History, Description and Environment of Property Taxation in America

with

References

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Roots of the property tax

Unlike the income tax and general sales tax that are 20th century creations (Bartle & Krane, 2004), property tax history extends far into the past. Seligman (1913) noted that a formal classified property tax was levied in Athens in 596 B. C. The war-tax of the Roman Empire was levied upon the value of property (Adams, 1999). A brief review of its history and roots provides a framework for understanding the property tax. It differs from the other major forms of taxation in that the power to tax land is one of the four fundamental rights in land retained by government. Grapperhaus (1989) reported that in the time of the Franks, from the fifth century to the tenth century, feudalism dominated and the type of central authority known in the time of the Roman Empire eroded to the point where taxes virtually disappeared, replaced by sharing of crop yields and products. In the feudal system of the middle ages, vassals were tenants of their lords and subtenants of the monarchs whom the lords served, each sharing a portion of the production of the land as rent with their respective land *lord* (an ancient form of sharecropping). As prosperity improved resulting from greater crop yields and the return of a monetary economy, taxes reappeared in Western society. Between the thirteenth and eighteenth centuries, the feudal system was gradually replaced by the allodial system of land ownership by which individuals were given the right to own and transfer rights in land (Jacobus, 2003).

Technically, a true allodial system (meaning *absolute* individual ownership) does not exist because governments have reserved certain rights and powers for themselves. Under the feudal system, the monarch was responsible for defending the land against invaders, deciding how the land would be used, providing roads and bridges, and providing law enforcement, courts and general government administration to the extent required. These *services* were paid by the land rents (in the form of products from the land) that were extracted from the lords and vassals by the monarch. As the feudal system declined and private land *ownership* evolved, a need still existed for the *services* provided by the monarch in the feudal arrangement. Grapperhaus (1989) maintained that the imposition of taxes grew out of mutual need. In conjunction with the return to a monetary economy, the rise of cities and the creation of mercenary armies, subjects gradually began offering their rulers an impersonal monetary payment in lieu of personal services and products. To have the capacity and authority to provide services for subjects as a whole, it became necessary for certain rights to be retained by government. Thus, under the English system of government, four fundamental rights in land were retained: (a) Power to tax land as the source of revenue replacing the feudal land production share provided to the monarch, (b) Eminent domain by which land could be taken for a public purpose, (c) Police power by which laws could be enacted and enforced for public safety, health and welfare of citizens (the legal authority for zoning regulations), and (d) Escheat by which property ownership would revert to the government when it became ownerless because of abandonment, lack of heirs or no instructions in the form of a will for disposal of the property (Jacobus, 2003). These rights retained by government in the English system provide the legal basis for property taxation and land use regulation. They have evolved over the last seven centuries and are fundamental to the operation of government. The American system of land law is derived from the English system and when the original colonies won independence from the British in the Revolutionary War, the four fundamental governmental rights in land passed to the newly formed United States, becoming part of state constitutions, the U.S. Constitution and the Bill of Rights.

Grapperhaus (1989) posited that by voluntarily agreeing to taxation, certain groups in society obtained the right to participate in discussions about revenue expenditures, enabling them to exert some influence on government. In time, this participation assumed the form of a popular assembly elected by the persons paying the taxes. When politically fragmented territorial units such as the original 13 colonies began sharing financial burdens with other regions, the modern unified state began to evolve.

Early American property taxation

One of the perceived causes of the American Revolution was taxation without representation. The revolutionary leaders who were responsible for the federal constitutional language recognized that "the core argument used to discredit the authority of Parliament and the British monarch was … an obsessive suspicion of any centralized political power that operated in faraway places beyond the immediate supervision or surveillance of the citizens it claimed to govern" (Ellis, 2001, p. 7). The U.S Constitution specified the powers *granted to* the federal government by the original 13 sovereign states that were not in favor of a strong central federal government. The respective state constitutions established the powers of the states and rights of their citizens. The U.S. Constitution did not mention local governments. Counties, cities, townships and villages are the governments closest to the citizens, where the property tax is the primary source of revenue, but are authorized and controlled by state governments. "The federal and State governments are in fact but different agents and trustees of the people, constituted with different powers, and designed for different purposes" (Madison, 1788, p.1).

