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Some Plain Talk About the Louisiana General Property Tax

JEFFERSON B. FORDHAM* AND FERDINAND M. LOB**

Perhaps this is not the time to be agitating the state revenue waters; the Federal revenue problems created by the war are certainly of such magnitude as to overshadow the state and local aspects of the total revenue picture. As a matter of fact, however, revenue problems of the Federal Government definitely aggravate the tax problems of the state and local units of government and careful reconsideration of the subject seems imperative if intelligent adjustment to post-war conditions is to be made. It may well be that a thoroughgoing overhauling of the Louisiana general property tax should await the victory. In the meantime, a minimum program of action would entail a very thorough study of the state and local revenue systems in their social and economic as well as legal aspects in order that, when the appropriate time comes, sound modifications may be made in our tax policy through the medium of well-drawn constitutional provisions and tax legislation.

The Bar of Louisiana takes great pride in our codification of the law governing ordinary civil relationships. At the present time the legislature has just adopted a bill codifying the substantive criminal law of the state. Yet in the field of public law, including taxation, we are woefully backward in using the code idea. The administrative code and the fiscal code of 1940, which have recently been held unconstitutional,¹ might be considered steps in this direction although the former does not contain in itself a complete statement of administrative powers, duties and procedures but relies heavily upon reference to other statutes.

Any lawyer who can see beyond the end of his nose must have observed the tremendous development of public law on the state as well as the Federal level. Much of this law is new and tentative. But this cannot be said of the main body of state and local

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1. The case is as yet unreported.

tax law. Instead of adopting a well-organized tax code, as has the Federal Congress, we have continued to rock along with a great diversity of tax statutes heavily freighted with obsolete and overlapping provisions, complicated by the usual general repealing clauses in later acts, which leave doubts as to just what earlier law has been wiped out and which represent, at the very best, a patched and re-patched crazy-quilt representing superficial and inadequate efforts to adjust the tax laws to new conditions. These observations are undoubtedly true of the statutes concerning the general property tax. We do not have much ground for declaiming about the virtues of codification so long as such a situation exists. Surely, if there is any field of the law where orderly, systematic legislative expression of the governing rules is needed, that domain is the difficult and very important realm of taxation.

We would say most emphatically, therefore, that Louisiana should have a carefully drawn revenue code to replace the statutory mess which now constitutes the bulk of our tax law. But we would say with equal emphasis that the proper procedure is not to turn on the constitutional and statutory materials with a view to drafting a code. That would be altogether superficial. There should first be made a very careful and thorough study of our tax system in all of the important aspects affecting tax policy in order that the substance of the code shall measure up.

But this is not all. Tax study and research are not matters which can be disposed of by one immense, inclusive effort or even by recurrent attacks. An adequate study would, it is true, provide the basis for a new start in Louisiana. It would, however, be only the beginning. Revenue problems are dynamic; they call for continuous, unflagging inquiry and analysis. It is accordingly our belief that the state should establish a public research agency with adequate personnel and financial support to perform this important continuing function. The unenlightened manner in which war-time revenue matters have been dealt with at the current session of the Legislature is far from encouraging but that situation emphatically does not deter us from speaking our piece.

The requisite primary over-all revenue study was projected by a group of interested faculty people on the campus of Louisiana State University over a year ago. It was thought that the members of that group could make substantial progress on the work by devoting to it such time as they could find while in the performance of their regular duties, even though independent financial support was not in sight. The plan was projected as a

large-scale venture in cooperative research. A principal reason why we have been unable to proceed in this wise is that war-time public service and the armed forces have drawn heavily upon the faculty's manpower. They have decimated the research group and left those still at the University with increased regular burdens which absorb time that might otherwise be devoted to research.² Thus it is that only a modest volume of work has been done on the project.

