Irrigation and Land Values In California

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CALIFORNIA has been my home State for more than half a century. For many years my chief activity was in helping Irrigation Districts borrow money to build dams and hydro-electric power plants, canals, drainage systems, etc. This was always done pursuant to State laws which provide that payment of the bonds issued to finance these projects must be made by holders of the land benefited, by means of a direct, annual ad valorem tax on the land. Originally the law required buildings and improvements also to be taxed. But in 1909 it was amended to permit their exemption and all the Districts soon took advantage of this. In 1917 the law was further amended to tax land values and prohibit any tax on buildings or other improvements, including, for instance, planted orchards, vineyards and crops.

An almost miraculous community development followed when money was borrowed to pay for the irrigation systems. Absentee landlords either prepared the land to make use of the water, or soon sought buyers willing and able to make good use of the land. The direct, annual ad valorem tax increased the amount of land offered for sale, and gave homeseekers an opportunity to buy good land at prices

they could afford. It also made land in many huge Spanish Grants accessible to small holders.

HENRY GEORGE'S PRINCIPLE IN OPERATION

Since 1909 this California Irrigation District Law has employed the principle of taxation advocated by Henry George, in *Progress and Poverty* and his other works. I did not become aware of this fact until after my retirement in 1927. Unfortunately taxpayers in the California Irrigation Districts still suffer the same onerous taxes imposed by federal, state, county, city and school district authorities as in other States. In my opinion this makes the beneficial effect of even the mild application of "single-tax" principle all the more convincing.

Much is rightly heard about George's influence in Denmark, Australia, New Zealand, Canada and elsewhere, but one should not underestimate his influence in California where *Progress and Poverty* was written. Our California Irrigation Districts contain about 5,000,000 acres of rural, orchard, vineyard and urban land. That is about the size of Denmark.

The progress we have made, has not been easy. Absentee landlords implacably opposed and attacked land-value taxation even calling it "communism and confiscation under guise of law". That was said in 1895 in a test case before the U.S. Supreme Court, reported in 164 U.S. 112. The lower federal court agreed with the landlords that the law was unconstitutional. This is reported in 68 Federal 948.

Two great constitutional authorities, Judge John F. Dillon and Mr. Choate, were interested in the case by friends of Henry George. They took an appeal to the Supreme Court, which reversed the lower Court's decision and rendered a sweeping approval of the law in the historic case of Fallbrook Irrigation District vs Bradley, 164 U.S. 112 (1895). But the speculators and absentee landlords were

not ready to quit. They kept attacking the law in countless ways, and never stopped trying to kill it. The miracle is that the law has survived.

THE ASHTON CASE

In 1929 there came the big panic and smash which closed all the banks for a time, and many of them permanently. It is claimed that about half of the country real estate mortgages in California were held against land in the Irrigation and Reclamation Districts. The law provided that the lien on land for an unpaid irrigation tax was the first lien, ahead of any other lien, and ahead of mortgages.

The mortgage interests rushed amendments through at Sacramento (the State capital) to change the law. The courts, however, rejected them when test cases were brought, staunchly defending both the California and the U.S. Constitutions.

In desperation the mortgage interests appealed to Congress in Washington, successfully persuading it to enact a municipal bankruptcy law (11 U.S.C.A. 301-304). Never before in the history of the Anglo-Saxon world had the sovereign taxing power been required to step aside in favour of private feudal or mortgage interests. I fought this bankruptcy law and was upheld both by the lower federal court which (in 9 F. Supp. 103) strongly denounced it and by the Supreme Court which, in the Ashton case (298 U.S. 513) threw it out in 1935. Many briefs for a Rehearing were filed, one of them being signed by the Attorney Generals of eleven States, but these were all rejected. An account of this decision and Rehearing struggle is reported in the later case of Brush vs Comm., 300 U.S. 352, 366-369.

The heart of the decree in the Ashton case is as follows:

"Our special concern is with the existence of the power claimed, not merely of what has already been attempted... If obligations of States or their political sub-divisions may be subjected to the interference here attempted, they are

no longer free to manage their own affairs; the will of Congress prevails over them.... The Constitution was careful to provide that 'no State shall pass any law impairing the obligation of contracts'. This she may not do under the form of a bankruptcy act, or otherwise. Nor do we think she can accomplish the same end by granting any permission to enable Congress so to do. Neither consent nor submission by the State can enlarge the powers of Congress...."

