The absolute inefficiency of the old rickety statutes passed in a bygone generation [is patent to all].[5]
>
> The hope of obtaining satisfactory results from the present broken, shattered, leaky laws is vain.[6]

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[1] Infra, chap. iv.

[2] *First Annual Report of the State Assessors*, 1860, p. 12.

[3] Comptroller's Report, 1859.

[4] *Assessors' Report*, 1873, p. 3.

[5] *Assessors' Report*, 1877, p. 5.

[6] *Report of Commissioners of Taxes and Assessments*, 1876, p. 52.

The system is a farce, sham, humbug.[1]

The present result is a travesty upon our taxing system, which aims to be equal and just.[2]

[The general property tax is] a reproach to the state, an outrage upon the people, a disgrace to the civilization of the nineteenth century, and worthy only of an age of mental and moral darkness and degradation, when the 'only equal rights were those of the equal robber.' "[3]

After such self-criticism nothing more need be said. In comparison with this, the view of the European scientists is moderate, that "a cruder instrumentality of taxation has rarely been devised."[4] And yet, notwithstanding all this criticism, our methods limp along almost unchanged.

II. History of the General Property Tax in Antiquity

In the previous chapter we have learned how direct taxation begins, and have seen that the primitive form is the land tax or tax on real estate. We also noticed the process by which the original mass of property is gradually broken up, and personal property slowly assumes a greater importance in the wealth of the community. Let us study a little more in detail the subsequent history.

The monarch, or public opinion as reflected in the government, seeks to conform the practice of taxation to this change in economic facts. The property tax continues, but the assessor tries to make the tax equable by including not only the realty, but also all these new forms of personalty, whether corporeal or incorporeal. The original land tax is supplemented by other taxes, or expanded into a general property tax. The attempt is intelligible and even laudable; for it is simply the manifestation of the ideas of equality and universality of taxation. Personal property must not escape; ergo, it must be included in the designation of general property and taxed equally with the real property.

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[1] *Assessors' Report,* 1879, p. 23.

[2] *Comptroller's Report*, 1889, p. 34.

[3] *Assessors' Report*, 1879, p. 7.

[4] Leroy-Beaulieu, *Science des Finances* (5me éd.), iii., p. 498: "Rarement, dans la fiscalité moderne, on a inventé d'instrument plus grossier."

The attempt is laudable, but it is futile. Personalty will evade the most inquisitorial assessor. Wherever tried, the general property tax again resolves itself into the real property tax. History shows us that this has always been the case. The more complex the industrial development, the more inevitably does this process take place and the more surely does the general property tax virtually revert to its primitive form of real property tax. Not alone history, but theory, shows us that this must be so. For the general property tax, as we have seen, originated with and is calculated for an economic system where the only property is the collective, indivisible property, where the landowner and capitalist are one. There is one kind of property, and therefore one kind of property tax. But as soon as property is split up into different parts, as soon as there are various kinds of property, just so soon does the single property tax become antiquated and useless. It is not only useless, but it is now absolutely iniquitous. For the attempt to include under one head the gains flowing from widely different pursuits—pursuits whose number and divergence are limited only by the well-nigh boundless variety of individual capacity—, this attempt to reduce the multiform to the uniform can end only in the virtual exemption of the new forms and a consequent overburdening of the old. What has been conceived in the spirit of justice develops into an embodiment of injustice. What has been in its origin an attempt to attain equality results in gross inequality.

Because of the evident impracticability of the general property tax, governments now begin to fit their theories of taxation to the economic facts. They abandon the attempt to make the new facts conform to the old theories. As various forms of personalty gradually set themselves free from taxation, the state reasserts the principle of equality. But it now recognizes the existing facts and abandons the fiction of the general collective property. As property splits up into its various elements, new taxes are laid, one by one, not on the property but on the separate sources of this new wealth. The old land tax may be retained, but other taxes are imposed in various forms. Taxes on vocations, on professions, on trade, on commerce, on profits, on interest, on wages and salaries, follow in quick succession, until finally the theories and practice of taxation are in harmony with actual conditions. One by one these various sources of wealth drop off from the antiquated general property tax only to receive a new life in these

fresh forms. The feeling of equity in the public consciousness cannot be put down. What escapes under one form it attempts to reach under another. Fiscal theory cannot long lag behind the facts of industrial life.

Let us test the truth of these statements by an appeal to history. Let us trace, in other words, the actual development of the general property tax.[1]

In antiquity direct taxation was treated as an extraordinary source of revenue. The Athenian direct tax (Greek), as levied in the time of Solon (B.C. 596), was nominally a classified property tax, but in reality a land tax.[2] With the increase of wealth an attempt was soon made to reach personalty; but its success is entirely conjectural. We simply know that under Nausinicus (B.C. 378) the bases of taxation were not only land and houses, but also slaves, cattle, furniture and money. It has been claimed, however, that the tax had by that time become a progressive income tax.[3] At all events there is no proof that the tax on intangible personal property as such was at all successful.

In Rome the direct tax (*tributum civium*), which was sometimes even treated as a forced loan to be repaid out of the proceeds of conquest, was levied only to meet extraordinary expenses for which the proceeds of domains (the *vectigalia*) did not suffice. As Rome was at first an agricultural community, the real "quiritarian" property alone

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[1] The only general attempt thus far made to discuss this subject is that of Parieu, *Histoire des impôts généraux sur la propriété et le revenu* (1856). While interesting, it is inexact, inadequate, unclear and antiquated.

[2] Booekh, *Public Ecotwniy of the Athenians*, book iv., chap. 5. J. Beloch, "Des Volksvermögen in Attika," in Hermes, vol. 20 (1885), pp. 245-6 maintains that it was a tax on produce, and most probably on gross produce. It was laid in kind until 428-7. For details see Seligman, *Progressive Taxation*, 2ded. (1908), pp. 11-12.

[3] This is claimed by Rodbertus, in Hildebrand's Jahrbücher, viii., p. 453 ct seq. For the other view see the complicated interpretation of Boeckh (p. 669 of the American edition). Beloch contends that it was still a property tax at this time, and that the taxpayers were put into associations or groups (Greek) for the purpose of a more adequate assessment of personal property. See the article quoted in the last note but one, and also "Das attische Timema," in Hermes, vol. 22 (1887), p. 371. Beloch's views are accepted by Ed. Meyer, *Geschichte des Altertums*, vol. ii. (1893), p. 408, note, and *Kleine Schriften zur Geschichtstheorie und zur wirthschäftlichen und politischen Geschichte des Altertums* (1910), p. 180. Cf. also P. Guiraud, *études économiques sur l'antiquité*, 2d ed. (1905), pp. 77-79; and Francotte, *Les finances des cités grecques* (1909), p. 26.

recognized by law consisted solely of land and the capital affixed to land, like houses, slaves and cattle. These were the *res mancipi*.[1] But the property tax was assessed only on the land, on the assumption that every acre of land would require a definite quantity of this productive capital.[2] The early Roman property tax was therefore in effect a tax on realty, analogous to the early (Greek)[3] With the development of trade and industry in the later days of the republic, the character of property underwent a change. The amount of personalty increased. If the *tributum* was to remain a general property tax, it would be necessary to assess also these new forms of property. And, in truth, the attempt was made. Not only farming implements, but ships, carriages, money, garments, ornaments, etc., were listed.[4] But it must be remembered that the only personalty assessed still consisted of visible, tangible objects, although the censors had practically unlimited power to take up any property into the tax-fist (census). There is no evidence to prove that trading capital proper was at all taxed.[5] And it is useless to speculate what might have been the result during the last period of the republic; for further progress in this direction was checked by the fact that, with one isolated exception, the republic levied no direct property tax at all on the Roman citizens after 167 B.C. Whether the *tributum civium* was again employed during the empire is a moot question. The weightier argu-

[1] "Mancipi res sunt praedia in Italico solo, tam rustica, qualis est fundus, quam urbana, qualis domus; item jura praediorum rusticorum, velut via, iter, actus, aquaeductus; item servi et quadrupedes, quae dorso collove domantur, velut boves, muli, equi, asini. Ceterae res nee mancipi sunt." Ulpian, 19, 1. Cf. Gaius, i., p. 120; ii., pp. 15-17.

[2] Marquardt, *Römische Staatsverwaltung* (2d edition), ii., p. 166.

[3] Except that it was not a graduated tax, and was levied on the market value, not the produce.

[4] Matthias, *Römische Grundsteuer und Vectigalrecht*, 1882, p. 6. The leading ideas of Matthias are translated in Humbert, *Essai sur les finances chez les Romains,* ii., p. 328 et seq.

[5] The only one who maintains the contrary is Walter, *Geschichte des römischen Rechts* (3d edition), i., p. 271. But the passage of Livy to which he refers (vi., 27) does not bear out his assertion. Walter stands quite alone.

ments seem to be on the side of those who maintain that it was never again made use of in its old form.[1]

In the provinces the property tax was nothing but a land tax—either a tax on the value (*tributum soli*), or a tithe (*decuma*), or a ground rent (*vectigal cerium* or stipendium). In addition to the land tax proper we find the poll tax (*tributum capitis*) which, in some of the older provinces where the remains of an enterprising commercial life still existed, probably included a tax on classes or professions or a nominal general property tax.[2]

The Roman property tax was therefore virtually a tax on land and the little productive capital affixed to land. Personalty, so far as it was assessed at all, consisted of the meagre tangible objects owned by an agricultural people. The Romans had a general property tax because, as in early Greece, there was only one kind of property—the collective property owned by slave-holding landed proprietors.

Under the empire industrial society began to differentiate. Caligula (A.D. 37-41) took advantage of this to levy taxes on special classes, above all on carriers, prostitutes and pimps.[3] Trading capital, everywhere the first element to separate itself from the collective mass of property, was reached for the first time by Vespasian (69-79) in the curious tax on the private owners of city urinals and closets.[4] Finally, shortly before Caracalla (211-217) we find a general tax on commercial capital, known henceforth as *aurum negotiatorium*. But what a

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[1] Rodbertus, *Hildebrand's Jahrbücher*, iv., pp. 408-427, and Hewegisch, *Römische Finanzen*, p. 134G, maintain its existence. But Savigny, *Vermischte Schriften*, ii., pp. 151, 185; Huschke, *Ueber den Census zur Zeit Christi,* pp. 70, 190; Mommsen, *Römische Geschichte*, ii., p. 387; and Marquardt, *Römische Staatsverwaltung*, ii., p. 171, take the opposite view. Durcau de la Malle, in his *Economie politique des Romains*, does not touch this point. The decisive quotation is that from Tacitus, *Annales*, 13, 51, of which Rodbertus' interpretation is strained. The best argument—which has not hitherto been advanced—seems to be this: that if the *tributum civile* had continued, it would not have been necessary for Diocletian to introduce into Italy the *tributum provinciale*.

[2] Rodbertus, iv., p. 364, puts it too strongly when he says that it was only a poll tax. See Marquardt, op. cit., ii., p. 195.

[3] Suetonius, Caligula, 40: "Ex gerulorum diurnis quaestibus pars octava, ex cai)turis prostituarum quantum quacque uno concubitu mereret." Cf. DioCassius, lix., 28.

[4] Known as *foricarii*. Suetonius, *Vespasian*, 16, 23. Cf. for other authorities Walter, *Rechtsgeschichte*, i., p. 498.

singular commentary it is on the progress of civilization that the first tax on circulating capital should be on a rather degrading occupation, and the first tax on industry one on prostitutes.[1] Caracalla, we are told, conferred the privilege of Roman citizenship upon all the inhabitants of the empire in order to extend to them the now numerous direct taxes, especially the succession and manumission taxes.[2] The provincial land tax continued; but it went through the same evolution as the civic direct tax and became a general property tax.

The industrial development, however, had outrun fiscal theory. It became more and more difficult to reach personalty. More and more barbarous methods were introduced;[3] until, as Lactantius tells us in stirring language, torture was applied to the recalcitrant owner.[4] Under Diocletian the provincial land tax (known henceforth as jugatio or capitatio terrena) was introduced into Italy. But at the time of the Theodosian code and the completion of the late fiscal system, we find, not the general property tax,[5] but a vast variety of taxes, indirect and direct. Chief among the latter were those on the profits of trades, professions and artisans,[6] now consolidated into corporations through the petrifaction of industrial relations.[7] But the attempt to tax personalty by means of a general property tax was abandoned because the original mass of property had disintegrated. The primitive system was abolished, and was replaced by methods more or less analogous to those employed in modern Europe.

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[1] Hildebrand's *Jahrbücher*, v., p. 315.

[2] At least this is the uncharitable construction of the act by Dio Cassius.

[3] The municipal decurions, for example, were made personally liable for the taxes levied on their municipalities. Service as decurion became compulsory and hereditary. Fugitive decurions were brought back, like fugitive serfs or military deserters.

[4] *De morte pers*. 23: Fora omnia gregibus famiUarium referta; unusquisque cum Uberis, cum servis aderat; tormcnta ac verbera personabant; filii ad versus parentes suspend ebantur; fidelissimi quique servi contra dominos vexabantur, uxores adversus maritos. Si omnia defecerunt, ipse contra se torquebantur, et quum dolor vicerat, adscribebantur quae non habebantur.

[5] The poll tax (*capitatio plebeia or humana*) levied on the serfs (coloni) was practically a property tax because it was paid by the landowner.

[6] Known as *chrysargyrum, vectigal artium, pensio auraria, and aurum lustrale*. Cf. Levasseur, *Histoire des classes ouvrières en France*, i., pp. 72-78.

[7] Cf. Wm. Adams Brown, "State Control of Industry in the Fourth Century," *Political Science Quarterly*, ii. (1887), pp. 494-513.

III. Early Mediæval History of the Property Tax

During the middle ages the same development can be noticed. In the early period, after the disruption of the Roman empire, there were no taxes at all. The primitive Teutonic idea forced its way into the feudal system, and the contributions originally devoted to public purposes became the private possessions of feudal nobles and overlords. The public tax became private property.[1]

In the early feudal system land was practically the only form of wealth, as it was the basis of the political fabric. In England the feudal payments (*hidage, scutage, carucage* and *tallage*) were assessed on the land, just as the Saxon *shipgeld* and *danegeld* were land taxes. These were at first levied on the gross produce of the land, either actual or as computed by the mere quantity of the land. With the progress of cultivation net produce rather than gross produce was made the test. Rents became the only practicable test of the value of land. But from the twelfth century onward, the growth of industry and commerce in the towns led to such an increase of personalty or movables that it became necessary to devise some new method of reaching the ability of the citizens. The only way out of the difficulty in England, as on the whole continent, was a combination of the taxes on lands and on movables through the general property tax.

The mediaeval town was the birthplace of modern taxation. Every inhabitant was compelled to bear his share of the local burdens, his proportion of the scot and the lot. The scot, or tax, was almost from the very outset the general property tax combined with the subordinate poll tax, exactly as in the earliest days of the New England colonies. The town, as such, generally paid its share of the national burdens in a lump sum, the *firma burgi*. But this lump sum was always distributed among the townsmen in proportion to the property of each.[2]

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[1] Cf. for details Clamageran, *Histoire de l'impôt en France*, i., p. 115; and Vuitry, *Etudes sur le régime financier de la France avant la révolution*, i., p. 420.

[2] Numerous examples may be found in Madox, *Firma Burgi*, p. 281 et seq. In one town, under Edward III., each man is "taxandus et assidendus juxta quantitatem bonorum et catallorum suorum ibidem." In another town the tax "debet assideri proportionaliter juxfa quantitatem bonorum suorum." For London, where each freeman paid the general property tax as *partem de bonis suis or partem catallorum*, see the examples in *Munimenta Gildhallae Londoniensis, Liber Albus*, i., p. 592 et seq.

On the continent it was the same. In the German towns the taxes were at first levied only on lands and houses.[1] Beginning in the twelfth century, however, other constituent elements of property, both movable and immovable, were gradually added, until before long we find the general property tax. The tempo of the development naturally varied in the different towns, but the broad lines were almost everywhere the same. Thus by the end of the thirteenth century it had become customary to add rent-charges to houses and land. As long as the rent-charges were irredeemable, they were taxed as real estate; but after they had become redeemable, they were gradually treated as personalty.[2] For in Germany as in England we find the feudal distinction between real estate and personal property (*Liegende* and *Fahrende Habe* or *Liegenschaften* and *Fahrniss*), which was almost tantamount to that between movables and immovables (*Mobilien* and *Immobilien*). The other elements of personalty were slowly added to the assessment fists. We find mentioned in the tax ordinances of the period the following classes of personal property: (1) household furniture, (2) clothing, ornaments and weapons, (3) food supplies for home consumption, (4) supplies of wine, straw and coal for the same purpose, (5) horses and cattle, (6) tools of various kinds, (7) wares and commodities, (8) money, (9) credits. At first a man's personalty was taxed only if the owner paid no tax on his real estate, but this alternative method of taxation soon disappeared. In almost all cases the various classes of personalty were assessed at fixed rates which varied for each class, but before long they were all merged into the general property tax—or, as it was called, the tax on property in *possessionibus, agris, domibus, censibus et rebus quibuscunque*.[3] In some towns it was called simply a tax of so much *per*

For full details as to the method of assessment tempore Edward II., see *Liber Cicstumarum*, pp. 193 et seq., 568 et seq.

[1] There is a rich literature of local taxation in Germany. Well-nigh every important town has had a monograph devoted to it. The general surveys are the older work of Zeumer, *Die deutschen Städtesteuern insbesondere die städtischen Reichssteuern im XH. und XIII. Jahrhundert*, Leipzig, 1878; and the more recent studies of M. E. Heidenhain, *Städtische Vermögenssteuern im Mittelalter,* Leipzig, 1906; and Bruno Moll*, Zur Geschichte der Vermögenssteuern*, Leipzig, 1911. Each of the last two works contains complete bibliographies of the local histories.

[2] See the full discussion in Heidenhain, op. cit., pp. 62-92, esp. 68.

[3] Zeumer, op. cit., pp. 86-89.

posse or *pro bonorum facultate*.[1] The documents often speak of a man being taxable "*na sine vermugen*," or in the Latin equivalent "*secundum propriamfacultatem et bonorum suorum estimationem*"[2] or "*juxta suam possibilitatem et pro rata bonorum suorum*.[3] Many of the German towns by this time combined the general property tax with the poll tax,[4] and in the Swiss cantons the tax was even called the *Hab*-, *Gut*-, und *Kopfsteuer*.[5]

In France and in the Low Countries the conditions were the same. The tax started out as one on real estate, but soon became one on property in general, the taxpayer being assessed according to his *vaillant* (fortune), or according to his *kiretage* and *catel* (realty and personalty), the *rentes-á-vie* always being taxable as realty.[6] At St. Quention provision was made as early as 1195 for a *collectam super omiies pecunias et hereditates burgensium;* and at Bapaume only a few years later the tax was levied ad *valentiam tenementorum et mobilium*.[7]

The only distinction between England and the continent was that in England the property tax remained for centuries the sole local tax, while in France and Germany local excises or *octrois* were soon added. But for some time at least the general property tax was the measure of the individual's capacity.

The general state taxes followed in the wake of the municipal taxes. Already in 1106 a property tax was levied throughout almost all Europe in order to aid the crusaders.[8] The English statute men-

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[1] Christian Meyer, *Das Stadtbuch von Augsburg*, 1872, pp. 75, 313.

[2] Von Below, "Geschichte der direkten Staatssteuern in Jülich und Berg," in *Zeitschrift des Bergischen Geschichtsvereins,* vol. 26 (1890), p. 32.

[3] Moll, op. dt., p. 37.

[4] G. von Schönberg, *Finanzverhältnisse der Stadt Basel im xiv. und xv.. Jahrhundert,* Tübingen, 1879, p. 134.

[5] Blumer, *Staats- und Rechtsgeschichte der schweizerischen Democratien,* ii., p. 295 etseq.

[6] Espinas, *Les finances de la commune de Douai des origines an XV siècle* (1902), p. 119 et seq. This work is especially valuable for its wealth of detail as to the French and Flemish towns.

[7] In 1200. Espinas, op. dt., p. 119, note.

[8] Sinclair, *History of the Public Revenue,* i., p. 88. For a general treatment see Gottlob, *Die. päpstlichen Kreuzzugssteuern des 13ten Jahrhunderts*. Heiligenstadt, 1892.

tions in detail the various classes of taxable property, namely, lands and all movables including gold, silver, animals, coin, credits, the produce of vineyards, etc., and provides further that those who do not own as much as a pound should nevertheless pay a penny if they are either householders or in possession of some office.[1] A few decades later, in 1188, came the Saladin tithe, on the occasion of the third crusade, when all rents and movables (*redditus et mobilia*) were expressly made taxable.[2] In England from this time on, the grants of rents and movables (*de redditibus et mobilibus* or, as they were sometimes called, *de redditibus et catallis*) became more and more common until they finally superseded the older methods of securing revenue. The fractional parts of the property granted varied from a fortieth to a fourth; but from 1290 it became customary to tax the nobility and the clergy only two-thirds as much as the commons. In 1334 the proportion was fixed as the fifteenth and the tenth. The tax accordingly came to be known as the fifteenth and tenth (*quinzime* and *disme*). Strictly speaking, the tenth was levied in the cities, boroughs, and lands of ancient demesne, the fifteenth in the rest of the country. Practically, however, the fifteenth was a tax on rents or realty, the tenth a tax on movables or personalty.

The name applied to the English tax—fifteenths and tenths or tax on rents and movables—brings up two interesting problems. The one is, why rents or produce should have been put on a plane with movables or property; the other is, why they should have been taxed at different rates.

As to the first point, it is clear that under feudal conditions, where land was not regularly bought and sold, the simplest method of ascertaining the taxable ability of the landowner was through the rental that he received for the land, a rental that was always in a certain proportion to the produce of the land. In the case of houses in the towns, especially where the land did not belong to the large landowners, we find of course more numerous examples of transfers of

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[1] The ordinance is reprinted in full in Manes "Die Einkommensteuer in der englischen Finanzpolitik," in Festgaben für Wilhelm Lexis, 1907. It is also found in B. Moll, *Zur Geschichte der englischen und amerikanischen Vermögensteuern*, 1912, p. 7.

[2] This ordinance is printed in full in Dowell, *History of Taxation*, etc., vol. ii (1888), appendix.

real estate; and accordingly the tax on town houses was sometimes assessed according to property, instead of rental, value. This is especially true in many of the German towns.[1] In the case of rent-charges again, which in the earlier centuries were far more common on the continent than in England, it is obvious that under the prevailing conditions their value could be found only as an annuity. Accordingly the annuity or yearly rent-charge was always included in the *redditus* or returns of real estate.

Personal property on the other hand had a capital value. In fact, most of the elements of personalty yielded no money produce at all, but only what economists call a benefit or psychic income. Personalty, therefore, was taxed according to property value; realty, except in the towns, according to rental value. Thus the mediæval general property tax was really a combination of property and product tax, product being utilized when the capital value was difficult or impossible to ascertain. In England this system of distinguishing between rents and movables continued through the middle ages; on the continent and especially where feudal conditions gave way before the democratic movement, the more unified property conception gained the upper hand.

The other problem is that of the difference in rates. In England the proportion came to be, as stated, a tenth for personalty and a fifteenth for realty. On the continent the disparity was often considerably greater, the rate on personalty being frequently two or even three times as high as that on realty. Moreover, when we remember that in the case of personalty the tax was assessed on capital value, whereas in the case of realty it was assessed only on the produce of the property, the contrast becomes astonishing.

In England there is not much doubt that the difference in the rate was, in part at all events, due to the fact that the peers were politically more powerful than the commons. But in many parts of the continent we find the same practice even where the aristocrats were not in the saddle. The explanation must therefore be of a more general nature.

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[1] As in Basel, Speyer, Mainz, Regensburg, Zurich, Bern, etc. Cf. Heidenhain, op. cit., p. 54.

Some authors seek the explanation in the alleged fact that personalty, especially that part of it invested in trade and commerce, was more lucrative than real estate, and could therefore more easily endure a higher rate.[1] Apart from the fact, however, that trade capital constituted only a small part of the taxable personalty, the alleged fact is really without foundation. Other writers advance a variation of this theory by contending that real estate, especially in the towns, was of very slight productivity. The towns, they tell us, were full of empty dwellings, the population was small, and land was not the subject of speculation as in modern times. The towns, we are told, even helped to rebuild houses that had been destroyed by fire.[2] This view, however, represents an unwarrantable generalization from a single town or a single period. A more defensible theory is that land was the basis of the entire economic life in the middle ages, and since most people even in the towns made their chief living out of the land, it was only natural that the principal means of subsistence should be treated somewhat more tenderly and that the surplus over what the individual needed for his living should be taxed at a higher rate.[3] The best explanation, however, is to be found in the fact that it was administratively more difficult to reach personal property, both because some of it was more or less hidden from the scrutiny of the assessor, and because intentional concealment and fraud were far easier.[4] As a matter of fact the assessment of chattels was not strictly enforced. This is apparent in England, at all events, from the dissatisfaction shown with the tax of 1275, when the people were assessed *ad unguem*, i.e. up to the full value of their movables.[5] In the suc-

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[1] This is the view of Hartung, "Die Augsburger Vermögensteuer im XV. Jahrhundert" and "Die Belastung des Augsburgischen Großkapitals," in Schmoller's *Jahrbuch*, etc., vol. 19 (189r)); and of Kolle, *Die Vermögensteuer der Reichstadt Ulm vom Jahrc 1700*. Stuttgart, 1898.

[2] F. R. Bothe, *Die Entwickelung der direkten Besteuerung in der Reichstadt Frankfurt bis zur Revolution,* 1612-1614. Leipzig, 1906, p. 67.

[3] This theory is vigorously espoused by Heidenhain, op. cit., esp. p. 5.