With the limited resources at hand we have tried to make some headway upon the basic tax in the system, the general property tax. The fruits of a special study of utility property assessment are presented in a companion paper in this number of the Review. The basis for the more general critique of the general property tax, which follows in the present paper, is a preliminary study of legal and administrative materials. We believe that our inquiry proceeded far enough to enable us, with confidence, to indict, on numerous counts, the Louisiana general property tax as semi-articulated in the constitution and tax laws and as administered by the tax authorities. Let not the reader suppose, however, that the discussion which follows is intended to be exhaustive. It has no such pretensions. It is more a sampling treatment, which should suffice to make and underscore the point that the Louisiana general property tax presently is in a disgraceful state.

There remains the challenge to the state's responsible leadership to see to it that ways and means are provided for the prosecution of the essential primary study to thorough completion.

PROPERTY SUBJECT TO TAXATION

Exemptions constitute the focus of this branch of our inquiry. Over the years there has been written into our organic law a formidable list of exemptions.³ The value of exempt property must be tremendous. A reliable statement of the relative value of

2. One, possibly both, of the writers will be in the service soon.

3. Some thirty-six types of exemption are set out in La. Const. of 1921, Art. X, § 4, and Arts. XIV and XVI, including both real estate and tangible, as well as intangible, personal property. The principal classes of corporeal property on the list are public property, property devoted to charitable, educational and religious purposes, new homes (for three years), homesteads (up to \$2,000 of value), industrial plants covered by exemption contracts, household property to the value of \$1,000, motor vehicles (optional as to municipal levies) and all livestock. Incorporeal property exemptions include cash on hand or on deposit, loans or other obligations secured by mortgage on property located exclusively in the state of Louisiana, policy loans by life insurance companies to their policy holders and obligations of the state or its political subdivisions.

exempt and taxable properties would be very interesting data.⁴ It may be a matter of considerable significance that the electorate in 1940 refused to renew the authority to exempt new industrial construction and to add new items to the exemption list.⁵

The exemption problem is quite complex. A variety of interests are served by this sort of dispensation. For obvious reasons public property enjoys exemption. Property devoted to charitable uses, more or less akin to the functions of government, claims like treatment. It is sought to nurture the family institution by fostering home ownership through the homestead exemption and the three-year exemption of new homes. Religion is granted a state subsidy in the form of gratuitous public services such as fire and police protection. The same is true as to new industrial development under exemption contracts made pursuant to a constitutional provision that expired, as authority for new contracts, in December, 1941.⁶ Oil and gas interests are tapped by the severance tax to the exclusion of *ad valorem* taxation.⁷ A number of special exemptions swells the list.⁸

The legislature is not responsible for these heavy inroads into the potential total tax base. Here, as in many other large matters of policy, we have not seen fit to entrust the power of decision to the legislature. Instead, we have tried to lay down the law in the constitution itself. One wonders what sort of job that body would do were the electorate to repose more confidence in it and to replace the present system of sawed-off sixty-day biennial sessions with a more ample legislative work schedule.

4. The Louisiana Tax Commission has reported that the total assessed value of all classes of property in Louisiana in the year 1941 was \$1,402,364,137 and that the total value of exempt real estate alone in all the parishes of the state was \$645,723,274.04 in 1941 or nearly half the assessed value of all taxable property in Louisiana. Report of Louisiana Tax Commission (1940-1941) 106-107, 196-197. We have little doubt but that the total value of exempt property exceeds the total assessed valuation. Add to that the fact that large values enjoy actual exemption by mere failure to assess and we have a serious situation.

5. The proposed constitutional amendment which failed of ratification at the November, 1940, election was initiated by La. Act 399 of 1940.

6. The 1938 constitutional amendment (proposed by La. Act 37 of 1938), which provided for tax exemption for new manufacturing establishments for a period not exceeding ten years, authorized the state to enter into exemption contracts with new industries during a period of only three years from the effective date of the amendment.

7. La. Const. of 1921, Art. X, § 21. This section also puts a limit on valuations of sulphur in place. The policy here is to substitute the severance tax in whole or part for the property tax and it is required that some of the severance tax proceeds be allocated to the parishes. The other local units of government dependent on the property tax are, however, shown no such solicitude.

