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ASSESSMENT OF REAL PROPERTY FOR TAXATION

Kenneth K. Luce*

A TAXPAYER'S suit to have the assessment on his real property lowered raises some of the oldest and most troublesome problems in the law of taxation. Invariably both the taxpayer and the government are in position to present convincing evidence and forceful argument regarding the fairness of the assessment. Moreover, to the lawyer the problems of appellate review involved in the taxpayer's suit are exceedingly complex. Except in the case of the public utility, the administrative process usually begins with the fixing of the assessment by the local assessing official. From his decision the taxpayer may in most jurisdictions appeal to a local board of review, and from there possibly to a higher tax tribunal. If the taxpayer is dissatisfied with the result reached in the administrative process, he may ordinarily bring suit in his local trial court, where the valuation placed upon his property will be approved, modified, or rejected, usually after findings by a referee. The trial court is sometimes a state, sometimes a federal, court, and this difference will naturally determine which course the case may take to the United States Supreme Court.

Throughout this long process of assessment and review there is likely to be little coincidence of opinion upon the questions of taxable value involved. The fact that the problem is so closely connected with the revenue collecting function of the government necessarily colors the course of decision and leads to wide gaps between the practice and the theory of tax valuation. The question becomes especially acute in times of economic depression. Serious consideration of the problem is especially appropriate at the present time in view of two recent decisions, one in the Supreme Court of the United States,¹ and the other in the United States District Court for the Eastern District of Michi-

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¹ Great Northern Ry. v. Weeks, 297 U. S. 135, 56 S. Ct. 426 (1936), noted in 49 Harv. L. Rev. 1012 (1936); 24 Geo. L. J. 1005 (1936); 30 Ill. L. Rev. 1070 (1936); 84 Univ. Pa. L. Rev. 784 (1936); 35 Mich. L. Rev. 174 (1936).
Both cases concerned problems of tax valuation which arose during the years of the recent depression. If taken at their face value these decisions bespeak a significant change in the prevailing administrative approach in regard to property tax assessment, and in the relationship of the courts thereto. The entire problem of assessment and judicial review merits re-examination. A proper consideration of the subject will require inquiry into the following phases: (1) the theoretical and historical basis of assessment practice; (2) assessment practice as applied respectively to rural, urban, and public utility and railroad properties; (3) judicial review of assessment practice; and (4) recent federal decisions attacking certain assessment practices.

I

THEORETICAL AND HISTORICAL BASIS OF ASSESSMENT PRACTICE

The ultimate objective in the taxation of real property must be to distribute the burden equitably. Experience has shown that no tax system can long stand which is considered unfairly discriminatory by the people subjected to its burden. Unfair discrimination leads to dissatisfaction, tax delinquency, and innumerable obstructive tactics and tax evasion practices. The objective is clear. The difficulty lies in the effort to develop and apply a tax base adequate to achieve it.

In modern economic society the effort to attain equitable distribution of the property tax burden resolves itself naturally to an inquiry into the concept of value. The value of a piece of property viewed in

2 SHULTZ, AMERICAN PUBLIC FINANCE AND TAXATION, rev. ed., c. 22' (1935); Connelly, "The Valuation of Industrial and Commercial Properties for Taxation," 20 NAT. TAX ASSN. PROC. 295 (1927); FROUTY, COLLINS AND FROUTY, APPRAISERS AND ASSESSORS MANUAL (1930); BABCOCK, THE APPRAISAL OF REAL ESTATE 8 (1924). See the statement of Andrews, J., in People ex rel. Warren v. Carter, 109 N. Y. 576 at 579, 17 N. E. 222 (1888), "The tax laws proceed upon the theory that all property protected by law should bear its equal share of the burden of taxation, and the statutory system, if exactly administered according to the letter of the statutes, would result in perfect equality of benefit and burden and none would have any just ground of complaint. But no system of taxation has as yet been devised which is capable of complete and perfect administration." See also, LUTZ, PUBLIC FINANCE, 3d ed., 529 (1936), where the author states, "After all, the fundamental task of a good assessment is that of establishing reasonable and equitable relations among the several parcels or tracts of land in an assessment district and throughout the state. Relative uniformity is, after all, the basic requirement of property valuation for tax purposes." This article deals solely with taxation of real property. For the evolution from the early form of the general property tax to the classification made today between real and personal property and between tangible and intangible property, see LUTZ, op. cit., c. 22 (1936):
the abstract is a function generally of its utility, more specifically of its adaptability and availability for particular uses, and its prospective capacity to produce income for its owner. But value is usually not viewed in the abstract. Any inquiry into the value of a piece of property assumes a purpose behind the search. For instance, if the purpose is exchange, the valuation process must involve a comparison of the particular piece of property with other similar pieces of property with that purpose in mind, and a resolving of the factors considered in the comparison into some common denominator. In our society the common denominator is the monetary unit. It becomes clear that the search for value is ultimately a comparative process, directed by the purpose for which the determined value is to be used, and designed to reduce the relative utilities of few or many pieces of property, as the case may be, to a common monetary scale. And if the process of valuation is to change with the purposes for which value is used, obviously value becomes an exceedingly slippery concept. It is truly one of the great inscrutables of economic science; in the words of Justice Brandeis, "a word of many meanings." And it is widely recognized that this process of reducing value in the abstract to a common monetary scale is one thing for purposes of rate regulation, another for purposes of the eminent domain power, another in the contract or the tort action for damages, and still another for purposes of taxation.

A question arises as to the nature of the process of reduction through which a common monetary scale may be attained for the purpose of taxing real property. In other words, through what process or processes of valuation is it possible to arrive at an equitable assessment structure? Widespread complaint concerning the lack of equity in present day property taxation indicates that no satisfactory solution

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4 Southwestern Bell Telephone Co. v. Public Service Comm., 262 U. S. 276 at 310, 43 S. Ct. 544 (1923).
5 Bonbright, "May the Same Property Have Different Values for Different Purposes?" 20 Nat. Tax Assn. Proc. 279 (1927); Tunell, "Value for Taxation and Value for Rate Making," 20 Nat. Tax Assn. Proc. 263 (1927); Whitten, "Distinction between Value for Tax and Rate Purposes," 7 Nat. Tax Assn. Proc. 342 (1913). There is considerable conflict of opinion in the decisions on this question. For instance, see Mobile & O. R. R. v. Schnipper, (D. C. Ill. 1929) 31 F. (2d) 587 at 592, where the court says, "To the mind of this court, value is always the same." And in Great Northern Ry. v. Weeks, 297 U. S. 135 at 139, 56 S. Ct. 426 (1936), Justice Butler said: "The principles governing the ascertainment of value for the purposes of taxation, are the same as those that control in condemnation cases, confiscation cases and generally in controversies involving the ascertainment of just compensation." It would seem significant that the latter statement was not extended expressly to include valuation for rate-making purposes.
of the problem has as yet been worked out. And this in spite of the fact that the administrators of the property tax, the legislatures, the courts, and the economists have struggled with it since the beginning of American property tax history. For a time, as will appear later in this article, the sale or market value of property furnished an easily applied process of valuation which was peculiarly applicable, under the economic conditions then existing, to the equitable determination of taxable value. But changing economic conditions have destroyed its usefulness as a basis for assessment. The real problem, then, has been one of working out a comparative process of valuation which, in the light of the economic conditions in which it is applied, will arrive at a common monetary scale of taxable value, in other words a tax base, adequate to distribute equally the burden of real property taxation.

The possibilities in the search for such a process are unlimited. For example, such factors as land area, front footage, the number of rooms in the buildings situated on the land, or the number of windows in those buildings might be made the bases of comparison in such a process. Mere citation of such possible components of the valuation process should be sufficient to demonstrate that no one of them would be capable of leading toward a tax base, equitable and uniformly applicable.

It has been suggested that the factors to be considered in the process of real property tax valuation be made consistent with the doctrine of ability to pay. In other words, that income should be the guide, and that capitalized income value should become taxable value. It must be recognized, however, that the theory of ability to pay leads logically toward placing all taxation upon the basis of personal income, leaving taxation of property as such without plausible justification. But whether or not it is equitable or justifiable in the eyes of those who accept the doctrine of ability to pay, the property tax still furnishes

7 See 1 Bonbright, The Valuation of Property 451 (1937), where the author states: "In canvassing the literature of public finance, one looks in vain for any master principle of tax apportionment which can take the place of the indemnity principle under the laws of damages and eminent domain, as the chief clue to the proper meaning of 'value.' Instead, one finds a variety of equally basic principles of 'just taxation,' most of which are in conflict with each other, and no one of which, taken alone, would clearly settle disputes as to the ideal basis of valuation."
8 "Taxation normally bears some relation both to the degree of protection required by the taxpayer and to his ability to contribute to such public burden as manifested by the permanent improvement of his real property." Turnley v. City of Elizabeth, 76 N. J. L. 42 at 44, 68 A. 1094 (1908).
practically all local revenue, and a large portion of state revenue.\footnote{Lutz, Public Finance, 3d ed., 497 (1936); Shultz, American Public Finance and Taxation, rev. ed., 403 (1935). "In 1929 property taxes accounted for $4,906,024,000 out of a total of $6,430,833,000 of state and local tax revenue."} The conclusion must be that if the theory of ability to pay is to be applied at all, it must be applied in hybrid form. It has been so applied in England, where the income from property is made the basis of comparison in the process of property tax valuation.\footnote{Murdoch, "The English System of Real Property Taxation," 84 Univ. Pa. L. Rev. 179 (1935).} But it is quite clear, both from the English experience in so far as it is pertinent to conditions in this country, and for reasons to appear later in this article, that the taxation of real property in the United States upon any basis derived from its ability to pay is administratively impracticable.