[4] This explanation was first advanced by the presgbent writer in 1892, in an article in the *Political Science Quarterly*, and is found in the first edition of this work. It was independently advanced by Hartung in 1895 in the essays mentioned above, and is accepted in substance by Hartwig, *Der Lübecker Schoss bis zur Reformationszeit*, 1903, p. 47, and by Moll, *Zur Geschichte der Vermögensteuern*, 1911, p. 108.

[5] Dowell, *History of Taxation and Taxes in England* (2d edition), i., p. 68.

ceeding grants the old easy practice was resumed. As the tax on lands, however, could be levied on actual rents, it was not apt to be so leniently assessed. Thus a substantial equality was probably reached. Just as in England the *tallages* merged into the fifteenths and tenths, so in France the feudal charges on the land developed into the general property tax, which however still retained the old name taille. The ordinances of 1254-56 attempted to regulate the assessment, and provided that immovables should be charged only half as much as movables.[1] France thus endeavored to attain by law what England effected by custom. During the fourteenth century the taille came to be the chief direct tax, and in 1439 it was made a permanent annual tax. In Germany, also, the imperial and state direct taxes, in so far as there were any, took the form of general property taxes. The Bede[2] or Landbede, the gemeiner Pfennig,[3] the Landschoss,[4] the Landsteuer,[5] etc., all followed the example of the local property tax. In Scotland the "costage" paid to England in 1424 was a general property tax. An act of that year directed that a book be prepared, containing the names of the inhabitants with a list of all their goods, including corn and cattle, as evidences of their ability to pay.[6] By 1585 it had become customary to apportion the occasional burdens known as *stents* to the burghs according to their "substance and common good."[7]

In the Italian republics the commonwealth was at first supported by the general property tax. In Milan, under the name *stima e catastro de heni* it is found as early as 1208, and afterwards was levied with such severity that the assessment book was known as the *libro*

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[1] Clamageran, *Histoire de l'impôt en France*, i., p. 264.

[2] At first a feudal land payment; cf. Hüllmann, *Deutsche Finanzgeschichte des Mittelalters*, p. 133.

[3] Lang, *Historische Entwicklung der teutschen Steuerverfassungen seit der Karolinger*. Berlin, 1793, p. 182.

[4] Schmoller, "Die Epochen der preußischen Finanzpolitik," in *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft*, i. (1877), pp. 3.5, 42.

[5] Hoffmann, *Geschichte der direkten Steuern in Baiern von Ende des xiii. Jahrhunderts*, pp. 11, 17, 39.

[6] S. H. Turner, *The History of Local Taxation in Scotland.* Edinburgh, 1908, p. 151.

[7] Ibid., p. 152.

del dolore.[1] In Genoa it was called *colletta*.[2] In Florence it was known as *estimo* and played an important role in politics.[3] And finally we find in the Netherlands from the earliest times the general property tax known as the *schot* or the tenth, etc., on *bezittungen* (possessions).[4]

The general property tax thus existed throughout all Europe. It was moderately successful because well suited to the period. Although involving an inquisitorial search into every article of the scanty mediæval stock, as can readily be seen from the detailed schedules of assessments still in existence, the tax was levied chiefly on tangible, physical objects not capable of easy concealment. With the exception of countries like France, where the tax was emasculated by the system of exemptions, it resulted on the whole, during this early period of society, in a tax fairly proportional to the individual faculty. There was a general property tax because there was a very slight differentiation of property.

IV. Later Mediæval and Modern History of the Property Tax

Before long a change set in. In England the fifteenths and tenths were changed in 1334 from percentage to apportioned taxes. Every locality had now to raise a definite lump sum, which, it was intended, should remain the same from year to year, and which was to be apportioned in precisely the same ratio among the various counties, towns and parishes. One fifteenth and tenth therefore meant a fixed sum, and when more was needed, two or three fifteenths and tenths were imposed. The old methods of assessment, however, soon fell into disuse. Each town and county made its own arrangement and treated personal property with such leniency that the total product of the tenth and the fifteenth continually decreased. This resulted in attempts on the part of the crown to supplement the old tax by a new general property tax, called the subsidy. The early efforts met with

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[1] Carli, *Relazione del Censimento dello State di Milano,* in *Custodi's Scrittori Classid Italiani, parte viodema,* xiv., pp. 184, 185.

[2] "Le imposte straordinarie si possono di questa epoca [1252] comprendere in una sola, la colletta." Canale, *Storia dei Genovesi,* i., p. 318 (edition of 1844).

[3] Villani tells us that it was levied on "cio che chiascuno haveadi stabile e di mobile e di guadagno." Istorie Florentine fino al anno 1348, book x., chap. 17 (vol. vi., p. 20, of Milan edition of 1803).

[4] Engels, *De Geschiedenis der Belastingen in Nederland,* pp. 60-65.

failure, but finally, in 1514, the first general subsidy was granted, as a tax of sixpence in every pound of property. The pound rate was afterwards fixed at four shillings on lands, and two shillings eight pence on goods. But the subsidy went through precisely the same development as the fifteenth and the tenth. At first really a percentage tax, it was soon practically converted into an apportioned tax of a stated lump sum. No re-assessment of the districts took place; each locality was supposed to pay the same sum year after year. All increase in wealth was thus entirely omitted from the lists. Exemption after exemption was made, and personal property was so loosely assessed that the total yield continually declined. The most arbitrary methods were employed. Only the old "subsidy-men" were taxed; allowances were made in a multitude of cases; and the assessments of personalty were so low and partial that the subsidy became a perfect farce. As Bacon said, "the Englishman is master of his own valuation."[1] Sir Robert Cecil stated in 1592 that there were not over five men in London assessed on their goods at £200; and Sir Walter Raleigh wrote in 1601 that "the poor man pays as much as the rich."[2] Although nominally a general property tax, the subsidy thus came to be levied chiefly on the land, and became an unequal land tax—so unequal that it finally disappeared in 1663.

Under the commonwealth an attempt was made to revive the general property tax, under the name of commonwealth monthly assessments, real estate being always assessed, as before, according to its "yearly value," personalty according to its value. These monthly assessments were already authorized during the Revolution. Thus in 1644 a "monethly assessment" was imposed upon the counties, cities and towns mentioned and levied upon "the true yearly values of lands, rents, annuities, offices and hereditaments and according to the true value of goods, chattels, debts and other estate reall or personall."[3] The improvement was so marked that the old subsidies were completely abandoned and replaced by the assessments. But the re-

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[1] And, he adds, "the least bitten in purse of any nation in Europe."

[2] *Report on Public Income and Expenditure*, 1869, ii., p. 415.

[3] *An Ordinance of the Lords and Commons assembled in Parliament for the raising and levying of the Monethly Sum of £120,000 towards the maintenance of the Scottish army, by a Monethly Assessment,* etc. Feb. 24, 1644. See esp.

form was short-lived and the assessments of personal property continually diminished. Sir William Petty, the author of the first theoretic work on taxation printed in England, discussed the defects of these monthly assessments in a picturesque passage as follows:

> "There have been, in our times, ways of levying an aliquot part of mens estate, as a fifth, and twentieth of their estates, real and personal, yea of their offices, faculties and imaginery estates also, in and about which way may be so much fraud, collusion, oppression and trouble, some purposely getting themselves taxed to gain more trust: others bribing to be taxed low, and it being impossible to check or examine or trace these collections by the print of any footsteps they leave (such as the hearths of chimneys are) that I have not patience to speak more against it: daring rather conclude without more ado, in the words of our comick to be naught, yea, exceeding naught, very abominable, and not good."[1]

A little later, however, Petty was slightly more hopeful and expressed the opinion as do some of our rural legislators to-day, that "assessments upon personal estates, if given in as elsewhere upon oath, would bring that branch which of itself is most dark to a sufficient clearness."[2]

After the Revolution the tax was levied as the so-called property tax. By its terms[3] it was assessed on the persons possessed of personal property, real estate, or public offices or positions of profit. And it was at first a percentage tax. But the yield decreased so enormously that Parliament in 1697 fixed the sum a rate should produce, i.e. it became an apportioned tax of stated amount. A rate of a shilling in the pound meant a tax of half a million pounds for the country as a whole, this sum being subdivided in fixed amounts to the various localities. The tax varied from three to four shillings in the pound. In the case of land the tax was assessed on the rent or yearly value. In the case of personal property the tax was assessed on the value of the property, rental value of all kinds of property being deemed to be six per cent of their capital value. In the case of "any

[1] *A Treatise on Taxes and Contributions*, by W. Petty, London, 1667, pp. 61-62.

[2] Petty, Verhum Sapienti; or … the Method of raising Taxes in the most equal manner, p. 17. (Appended to his Political Anatomy of Ireland, edition of 1691.)

[3] William III., chap. 1.

person exercising any public office or employment of profit" where there was no capital value the tax was imposed directly on the salary.[1] Moreover, the difficulty of assessing personalty and the impossibility of reaching intangible property were now so apparent that whereas according to the intent of the law the chief revenue was to come from personal property, and only the residue from realty, in practice the tax became almost exclusively a land tax, and was first so called in 1697. The "annual land tax" of England was thus intended to be a general property tax and for a long time continued to be so legally.[2]

The complaints as to the escape of personal property were heard almost from the beginning. Thus in 1694 Briscoe tells us:

> "And here I might take notice how the monied men are enrich'd by the ruine of the poor and industrious traders, how gentlemen (whose estates are in land) are pressed with taxes, while the monied men are in a manner tax-free; the landed man pajang more tax to their Majesties out of an estate of £100 per annum or higher, than the monied men do for £10,000 in money."[3]

In the eighteenth century this had become a commonplace. A popular pamphleteer expresses himself as follows:

> "This is a grievous and unequal tax. In all the remote pans of this country, the tax never was levied according to the value of their estates nor ever can be…. Monied men are another vast body who … contribute little or nothing to this tax. Their stock in trade can never be known and is always assessed but a trifle. Money lent on mortgages never is taxed and stock in the funds hath the publick faith to exempt it so that it never can be taxed. With all these advantages the monied men, though they hold the greatest properties in the state, pay no proportion to the support of that govern-

[1] For a full explanation of the law the provisions of which are frequently misunderstood, see Seligman, The Income Tax, 1911, pp. 48-49.

[2] Adam Smith, *Wealth of Nations*, book v., chap. ii. : "By what is called the land tax, it was intended that stock should be taxed in the same proportion as land." (Thorold Rogers' edition, ii., p. 553.)

[3] *A Discourse on the Late Funds of the Million-Act*, etc., by J. B(riscoe), 1694, p. 13.

ment from whence they have equal protection with those who are charged at the utmost."[1]

Walpole at about the same time stated that "no man contributes the least share to this tax, but he that is possessed of a landed estate."[2] Perhaps the most severe arraignment of the justice of the tax is made, toward the middle of the century, by a well-known publicist, Decker, from whose catalogue of indictments we select the following:

"Thirdly, It tends to corrupt the manners of the people, consequently to make them tumultuous and less governable.

"For being to pay in proportion to what they earn, spend, or possess, the just value whereof is impossible to be known but by themselves, and to force them to a declaration, an oath is always imposed, which makes a struggle between interest and conscience; an extreme wise law, whereby an honest man is put on a worse footing than a perjured knave: he that forswears himself pays less than his due and saves his money; but he that is conscientious pays to the full; which latter suspecting others to evade, is piqued at paying more than his neighbors, and wonders why a false oath should not fit as easy on him as on so many others; whereby the most solemn pledge of truth among men becomes frequently violated, is despised, disregarded, and interest rides triumphant over conscience; which latter being to men as a dike to keep out the torrent of vice, if once a thorough breach is made, a deluge of iniquity ensues, whereby all good principles are drowned; and the more vicious men grow, the readier they are to oppose authority."[3]

So unequal and so insignificant did the old general property tax (now universally known as the land tax) become that in 1798 permission was given to the landowners to buy themselves free of the tax by the payment of a capital sum. In other words, the land tax became a redeemable rent-charge. The provision taxing personal property continued to exist on the statute book until 1833, and the clause tax-

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[1] *A Letter to a Freeholder on the Late Reduction of the Land Tax to one Shilling on the Pound,* By a Member of the House of Commons, London, 1732, pp. 44, 48, 26.

[2] Dowell, op. cit., vol. ii., p. 99.

[3] Matthew Decker, *An Esssay on the Causes and Decline of the Foreign Trade*, Edinburgh, 1756, pp. 19-20.

ing public offices and positions of profit was not finally repealed until 1867. The year before its repeal it yielded the sum of 823![1] Such was the ludicrous result of the attempt to maintain mediaeval customs. The general property tax, which had started out as a land tax, reverted in name as well as in fact to its earliest form.

In Scotland the history was the same, although because of the later industrial development of the country the old system survived almost to our day.[2] The chief direct tax, known as the *cess*, was originally a general property tax. In the middle ages one of the functions of the Great Chamberlain was to inquire whether the public burdens were fairly "distributed to rich and poor according to their faculties."[3] A fixed proportion of the *cess* was allotted to each burgh and it was then paid partly out of "the common good,"[4] partly out of real estate, while the remainder, if any, was assessed on the personal property and income of the taxpayers. In 1597 an order declared more precisely that the officers are to "stent" each person "according to the avail and quantity of his rent, living, goods and gear that he has within burgh."[5] In the course of time, however, personalty slipped out of the assessment list. In Dumfries by the end of the seventeenth century the records tell us that "now by the decay of trade the *cess* is like to fall on the lands and houses." In Kintore the *cess* was "paid of the land rent."

In the counties the *cess* or land tax, as it was now sometimes called, was converted into a redeemable rent-charge in 1798 and 1802, as in England. In the boroughs, however, the old system continued, each borough levying the general property tax in its own way, with suitable variations. In Banff, for instance, in the nineteenth century, the tax was levied, one-half on real estate; one-quarter on trade

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[1] *Report of the Commissioners of Inland Revenue,* 1867.

[2] Cf. for a sketch of the Scotch system the *Report of the Poor Law Commissioners on Local Taxation*, 1843, and the more recent work of Stanley H. Turner, *History of Local Taxation in Scotland*. Edinburgh, 1908.

[3] "Si equaliter ponantur super divitibus et pauperibus juxta eorum facultates." Turner, op. cit., p. 158.

[4] The "common good" included the public lands for grazing as well as feu duties on those parts loaned in perpetuity and river and loch fishings and also grain mills and occasionally a walk-mill and the like. Turner, op. cit., p. 128.

[5] Turner, op. cit., p. 159.

and merchandise, according to the amount of purchases by each trader; one-eighth on the incorporated trades; and one-eighth on the other inhabitants, according to the discretion of the stent-master. In Cullen the rate was imposed on land and on trade each being rated "according to his understood ability to pay."[1] So burdensome and vexatious were the remains of the property tax felt to be that the Commission of 1835 recommended the entire abolition of the trade-stent, as it was called. It was, however, not until 1896 that the whole system of borough contribution to the *cess* was abolished and with it all attempts to raise any part of the tax from personal property.[2] That was the end of the state general property tax in Scotland.

In other countries the history of the property tax is identical. In France the *taille* was of two kinds; the *taille reelle,* which was levied only on lands in the pays d'etat; and the *taille personnelle*, nominally a general property tax levied in the pays d' election which constituted the greater portion of France. In reality the *taille personnelle* was assessed only on the families or households of the non-nobles (*roturiers*), and it became practically a land tax like the *taille reelle*; for the wealthy owners of personalty soon acquired the same privileges as the nobility. Vauban tells us that the *taille* as a tax on movables was assessed only on the poorest classes.[3] Sully, indeed, endeavored in 1660 to restore the principles of the general property tax and to assess personalty as well as realty.[4] But he failed ignobly; for, at the close of the seventeenth century, the great work of Boisguillebert is full of bitter complaint and lamentation.[5] And when the attempt was made in the eighteenth century to supplement the *taille* by the *dixiemes* and *vingtiemes*, like the tenths or fifteenths of old in England,

[1] Ibid, pp. 164, 165, 183.

[2] Ibid., p. 167.

[3] "En résume la taille était un impôt territorial qui l'atteignait que les propriétaires les plus pauvres du royaume, et une taxe mobilière qui port ait exquisément sur los classes les mains riches de la société." Dîme royale, p. 32 of Daire's edition.

[4] Sully ordered the officials to assess contributors "a raison de leurs faculté, quelque part qu'elles soient, meubles ou immeubles, héritages nobles ou roturiers, trafic et Industrie." Cf. Clamageran, Histoire de l'impôt, ii., p. 359.

[5] "Il n'y a pas le tiers de la France qui y contribue, n'y ayant que les plus faibles, et les plus misérables; en sorte qu'elles les ruinent absolument." *Le détail de la France*, chap. iii.

the new tax again soon became virtually a land tax.[1] The development was inevitable, and it resulted during the Revolution in the total abolition of the general property taxes.

In Germany, the mediaeval assessment lists to be filled out by the taxpayer bear a striking resemblance to those still used in some of the American commonwealths.[2] But there, as here, it became continually more difficult to reach personal property. In Prussia (Brandenburg) this was true already at an early period.[3] In Bavaria as well as in Austria the nobility and the richer commercial class succeeded at the end of the sixteenth century in shoving the main burdens on the shoulders of the rural population.[4] And in the other German states the equal property tax remained so only in name.[5]

In the Netherlands, the general property tax or two hundreth seemed in the seventeenth century to possess some advantages in English eyes. We are told by a pamphleteer that

> "The two hundredth part is assessed upon the whole bulke of a mans substance so that whoever is worth two hundred shillings or in pounds payes in one to the treasury, for foure hundred and so proportionably: but some may say, how can the magistrate make a true estimate of every mans private fortunes? Since none easily betray their opulence or indigence; whence may be infer'd, that the magistrate often declines the way of equity, seeing it cannot be but that some will passe for poorer, others for richer than indeed they are. This difficulty is prevented by a prudent temper and moderation. … Most men being ambitious and having the epute of opu-

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[1] "Dans la pratique, l'élément foncier prédominait presque exclusivement." Stourm, *Les finances de l'ancien régime et de la révolution*, i., p. 240. See also Necker, De l'administration des finances de la France, i., p. 159. It must be noted, however, that these taxes were calculated on the basis of income, rather than of selling value. For details, see Seligman, *The Income Tax*, 1911, pp. 51-53.

[2] For a typical list of 1531, see Bielfeld, *Geschichte des magdeburgischen Steuerwesens von der Reformationszeif*, pp. 19-23.

[3] Schmoller, "Die Epochen der preussischen Finanzpolitik," in his *Jahrbuch*, i., pp. 42, 49. Cf. his "Studien über die wirtschaftliche Politik Friedrichs des Grossen," in the Jahrbuch, viii., p. 38, for Brandenburg; viii., p. 1011, X., p. 330, and x., p. 350, for Magdeburg. Cf. also F. J. Neumann, *Die persönlichen Steuern vom Einkommen*, 1896, p. 232.

[4] Hoffmann, *Geschichte der direkten Steuern in Baiern*, p. 70.

[5] Wagner, *Finanzwissenschaft*, iii. (1st edition), pp. 62, 77, 80.

lent, many from whom the magistrate exacts too much, chuse rather to pay then proclaime the slendernesse of their fortunes. So that vice itselfe supports vertue and reall profit is reaped from wealth imaginery."[1]

Half a century later, however, the testimony of writers on the spot shows that the general property tax in Holland worked just as badly as elsewhere. We hear that:

"Finally, in an extreme necessity of money, there may be impos'd a general tax on all the moveable and immoveable estates of the inhabitants. I say in an unusual great necessity, because by these taxes there would fall a greater hardship upon the common inhabitants than could fall by any other expedient of this nature. And seeing the assessors are wholly ignorant of mens personal estates or what the inhabitants do owe, or is owing to them; and if they did know the value of them yet could they not tax them so equally as may be done in the case of immoveable goods: We may therefore easily see, what by favour and hatred, and by ignorance of the assessors, that there must be an intolerable inequality in bearing this tax. Those that would honestly declare their estates might lighten the tax; but the fraudulent will unavoidably make it heavier."[2]

In Italy the development of the property tax can be clearly studied in Florentine history. The *estimo*, at first assessed with comparative equality, soon became honeycombed with abuses. Personalty slipped out of the lists, the rich bankers entirely escaped, and the whole load of taxation fell with crushing force on the small owners, *populo minuto*. Hundreds were completely ruined and compelled to seek refuge in exile.[3] The discontent became so loud that after threats of

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[1] *The City Alarum or the Weeke of our Miscarriages, etc., whereunto is annexed a treatise of the Excize*, London, 1645, pp. 29.

[2] *The True Interest and Political Maxims of the Republick of Holland and West Friesland*. By John DeWitt, and other Great Men in Holland, London, 1702, pp. 109-110.

[3] Cf. Leon Say, *Les solutions démocratiques de la question des impôts,* i., p. 209 et seq., especially pp. 222, 229. He gives no references. For a full history, see Baer, "*Il Catasto Fiorentino ncl secolo xv*.," *Nuova Antologia,* vol. 17 (1871) and the book of Canestrini quoted in the next note but one.

revolution and disorder the *estimo* was finally supplanted in 1427 by the new tax, *catasto*, to be levied on the personalty of traders and bankers as well as on realty. Machiavelli gives us an interesting account of the opposition of the nobles, who were at the same time great financiers.[1] But the new general property tax went the way of its predecessors. When we read of the subterfuges and evasions, of the strenuous efforts on the part of the state to compel the listing of personalty and of the dismal failure of the attempts, we seem to be reading the present-day reports of American commonwealth assessors or comptrollers. Their experience was precisely the same as ours. In 1431 only fifty-two persons paid the tax on trade capital, although the amount of such capital must have been immense. And in 1495 the tax was made in name, what it had long been in fact,[2]—a tax on immovables only. Personalty, as such, was henceforth legally exempt. The general property tax had again become a land tax. Throughout Europe the local property tax also has become a tax on real estate. In England the whole system of local taxation is based on the poor rate, according to the statute of 1601 which mentioned as liable to the tax not only occupiers of lands, houses, etc., but every inhabitant, parson and vicar. The tax was a general property tax levied according to the ability of the individual, *ad statum et factidtates*, as the courts put it. At first land was assessed, as everywhere else at the beginning, simply according to the number of acres; but by the time of William III., rental value was substituted for mere quantity as the test of ability. Since personal property also was taxable, this was, however, simply a general property tax. Yet from an early period the rule was adopted that all personal property liable must be local, visible and productive of a profit.[3] Thus intangible personalty, tangible personalty kept in the owner's hands, earnings from personal abilities, and profits from moneys invested or lent at interest in another parish were exempt as being either unproductive, invisible, or not

[1] *History of Florence*, iv., p. 14 (vol. i., p. 181 of Detmold's translation).

[2] *Canestrini, La Scienza e l'Arte di Stato. L'Imposta sulla Richezza Mobile ed Immobile* (1867), i., pp. 108, 115, 321, etc.

[3] In 1633 it was decided that "the assessments are to be according to the visible estates, real and personal, of the inhabitants." Sir Anthony Earby's Case, 2 Bulstrode, 354.

possessing a local *situs*.[1] The only property not excluded by these conditions was stock in trade; but it was not until the industrial revolution toward the close of the eighteenth century that the matter became of importance. Lord Mansfield in 1775 showed the impolicy of such action;[2] but although the liability of stock in trade was hotly disputed, it was affirmed by Lord Kenyon in 1795.[3] The results were doubly disastrous in the places where it was tried: the early success of the experiment led the justices of the peace to begin that improvident method of poor relief known as the allowance system;[4] and the practice of rating stock in trade, which was confined to the old clothing district in the south and west of England, resulted in the rapid decline of the ancient staple industry and a transfer of the business to Yorkshire, where personalty was not assessed.[5] When the principle was tested in another district in 1839, the courts again upheld the practice.[6] As a consequence, a law was passed which exempted personalty from taxation,[7] but it was powerless to bring the trade back to its old channels. The exempting law was enacted for only a year, but it has been annually renewed ever since.[8] Thus for the last half cen-

[1] *Report of the Poor Law Commissioners on Local Taxation*, 1843, 8vo edition (1844), p. 43 et seq., and especially pp. 34-38. This contains an excellent history of local taxation in Great Britain. A more recent work is Edwin Cannan, *The History of Local Rates in England,* 1896 (2d ed., 1912).

[2] Rex vs. Ringwood, 1 Cowp. 326.

[3] Rex vs. Mast, 1 Bott. 204. For a detailed statement of the case see Appendix A to the Report of the Poor Law Comissioners on Local Taxation, 1843, nos. 35-94. The existence of the general property tax can still be seen in 1791. Cf. Rex vs. White, 4 T. R. 771.

[4] By the *Speenhamland Act* of 1795. See *First Annual Report of the Poor Law Commissioners*, 1835, p. 207.

[5] *Report of the Poor Law Commissioners on Local Taxation*, 1843, 8vo edition, p. 38.

[6] Queen vs. Lumsdaine, 10 Adol. and Ellis, 157.

[7] 3 and 4 Vict., chap. 89, provided that it should not be lawful "to tax any inhabitant in respect of his ability derived from profits of stock in trade or any other property," except "lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods."

