THE RIGHT OF EMINENT DOMAIN.

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We, single taxers, who believe that the present system of land tenure throughout the civilized world results in allowing a few, in what is practically a privileged and hereditary caste, to withhold from the use of all others, except upon oppressive terms, the natural opportunities on which alone energy and ability can be exerted, find the greatest difficulty in the way of a candid and careful consideration of our proposition to substitute for such a tenure one more just and less disastrous in its effects, to be the idea that we are trying to destroy the sacredness of private property, and to introduce a chimerical communism in place of a long-established and approved system of individual rights.

It would, to many of us, be far from a valid argument in favor of the justice or expediency of allowing the present system to contine that it was of immemorial existence, and that courts and legislatures had theoretically as well as practically sustained it. But so strong is the mental habit of conservatism among the great mass of intelligent people — a mental habit that makes everything that has long existed seem natural and necessary — that I deem it of the highest importance to point out that in urging in the United States (to which I shall confine myself in this short article, although it could be shown that the case is the same in every other country of the civilized world) the change from the present system to the one known as the "single tax," we are advising the assumption of no new or startling power by the state, and are proposing no unconsidered doctrine of public and governmental right as opposed to that of individuals.

By the single tax, instead of the miserable, insufficient return which the landlord now makes to the community, under its organized form of "the state,"' for the privileges which it affords him, an annual payment, progressing with and equal to the annual value of the natural opportunities which he monopolizes, would be exacted from him. It is therefore perfectly true that our remedy is a drastic and far-reaching one, which would produce very marked and significant changes in social conditions. It is no part of my purpose to deny this. If it were not so, the cause would not be worth advocacy. But it is not out of the line of nor opposed to the methods and course of our political development, nor repugnant to any of the doctrines concerning land ownership which have been declared by legislatures and courts alike to be the fundamental propositions

which underlie such ownership.

A popular impression may be said to prevail that a man's field is his in the same sense that his horse and his clothes are his, and that he may own a coal mine with the same absolute right that he may the coal which has been taken out of it and stored for his burning. It is no wonder that this should be so, for practically, under our present system, it is what men may do and what they do, producing thereby the misery and distress of many for their own enrichment and aggrandizement. But theoretically, and in the view of the law, no such absolute right of ownership of the soil ever belonged to individuals. On the contrary, I think, the commentators and judges agree that it is the common law of England and the United States that government cannot deprive itself nor be deprived of the power to regulate the use of the land in such manner as shall secure to the public its rights. Such power cannot by the government be even suspended, abrogated, or bargained away by contract.

It follows, therefore, that while under the laws that at any time exist, individuals may acquire a property in land which must be respected by all others, it can be acquired only subject to the limitation that it may at any time be qualified or even destroyed at the will of the legislature, — using the term legislature, of course, in the largest sense, to include that law-making power which can modify or remove the restrictions of a written constitution as well as legislate subject to them.

This original and reserved ownership) of the soil remaining in the state is called, in legal phrase, the right of eminent domain. It is founded explicitly upon the doctrine that this original ownership being reserved to the state, the state has the right and must have the power (which is exercised through the process of its courts) to resume possession of any part of it (from which it of course follows, it may do so of the whole), when its use by the state is essential to the mutual advantage and the welfare of society.

Examples of the use of this power are familiar, of course, to every citizen. The necessity of opening streets, constructing canals, building railroads, and laying out parks, is calling it into exercise constantly. But it has never been held that the power was confined to these or similar uses. It has been laid down as a rule that to enlarge the resources, extend the industrial energy, or promote the productive power of even a moderately large number of the community, the power could be legally and properly exercised; and it is held, moreover, that of the question whether such benefits would result, the legislature is the proper judge.

The doctrine has been carried far by the courts, even in late years, and in face of the tendency which, until the single tax agitation arose, seemed unchecked, to regard the theoretically limited and modified property which individuals can hold in land as such an absolute and indefeasible right of ownership as appertains, ethically, only to the products of industry. Thus not only have lands been taken for the uses above alluded to and for public drains and sewers, for school houses and for school playgrounds, for burying grounds and for public reservoirs, but where mill sites in sufficient number for the accommodation of manufacturers desiring to serve the public (and themselves) could not otherwise be obtained, the supreme court of the United States has held it proper for the government, by the right of eminent domain, to condemn, for the benefit of such manufacturers, favorable sites for the construction of the mills.