8. See note 10, *infra*.

Section 4 of Article X of the Constitution purports to lay down an exclusive list of property tax exemptions.⁹ That it tells the whole story, however, is far from true. In the first place the list is lengthened by special provisions found elsewhere in the Constitution. For example, Section 22A of Article XIV of the Constitution authorizes the Commission Council of the City of New Orleans to exempt buildings and other structures in the Vieux Carré, having historical or architectural value, from municipal and parochial taxes for any period of years which the Commission Council may determine.¹⁰ The supreme court, moreover, has placed its imprimatur upon a distinctly left-handed type of exemption, namely, legislative failure affirmatively to tax. The court has decided that shares of corporate stock are not taxable unless the legislature has expressly provided for their taxation.¹¹ As a result a tacit exemption not provided for by the Constitution has been created simply by the failure of the legislature to tax such property, although attempts of the legislature to create express tax exemptions not authorized by the Constitution have been declared unconstitutional.¹² That the supreme court has been correct in approving such exemptions by omission is open to serious question as has been previously indicated in the pages of this review.¹³ Even more disconcerting is the wide sweep of administrative exemption. Thus, although certain types of personal property, such as stock in trade and business furniture and fixtures, generally appear on the assessors' rolls, most other personal property is not listed in Louisiana, and, consequently, is not taxed.

9. It begins: "The following property, and no other, shall be exempt from taxation."

10. Other provisions of Articles X, XIV and XVI of the Constitution exempt from taxation various obligations of the City of New Orleans and of other governmental agencies or subdivisions and certain special property such as the bridge across the Mississippi at Natchez, constructed by the City of Natchez, Mississippi. It is not evident why special exemptions of municipal bonds are needed, in view of the general exemption of state and local obligations provided by paragraph 3 of § 4 of Art. X of La. Const. of 1921. Surely "obligations" would cover revenue and other special as well as general obligations.

11. *Chassaniol v. Board of Assessors of the Parish of Orleans*, 120 La. 777, 45 So. 604 (1908). *Allgeyer v. Board of Assessors*, 121 La. 149, 46 So. 134 (1908). See also *Ficklen v. City of New Orleans*, 147 La. 567, 85 So. 330 (1920). In these cases the court was obviously trying to prevent double taxation. That consideration is totally absent, however, in the case of stock in a corporation which does not have substantial taxable property in the state.

12. *City of New Orleans v. Louisiana Savings Bank and Safe Deposit Co.*, 31 La. Ann. 826 (1879). See *Southland Investment Co. v. Jeter*, 171 La. 106, 109, 129 So. 722, 723 (1930); *State ex rel. Porterle v. Housing Authority of New Orleans*, 190 La. 710, 749, 182 So. 725, 737, 738 (1938).

13. See Comment, *Corporate Stock and the Louisiana General Property Tax* (1941) 4 *LOUISIANA LAW REVIEW* 110.

The value of one's household goods in excess of \$1,000 is taxable but no effort is made to assess such property. In mitigation some assessors have insisted that they would be shot if they went to people's homes to list their household personalty! That is a lovely compliment to pay the gentle taxpayer. It is not to be taken seriously. We have heard of no assessor fatalities in states where such listing is a commonplace.

It may be said, therefore, that there are three classes of tax exemptions in Louisiana: (1) constitutional exemptions, that is, the exemptions specifically set out in the Constitution; (2) judicial exemptions or those created by the courts in interpreting these constitutional provisions; and (3) administrative exemptions, which are those created by the failure of the tax officials to assess certain classes of property.