Another theory of taxation, the so-called benefit theory, would measure the tax directly by the relative economic benefit which the property receives as a result of governmental protection, that is by establishing a correlation between benefit of protection and the cost of that protection to the government. But the benefit theory also fails to furnish any feasible guide to an equitable determination of tax or taxable value. There is no way of determining governmental cost of protecting real property, and if there were it would be extremely difficult to apportion the cost equally among many types and parcels of property. Probably the benefit theory leads most clearly in the direction of original or reproduction cost, but no clear and simple correlation between cost of property and cost of protection can be assumed.\footnote{1 Bonbright, The Valuation of Property 459 (1937); Bonbright, "The Valuation of Real Estate for Tax Purposes," 34 Col. L. Rev. 1397 (1934). Clearly, depreciation could not be allowed as a deduction from cost in determining capital value if the benefit theory were strictly applied, because it probably costs the government more for protection of an old building than a new one.}

In the absence of any process of valuation capable of achieving a tax base adequate to distribute the burden of taxation equally under any and all economic conditions, tax administration in this country has been forced from the beginning to pick at random, from the changing materials afforded by a rapidly developing social and economic structure, the factors of comparison to be used in its valuation process. From the beginning of our property tax history until nearly the close of the last century, the most common index of taxable value was, as has already been stated, the land market. So long as the United States remained a country with an expanding frontier of free land, market value was undoubtedly the best solution of the problem. Land was
continually being bought and sold. For practically all real property, market value was a quantity not too difficult to ascertain. It furnished a common basis for comparison peculiarly adapted to the determination of taxable value. And so long as property remained largely in one and the same class as regards use and characteristics, the result of arriving at taxable value through market value data was taxation of real property upon a basis substantially equal in its burden.\textsuperscript{12}

But men did not appreciate that market value depended for its efficacy upon the specific economic conditions then prevailing. The market value guide was written into many state statutes and constitutions as the legal guide to taxable value. Still others contain statements that property shall be valued for taxation at its “full cash value,” “just value,” “true value,” or “actual value.”\textsuperscript{13} These phrases, however, have been universally interpreted by the courts to mean market value.\textsuperscript{14} Of course, the objective of real property taxation that

\textsuperscript{12} “A reasonable construction of any property tax law leads to the interpretation that the legal rule of sale or market value is really intended as a guide in the establishment of relative assessments.” Lutz, Public Finance, 3d ed., 528-529 (1936).

\textsuperscript{13} For instance, see Minn. Stat. (Mason 1927), § 1992, “All property shall be assessed at its true and full value in money,” and § 1980(5), “‘True and full value’ shall mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment; being the price which could be obtained therefor at private sale, and not at forced or auction sale”; Cal. Pol. Code (Deering 1931), § 3627, “All taxable property must be assessed at its full cash value...” and § 3617: “Fifth—The terms ‘value’ and full ‘cash value’ mean the amount at which the property would be taken in payment of a just debt from a solvent debtor”; Conn. Rev. Gen. Stat. (1930), § 1143, “true and actual valuation,” and § 1149, “The present true and actual value of any estate shall be deemed by all assessors and boards of relief to be the fair market value thereof, and not its value at a forced or auction sale”; N. J. Const., art. 4, § 7 (12), “true value”; N. Y. Consol. Laws, “Tax Law,” art. 1, § 8, “All real property subject to taxation shall be assessed at the full value thereof”; Mich. Comp. Laws (1929), § 3412, “true cash value”; Nev. Comp. Laws (1929), § 6420, “full cash value,” and § 6419, “The term ‘full cash value’ means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor”; Neb. Comp. Stat. (1929), § 77-201, “All property in this state... shall be subject to taxation, and shall be valued and assessed at its actual value. ‘Actual value,’ as used in this act, shall mean its value in the market in the ordinary course of trade”; Maine Const., Art. 9, § 8, “All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally, according to the just value thereof”; Wis. Stat. (1935), § 70.32, “Real property shall be valued by the assessor from actual view or from the best information that the assessor can practically obtain, at the full value which could ordinarily be obtained therefor at private sale”; Ind. Stat. Ann. (Burns 1933), § 64-1009, “Lands, and the improvements and buildings thereon or affixed thereto, shall be valued at their full, true cash value, estimated at the price they would bring at a fair, voluntary private sale, not a forced or sheriff’s sale.”

\textsuperscript{14} Kemble’s Estate, 280 Pa. 368, 124 A. 94 (1924); Willapa Electric Co. v.
the burden be distributed equally was likewise enacted into the state constitutions and statutes in the form of statements that property should be taxed according to a uniform rule. But this compound formula for taxation—at market value and according to a uniform rule—was bound to lead to conflict and confusion when unforeseen economic changes rendered market value useless as a uniformly applicable determinant. Because of its place in constitutional and statute law, market value has remained the only factor which can legally be considered in the valuation process. And this despite economic changes of great magnitude since the last century. The frontier has disappeared, and with it the active land market. City business property is seldom sold, and the realty and permanent improvements of public utilities and railroads are practically never sold as such. The value of such properties has come to be bound up inextricably with the value of going business assets. Violent fluctuations in price levels and in business conditions since the beginning of this century have, in the opinion of many, made market value, where it still exists, an impossible guide to uniform property assessment. These changes have produced inevitable confusion.


Minn. Const., art. 9, § 1, "Taxes shall be uniform upon the same class of subjects"; Cal. Const., art. 13, § 1, "All property in the state . . . shall be taxed in proportion to its value . . ."; N. J. Const., art. 4, § 7 (12), "Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value"; Mich. Const., art. 10, § 3, "The legislature shall provide by law a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law" [What is called a specific tax has been levied upon public utilities in Michigan, but this tax has been construed as an ad valorem property tax. Pingree v. Auditor General, 120 Mich. 95, 78 N. W. 1025 (1899)]; Neb. Const., art. 8, § 1, "taxes shall be levied by valuation uniformly and proportionately upon all tangible property"; Wis. Const., art. 8, § 1, "The rule of taxation shall be uniform"; Ohio Const., art. 12, § 2 (Amendment of 1934), "No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes. . . . Land and improvements thereon shall be taxed by uniform rule according to value."


Connelly, "Assessment of Property in Times of Depression," 20 Nat. Tax Assn. Bull. 226 (1935); 20 Nat. Tax Assn. Proc. 277 (1927), where F. R. Fairchild, in conference discussion, makes the following statement: "Let us be honest and face the fact that no man on God's earth can find out the value of ninety per cent of taxable property. . . . we shall have to recognize that in many, if not in all cases value is an impossible tax basis. This was recognized long ago in Europe. . . ."
Furthermore, the steady and increasing expenditures of government cannot depend on a tax base which fluctuates with uncertain and always changing market prices. This is especially true in view of state constitutional limits upon the rate of taxation and debt limits imposed upon local government, which are usually determined according to assessed valuation. Also, constant re-assessment is expensive, and not at all conducive to equal distribution of the tax burden. Once the assessor has achieved substantial equality in his assessment structure he is naturally reluctant to attempt repeated readjustments in response to a fluctuating price level. To avoid such plunges into the unknown, assessors often resort under pressure to what is termed under-assessment. This is the practice of fixing assessments at a certain per cent of full capital value. Clearly such a practice violates the principle that property should be assessed at full market value, providing one makes the doubtful assumption that the base valuation is the equivalent of market value.

In any case the assessment official who is attempting to do his job well must to a large extent desert the land market as a guide to taxable value and resort to other guides more uniformly available and applicable to the economic conditions before him. That is what assessment officials in this country have been forced to do. They have universally made use of many other tests of value, such as capitalized income,

20 Another reason for the practice is the desire of the local assessor to reduce the amount of tax which his district will have to pay when a uniform tax rate is applied to a number of taxing districts. See, Shultz, American Public Finance and Taxation, rev. ed., c. 22, p. 436 (1935).
21 Annual Report of the New York State Tax Commission 12-13 (1934) (N. Y. Leg. Doc. No. 11, 1935); Lutz, Public Finance, 3d ed., 508 (1935), where the author states, “No more important problem of property taxation exists than that of finding a defensible technique of assessment in the face of these changing conditions. . . .”
reproduction or original cost less depreciation, stock and bond values, and public opinion.\textsuperscript{22} Since market value today can be no more than one factor in assessment, the process of valuation is constantly in danger of running afloat of judicial condemnation under a strict application of the market value rule. Courts have in varying degree recognized that although market value is the legal guide to taxable value, this value is only a step toward the likewise legal objective of accomplishing an equitable distribution of the tax burden. Where strict application of the guide would make equal distribution of the tax burden impossible, many courts have made use of fictions in order to fit the legal guide to modern assessment practice.\textsuperscript{23} It is when a court loses sight of the ultimate objective and looks only to the market value standard that trouble results. The treatment which the courts have given to the problem of real property tax assessment will be dealt with specifically further on in this article. Suffice it to say now that it is difficult to examine the judicial treatment of the subject without first understanding modern assessment practice with respect to capital value determination.

\section*{II}

\textbf{Assessment Practice as Applied to Rural, Urban, and Public Utility Properties}

Any examination of assessment practice must differentiate between classes of real property according to the uses to which property is devoted today.\textsuperscript{24} Technological change has operated to throw property into distinct classes of increasingly differing characteristics. The evidence available and applied in the process of determining the taxable value of public utilities and railroads may be totally unavailable and

\textsuperscript{22} Spring, "Some Difficulties arising from Statutory Definitions of Valuation for Taxation Purposes," 12 Nat. Tax Assn. Bull. 174 (1927); Todd, "The Taxation of Real Estate," 12 Tax Mag. 533 at 536 (1934), where the writer says, "If we are to be guided by the observations of practical tax administrators . . . despite constitutional provisions and court decisions, assessors must be guided by other criteria than sales value in appraising land for tax purposes, for the reason that the evaluation of a parcel of land or a building is a complicated and perplexing problem."

\textsuperscript{23} Central Realty Co. v. Board of Equalization and Review, 110 W. Va. 437, 158 S. E. 537 (1931); Underwood Typewriter Co. v. City of Hartford, 99 Conn. 329, 122 A. 91 (1923); Sweet v. City of Auburn, 134 Me. 28, 180 A. 803 (1935).