The concept of equality so eloquently stated in the Declaration of Independence, the U.S. Constitution and the Bill of Rights had major implications. Men of wealth and social status who were the leaders, as well as ordinary men, thought about the meaning of equality, and asked about its implications for taxation. The leaders often saw little connection among independence, political equality, and the tax system, but many ordinary men saw an opportunity to demand changes. In the colonial period, taxes were usually specific amounts per unit and based upon quantities such as the number of acres of land or horses (Benson, Benson, McClelland & Thomson, 1965). Such systems failed to recognize inherent differences in such assets, and dissatisfaction with the colonial tax systems became a major reason for the 19th century movement for taxation of all property at a uniform rate according to value (*ad valorem* taxation). Before 1800 land was taxed in a variety of ways, but only four states taxed what was referred to as the "mass of property" in a survey of taxes in 1796 (Benson et al. p. 30), which was the forerunner of the general property tax of the 19th century, discussed in the next section.

Adam Smith's *The Wealth of Nations*, published at the time of the American Revolution, contained the first important economic analysis of taxation (Smith, 1776). Smith offered four maxims of taxation: *equity*, certainty, convenience of payment, and economy of collection. These maxims have remained important in the analysis of tax systems and were referenced in the works of Cooley (1876), Ely (1888), Wells (1907), Seligman (1913), and throughout the 20th century to Fisher (1996) and Adams (1999).

Nineteenth century property taxation

Property was a major source of public revenue throughout the 19th century, from both the sale of public land and from property taxes. The dominant political concept of democracy was expressed in demands for uniformity and universality in taxation, which were idealized in the concept of taxing *all property* according to its value at an equal rate. At the end of the 18th century, no state constitution required that taxation be by value or required that rates on all kinds of property be uniform. In 1818, Illinois adopted the first uniformity clause. Missouri followed in

1820, Ohio in 1825, and in 1834 Tennessee replaced a provision requiring that land be taxed at a uniform amount per acre with a provision that land be taxed according to its value, i.e. *ad valorem tax* (Fisher, 1996). By the 1890's thirty-three states had included uniformity clauses in new constitutions or had amended old ones to include the requirement that all property be taxed equally by value. However, near the end of the 19th century the general property tax was subjected to increasing criticism as being impossible to administer equitably. In all eight editions of his book beginning in 1895, Seligman (1913) stated:

> *Practically*, the general property tax as actually administered is … 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 of uniformity, of equality, and of universality of taxation. (p. 62)

The basis for the criticism was its application to *all* property, tangible and intangible, which became increasingly difficult as society and commerce became more complex. Seligman (1913) admitted that administration of a general property tax was possible in a simple agrarian society, but that it was not possible in industrialized society and therefore advocated its elimination. The foundation and justification for the income tax as an alternative can be seen in the writings of other leading economists of the era including Ely (1888), and Wells (1907).

Twentieth century property taxation

With the creation of the National Tax Association (NTA) in 1906, a national forum for study of taxes by academic scholars and public policymakers was established, and in particular at the time, for criticism of the general property tax. In 1907, the governor of Ohio invited the governors of all states and premiers of Canadian provinces to Columbus for a conference on state and local taxation. The association also invited other state officials, university presidents, economics professors and members of state tax commissions to attend. Footnotes in Seligman's book (1913) indicate that he attended both the 1907 and subsequent 1909 conferences, with several chapters of his 8th edition (1913) being based upon papers presented by him at the conferences. The NTA continues as the premier association in the field of taxation and represents three constituencies: academic, business, and government. The association publishes the *National Tax Journal*, which provides significant literature cited for the proposed research. However, the NTA itself is not without its critics, as documented in a doctoral dissertation by Ellis (1991), which argued that the NTA was a *front* for powerful business interests and anti-progressive forces in America.