THE BEKINS CASE

Undaunted, the feudal forces and mortgage holding interests persuaded Congress to adopt a second Municipal Bankruptcy Act (11 U.S.C.A. 401-403) which was substantially the same as the one annulled by the U.S. Supreme Court in the Ashton case. When this second statute came before the Supreme Court in the case of U.S. vs Bekins (304 U.S. 27) — certain changes in the Court's personnel meanwhile having been made — it was declared to be "not unconstitutional".

This means that State officers with the duty to enforce the State land tax laws can, if sanctioned by a federal court, violate the non-discretionary commands in the State laws. Since then the federal courts have imposed "death sentences" on valid, binding and unpaid local government bonds secured by State laws which guarantee the levy and enforcement of direct, unlimited annual ad valorem taxes on land.

Although the interest from such bonds is constitutionally exempt from federal income tax, the bonds themselves have been confiscated by the Federal Government and without payment to bond investors.

So, the highest courts have allowed the bankruptcy power in the U.S. Constitution to rank higher in dignity and importance than the tax power. This is an extremely perilous state of affairs. Borrowing the phraseology of the

absentee landlords in 1895, previously noted, is not this "communism and confiscation under guise of law"?

Those who drew up the U.S. Constitution meant it to be unique. Because they feared tyranny and the power that any one government could use, they divided government between two sovereigns, each having specified powers and authority. At the same time they left in the people and absolutely inalienable by either sovereign, certain basic rights including the equal right to life, liberty and property.

Neither the States of Australia nor the Provinces of Canada ever had such an independent authority to raise their own revenue, as have our States. Even Alexander Hamilton, the leading "federalist" announced in the Debates preceding the Constitution as follows:

SOVEREIGN POWER OF STATES TO TAX LAND VALUES

"I am willing here to allow in its full extent, the justness of the reasoning which requires that the individual States should possess *an independent and uncontrollable* authority to raise their own revenues for the supply of their own wants and making this concession I affirm that with the sole exception of duties on imports and exports they would, under the plan of the Convention, retain that authority *in the most absolute and unqualified sense and that an attempt to abridge them from the exercise of it would be a violent assumption of power unwarranted by an article or clause of its constitution*.... A law for abrogating or preventing the collection of a tax laid by the authority of the State (unless upon imports or exports) would not be the supreme law of the land, but a usurpation of power." (Federalist Essay, No. XXXII.)

Thus it is clear that the sovereign power of each State to tax the value of land within its borders was to be and to remain a power free, independent and absolutely uncontrolled by any Act of Congress or by the federal court.

That is the State sovereign power the Court protected in the Ashton case, but neglected to defend in the Bekins case as a consequence of which any State law to tax land values would be subject to veto, regulation and control by Congress. Not all of our friends are aware of this "loophole" which is available to the landed interests. It is not easy to explain.

PRECEDENTS FOR CONGRESS

Turning now to the available strategy for Georgeists in the U.S.A., it is my opinion we should ask Congress to require the State to lay and collect direct, ad valorem taxes of the kind that Congress employed between 1798 and 1861 in numerous statutes. The amount each State was called on to levy and collect for support of the federal budget was apportioned, according to population, as provided in the U.S. Constitution. The tax was upheld by the highest Court. (81 U.S. 553).

I do not hesitate to predict that unless valuable land is again made subject to federal taxation, land hoarding is going to increase. If this happens the general costs of production, of distribution and of living will continue to rise. There is every incentive today for persons in the high tax brackets to acquire deeds to valuable mineral and urban land. Any State or local tax paid is now deductible from the federal income tax. In this way, the rich can make federal taxpayers pay up to 91 per cent of the State tax on real property which the landholders would ordinarily have to pay.

When we reflect on the record of failure left by the monetary experts in Germany, France, Italy, Spain, Greece, Argentina, Brazil, Japan, etc., since World War I, it behooves us to stress the fact that the BASIC reason for rising living costs in every nation has been wrong and unjust taxation that hampered and penalised those who produced the wealth.

EQUAL JUSTICE UNDER LAW

We know it is possible to support government *without* taxing the fruits of capital and labour and without pushing up the costs of living. Is not this the politico-economic fact that the people everywhere are seeking? When people are allowed to keep the full fruit of their work, untaxed, and are allowed to buy food, clothing, etc., untaxed there is really the "Equal Justice Under Law" that at present is only graven in marble over the entrance to the Supreme Court of the United States.

This can be accomplished by any State or Nation that is willing to draw its revenue from the economic rent of land. In that way, no tax would be needed from capital or labour. There would be no hoarding of valuable land, waiting for the community to increase its selling price. There would be no periodic booms and busts and wild fluctuations in living costs such as the people in so many nations suffer.

In short, the system of taxation recommended by Henry George is the only way public revenue can be raised with equal justice to all.