[8] By the *Expiring Laws Continuance Act*

tury the local property tax in England has been legally as well as actually a tax on productive real estate alone.[1]

Scotland has had an especially interesting history because of its later industrial development and of the consequent survival of the old system almost to our own day.[2] The local tax in Scotland, as in England, originated with the Poor Act. The earliest law providing for compulsory in lieu of voluntary contributions was the Vagabound Act of 1574, which authorized the elders and deacons in towns and the headsmen of rural parishes "by their good discretion to tax and stent the whole inhabitants of the parish … according to the estimation of heir substance."[3] The "stent-roll" was to be revised yearly according to the "increase or diminution of men's goods and substance." In 1649 a more general act was passed empowering the commissioners, when they found the voluntary contributions inadequate, to stent the parishes according to their ability and wealth. In all these matters the criterion of ability was declared to be the "estates and conditions" or the "goods and substance" of the inhabitants.[4] In 1663 the important change was introduced that one half of the charge was to be assessed on lands and only the other half on the inhabitants according to their means and substance. In 1692 this was made a general rule.[5] For a long time the tax included personal es-

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[1] Thorold Rogers, Local Taxation, especially in English Cities and Towns, p. 16. Cf. also Cannan, op. cit., passim; Noble, Local Taxation, p. 58; Palgrave, Local Taxation in Great Britain, p. 78; Goschen, Reports and Speeches on Local Taxation, p. 50; Phillips, "'Local Taxation in England and Wales," in Probyn's Local Government and Taxation in the United Kingdom, p. 502; Bilinski, Die Gemeindebesteuerung und deren Reform, p. 35 et seq. See also Hedley, Observations on the Incidence of Local Taxation (1884), who opposes the exemption of stock in trade and the attempts to get machinery exempted from ratability. Cf. G. H. Blunden, Local Taxation and Finance, 1895. Some interesting material may also be found in J. J. O'Meara, Municipal Taxation at Home and Abroad, 1894. The best works on the legal aspect of the question are Boyle and Davies, The Principles of Rating practically considered, 1890; Castle, Law and Practice of Rating (1895 and later editions); E. M. Konstam, Rates and Taxes, a practical guide, 1906; VV. C. Ryde, The Law and Practice of Rating, 2d ed., 1904; C. A. Webb, Law and Practice of Rating and Assessment, 1910.

[2] Cf. especially the work of Turner, cited supra, p. 49, note 3.

[3] Ibid., p. 14.

[4] Ibid

[5] Ibid., pp. 21, 34.

tates and even the income of professional classes and artisans.[1] In the various boroughs and parishes the practice was exceedingly diversified, although personal property in most cases slipped out of the assessment. The Act of 1845 granted wide option to the parochial boards. Several alterations were permitted, one of which included an assessment "upon the whole inhabitants according to their means and substance."[2] By 1847 out of 558 parishes that used their rating powers only 71 employed the method of means and substance, the great mass imposing the tax on real estate, one-half on owners and one-half on occupiers. By 1860 out of 752 parishes only 25 used the "means and substance" method. In 1861 the Baxter Act abolished rating on means and substance in all parishes where it had been introduced since 1845. A very few parishes retained the system by right of usage previous to 1845, the last to maintain the custom being Greenock, where it continued to exist according to a curiously progressive scale, until 1880.[3] The system was abolished because it was finally realized by the owners of real estate that the exemption of personalty really increased, rather than diminished, the value of their own real property.[4] Thus came to an end the local general property tax in Scotland. As we have seen above,[5] it was only a few years more before the state general property tax followed suit.

History thus everywhere teaches the same lesson. As soon as the idea of direct taxation has forced itself into recognition, it assumes the practical shape of the land tax. This soon develops into the general property tax which long remains the index of ability to pay. But as soon as the mass of property splits up, the property tax becomes an anachronism. The various kinds of personalty escape, until finally the general property tax completes the cycle of its development and reverts to its original form of the real property tax. The property tax in the United States is simply one instance of this universal tendency; it is not an American invention, but a relic of mediævalism. In substance, although not in name, it has gone through every phase of the

[1] Ibid., p. 38.
[2] Ibid; pp. 44-45.
[3] Ibid., pp. 48-49.
[4] Ibid., p. 52.
[5] *Supra*, p. 50.

development, and any attempt to escape the shocking evils of the present by making it a general property tax in fact as well as in name is foredoomed to failure. The general property tax as the chief source of revenue is impossible in any complicated social organism. Mediæval methods cannot succeed amid modern facts

V. Theory of the General Property Tax

While it is generally confessed that the property tax, as administered in the United States, is a failure, it is sometimes contended that if thoroughly executed it would be a just tax.[1]

The theory of the general property tax designed as the sole or principal source of state and local revenue, as set forth in almost all our state constitutions, is held to be correct in principle. Is this true?

In the first place we must, disabuse ourselves of the idea that property, as such, owes any duty to pay taxes. The state has direct relations not with property, but with persons. It is the individuals who, from the very fact of his existence within the state, is under definite obligations toward the state, of which the very first is to protect and support it. The state, indeed, can exist without the particular individual, but the individual cannot exist without the state. Every civilized community professes to tax the individual according to his ability to pay, which may, indeed be measured by his property or by any other standard. In the last instance, however, it is the individual who really owes this duty.

But is property the true test of ability? In primitive communities it is to a certain extent. Every freeman is a proprietor, and all are supported by the produce of the land. Comparative equality of wealth gives comparative equality of opportunity, and the finer differences in ability to pay are not yet recognized. In the early stages of society property is indeed a rough test of ability.

But a change soon sets in. As society differentiates, classes arise who support themselves not from their property, but from their earnings. Manifestly he who earns a salary cannot be declared entirely devoid of ability to pay, as compared with one who receives the

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[1] "While there is no fairer or better mode of taxation than the ad valorem system properly and justly administered, there is none more oppressive or unjust and unequal when loosely or imperfectly executed." *Report of the Comptroller-General of Georgia*, 1894, p. 5.

same amount as interest on a principal, or as profits on property. Moreover, the productiveness of property becomes a controlling element in calculating the owner's ability. Of two factory owners, one may be running full time and making large profits; the other may be compelled to keep his factory closed, earning nothing. Of two landowners, one may employ improved processes and enjoy a large product; the other, although on equally valuable land, may suffer climatic reverses and produce far less. Of two capitalists, one may invest his property so as to obtain large proceeds; the other may put an equal amount into an enterprise which yields very little. It is plainly incorrect to say that the ability in these cases varies with the property. The test of ability is shifted from property to product, proceeds or earnings.

The truth of this principle is faintly recognized in the legislation of all countries one step removed from the primitive tax system. Its application can be seen in some of the mediæval town taxes, where the earnings of the artisans and tradesmen were taxable, as evidences of ability or faculty, side by side with the property of others. It can be seen also in various attempts of mediæval states to tax the proceeds or rents of land, the salaries of officials and the products of individual exertion. In like manner, it can be seen in the early legislation of the American colonies. Thus the law tax of 1634 in Massachusetts Bay provided for the assessment of each man "according to his estate and with consideration of all other his abilityes whatsoever." The measure of ability, however, was still property, as appears from the provision of 1635 that "all men shall be rated for their whole abilitie, wheresoever it lies." By 1646, the glimmering of the new idea is seen; for the law now provides not only for rating of all "estates, both real and personal," but also for the taxation of "manual persons and artists," who "are to be rated for returns and gains proportionable unto other men for the produce of their estates." In other words, not only property but product was taken into account. In many of the other American colonies, also, the profits of certain classes were taxable like the produce of estates, by what was known as the faculty tax or the assessment on the faculty.[1] We see, therefore, how wide of

[1] For the details of this development see Seligman, *The Income Tax*, 1911, 367 et seq.

the mark is the statement that the system which the Americans instinctively adopted was "the equal taxation of property, the non-taxation of labor."

In the colonies, indeed, these laws mark only the first faint attempts to substitute product for property as the basis of taxation. Later on, the distinction was lost sight of and the attempt abandoned. But in Europe the development continued and the basis of the tax system was changed from property to product. Thus taxes on land, houses, wages, salaries, interest, profits, etc., gradually supplanted the property tax, and formed a more or less complete system based on product. In modern societies, as we have seen, the basis of taxation has very recently again shifted from product to income. The point here to be noticed is that throughout all Europe the mediæval basis of taxation—the mass of property—was abandoned because it no longer corresponded to the demands of justice. The property tax is theoretically unjust because property no longer measures the ability to pay—because property has been replaced by product as an index to faculty.

This is the reason for the failure of the property tax. It has, indeed, been contended by some, as, for instance, by President Walker, that the fatal defect of the property tax consists in its constituting a penalty on savings.[1] This criticism seems to be questionable, for the same objection would attach to any tax based on income just so far as income exceeds expenditures. An income tax on the surplus is equally a tax on savings. There is no difference in this respect between a property tax and this portion of an income tax. The only logical conclusion from this objection to the property tax is a tax on expense. If we wish to avoid taxing savings, we must tax only expenditure. And yet President Walker correctly opposes the expense tax as the most unjust of all. The property tax is unjust, not because it is a penalty on savings, but because property is no longer a measure of ability.

There is not a single scientist of note who upholds the property tax as the sole or chief direct contribution. Some of the German writers on finance do, indeed, advocate a general property tax, but simply as

[1] *Political Science Quarterly*, vol. iii. (18SS), p. 3.

a subordinate supplement to all existing direct taxes,[1] and mainly as an adjunct to the income tax, in order to tax income from property more than professional or individual earnings. These writers, however, overlook the fact that the same result may be attained by making a difference in the rate of the income tax, as in Italy. Above all, the continental countries have been so long exempt from the general property tax that the European writers have given it very little attention, have forgotten its shortcomings and have failed to analyze its inherent defects.

One other argument of somewhat more weight is sometimes advanced in favor of the property tax, viz., that under any other system unproductive property, like jewellery, art collections, unimproved lands, etc., would be exempt. This consideration at its best does not justify a general property tax, but a tax on special kinds of property. Entirely apart from the impolicy of taxing art collections, or the impossibility of discovering jewellery, or the utter insignificance of this kind of property when compared with the total national wealth, the argument is defective. The conversion of capital into unproductive wealth of itself destroys the revenue, which is the only true fund for the payment of taxes. It is undeniable that if the property were productive, and if the tax were levied on the product, the owner would pay a larger sum. But on the other hand, his revenue would be still greater and his annual surplus above the tax would constitute an ever-increasing productive fund. To leave unproductive property free may thus indeed lessen the share of the government, but seems to be nothing more than justice to the individual. His renunciation of revenue diminishes *pro tanto* his tax-paying ability. It is really only because of the belief that the possession of these articles of consumption involves an expenditure for their maintenance, or forms an indirect proof that their owner is able not only to retain these articles of luxury, but also to live in comfort on his income, that we attempt to tax this kind of property. In other words, just as relative expenditures of certain kinds afford a rough criterion of a man's income, because

[1] Cf. Gustav Cohn, Finanzwissenschaft, ñ475: "Neben der Erwerbsbesteuerung bleibt für die Besitzbesteuerung heute nur ein beschrankter Raum übrig." See the English translation, p. 566: "The taxation of earnings as it exists to-day leaves but scant room for taxes on possessions."

his standard of living usually bears a fairly definite relation to his income, so the taxation of special articles of property may really be considered an indirect way of getting at relative revenue. But precisely because it is very rough and indirect, it is in the main unsatisfactory.

The great element of reason in the demand for the taxation of unproductive property is to be found in the assessment of real estate. It is an undoubted fact that real estate is often held for speculative purposes, and that it is the duty of the community not to encourage such speculation by exempting vacant lands from taxation. The owner expects to reap from the future value of the land, whether he sells or keeps it, a sum more than sufficient to recompense him for his outlay and intervening loss of interest and profit. He is prospectively earning an annual revenue from the land, whose present unproductiveness is technical rather than real. It is thus perfectly logical to tax unproductive real estate even though the basis of taxation be product rather than property. It is the estimated, rather than the actual, product that is taxed.

But even granting that there is this justification for a tax on certain forms of unproductive property, it would not strengthen the case for a general property tax. At best it would simply mean that the tax on product should be supplemented by a tax on certain kinds of unproductive property, which are really prospectively productive. No one has ever objected to a real estate tax, whether it be levied on the basis of value or of assumed product. But a real estate tax is not a general property tax; the principle of the real estate tax does not signify that property in general should be made the test of ability to pay. We may, therefore, still assert that if there are any evils arising from the absence of a general property tax, they are slight when compared to the evils inseparable from its existence.

VI. Conclusion

From the preceding survey it is difficult to escape the conclusion that the general property tax as the main source of public revenue is a failure from the triple standpoint of history, theory and practice.

Historically, the property tax was once well-nigh universal. Far from being an original idea which the Americans instinctively adopted, it is found in all early societies whose economic conditions

were similar to those of the American colonies. It was the first crude attempt to attain a semblance of equity, and it at first responded roughly to the demands of democratic justice. In a community mainly agricultural, the property tax was not unsuited to the social conditions. But as soon as commercial and industrial considerations came to the foreground in national or municipal life, the property tax decayed, became a shadow of its former self and, while professing to be a tax on all property, ultimately turned into a tax on real property. The disparity between facts and appearances, between practice and theory, almost everywhere became so evident and engendered such misery, that the property tax was gradually relegated to a subordinate position in the fiscal system, and was at last completely abolished. All attempts to stem the current and to prolong the tax by a more stringent administration had no effect but that of injurious reaction on the morale of the community. America is to-day the only great nation deaf to the warnings of history. But it is fast nearing the stage where it, too, will have to submit to the inevitable.

Theoretically, we have found that the general property tax is deficient in two respects. First, the theory presupposes that there is an ascertainable general property—a definite surplus of assets over liabilities. In primitive social conditions this is true; there is a composite mass of property, because there is no industrial differentiation. But in the modern age property is split up into a hundred elements, so that if we attempt to tax each element separately, it is often impossible to decide from which category deductions are to be made for indebtedness. An individual, for instance, owes more on his book accounts than is due to him. Granting that he therefore pays no tax on his book accounts, shall he be permitted to deduct this surplus of debt from the value of his real estate? This is manifestly inadmissible. And yet unless this is done he is taxed not on his property, but on his surplus of debt—not on his real assets, but on what he owes; not on his ability, but on his liability. The theory of the property tax is not carried out; and it cannot be carried out because the conditions of the theory fail. The general mass of property has disappeared, and with it vanishes the foundation of the general property tax. Secondly, the property tax is faulty, because property is no longer a criterion of faculty or tax-paying capacity. Two equal masses of property may be unequally productive, and hence unequally affect the margin of in-

come from which the public contributions are paid. The standard of ability has been shifted from property to product; the test now is not the extent, but the productivity, of wealth. And since revenue is a better index than wealth, the vast class of earnings derived not from property but from exertion is completely and unjustifiably exempted by the taxation of property alone. The theory of the property tax again fails because the conditions of the theory have disappeared.

Practically, the general property tax as actually administered is beyond all doubt one of the worst taxes known in the civilized world. Because of its attempt to tax intangible as well as tangible things, it sins against the cardinal rules uniformity, of equality and of universality of taxation. It puts a premium on dishonesty and debauches the public conscience; it reduces deception to a system, and makes a science of knavery; it presses hardest on those least able to pay; it imposes double taxation on one man and grants entire immunity to the next. In short, the general property tax is so flagrantly inequitable, that its retention can be explained only through ignorance or inertia. It is the cause of such crying injustice that its alteration or its abolition must become the battle cry of every statesman and reformer.

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Chapter III—The Single Tax

Among the projects for social and tax reform, few have been more earnestly and enthusiastically supported than the single tax. Many persons, however, have only a faint idea of what the project really is; while others have been so influenced by the alluring arguments of its advocates, that they have not troubled themselves to investigate the problem from the standpoint of modern economic science. Let us attempt, in the following pages, to explain the nature of the single tax and to consider critically the arguments that are commonly urged in its favor.

I. What is the Single Tax?

In the first place, the single tax denotes, as its name implies, the only tax, the exclusive tax, the tax on some one class of things. The idea that the wants of the state may be supplied by such a tax is not a new one. During the seventeenth and eighteenth centuries, a band of reformers in England as well as on the continent put forward the idea of a single tax on expense.[1] So many of the privileged classes had succeeded in securing exemption from the various direct taxes, that it was hoped to realize a substantial universality of taxation by taxing everybody on his expenditure; and since it was supposed that this tax could be evaded by no one, it was for a time very popular. Later on in the eighteenth century there was a party in England whose motto was a single tax on houses.[2] Again, at the beginning of the nineteenth century the experience of England with the income tax led a number of writers on the continent to advance the plan of a single tax on incomes.[3] Toward the middle of the century, again, a single stamp tax was advocated in France,[4] and a generation later, the project of a single tax on capital was enthusiastically advocated not by socialists,

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[1] Supra, p. 8.

[2] Cf. Seligman, *The Shifting and Incidence of Taxation*, 3d ed., 1910, pp. 89-95.

[3] For the German advocates of this single tax see Seligman, *The Income Tax*, 1911, pp. 234-23G.

[4] Alexis Wilhelm, *Projet d'impôt unique universel sur la fortune publique*. Paris, 1850.

but by conservative reformers.[1] The single tax proclaimed by Henry George is thus simply the last of many similar schemes that have been propounded; and it is not improbable that after it has disappeared economists of the future will be occupied in dealing with yet another form of single tax.

The present scheme is a single tax on land values,—that is, a tax on the value of the bare land irrespective of the the buildings or other improvement in or on the land. Curiously enough the taxation of land has been supported by two lines of argument which are fundamentally opposed. Thus about a generation ago Mr. Isaac Sherman, an eminent citizen of the city of New York, proposed a plan by which all state and local taxes at least were to be levied on real estate. Mr. Sherman and his followers confessed that taxes ought to be borne by the whole community. They favored the taxation of land on the theory that the tax would be shifted from the landowner to the consumer, and would thus be diffused throughout the community. As every one is a consumer, each would in the end bear his share of the burden. The tax would, moreover, have the additional merits of simplicity and convenience.

Many people to-day declare their adhesion to a tax on land for this reason. But it is remarkable that what constitutes the chief advantage of the tax in the eyes of this party is regarded in precisely the opposite way by the real advocates of the single tax on land values. Mr. Sherman said that the tax on real estate is to be recommended because it falls only nominally on the owner, and is in fact shifted to the consumer. Mr. George said that the tax on land values will stay where it is put, namely, on the landowner, and that it is to be recommended precisely because it will not be shifted to the consumer. The difference between the two theories could not be more fundamental.

As between these two theories, there is a substantial consensus of opinion among economists that Mr. George is correct. From the time of Ricardo, it has been well-nigh universally confessed that a tax on land values, i.e. a tax on economic rent, will fall wholly on the

[1] Especially Menier and his followers. For these see Seligman, *The Income Tax*, 1911, p. 290.

owner.[1] This is precisely the reason why the scheme is advocated by the single-taxers, who desire to tax the landowner out of existence—to take away from the owner of the land all his revenue rights in the land. The essential antagonism between the two schemes, therefore, cannot be emphasized too strongly. The one desires a land tax because it will be borne by the whole community; the other desires a tax on land values because it will be borne not by the whole community, but by a particular class. Yet many persons who really favor the former theory mistakenly give their adhesion to the latter. There are many self-styled single-taxers who simply believe that a land tax is the most convenient of all methods for securing the desired equality of burden. In reality, there is no kinship between them and the single-taxers proper. Mr. George warns us not to confuse a tax on land with a tax on land value.

Another point, which needs especial emphasis is the distinction to be observed between the single tax and a tax on land values. The single tax with which we have to deal is indeed a tax on land values, but a tax on land values is not necessarily a single tax. The essential feature of the single tax is the singleness of the tax—the demand for the abolition of all other taxes and the substitution of a tax on land values. This is something quite different from the demand for a tax on land values as a supplement to other taxes. The addition in recent years of a tax on land values to the tax systems of various countries must not be interpreted to be an acceptance of the single-tax philosophy. The more modern advocates of the "single tax limited," i.e. a local tax on land values plus a state tax on corporations, plus perhaps a national income tax are really not single-taxers at all. The distinction between the single tax and a tax on land values is of fundamental importance.

II. The General Theory

The general economic theory on which the demand for the single tax is based may be summed up in a few words. Land is the creation of God; it is not the result of any man's labor; no one, therefore, has a right to own land. Increase in the value of land is due mainly to the

[1] See Seligman, *The Shifting and Incidence of Taxation*, 3d ed., 1910, pp. 2S1-287.

growth of the community; like the land itself, it is not the result of any individual effort; it is an unearned increment which properly belongs to society. Moreover, private property in land is undoubtedly the cause of all social evils. It therefore becomes the duty of the government to take what rightfully belongs to the whole community. Every one may still retain the result of his own labor; but the value of the bare land, the economic rent, must be taken for the state. In this way, and in this way alone, can the social problem be solved. The consequences are epitomized as follows in the platform of the Single Tax League: "It would solve the labor problem, do away with involuntary poverty, raise wages in all occupations to the full earnings of labor, make over-production impossible until all human wants are satisfied, render laborsaving inventions a blessing to all, and cause such an enormous production and such an equitable distribution of wealth as would give to all comfort, leisure, and participation in the advantages of an advancing civilization."

This is an inviting prospect. It is not so much a method of tax reform, as a panacea for human ills, that is here set forth. It would be interesting to discuss this fine fabric of the ideal. But we must be more modest and confine our attention to the scheme primarily as a practical method of tax reform.

In order to attain a basis for this discussion, it is necessary to allude to the two fundamental doctrines on which the plan is founded. The first is the underlying theory of private property; the second is the theory of the relation of the individual to the public purse.

In the first place, the single-tax theory of property is the labor theory—the theory that individual human labor constitutes the only clear title to property. It would be interesting, were there space, to trace the genesis of this doctrine. The Romans, as is well known, had an entirely different theory—the occupation theory, based on the right of the first occupant. Against this rather brutal doctrine, which in the early middle ages paved the way for intolerable abuses, the philosophers advanced the labor theory, hoping thereby to bring about a reform in actual institutions. The labor theory went hand in hand with the doctrine of natural rights, which was the result of an earnest attempt to abolish the abuses of the ancien regime, and which came to a climax in the eighteenth century. Modern jurisprudence and modern political philosophy, however, have incontestably

proved the mistake underlying this assumption of natural law or natural rights. They have shown that natural law is simply the idea of particular thinkers of a particular age of what ought to be law. These particular thinkers, indeed, often influence the social consciousness, as they in turn are influenced by it, so that natural law may be called law in the making. But at any given time it represents simply an ideal. Whether that ideal will approve itself to society depends on a variety of circumstances, but chiefly on the question whether society is prepared for the change. Just as the modern theory of jurisprudence is sociological in character, so also the modern theory of property may be called the social utility theory.[1]

The social utility theory says that just as all law, all order and all justice are the direct outgrowths of social causes, and just as private ethics is nothing but the consequence of social ethics, so private property is to be justified simply by the fact that it is the last stage of a slow and painful social evolution. At the outset, property, and especially property in land, was largely owned in common. It was only through the gradual progress of economic and social forces that private property came to be recognized as tending on the whole to further the welfare of the entire community. The social utility theory does not, of course, mean that what has once been must always be. It is not a reactionary doctrine which looks upon all that is as good. It simply maintains that the burden of proof is always upon the party urging the change; and that when the change advocated is a direct reversal of the process of centuries, and a reversion to primitive conditions away from which all history has travelled, the necessity for its absolute proof becomes far stronger. The nationalization of land is a demand which, in order to win general acceptance, must be based on theories independent of the doctrine of natural rights.

Even though we accept the theory of natural rights, we need not therefore accept the single tax. If it is said that the value of land is the work of the community, and that in consequence every one has a natural right to it, how can we logically deny that the value of any

[1] For a good exposition of the insufficiency of the doctrine of natural rights, a discussion of which would be out of place here, the reader is referred to Ritchie, *Natural Rights*, 1895; and, with special reference to the land question, to Huxley's essay on "Natural Rights," in his *Collected Essays*.

so-called product is, at least partly, the work of the community? Mr. George bases his defence of private property in commodities other than land on the labor theory. Yet individual labor, it may be said, has never by itself produced anything in civilized society. Take, for example, the workman fashioning a chair. The wood has not been produced by him; it is the gift of nature. The tools that he uses are the result of the contributions of others; the house in which he works, the clothes he wears, the food he eats (all of which are necessary in civilized society to the making of a chair), are the result of the contributions of the community. His safety from robbery and pillagenay, his very existence—is dependent on the ceaseless cooperation of the society about him. How can it be said, in the face of all this, that his own individual labor wholly creates anything? If it be maintained that he pays for his tools, his clothing and his protection, it may be answered that the landowner also pays for the land. Nothing is wholly the result of unaided individual labor. No one has a right to say: This belongs absolutely and completely to me, because I alone have produced it. Society, from this point of view, holds a mortgage on everything that is produced. The socialists have been in this respect more logical; and that perhaps explains why the movement to which Mr. George gave such an impetus in England and elsewhere is fast changing from one in favor of land nationalization into one for nationalization of all means of production. The socialists, indeed, as well as Mr. George, are in error, because the premises of each are wrong. It is not the labor theory, but the social utility theory, which is the real defence of private property. But if we accept the premises of the single-taxers, we are inevitably impelled to go further than they do. The difference between property in land and property in other things is from the standpoint of individual versus social effort simply one of degree, not of kind.

The other fundamental doctrine of the advocates of the single-tax is the theory of benefit,—the doctrine that a man ought to contribute to public burdens in proportion to the benefits that he receives. The theory is that, since the individual gets a special advantage from the community in the shape of unearned increment, he ought to make some recompense. To this contention, two answers may be made: first, that the benefit theory of taxation is inadequate; and second,

that, even if it were true, it would not support the single tax. Let us take up these in turn.

It is pointed out in another chapter that the payments made by the individual to the government are exceedingly diverse in character.[1] Where the government acts simply as a private individual, in performing certain services for the citizen, the payment is a price. It is a case of *do ut facias*. The government does something; the individual gives something. Again, even after common interests have developed, the individual may ask the government to do some particular thing for him, to confer some privilege upon him. He may wish to get married or to run a cab. For this particular privilege it is perfectly proper that the government should make a charge—known in modern times as a fee or toll. Again, the government may be at considerable expense in laying out a new street, the result of which will be to enhance the value of a particular plot of ground. There is here no reason why the government should not demand that the owner of this plot should defray at all events in part, the cost of this improvement. This is called a special assessment. In all these cases the individual receives an undeniable, special benefit as the result of a special expenditure made, or privilege conferred, by the government. The principle of give and take, therefore, is applicable.