Although Adam Smith had offered the four maxims of taxation in 1776 and other members of the classical school of economics wrote extensively about taxation in England, until Ely (1888) American economists showed little interest in the subject. After publication of Ely's defining work, there was rapid growth in the literature on state and local taxation, culminating in the papers presented at the 1907 and 1909 NTA conferences. It is interesting to note that ideas and recommendations offered by Ely in 1888 foretold the eventual evolution of the property tax that occurred in the 20th century. Ely defined the theory of property tax capitalization reflected in *market value* without actually using the term. The assessment problem of competitive undervaluation of real estate was cited by Ely – locally elected assessors tending to undervalue their own jurisdictions relative to others in order to transfer the tax burden to others, as if such actions were somehow part of their duty to constituents in performing their assessment function, or perhaps a prerequisite for reelection. He recommended that real estate be exempt from state taxation in order to minimize tax burden competition among counties, and assessors in counties be placed under a single supervisor within the counties to achieve equalization of the property tax burden. These recommendations have been implemented widely over the past century; however, the transition is not yet complete. Ely also strongly supported selling prices in the open market as the standard for assessment valuation (the *market value* standard). Most states now have the *market value* standard established for tax assessment. Ely initiated the gradual realization that real estate, rather than *all* property, should be the primary object of an equitable property tax system because its fixed and visible characteristics made the real estate tax feasible to administer fairly. According to Fisher (1996), attacks upon the general property tax in papers presented at the early NTA conferences fell into three general categories: (a) Intangible property cannot be accurately identified and valued, and if it could it would be double taxation, (b) Tangible personal property is very difficult to assess and self-assessment tends to be a tax on honesty, and (c) Real estate assessment is poorly administered because of competition among assessment districts and state tax commissions had not been successful in stopping competitive under-valuation. Some presenters at the early NTA conferences argued that the inherent difficulties in property appraisal and political interference were the main difficulties in appraising real estate. Moore (2006a) documented the shortcomings in appraisal methodology at the start of the 20th century and traced its evolution to the first decade of the 21st century, noting that assessors finally have all the tools necessary to perform annual tax assessment at an acceptable quality level for an acceptable cost. However, the problems of political interference have continued a century after the presentations at the early NTA conferences, and have simply assumed new, more subtle, indirect forms that are the subject of the proposed study.

Efforts to quantify assessment quality began during the first quarter of the 20th century with the pioneering research of Eric England of the Kansas State Agricultural College (Fisher, 1996). England calculated ratios of assessments to sale prices and applied statistical methods to the study of actual assessment practice, discovering that larger properties were under assessed relative to smaller properties, a condition known as *vertical inequity* in the literature. England may have been the originator of the coefficient of dispersion (COD), which he used in the mid-1920s to evaluate inequities among individual parcels, known as *horizontal inequity* in the current literature.

Jensen (1931) spent 10 years researching the large volume of fragmentary material that had been produced since Ely (1888). Consolidating his findings about the essential aspects of property taxation at that time into one organized volume, he published a landmark work on property taxation in the United States. Jensen's research determined that the so-called *general* property tax was indigenous largely to the United States, almost universally criticized as being unsound in principle and impossible in practice, and yet continued to be almost the sole source of local government revenue. Jensen devoted an entire chapter to the uniformity rule that required all of a taxpayer's property situated in the same taxing district to be treated alike, noting that it was a requirement of law in most states, yet was far from realized. Jensen concluded that the uniformity rule was objectionable mainly because it applied to intangibles and that evasion with respect to intangibles was widespread. Jensen posited that the obvious remedy would be to exclude intangibles from property taxation. Jensen suggested that the uniformity rule would then apply to only tangibles and the property tax would become what it actually was in practice, a tax *in rem* on possessions, making uniformity feasible. Most states have eliminated taxation of intangibles, but in some states, including Florida, taxation of intangibles remained in the statutes with little effort at enforcement. The only national review of intangible taxation conducted in the past 40 years was by Bowman, Hoffer and Pratt (1990). Jensen (1931) devoted an entire chapter to exemptions, noting that exemptions were widespread in colonial time, but many exemptions disappeared during the uniformity and universality movement of the 19th century. Jensen also noted that the uniformity movement had run its course and the demand for exemptions had again become insistent, which is consistent with the property tax cycles described by Lynn (1967). The homestead exemption is one of the exemptions emerging in the 1930s (Groves, 1939) that would be studied in the proposed research.

