

The Public, September 14, 1917

Is Land Value Taxation Unconstitutional?

By Jackson H. Ralston

In view of the constitutional provision requiring direct taxes to be apportioned among the several states according to population, is it possible with fairness to adopt for national purposes taxation on the unimproved value of land? This question is not susceptible of easy answer.

The Supreme Court has defined direct taxes to mean taxes levied upon real estate and poll or capitation taxes. The first of these classes would undoubtedly include taxes levied either upon land or improvements, or both.

The Crosser bill proposes to apportion direct taxes on the value of land, exclusive of improvements, among the several states according to population. Undoubtedly it would seem that such a tax was absolutely constitutional, being a direct tax apportioned as the Constitution provides. It would not, however, be a fair tax because the relation between the value of land to the population is by no means uniform. A state wherein there are large cities and where consequently the ability to produce wealth is intensified and magnified, will have a land value per head, much greater than that which exists in a state of like population, but having its inhabitants scattered among unimportant centers. The strict application of the (Grosser bill, therefore, would make the tax on land values in a state like New York much less in proportion to value upon the land taxed than would be the case in Alabama, Mississippi and Arkansas, for example.

On the other hand, a tax which would ignore State lines and be charged upon real estate or land value only everywhere, according to its value, would be so far unconstitutional that it would not receive any reasonable consideration by Congress.

Is the proposition, therefore, unsolvable? I think not. A solution, however, must be found in a direction different from those so far pursued.

The Holding of land by one individual to the exclusion of all others is entirely due to conventional arrangements. Without the convention, it does not exist. This has been recognized more than once by legal writers. Blackstone maintains it in the first chapter of the second book of his Commentaries, wherein he says:

There is no foundation in nature or in natural law, why a set of words upon parchment should convey the dominion of land: why the son should have a right to exclude his fellow-creatures from a determinate spot of ground, because his father had done so before him: or why the occupier of a particular field or of a jewel, when lying on his death-bed, and no longer able to maintain possession should be entitled to tell the rest of the world which of them should enjoy it after him.

The right to hold land, therefore, being purely conventional, is to be treated as a privilege, and while the land itself may not be taxed, the privilege — the franchise to hold and use — is fairly the subject of taxation. It differs in no wise from the franchise of a corporation, whose property is taxed separately from the right to hold and control its property.

The tax, therefore, which I propose is a tax upon the individual who holds land, and I would have that tax apportioned to the value of the privilege he enjoys. The value of this privilege is shown by the value of the land he owns, irrespective of the improvements upon that land. The United States, then, would not be concerned in any way with the use he made of his privilege, but only in the fact of its existence, irrespective of the place of its exercise.

The reasoning upon which such a tax would be based would be exactly parallel to that upon which inheritance taxes are based. The courts do not consider that inheritance taxes are upon the thing inherited, but upon the right — the privilege — of inheritance, the value of which privilege is measured by the value of the thing inherited.

An interesting illustration of the underlying principle is afforded by certain distillery taxes which are estimated, not upon the amount of whiskey produced in the distillery, or upon the value of the machinery, but by the capacity of the distillery. Laying aside the element of speculation, this is the ground work of the value of land — its capacity to produce wealth.

Another suggestion remains to be made. If I am right in my premises, it is not necessary that all classes of landed privileges should be taxed at the same moment. The experiment may be made progressively. We can start for example, by a tax upon the privilege of holding land primarily valuable for mineral productions. We can tax the privilege of holding agricultural lands in excess of one thousand acres and other modifications may be possible.

The Industrial Commission in its latest report has pointed out the terrible effects of land monopoly, ownership extending even to tracts comparable in size with states of the Union. This problem can be met and with tremendous efficiency, if we have the courage to address ourself to it, in the manner I have outlined.