On the other hand, there are certain actions of the government which interest the whole community, and from which the individual receives no benefit, except what accrues to him incidentally as a member of the community. If the government undertakes a war, no one citizen is benefited more than another. If the government spends money for instituting a public school system, for erecting tribunals, or for preserving the public health, it cannot be claimed that any one individual receives a measurable, special benefit; all are equally interested in good government. When payment is made for these general expenditures—and such a payment is called a tax—the proper principle of contribution is no longer that of benefits or of give and take, but of ability, faculty, capacity. Every man must support the government to the full extent, if need be, of his ability to pay. He does not measure the benefits of state action to himself first, because these benefits are quantitatively un-measurable; and secondly, be-

[1] Infra, chap. xiv.

cause such measurement implies a decidedly erroneous conception of the relation of the individual to the modern state.

At one time the doctrine of benefit had a relative justification. Two centuries ago, when the absolute rulers of central Europe loaded down their subjects with grievous burdens and devoted the profits to their own petty pleasures—when in France, for example, the peasant was taxable *à merci et miséricorde* of the nobility—it was natural that a school should arise to protest and to proclaim the principle of benefits. Their argument was that as the state protects everybody, everybody is under a duty to pay taxes; in other words, their plea was for universality of taxation. This was a distinct step in advance. Later on, however, the doctrine was stretched to assert that everybody should pay in proportion to benefits received, with the implication that if the state could not be proved to confer any special benefit on the individual, he should not be held to pay anything.

As thus extended, the theory has been rejected by well-nigh all the thinkers of the last fifty years. It is now generally agreed that we pay taxes not because the state protects us, or because we get any benefits from the state, but simply because the state is a part of us. The duty of supporting and protecting it is born with us. In civilized society the state is as necessary to the individual as the air he breathes; unless he reverts to stateless savagery and anarchy he cannot live beyond its confines. His every action is conditioned by the fact of its existence. He does not choose the state, but is born into it; it is interwoven with the very fibres of his being; nay, in the last resort, he gives to it his very life. To say that he supports the state only because it benefits him, is a narrow and selfish doctrine. We pay taxes not because we get benefits from the state, but because it is as much our duty to support the state as to support ourselves or our family; because, in short, the state is an integral part of us.

The principle of benefit, moreover, would lead us into the greatest absurdities. If we accept it, we must apply it logically; we must not restrict its beneficent workings to the landowner. As has been pointed out in another place,[1] the poor man, according to the theory of benefit, ought to be taxed more than the rich, because he is less

[1] Cf. Seligman, *Progressive Taxation in Theory and Practice*, 2d ed., 1908, pp. 150-157.

able than the rich man to protect himself. It is, however, needless to discuss this point because, as we have seen in a previous chapter, so far as the individual is concerned, ability to pay is not only the ideal basis of taxation, but the goal toward which society is steadily working. It lies instinctively and unconsciously at the bottom of many of our endeavors at reform. When we say that indirect taxes are often unfair to laborers, we mean that they are less able than the wealthier portion of the community to pay the tax. When we say that a corporation with large receipts should pay more than one with small receipts, we do so because we know that its ability to pay is greater. The principle of benefit is, therefore, not the basis of taxation. It is the principle away from which all modern science and progress have been working. It is founded on a false political philosophy, and it can result only in a false political economy.

It may be contended, however, that the doctrine of the single-taxers is really somewhat different, and that what they desire to emphasize is the principle of privilege or opportunity, rather than that of benefit. This, however, does not really help their case. It is undeniable that privilege constitutes an important factor in the tax problem; but correctly interpreted, privilege as we shall see in a subsequent chapter,[1] is simply an element in taxable ability. The lucrative privileges that are conferred on an individual increase his income or his property, and to that extent augment the modern index of his taxpaying ability. There is therefore no real opposition between the two conceptions; but it is obvious that privilege is the minor factor, ability the major. Privilege is one of the elements that constitute ability, not the sole element.

The result of this consideration is that a tax on land values is legitimate because it reaches one of the elements of taxable ability. But the conclusion follows with equal force that the demand for a single tax on land values is inadmissible. This is true for two reasons: in the first place it emphasizes the principle of privilege to the neglect of all the other constituent elements of faculty; it attempts to erect into the superior position a point of inferior importance; it takes a part and makes of it a whole. In the second place, even if the principle of privilege were put into this position of pre-eminence, the single-

[1] Infra, chap. x

taxers err in singling out a particular privilege and basing their system on this, to the exclusion of other scarcely less important privileges. This point will be more fully discussed below, under the head of the justice of the single tax. Thus in a double way the single-taxers have failed to gain the assent of tax scientists and tax reformers. The arguments, which are of unquestioned validity when advanced in favor of the addition of a landvalue tax to existing fiscal systems, lose their force in proportion that the emphasis is laid on the desirability of the single tax.

III. Practical Defects

Let us now leave the discussion of principles and come to the objections that may be urged against the single tax as a practical method of tax reform. To a certain extent indeed, the paths of American fiscal reformers and of the single-taxers are parallel, so that up to a given point it is the advantages rather than the defects of the single-tax movement that might be emphasized. As we have pointed out in a preceding chapter, the general property tax has become a failure in America. Every serious student agrees that the personal property tax as a part of the general property tax must be abolished. What to put in its stead is another question which need not be touched upon here. But the old must always be demolished before the new can be erected. Now so far as the destructive side is concerned, single-taxers and other tax reformers may go hand in hand. So ingrained is the belief of the average American in the virtue of the general property tax that the united efforts of all are necessary to effect a change. And where, as is sometimes the case, the more moderate single-taxers will go further and advocate practicable substitutes for the present-day property tax, there is still more reason for co-operation.[1] In the struggle against the common enemy there is no time for the combatants on the same side to lay stress on differences of opinion. This explains why it is that in several of the American states the single-taxers and other tax reformers are working in unison. But this harmony is, after all, destined to be only temporary. After a time, when the period for real constructive work arrives, the differences are bound to make

[1] Among the most interesting and effective of the modern single-taxers is Mr. Fillebrown of Boston. Cf. especially his A. B. C. of Taxation which have gone through several editions.

themselves felt and the rift will reappear. So that, however greatly we may prize the co-operation of the single-taxers for a time, the emphasis must ultimately again be put on the defects of the scheme as a practical, constructive solution of tax problems. These defects may be summed up under four heads: First, the fiscal defects; second, the political defects; third, the moral defects; and fourth, the economic defects.

1. Fiscal defects

One of the great aims of every sound financial system is to bring about an equilibrium of the budget—that is, to avoid a surplus as well as a deficit. Now, while many taxes may be suddenly lowered, not many of them can be made to give a suddenly increased yield. One of the cardinal principles of taxation, therefore, is elasticity. In order to secure this, two conditions are necessary. In the first place, the source from which the tax is derived must be of such a nature that an increase of the rate will always mean an increase of the yield. There should be in the source of taxation a reserve power which can be drawn upon in case of need. Secondly, the revenue should be secured from a number of objects, so that the shrinkages or deficits temporarily due to the one class may be made good by the increase or surplus revenues of the other class. Among the elastic taxes is the income tax, and it is well known that in English finance one of the chief functions of this income tax is to preserve the equilibrium of the budget. So again, certain taxes on commodities are often utilized for this purpose. The single tax on land values, however, is utterly inelastic; for since, according to the theory of its advocates,*1 the total rental value is to be taken from the landowners, the single tax cannot be increased. Where nothing has been left, nothing more can be taken. In the case of an emergency there would, therefore, be no possibility of increasing the revenues. Even if the total land value were not taken, it would still remain true that a direct tax on the unimproved value of land is far more inelastic than other taxes; for when the supply is constant and the price varies with the conditions of demand, the selling value as well as the rental value is subject to far more fluctuations than in commodities where the supply may be altered at pleasure. Furthermore, as we have seen, a single tax of any kind, whether on lands or on anything else, would be less elastic than

a system of taxes where one may be played off against the other. Lack of elasticity is a serious defect in the single tax.

Another fiscal weakness of the single tax is that it inevitably intensifies the inequalities resulting from unjust assessments. We all know how difficult it is to carry out laws which provide for equal assessments. Under the real estate tax in the United States, for example, the assessors are usually sworn to rate the property at its actual or selling value, and the selling value of a piece of land or of a house is comparatively easy to ascertain; yet it is notorious that in no two counties, nay even in no two adjoining pieces of property, is the standard of assessment the same. Thus the report of the Iowa Revenue Commission of 1893, states that realty in Iowa was assessed at from seventeen to sixty per cent of the true value. It is well known, too, that in Chicago adjacent plots of real estate were until recently assessed at percentages of ridiculously varying degree. Now, it is manifestly not so easy to assess the land values,—that is, the bare value of the land irrespective of all improvements,—as it is to assess the selling value of a piece of real estate. For instance, an acre of agricultural land near a large town may be worth $200; but if used for truck-farming, considerably more than $200 may have been expended on it during the last century or two. Who can tell how much of the $200 present value is the value of the bare land and how much is to be assigned to the labor expended? Under the present method we have at least a definite test—the selling value; under the new method we should have no test at all. There is every likelihood, therefore, that the difficulties of the present situation would be intensified. During the past few years a number of American cities and a few states have initiated the system of differentiating between assessments on land values and on improvements. In every case, however, by improvements is meant in practice not the improvements in the land, but the improvements on the land, and not even all the improvements on the land, but only those consisting of buildings. In the cities this is of course all that is needed; but in the rural districts no effort is made to ascertain land values in the proper sense of the term. Any attempt to do so would at once engender the difficulties referred to above. Moreover, under the present system, inadequate as it is, there is always a chance that the imperfect enforcement of a particular tax law will be offset by the assessment of other taxes, direct or indirect. Under the single tax not

only would there be more difficulty than at present in making the original assessment, but any inequality in the assessment would be seriously intensified by the very fact that it is a single tax.

2. Political Defects

The adoption of the single tax means the total abolition of all custom houses and import duties; it means that there can be no such thing as a system of protection to home industry. Many would, it is true, favor the single tax precisely on this account; but there are some self-styled "single-taxers" who believe that as a matter of national policy there is a justification for import duties. Whatever we may think of the economic justification of import duties, it must be recognized that they may sometimes form an important political weapon. It is clear, however, that leaving the question of protection entirely aside, the adoption of the single tax will make it impossible to utilize import duties for political, fiscal or other purposes.

In the second place, the adoption of the single tax would render it impossible for governments to utilize the taxing power as a political or social engine. For instance, the United States government now imposes a tax on the circulation of state banknotes in order to bring about certain desirable results in the currency situation. Again, the United States government levies a high tax on opium, not for the purpose of revenue, but in order to discourage the consumption of opium; and it also assesses a tax on oleomargarine, primarily in order to ensure the purity of butter. Under the single tax, all such efforts would be impossible. Finally, to mention only one other example, one of the chief methods of dealing with the drink question is through the imposition of high liquor licenses, the fiscal importance of which is only secondary. Under the single tax we should be prevented from attacking the problem in that way. Governments have always made use of the taxing power to regulate and to destroy, as well as to yield a revenue. Were the single tax to be adopted, this power would be eliminated.[1]

Thirdly, the political results of the single tax would be dangerous in another way. So far as there is any truth in the assertion that in a

[1] Mr. George indeed states that he does not object to repressive taxes, because neither a land nor a revenue question is involved. But clearly the tax would then not be a "single" tax.

democracy it involves some risk for a small class to pay the taxes and for a large class to vote them, it is especially applicable to the single tax. Since the "unearned increment" would flow of itself, silently and noiselessly into the treasury, there would be no need of a budget and the sense of responsibility in the citizens would be perceptibly diminished. It is well known that liberty has been intimately bound up with the contest against unjust taxation; the constitutional history of England is to a large extent a history of the struggle of the people to gain control of the treasury; the American Revolution was precipitated by a question of taxation; the French Revolution was brought about primarily by the fiscal abuses of the *ancien regime*. To take away, then, from the vast majority of citizens the sense of their obligation to the government and to divorce their economic interests from those of the state would, especially in a modern democracy, be fraught with danger.

3. Ethical Defects

The advocates of the single tax love to base their arguments on the ground of justice. In this they are certainly wise; for even though all other arguments were in its favor, if the justice of the single tax could be successfully impugned, it would be foredoomed to failure. Let us then ascertain whether it is indeed true that the single tax is an equitable method of taxation.

The two great canons of justice in taxation are universality and uniformity or equality. If anything has been gained by the revolutions of the eighteenth century and by the growing public conscience of the nineteenth and twentieth, it is a recognition of the fact that all owe a duty to support the state, that a system of wholesale exemptions is iniquitous, and that every taxpayer should be treated according to the same standard! Judged by any or all of these tests, can it be seriously maintained that the single tax is an equitable form of taxation.

Toward the close of the eighteenth century, there was a school of French writers, the Physiocrats, who first advocated the plan of a single tax on land—the famous *impôt unique*. It was considerably talked about until Voltaire turned his caustic pen upon them and wrote the celebrated essay *L'homme à quarante écus*—the man of forty crowns—, one of the most effective bits of mordant sarcasm

ever written. Voltaire pictured the position of the French peasant toiling laboriously, amid conditions of unspeakable distress, but succeeding in getting from the soil a product equivalent to forty crowns. The tax-gatherer comes along, finds that the peasant can manage to keep body and soul together on twenty crowns, and takes away the other twenty. Then the peasant meets an old acquaintance, originally poor, who has been left a fortune of 400,000 crowns a year in money and securities. He rolls along the highway in a six-horse chariot, with six lackeys, each with double the peasant's income; his *maitre d'hôtel*, gets 2000 crowns salary and steals 20,000; his mistress costs 80,000 crowns a year. "You pay of course half your income, 200,000 crowns to the state?" asked the peasant. "You are joking, my friend", answered he, "I am not landed proprietor like you. The tax gatherer would be an imbecile to assess me; for everything I have comes ultimately from the land, and somebody has paid the tax already. To make me pay would be intolerable double taxation. Ta-ta, my friend; you just pay your single tax, enjoy in peace your clear income of twenty crowns; serve your country well, and come once in a while to take dinner with my lackey. Yes, yes, the single tax, it is a glorious thing." This little picture, perhaps, did more than all else to nullify the efforts of the Physiocrats.

We shall later discuss the effects of the modern single tax on the farmer, but the principle underlying Voltaire's thought is equally applicable here. On what grounds of morals or justice shall the landowner be singled out for taxation?

We have seen that the theory of natural rights is not adequate; we have learned that the principle of opportunity does not correctly portray the relations of the individual to the state. Even if the theory of unearned increment were true, it would not by any means justify the single tax on land values. In the first place, land values do not always or necessarily increase; and, secondly, there are a great many other values which increase mainly by the operation of forces which the owner of the property neither creates nor controls.

Land values do not always or necessarily increase. Thus, in the testimony given before the Rapid Transit Commission in the city of New York in March, 1895, one of the witnesses spoke of several long avenues being lined with the graves of property owners. What did he mean? Simply that ten, or twenty, or thirty years before, cer-

tain individuals had invested in the land, in hope of a rise in value, just as people invest in bonds or stocks or other securities. Instead of values rising, however, they remained stationary or even decreased; while, in the meantime, the accumulated taxes and assessments upon this nonproductive property completely ruined many of the investors. It is indeed true that in most growing cities land values in certain localities will increase; but it is equally true that there are always sections in such cities where, for obvious reasons, land values decrease. These facts are familiar to all observers in large cities. Moreover, in some European countries the rental value of the land, as a whole, is less to-day than it was a few decades ago, owing to transatlantic competition. The tax on land value would there yield only a precarious revenue.

More important still is the fact that even though land values often increase, similar increase in value is not by any means confined to land. Let us ask anyone whose mind is not befogged by the mist of erroneous enthusiasms: Who are the rich men of the world to-day? How has by far the greater part of our huge individual fortunes been acquired? Let us study the way in which men have become millionaires, especially in the United States. The usual cause is some fortuitous conjuncture of events, some chance happening due to no one's labor, but to a turn in the wheel of fortune—call it speculation, call it luck, call it by any name we will. How have most of the fortunes in Wall Street been made? Who is responsible for the increased value of investments? Who can say that the successful manager of the ring, the corner, the pool and the trust has worked out his salvation through his own industry? Land speculation is only a part of the sum total. If it be claimed that the fortunate speculator deserves his fortune because of his sagacity and foresight, why deny these attributes, at least in part, to the landowner? It can, of course, not be denied that wealth has been acquired by thrift and industry; but it remains true that most of the very large fortunes that strike the common observer are due to these incalculable turns in the wheel of fortune, and that the so-called unearned increment of land values forms only a portion of these total gains.

Value is a social, not an individual phenomenon. If social environment gives a value to bare land, the same social environment, by increasing the demand for other commodities, may at least in part

help to augment their value. It is indeed true that if we contrast land with concrete commodities that can be multiplied at will, the difference seems to be profound. Increased demand may lower, not increase, the price of the latter by reducing cost of production. But what the single-taxers forget is that property consists of, and income is derived from, not only concrete commodities, but services, relations and privileges of all kinds,[1] where increased demand, outstripping any corresponding decrease in the cost per unit of producing a greater supply, is primarily responsible for the increased value. A newspaper in a desert is worth nothing; a newspaper in a town is worth something; a newspaper in a city is worth still more. The newspaper is in part the product of labor, but the greater demand increases the value. A milk-route also is more profitable in a city than in a village. If it be said that land differs from all these in that it is a monopoly the answer is irresistible that if there is any one thing which distinguishes the modern age, it is the development of economic monopolies of all kinds. So important, indeed, have these become that modern economic theory has been compelled to supplement the old doctrine of value which was based on the assumption of free competition by a newer and more comprehensive theory, especially applicable to all these modern forms of monopoly price. Many of these monopoly profits cannot be reached by a tax on land values.

On what possible theory of justice, then, shall we tax the man who has invested $100,000 in land which the next year appreciates fifty per cent; and, on the other hand, exempt the man who has invested $100,000 in the stock of the Sugar Trust, which the next year may also enhance fifty per cent? Why should the earnings invested in land be taxed and the earnings invested in any corporate security be wholly untaxed?

It might, indeed, be claimed that a railway stockholder will be affected by a tax on the land owned by the corporation: but it is difficult to see how a railway bondholder can be reached by any tax on land values except in so far as the ultimate security for his debt may be affected. As the bonded indebtedness of the railways to-day far exceeds their capital stock, it appears that, even in the case of these

[1] Seligman, *Principles of Economics*, 5th ed. (1912), §§84, 113.

industries whose increasing values are largely due to the influence of the community, the majority of investors would scarcely be touched. In the great mass of industries, of which the Sugar Trust is an example, where the land owned by the corporation is of exceedingly small consequence as compared with its other assets, it is plain that a tax on land values would not reach even the stockholders or the owners proper. Almost every industry, moreover, is dependent for its increasing profits upon the development of the community, that is, upon the increasing demand for the product. Land rises in value because there are more people who want to occupy that land; the earnings of a city newspaper increase chiefly because there are more people who want news. In each case the increased returns are due primarily to social causes; and while a larger newspaper indeed costs more to produce, while more land does not, yet so far as actual profits are concerned, the distinction between them, for all practical purposes, is one only of degree, not of kind. To confiscate the capital invested in land with the chance of the land either falling or rising in value, while exempting absolutely the capital invested in corporate or industrial securities, is but a travesty of justice. It will be impossible to convince the common people that so; called unearned increments are confined to land. As a matter of fact the "unearned increment" of land is only one instance of a far larger class.

So far as a man receives special opportunities from the community, which undoubtedly increase his ability to pay, they should be taken into account in framing any scheme of taxation. And since the rapid growth of modern towns brings into strong relief the appreciation of site values which are due primarily to the growth of the community itself, it is not only justifiable but eminently desirable that a part—and a large part—of the revenues should be raised from a tax on land values. But let us not single out one special opportunity, because it strikes the eyes of urban observers, while we neglect all the other opportunities which are equally, or almost equally, the result of social forces. While some kind of a tax on land values is a legitimate part of a tax system, the single tax on land values is unjust; first, because opportunity is not the only element that must be taken into account in framing a tax system; and, secondly, because, even though it were, revenues from land are by no means the only form of

the results of special opportunity. The single tax is unjust because it is exclusive and unequal.

Even though the single tax, however, were theoretically just, it would not follow that it is desirable. Let us, therefore, come to the final part of our inquiry.

4. Economic Defects

These considerations which have often been overlooked, may be discussed from three points of view: first, the economic effect of the single tax on poor communities; second, the economic effect on farmers and the agricultural interests in general; third, the economic effect on rich communities.

In the first place, what would be the effect on poor communities?

In such cases the taxable property of the community consists principally of the often dilapidated farm houses erected on the land; of the tools, implements and beasts of burden used for tilling the land; and of the personal effects and money that belong to the farmers. Even making due allowance for the relative poverty of the community, it may be said that the great mass of their possessions therefore, consists of personalty. In so far as there is any real property at all, it is only to an exceedingly slight extent composed of land values. How then, it may be asked, can taxes be raised in a community like this? How can the roads be maintained, the school houses be kept up, and the other improvements be effected? Since land values are insignificant, a tax imposed on an insignificant basis must be insignificant. In fact it may be said that a total confiscation of the land values would not suffice to defray any considerable part of the necessary expenditures. If we take any of the assessors' reports in the less wealthy and not rapidly growing American states, it will be found that, contrary to the conditions of the rest of the country, the assessed personal property far exceeds in value the total assessed real estate. For instance, in 1890 personalty was to total realty in Montana as 58 to 55 millions of dollars, in Wyoming as 20 to 13 millions, in New Mexico as 28 to 15 millions. Compare these figures with the older sections, as New York or Pennsylvania, where the proportion was as 382 to

3,404 millions and 618 to 2,042 millions respectively.[1] In 1904, the date of the last available statistics, the proportions were about the same. Taxable personalty was to realty in Montana as 107 to 95 millions, in Wyoming as 28 to 18 millions, in New Mexico as 26 to 16 millions; but in New York as 686 to 7,051 millions and in Pennsylvania as 200 to 3,476 millions. The estimated true values were as follows: Montana, as 418 to 328 millions; Wyoming, as 197 to 133 millions; New Mexico, as 177 to 154 millions; New York as 5,617 to 9,151 millions; Pennsylvania, as 4,882 to 6,593 millions. If we are to abolish not only the tax on personalty, but all that part of the tax on realty which is not drawn from land values,[2] it can easily be seen how difficult it would be to carry on government in these sections.

What is true of poor communities as a whole applies also to the poorer sections of a rich community constituted largely or almost entirely of an agricultural population which is not rapidly increasing in numbers or wealth. The single-taxers themselves claim that land values amount to practically nothing in the farming districts. We shall see below the fallacy in this general contention; but so far as the community is a poor one there is undoubted truth in the statement that land values are trivial. In the testimony taken before a recent tax commission of Massachusetts, one of the single-taxers who was testifying as to the situation in certain rural townships was asked the question: How will it be possible for this poor town, in which there is very little land value, to raise its taxes? The witness was compelled to reply that it would be impossible for the community to do so, and he suggested that the expenses of the poor communities should be defrayed in large part from the revenues of the rich communities.[3]

This proposal is not easy of accomplishment; for with the American theories of local government, it would be difficult to induce certain sections in the community to assume the burdens of other sections. We are all acquainted with the continual bickerings in our state taxation, due to the efforts of the richer counties to escape paying

[1] These figures are taken from the census reports of 1890. See *Abstract of the Eleventh Census*: 1S90 (1894), p. 195.

[2] Census Report: Wealth, Debt and Taxation, 1907.

[3] Cf. Hearings relating to Taxation, 1893, pp. 185-188, and Report of the Joint Special Committee on Taxation, 1S9-1, p. 38.

more than their proportion of the general state taxes; and we have seen the discontent aroused in 1894 by the attempt in the shape of the federal income tax to make certain wealthy sections of the country pay a disproportionate part of the revenue of the national government. Where these efforts have given rise to so much dissatisfaction, it is obviously improbable that the purely local expenses of any community will be defrayed by the efforts of other communities. While it is indeed true that the general state government has—and very properly—in recent years constructed highways and built hospitals, and while even according to our present system school taxes levied according to wealth are sometimes, in part at least, distributed according to population, this tendency, however desirable in itself, has well-defined limits. To a very large extent, at least, it will probably continue to be true that in purely local matters every county and town must, stand on its own feet. But if the single tax is unable to defray even the local expenses of a poor community, not to speak of its share of general state or federal expenses, it is clearly beyond the realm of practical politics. In poor communities, unless rapidly increasing in population and resources, the single tax would be a somewhat precarious reliance.

Let us consider, next, what would be the effects of the single tax on farmers in general. One of the claims of the advocates of the system is that it would relieve the farming population of the burden of taxes now weighing upon them. A careful consideration of the facts shows, however, that this claim is unfounded, and that, on the contrary, the result of the single tax would be to make the farmers pay more than they are paying to-day.

In only a few states is a distinction made in the assessments between land and improvements on land. Let us take, as a typical instance, Ohio county in West Virginia, in which the city of Wheeling is situated. In the auditor's report for 1892, we find the following figures:[1]—

[1] These figures are subject to some qualification because of the inclusion of the value of oil leases in the personal property. But the corrections would probably not suffice to alter the conclusion.

	Ohio County	Entire State	Proportion of Ohio County Per cent
Value of buildings on lots,	$8,554,010	$22,840,511	
Value of buildings on lands,	671,795	14,371,855	
Total value of buildings,	$9,225,805	$37,212,366	25
Value of town lots without buildings,	4,409,152	14,453,321	
Value of land without buildings,	1,678,962	95,771,281	
Total value of all land without buildings,	$6,088,114	$110,224,502	5½
Total value of lands, lots and buildings,	15,313,919	147,685,972	10⅓
Value of personalty,	6,187,710	51,707,093	12
Total assessments,	21,501,629	198,959,920	10½
Population,	41,000	763,000	5¼

In other words, whereas Ohio county then paid ten and one-half per cent of all taxes, and would have paid about the same if real estate alone were taxed, had the single tax been introduced it would have paid only five and one-half per cent of the total taxes, or about one-half of what was actually the case. The corresponding figures for 1908 were 9.9 per cent on total valuation, 9.8 per cent on real estate alone, and 6.8 per cent on land values alone. If the large towns would pay so much less, of course the farming districts would have to pay so much more. The improvements in the towns are worth more than the value of the bare land; while in the country districts the reverse is true.