Real estate assessment considerations in property taxation

Jensen (1931) identified the valuation and assessment process as fundamental by definition to the administration of an *ad valorem* property tax, devoting a major portion of his study to the subject. Jensen cited lack of bone fide market transactions as one of the impediments to accurate assessments and described use of “scientific appraisal” and “constructive market value” as possible alternatives (p. 449). Jensen defined a constructive market value as “one constructed synthetically by taking all the factors affecting value into account so that it shall approximate as closely as possible what the market value would be could one be ascertained” (p. 450). The scientific appraisal methodology and constructive market value that Jensen described amounted to what is now known as the cost approach, which had its origins in the period of Jensen’s research. It was referred to at the time as scientific appraisal because the value was ascertained by considering all the material and labor costs for the building components that were used, which were engineering estimates organized and placed in manuals for reference by assessors (Moore, 2006a). Because of its intuitively scientific nature and ease of explanation to taxpayers, the method was rapidly adopted in the 1920s and 1930s, enjoying wide and nearly total acceptance until computer based techniques such as multiple regression began to emerge in the 1970s. Moore (2006a) provided a brief history of the evolution of valuation practices during the 20th century beginning with the first known book on the subject (Hurd, 1903). As the adverse criticism of the general property tax grew, beginning toward the end of the 19th century, and the property tax became predominately a real estate tax during the 20th century, methods for accurate real estate valuation evolved and steadily improved. The available market methods as of the first decade of the 21st century have been shown by recent research to be capable of great accuracy (Moore, 2006b); however, they are not universally in use.

Little property tax literature was published after 1939 and prior to publication of a comprehensive report by the Advisory Commission on Intergovernmental Relations (ACIR, 1963), which documented the status of the property tax in the United States at that time with specific recommendations for improving its administration. The ACIR report acknowledged the importance of the property tax in the federal system, rekindled academic interest in the subject, and made a number of important recommendations intended to improve property tax equity. Prior to the 1963 ACIR report, the previous major work was the published papers of a property tax symposium held in Philadelphia just prior to World War II (Tax Policy League, 1939). It provided a glimpse into the status of the property tax prior to the quarter century lull in the literature that began with the war years. The papers in the proceedings of the 1939 symposium contain indications of the shifting thought about property taxation. In the 1939 papers was noted the growing use of exemptions and tax rate limitations. The decline of the property tax as a major source of revenue for state governments was discussed as well as the continuing importance of the property tax as the main revenue source for local governments. The 1939 symposium papers also identified the migration from the *general* property tax to a predominately real estate tax. As a predominately real estate tax, the property tax had an important place in a sound tax system for the country according to the 1939 symposium papers, having eliminated the worst evils of the intangible aspects of the tax. Note that the property tax changes documented in the 1939 property tax symposium followed the recommendations of Ely (1888), Seligman (1913) and Jensen (1931).

The period of awakening

Following the 1963 ACIR report a resurgence of interest and study of the property tax occurred. In the preface of his definitive work, Netzer (1966) provided retrospective insight concerning the literature:

> Although three decades have passed since then, Jensen's book remains the standard work, and with good reason. In many respects, neither property tax institutions nor analytic approaches have changed much since 1931, and Jensen's handling leaves little to be desired. (p. ix)

The ACIR report and Netzer's work initiated a 15-year period that produced a number of important publications by leading economists and other scholars, in symposium proceedings volumes and other outlets that this investigator categorizes as the awakening at the dawn of the era of computerized tax administration. The literature included publications from Lindholm (1967), the Tax Institute of America (1967) – the old Tax Policy League, volumes edited by Johnson (1969), Lynn (1969) and Peterson (1973), a book analyzing the effects of assessment practices in eight major cities that documented *vertical inequity* (Peterson, Solomon, Madjid & Apgar, 1973), as well as important books of Aaron (1975) and Case (1978). In their introductory comments about the subject, all of these sources reiterated in one way or another Jensen's famous quote, "If any tax could have been eliminated by adverse criticism, the general property tax should have been eliminated long ago" (1931, p. 478). They all conceded that the property tax had survived the criticism and appeared to be a permanent reality, since there did not seem to be a suitable alternative for local government own source revenue. Aaron (1975) showed that the widely held view of property tax as regressive was in fact incorrect when the tax was properly administered. The literature of this period began to focus on improvement of property tax administration and in particular, the assessment process that is the foundation of a properly functioning *ad valorem tax* system. This awakening era also produced the first scholarly studies of assessment equity.

