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## *Reflections on the General Property Tax*

By VICTOR ARTHUR MILLER, ESQ.

*(The following article is intended to express the personal views of the writer and not any policy of the editorial board of the Record.)*

“TAXES are something of which we have all heard, but which few of us have experienced. Some reckless person once said that only death and taxes were certain. If death was no more certain than taxes, most of us would live forever. When death comes, man folds up like a tired autumn leaf and joins the great majority. But when the assessor pokes his head in the door, man arises in his might and tells him to go to ——— that he is a poverty stricken patriot with only \$2.43 worth of personal effects and that the state owes him money.

“Taxes are of two kinds—real and personal. The real taxes are the ones which can't be dodged. They are taxes on real estate. The personal taxes are so called because they are a man's own business. When a man owns a \$2,000 cottage with a cabbage patch, inhabited by cutworms behind it, he pays real taxes. But when a man owns four bales of assorted bonds in a safety deposit box, that is personal property, and the state can go to thunder.

“Taxes produce most of the liars in the world—at least taxes give them their early training. According to the information which the tax assessor receives, the land is full of \$25.00 pianos, \$14 diamond rings, \$100 automobiles and invisible dogs. You can't get an assessor to weep tears over the family which has a mortgage over its humble roof, because he has never seen a mortgage, and knows there isn't any such thing.” From “Taxes”, by George Fitch.

Last year the tax-supported entities of which Colorado is composed con-

sumed a sum in excess of \$40,000,000.00. Since these taxes represent a payment made year by year they constitute an interest and not a capital charge. Furthermore, since their lien is first and paramount to all other interests of whatsoever kind, they may fairly be capitalized back at a rate of not in excess of 4%. On the basis of such a rate we find that the permanent capital charge against the State of Colorado to make an annuity for tax purposes approximates the staggering sum of \$1,000,000,000.00. Taxation is a first mortgage on the State of Colorado in the sum of one billion dollars.

If we agree with the late William Graham Sumner and most economists that governmental fiat never created a dollar of positive wealth, we may go farther and say that, by the continuance of the present rate of taxation, there is withdrawn from the productive wealth of Colorado approximately \$1,000,000,000.00, which is thus segregated to purposes not of production.

Now this enormity of the tax burden is not the primary object of this discussion, which is in reality concerned rather with its inequity than its size. Yet its weight accentuates the inequity. It matters a little if a single pound of burden is tied to only one side of a burro; but not so with a pack that weighs a considerable portion of a ton.

Accordingly taxation has always been of a kind with the weather, which, as Mark Twain says, everybody talks about but nobody does anything for.

Probably no two jurists have been

found to agree upon the correct basis of tax apportionment; and this statement is even more true of economists, of whom each one, having found fault with all the others, proceeds to disagree with himself. Out of this somewhat unsatisfactory background, there have, however, been evolved at least three theories of the just basis of tax apportionment; the equality theory, the benefit theory, and the theory of apportionment according to ability to pay.

Space will not serve to discuss the academic niceties of these theories, even if known and understood by the writer, which is doubtful. Suffice it to say that the equality theory holds that all persons should have an equal share in the burdens of the State. The benefit theory holds that a tax is a quid pro quo for benefits directly or indirectly received. Whatever their logical support, both these theories would seem to be practically untenable; for, in the last analysis, if the first were to prevail, there would be no tax but a poll tax and, if the second were possible, the bulk of all taxes would be paid by inmates of penal institutions, insane asylums, municipal and quasi municipal corporation headquarters, State office buildings, etc., (not to be construed ejusdem generis).

Almost everybody is ready at this day to admit, therefore, that the true foundation of tax apportionment for practical purposes is the "ability to pay." It may fairly be said to be the true apportionment according to "equality" since it contemplates equality of sacrifice. It has the sanction of antiquity as evidenced by the parable of the widow's mite.

It is likewise supposed (but the truth of the psychology thus assumed may well be doubted) that such an apportionment encounters less opposition because it assumes to withdraw

the dollar from him who has the most dollars and to whom accordingly, so it is supposed, the marginal desirability of any single dollar is the least. More epigrammatically put by the ancient British statesman, "it plucks the feathers where it makes the goose squawk the least."