It is to be noted that it is not essential to the proper use of this right of eminent domain that the land or the property right in the land should pass into the possession of the state. The title to the land itself may remain undisturbed and a mere easement over it be given for the public use, or the title may be put into the hands of other private parties burdened with the public use, which may be expressed, for example, only in the common law obligations of a carrier. Of the public use itself the public is too often defrauded, after it has been made the pretext for the governmental exercise of eminent domain.

These propositions concerning the right of eminent domain and the foundation on which it rests being held in mind, it appears clearly that, independently of the line of argument based on the inherent and unlimited taxing power of the government — subject to which, all property, real and personal, is, under the law as it now stands, held by private owners — the single tax theory of the appropriation of ground rents for common use can be justified under our legal theories of land ownership. For my part I should prefer, as an abstract proposition, so to justify it, for while it is undoubtedly true that legally the taxing power of the government is unlimited, ethically, I, like all other thorough-going single taxers, believe that so far as it extends to the products of industry, it is indefensible. Taxation as taxation is socialistic, and we are individualists. But true individualism does not demand a right of absolute private property in natural opportunities, and, therefore, whatever it may have to say of taxation as such, it does not deny to organized society the right of eminent domain and all which that implies.

The right of eminent domain, as I have said, is the right of the state to resume

possession, to the extent of its original and primary ownership, of all that part of the land which is essential to the welfare of society. We contend (of course this is not the place or opportunity to argue that contention), that the welfare of the state now demands the resumption of all land to the extent of burdening it with the payment for the common weal of all its economic rent, less, perhaps, a narrow margin which may be left to the secondary owner — the owner, that is, in subordination to the state, as his wages for the trouble he takes in collecting such rent from the users of the land and paying it over to the public.

This economic rent is the annual value which the soil, as it came from the hands of the Creator, without anything that man has put upon it, has acquired from the growth of the community, and it is therefore most just that it should be the revenue of the community. To take it, we need not interfere with the usual and traditional system of land titles, or their transfer by descent, devise, or purchase, for we can do it by the use of the forms and machinery of taxation alone. While thus using both the forms of private land ownership and of taxation which now exist, we should take away from both that which makes of each of them the means of injustice and oppression to the mass of the people for the benefit of a favored few.

It may be objected to this argument that the application of the single tax is justified under the common law principle of eminent domain, that the right of eminent domain carries with it the obligation of compensation. This is a confusion of ideas. The right of eminent domain has no such limitation. It is simply the assertion of an inherent ownership in the soil by organized society, and the right to resume possession under that ownership when the necessity occurs, to the extent demanded by that necessity. The constitutional and legal restrictions which prevent the taking of private property for public uses without compensation, are entirely different matters, having no inherent relation whatever to the fundamental principle of eminent domain. It is true that courts and custom have universally applied the principle of compensation for particular property taken for public uses, whether it be land or personal property, even in the absence of express constitutional or statutory provisions. This is, of course, just. To take some land, or the economic rent of some land, within a given governmental jurisdiction, and allow the rest to remain in private hands, without equalizing the forced contribution for the public purposes, would be highly tyrannical and oppressive; almost as bad, perhaps, as the operation of a protective tariff.

But the application of the principle of eminent domain to the aggregate ground rents of the country, through the machinery of taxation, would not require compensation to

render it in accord either with technical law or ethical principles. It would not be the taking of private property at all. It would be, ethically, the resumption of a right too long farmed out to a privileged class at a ruinous loss to the public, and in a technically legal view it would be a simple extension of the taxing power in one direction and its curtailment in others — a process which for more than a hundred years has been constantly going on in the United States without a thought or claim of compensation, although, by the unjust and impolitic manner of its exercise hitherto, it has ruined hundreds of thousands of honest men and injured as many millions.