As another example let us take California. In the comptroller's report for 1893, we find the following figures:—

County	Value of Real Estate (i.e. bare land)	Value of Improvements on Real Estate	Ratio of Land Values to Total Real Estate Per cent
Colusa,	$10,649,318	$1,283,265	89
Merced,	11,222,179	1,037,103	92
Tulare,	17,258,512	2,327,705	88
San Francisco,	193,872,645	82,584,775	70
Total state,	757,980,207	242,388,163	76

We thus see that while in the city of San Francisco improvements equalled thirty per cent of the total real estate value, in some of the country districts improvements were only ten or fifteen per cent of

the total. Taking the state as a whole, land values equalled seventy-six per cent of all real estate, while in San Francisco land values were only seventy per cent of all real estate. To levy the single tax would, therefore, make San Francisco pay less, and some of the country counties far more, than at present.

Again, let us call attention to the report of the Commission on Valuation, made in 1892 to the Pennsylvania Tax Conference, which is probably the most careful attempt made up to that time to distinguish land values from improvements. We find the following figures:—

	Value of Land	Value of Improvements
Philadelphia county,	$357,007,936	$646,244,284
Purely agricultural land in Philadelphia county,	21,610,429	3,813,605
Entire state, all land,	1,881,334,522	1,754,525,949
Entire state, agricultural land,	725,485,439	245,494,072

The proportion of land values to total valuation of all property was in the county of Philadelphia, thirty-six per cent; in the agricultural counties of Sullivan and Greene, eighty-one per cent and seventy-five per cent, respectively; and in the whole state, fifty-two per cent. The Commission concludes: "As a rule, in agricultural counties the land values are the greatest, as would be expected; while in manufacturing counties and those having large cities, the value of the improvements is equal to that of the land, or greater."

Let us now choose some Western states. In the report of the auditor of Colorado for 1894 we find the following figures:—

Value of agricultural and grazing land, irrespective of improvements	$36,907,810
Value of improvements	7,492,022
Value of town and city land, irrespective of improvements	63,080,205
Value of improvements	34,788,941

In other words, in the towns improvements constituted about one-third of the total values; whereas in the country, improvements were only about one-sixth of the total.

As to Montana we find, in the report of the Board of Equalization for 1894, the following figures :—

Value of city and town lots	$29,362,754
Value of improvements on same . . .	15,156,115
Value of land	17,493,680
Value of improvements on same . . .	7,287,887

In Lewis and Clarke county, the home of the largest city in the state, the total value of all land was $11,397,860; that of improvements, 85,269,300. In some of the agricultural or grazing counties, however, the value of the land was far higher in proportion to the improvements; in Meagher county, for example, land was $1,821,385, while improvements were only 8629,054. Most striking of all, in this very same county, in the case of agricultural property, the figures were: land $1,218,474, improvements $266,824; while in the town lots the figures were: bare land $602,911, improvements $362,375. In other words, not only are improvements proportionately less in the rural counties, but even in these rural counties by far the larger proportion of the improvements are found in the little towns, as compared with the farming or grazing land proper.

In the state of Washington, the State Board of Equalization agreed on the following figures for 1893:—

Value of land exclusive of improvements .	$ 87,527,472
Value of improvements	8,970,908
Value of city and town lots	101,889,377
Value of improvements	29,585,930

In Utah, Salt Lake county, the seat of the chief city, assessed, in 1893, real estate, exclusive of improvements, at $31,347,670; improvements, at $9,483,141. In rural counties like Rich county and Cache county, the figures were, in the one case, realty $527,666, improvements $81,445; in the other case, realty $3,771,810, improvements $915,614. Here again, the more densely settled the township, the greater in proportion is the value of the improvements.

To choose more recent figures, the North Dakota state board of equalization fixed the valuation for 1910 as follows:

Land values	$146,654,672
Improvements	9,909,143
Town or city lots	11,066,982
Improvements	16,959,192

Almost equally remarkable figures are reported for Wyoming by the Commissioner of Taxation for 1909–1910:—

Land values	$40,029,518
Improvements	6,338,712
Town lots	12,836,541
Improvements	14,324,496

The same is true in the Eastern states. Thus in New Jersey, in 1911 in certain counties the land values were greater than the value of the improvements:—

County	Value of Land	Value of Improvements
Gloucester	10,474,115	8,574,078
Somerset	9,863,204	7,868,530
Salem	8,870,393	4,062,473

While in the cities the reverse was true.[1]

City	Value of Land	Value of Improvements
Camden	$18,610,635	$ 30,278,706
Newark	$134,764,835	150,144,175

In all these cases—and they might be multiplied—it is seen that the value of the improvements is, on the whole, greater in the urban than in the rural districts.[2] To many this will be a surprise, because they

[1] These figures were fortunately not available when Mr. Shearman stated (*Natural Taxation*, ch. 12) that "in no large city are buildings worth more than 50% of all real estate."

[2] The only official examination of this matter is found in the government report entitled *Taxation in Country and City: An Examination of the Distribution of Property Taxes as shown by Official Statistics of Assessed Valuation*. U. S. Dep'tm't of Agriculture, Division of Statistics, Misc. Series, 1900. This examination covered the District of Columbia and the sixteen states which assessed land values separately. The conclusion was that in a majority of the cases land values were proportionately greater in rural than in urban districts. The figures are printed and commented in

are apt to be blinded by the immediate facts about them. The single-tax advocate generally lives in the city, and sees before him a city lot, each foot of which will sell for hundreds or perhaps thousands of dollars. The town lot, he is apt to exclaim, is worth hundreds of times as much as a piece of land in the agricultural districts. This is perfectly true; but it proves nothing as to the comparative ability of their owners to pay taxes because it overlooks a point of the greatest importance. When we compare urban with agricultural land values, we do not compare foot with foot, but total units with total units. Thus, an acre of land in New York City may be worth a thousand times as much as an acre of land in the country; but it must be remembered that there are many thousand times as many acres in the country as there are acres in New York City. A lot in New York may be worth ten thousand dollars, but a farm of five hundred acres in the country may also be worth ten thousand dollars, exclusive of improvements. The farmer who has paid ten thousand dollars for his farm, and has then proceeded to improve and cultivate it, will not be satisfied, when the assessor taxes him and exempts all the business men and house-owners in the adjoining village, with the statement that the owner of a ten-thousand-dollar lot in New York City pays a hundred times as much per front foot. He will be apt to reply that it makes no difference to him whether the New Yorker's ten thousand dollars is taxed; but that he objects to his own ten thousand dollars being taxed, while his neighbors in the village, who are far richer than he, pay nothing at all. In short, while attention is directed to the fact that land values are undoubtedly less per acre in the country than in the city, it is forgotten that the number of acres in the country is so many times larger than the number of acres in the cities that the total land values in the country will form a substantial part of the whole. Moreover, we have seen that the value of improvements is relatively greater in the towns than in the country.[1] In the country the farm-

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Max West, "City and Country Taxes," in *Political Science Quarterly,* vol. 14 (1899), pp. '486-499.

[1] The single-taxers claim that much of the present value of farmland—due to fencing, draining, etc.—should be classed as improvements. But, as we have pointed out above, it is quite impossible in practice to distinguish improvements on the land from improvements in the land. No attempt is ever made, in assessing land values, to differentiate between the two.

house is built for a few hundreds or thousands of dollars; in the city the fine stone mansion or steel skyscraper is erected at a cost of hundreds of thousands or millions of dollars.

If, therefore, all improvements were to be entirely exempted, the result of a tax on land values would be to make the farmers pay more than they do at present. It is not denied that as between the general property tax as actually administered and a tax on real estate only, the farmer would be benefited by the adoption of the latter. For personal property, as has been elsewhere explained,[1] is assessed chiefly in the agricultural communities.

The remedy, however, consists not in taxing land values alone, but in striving to reach the owners of personal property by some other method than that of the general property tax. But even assuming that this reform cannot be effected, what the farmers would gain by the abolition of the personal property tax, they would lose and more than lose, as we have seen, by the total exemption of all improvements.[2] As long as the United States remains pre-eminently an agricultural community it is not likely that the single tax will become a practical question.[3]

Thirdly, and finally, let us consider the economic effects of the single tax on rich urban communities.

It is contended by the single-taxers, with special reference to the advantages claimed as likely to accrue to the tenement house popula-

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[1] Supra, p. 18.

[2] This conclusion is confirmed by Dr. West, after analyzing the official statistics, in the article cited on the previous page, in which he also states that "the exemption of intangible personalty alone would in a majority of cases relieve urban communities at the expense of rural districts; but that the exemption of both tangible and intangible personalty would benefit the rural districts in three-quarters of the commonwealths."

[3] In a pamphlet entitled *Peoples Power and Public Taxation*, written by A. D. Cridge and W. S. Uren, published by the Fels fund and distributed in 1910 to every voter in Oregon, some remarkable figures are presented as to the effect of the adoption of a land-value tax in lowering farmers' taxes. The figures are worthless because of the naive assumption that the naked land value of tillable lands (those actually in cultivation) is no greater than that of the non-tillable lands. In other words, if a piece of good land is cleared, its naked land value, according to this view, would be no greater than that of an adjoining rocky hillside which is not put under cultivation because it would not be worth while. It is such arguments that are spread broadcast to the general public!

tion of the large cities, that the introduction of their system would bring about the social millennium. It is supposed that if we abolish the tax on improvements, that is, on houses, the vacant lots will be built over as if by magic, rents will fall, the wages of the workmen will rise, and a period of general prosperity will be ushered in.

It may be asked, in the first place, where all this additional capital which is to be invested in houses is coming from. There is no fund floating about in the air which can be brought to earth simply by the imposition of the single tax; the amounts to be laid out in houses must be taken from the capital now invested in some other form of productive enterprise. The amount of loanable capital in the money market at any one time is definitely fixed. Even deposits in banks are already invested, for the most part, in mortgages or in corporate securities; that is, they are already utilized for productive purposes. What is put into new houses will, therefore, simply be so much taken away from other productive employments.

It may be asked next, how are the rents of our tenement-house population so suddenly to fall? The theory that a tax on houses is shifted to the consumer or tenant is true enough, provided that the tax be exclusive—that is, provided that nothing be taxed except houses. If, on the contrary, the house tax is simply a part of a wider system of taxation; if other forms of property are assessed, like investments in land and in personal property; if a corporation tax is imposed to hit the investors in corporate securities; or if we have an income tax which is to reach general profits,—in all these cases the very conditions of the theory according to which a house tax is shifted disappear.[1] To the extent, then, that the house tax is not a single tax, the tendency for it to be shifted will be diminished. The only result, in this direction, of the single tax would be, as a matter of fact, that people would pay their rent to the state instead of to private individuals. We hear a great deal about the unoccupied lands held for speculative purposes in large cities; but it is a fact that south of Fourteenth Street in the city of New York—the home of the major part of the tenement-house population—not seven-tenths of one per cent of the building lots lie idle, and of these some lots are occupied as coal yards, and some adjoining factories or large establishments are used

[1] See *The Shifting and Incidence of Taxation* (3d ed.), pp. 292, 293.

for storage purposes.[1] How then would the single tax relieve the inhabitants of the slums? They will not go to the suburbs where there is an abundance of land, for the same reason that they do not go there now. Rent in the suburbs is at present relatively less than in the slums, which are nevertheless crowded. The average workman plainly prefers to be near his work, and to enjoy the social opportunities of contact with his fellow-workmen, evenings as well as daytime. Above all, without cheap and rapid transit, he cannot afford the expenditure of time and money, necessary for conveying the various members of his family to and from the suburbs. The single tax, however, would not alter conditions of transit. Even assuming, therefore, that there was some magic fund to cover the suburban lots with houses, the rents in the slums would not be affected to any appreciable degree.

Somewhat akin to this is the question of exempting improvements from the local tax on real estate, as a part of the whole scheme of taxation. Even here, however, it is scarcely open to doubt that the claims made by its defenders as a cure for urban congestion of population are greatly exaggerated.[2] In small towns where it is customary for the owner of the land also to own the buildings, it makes indeed, very little difference whether the tax is imposed in a lump sum on both land and buildings, or whether the same amount is paid by the owner on his land with the buildings exempted. The chief difference is to be found in the larger cities, where there is a variation in the proportion of the value of the structure to that of the land. Where the building value is sixty per cent of the total, as in the suburbs of a large city, compared with forty and thirty-five per cent in the crowded districts, it might seem that a remission of the tax on improvements would tend to foster the construction of buildings in the suburbs and thus to reduce rents all around and in this way lessen congestion. But entirely apart from the considerations adduced in the last paragraph as to the relative inelasticity of rents in the slums, it

[1] In 1911 there were south of Fourteenth street in New York 467 vacant lots, with a value of $9,844,910 out of a total number of 24,203 parcels of real estate with an assessed valuation of $1,319,866,666. See the *Report of the Commissioners of Taxes and Assessments* for 1911.

[2] See especially *Taxation of Land Values in American Cities*, *The Next Step in Exterminating Poverty*. By Benjamin C. Marsh, New York, 1911.

may be pointed out that if improvements are wholly exempt the tendency would obviously be for landowners in the crowded slums to erect still higher tenements, which would have to return only the interest on the lessened investment, and which would therefore again increase congestion. In point of fact, suitable transportation facilities, proper housing and building laws, and adequate credit conditions exert a far more important influence on congestion and house rents than does any system of exemption of improvements from taxation.

The exemption of improvements from the local real estate tax has been tried especially in Australasia and in Canada. In Australasia the results are inconclusive, and the real importance of the reform lies not so much in the exemption of improvements as in the substitution of capital values for rental values in the assessment of land.[1] In Canada several cities and provinces have in recent years exempted buildings in whole or in part, from the real estate tax.[2] The advantages of the system, however, have not been those advanced by its advocates. In Winnipeg and Vancouver, for instance, house rents have not fallen, but risen; and speculation at large, far from being abated, has increased enormously. This is, of course, due to the fact, that taxation, even as a whole, is of incomparably less importance than the economic forces which make for the growth of the community. But it is quite idle to speculate upon what the result would have been if the improvements had been taxed; we are told that little difference can be noted between the Canadian towns where improvements are exempt and the American towns across the border, where they are taxed.[3] The true reason why there has been so little opposition to the exemption of improvements in Canada is that the tax rate, in the face of an enormous increase of land values which is naturally found in all rapidly growing communities, has been kept very low. Joined to this is the sentiment against absentee ownership, which is often apt to be strong in any young community, as is evidenced by similar

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[1] For a discussion of this cf. infra, p. 530.

[2] For a full and accurate statement of all the facts of the case see chap, viii. of *Provincial and Local Taxation in Canada*, by S. Vineberg, New York, 1912. This is no. 128 of the Columbia University Series in *History, Economics and Public Law*.

[3] See especially F. C. Wade, *The Single Tax Humbug in Vancouver*. Vancouver, 1912. Wade contends that the other Canadian "non-single-tax" cities have increased still faster than Vancouver.

movements toward the exemption of improvements that are found in the early history of prosperous American states.[1] The situation in Canada is the same as that in Australasia.[2] As soon as the normal conditions of a long established community present themselves, with only a gradual and moderate increase of prosperity, but with the rapidly growing expenditure of a complicated economic life, the real problem will present itself, as it is, for instance, found in the cities of the Eastern United States.

So far as it is true that land in or near cities is held largely for speculative purposes, the difficulty can be met by the enforcement of now existing laws, and by the imposition of a special or a higher tax on unoccupied lands in or near the city. The tax laws of the American states everywhere instruct the officials to assess property at its true or selling value, but it is notorious that unimproved lots are, as a rule, considerably undervalued as compared with those on which improvements have been erected. If, then, we simply enforce the laws as they exist, it will be more difficult for anyone to hold land too long on speculation. If in addition we impose a special tax or a higher tax on unimproved city lots, it will be still more difficult to do so. It is thus evident that the desired end may be accomplished without invoking the aid of the single tax.

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[1] In the territorial days of Iowa, for instance, improvements were exempted for a time in 1840, and a few years later an important discussion took place in which the disadvantages of the unearned increment accruing to non-settlers and especially to absentee speculators were fully set forth, with reflections on the dangers of land monopoly. As the country was built up, however, absentee ownership diminished in its relative importance and the demand for the exemption of improvements disappeared. Cf. J. E. Brindley, *History of Taxation in Iowa,* 1911, i., pp. 23-28, and the interesting editorials from contemporary newspapers, pp. 370-371.

Still further back, namely in the seventeenth century we find a similar movement although for somewhat different reasons. In 1652 Director Stuyvesant of New Amsterdam proposed a tax on unimproved lands only. The bill was drawn and would have passed but for the necessity of a larger revenue from more general sources, due to the war between Holland and England. See O'Callaghan, *Laws and Ordinances of New Netherlands*, 1638-1674, sub anno. Two years later it was proposed that vacant lots in New Amsterdam, Beverwyck and other towns, which had been granted for building purposes, should be sold at an official valuation "in case the present owners and proprietors either neglect or are disinclined to build on aforesaid vacant lots." Ibid., p. 181.

[2] Cf. infra, chap, xvii, sec. vi.

Furthermore, so far as the idea of unearned increment is really applicable to urban real estate, the problem can be solved not only by extending the American system of special assessments which takes for public purposes, and precisely at the time of its creation, the increased value which may properly be said to be due to any positive action on the part of the community; but also by imposing an additional increment-value tax, which will take for the community a part of the increased value caused by the silent growth of the community itself.[1] By enforcing the tax laws as they exist to-day, by extending the law of special assessments to all the cases which are properly referable to the principle of benefits, by levying a special tax on unbuilt city lots and by adding to the existing code of taxation some form of increment-value land taxes, we shall in all probability do as much as is under existing conditions either practicable or equitable.

IV. Conclusions

We have studied the single tax from different points of view. It is undoubtedly true that the single-tax agitation has been of great value. It has in some countries served to direct attention to the abuses of a mediæval land system. It has in the United States helped to disclose the shortcomings of the antiquated general property tax. It has everywhere done yeoman's service in emphasizing the question of unjust privilege. But none the less we have found ourselves unable to accept its demands. We have seen that the single tax is defective fiscally, politically, morally and economically. We have learned, first, that it would be inelastic, and that it would intensify the inequalities resulting from unjust assessments; secondly, that although itself proposed chiefly from social considerations it would prevent the government from utilizing the taxing power for other financial purposes and that it would divorce the interests of the people from those of the government; thirdly, that it would offend against the canons of universality and equality of taxation and that it would seriously exaggerate the difference between profits from land and profits from other sources: and finally, that it would be entirely inadequate in poor communities, that it would generally have an injurious influence on the farmer, and that even in the large urban centres it would exempt large sections of

[1] As to this cf. infra, pp. 491 el seq., 50S et seq.

the population without bringing any substantial relief to the poorer classes.

This is clearly not the place to discuss the wider claim of the single-taxers, that the application of their scheme would introduce the social millennium. Even as a method of tax reform, however, the project is, as we have seen, a mistaken one. Our system of taxation is far from being ideal, or even comparatively just. But whatever be the much needed reform and however desirable may be the addition of a tax on land values to existing revenue systems, it is not probable that either the common people or the student will accept a scheme which is at bottom palpably unjust, which abandons one of the fundamental theories of modern taxation—that of relative ability or faculty—and which seeks to put the burdens of the many on the shoulders of the few.

Chapter IV—Double Taxation

Double taxation in the simplest sense denotes the taxation of the same person or the same thing twice over.[1] This is at once a very old and a very new phenomenon. It is very old so far as it is founded on mere extortion, on the caprice of government and on the desire to raise revenues without any regard to the relative burden on the taxpayer. All government was at first based on might. Although this was the original cause of the double taxation of one man and the exemption of his neighbor, it is in modern times entirely overshadowed by the second cause, which is essentially of recent growth. We live in an age of industrial complexity and differentiation. In former times property rights were simple, and the little capital that existed was largely owned by the producer. To-day not only does the same capitalist invest in different enterprises, not only is the producer often dependent for a part of his capital on sums that belong to others, but the old geographical unity has been dissolved, and there is no necessary connection between the residence of the capitalist and the place where his capital is employed. A system of taxation, therefore, which may have been perfectly just under the older and simpler conditions, may now be entirely inadequate because of the failure of government

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[1] Cf. in general, Francis Walker, *Double Taxation in the United States*, published in the Columbia *University Studies in History, Economics and Public Law*, vol. v., no. 1 (1S9.5). CJ. also T. Sutro, "Double and Multiple Taxation " in *Proceedings of the Second International Tax Conference*, Columbus, 1009, p. 547 and C. Crocker, "Some Judicial Opinions against Double Taxation," *Fourth Conference*, 1011, p. 261. For the earlier American literature on the subject see A. L. Perry, *Extra-territorial Taxation*, Boston, 1875; George G. Crocker, *An Exposition of the Double Taxation of Personal Property in Massachusetts*, Boston, 1885; and the same author's *The Injustice and Inexpediency of Double Taxation*, Boston, 1892; J. C. Ropes, *Double Taxation. Argument before the Joint Committee*, Cambridge, 1884; Josiah P. Quincy, *Double Taxation in Massachusetts*, Boston, 1889; Richard H. Dana, *Double Taxation unjust and inexpedient*, Boston, 1892; and the same author's *Double Taxation in Massachusetts*, Boston (1895).

The continental literature is singularly weak in the discussion of the general problem, although more satisfactory in some detailed questions. For a more recent, treatment of the problem as a whole, see Eheberg, *Doppelbesteuerung in Conrad's Handwörterbuch der Staatswissenschaften,* 3d ed. (1910), vol. iii.; and M. J. Brincour, *Des doubles impositions fiscales au point de vue national el au point de vue international.* Louvain (1910).

to take account of these new complications in property rights. As a matter of fact, almost all existing double taxation in civilized nations is due to inattention to these modern industrial intricacies.

If we approach the subject of double taxation more closely, we are confronted by serious difficulties. There are almost as many kinds of duplicate taxation as there are kinds of taxes or of industrial relations. We find the term used with the utmost looseness, so that what may be in one state a very important species of double taxation may be quite insignificant in another. In the first state, then, the phrase "double taxation" always calls up a particular set of problems; while in the other state the same phrase will denote something entirely different. Let us therefore endeavor to give an analysis of the phenomena which, while not entering into the details of the problem, will explain the principle in all states.

There are two distinct categories of double taxation—that by competing jurisdictions or authorities, and that by the same jurisdiction or authority. The first is essentially geographical in character. It is partly due to the fact that modern wealth is more or less cosmopolitan. A man living in one state and owning property in another may be taxed on the same property by both states, because they compete with each other in claiming jurisdiction over that property. Not only is this true as between foreign countries, but it is equally true, and in fact of far greater importance, as between conflicting authorities in the same country. The separate commonwealths in a federal state, the separate counties in a commonwealth, the separate towns in a county—each and all of them may make conflicting claims on the same individual or on the same piece of property. Double taxation—or it may be triple or quadruple taxation—by competing jurisdictions is thus a product of the modern mobility of capital and labor; and with the growing importance of local taxation, the difficulties are multiplied.

It may happen, however, that a single authority—the same town, county, commonwealth or nation—is confronted by essentially similar difficulties as to property or persons within its jurisdiction. Thus a man buys a piece of land, and borrows part of the purchase price from another man living in the same town. If the town taxes the value of the land, which in this case includes the value of the mortgage, and then taxes the mortgage, the question of double taxation

immediately presents itself. So, again, if a man invests his property in the stock of a corporation doing business in the same place while the state taxes both the investor and the corporation, we are confronted by the same difficulty. In such cases the taxes are imposed by the same authority or jurisdiction. Let us discuss each class in turn.

I. Double Taxation by the Same Authority

The simplest case arises when a person is taxed on his property, income or profits, while an additional tax is imposed on the property, income or profits of the business in which he is a partner. This is such a flagrant case of double taxation that it is not practised by any civilized government. For, clearly, the business income is to that extent the individual income. This case may therefore be neglected as of no practical moment.

The first important instance of double taxation arises when an attempt is made to tax property and also to tax income; or to tax either property or income, and also to levy a business or license tax. On this point there is much misconception. Many consider this to be wrong, because it is double taxation. As a matter of fact, however, if all are put upon the same plane, the simultaneous taxation of property and of income works no injustice. If all the members of the class are treated alike, it makes no difference whether there is one single high tax on property, or a low tax on property and another low tax on the profits of the property. In fact, the government would be perfectly justified in taxing the property, the income of the property and also the expenses or any other attribute of the property. All such duplicate or triplicate taxes are perfectly reasonable so long as they fall equally on all. Taken together, they amount simply to a high rate for a single tax on the property. Double taxation, therefore, is not always wrong; it is unjust only when one taxpayer is assessed twice while another in substantially the same class is assessed but once. It is the inequality of taxation that instinctively shocks us. But if all persons within the class are equally subjected to the burden, there can be no just complaint.

It may be objected that people are not treated alike when they pay different taxes on the same income. Our opinion must depend, however, entirely on the attitude we take toward what is called "differentiation" of taxation. If we maintain that all incomes should be taxed

alike, irrespective of source, the objection would be valid. But modern theory has formulated the demand for a distinction between earned and unearned incomes, or between incomes from labor and incomes from property. Even so conservative a writer as John Stuart Mill was an adherent to this principle, which is at present quite generally admitted. This "differentiation" may be secured in two ways. A lower rate may be levied on labor incomes than on property incomes, as in the present North Carolina income tax, as in the former Virginia income tax, and as in Italy, in Holland and in some of the Australian states. But instead of making a difference in the rates, the same result may be reached by levying a uniform tax on all incomes and an additional tax on property, so that the income from property thus indirectly pays a higher rate. This is the case in Prussia and in some of the Swiss cantons, where the property tax and the income tax are levied on the same property. In other words, property income is put into a different class from labor income. It is taxed twice—once on property and once on income—because the seeming inequality is considered to be really a higher equality. It is double taxation, but it is not unjust double taxation.