The 15-year *period of awakening* witnessed a major transition from predominately hand-administered assessment and property tax systems to the early era of affordable computerized systems and the birth of computer-assisted mass appraisal (CAMA). In the 1973-1975 time frame, the first ever CAMA system designed for a new class of affordable computers known as minicomputers as a market value driven system based upon an early form of the adaptive estimation procedure (feedback) was successfully implemented for a major 300,000 parcel jurisdiction (Moore, 2006a). At the same time market value driven systems utilizing multiple regression analysis (MRA) emerged on mainframe computers in various parts of the country. *Market value* driven systems became possible because most states began requiring disclosure of sale prices as part of the property transfer process (sometimes unintentionally in the form of transfer taxes that were a fixed fraction of the sale price that could be used to determine selling price). Disclosure of sale prices allowed methods to emerge that made use of computers' ability to perform numerical and statistical analysis, overcoming one of the major obstacles to improved assessment identified by Jensen (1931). These methods permitted use of computerized analytical extensions of the market comparison approach, where the value of a subject property was determined by comparing its features and description to those of similar properties that had sold for a known price in the same market area. If an adequate number of similar properties had recently sold in the market area, these comparable property sales would form a price distribution that, if assumed normal for a market area, produced a sample mean that would be a good market value indicator for the subject property (Moore, 2006a). Use of these statistical methods defined the modern era of property tax administration and was generally considered by practitioners to produce superior results, as measured by established standards (IAAO, 1999), when compared to the pure cost approach (the "scientific appraisal" defined by Jensen). This belief was confirmed by recently completed research (Moore, 2006b) that used different valuation models to generate values for precisely the same set of properties at the same point in time, which was a strong test of the difference between models.

Aaron (1975) reported that official statistics about property tax administration in the United States, as measured by coefficients of dispersion, "… improved sharply between 1956 and 1966 …" (p. 15). Assuming that by 1970 the quality of assessment was better than at the turn of the century, the documentation of assessment inequity was certainly much improved as shown by Aaron's analysis and methods for testing equity (Paglin & Fogarty, 1972). A few states began regular assessment-sales ratio studies prior to 1950, but coefficients of dispersion were not published until much later (Fisher, 1996). Fisher reported that the biggest weakness of the sales ratio studies was not the statistical analysis, but the gathering, editing and confirmation of the circumstances of each sale to verify that it represented an *arm's length* market transaction. To improve accuracy of the sales data, a few states began in the 1960s to require that additional information about the circumstances of the sale be certified by Grantor and Grantee and be filed with the deed. With reference to the 1970s, Fisher, reporting that the average state-wide coefficient of dispersion (COD) in Kansas was above 50, when 20 was viewed as the acceptable upper limit, stated, "Even if allowance is made for possible weaknesses in the choice of sales to be included in the assessment-sales ratio studies, it is clear that the quality of assessment was incredibility bad" (1996, p. 169). The continued expansion in the use of computers, the further affordability made possible by the introduction of powerful personal computers, creation of assessment standards (IAAO, 1999), and improved software for property tax administration resulted in steady improvement in the quality of assessment in the final quarter of the 20th century (Fisher, 1996; Moore, 2006a, 2006b). In reviewing the status of property tax administration in the 1990s, Fisher offered, "A computer-assisted mass appraisal (CAMA) system has the potential for greatly improving the quality of assessment, but it offers challenges and dangers. Developing CAMA systems requires a high degree of statistical and computer skills as well as the theory and practice of appraisal" (1996, p. 196). This potential for improvement of assessments using automated valuation models and Fisher's warning were also noted by the International Association of Assessing Officers (IAAO, 2003).

Three distinct eras of government finance

Wallis (2000) identified three distinct systems of government finance between 1790 and 1990. The first fiscal period extended from 1790 to about 1842, during which state governments took the lead in promoting economic development through infrastructure investment in transportation and legal innovation to promote corporations and banking. Canal transportation was critical to development of the western lands (Wallis, 2001). Wallis noted (p. 135) that a property tax compromise in Ohio, which recognized that land near transportation would have higher value, changed the land valuation basis from three flat per-acre rates to *ad valorem* valuation and led to passage of the *1825 Canal Law* that provided funding for construction of major canals in the state. By the late 1830s, the states had eight times more debt than the national and local governments combined.