\textsuperscript{24} The first classifications made within the old general property tax were of course made between tangible and intangible property, and between real and personal property. Lutz, Public Finance, 3d ed., 505 (1936). This article deals primarily with tax valuation of real property, and the classification dealt with here are those made as to real property for purposes of valuation.
inapplicable to city business and residential property, or again to rural farmland. In making distinctions there may be perceived a violation of the state constitutional requirement that all property be assessed upon a uniform basis. But administrative necessity has led the courts to hold that reasonable classification of property for assessment purposes is permissible within the principle of uniformity. However, the courts require equal distribution of the tax burden between classes of property. At least, such conclusion is to be inferred from decisions holding railroad and public utility assessments too high as compared with the assessment level of city and rural property in the same jurisdiction. But how confident can a court be, when it makes a reassessment of public utility property upon the basis of such a comparison, that it is really achieving an equality and uniformity of assessment as between different classes of property which are and must be valued by different methods? If equal distribution of the tax burden is to be achieved at all, obviously it must start with equal distribution of the burden within each class. This involves problems of great administrative difficulty. All the property in each given class must be reached and assessed, and taxable value in each class must be determined by some uniform method based upon the value data available and applicable to the particular class.

It will be convenient to divide this section into three parts in accordance with the lines which have been developed in assessment practice. These lines have pursued the economic classification of property indicated in the last section. Accordingly, mention will first be made of assessment practice as it is applied to rural property; then will follow a discussion of the practice applied to assessment of urban property; and finally the practice applied to assessment of public utility and railroad property will be given consideration.

It must be recognized at the outset that the whole practice of tax valuation is bound up with state tax administration as it exists today. State tax commissions have been established in practically all of the states, but except for railroad and utility assessment their functions are confined to equalization. In a few progressive states the commissions


have some supervision of local assessment.\textsuperscript{27} The effectiveness of equalization has been found to be narrowly limited when applied to a poor original assessment structure.\textsuperscript{28} On the whole, the administration of property taxation has been characterized by great decentralization, haphazard assessment by poorly trained, politically influenced local assessors, and anything but uniformity of assessment between local districts.\textsuperscript{29} This administrative problem is of course beyond the scope of this article. It is necessary to mention it only because the defective administrative system is largely to blame for the unsatisfactory conditions existing today in the assessment of property in rural areas, small towns and cities.\textsuperscript{30}

A. \textit{Rural Property}

The outstanding characteristic of rural assessment practice is the almost complete lack of uniformity of method in the determination of taxable value. In the case of rural land, market value has retained its utility to a greater extent than it has with other classes of property. But even in rural areas land is rapidly reaching the state where it is being handed down from generation to generation in the same family and seldom sold, with the result that the rural and small town assessor is left with nothing but his uncontrolled judgment as a guide.\textsuperscript{31} And as a matter of fact his judgment is his only guide in most cases, because

\begin{itemize}
\item \textsuperscript{28} Jensen, \textit{Property Taxation in the United States}, c. 15 (1931).
\item \textsuperscript{31} Connelly, “The Valuation of Industrial and Commercial Properties for Taxation,” 20 \textit{Nat. Tax Assn. Proc.} 295 (1927). The writer, tax commissioner for the city of Bridgeport, Conn., indicates the distinction between trained judgment and guesswork when he says at pp. 296-297, “Frequently, one hears in assessment work that ‘value is a matter of judgment.’ This always appears to me as an excuse for lack of method. Judgment, of course, is an essential quality, but judgment alone will not produce equalized values. Judgment cannot be entirely eliminated but it should be used only where concrete methods fail. Without a method the valuation of special properties would try the knowledge and judgment of Solomon. And no Solomons arise to help the assessor.”
\end{itemize}
decentralized administration has prevented the establishment of systematic and scientific assessment of any kind in rural areas and has led to competitive under-assessment which only heightens the confusion. Property is assessed year after year at figures that have become traditional; the statutory mandate of market value is disregarded; under-assessment is a common practice; and from under-assessment comes regressivity, or assessment of high-priced properties at even lower percentages of full value. Obviously, equal distribution of the tax burden under such conditions is impossible, and needless to say any equality that exists is likely to be purely accidental.

B. Urban Property

Modern assessment of urban property presents a different picture. The variety of uses to which property is devoted in a modern city has created a tax valuation problem of such complexity that practically all cities of any size were forced many years ago to seek more systematic methods in order to prevent the complete breakdown of the property

32 See the complete study of the problem as it exists over the whole United States in Silverherz, "The Assessment of Real Property in the United States," Part 2, SPECIAL REPORT OF THE NEW YORK STATE Tax COMMISSION, No. 10 (1936); Nelson, "The Problem of Assessment Administration," 9 Tax Mag. 173 (1931), a study of assessment practice in Iowa, Minnesota, Nebraska, Indiana, and Wisconsin. The writer's tables show that the ratio of actual assessment to full capital value runs from forty-eight per cent in Iowa to ninety-two per cent in Wisconsin. In summarizing, the writer states at p. 175, "The assessment situation existing in these five states, then, is characterized by low valuations, wide departures from uniformity, and persistent regressivity... . In the absence of any evidence to the contrary, it seems reasonable to assume that conditions in these five states are representative of those prevailing throughout the entire bloc of mid-western states." See also 46 Harv. L. Rev. 1000 (1933).

33 Jensen, "The Decline and Fall of the Classified Property Tax in Kansas," 15 Nat. Tax Assn. Bull. 231 (1930); NATIONAL INDUSTRIAL CONFERENCcE BOARD, INC., CURRENT TAX PROBLEMS IN NEW YORK STATE 135 (1931); Compton, "Romance and Reality: The Law and Practice of General Property Tax Assessment in Ohio," 9 Tax Mag. 432 at 436 (1931), where the writer states, "In short, the methods range from those of Cuyahoga County, where the most scientific appraisal methods are developed and employed, to those counties in which the auditors merely send out assessors to appraise property at whatever they think it is worth, with no instructions and no maps, and accept the resulting valuations without subsequent check or equalization." See also, Todd, "The Taxation of Real Estate," 12 Tax Mag. 533 (1934), where the author says, "In fact, in hundreds of local communities, no changes of a radical nature in assessment procedure have been made in the last seventy-five years; and, even after more than thirty years of agitation for more exact procedure in making assessments, we find only a small number of local assessors selected because of any special fitness for the job; and assessments are still made in the most haphazard, hit-and-miss manner."
The earliest important contribution to scientific urban assessment was made by William A. Somers in his assessment of the city of St. Paul in 1896. From that time the spread of systematic urban assessment was rapid. Mr. Somers later organized a commercial appraisal firm which entered the business of installing his system in cities. Prominent in the picture was John A. Zangerle, who has been tax assessor for Cuyahoga County, Ohio, for more than a quarter of a century, and who has built up an equitable structure of urban assessment in the city of Cleveland. Scientific systems of urban property assessment have come into general use today. Although they have been refined and improved through years of practical application, the original scheme remains substantially intact and the methods of valuation used are strikingly similar wherever systematic urban assessment is applied.

A detailed description of assessment practice will not be attempted because a broad outline of the bases and objectives is all that is necessary for purposes of the present article. The urban assessment systems begin by separating the land from the buildings and improvements for purposes of valuation. The land is valued on the basis of front foot value, the front foot being a strip one foot wide and extending back from the front line of the lot. In valuing the front foot the assessor considers such things as previous assessments, previous sales, mortgage loans, lease and rental figures, corner influence, lot location, and other relevant facts. The Somers system makes use of public opinion obtained

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34 Concerning the situation in Chicago which culminated in the order of the Illinois Tax Commission for reassessment of real property in Chicago and Cook County in 1928, see Simpson, Tax Racket and Tax Reform in Chicago (1930).

in meetings of taxpayers, a practice which obtains assessments more readily acceptable to taxpayers than assessments established by official fiat alone. Charts and tax maps are used to classify the property. The whole process is a comparative one, and where intelligently administered has resulted in substantial equality of assessment.\textsuperscript{36}

In the fixing of building assessments, the predominant factor appears to be reproduction cost. Buildings are classified according to their type and quality of construction as well as their use and location. Much emphasis in classification is placed upon types of construction. Then the square foot area or the cubic foot volume of the building is multiplied by a factor which varies according to building classification, and which is determined largely on the basis of the present cost of building materials and labor. The valuation thus obtained is then reduced, according to the physical and functional depreciation of the building, upon the basis of uniform depreciation schedules. Most difficulty is experienced with the problem of depreciation. But men who have had first hand experience with this scientific approach to property assessment are high in their praise of the equitable results obtained. Not only is substantial equality achieved in assessment, but the volume of tax litigation pouring into the courts is reduced.\textsuperscript{37}

It is when a depression is encountered that the reproduction cost system of assessing city buildings is endangered. Falling property income leads naturally to a widespread plea for assessment upon the basis of capitalized income value.\textsuperscript{38} But expert tax assessors are in agreement that assessment of urban as well as rural property upon the

\textsuperscript{36} Todd, “The Taxation of Real Estate,” 12 TAX MAG. 533 (1934); Connelly, “The Valuation of Industrial and Commercial Properties for Taxation,” 20 NAT. TAX ASSN. PROC. 295 (1927).


\textsuperscript{38} Boise, “Assessment Methods in Times of Depression,” 26 NAT. TAX ASSN. PROC. 297 (1933); Thorson, “Appraisal Methods in Times of Depression,” 26 NAT. TAX ASSN. PROC. 310 (1933); Leland, “Assessments in Time of Depression,” 26 NAT. TAX ASSN. PROC. 323 (1933), where the writer says at p. 325, “The problem is how, during a depression, to maintain uniformity in assessments between classes of taxpayers, between types of property, between different individuals in jurisdictions which previously enjoyed equitable assessments. The essence of this problem lies in a study of the relative effects of the depression on the value of different types of property and areas affected. It is concerned more with deviations in the value of some types of property from the customary assessment standard than with changes in the average assessment level.”
basis of income is administratively impracticable. A recent article by John A. Zangerle vividly portrays the confusion that would result from such a standard. There is no accounting or other data available upon which to compute the periodic income of most property. Annual rentals have been suggested, but it has been found that rentals cannot be ascertained upon any uniform basis. Especially in a depression, rental data are shot through with rental defaults and hidden agreements. Computation of property income would involve careful analysis of the depreciation problem for each piece of property, in order to determine capital expense on the one hand and depreciation expense on the other. The rate of capitalization to be applied would be a continual bone of contention, as would the period over which income would be measured. More confusion enters when one realizes that most urban property income is inseparable from the income of the businesses connected with the property. The final objection to assessment of urban and rural property upon the basis of income is that the expense of the original valuation which would be required annually might be prohibitive. All in all the result of any attempt to appraise rural or urban property for tax purposes upon the basis of income might well be a much higher degree of inequality in assessment than now exists.