In some places the principle of differentiation has not yet been adopted. When the income tax is added to the property tax, the income from property already taxed is exempted, as in Massachusetts and in some of the Swiss cantons. Many difficulties have, however, arisen in the endeavor to distinguish these property incomes. Thus in Massachusetts the question presented itself whether the income from a business could be taxed, if the property invested in the business was already taxed. In a leading case this practice was upheld on the ground that business profits are the result not only of the capital invested, but of the industry and skill of the capitalist.[1] Although this is no doubt true, as a matter of fact the interpretation of the Massachusetts law is unjust because incomes derived solely from land or from other investments pay only once, while incomes derived from business enterprise pay twice, once on the property invested and again on

[1] Wilcox vs. Middlesex, 103 Mass. 544. Cf. the interesting discussion in J. A. Lane, *Address on Taxation with Special Reference to Taxation upon Income derived from Property subject to Taxation*, Boston Executive Business Association, 1891. Cf. also *Report of the Special Commission on Taxation*, Boston, 1891.

the income derived. It is this inequality of the tax which renders the system crude and inequitable. This has been recognized in practice, and the custom has arisen for the assessor to allow six per cent on the capital invested in the business as representing the income from capital, and to levy the income tax only on the surplus profits. In the Swiss cantons similar provision is made by law and applies to incomes from all property, the amount exempted being four to five per cent of the capital. These figures are, indeed, entirely arbitrary, although they represent an interesting attempt to avoid double taxation.[1]

If, however, we accept the principle of differentiation, this attempt is to a certain extent unnecessary. The higher taxation of income from property as compared with income from other sources is theoretically defensible, although the exact amount of increase cannot be fixed *à priori*. It is only when the additional rate exceeds this amount that we can really speak of unjust double taxation. Up to that point it may indeed be double taxation, but it is not necessarily unjust taxation. We may, then, conclude that to tax property and also the income from property is not of itself inequitable, provided that the income from all property is taxed. To single out a special class, as is done in Massachusetts, does indeed involve injustice. But if the tax applies to all property, the simultaneous taxation of property and income is not of itself reprehensible double taxation. Incomes from property should be taxed higher than incomes from labor.

The second important case of double taxation is connected with the question of indebtedness. Shall debts be deducted from assessments for the property tax, or the interest on indebtedness from assessments for the income tax?[2] Is it double taxation to tax the creditor on the debt, and the debtor on the whole property including the debt?

Put in this way the answer is plain. A man must be taxed upon what he has, not upon what he has not. What he owes to another is not really a part of his property. The one great reason why the countries of continental Europe are changing their system from taxation

[1] For some additional considerations, see *infra*, chap, viii, sec. ii.

[2] The fullest study of this case is Heckel, the *Einkommensteuer und die Schuldzinsen*, 1890.

of product to taxation of income, is that under the former method, which disregards the personal position of the individual, no deduction is made for indebtedness; whereas by the income tax such deduction is made. For net income can mean only the surplus above all necessary outlays—including interest on debts—connected with the acquisition of the revenue. Every income tax, whether in Europe or in America, therefore permits interest on indebtedness to be deducted.

What is true of the income tax is equally true, in theory, of the property tax. But the practical limitations to the application of the theory in the case of the latter, and more especially in the tax on personalty, are very considerable. The unfortunate experience of the United States has already been discussed.

There is, however, one special phase of the question which is of widespread interest. In the case of a tax on land or on real estate, what should be done with the amount of the mortgage? The problem of double taxation arises, as in several of the American states, when the borrower or mortgagor is assessed on the full value of his land, and the lender or mortgagee is also taxed on the amount of the mortgage debt. If A, the owner of a $100,000 farm, borrows $50,000 from B, the state thus taxes $150,000, when there is really only $100,000 of property; and so far as B is able to shift his tax on A, the latter pays the taxes for both.[1] On the other hand, if the mortgagor is allowed to deduct the value of the mortgage, and if the mortgage debt is not taxed at all to the mortgagee, the state loses a legitimate revenue. It now taxes A on $50,000 and does not tax B at all, thus getting a revenue from $50,000, when there is really $100,000 of property. In the one case we have double; in the other, we have inadequate taxation.

What is the remedy? Several plans have been tried. According to the first the mortgagor is taxed on the full amount of the property, but the mortgagee is exempt. This method is based on the theory that the tax on the lender will be shifted at any event to the borrower, that as a result of the exemption of mortgages capitalists will lend more readily and at a lower rate, and that the benefits of exemption will

[1] In 156 Pa. 488, the taxing of both land and mortgage was held not to be double taxation.

accordingly be diffused throughout the community.[1] This plan is obviously the simplest and most effective method of avoiding double taxation. Several American states have now adopted this plan, with great satisfaction to all concerned. For under this scheme, in the case mentioned above, the state will still get the revenue on the entire $100,000 worth of property, and the mortgagor will not have to pay the double tax, once to the state and again in the shape of interest to the lender.

A second plan consists in exempting not the lender, but the borrower; not the credit of the mortgagee, but the liability of the mortgagor; that is, to tax the lender on the amount of the mortgage and the borrower on the value of the property minus the mortgage. In working out this scheme, however, several commonwealths, like California and Massachusetts, adopted a slight modification. According to the amended plan, the mortgagor can offset the amount of the mortgage debt. The mortgage, on the other hand, is taxable in the hands of the mortgagee, but it is treated as realty, not as personalty—that is, its *situs* does not follow the domicile of the mortgagee, but it is taxed in the locality where the mortgaged property lies. If the tax is paid by the mortgagor, he may recoup it from the mortgagee. In Massachusetts, indeed, this provision is practically void, because nearly all mortgages contain a clause requiring the mortgagor to pay taxes upon the mortgaged estate, and a further agreement to pay all taxes upon the debt in the event of the repeal of the law. The practical result, therefore, is virtually the same as if mortgages were exempt, and the borrower taxed on the total value of his land.[2] In

[1] See Seligman, *The Shifting and Incidence of Taxation*, 3d ed. (1910), pp. 332-337.

[2] See the *Report of the Special Committee of the Boston Executive Business Association on Taxation*, 1889, p. 31. For an investigation of the question as to how far the rate of interest has been affected, see Thomas Hills, *Address on Taxation*, delivered before the Boston Executive Business Association, 1890, p. 20; and Nathan Matthews, Jr., "Double Taxation of Mortgaged Real Estate," in *Quarterly Journal of Economics*, iv. (1890), p. 339. Cf. also R. H. Dana, *Double Taxation in Massachusetts*. Published under the auspices of the Massachusetts Anti-Double-Taxation League, 1895, pp. 72-86. For earlier discussions of the subject see Benjamin A. Willis, *Remarks on the Bill providing for the Exemption of Mortgages on Real Estate from Taxation*, New York, 1873; John C. Ropes, *Taxation of Mortgaged Real Estate*, Boston, 1881; A. W. Beard, *Taxation of Mortgaged Property. Remarks*

Cahfornia, where the plan was incorporated into the constitution of 1879, all such agreements between mortgagor and mortgagee were void. This continued until 1907 when, after an amendment to the constitution in 1906, a law was passed permitting separate contracts. Legal enactments, however, cannot prevent the operation of economic law. As a matter of fact, the interest rate on mortgages rose as a consequence of the law, and it has even been claimed with some degree of truth that interest rose by a slight amount over and above the tax, to compensate the lender for trouble and risk.[1] By the end of the nineties this was beginning to be recognized, and during the next decade the conviction of the futility of the old scheme became so widespread that in 1910 the constitution was again amended so as to provide for the complete exemption of mortgages. In the meantime, however, the Massachusetts or California system had been introduced in 1903 in Wisconsin, leading there also to practical exemption.[2]

In addition to these methods of attempting to avoid double taxation we find some alternative and halfway schemes. Several states which recognize the inevitable shifting of a tax on mortgages to the

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before the Legislative Committee, n. p. 1881; Henry Winn, *The Exemption of Money Lenders from Taxation: its Effect upon the Interest Rate*, Turners Falls, 1883; and the same author's *Mortgage Exemption and Taxation of Real Estate only*, Boston, 1889.

[1] See C. C. Plehn, "The Taxation of Mortgages in California," in *The Yale Review,* viii. (1899), pp. 31-67. For later studies on the question of the incidence of the tax on mortgages see *Mortgage Taxation and the Bostwick Bills.* Prepared by the New York Tax Reform Association, New York, 1904; *Mortgage Taxation and Interest Rates*, New York, 1906, a study made by the New York Tax Reform Association; T. B. Adams, "Mortgage Taxation in Wisconsin," in the *Quarterly Journal of Economics*, xxii. (1907), pp. 1-27; and 11. A. Campbell, *Mortgage Taxation*, Madison, 1908.

[2] The same system at one time existed in Michigan, Missouri and Oregon. The Missouri constitutional amendment of 1900 was declared by the state court to be opposed to the federal constitution in Russell vs. Croy, 164 Mo. 69, on the ground that corporate mortgages were not treated in the same way as those of individuals. In Oregon the law of 1882 was declared unconstitutional in 1884 for much the same reason, but the defect was removed by an amendment of 1885. In 1893, however, the law was repealed. The Michigan law was also repealed in 1893, and mortgages were again taxable as personal property until 1911 when the mortgage-recording law was enacted.

borrower or, on the other hand, the practical impossibility of the discovery of mortgages by the assessors, are nevertheless not ready to abandon all revenue from this source. A few of these states try to solve the problem by levying a special tax on mortgages, but at such a low rate that there is less inducement to conceal them. A few others attempt to solve the problem by levying a small tax on the mortgage when it is recorded, and thereafter exempting it.[1] The first method involves practical exemption from the beginning, the latter complete exemption after the first year. Thus the tendency may be said to be everywhere in the direction of exemption as the best means of avoiding double taxation.[2]

In the above discussion we have treated primarily of individual indebtedness. The same question often arises in connection with corporate debts, especially in the shape of mortgage bonds. It has usually been overlooked, however, that there is a distinction between individual and corporate property or income. In the case of individuals, to tax both the property and the amount of the mortgage debt is theoretically unsound, because the individual's true taxable property consists in his surplus above indebtedness. The capital stock of a corporation, however, represents, in many cases, only a portion of the property, while the remainder is represented by the bonded indebtedness. In the United States, for example, it is well known that rail-

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[1] As to this see C F. Robinson, "The Mortgage Recording Tax" in the *Political Science Quarterly*, vol. xxv (1910), p. 609.

[2] At present (1912) twenty-eight of the American states and territories still tax both mortgagor and mortgagee; eight (Arizona, California, Colorado, Delaware, Idaho, Louisiana, Utah and Washington) exempt mortgages completely; one (New Hampshire) exempts money loaned at not exceeding five per cent, and secured by note or mortgage on real estate within the state; one (Indiana) exempts mortgaged land to the extent of $700, provided that this does not exceed one-half of the value of the real estate, but the mortgage credit is then assessed to the mortgagee at his residence; four (Connecticut, Massachusetts, New Jersey and Wisconsin) deduct the mortgage from the value of the land, but permit the mortgagor to assume the tax, the mortgage being treated as an interest in the real estate, as explained in the text; four (Iowa, Maryland, Pennsylvania and Rhode Island) tax mortgages at a special low rate; and four (Alabama, Michigan, Minnesota and New York) tax mortgages at a low rate when they are recorded, through the mortgage-recording tax. For a detailed account of the situation in 1908 see Robert Argyll Campbell, *Mortgage Taxation, Comparative Legislation Bulletin* No. 17, Legislative Reference Department, Madison, 1908,

roads are built mainly on the proceeds of mortgage bonds. To exempt the mortgage debt in the case of these corporations would thus be inequitable; for only by taxing both capital stock and mortgage debt can the state reach the true faculty of the corporation. In the case of individuals, indebtedness diminishes the capacity to pay taxes; in the case of corporations, indebtedness often augments that capacity because the so-called debt is in reality an integral and constituent part of the capital.

Strictly speaking, the proper distinction is not between corporate and individual credit, but between production and consumption credit. In the case of individuals, money borrowed for purposes of consumption or to meet pressing emergencies certainly comes under the above rule that indebtedness is to be regarded as a burden. When, however, money is borrowed in order to enlarge the business, the credit takes the place of capital and may enable the borrower to make larger profits. The income of the borrower therefore is really increased by the surplus of the additional net profits, due to the loan, over and above the amount of the interest on the loan. In an income tax this is automatically provided for, since the additional profits figure on the one side, and the interest charge on the other side, of the income account. Where the tax is levied on property, however, no allowance is made. Strictly speaking, only so much of the borrowed money ought to be assessed to the borrower as represents the capitalization of the surplus profits. Practically, however, this is impossible to ascertain, and we are therefore justified in demanding an exemption of debts from the property tax.

On the other hand, in the case of corporations, while debts are sometimes contracted to meet pressing exigencies, and may thus in a way be considered a kind of consumption credit, mortgage bonds at least are almost exclusively issued in order to provide capital. Economically, the corporate capital consists of the bonds and the stock. In England, as is well known, there are even no railroad bonds at all, but simply debenture stock. It is therefore quite fitting that the interest on corporate bonds should not be deductible in case of the income tax, nor the mortgage bonds themselves in case of the property tax. It

is the correct recognition of this fact that has led to the introduction of the tax on corporate loans in many states, American and foreign.[1]

We come now to the third case of double taxation, which in the modern days of corporate industry has assumed much importance,—that of the double taxation of a corporation and of the investor in corporate securities. If we tax the corporation, shall we also tax the individual stockholder or bondholder? The great divergence of practice in America, as well as abroad, will be discussed in another chapter;[2] but the economic theory is simple. If the tax—whether on income or on property—is general, and applies to all classes of corporations and to other non-corporate investments as well, it is manifestly double taxation to assess the security holder as well as the corporation. The tax on the corporation diminishes his income from the corporate security; an additional tax on the security would involve double taxation of the same income or property. But if the tax is a special or exclusive tax instead of being a general tax, the matter is different. In that case the general doctrine of capitalization of taxation will apply.[3] If only one class of corporations is taxed, the purchaser of these corporate securities will escape taxation, because the amount of the tax is discounted in the depreciation of the security. For example, let us suppose that a corporation previously untaxed has been paying five per cent dividends on its stock quoted at par. If a special tax of ten per cent be imposed on these dividends, the stockholders will get only four and a half per cent. But since by the supposition other classes of corporations, or at all events other non-corporate investments, are not taxed, the price of the stock will fall to ninety. People who can get five per cent on their capital will not ordinarily consent to take four and a half per cent. The original holders of the stock will indeed lose, but the new purchasers will not be affected, because the tax is capitalized and leads to a depreciation of the capital value of the stock. A dividend of four and a half dollars on stock costing ninety is as good as one of five dollars on stock

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[1] The great defect in the otherwise admirable study of Heckel, mentioned above, is the failure to distinguish between corporations and natural persons. He is indeed forced to the practical conclusion that corporations must be liable for the tax on mortgage debts, but his arguments are not convincing; cf. p. 182 of his work.

[2] *Infra*, chap, viii, sec. v.

[3] See Seligman, *The Shifting and Incidence of Taxation* (3d ed.), pp. 221-226.

costing a hundred. A tax levied only on corporate profits, or only on some special classes of corporations, does not affect anyone except those who become stockholders before the imposition of the tax. To tax the new purchaser on his security would not in such a case involve unjust double taxation.[1]

There is one other condition under which the simultaneous taxation of the corporation and the security holder is not unjust. In the case of a stockholder, we have seen that if the tax is general it is unjust to tax both the corporation and the stockholder. In the case of a bondholder this would also ordinarily be true when the income tax on the corporation is, for instance, deducted from the interest of the bondholder as well as from the dividends of the stockholder. In some cases, however, it happens that the corporation is willing to assume the tax as a whole, and to count the tax among its fixed charges, declaring the coupons free from tax. In such a case it is really the stockholders who pay; for the interest on the bonds is fixed, and what is not deducted from the interest must be paid out of the surplus earnings which would otherwise ultimately go to the stockholders. The bondholders are not reached at all by such a tax, except in the very indirect way that they may be exposed to an ultimate diminution in the security of their lien. But the tax as such does not strike them at all; their property or income in the corporate bonds goes scot-free. An additional tax upon the bondholder would thus really not involve any injustice to them. Here, as well as in the preceding case, a study of the real incidence of the tax becomes important. What is apparently double taxation may turn out not to be such.

We may, therefore, sum up by saying that in so far as the tax is general, it is manifestly unjust to tax both corporation and security holder; but that when the tax is partial or when the corporation assumes the tax as a whole, the additional taxation of stockholder or of bondholder is not necessarily either double taxation or inequitable taxation.

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[1] This and the following point is not considered at all either by Professor Wagner who is opposed to such double taxation of corporations, "Direkte Steuern" in Scheinberg's Handbuch der Politischen Ökonomie, III. 1, 4th ed., p. 428; or by Professor Schaeffle, who is in favor of such double taxation (*Die Steuern*, vol. ii (l895), p. 24).

There remains the fourth and final form of double taxation by the same jurisdiction, which has given rise to considerable difficulty. This applies especially to corporations. The question here is: Is it permissible to tax the corporation on its property and again on its capital stock?

The answer from the economic standpoint is simple. While the exact relations between capital stock and property are discussed more fully below,[1] it is clear, for the purposes of this argument, that corporate property is at all events one of the elements that contribute to the value of the capital stock. If this be true, to tax the corporation on its property and then to levy an additional tax on its stock, is *pro tanto* duplicate taxation of an unjust character. If other persons are taxed only once on property, corporations should not be taxed again on what is at all events a part of their property.

This concludes the discussion of the important cases of double taxation arising from the actions of the same tax jurisdiction. Equally important are the cases due to the conflicts of jurisdiction between independent taxing authorities. These we now proceed to take up.

II. Double Taxation by Competing Authorities

The problems included under this head are essentially of modern growth. Until very recently they have received little attention, for three reasons. In the first place, the international relations of commerce and industry were comparatively unimportant; and even within the same state business methods and business investments were far more localized and less complicated. Secondly, the stranger in primitive society was originally an enemy. The survival of this idea in the conception that the foreigner, as such, is an especially desirable subject of taxation has only slowly given way to the broader conceptions of the modern age. Thirdly and chiefly, in former times but little attention was given to the question of justice in taxation. Even when the general problem was considered, the details of double taxation were regarded as insignificant. But nowadays the question is forging to the front.

It need not be pointed out that amid the complexities of modern industrial life equality of taxation cannot be attained without a care-

[1] *Infra*, chap, viii, sec. iii.

ful consideration of these problems. To-day a man may live in one state, may own property in a second and may carry on business in a third. He may die in one place and leave all his property in another. He may spend all his income in one town and may derive that income from property or business in another town. He may carry on business in several states, or if he has invested in corporate securities, the corporation may be the creature of another state and may be situated or do business in a third. All these cases may affect foreign states or separate commonwealths of the same federal state, or separate cities or counties of the same commonwealth. The possible entanglements are well-nigh innumerable.[1]

The question thus arises: Where shall a man be taxed? Whatever principle we lay down, it is plain that, if every state or every tax authority followed the same principle, it would be easy to avoid double taxation. The complications arise from the fact that one state follows one principle, and that another state follows an opposite or conflicting principle. Let us discuss the different principles that have actually been employed.

The oldest principle is that of citizenship or political allegiance. Originally only the citizen of the state or the burgess of the town had any obligation to the government under which he lived. But it soon happened that commercial relations developed, until in modern times the actual population of any state or community is by no means limited to citizens. To tax only the citizen and to exempt the stranger, whether the stranger be from another state or only from another city, would plainly be inadmissible. Political allegiance in this sense is nowhere to-day made the basis of taxation. Yet when political allegiance involves a positive rather than a negative attitude, it is still

[1] The question has naturally attracted some attention in federal states. We find little discussion of the problems in French or English books on finance. It is only lately that the matter has been seriously discussed in Germany and Switzerland. See especially Schanz, "Die Ort der Besteuerung," in Finanz Archiv, vol. ix (1892); and G. Antoni, "Die Steuersubjekte im Zusammenhalte mit der Durchführung der Allgemeinheit der Besteuerung," in Finanz Archiv, vol. v (1888), p. 916. A more recent work is J. Fischer, *Die Doppelbesteuerung in Staat und Gemeinde. Fine Untersuchung über die Besteuerung der Bundesverwandten und Ausländer, sowie der Forensen, nach den direkten Staatsund Gemeindesteuergesetzen Deutschlands und der Schweiz*, Berlin, 1909. Cf. also H. Kramer, *Die Einkommen- und Vermögenbesteuerung der Ausländer und Forensen*, Berlin, 1909.

followed, at all events in international relations. While the stranger is not exempted, the citizen living abroad is frequently held responsible to his country. Political fealty cannot be so easily abandoned; political rights involve political duties. Among them is certainly the duty to pay taxes.

In modern times, however, the force of political allegiance has been considerably weakened. The political ties of a nonresident to the mother country may often be merely nominal. His life may be spent abroad and his real interests may be indissolubly bound up with his new home, while his loyalty to the old country may have almost completely disappeared.

In many cases, indeed, the new home will also become the place of a new political allegiance. But it is well known that in some countries the political bond cannot be dissolved even by permanent emigration; while it frequently happens that the immigrant has no desire to ally himself politically with what is socially and commercially his real home. In the modern age of the international migration of persons as well as of capital, political allegiance no longer forms an adequate test of individual fiscal obligation. It is fast breaking down in practice, and it is clearly insufficient in theory.

The second principle that may be followed is that of mere temporary residence; every one who happens to be in the town or state may be taxable there. This, however, is also inadequate. If a traveller chances to spend a week in a town just when the tax collector comes around, there is no good reason why he should be assessed on his whole property by this particular town: the relations between him and the government are too slight. Moreover, as he goes from place to place, he may be taxable in each place or in none. Temporary residence is plainly inadmissible as a test.

The third principle is that of domicile or permanent residence. This is a far more defensible basis, and it has many arguments in its favor. Those who are permanently resident in a place ought undoubtedly to contribute to its expenses. But the principle is not perfectly satisfactory. For, in the first place, a large part of the property in the town may be owned by outsiders: if the government were to depend only on the permanent residents, it would lose a portion of its rightful dues. In the second place, most of the revenues of the resident population may be derived from outside sources, as from business con-

ducted in other states. In this case, the home government would be gaining at the expense of its neighbor. Thirdly, property owners like the absentee landlords of Ireland or the absentee stockholders of the railways in the western states of America cannot be declared devoid of all obligation to the place whence their profits are derived. Domicile, therefore, cannot be the exclusive consideration.

The fourth principle is that of the location of the property. This again is undoubtedly legitimate to a certain extent. For a man who owns property has always been considered to have such close relations with the government of the town or county where his property is situated, as to be under a very decided obligation to support it. But for reasons just the reverse of those mentioned in the preceding case, the location of the property clearly cannot be the only test. Permanent residents of means owe some duty to the place where they live, even if their property is situated elsewhere. A New Yorker who has invested even his whole property abroad cannot be said to be entirely without any duty to support the New York or American government.

We see then that each of the last three principles—temporary residence, domicile and location of property—has a certain, but none a complete justification. There is, however, one final principle, toward which all modern governments are tending, which reconciles the three preceding tests. This is the principle of *economic interest or economic allegiance*, as against the antiquated doctrine of political allegiance. Every man may be taxed by competing authorities according to his economic interests under each authority. The ideal solution is that the individual's whole faculty should be taxed; but that it should be taxed only once, and that it should be divided among the tax districts according to his relative interests in each. The individual has certain economic interests in the place in which he happens to live, in the place of his domicile, and in the place or places where his property is situated or from which his income is derived. If he makes money in one place, he often spends it in another.

It has been pointed out elsewhere that the conception of faculty in taxation involves two considerations,—those connected with acquisition or production, and those connected with outlay or consumption.[1]

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[1] See Seligman, *Progressive Taxation in Theory and Practice*, 2d ed. (1908), pp. 290-294.

In apportioning the total fiscal obligation of the individual it is therefore necessary to ascertain from what place or places his earnings are derived, and then to observe in what place or places they are expended. Only in this way can his real economic interests be located.

From this point of view the solution of the problem would be easy. Let the state or states from which the earnings are received divide among themselves the taxes on production, that is, the taxes levied according to property or income or business or any other measure of productive capacity: let the state where the individual lives and where the earnings are spent levy taxes on consumption, whether direct or indirect.

This plan, however, involves one serious difficulty. Expenditure, for obvious reasons, is no longer considered so satisfactory a basis of taxation as revenue. And although taxes on consumption are still largely employed and are defensible for the central authorities, their use for local or commonwealth purposes tends everywhere to be restricted to narrow limits. Where taxes on consumption are abandoned, it becomes necessary to devise some compromise in apportioning the taxes on production. Some writers have suggested that three-quarters of the tax on property or business or earnings should go to the state of domicile, while others have proposed an equal division. It may be conceded that the exact division is necessarily arbitrary; but even an arbitrary division is better than no division at all. Whatever figures we adopt, it is none the less clear that the principle of economic interest will help us out of many a difficulty.