The second era of government finance began to unfold in the 1840s. An economic depression caused states to approach debt default status and local governments took the lead with most of the important infrastructure investment in education, highways, water systems, sewer systems and public utilities, financed by the property tax, which grew to become the most important source of revenue for local and state governments. On the eve of the Great Depression, local governments collected over half of all tax revenues and had debt equal to the national debt that remained from World War I.

The Great Depression and the New Deal ushered in the third era of government finance that continued through the end of the 20th century. The third era has featured national domestic programs, including infrastructure investment, funded from the federal level by income tax revenues and administered by state and local governments, as well as a national system of defense and retirement security. Income and consumption taxes became the predominant forms of revenue at the national and state levels, while the property tax remained the main tax revenue source at the local government level. According to Wallis, government revenue in 1840 was about 4% of GNP with local government being about 33% of the total. By 1902, total government revenue had grown to 7.3% of GNP and local government accounted for over half of that. Wallis (2001, p. 126) reported that between 1902 and 1992, local government revenue less than doubled from 4% to 7.3% of GNP, while federal government revenue increased seven-fold to 21% of GNP and state government revenue increased more than 11 times to 9.3% of GNP. During the same 90-year period, the property tax share of total revenue at all levels of government decreased from about 42% to less than 10%, with the national and state shares approaching zero and the local share declining from approximately 74% to 45% Wallis (2001, p. 124). The size of government relative to the GNP is determined by the cost of the functions and services that it commits to provide for its citizens, not by the revenue structure. After researching the history of American government finance, Wallis (2000, p. 80) concluded that, “There is no substantive evidence to suggest that tinkering with the revenue structure will change the size of government.”

The main purpose of this historical review has been to provide a framework for understanding property tax administration as it relates to the subject of *equity*, which has been intertwined with a general debate about the theory and practice of its administration that has lasted at least 125 years.

Improved administration and revenue windfalls

As demonstrated in the previous section, the literature of the *period of awakening* from 1963 to 1978 began to focus on improvement of property tax administration and in particular, the assessment process that is the foundation of a properly functioning *ad valorem tax* system. An *ad valorem tax* by definition depends upon value and value theory, which is based upon economic theory. Accounting for the number of acres of land and then applying a specific flat tax per acre is valuation according to unit quantity, not according to its value (*ad valorem*). During the early 19th century as governments replaced the provision requiring that land and improvements be taxed at a uniform amount per unit with provisions that land and buildings be taxed according to their value, the profound change required in property tax administration did not exist and would not exist at an acceptable cost for nearly two centuries. It required an appraisal process that would not be developed for another century (Moore, 2006a), which would be based upon economic theory that would not be published until the end of the 19th century (Marshall, 1890), and computer capability that would not exist until the last decades of the 20th century. The ideal of *ad valorem tax* theory, even if limited only to real estate, was not realistically possible to administer equitably, uniformly and efficiently in practice until after development of standard appraisal practice during the 20th century and the advent of the digital computer. The modern American property tax revolt was already underway when a technically feasible, accurate, and cost-effective solution to the old problem of assessment inequity finally emerged. Unfortunately, the rapid emergence of the solution and its misuse by local officials may have hastened the spread of the property tax revolt (Martin, 2003). Taxpayers understood that their home values were appreciating, which was a good thing from a personal finance point of view, but not good when the increases in value appeared proportionately on their real estate tax bill. As was the situation during the first years of the 21st century, a real estate boom resulted in home values appreciating at more than double the general rate of inflation. Without tax rate adjustments, a windfall in revenue for local governments resulted, allowing expenditure increases instead of maintenance of government revenue in line with general inflation and actual revenue needs. The windfall in revenue meant that pet programs and projects that were not previously possible could be funded, allowing potentially marginal use of taxes.

Property Tax Literature

The following pages contain a reference list of important property tax literature. Much more literature exists, but the list provides a beginning. References to newspaper articles are primarily for Florida, but similar accounts exist in other states where property tax limitation has been a hot political topic.

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