C. Public Utility Property

Economic circumstance has placed the assessment of the public utility and the railroad apart from the assessment of all other property. System there is, but that is as far as any analogy to urban and rural property valuation practice can go. The courts have been forced to recognize that equitable distribution of the tax burden between public utility and other property must be achieved otherwise than

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41 Daugherty, "Eighty-Seven Years' Experience in Taxing Land on Its Annual Yield Basis," 20 Nat. Tax Assn. Bull. 145 (1935). The author concludes his discussion by saying, "If there is any taxation scheme which engenders more trouble, yields less revenue, and is more regressive than the taxation of property on its annual rental value, Delawareans do not know what it is."
42 See generally, 1 Bonbright, The Valuation of Property, c. 18 (1937); Shultz, American Public Finance and Taxation, rev. ed., 475 (1935); Blakey, Taxation in Minnesota, cs. 11, 12 (1932).
43 In this section the term "public utility" will be used to include both public utilities and railroads.
by application of the same methods of valuation to both. The traditional tax upon the value of physical property is even less applicable to the property of the public utility than to the property of the ordinary business concern. Public utility properties are devoted to a highly specialized use; they commonly extend over more than one tax jurisdiction within a state, and quite often cross state lines. Apart from the functional value imparted to them through their use in a going business concern, their only value is as scrap. It must be clear that the inseparability of the independent values of physical units of property from the business values peculiarly characteristic of public utility concerns makes imperative wide departures from the traditional in rem taxation of physical property units. A shift from physical property taxation to the taxation of going-business values becomes necessary, and this leads in the direction of placing one assessment upon the whole public utility as a business unit, to the exclusion of any additional assessment of its physical properties.

This method has been termed the unit rule of assessment, and long ago was given approval in the courts. All of the states have adopted the unit rule, at least to the extent of removing the assessment of most public utilities from the hands of the local assessor and placing it under the centralized control of state tax commissions and boards. Any considerable uniformity in state treatment of the problem ceases at this point. Most of the states still assess public utilities as a part of the system of real property taxation in the state, the property of each utility being assessed as a unit. Diversity of treatment arises from the varying degrees to which the states have adopted the unit rule. In many states the local assessor still retains his jurisdiction over many types of utility

44 Powell, "Supreme Court Condonations and Condemnations of Discriminatory State Taxation, 1922-1925," 12 Va. L. Rev. 441 and 546 (1926); Justice Brandeis, in Baker v. Druesedow, 263 U. S. 137 at 140, 44 S. Ct. 40 (1923), made the following statement of the law: "It has long been settled . . . that the equal protection clause is not violated by prescribing different rules of taxation for railroad companies than for concerns engaged in other lines of business. . . ."

45 The problem of apportioning the total unit valuation for assessment by the several taxing jurisdictions in which a public utility may be operating is not considered in this article.


48 All but those states that impose a tax upon gross receipts in lieu of, and not in addition to, the property tax. See note 62, infra.
property. Franchise and capital stock taxes are superimposed upon the utility property tax, with the result that the aggregate of taxes upon a utility may impose a burden widely variant from the burden which would be imposed by a single assessment upon the whole business value.\textsuperscript{40} Other states have scrapped the property tax upon some utilities and have substituted a gross earnings tax in lieu thereof.\textsuperscript{50} The whole picture is exceedingly complex, and even a cursory survey would be beyond the scope of this article. The purpose of mentioning it here is simply to illustrate that the problems and practice of assessment are greatly different for the public utility than for other property.

The gap between the assessment practice applied to public utilities and that applied to other property appears even wider when methods of determining taxable value are considered. The basis for distinction lies in the fact that the guides uniformly available and appropriate for the valuation of public utilities are found not to be uniformly available for the valuation of other classes of property.\textsuperscript{51} The practical difficulties encountered in any attempt to value most property upon the basis of income have been indicated. But in the case of the public utility, governmental regulation and business necessity have led uniformly to the development of accounting systems adequate for the proper determination of income. The result is that income often receives more emphasis than any other factor in the valuation of these instrumentalties for tax purposes.\textsuperscript{52} Unlike most other property, public utility property is usually capitalized, and the capitalization is represented by stocks and bonds which have market value. Accordingly, market value of stocks and bonds has come to be widely used for tax valuation in this field.\textsuperscript{58} The Interstate Commerce Commission and the state utility

\textsuperscript{40} For example see, \textit{National Industrial Conference Board, Inc., Current Tax Problems in New York State, c. 6} (1931).
\textsuperscript{50} See note 62, infra.
\textsuperscript{51} See generally, Hodes, "The Assessment of Railroads in Illinois," 29 \textit{Ill. L. Rev.} 744 (1935); Ravage, "Valuation of Public Utilities for Ad Valorem Taxation," 41 \textit{Yale L. J.} 487 (1932); Shortt, "The Taxation of Public Service Corporations," 1 \textit{Nat. Tax Assn. Proc.} 622 (1907), where at p. 632 the writer states, "The attempt, in the interest of a superficial and mechanical equality, to value, rate and tax public service corporations on the same basis as the property of private individuals cannot fail to result in very real inequality in taxation."
\textsuperscript{52} See the extended discussion of the factors considered in assessing railroads and weight due to each factor in Northern Pacific Ry. v. Adams County, (D. C. Wash. 1932) 1 F. Supp. 163; see also Chicago & N. W. Ry. v. Eveland, (C. C. A. 8th, 1926) 13 F. (2d) 442.
\textsuperscript{58} Stock and bond value is made the basis of assessment for public utilities by statute in Indiana. Ind. Stat. Ann. (Burns 1933), § 64-709. The Indiana statute has
commissions have undertaken extensive original and reproduction cost valuations of utility properties for rate purposes, and the tax commissions have made much use of these in tax valuation.\textsuperscript{54} It becomes clear that there is little resemblance between the practice followed in the assessment of utilities and that followed in the assessment of city and rural property.

In view of the practice outlined above, it is hard to see how unequal distribution of the tax burden between the different classes of property can be detected except in the clearest of cases. It is submitted that decisions which find discrimination merely because a public utility is assessed at the full valuation placed upon it by the state commission, while urban and rural property in general in the jurisdiction is uniformly assessed below the valuation placed upon it by local assessors, are unrealistic and fail to inquire into the actual value factors involved and the methods of valuation actually available.\textsuperscript{55} Of course, the more complete and efficient valuation which results from centralized assessment of public utilities may result in discrimination against them in favor of city and rural property less efficiently and fully assessed.\textsuperscript{56} A feeling that such is the situation may be the real reason for decisions

been declared constitutional. Western Union Telegraph Co. v. Taggart, 163 U. S. 1, 16 S. Ct. 1054 (1896).


\textsuperscript{56} Hodes, "The Assessment of Railroads in Illinois," 29 ILL. L. REV. 744 at 759 (1935): "When local township or county assessors undervalue property in violation of the statutory provision for full value, the Tax Commission is faced with two alternatives. It may also undervalue property under its jurisdiction, or it might follow the statute and thus violate the constitutional mandate of uniformity. The constitutional guarantee of uniformity, of course, must prevail." See also "Report of the Committee on Taxation of Public Utilities and upon the Interstate Apportionment of the Tax," 15 NAT. TAX ASSN. PROC. 162 (1922). The report states at p. 167: "Equality relates to the actual burden of taxation. It may be the result of a judicious variety of tax methods... there is good reason for taxing public utilities by methods
which upset public utility valuations because of discrimination, but the
decisions should be placed upon a more scientific basis than a simple
comparison of the percentages of full value at which public utility
and other property is assessed. A more realistic approach would
involve an inquiry into the valuation practice which preceded the
fixing of the assessment in issue. It is submitted that if a more realistic
approach were followed, the apparent discrimination would disappear
in the majority of cases.

Many authorities feel that the complexity of the real property tax
as applied to the property of public utilities, and the fact that the
income of public utilities is regulated through state control of rates,
should justify placing taxation of these instrumentalities solely upon
the basis of their income measured in terms of gross earnings. They
feel that equal taxation should be achieved between public utilities
and other property. Since differences in value data prevent attaining
equality through application of a uniform method of valuation to both,
they feel that income should be the basis of utility assessment; the
income of public utilities is simple to ascertain, and an income basis
of taxation would be consistent with governmental control of utility
income. A committee of the National Tax Association has proposed a
percentage tax upon the gross income of public utilities in lieu of all
other state and local taxation of the utilities.

distinct from these applied to other property or businesses. This implies no departure
from the principle of equality. It cannot be too strongly insisted that equality
must be real equality and not merely formal. For example, the development of an
efficient process for the centralized assessment of all the property of public utility cor­
porations may produce, not equality, but gross inequality, because of the simple fact
that equally efficient methods of assessment are not applied to all the taxable property
of other taxpayers.

57 Other decisions make more cautious application of the principle that the assess­
ment will be allowed to stand unless the undervaluation was clearly shown to be inten­
tional and systematic. Southern Railway v. Watts, 260 U.S. 519, 43 S. Ct. 192 (1922);

58 In Chicago, B. & Q. Ry. v. Babcock, 204 U. S. 585 at 598, 27 S. Ct. 326
(1907), Justice Holmes said in speaking of the state tax board: “The Board was created
for the purpose of using its judgment and its knowledge. . . . Within its jurisdiction,
except, as we have said, in the case of fraud or a clearly shown adoption of wrong
principles, it is the ultimate guardian of certain rights. The State has confided those
rights to its protection and has trusted to its honor and capacity as it confides the pro­
tection of other social relations to the courts of law. Somewhere there must be an end.”

59 Ravage, “Valuation of Public Utilities for Ad Valorem Taxation,” 41 YALE
L. J. 487 (1932); Holcomb, “The Assessment of Public Utility Corporations,” 5
NAT. TAX AssN. PROC. 149 (1911).