In international relations we have scarcely begun to apply the doctrine; in fact, we still cling in part to the principle of political allegiance. The result is much unjust double taxation.[1] In internal relations, as in the federal states of America, Germany and Switzerland, more progress has been made. In the United States, as to a large extent everywhere else, the rule of *situs* has been applied to real estate. This is taxed where it is situated. But in the case of personalty or

[1] Cf. from the point of view of international law various essays by E. Lehr, "Les doubles impositions en droit international," in Journal Clunet, 1901, p. 722; "Les bases de l'impôt en droit international," in Revue de droit international, 1897, p. 428; "Les Bases légitimes des impôts en droit international," ibid., 1903, p. 547. CJ. also L. von Bar, "Observations sur les principes du droit international concernant les impôts, notamment les doubles impositions," ibid., 1900, p. 435.

business most countries waver between the doctrines of *situs* and of domicile. In America, for example, while most of the states tax personal property actually located within their bounds,[1] we find in many places the legal principle, which had its origin in entirely different reasons, that personalty follows the owner—*inobili a personam sequuntur*.[2] Accordingly if the owner is a nonresident, his personal property may be taxed twice—once by the state where it is located, and again by the state of his domicile.

In the United States several commonwealths have indeed provided by statute for the exemption of a resident's personalty, if permanently located and taxed in another state. Such is now the law in Alabama, California, Connecticut, Indiana, Louisiana, Maine, Missouri, New Jersey, Ohio, Rhode Island, South Carolina, Vermont and West Virginia.[3] The same rule has been extended by judicial interpretation to Illinois, Kansas, Missouri, New York, North Carolina and Ohio.[4] In other commonwealths the rule is applied only in part.

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[1] That this is permissible is recognized in Coc vs. Errol, 116 U. S. 517.

[2] Or, as it is sometimes put, *mobilia inhaerent ossibus domini*. Cf. in general, Story, *Conflict of Laws,* $$ 362, 383, 550. The original use made of this principle in America may be seen in Catlin vs. Hall, 21 Vt. 152.

[3] Ala. Code (1896), §3911; Cal. Polit. Code (1903), §3607; Conn. Gen. Stat. (1902), §2321 et seq. (applies to property actually invested in merchandizing or manufacturing); Ind. Annot. Stat. (1894), §8410; La. Act July 9, 1890, no. 106, § 1; Me. Rev. Stat. (1904), ch. 9, ñ 13-11; Mo. Rev. Stat. (1889), §§ 7.503, 7508, 7531; N. J. Rev. Stat. (1877), p. 1151; O. Rev. Stat. (1892), §2735; R. I. Pub. Stat., chap. 42, §9 (applies only to machinery, machine tools, stock in trade, merchandise, lumber, coal and stock in every stables); S. C. Code (1902), § 268; Vt. Stat. (1894), §362-IV; W. Va. Code, chap. 29, § 48.

[4] Mills vs. Thornton, 26 111. 300 (1861); Fisher vs. Commissioners of Rush County, 19 Kan. 414; State vs. St. Louis County, 47 Mo. 594 (1871); State ex rel. Dunnica vs. County Court, 69 Mo. 454 (1879); Valle vs. Ziegler, 84 Mo. 214 (1882); People ex rel. Hoyt vs. Commissioners, 23 N. Y. 224 (1861), which decided that shares of foreign corporations are exempt from local taxation in New York because they have no *situs* in the state; People ex rel. Trowbridge vs. Commissioners, 4 Hun, 595 (1875); 2 Jones Eq. Rep. 53, where the principle *mobilia personam sequuntur* is declared to be "a fiction which has no application to questions of revenue"; Carrier vs. Gordon, 21 Ohio, 605 (1853). Cf. for the practice and cases up to 1871, (First) Report of the (New York) Commissioners to revise the Laws for the Assessment and Collection of Taxes (1871), pp. 130-147; and for a more systematic discussion of the later cases, F. Walker, *Double Taxation in the United States*, 1895, chap. vi.

Thus in Arkansas, South Carolina and Virginia a similar exemption is made for all personalty except in so far as money, credits or investments in business are concerned.[1] In Delaware only so much of the personalty is exempt as consists of non-productive securities of other commonwealths."[2] Finally, in Michigan all the personalty of a resident is taxable except that which is invested in another commonwealth.[3] But in most of the commonwealths the legal fiction still prevails, and the individual is taxed on all his personalty irrespective of its location. The obvious result is double taxation of a nature which cannot possibly be justified.

According to the doctrine of economic interest, the solution is plain. A large part of the tax should go to the place where the property lies or whence the earnings are derived; a smaller share to the domicile of the owner. But this presupposes uniform action on the part of the conflicting authorities. As long as no interstate or intercommunal agreements are made, the simplest plan would be for the state of location to tax the tangible property, and the state of residence to tax the intangible property or income therefrom.

This conclusion, however, is complicated by several considerations. In the first place, the intangible property may consist of corporate securities, while the corporation may already be taxed in the state where it is situated; secondly, the intangible property may consist of a mortgage on real estate abroad, which in that state is treated as realty and already taxed; and finally, the American experience with the taxation of intangible personalty in general is very sad. For practical purposes, therefore, the conclusion would be: Tax only realty and tangible personalty, and tax this in the state of location. When the era of interstate agreements is finally reached, it will be feasible to attempt the more ideal plan of taxing the entire property or income, dividing the proceeds among the states of location and domicile according to a pre-established proportion, and in harmony with the doctrine of economic interest. In the interval it may be possible to reach intangible personalty through some form of national

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[1] Ark., Mansfield's Digest, sec. 5048; S. C. Gen. Stat., chap. 11, sec. 149; Va. Code, sec. 492.

[2] Del. Laws 1879, chap. 2.

[3] Mich. Laws 1885, no. 153, sec. 2.

taxation, the general government then to apportion the proceeds to the states.

In Germany and Switzerland the situation is much simpler than in the United States because of the existence of federal laws regulating the entire subject. In Germany the federal regulation dates from 1870, and was further developed by a law of 1909.[1] A German citizen is now subject to direct taxes only in the state of his domicile or, where he has no domicile, in the state of his residence. Real estate and so-called fixed industry (*stehende Gewerbe*) can be taxed only in the state where the real estate or place of business is situated. If there are several such places of business, the tax is divided among the various states according to a fixed proportion. If anyone is assessed in one state for a direct tax when he has paid a similar tax in another state for the same period, he has a right to reimbursement. The German law, however, is not complete in that it does not regulate the interlocal taxation. In the matter of local taxation it was thought best to leave the adjustment of conflicts to inter-state agreements, and of these not a few have been consummated.[2]

In Switzerland, on the other hand, the federal law applies to local as well as to state taxation. It was not until 1874 that the constitution empowered the federal government to prevent double taxation. After that time the federal council rendered a number of decisions most of which were summed up in the law of 1885.[3] The principles enforced

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[1] Cf. Th. Clauss, "Das Reichsgesetz vom 13 Mai, 1870 wegen Beseitigung der Doppelbesteuerung unter vergleichender Berücksichtigung des Schweizer Bundesrechts erläutert," in *Finanz Archiv*, vol. v. (1888), p. 138 ct seq.; "Deutsches Doppelsteuergesetz vom 22 März, 1909," ibidem, vol. xxvi. (1909), p. 809 et seq.; R. Blochmann, "Das Reichsgesetz wegen Beseitigung der Doppelbesteuerung vom 13 Mai, 1870 erläutert," in *Annalen des Deutschen Reichs*, 1887, nos. 7-10.

[2] Cf. Dr. Strutz, "Die Gemeindebesteuerung des Einkommens aus ausländischem Grundbesitz und Gewerbebetrieb in Deutschland," in Verwaltungsarchiv, vol. iv. (1896), p. 209; and Brincour, *op. cit*., p. 10.

[3] Cf. the two works by E. Zürcher and F. Schreiber, each entitled, *Kritische Darstellung der bundesrechtlichen Praxis betreffend das Verbot der Doppelbesteuerung und Vorschlage zur Regelung dieser Frage,* and each published in 1882; B. Van Muyden, Expose critique de la jurisprudence fédérale en matière de double imposition suivi des propositions en vue de règlement de cette question par une loi fédérale, 1882; P. Speiser, Das Verbot der Doppelbesteuerung (1887); C. A. Brodtbeck, Unser Bundesrecht in Doppelbesteuerungssachen (1898); P. Steiger, "Ueber

are the same as in Germany, but are carried out in further detail and with greater effectiveness. The law applies also to inheritance taxes, which accrue in the case of real estate to the canton where it is situated, and in the case of personalty to the canton where the deceased was domiciled.

It will be well now to take up in turn the most important cases of double taxation by different jurisdictions. As the problems apply to interstate or inter-municipal complications as well as to difficulties between foreign countries, the word alien must be understood to include persons from another town or commonwealth as well as from a foreign country. And since the questions are precisely the same when applied to corporate business as when applied to individuals or individual business, the term citizen must be understood to mean legal as well as natural persons. Let us proceed to discuss the cases in order.

1. Shall a resident citizen be taxed on his property abroad or on his income from abroad?

In international relations the principle of political allegiance is still largely followed. Thus in England, and many other countries, as formerly and again more recently in the United States, a resident citizen is subject to the income tax on his entire income, whether received abroad or not. If, as is usually the case, the income is again taxed where it is earned we have a glaring case of double taxation. It is only in the inheritance tax that the principle of citizenship has begun to be weakened, and that the doctrine of location is applied to a small extent.

In state and local taxation the principle of economic interest has made more headway. In the United States, as well as in several of the German commonwealths and Swiss cantons, the rule of *situs* is generally applied to real estate and to tangible personalty and business; the rule of domicile to other forms of property or revenue. In Germany the taxes on business, salaries and pensions, as well as on land, must be assessed according to location. But all these rules are only an approximation to the ideally correct principle.

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die Grundzüge eines Bundesgesetzes betreffend das Verbot der Doppelbesteuerung," in Zeitschrift für Schweizerisches Recht, vol. 43 (1902).

In the case of business—whether individual or corporate America is as yet in the rear of some of the European states. In purely local taxation the American commonwealths generally levy the entire property tax at the place of the principal office, although most of the business profits may be earned in other places within the state. In the case of corporation taxes, however, a few states now pursue the more sensible policy of taxing the domestic corporation only on that part of its capital or earnings which is employed or received within the state. This is perhaps as near as we can get at the present time to any practicable solution.

2. Shall a non-resident citizen be taxed on his property abroad or on his income from abroad?

This seems to involve a great stretching of the principle of political allegiance; yet we find it to be the practice at the present day in international relations. For instance, in the national income tax of 1894 in the United States, an American was taxed on his whole income, whether he resided in America or abroad. Some states, however, like England and Austria, do not carry the doctrine of citizenship to this point,—they make no attempt to tax a non-resident citizen on his foreign income. Other countries cling only nominally to the principle, by providing for a remission of taxes in case the citizen is actually taxed abroad. And still others, like Russia, compromise the matter by exempting the citizen after he has lived abroad two years.

In state and local taxation, the tendency is far more evident to settle the matter according to the doctrine of economic interests. According to this principle, there is no imaginable reason why a non-resident citizen should be taxed for his property abroad. Moreover, neither the principle of location nor that of domicile has any application. Even if it were desirable to levy such a tax, it is difficult to see how the obligation could be enforced, unless the non-resident happened also to own some real estate at home. And even then, the home property would scarcely be liable for the taxes of the non-resident on his foreign income.

3. Shall a non-resident citizen be taxed on his property at home or on his income earned at home?

Here, again, the ideal solution would be, as in the first case, that the home government should levy not the entire tax, but only the greater part, leaving a small share to the foreign government. But in default

of such an arrangement, the most practicable method is for the home government to levy the whole tax, and to trust to the foreign government to avoid double taxation.

As a matter of fact, this is the practice in international relations. Almost everywhere the income earned at home is taxable even though the citizen lives abroad; for in this case the principles of citizenship (or political allegiance) and of location come together. In state and local taxation, however, the practice is considerably modified by the principle of domicile, as applied to certain forms of personalty or income. We have seen the practice in America in regard to property; and in the few cases of income taxation, the custom is still further restricted. In Massachusetts and Virginia, for instance, the income tax applies only to residents.

4. Shall a resident alien he taxed on his property or income in the state of residence?

This, together with the two following cases, is the reverse of the preceding cases. It is indeed evident that the alien should not be treated with greater favor than the citizen. Accordingly, if the non-resident citizen be taxed, the resident alien should certainly not be exempt in so far as the same property is concerned. In international relations most states have here abandoned the doctrine of political allegiance. There is no reason why it should not be abandoned; for the principles of domicile and of location here converge and, combined, far outweigh that of citizenship. In state and local taxation the matter is somewhat complicated by a survival of the old jealousy of strangers. Not only is the resident alien taxed, but he is sometimes taxed at a higher rate than the citizen, or is taxed when the citizen is exempt. We find this, for instance, in the United States where a higher rate is imposed on certain foreign companies (i.e. resident aliens). A way out of the difficulty has been outlined in the so-called reciprocal laws, according to which a state taxes resident aliens in the same way that its citizens resident in the foreign state are there taxed.[1] The wholesome dread of reprisals is often sufficient to prevent unjust double taxation.

5. Shall a resident alien he taxed on his property abroad or on his income earned abroad?

[1] See *infra*, chap. vi, sec. ii., § 2.

This case is not quite so simple. We have seen that if we abandon the principle of political allegiance and substitute that of economic interest, a large part of the tax should be paid to the country where the property is situated, and only a small part to the country of domicile. But where this ideal cannot be attained, we found it simpler to apply, as far as possible, the doctrine of location.

In international relations it is to be noticed that almost all states have abandoned the doctrine of political allegiance and have substituted that of domicile. That is, in England and in most of the German states residents are liable to the income tax on their whole income, whether they are aliens or citizens, and whether the income is derived from the home country or from abroad. This was also the case in the 1894 income tax in the United States. To put it in another way: when the principle of citizenship is advantageous to a state, it is applied; when it is disadvantageous, it is not applied. Only a few countries exempt the foreign property or income of a resident alien. If the foreign state applies the principle of citizenship and the home state the principle of domicile, as is frequently the case, it is not to be wondered at that there should be so much double taxation.

In state and local relations the doctrine of economic interests has made considerably more headway. Little attention is paid to the question whether the resident is a citizen or a foreigner, or whether we are dealing with a foreign or a domestic business or corporation. The problem is solved very much as in the case of the resident citizen.

6. Shall a non-resident alien be taxed on his property or income in the state?

In international relations, here again, the principle of political allegiance has been abandoned, and that of location has been substituted. It is the almost universal custom for states to levy a tax on incomes arising within their borders, irrespective of the question whether the recipient lives abroad or is a foreigner. The income tax law of 1894 in the United States formed no exception. The difficulty arises in the practical enforcement of the law, where the property or the source of income does not consist of tangible property.

In state and local taxation the problem is comparatively simple as regards tangible property, which is taxed where it is located. But in the case of intangible property, not capable of a *situs*, the question

arises whether it should follow the domicile of the owner, and to that extent be beyond the jurisdiction of the taxing power; or whether the intangible property may not be declared to have at least an economic *situs* in connection with the tangible property on which it is based or which it represents. In so far as corporate securities are concerned, this question will be treated in a subsequent chapter. In the case of earnings from business, since there must generally be an office or an agent in the state through which the earnings are received, the alien (or foreign business or corporation) is to that extent no longer a non-resident. But even here the principle of economic interest is clearly applicable.

In the case of the inheritance tax international complications have recently assumed important dimensions. In the British empire the difficulty has become especially acute in view of the high inheritance taxes levied simultaneously by the mother country and by the states of Australasia or South Africa. At the last imperial conference in London this was made the subject of urgent representation by New Zealand; but the British government could not see its way to abandon the large revenues now derived on the estates of non-resident citizens.

Of recent years the problem of double taxation has also become acute in the United States in the case of the inheritance tax which is now so widespread.[1] At first, as in the case of the general property tax, while real estate was usually taxed only in the state of its *situs*, most of the commonwealths taxed not only all the personal property of resident decedents but also such personal property of non-resident decedents as was actually or technically within the state, as moneys or securities in the local banks or deposit companies, or other evidences of debt. Some states even went further and taxed the securities of corporations organized under their laws, even though the decedent was a non-resident and the securities were in some other state. In this way there was the possibility of not only double, but triple or quadruple taxation. For if the citizen of state A, whose entire fortune consisted of railroad bonds, happened to die in state B, leaving on deposit in state C the securities of a railroad organized in state D but actually operating in state E, his whole estate might be taxable by

[1] Cf. *infra*, chapter v.

each of the five states. A case actually occurred a few years ago in New York where a decedent's estate was compelled to pay no less than four taxes to different states on the same portion of the estate. About one-half of the American commonwealths still follow the old method. Several states, however, now endeavor to avoid double taxation by maintaining the principle that personal property should be taxed only at the domicile of the decedent.[1] Others, again, have adopted this principle only in part. Maine and Vermont, for instance, allow a resident decedent's estate credit to the extent of taxes imposed on the same inheritance by another state. As to non-resident decedents, however, their personal property in the state is still taxable, but only to the extent that the amount of tax may exceed the amount imposed by the state of the decedent's domicile. A few states, again, have a reciprocal provision. Massachusetts, for instance, allows a credit for taxes paid to other states, but only if the law of such other state contains a similar reciprocal provision. Finally in a few states we find retaliatory provisions. Connecticut, for instance, taxes the stock or registered bonds of domestic corporations to non-resident decedents only when the state of residence taxes similar securities of its own corporations when owned by a decedent of Connecticut.

This whole subject was carefully considered by a committee of the National Tax Association, which reported a so-called model law in 1911.[2] The committee recommended the adoption of the simple rule that the tax should be imposed, in the case of residents, upon all their intangible property and upon such tangible property as was within the state; but that in the case of non-residents the tax should be imposed only on the tangible property within the state. The New York law of 1911 followed this recommendation closely and limited the taxable property of non-residents to tangible property which was defined as "corporeal property such as real estate and goods, wares

[1] Such are Arkansas, Idaho, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Montana, Nebraska, New York, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wyoming.

[2] *Addresses and Proceedings of the Fourth International Conference of the International Tax Association*, Columbus, 1911, p. 279 et seq. As to the change of name from International to National Tax Association, of. *supra*, p. 20, note.

and merchandises, and shall not be taken to mean money, deposits in banks, shares of stock, bonds, notes, credits or evidences of an interest in property or evidences of debt."[1] The same principle has been adopted in the Massachusetts law of 1912. Were all the states to follow the same rule, the situation would be simplified. In the meantime, however, in default of a federal compulsion or of an interstate agreement, the possibility of double taxation is by no means eliminated. Residents of a large financial centre like New York are especially exposed to simultaneous taxation on the securities of foreign corporations,[2] and will remain so unless a provision is adopted as in Switzerland or as in Maine and Vermont. Moreover, it is not very probable that the Western states which suffer from absentee ownership will agree to abandon the taxation of the securities of railroads owned in the East. As long as the present conditions continue it is most desirable that some interstate arrangement be effected whereby only such proportion of the securities be taxed as corresponds to the mileage or other criterion of property within the state.

From the above review, it is evident that the question where a tax ought to be imposed involves a rather simple theoretical problem and many very difficult practical problems. It is the same with almost every question of taxation. As a matter of principle, it is easy to decide that a man should be taxed according to his faculty; as a matter of practice, it is not so easy to apply the principle of faculty in the

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[1] The history of the New York law is typical. The original law of 1885 did not tax the personal property of a non-resident decedent. An amendment of 1887 was designed to accomplish this, but the law was so worded that the result ensued only when the decedent also owned real estate within the state. In 1892, however, this condition was abrogated, and from 1892 to 1911 the revenue from the tax on the personal property of non-resident decedents amounted to from one-ninth to one-twelfth of the entire proceeds of the tax. This deficit was, however, more than made good, under the law of 1911, by an increase of the rate. Cf. the following chapter.

[2] We are told, for instance, that the securities of about 450 large corporations are dealt in on the stock exchange of New York. Of these, 32 are incorporated in New York, 84 in New Jersey, 70 in Massachusetts, 33 in Michigan, 33 in Maine, 27 in Pennsylvania, 21 in Illinois, and 14 in New Hampshire. In all these states, except Pennsylvania, a tax is imposed on the stock of such corporations when owned by a decedent of New York. Cf. *Annual Report of the Comptroller of the State of New York,* Albany, 1912, p. xiii.

actual tax system. So we have found that in the case of double taxation due to conflicts of jurisdiction the ideal principle is that of economic interest or economic allegiance, modified in a few cases by that of political allegiance. The difficulty arises when we attempt to embody this principle in equitable assessments.

If we observe the legislation of the most progressive countries, we find, especially as regards internal or federal relations, a distinct tendency toward the realization of this principle. Economic interests are divided between the places of location, of domicile and of residence. However differently various states may measure the relative importance of each, there is a steady progress toward the recognition of the principle. In the case of real estate the solution is obvious; in the case of intangible personalty, of business earnings and of interest from loans the problems are far more complicated. To work out the solution[1] for each kind of tax would take us too far afield. But it cannot be too strongly emphasized that in federal states no satisfactory system of taxation can be attained until two conditions are realized. We need, in the first place, a substantial interstate agreement to pursue the same general policy in cases of conflicting jurisdiction; and we need, in the second place, a virtual acceptance of the doctrine of economic interests in taxation. When once these conditions exist, it will make comparatively little difference how the principle is interpreted. For if it is everywhere interpreted in the same spirit, there can be little double taxation; and with increasing experience we may expect to find closer and closer approximation to strict justice in the application of the principle. In international relations we are still very far removed from the ideal; in internal taxation—federal, state and local—the drift is unmistakably in the right direction.

[1] For a study of the practical problem as applied to the corporation tax, see *infra*, chapter viii, sec. iv. Cf. in general the monograph of Walker.

Chapter V—The Inheritance Tax

The inheritance tax,[1] as now understood in most countries, is essentially the product of modern democracy. It was, indeed, not unknown to antiquity. In Rome the *incesima hereditatium*, a tax of a twentieth part of inheritances, was imposed at the beginning of the empire to pay the pensions of the veteran soldiers. In the middle ages the relief and the heriot were exacted by the overlord in return for the privilege of succeeding to the possession of property. But while the influence of the mediæval idea is still to be seen in a few of the continental countries where the payment is regarded as made for the privilege of succession, the tax is almost everywhere of independent and comparatively recent origin. In Holland, in France and even in England, parts of the existing inheritance taxes are survivals of the system of charges on transfers and transactions. In many English-speaking states the term *probate duties* is still employed, signifying that the original conception was a charge for the privilege of having the will probated; and in some places the various forms of the inheritance tax are included among the stamp taxes, or taxes on transactions. But in most countries the older idea has been abandoned, and has been supplanted by the view that the tax must be regarded as a charge rather on the recipient of the inheritance than on the transaction itself. The inheritance tax is to-day found primarily in democracies like those of England, Switzerland, Australia and America; and in other countries its development has gone hand in hand with the spread of democratic ideas.

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[1] The term *inheritance tax* is here used in its popular sense, as a tax on the devolution of property, whether real or personal, whether by will or by intestacy. By all means the ablest, as it is the only complete, discussion of this topic from the points of view of economics, law and history (American as well as European), is to be found in *The Inheritance Tax*, by Max West, in Columbia University Studies in History, Economics and Public Law, vol. iv., no. 2, 1893 (2d ed., 1908). Less complete are: von Scheel, *Erbschaftssteuern und Erbschaftsreform* (2d ed., 1877); Eschenbach, *Erbrechtsreform und Erbschaftssteuer*, 1891; Krüger, *Die Erbschaftssteuer*, 1889; Garelli, L'lmposta Sttccessoria, 1896. Cf. also several articles by Schanz in *Finanz Archiv*, vols. xv. and xvii.

For the United States cf. A. W. Blackmore and Hugh Bancroft, *The Inheritance Tax Law containing all American Decisions and existing Statutes*, Boston, 1912; and Peter V. Ross, *Inheritance Taxation*, Albany, 1912.

It may be asked why democracy should favor the inheritance tax. The answer depends upon the point of view from which we regard democratic tendencies. If we say, as some believe, that the trend of democracy is necessarily toward socialism, the answer is plain: the inheritance tax is imposed because democracy is jealous of large fortunes. But if, on the other hand, we hold with the less pessimistic critics that modern democracies are endeavoring simply to do away with the abuses that have come down to us from the aristocracies of the past, we may claim that the inheritance tax is only a means of securing equality in taxation and of realizing the principle of ability to pay. Because the tax has frequently been urged by those who are opposed to large fortunes, it has usually been overlooked that it may be defended on purely economic grounds as in complete harmony with the general principles of equitable taxation.

The earliest argument[1] for the inheritance tax had its origin in the plan to abolish intestate inheritance; that is, to provide, when there was no will, for the devolution of the property to the state. This scheme was propounded in the celebrated essay of Bentham, entitled "Supply without Burden."[2] The title of the essay is explained in the following problem:

"What is that mode of supply of which the twentieth part is a tax, and that a heavy one, while the whole would be no tax, and would not be felt by anybody?"

The solution of the problem, according to Bentham, lay in the abolition of intestate succession except in the case of immediate relatives. To this he added the limitation of the power of bequest of testators without direct heirs. The old principle of escheat was to be extended to include the inheritances or bequests then going to collateral relatives. But Bentham claimed, further, that the state should have an equal share in the sums going with or without a will to such close relatives as grandparents, uncles and aunts, and perhaps nephews and

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[1] The fullest account of the arguments is to be found in the article by Dr. Max West, "The Theory of the Inheritance Tax," *Political Science Quarterly,* viii., p. 426 (1893). They are also summarized in his book.

[2] The full title is "Supply without Burden, or Escheat *vice* Taxation, being a Proposal for a Saving of Taxes by an Extension of the Law of Escheat, including Strictures on Collateral Succession comprised in the Budget of 7th December, 1795." In Jeremy Bentham, *Collected Works*, Browning's edition, ii., p. 585.

nieces, as well as a reversionary interest in the succession of childless direct heirs without prospect of children.[1]

Bentham held that this was not a tax, and that precisely in this fact lay its chief advantage,—that of "unburthensomeness," or, as we would say, freedom from oppressiveness. According to the general principles of human nature, said he, a man is led in the case of a tax on successions to look upon the whole of what is left to him as his own, of which he is then called upon to give up a part. But if under the law regulating successions he knows that nothing, or only a small share, is due him, Bentham claimed that he would suffer no hardship. "For hardship depends on disappointment; disappointment upon expectation, and if the law of succession leaves him nothing, he will not expect anything."