Sized by this rule we have to consider the general property tax as shared by Colorado with most of the other states of the Union ab origine. The general property tax in Colorado pays from  $\frac{2}{3}$  to  $\frac{3}{4}$  of the whole budget and of this the tax on real estate pays in excess of  $\frac{2}{3}$ . By far the greater proportion of the remainder is excise which directly or indirectly receives a quid pro quo (as auto license taxes, which less than meet their shares of highway and other development for auto benefit; or corporation taxes, paying for the convenience of the legislative grant of corporate entity). Unquestionably, therefore, it is the land owner that is paying for the uses and abuses of government in Colorado.

This fact is further accentuated where, as in this State, the real estate owner pays not only for what he owns but also for what he owes—there being no deduction for incumbrances. This is certainly a literal fulfillment of Scripture, "From him that hath not shall be taken away even that which he hath."

Of course, an apportionment of tax according to ability would seem in point of theory to demand an "income" tax. Yet in its dim beginnings, the property tax was not totally unsustainable even upon this theory. Landed property as a basis of acquisitive capital—even as against personal services—was, in the agricultural conditions of Colonial and Early Nineteenth Century America, so great a proportion of the whole that, speaking in generalities, the property tax paid by

the squire was a fairly well distributed income tax. The proportion of the community's income derived from other sources was small. Under these circumstances it made no difference that it was called a property tax, the effect was to take it out of income. Whether the squire was taxed one mill on a hundred dollar acre, or one cent on the ten dollar crop the acre grew, it was immaterial to him; and had, in either case, to be made from income. Even if the land was vacant, and held as a speculation, taxes would have to come out of the increment actual or prospective as capitalized back; otherwise the owner would let the County Treasurer have it.

Moreover the squire was practically concerned with the incidence of the tax not the object of its immediate levy. So long as the tax remained fairly stable, he passed it on to his tenants or the purchaser of his crops. Whatever distinction may be made between direct and excise taxes juristically, practically speaking, a general property tax is an excise on the usufruct of the land.

In the years that have passed since the squire's days, however, the country has become industrialized and socialized. The product of land or land and improvements is only a small part of the country's real income budget now; yet it still pays all the tax. The crooked track over which the squire's cows tinkled their leisurely way has now become a city street which we poetically describe as canyoned skyscrapers. From the street a certain portion of a mile in the air represents the domiciles of stock and bond houses, mercantile supplies, shoe factories, and ocean liners. The surface of the ground beneath represents the handiwork of the steel and concrete industry, the ubiquitous Ford and other transportation interests—each and every one deriving an income

greatly in excess of that from mere land and building investment. But still the successors of the squire, the urban landlord and the country farmer are paying the taxes that afford societal protection (not to mention societal parentalism) to all these other sources of income.

The landlord and the farmer are the little red hen saying, "Who will pay to educate your children?" and everybody else is answering, "Not I."

Nor can it be said that the landlord is at present protected by the incidence of the tax, for the tax is constantly moving upward toward the point of confiscation. By the time the property owner has placed his finger on the tax point and adjusted rents to it, like the Irishman's flea, it has taken another jump. Indeed, both he and the farmer are now dependent on externals which would render difficult a shifting of incidence under the most stabilized conditions of taxation.

The late Mr. Fitch's veracious exposition at the beginning of this article adequately illustrates that the so-called personal property tax is only a fictional compensation for the inequities.

It is suggested therefore that, in the present state of society, the optimistically denominated "general property" tax operates prejudicially against real property owners in favor of all businesses and occupations where the income therefrom derived is disproportionate to the real estate ownership entailed. This applies as well to mercantile and manufacturing interests, where a land ownership may be present but only as an incident, as to incomes derived from purely personal services. The best example, however, of the system's injustices may be found in the case of the person, of whatever calling, deriving a large income solely from personal services. The source of such income is just as

exempt from local taxation as St. John's Cathedral, the Denver Orphan's Home, or the Court House. A professional man who makes ten thousand dollars a year contributes no cash payment to local government unless he owns a home. A building owner deriving a ten thousand dollar per year net income but likewise without a home pays from three thousand to six thousand dollars a year in general taxes depending on whether his revenue comes from a building which he owns free and clear or merely from his equity in a building.

This situation is even more lamentable in its tendency than in its immediate effect, because it does not give the professional men, the most influential members of the community, a proper stake in local economy. It is unfortunately true that persons who are untouched, or lightly scathed, by the assessor's hand are apt to view through very optimistic spectacles those green hills far away into which governmental activity may be expensively extended. Even the provision for ballot on bonds by tax-payers is rather a grim jest; and many a \$25,000 a year professional or business man, by chipping in a penny ante, has felt justified in whooping on the public to hoist another bond load on the real estate camel to build a Pompeian villa for his children's children through the medium of government.