60 Rosé, “Civil Works Administration Assistance in Wisconsin Property Tax
Assessment,” 19 NAT. TAX AssN. BULL. 130 (1934). See also “Report of the Com­
mittee on the Taxation of Public Utilities and upon the Interstate Apportionment of
Under this plan equality of burden as between public utilities and other property is to be achieved by variation of the public utility income tax rate. A number of states have adopted such a tax. The California gross receipts tax upon public utilities, now repealed, was upheld by the United States Supreme Court in an opinion which

the Tax,” 15 NAT. TAX ASSN. PROC. 162 at 175 (1922), where it is stated: “Such an alternative gross or net tax is in harmony with the principles laid down as a guide for measuring the amount of the tax contribution of the public utilities. By proper adjustment of the rates applied to gross and net earnings respectively, the burden of the tax may be made to correspond fairly with the burden of the property tax upon other taxpayers.”

61 See, FOURTEENTH BIENNIAL REPORT OF THE MINNESOTA TAX COMMISSION 4 (1934), where the commission strongly recommends to the legislature that the tax rate on railroad gross earnings be raised in order that the railroad tax burden may be increased to keep pace with the burden imposed upon other property in the state.

62 Minnesota imposes gross receipts taxes in lieu of general property taxes upon all the operative property of railroads, express, freight line, sleeping car, and telephone companies. See Minn. Const., art. 4, § 32a; Minn. Stat. (Mason 1927), §§ 2246, 2265, 2272, 2273, 2275, 2283; Minnesota Corporation Tax Service, ¶ 20-001; BLAKEY, TAXATION IN MINNESOTA (1932). For gross receipts taxation of public utilities in New Jersey, see Waltersdorf, “Taxation of Public Utilities in New Jersey,” 20 NAT. TAX ASSN. BULL. 8 (1934); N. J. COMP. STAT. (1911), c. 208, §§ 445-536a, as amended; New Jersey Corporation Tax Service, ¶¶ 20-001 and 8000. Connecticut has a system of gross receipts taxation similar to that used in California from 1911 to 1935. See, Conn. Gen. Stat. (1930), cs. 70, 71, 72, 73; Connecticut Corporation Tax Service, ¶ 8000 et seq. Nebraska imposes a gross earnings tax only upon express companies, which is in addition to, and not in lieu of, property taxes; Neb. Comp. Stat., § 86-602. Maine imposes a gross receipts tax in lieu of all other taxes upon certain public utilities, except that the real estate of the utilities is subject to local ad valorem taxation. Maine Rev. Stat. (1930), c. 12. Wisconsin imposes a gross earnings tax upon telephone and freight line companies in lieu of property taxes upon any property necessarily used in the business. Wis. Stat. (1935), §§ 76.38, 76.42.

63 In 1910 California amended its Constitution to provide for gross receipts income taxation of public utilities in lieu of all other taxes on public utilities. Cal. Const., art. 13, § 14; San Francisco v. Pacific Telephone & Telegraph Co., 166 CAL. 244, 135 P. 971 (1913). By amendment in 1933, sections 14 and 15 of Article 13 of the Constitution of California were repealed, effective January 1, 1935, and Article 13, sections 14 and 15 now provide for taxation of the property of public utilities by the State Board of Equalization on the same basis as that used for the taxation of other property in the state. See California Corporation Tax Service, ¶ 8000. The reason for the repeal of the gross receipts tax in California may be found in a statement made in California Corporation Tax Service, ¶ 8000, p. 303, where it is said: “This system made for certainty in assessment and obviated the necessity of a Statewide equalization of local assessment rolls, which was a doubtful advantage, but it also caused endless controversy and political logrolling as to fair utility tax rates.” That there are hidden practical difficulties involved in the taxation of public utilities upon a gross income basis, while other property is taxed upon a capital value basis, is clearly indicated in the fact that the people of California have gone to the trouble to remove the gross receipts tax from their Constitution and have gone back to the old system of state centralized, capital value, assessment of public utilities.
construed the tax as a property tax. But the opinion intimated that the equal protection clause in the Fourteenth Amendment to the Constitution of the United States would require that the gross income tax not depart too widely from what the tax would be if the property were taxed on the same basis as the rest of the property in the state. This qualification to the Court's acceptance of the gross income tax on public utilities might become extremely important in a depression like the last one in which the gross income of many public utilities was negligible. The feeling that public utilities should contribute equally to the cost of government, regardless of depression conditions, has led to several judicial pronouncements that less emphasis should be placed upon income in the valuation of public utilities in depression times than normally. Such decisions indicate that uniform assessment of public utilities upon the basis of income will be permitted so long as it does not result in arbitrary discrimination against other classes of property in the distribution of the tax burden. But again it is difficult to understand how discrimination can be detected, except under the most unusual conditions, when public utilities are taxed on a gross earnings basis and other property on the basis of capital value.

The important conclusions emerging from the foregoing brief survey of tax valuation practice are: (1) Property is in practice classified for purposes of taxation. Different guides and methods for deter-

64 Pullman Co. v. Richardson, 261 U. S. 330 at 339, 43 S. Ct. 366 (1922).
65 Ibid., 261 U. S. at 339, stating: "The tax is not claimed to be in excess of what would be legitimate as an ordinary tax on the property valued as part of a going concern, nor to be relatively higher than the taxes on other kinds of property."
66 Baker v. Druesedow, 263 U. S. 137, 44 S. Ct. 40 (1923), noted in 2 Tex. L. Rev. 246 (1924), where the Court upheld an assessment of $39,116,033, because lowering it would have discriminated against other property in the state, although the income of the railroad for the year capitalized at seven per cent gave a valuation which approximated $1,000,000. The Court said in substance that unless it could be shown that the railroad was bearing a disproportionate share of the property tax burden, there was no violation of the Fourteenth Amendment to the Constitution of the United States. See also People ex rel. Mid-Crosstown Ry. v. State Tax Commission, 192 N. Y. S. 388 (S. Ct. 1921).
67 The following statement from an opinion of the supreme court of a state which imposes a gross earnings tax upon certain public utilities in lieu of a property tax is enlightening: "A gross earnings tax is not required to be an exact equivalent of the ad valorem tax imposed on other property. If there must be a valuation of the property taxed and an exact comparison of results, then the whole purpose of the gross earnings tax is defeated, for it is usually resorted to because, as to the property involved, it is not practicable to make such a valuation or to impose an ad valorem tax." State v. Wells Fargo Co., 146 Minn. 444 at 456, 179 N. W. 221 (1920).
mining taxable value are applied to the property in the different classes. (2) Where assessment officials have been forced by necessity to resort to more scientific and systematic methods than are used by the average rural assessor, the ultimate objective has been the attainment of equal distribution of the tax burden upon the property in each class according to value determined by a uniform method of valuation. (3) Where uniform methods have been carefully applied to city property and to public utilities, substantial equality has been achieved within the classes. (4) The outstanding characteristic of rural assessment practice is the deplorable lack of any system or method in the valuation process. For urban land and buildings the valuation process has been systematized upon the basis of front foot values and reproduction cost data. For public utilities the valuation process has been shaped by income, capitalization, and reproduction cost data made available by improved accounting methods and state and federal regulation. Because of the differences in these valuation processes it is extremely difficult, if not impossible, to evolve any rational scheme for equalizing the tax burden between these different classes of property.

III

Judicial Review of Assessment Practice

It must be remembered that although practical tax administration has been forced to depart from market value as a guide in tax valuation and to adopt the procedure outlined above, most state statutes and constitutions, interpreted in the light of their history, still require that all property be assessed uniformly upon the basis of market value. The result is that the courts have been faced with the problem of reconciling present-day practice with an outmoded statutory standard. The destructive influence which strict judicial application of the statutory mandate would have upon the efforts of assessment officials to reach a workable solution of their problems has been mitigated largely by three factors.

The first factor is judicial recognition of the doctrine that courts should be slow to interfere in cases involving governmental collection of revenue. This doctrine is based upon the practical consideration that government needs a constant and steady flow of revenue in order to exist. Because even a temporary disruption of this flow may

68 See notes 13 and 14, supra.
cause paralysis, courts are likely to condone quite serious infringements of private interest rather than to interfere. Even one case may set a precedent leading to a flood of litigation and to dissatisfaction and tax delinquency which will cause such a disruption. The valuation process is not considered a judicial function, and the rule has been that the court should not interfere except where there has been a clearly arbitrary and unreasonable exercise of discretion by the taxing officials.

In the second place, the remote and detached character of judicial review of real property tax assessment usually fails to reflect clearly the true nature of assessment practice. Due to the absence of an active land market, it has been common judicial practice to define market value through the use of such expressions as "the price which a purchaser, willing but not obliged to buy, would pay to an owner, willing but not obliged to sell." The next step has been to rule that in determining this fictional quantity all relevant elements of value must be considered. Reproduction and original cost less depreciation, in-

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70 In re Lehigh & Wilkes-Barre Coal Co's. Assessment, 298 Pa. 294 at 303, 148 A. 301 (1929); Kenmont Coal Co. v. Perry County Board of Supervisors, 262 Ky. 764 at 765, 91 S. W. (2d) 47 (1936).