This is a thoroughly unsatisfactory situation. There should be no judicial nor administrative exemptions. As a matter of policy it may be that some of the classes of property exempt in such wise should enjoy that advantage by force of positive law. Practice has so far departed from positive law that that condition in itself calls strongly for a fresh and searching re-examination of the whole subject. But it is the great accumulation of exemptions, of one sort or another, which renders the need of thorough reconsideration of exemption policy so pressing. It will be difficult to gain for a subject, so colored by sentimental, emotional and selfish considerations, the calm, dispassionate treatment it should receive. That may be sufficient reason for penny-politicians to back away from the subject but it only increases the challenge to statesmanship.

There is not space to consider all the problems which have arisen or might properly be raised with respect to the various express constitutional exemptions and which should claim attention when the positive law is revised. It may be suggestive, however, to advert to some of the questions affecting public, religious, educational and charitable properties.

"All public property" is exempted without qualification. Although there are no Louisiana cases in point, the general rule in other states is that if public property, the title to which is in a public corporation, is expressly and unqualifiedly exempt from taxation by the constitution or a statute, the property is exempt irrespective of its use.¹⁴ On the other hand, if property is dedi-

14. For a collection of cases see II Cooley, *Taxation* (Nichols' 4th ed. 1924) 1421, § 680, n. 92 et seq. Note the North Carolina cases which, after

cated to public use, even though title is not vested in the public, it is also exempt from taxation according to the view embraced in a majority of jurisdictions, including Louisiana.¹⁵ Furthermore, it has been ruled that if the revenues from such property serve a public purpose, the property itself is considered to be public property and, as such, exempt from taxes.¹⁶

In the case of *State ex rel. Porterie v. Housing Authority of New Orleans*¹⁷ the Louisiana Supreme Court went so far as to hold in a test case that the notes, bonds and other obligations of the Housing Authority of New Orleans, a public agency, would, when issued, be "public property" within the meaning of the exemption provision, inasmuch as the legislature had declared such obligations to be for a public purpose and to be public instrumentalities and, as such, to be exempt from taxation. This is rather attenuated reasoning because, although the obligations are, in a sense, public instrumentalities, once outstanding they would plainly be private property if held by private owners. It would have required less straining to have labeled the Authority a political subdivision and then rested the exemption upon Paragraph 3 of Section 4 of Article X, which exempts "obligations of the State or its political subdivisions."

Since the title theory governs, property which has been adjudicated at tax sale to the state or to a municipality is beyond the reach of taxation while so held, even though it is used for public purposes only in the sense that it is being held in the process of collecting public revenue.

Paragraph 2 of Section 4 of Article X exempts from taxation the property of religious, charitable and educational organizations which is used for these purposes and is not leased for profit or income. Here the sole test is the use to which the property is put and ownership is not essential.¹⁸ In interpreting this section the

much litigation, have converted a constitutional ownership test into a use criterion. The cases are discussed by Coates, *The Battle of Exemptions* (1941) 19 N.C.L.Rev. 154, 167 et seq.

15. *Anniston City Land Co. v. State*, 160 Ala. 253, 48 So. 659 (1909); *Kappa Kappa Gamma House Association v. Percy*, 92 Kan. 1020, 142 Pac. 294, 52 L.R.A. (N.S.) 995 (1914). See *State ex rel. Cunningham v. Board of Assessors of Parish of Orleans*, 52 La. Ann. 223, 228, 26 So. 872, 875 (1898); *Martin v. Louisiana Central Lumber Co.*, 150 La. 157, 183, 90 So. 553, 562 (1922); *II Cooley, Taxation* (Nichols' 4th ed. 1924) 1425, §§ 680, 682.

16. See *Opinions of the Attorney General* (1938-1940) 1135, relying on *Administrators of the Tulane Education Fund v. The Board of Assessors*, 38 La. Ann. 292 (1886).

17. 190 La. 710, 182 So. 725 (1938).

18. *Methodist Episcopal Church, South v. City of New Orleans*, 107 La. 611, 32 So. 101 (1902); *Opinions of the Attorney General* (1922-1924) 755.