The quiescent attitude of real estate owners under present conditions of general property taxation is without a parallel in history and indicates a decided softening of constitutional fiber from that of our Anglo-Saxon forebears. There is probably no single incident of government that has been more jealously guarded than the tax prerogative. It is made a chief point in Magna Charta. Hampden's ship money case was the tinder box of the Puritan Revolution. The hearth

tax was a periodic source of turbulence throughout England. MacCauley recalls a doggerel rhyme of Stuart England:

*"There is not one old dame in ten,  
And search the country through,  
But, if you talk of chimney men,  
Will spare a curse or two."*

Yet the hearth tax was benign in its fairness in comparison to the American General property tax.

A century and a half ago our forefathers committed an act of rebellion by dumping a tea cargo in Boston harbor rather than submit to a trifling inequity in the taxation of tea which concerned them little.

Today in many parts of the country proprietors of tea shops are being taxed out of existence without a murmur to enable governmental entities to serve tea at cost.

In the turbulent days of Reconstruction in the South the prime indictment of the carpet baggers, the gravamen of their offending, which has been used to hold them up to holy horror and justify the "Solid South" ever since, was that their corruption, incompetence and bond issues raised taxes. Rhodes, the historian, cites it as almost unbelievable that the bonded debt of the whole state of North Carolina rose from 16 millions to 32 millions 100% under the Holden regime; and the biting finger of ridicule has been put upon it, as a crowning touch, that each legislator was given an imported cuspidor worth \$20.

In an equivalent period the bonded debt for public purposes born by Denver alone has increased from \$1,500,000.00 to \$32,000,000.00 or 2,100 percent and every domestic science class of little girls has a genuine walnut table and real silver ware worth \$200 to learn on.

In the latter half of the last century, Mr. Henry George published a

book called "Progress and Poverty" in which he advocated the maintenance of government by a "single tax," namely the confiscation of the "unearned increment" upon land—meaning the growth in value of land simply by the growth of population. The citizens of this city and state have repudiated Mr. George's ideas at the polls a number of times; yet even so that gentleman must be smiling in his tomb. Though Denver's population has nearly doubled since 1910 and multiplied nearly ten times since 1880, in many sections of Denver, sections by no means in the backwash, land is worth no more than it was in 1910; in yet others it is worth no more than it was in 1880, and in some even less. Society has taken the unearned in-

crement with a vengeance. Yet were it suggested that Colorado was operated on a single tax policy it would be indignantly denied.

In Bill Nye's fourth-reader story, the "Grammatical Boy," his seven year old hero is made to say:

"In yonder cottage near the glen my widowed mother and her thirteen children dwell with me and I provide for them by digging wells. I toil, oh, so hard, sir, for we are very, very poor, and since my elder sister, Ann, was married and brought her husband home to live with us, I have to toil more assiduously than heretofore. But, oh, sir, should my other sisters marry, I fear that some of my brother-in-laws would have to suffer."

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## *Recent Trial Court Decisions*

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*(Editor's Note.*—It is intended in each issue of the Record to note interesting current decisions of all local Trial Courts, including the United States District Court, State District Courts, the County Court, and the Justice Courts. The co-operation of the members of the Bar is solicited in making this department a success. Any attorney having knowledge of such a decision is requested to phone or mail the title of the case to Victor Arthur Miller, who will digest the decision for this department. The names of the Courts having no material for the current month will be omitted, due to lack of space.)

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### *United States District Court*

JUDGE SYMES

**Libel—Judge and Jury—Conformity Act**  
**Facts:** Motion for new trial. Upon trial the Court refused to instruct.

"The Court instructs the jury that under the constitution of the State

of Colorado, in this case, the jury are the sole judges of both the law and the facts."

It did instruct.

"The Court has a certain duty in this case to perform, which cannot be avoided, and has decided and instructs you that the article is libelous *Per se*. That is, as a matter of law it was libel, and the question left for you to decide in what damages, if any, the plaintiff, Frank Seested, is entitled to."

**Held:** Correct as to former, erroneous as to latter. New trial allowed.

**Reasoning:** A Federal Court is not, by the conformity act, required to follow the Colorado Constitutional provision referred to. Nor is that provision declaratory of the Common Law, by which, in libel as in other cases, the Court, not the Jury, is Judge of the Law. But the question as to whether certain publication is or is not libelous where, as in this case, the language is