71 Alpena Power Co. v. Caledonia Township, 194 Mich. 622, 161 N. W. 829 (1917); Appeal of American Academy of Music, 321 Pa. 433, 184 A. 657 (1936); Somers v. City of Meriden, 119 Conn. 5, 174 A. 184, 95 A. L. R. 434 at 442 (1934), cited in 33 Mich. L. Rev. 1116 (1935); Underwood Typewriter Co. v. City of Hartford, 99 Conn. 329, 122 A. 91 (1923); Schlaet v. Board of Relief Appeals of the Town of Westport, 1 Conn. Supp. 112 (1935). In Northern Pacific Ry. v. Adams County, (D. C. Wash. 1932) 1 F. Supp. 163 at 190, the court says: "I feel that in both reason and authority it is infinitely safer, where a number of relevant evidential factors of value are available, to take a composite view based upon all relevant elements and give to each in the exercise of sound judgment that weight and consideration which the peculiar facts of the case in hand justify and require." And in Tremont & Suffolk Mills v. City of Lowell, 271 Mass. 1 at 16, 170 N. E. 819 (1930), the court said: "Land commonly is not and cannot be sold at a moment's notice. The value of a tract of land for purposes of sale, that is, its fair cash value, is ascertained by a consideration of all those elements which make it attractive for
come, stock and bond value, sale price history, prior assessments, and other factors are considered relevant evidence of value. An assessment based upon one of these factors alone would be held improper. The courts seem to feel that reproduction cost alone, for instance, is not market value, but that a valuation based upon a combination of reproduction cost and all the other recognized elements of value is market value. In view of such a judicial approach, one wonders how scientific systems of assessment, based upon reproduction cost less depreciation, as is the usual city system for instance, are allowed to stand. One answer is that review in the courts is usually based upon the findings of some board of review in the administrative structure, which board of review has been guided ostensibly by the vague standard of value required by the courts. And the findings of the board will state and often demonstrate that the required elements of value have been considered by it. The reviewing court is then free to hold an assessment, which perhaps was made by a city assessor as part of a scientific assessment structure based primarily upon reproduction cost, to be founded properly upon market value. And the court will generally so hold unless it feels valuable use to one under no compulsion to purchase but yet willing to buy for a fair price, attributing to each element of value the amount which it adds to the price likely to be offered by such a buyer.

72 Harris Trust & Savings Bank v. Earl, (C. C. A. 8th, 1928) 26 F. (2d) 617 at 618: "But it is not the law that the valuation of railroad or other property for taxation purposes is to be determined from any single factor. As bearing upon the proper result, many facts have evidential value. Certainly, among others, are to be considered original cost, cost of reproduction less depreciation, bonded indebtedness, current market value of stocks and bonds, and earning capacity. Of these the two last named are of the greatest significance." And see Zangerle, "Assessing Real Estate on Its Income," 15 PUBLIC MANAGEMENT 206 at 209 (1933), where the writer states: "Whatever we may think as to what should be the major factor in establishing values, the assessor must be guided by the law of the land. In almost every state it will be found that the courts interpreting express statutory provisions requiring property to be appraised at its 'true value' or similar terms have held that the value of real estate in general is measured by its market or sales value if it has any, and if not, that all elements must be considered. Any assessor who should admit that he had assessed on consideration of income only or had failed to consider any one of the many elements of value would discredit his assessment and make it subject to attack for illegality."

73 Ravage, "Valuation of Public Utilities for Ad Valorem Taxation," 41 YALE L. J. 487 at 512 (1932). The approach outlined here appears clearly in Central Realty Co. v. Board of Review, 110 W. Va. 437, 158 S. E. 537 (1931); State ex rel. Gisholt Machine Co. v. Norsman, 168 Wis. 442, 169 N. W. 429 (1919). And see 20 NAT. TAX AssN. Proc. 307-308 (1927), where John A. Zangerle, County Auditor, Cuyahoga County, Ohio, made the following remarks in the discussion which followed a paper outlining the reproduction cost system of assessment, usually used in the assessment of urban property: "But, I submit that Mr. Connelly's method is the first and
that the assessment was clearly discriminatory, arbitrary, or fraudulent.\textsuperscript{74} Quite often a court will find the record prepared by the board of review so vague as to be of little help in determining just what the board and the assessing officials did use as the basis of their valuation. In such case the court will attempt to determine, by the use of the data which the record contains or evidence obtained in a proceeding de novo, whether the assessment under protest coincides reasonably with independent valuations reached by the court in accordance with methods deemed proper by the court.\textsuperscript{75} Obviously the court is not equipped to handle the highly technical problems involved, and therein lies another reason for the judicial doctrine of non-interference in tax matters. Undoubtedly the courts are to be commended for having made use of fiction to interpret the precise statutory standard of value in terms sufficiently broad to permit consideration of all the elements of value applicable under modern economic conditions. It was the only way to avoid the impossible situation which would have resulted from strict application of the market value standard. On the whole, the courts have done well to avoid the formulation of any rigid standard for the guidance of assessing officials.\textsuperscript{76} The legislatures or the people, as the case may be, would likewise do well to repeal the market value rule and leave the courts and the assessing officials free to work out the proper method for an assessor, but I agree with Mr. Tobin that when the matter of the true value comes before a board of revision, which is called upon to make a particular assessment and not a general assessment, that they must consider all the elements and not merely one that is undoubtedly the best and the most convenient method of establishing it in the first place.”

\textsuperscript{74} Sunday Lake Iron Co. v. Wakefield Tp., 247 U. S. 350 at 353, 38 S. Ct. 495 (1918). In a decision refusing relief, the court said: “The good faith of such officers and the validity of their actions are presumed; and when assailed, the burden of proof is upon the complaining party.”

\textsuperscript{75} See Northern Pacific Ry. v. Adams County, (D. C. Wash. 1932) 1 F. Supp. 163 at 171, where the court says: “Inasmuch as the Legislature of Washington has not defined specifically how railroad property shall be valued for taxation, I am of the opinion that the proper way of testing whether the action of the state tax commission can be upheld is to inquire whether under any legally authorized method or methods its determinations can be justified and sustained.”

\textsuperscript{76} Zangerle, “Assessing Real Estate on Its Income,” 15 Public Management 206 at 209 (1933). The writer concludes: “No court has ever defined, and in my opinion no court ever will define, what emphasis is to be placed on the different factors of value. The cases are so variant that in one decade one factor becomes primary which in the next becomes secondary, and vice-versa. The answer involves the condition of commerce, industry, and finance, of inflation and deflation, of demand and supply, and of a hundred other elements all of which must be taken into account.”
process of tax valuation as changing economic conditions require.\textsuperscript{77} As one writer has put it:\textsuperscript{78}

"Many valuation cases represent attempts by courts to fix a stable standard for the measurement of value, some criterion that will resist the flux and change of circumstance. It has not yet been done. New sources of competition develop; wars disrupt economic life; prices rise and fall; earnings swell and dwindle; securities soar and crash; ceaseless change is the rule, and the valuation process must adapt itself to change. ... One can begin to see the inexorable necessities that drive courts ultimately to the haven of 'discretion' and 'judgments.'"\textsuperscript{79}

In the third place, more and more courts are realizing the importance of the relative position which the individual assessment occupies in the assessment structure of any particular city, county, or state. They are realizing, in other words, that the real objective in property tax assessment is proportional and equal distribution of the tax burden, and that justice to the individual taxpayer does not depend upon the value at which his property is assessed, but upon the relation of his assessment to that of other property of the same class in the jurisdiction.\textsuperscript{79} In recent cases a few courts have apparently discarded

\textsuperscript{77} See 20 NAT. TAX ASSN. PROC. 303 (1927). In the discussion which followed a paper read by Mr. Connelly, tax commissioner of the city of Bridgeport, Connecticut, outlining the reproduction cost method followed by Mr. Connelly in his assessment of urban property, F. R. Fairchild made the following remarks: "Mr. Connelly is trying to substitute something for value in the assessment of industrial property. I seriously doubt if his device is legal, and that, I take it, is perhaps the point Mr. Tobin is making. If so, I think I am in agreement. ... In other words, he is engaged now in practical research, for the purpose of finding some tax base which we may substitute in place of value which will not work, and I believe he will find it for this particular class of property. When he does, my imagination is able to carry me to the point when the Connecticut legislature may amend its law and may say that industrial property shall be assessed upon the basis of reproduction cost less depreciation. When that is done, one class of property will be taken out of the realm of vague speculation and put on the sound basis of engineering and technical skill; and in the course of time other classes of property may receive the same treatment." See also, Connelly, "Assessment of Property in Times of Depression," 20 NAT. TAX ASSN. BULL. 226 at 229 (1935), where the author says, "The time has come when statutory recognition ought to be given to the basis upon which the modern system of assessment is built, proportional distribution of the local tax burden."

\textsuperscript{78} Ravage, "Valuation of Public Utilities for Ad Valorem Taxation," 41 YALE L. J. 487 at 501 (1932).

the statutory mandate of market value entirely, and have taken a position similar to that of the administrative officials. One of these cases is City of Roanoke v. Gibson, where the court upheld an assessment which had been established under the Somers system. The court said:

"Section 169 of the State Constitution provides that real estate shall be assessed at its fair market value. But this provision is to be read in connection with section 168, which declares that all taxes on property of the same class shall be uniform. Any system of assessments which taxes all citizens ratably and alike meets the test of our Constitution and of the 14th Amendment to the Federal Constitution. And it is not important if the assessment be high or low provided it is uniform. . . . It is not enough to show that the assessment is excessive as compared with an assessment against A, or against B. It must plainly appear that it is out of line with methods of valuation adopted in the taxing district as a whole." 

In at least one type of case the courts have long been accustomed to sacrifice market value to uniform and equal taxation. It is the generally accepted rule that if the taxpayer can show that his property is assessed at full value while the rest of the property in the jurisdiction is uniformly assessed at less than full value, the court will obey the requirement of equality and lower the assessment complained of to the general level. As the court is unable to raise the whole level

80 161 Va. 342, 170 S. E. 723 (1933). See also Underwood Typewriter Co. v. City of Hartford, 99 Conn. 329 at 337, 122 A. 91 (1923), where it is stated: "But it does not follow that when the tax assessors cannot ascertain the market value of certain property, they cannot determine the valuation of that property for legal taxation. If the rule of taxation provided by statute cannot be applied, the law still commands that all property liable to taxation shall be put in the owner's list at its present true and actual valuation. The general law is not nullified or modified by the particular statute which lays down a rule of valuation. But the law never requires the impossible. Hence, if the rule indicated cannot be followed, other means must and may be found by which the assessors can perform the duty the law has put upon them." The court goes on to say that original and reproduction cost less depreciation are proper elements of value and should be included in the assessor's judgment of value.