Exaggerated as Bentham's distinction undoubtedly is, it contains a kernel of truth; namely, that there is no such thing as a natural right of inheritance, and that the extension of intestate succession to collateral relatives is under existing social conditions, defensible only to a very limited extent. Whatever may have been the original family theory of property, it may be argued with some force that the bonds of the wider patriarchal family life have been considerably loosened in modern times, and that the family consciousness extends nowadays only to the nearest relatives.

While Bentham looked upon the matter primarily from the point of view of escheat, it was but a step to extend the argument, and to say, as many writers now do, that, since it is exceedingly difficult to draw a sharp line where the family consciousness ends, it is more just and more practicable for the state to take away a small part from direct relatives and an increasingly larger sum from the more remote relatives. The tax, in other words, would be graduated according to the degree of relationship. What was originally nothing but an extension of escheat, thus grew into the idea of a graduated collateral inheritance tax. Even Bentham himself, although protesting against the use of the word tax, virtually advocated a graduated tax when, as we

[1] The plan is defined to be "the appropriating to the use of the public all vacant successions, property of every denomination included, on the failure of near relations, will or no will, subject only to the power of bequest, in respect of the half of whatever property would be at present subject to that power."

have seen, he proposed the exemption of direct heirs; the confiscation of fifty per cent from grandparents, uncles and aunts; and the seizure of the whole in case of intestacy. Thus the extension-of-escheat argument, which was meant originally to apply only to intestacy, has been made to include also a limitation of the power of bequest.

A supposed variation of this line of reasoning is seen in what is called the theory of state co-heirship or co-partnership. It originated with Bluntschli, who used the expression *staatliches Miterbrecht*, and has found its way into some recent treatises. Its most vigorous recent defender is Andrew Carnegie, who is as enthusiastic about a progressive inheritance tax as he is opposed to an income tax.[1] Sometimes Bentham is cited as the originator of the doctrine, but this is a mistake. As Dr. West so well puts it:—

> "Bentham's plan was to abolish intestate inheritance except between immediate relatives, to restrict the power of bequest of testators having no direct heirs, and to give the state a part of the property of decedents in certain cases. He called the system which he proposed an extension of escheat, and based it not upon any right of inheritance in the state, but upon the absence of any reason for the operation of intestate inheritance between individuals not closely related. It is therefore a mistake to call Bentham a representative of the theory of state co-heirship. But later writers have combined with his argument the thought that the state should inherit property from individuals because of what it does for them during their lives. The state is sometimes represented as a larger family; according to Umpfenbach, the bond of kinship between distant relatives loses itself in the whole nation, which therefore inherits the property of individuals as the family inherits the property of its members. Such expressions as these, however, must be regarded as metaphorical rather than scientific. The state may acquire property by escheat, but not by inheritance. Inheritance implies kinship, and the modern state is not a genetic association. The representation of the state as co-heir is either a mere figure of

[1] Mr. Carnegie stated that the "American republic is the partner in every enterprise where money is made honorably." Cf. Seligman, *Progressive Taxation*, 2d ed., 1908, p. 322.

speech (and as such it is as old as Pliny), or else it results from a confusion of inheritance and escheat. Inheritance is not a matter of public law; it is for private law to prescribe how far inheritance shall be permitted between individuals, and for public law to ordain that where inheritance ends escheat shall begin."[1]

We now come to the second theory, which may be called the socialistic or diffusion-of-wealth theory. It is based upon the doctrine that it is the function of government to use the power of taxation as an engine of social reparation in checking the growth of large fortunes and in bringing about a more equal distribution of wealth.

In its origin this theory was not socialistic. John Stuart Mill accepted Bentham's reasoning, but developed it. Since he did not consider the right of inheritance as necessarily involved in the private ownership of property, he desired to extend the abolition of intestate succession to direct heirs, as well as to collateral relatives. Moreover, even in the case of a will, no one, he thought, was justified in demanding more than a fair competence. His plan was as follows:—

> "That no one person should be permitted to acquire by inheritance more than the amount of a moderate independence. In case of intestacy, the whole property to escheat to the state: which should be bound to make a just and reasonable provision for descendants, that is, such a provision as the parent or ancestor ought to have made, their circumstances, capacities, and mode of bringing up being considered."[2]

This argument is not necessarily socialistic; but it is perhaps open to question on other grounds. It may be regarded as opposed to the family theory of property, which even in its narrower sense, assumes that as a man acquires property largely in order to leave it to his children, for whom ho ought to provide, there is reasonable ground for demanding the perpetuity of the means of family support. Denial of the right of inheritance by direct heirs thus seems to involve an attack upon the unity of the family. On the other hand, the right of inheritance within the family has already been largely modified by the freedom of bequest; and if a man is at liberty to give away his whole

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[1] *Political Science Quarterly*, viii.; p. 436.
[2] *Political Economy*, book v., chap, ix., sec. i. CJ. book ii., chap, ii., sees, ill., iv.

fortune to outsiders, we cannot well speak of a family right. In parts of continental Europe, indeed, we have the survival of the old idea in the institution of compulsory children's share (*portion legitime, Pflichttheilsrecht*). Even in the United States some of the commonwealth laws prohibit the bequeathing of more than a certain portion of the estate to charitable or public uses when there is a child, a widow or a parent. But, as a general rule, in English-speaking countries the right of bequest is free. It is well known that inheritance is older than bequest, and that the latter system was introduced into the Roman law, not to limit inheritance, but to provide heirs in default of near relatives. The modern right of free bequest is, therefore, really opposed to the older family idea of property, which takes shape in the assertion of the right of inheritance. It thus becomes a very difficult question to decide how far inheritance may be demanded as of right. Nevertheless, it may be said that most thinkers, as well as the mass of the public, would still to-day maintain the custom of inheritance, not indeed as a natural right or as a necessary consequence of the right of private property, but as an institution that is on the whole socially desirable. Even Mill says of his own scheme: "The laws of inheritance have probably several phases of improvement to go through, before ideas so far removed from present modes of thinking will be taken into serious consideration."

While there is some scientific justification for the doctrine as originally expounded, it is unquestionable that most of its defenders plant themselves squarely on the ground that it is the function of the state to check the aggregation of wealth into a few hands, and to provide for the equalization of fortunes. These writers would put a limit not only to the amount of wealth acquired through inheritance or bequest, but to the amount acquired in any manner. No fortunes should exceed a definite sum. Such a doctrine is very distinctly socialistic. Those who are not prepared to accept socialistic premises and socialistic methods of reasoning cannot acknowledge the validity of the diffusion-of-wealth argument.

While the premises may thus be regarded as wrong, the conclusion may nevertheless be right, for the same conclusion may conceivably be drawn from utterly dissimilar premises. Just as it has been elsewhere shown that progressive taxation may be upheld by decided

opponents of socialism,[1] so it can be shown beyond dispute that the inheritance tax may be supported through entirely different arguments by those who oppose the doctrine of the diffusion of wealth. Brushing aside, therefore, the socialistic doctrine as inadequate and unsound, let us examine these other arguments.

The so-called cost-of-service theory, which is occasionally found, treats the inheritance tax simply as a fee. The probate courts are a source of expense to the government and a source of special benefit to those that utilize their services. What is more reasonable, then, than that those who receive the special benefit should defray the cost?

This argument, however, would justify only very light charges, and it would result not so much in an inheritance tax as in a system of probate fees. Such probate fees are occasionally found;[2] but as soon as they exceed the cost, the theory is no longer applicable. The probate duty in England, for instance, soon outgrew its original character of a fee. Another objection to this theory is that logically the charge ought to be regressive, not proportional or progressive; that is, since it costs proportionally less, to probate a large sum than a small sum, the rate ought to be lower on a large inheritance than on a small one—or, at all events, it ought not to grow with the size of the inheritance. As a matter of fact, the inheritance tax of 1889 in Wisconsin was regressive.[3]

A somewhat more substantial theory is that which considers the inheritance tax as the price of a special privilege. It is regarded not so much as a fee paid to defray the cost of government services as a charge proportioned to the advantages that accrue to the recipient of the inheritance. From the legal point of view, this has much to recommend it. In the United States, for instance, if regarded as a tax on property, the charge would conflict with the constitutional provision

[1] See Seligman, *Progressive Taxation in Theory and Practice*, 2d ed. (1908), p. 142.

[2] So in the American commonwealths, as Wisconsin, Minnesota, Illinois and New Hampshire.

[3] Estates not exceeding $3,000 were exempt; up to $500,000 they paid one-half of one per cent; on the excess above this, one-tenth of one per cent. The charge was declared to be "in lieu of fees," but if was held to be a tax, and therefore unconstitutional because applicable only to one county. 76 Wis. 469. See West, op. cit., p. 77.

found in many commonwealths, requiring all property to be taxed equally. If a general property tax were levied, and then an additional inheritance tax were imposed, we should have technically unequal taxation of some property. Again, the tax, if imposed by the federal government, would militate against that section of the constitution which requires all direct taxes to be apportioned according to population. Accordingly, many of the American states have contrived to uphold the constitutionality of the tax only by declaring it to be a tax on the devolution of property. It is declared to be a tax not on wealth, but on the transfer of wealth. So the Louisiana inheritance tax was originally upheld by the federal Supreme Court as a simple regulation of inheritance.[1] But since the federal government possesses no constitutional power to regulate inheritances, the federal inheritance tax was sustained as being neither such a regulation nor a direct tax on the land, but an excise on the right to succeed to the ownership of property.[2]

From the economic point of view, there is a partial justification for this contention. It is indeed true that if the inheritance tax is to be regarded as an indirect tax on transactions or transfers, it might be declared obnoxious to the general tendency of modern theory to restrict the scope of taxes on acts and transactions to their narrowest limits. But this opposition to taxes on economic phenomena, as we shall see later[3] has been pushed too far. Again, to regard the tax as a charge on the mere privilege of succession, is in reality to merge it with the theory to be discussed in the next paragraph, because of the undoubted fact that the result of the privilege of succession is to enhance the ability of the recipient.[4]

We come then to the theory which regards the inheritance tax as a direct tax on the recipient of the inheritance. If we grant that the basis of taxation is the faculty of the individual, it is evident that any addition by inheritance to the wealth of the individual increases his ability to pay. If we grant, further, that the best test of faculty is the revenue of the individual, it is clear that this accretion to his revenue is of

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[1] Mager vs. Grima, 8 How. 490.
[2] Scholey vs. Rew, 23 Wall. 331.
[3] Cf. *infra*, chap. ix.
[4] As to the relation between privilege and ability, cf. *infra*, chap, x, sec. 3.

a peculiar character. Income, as the term is commonly employed, denotes a regular periodic return; but an inheritance is an irregular, a spasmodic, a chance return. In a logical income tax there is no room for such accidental or fortuitous revenues. Yet they clearly add to the ability of the individual, just as the chance gains from speculation undoubtedly increase the faculty of the taxpayer. From this point of view, the inheritance tax may best be defended by the accidental, or fortuitous-income argument.

It may be claimed that there are possible cases where this argument is inapplicable. Thus, after a man's death, his widow or children may have to depend entirely on the income from his property, where before his death they enjoyed not only this sum but also the additional income due to his personal exertions. The family ability to pay may be diminished, not increased. It may be answered that the state deals with individuals, not with families, and that the individual members now have incomes where before they had none. And even if we concede this claim, the difficulty can be met by exempting a certain amount, and imposing a progressive tax on the remainder. For in proportion as the family income was derived from property, rather than from the labor of the head of family, the share due to his influence becomes correspondingly smaller, and the loss due to his absence will be less keenly felt; while, on the other hand, the family expenses themselves are diminished by his death. Finally, in proportion as the inheritance goes to self-supporting direct heirs or to collateral relatives, it may be maintained with truth that there is a decided increase in tax-paying ability.

When, therefore, we have a system of income taxes, the inheritance tax may be regarded as a supplementary tax to reach the real ability of the individual. Moreover, it may be regarded as a convenient method of applying the principle of differentiation in the taxation of income. It is now commonly recognized that incomes from property should pay a higher rate than incomes from labor. Instead of making a difference in the rates to reach this end, the proportional income tax may be supplemented by a property tax; or where this is for any reason undesirable, by the inheritance tax. The latter would then serve the double purpose of reaching not only accidental incomes, but also property incomes, since all inheritances take the shape of property.

Even in those states where the chief direct tax is that on general property, the inheritance tax may be defended on the accidental-income theory. For in so far as property is at all an adequate test of faculty in taxation, it is simply a mode of estimating the regular revenue or income. Accidental income is as little taken note of in a property tax as in an income tax. In fact, as between the two systems, an inheritance tax is more necessary to supplement the former tax than the latter.

An additional theory which has been advanced more recently is the so-called back-tax theory. Since general property taxes are to a large extent evaded during life, it is said to be no more than just that the property should be made to pay when the tax cannot be evaded. But in this case it is the property of the decedent, rather than the ability of the heir, that is considered. Moreover, the validity of the argument is questionable chiefly because it is well-nigh impossible to prove the relation between the amount of the inheritance tax and the aggregate of taxes evaded during life. In the United States, for example, taxes on realty are generally paid; it is the tax on personalty that is evaded. The inheritance tax ought then to take the shape only of a tax on the successions to personal property. As an actual fact, this was for some years the case in New York and several other states in the direct inheritance tax. The reasoning, therefore, does not apply to real estate at all. Finally, in proportion as other taxes are substituted for the personal property taxes, the argument falls away. Where there is a property tax or an income tax, there may well be some provision for an inventory of the estate after death (as in Switzerland and Germany) with severe penalties for the evasion of back taxes. But such a provision is entirely independent of the inheritance tax.

The theory sometimes advanced[1] that the inheritance tax is to be regarded as a capitalized income tax paid once and for all at the close of life, instead of in small amounts during each year, is not so strong. In the first place, the existing tax system either does, or does not, reach the income or property of the living taxpayer. If it does, as it ought to do, to capitalize what has already been paid involves double taxation. If it does not, the tax is still objectionable on the score of inequality, because when two people with the same fortune die at

[1] Bastable, *Public Finance*, p. 526.

different ages and pay the same tax, the amount, if regarded as a capitalized income tax, would mean a very divergent rate of income tax. If the tax payable by A, who has enjoyed his income forty years, is equivalent to the capitalization of a five per cent income tax, the amount payable by B, who has enjoyed his income only ten years, would be tantamount to a twenty per cent income tax. An inheritance tax, from this point of view, would be grossly unjust. This objection, due to the varying frequency of the transfer, was first made by Adam Smith, but is applicable only when the tax is considered as a property or capitalized income tax. According to either the price-of-devolution, the privilege-of-inheritance or the accidental-income argument, the frequency of transfer is immaterial; for the tax is paid each time by a different person.[1] Finally, under the capitalized-income theory no graduation according to relationship would be possible. In short, the whole theory seems defective.

The logical defence for the inheritance tax is thus the accidental-income argument as supplemented by the privilege of inheritance argument. It is in harmony with the general basis of taxation—the faculty or ability of the individual to pay; it rounds out the existing system, whether based on property or on income; and it is not open to the objections which may be urged in one form or another against each of the other theories.

A corollary from this theory is that the inheritance tax should be regarded primarily as a tax on the recipient of the inheritance rather than on the estate itself. Where the tax is proportional this makes very little difference, for the sum of the shares is equal to the entire estate. But where, as is now frequently the case, we have a graduated tax, the difference is marked. The higher rates on the larger amounts would obviously result in greater revenue to the state when the tax is imposed on the estate as a whole than if it is levied on the shares. Nevertheless the taxation of the shares constitutes a far more equitable method. For if A receives $10,000 from a $50,000 estate, and B receives a like amount from a million dollar estate, it does not comport with justice that B should be taxed ten times as high as A simply

[1] Some states, however, provide for this supposed inequality by exempting the second devolution, if it takes place within a certain number of years. Chili fixes the term at ten years. See West, op. cit., p. 33.

because the rate on a million dollars happens to be ten times than on $50,000. This principle of taxing the share rather than the estate is now gradually being recognized. England pursues both plans, taxing the estate as a whole through the estate duty, and the separate shares through the legacy and succession duties. In the United States the tax is generally levied on the estate as a whole, but the noteworthy New York statute of 1911 introduced the principle of taxing the individual shares.[1]

Granting the desirability of the tax, we are at once confronted by the problem of graduated or progressive taxation. Graduation of the tax according to relationship has met with well-nigh universal acceptance; graduation of the tax according to amount has given rise to more controversy. This question has been fully discussed in another place[2] with the conclusion that the theory of progression is more applicable to the inheritance tax than to any other part of the fiscal system; and that, whether we base our demand on the limitation-of-inheritance theory, the faculty theory, or the compensatory theory, some scale of progression is both desirable and practicable.

The inheritance tax to-day scarcely needs defence. It is found in almost every country; and the more democratic the country, the more developed is the tax. In some of the Canadian provinces, in the Australasian states, in the Swiss cantons, in England itself, the rates are not only progressive, but highly progressive. The recent reforms in England are fully described in another chapter.[3] In the United States also, there is now a decided movement toward the progressive inheritance tax. The collateral inheritance tax is virtually the product of the last two or three decades. Up to 1890 it existed in only six states,[4] but between 1890 and 1900, it was adopted by fifteen additional states,

[1] For a defence of taxing the share instead of the entire estate see the *Report of the Special Tax Commission of New York* of 1907, of which the author was a member. Cf. especially the section on the Inheritance Tax.

[2] Cf. Seligman, *Progressive Taxation*, 2d ed. (1908), pp. 319-322.

[3] Infra, chap. xvi.

[4] The date when first imposed is put in brackets: Connecticut [1889], Delaware [1869], Maryland [1845], New York [1885], Pennsylvania [1826], West Virginia [1887].

making twenty-one in all.[1] During the next decade this number was almost doubled, through the addition of nineteen states.[2] The collateral inheritance tax is therefore found at present in thirty-eight states, being lacking only in Alabama (where it existed from 1848 to 1868), Arizona, Florida, Indiana, Mississippi, Nevada, Rhode Island and South Carolina. The tax was declared unconstitutional in six states,[3] but the constitutional objections were in every case obviated by later laws as indicated in the preceding notes.

The direct inheritance tax came somewhat later. It was first introduced timidly and with insignificant rates, and frequently applied only to personal property. Gradually the rates were increased, the exemptions were reduced and the tax was made applicable to real estate as well. The tax was first imposed in New York in 1891, but by the end of the century it had spread to six states.[4] During the next decade the progress was more rapid and three times as many states, that is, eighteen, were added to the list.[5] With the addition of another state in 1911,[6] the number of states with a direct inheritance tax now

[1] California [1893], Illinois [1895, although it existed for Cook county alone since 1887]. Iowa [1896], Maine [1893], Massachusetts [1891], Michigan [1893-1894, and again from 1899], Minnesota [1897, although an earlier tax had existed from 1875 to 1886], Missouri [1895-1898 and again in 1899], Montana [1897], New Jersey [1892], North Carolina [1897, although an earlier tax had existed from 1847 to 1874], Ohio [1893], Tennessee [1891], Vermont [1896] and Virginia [1896 although an earlier tax had existed from 1844 to 1884].

[2] Arkansas [1901], Colorado [1901], Idaho [1907], Kansas [1909], Kentucky [1906], Louisiana [1904, although there existed from 1828 to 1877 and again from 1894 to 1899 a tax applicable only to foreign heirs], Nebraska [1901], New Hampshire [1905, although an earlier tax had existed from 1878 to 1882], North Dakota [190.3], Oklahoma [1908], Oregon [1903], South Dakota [1905], Texas [1907], Utah [1901], Washington [1901], Wisconsin [1903, although an earlier tax had existed from 1899 to 1902] and Wyoming [1903].

[3] Louisiana in 1899, Michigan in 1894, Minnesota in 1886, Missouri in 1898, New Hampshire in 1882 and Wisconsin in 1902.

[4] The date when first imposed is put in brackets: Connecticut [1897], Illinois [1895], Michigan [1899], Montana [1897], New York [1891] and North Carolina [1897].

[5] In 1901 Colorado, Nebraska, Utah and Washington joined the ranks; in 1903 Oregon, Wisconsin and Wyoming; in 1904 Louisiana; in 1905 California, Minnesota and South Dakota; in 1907 Idaho, Massachusetts and West Virginia; in 1908 Oklahoma; and in 1909 Arkansas, Kansas and Tennessee.

[6] Maine.

amount to twenty-six, or about two-thirds the number of those possessing a collateral inheritance tax. There is of course none in the former class that is not to be found in the latter class.

As to the rates, which are naturally higher in the collateral taxes, the most interesting recent development had been the gradual spread of the progressive principle. The first case in which that principle was applied was the direct tax of Ohio of 1894, which was declared unconstitutional for that reason by the state court in the following year.[1]

In the same year, 1895, the progressive principle was applied to the collateral inheritance tax by Missouri and Illinois. The Missouri law was overthrown by the state court although for other reasons.[2] But the Illinois law, of a far more radical character, was upheld, not only by the state court but by the federal Supreme Court in what has become a leading case.[3] For it settled the principle that progressive taxation is not a denial of the equal protection of the laws demanded by the constitution, and thus made it difficult for any state court to annul a progressive tax because of some vague provision in the state constitution. When the same question arose in Wisconsin as applicable to the direct inheritance tax the Wisconsin court stated that the decision of the federal Supreme Court was conclusive.[4]

As a result of this decision by the Supreme Court, and in part also as a consequence of the highly progressive inheritance tax temporarily imposed by the federal government during the Spanish war and lasting from 1898 to 1902,[5] the progressive principle spread rapidly

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[1] State vs. Ferris, 53 Ohio State, 314.

[2] State vs. Switzler, 143 Mo. 245.

[3] Kochesperger vs. Drake, 167 Ill. 122; Magoun vs. Trust and Savings Bank, 170 U. S. 283.

[4] Nunnemacher vs. State, 129 Wis. 190.

[5] The federal tax applied only to personal property over $10,000. On estates between $10,000 and $25,000, the rate varied according to five classes of relationship, from three-quarters of one per cent to five per cent. On estates from $25,000 to $100,000, these rates were increased one-half; from $100,000 to $500,000 they were multiplied by 2; from $500,000 to $1,000,000 by 23½; over $1,000,000 by 3. On the highest amounts the tax thus varied from two and a quarter to fifteen per cent. The federal tax was also upheld as constitutional in the leading case of Knowlton vs. Moore, 178 U. S. 41. The point in this case was as to whether the injunction of

throughout the country. As a result, at the present time (1912) about one-third of the states levying a direct inheritance tax enforce the progressive principle. In two (Illinois and Maine) the rates vary from one to two per cent, in four (Idaho, Minnesota, West Virginia and Wisconsin) from one to three per cent; in two (Massachusetts and New York) from one to four per cent; in two (California and Kansas) from one to five per cent, and in one (Oklahoma), if the letter of the law is to be followed, from one per cent indefinitely upward without any limit.[1] In the other states the direct tax is proportional at the rate of one per cent in nine cases (Arkansas, Connecticut, Michigan, Montana, Nebraska, Oregon, South Dakota and Washington); at one and a quarter per cent in Tennessee; at two per cent in Colorado, Louisiana and Wyoming and at the high figure of five per cent in Utah.

In the collateral inheritance tax the progressive rates are naturally both more numerous and more elevated. Although the proportional rate is found in eighteen states (one at two per cent, one at two and a half per cent and all the rest at five per cent) the majority of the states, twenty in number, now utilize the progressive scale. The graduation in these twenty states begins at one and a half, two, three or even four per cent and rises to as high as ten per cent in Colorado, Illinois and South Dakota; twelve per cent in Texas and Washington; fifteen per cent in Idaho, Kansas, Minnesota, North Carolina, West Virginia and Wisconsin; and twenty-five per cent in California.

Finally it might be added that not alone have the rates been slowly advanced, but the exemptions have been gradually reduced. In the collateral inheritance tax the exemptions are now usually from $100 to $2,000. Utah and North Dakota are remarkable exceptions, the former with an exemption of $10,000, the latter with one of $25,000. In the direct inheritance tax the exemptions, however, are very much higher than in the collateral tax, varying from $5,000 to $10,000 and

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uniformity in the constitution meant anything more than geographical uniformity. The court, by deciding in the negative, upheld the law.

[1] In McGannon, admrx., vs. State ex rel. M. E. Trapp, no. 2669 of Okla. Sup. Ct. it was, however, decided in 1912 that the words "the rates provided for herein shall be increased 1-125 of 1% for every $100 increase in valuation of such excess "are to be interpreted as if the sentence stopped with the words 1%. In other words, the maximum rate becomes 1%+ 1-125 of 1% or 1.008% instead of 100%.

even reaching $20,000 in Illinois, $24,000 in California and $25,000 in West Virginia.

A comparison of the recent fiscal development in democratic states would not be un-instructive. In only three countries does the old general property tax still survive—in Switzerland, in Australia and in the United States; and in all three the system has become so defective that it has been supplemented by other sources. The Swiss cantons first developed the income tax, then the inheritance tax, and have only recently been paying attention to the corporation tax. The Australian colonies were first in the field with the inheritance tax, later developed the income tax, and have scarcely yet realized the importance of the corporation tax. The American commonwealths, finally, were the first to introduce the corporation tax, have more recently turned their attention to the inheritance tax, and have only just begun to experiment with the income tax. The differences are suggestive, but are easily explicable when we recall the economic and administrative conditions in each country. With all the variations in detail, it is clear that the democratic trend is in one general direction; and it is more than probable that progressive inheritance taxes will play by no means an insignificant role in the fiscal systems of the future.