81 City of Roanoke v. Gibson, 161 Va. 342 at 347, 170 S. E. 723 (1933).

82 44 YALE L. J. 1075 (1935); Cumberland Coal Co. v. Board of Revision of Greene County, 284 U. S. 23, 52 S. Ct. 48 (1931); Taylor v. Louisville & N. R. R., (C. C. A. 6th, 1898) 88 F. 350; People ex rel. McDonough v. Grand Trunk Western R. R., 357 Ill. 493, 192 N. E. 645 (1934); People ex rel. Wangelin v. Wiggins Ferry Co., 357 Ill. 173, 191 N. E. 296 (1934). Some cases refuse to lower an assessment on a showing that other similar property is assessed at a lower percentage of full value, but adhere to the market value standard by requiring a showing that the taxpayer's assessment is above the market value of his property. In re Greene County Coal Tax Appeals, 302 Pa. 179, 152 A. 755 (1930), reversed, Cumberland Coal Co. v.
of assessment, it will lower the individual assessment to attain uniformity even though it involves a violation of the requirement that property be assessed at full market value. See Sioux City Bridge Co. v. Dakota County, 260 U. S. 441 at 446, 43 S. Ct. 190 (1922), where the court said: "The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law."

It is when the taxpayer does not complain of discrimination, but points only to the fact that his assessment, viewed independently, is far above the sale value of his property, that a court will often forget that equal distribution of the tax burden is the true objective of real property taxation and will lower his assessment in obedience to the market value mandate. If the assessment attacked is part of an equitable system of assessment established by uniform method, such a decision sets a dangerous precedent because it may invite litigation which will upset the whole structure, destroy all equality, and throw the fiscal affairs of the jurisdiction into chaos. It is suggested that in jurisdictions where the statute or the constitution does not state the market value rule in express terms, but states instead a rule of true or fair value, which has been judicially interpreted to mean market value, the path of statutory construction is open to permit a departure from the market or sale value rule if the court is willing to treat its statements regarding market value as mere declarations of its approval of that kind of value as a fair value in particular types of cases. Some courts do say that market value means normal and not present market value, and thus, through the use of a fiction, avoid the evidence Board of Revision of Greene County, 284 U. S. 23, 52 S. Ct. 48 (1931). Or that the result of the overassessment will be to force the taxpayer to pay more than his just share of the tax. People ex rel. Warren v. Carter, 109 N. Y. 576, 17 N. E. 222, (1888); see also, Florida Land Company v. Graham, 97 Fla. 476, 121 So. 462 (1929).
afforded by depression conditions. Others place their decisions squarely upon the need for equal assessment and point out that lowering some assessments will simply discriminate in favor of those who bother to sue, and throw the additional burden upon those property owners who do not. But the cases are in great conflict. Many courts forget the importance of equal taxation and hold that the statutes mean what they say about market value. These courts define such value as present sale value and accordingly in the last few years they have scaled contested assessments down to depression levels. Some of them have

85 Central Realty Co. v. Board of Review, 110 W. Va. 437 at 440, 158 S. E. 537 (1931), where the court says: "So long as business conditions are normal, it is possible to arrive at the statutory value. But does the law require the rule to be strictly applied to any particular year in which property, due to depression and unhealthy business conditions, has no prospective buyer at any figure? . . . Was it the purpose of the statute to jeopardize the machinery of state, county, district and municipality, during a depression, or was it enacted to cover ordinary conditions existing over a period of years? To ask the question is to answer it." See also, Tremont & Suffolk Mills v. City of Lowell, 271 Mass. 1, 170 N. E. 819 (1930).


88 State ex rel. Northwestern Mutual Ins. Co. v. Weiher, 177 Wis. 445, 188 N. W. 598 (1922). In this case depression conditions and a strict application of the market value rule led to reduction of the assessment of a building, which assessment was part of a system of assessment based upon reproduction cost. See also Letcher County v. Kentucky River Coal Corp., 250 Ky. 7, 61 S. W. (2d) 891 (1933); Atlantic States Coal Corp. v. Letcher County, 246 Ky. 549, 55 S. W. (2d) 408 (1932); Kenmont Coal Co. v. Perry County Board of Supervisors, 262 Ky. 764, 91 S. W. (2d) 47 (1936); Turnley v. City of Elizabeth, 76 N. J. L. 42, 68 A. 1094 (1908); Willapa Electric Co. v. Pacific County, 160 Wash. 412, 295 P. 152 (1931). Two decisions in the Erie County Court of Common Pleas in Pennsylvania indicate the practice in that state. It appears that in Pennsylvania the market value rule is strictly applied. The assessment has only prima facie force, and once the taxpayer introduces evidence of sale value, the case is open for findings by the court as to the market value. The court then proceeds to re-assess the property. Apparently little regard is paid to the valuation of the assessor, and none to the relative place of his assessment in the city assessment structure. Appeal of Baldwin, 16 Erie County L. J. 374 (1935), aff'd., sub. nom. Appeal of Erie City, 320 Pa. 31, 181 A. 446 (1935); Appeal of American Academy of Music, 321 Pa. 433, 184 A. 657 (1936). Some of the foolishness that apparently takes place incident to the efforts of the court to obtain evidence of market value is indicated in a passage from the opinion of the county court in Appeal of Baldwin, supra, 16 Erie County L. J. at 379: "Between the time when the court set a date for hearing and the hearing was actually held, the appellant held a public sale, wherein the bulk of these properties were sold to appel-
been so blind to practical necessity as to ridicule attempts to obtain equality by the use of scientific systems of assessment. Such decisions can only be explained in the light of the history of real property tax valuation in this country. Sooner or later they must be removed from the law, either by judicial repudiation or by legislative repeal of market value as the guide to taxable value.

IV

Recent Federal Decisions Attacking Assessment Practice

In view of the two recent federal court decisions mentioned at the beginning of this article, the development of this subject in the federal courts deserves mention. Before 1900 the Fourteenth Amendment to the Constitution of the United States was not used as a ground for federal jurisdiction in cases involving the assessment of real property. The ground was usually diversity of citizenship, and the merits of the cases were decided through interpretation of the facts in the light of the uniformity clauses in state constitutions. Soon after the turn of

lant's brother for an average much less than the original value fixed by the City Assessor. Some forty people attended the sale, and there were two other bidders. The sale was well advertised, and regularly held, with full opportunity for anyone to bid thereat. Under the decisions we must accept this as a fair attempt to conduct a sale, although some of the witnesses for the city intimate to the court that in their opinion it was brought about to produce evidence for this hearing." In City of Erie v. Scott Estate, 18 Erie County L. J. 319 (1937), the court re-assessed one hundred fifty-four lots at from one-half to one-fourth of the assessor's original figures.

88 Harleigh Realty Company's Case, 299 Pa. 385, 149 A. 653 (1930). In Delaware, L. & W. R. R. v. Luzerne County Comrs., 245 Pa. 515 at 518, 91 A. 889 (1914), quoted in Kemble's Estate, 280 Pa. 441 at 445, 124 A. 694 (1924), the court said: "What the law requires cannot be disregarded no matter how desirable some method not authorized might prove to be. . . . Scientific formulas, arithmetical deductions and mental contemplations, have small value in making assessments under our practical system of taxation. The market value of the separate tracts at public sale, after due notice, is the legal basis recognized by our statutes of determining the assessable value of real estate, and until the legislature changes this method, it is binding not only upon the taxing authorities but upon the courts as well." Again in In re Lehigh & Wilkes-Barre Coal Co's. Assessment, 298 Pa. 294 at 300, 148 A. 301 (1929), approved in Appeal of Glen Alden Coal Co., 321 Pa. 333, 184 A. 123 (1936), the court said: "The legislature has fixed the standard of measurement; 'scientific formulas' predicated on theoretical uses, location and the like applied to property should have small consideration in fixing assessable or market value."

89 See notes 1 and 2, supra.

90 Cummings v. National Bank, 101 U. S. 153 (1879); Taylor v. Louisville & N. R. R., (C. C. A. 6th, 1898) 88 F. 350; Green v. Louisville & I. R. R., 244 U. S. 499, 37 S. Ct. 673 (1917). In the latter case the Court noted the applicability of the Fourteenth Amendment, but decided the case on the basis of the uniformity clause in the state constitution.
the century the equal protection clause in the Fourteenth Amendment became the basis for federal jurisdiction, and replaced the uniformity clauses in the state constitutions as the guide to decision. This shift in the approach of the federal courts was an imperceptible one, as is evidenced by the fact that many of the early cases, decided under the uniformity clauses in state constitutions, were cited in later cases which rested entirely upon the Fourteenth Amendment. The development did not take place wholly without challenge. In 1907, Justice Holmes, dissenting in Raymond v. Chicago Union Traction Company, made the following statement:

"So far as I know this is the first instance in which a Circuit Court has been held authorized to take jurisdiction on the ground that the decision of a state tribunal was contrary to the Fourteenth Amendment."

Justice Holmes, continuing, took the position that the federal courts should decline jurisdiction of cases involving property assessment unless and until the highest court of the state had interpreted its constitution or statutes in such a way as to violate the Fourteenth Amendment. This protest had little influence upon the later course of decision. Taxpayers continued to resort to the federal courts or to the state courts at their option, once their remedies in the state administrative system were exhausted. Thus the practice of property tax assessment


94 207 U. S. 20 at 41, 28 S. Ct. 7 (1907).

95 The doctrine of comity has not destroyed the right to elect between the state and federal courts. See Prentis v. Atlantic Coast Line Co., 211 U. S. 210, 29 S. Ct. 67 (1908). And see Smyth v. Ames, 169 U. S. 466 at 516-517, 18 S. Ct. 418 (1898), where the Court says: "A party by going into a national court does not, this court has said, lose any right or appropriate remedy of which he might have availed himself in the state courts of the same locality; that the wise policy of the
in the states became subject to direct review in the federal courts under the Federal Constitution. However, the test applied by the federal courts under the equal protection clause was identical with that applied by the state courts under the uniformity clauses in state constitutions. In essence the Court would not interfere unless the principle of equal distribution of the tax burden was clearly and systematically violated.96 A typical statement of the principle is found in *Sunday Lake Iron Co. v. Wakefield Tp.*,97 where the Court says:

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property."

Constitution gives him a choice of tribunals." In Raymond v. Chicago Union Traction Co., 207 U. S. 20 at 41, 28 S. Ct. 7 (1907), Justice Holmes said: "It seems to me that the appellee should not be heard until it has exhausted its local remedies; that the action of the state board of equalization should not be held to be the action of the State until, at least, it has been sanctioned directly, in a proceeding which the appellee is entitled to bring, by the final tribunal of the State, the Supreme Court. I am unable to grasp the principle on which the State is said to deprive the appellee of its property without due process of law because a subordinate board, subject to the control of the Supreme Court of the State, is said to have violated the express requirement of the State in its Constitution. . . ."

96 Rowley v. Chicago & N. W. Ry., 293 U. S. 102 at 111, 55 S. Ct. 55 (1934), where the Court said: "There must be something that amounts to an intention, or the equivalent of fraudulent purpose, to disregard the fundamental principle of uniformity. . . . There was no discrimination against respondent by undervaluation of the property of others." Sioux City Bridge Co. v. Dakota County, 260 U. S. 441, 43 S. Ct. 190 (1922); Sunday Lake Iron Co. v. Wakefield Tp., 247 U. S. 350, 38 S. Ct. 495 (1918); Chicago Great Western Ry. v. Kendall, 266 U. S. 94, 45 S. Ct. 55 (1924); Cumberland Coal Co. v. Board of Revision in Greene County, 284 U. S. 23, 52 S. Ct. 48 (1931); Southern Ry. v. Watts, 260 U. S. 519, 43 S. Ct. 192 (1922); Coulter v. Louisville & N. R. R., 196 U. S. 599, 25 S. Ct. 342 (1905); Chicago, B. & Q. Ry. v. Babcock, 204 U. S. 585, 27 S. Ct. 326 (1907). And see Greene v. Louisville & I. R. R., 244 U. S. 499 at 515, 37 S. Ct. 673 (1917), and Cummings v. National Bank, 101 U. S. 153 at 158 (1879), quoting with approval the statement of the Ohio court in Exchange Bank of Columbus v. Hines, 3 Ohio St. 1 at 15 (1853), that "Taxing by a uniform rule requires uniformity, not only in the rate of taxation, but also uniformity in the mode of the assessment upon the taxable valuation. Uniformity in taxing, implies equality in the burden of taxation; and this equality of burden can not exist without uniformity in the mode of the assessment, as well as in the rate of taxation." See the summary of the cases up to this point in 1 Bonbright, *The Valuation of Property* 501-503 (1937).

Quoting this, the Court added in *Sioux City Bridge Co. v. Dakota County*: 98

"mere errors of judgment do not support a claim of discrimina-
tion, but . . . there must be something more—something which
in effect amounts to an intentional violation of the essential prin-
ciple of practical uniformity."

In 1936 the Supreme Court of the United States in *Great Northern
Railway v. Weeks*, 99 held an assessment of $78,832,888 placed by the
North Dakota Board of Equalization upon the property of the railroad
in North Dakota to be too high by $10,000,000. The startling feature
of the decision was that the Court made no mention of the principle of
equal taxation as it had been applied previous to that time under the
equal protection clause of the Fourteenth Amendment. The Court
instead invoked the due process clause; it placed its decision upon the
ground that the assessing officials had adopted the 1932 assessment,
placed by the board upon the property of the railroad, as the 1933
assessment, without considering the decline in values during the inter-
vening period. Justice Stone, dissenting in an opinion concurred in by
Justices Brandeis and Cardozo, made this rather significant statement:

"The feature of the decision which is especially a matter of
concern is that for the first time this Court is setting aside a tax
as a violation of the Fourteenth Amendment on the ground that
the assessment on which it is computed is too high, without any
showing that the assessment is discriminatory or that petitioner
is in any way bearing an undue share of the tax burden imposed
on all property owners in the state." 100

And again Justice Stone states:

"Here the state, so far as appears, is raising the needed revenue
and distributing the burden as in previous years, by continuing
old valuations. However high those valuations may be, if not
discriminatory, they impose no unequal share of the tax burden
on petitioner and cannot be said to be arbitrary or oppressive in
the constitutional sense." 101

This decision was closely followed by *Parsons v. Detroit & Canada
Tunnel Co.*, 102 decided in the United States District Court for the

98 *Sioux City Bridge Co. v. Dakota County*, 260 U. S. 441 at 445, 447, 43
S. Ct. 190 (1922).
100 *Great Northern Ry. v. Weeks*, 297 U. S. 135 at 154, 56 S. Ct. 426 (1936).
101 Ibid., 297 U. S. at 156.
Eastern District of Michigan. In that case the depression had created an extremely difficult situation. The case involved the assessments placed upon the property of the Detroit and Canada Tunnel Company for the years 1932, 1933, and 1934. Under Michigan law the tunnel property was classed with business and residential property in general and subjected to assessment by the Detroit Board of Assessors.103 Prior to 1932, reductions had been made of ten and thirteen per cent in the tunnel assessment, these reductions being part of horizontal reductions applicable to all property within the jurisdiction of the Board. The assessments in question were part of the Board’s assessment of property generally in the city, and were made upon the basis of original cost of construction less depreciation. For 1933 the assessment of the tunnel property was $3,610,210, and was substantially the same for 1932 and 1934. The receiver of the company sued in the federal court to restrain collection of the tax based upon these assessments. The court handed down a decision very similar to that of the United States Supreme Court in the Weeks case. The questions of uniform assessment practice and equal distribution of the tax burden were ignored. It was pointed out that the tax based upon the assessment of the Detroit Board of Assessors would consume forty-one per cent of the gross receipts of the company, and that the capitalized income value of the property approximated $850,000, and the stock and bond value, $530,000. The court assessed the property at $848,937 upon the basis of capitalized income value, apparently being of the opinion that because the property was devoted to a “single purpose,” it should be assessed upon the basis used by the State Board of Assessors in the taxation of public utilities.104 But the fact remains that the property was assessed by the Detroit Board of Assessors, and the assessment was part of a system applied to property generally in the city. And query whether the “single purpose” doctrine could not be applied with like effect to other large properties placed under the jurisdiction of the local assessor. One has only to think of bridges, office buildings, apartments, and hotels. The obvious result of such decisions as this one, and that in the Weeks case, is to favor the taxpayer who thus obtains reduction of his assessment to the prejudice of the other property owners in the same class who must as a result bear the additional tax burden. And increasing tax delinquency, litigation, disruption of the revenues of government, and chaos in the administration of the property tax

Obviously such decisions are a result of the economic depression. It is to be hoped that they will be regarded in the future as pieces of depression jurisprudence, to be applied sparingly and only in extremely hard cases if they are applied at all.

The principal conclusions emerging from the foregoing discussion are: First, the underlying objective of all real property taxation must be the achievement of equality in the distribution of the tax burden. Second, it must be recognized that there is no process of valuation capable of reducing the concept of value to a common monetary scale for tax purposes and for any and all economic conditions. Finally, the shifting economic problems presented in a rapidly developing country have produced uncertainty and confusion in the efforts of tax administrators and courts to build an equitable assessment structure. Technological advance and the growth of cities have operated to draw sharp lines of distinction between rural, urban, and public utility and railroad property, not to mention differences between various classes of residential and business property. These lines of difference bear a direct relation to applicable methods of property assessment, and have formed the basis of modern classification of real property for tax assessment purposes. Clearly, equal distribution of the tax burden can only come about by applying uniform methods of assessment to the property in each class. Any effort to achieve equality between the classes must lag behind. The political decentralization so characteristic of tax administration in the United States today has made uniformity of method or result impossible in the case of rural land. However, scientific assessment upon the basis of reproduction cost has made rapid

105 Compare the decision in Parsons v. Detroit & Canada Tunnel Co., (D. C. Mich. 1936) 15 F. Supp. 986, with the decision of the Supreme Court of Michigan in Sloman-Polk Co. v. City of Detroit, 261 Mich. 989, 247 N. W. 95 (1933), where the court faced a similar situation. The Supreme Court of Michigan permitted the assessment of the Detroit Board of Assessors to stand, saying (261 Mich. at 692): "The overvaluation was not confined to plaintiff or its property nor to classes of persons or property but ran against all property in the city, upon the same standard. A reduction of plaintiff's assessment to values of 1931, without corresponding reduction of all other property, would result, not in equality and justice to plaintiff, but in favoritism to it and injustice to other property owners. A court of equity is never justified in rendering an inequitable decree. . . . The only method by which equity could be done under the circumstances would be for the court to assume the task, not within its proper functions nor practical of operation, of reassessing the whole city. The character of the relief required in order that it may be equitable puts it outside the province of a court of equity." See also, City of Birmingham v. Oakland County Supervisors, 276 Mich. 1, 268 N. W. 409 (1936).
 strides in recent years in urban assessment practice, and with the iron­
ing out of political defects in the administrative structure future prog­
ress along the same lines is to be expected. Likewise, governmental
regulation, the development of accounting technic, and the capitali­
zation of utility properties have furnished valuable data, the use of
which has furthered the development of uniform methods of assess­
ment for public utility and railroad property. Progress in administra­
tive practice has been hindered by the economically obsolete legislative and
constitutional rule that property must be assessed upon the basis of
market value. Construed as present sale value, this rule renders equal­
ity in the distribution of the tax burden impossible under present con­
ditions. The extent to which the rule obstructs equitable taxation
naturally depends upon the judicial interpretation placed upon the
statutory and constitutional provisions. Judicial reluctance to interfere
in tax matters and the peculiarities of judicial review have minimized
judicial interference with apparent departures from statutory and
constitutional standards. However, the recent economic depression
brought many distressed taxpayers into the courts for relief from
assessments; in their desire to give relief in the difficult cases before
them some courts have seemingly ignored the fact that the reduction of
one assessment merely shifts the added burden to other taxpayers, and
that governmental expense varies inversely with the movement of the
business cycle if it varies at all. The two recent federal decisions here­
inbefore mentioned clearly illustrate this depression-induced tendency
to favor the individual taxpayer at the expense of orderly and equit­
able administration of the revenue collecting function of government.
Instead of this depression-born judicial doctrine, wiser and more
equitable results would in the long run be achieved were the courts to
continue to allow reasonably free play for the development of scien­
tific assessment methods based upon factual studies, not only of actual
income determination, but also of the many factors relevant to equitable
tax valuation.