Attorney General's office has been remarkable for the variety and contrariety of the opinions it has produced. For example, although there have been a number of opinions to the effect that use rather than ownership is determinative,¹⁹ on one occasion it was said that the constitutional exemption applied only to property actually owned by a charitable institution and not to property under a different ownership even though it was being used, without charge, exclusively by the charitable institution.²⁰ Again, although the Attorney General has ruled that property which was leased for profit or income²¹ or which was not actually used for church, charitable or school purposes²² was subject to taxation even though the income or revenue from such property was devoted exclusively to religious, charitable or educational purposes, in another opinion,²³ certain real estate belonging to the American Legion, which was let for non-charitable purposes, was declared to be exempt from taxation because the revenue received by the Legion from the property was used entirely for charitable purposes.

CLASSIFICATION

There is no doubt but that the legislature has authority to classify property for purposes of taxation. We no longer have the familiar unqualified uniformity and equality clause, which appeared in earlier Louisiana constitutions.²⁴ Instead our organic law simply requires that all taxes shall be uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax.²⁵ It provides further that the classification for state taxation shall be that for local taxation.²⁶

Experience under these provisions is, however, quite limited. In other states classification has been used rather extensively.²⁷ It is obvious that so long as intangibles are taxed on the same footing as real property very little of such values will be reflected on

19. Opinions of the Attorney General (1920-1922) 814 and 820; Opinions of the Attorney General (1932-1934) 888 and 889.

20. Opinions of the Attorney General (1918-1920) 662.

21. Opinions of the Attorney General (1932-1934) 884.

22. Opinions of the Attorney General (1920-1922) 807.

23. Opinions of the Attorney General (1924-1926) 519.

24. See La. Const. of 1913, Art. 225, and the corresponding articles of preceding constitutions.

25. La. Const. of 1921, Art. X, § 1.

26. *Ibid.*

27. See generally Jensen, Property Taxation in the United States (1931) 173-203, and Leland, The Classified Property Tax (1928) *passim*.

the tax rolls. Thus, property of this type has by a number of our sister states been placed in a relatively highly favored class.²⁸

It seems appropriate to pose at this point a question for those who eventually carry out a thorough study of our tax system. The principle of classification relates the tax burden of a particular class of property to its special characteristics, which bear on its responsibility to contribute to the public treasury, but at the same time adheres to the general principle that all property which receives the protection of government should share in the cost of that public service. Why ignore this principle, as we have been doing for the most part, and resort instead to complete exemption where we wish to accord favored treatment?

It is obvious that the property tax burden can be modified by acting either on the tax base or on the tax rate. Thus, as a practical matter, property may be classified for tax purposes either in terms of the tax base or of rates. Classification of the former sort would involve listing various classes of property at varying percentages of full value. Classification by rate, of course, would involve variations in rate according to the adopted classification of property. We would suppose that the constitutional authority for classification is broad enough to permit either type of classification as to all property other than real estate.²⁹ It is difficult to see

28. E.g., Ind. Acts 1933, c. 81, § 3 [Burns Ind. Stats. (1933) § 64-903]; Kan. Laws 1931, c. 311, § 2, and c. 312, § 2 [Kan. Gen. Stats. Ann. (1935) § 79-3109]; Ky. Acts 1924, c. 116, § 1 and 1926, c. 164, § 1 [Carroll's Ky. Stats. (Baldwin's Revision 1930) § 4019]; Mont. Laws 1919, c. 51, § 1, and 1921, c. 248, § 1 [Anderson and McFarland's Rev. Codes (1935) §§ 1999-2000]; N. C. Laws 1939, c. 158, §§ 700-719 [N.C. Code Ann. (Michie 1939) §§ 7880 (156)oo-7880 (156)hhh] (This is a state tax; intangibles are not subject to local taxation). The constitutionality of the Kentucky statute was upheld by the United States Supreme Court in *Madden v. Kentucky*, 309 U.S. 83, 60 S.Ct. 406, 84 L.Ed. 590 (1940), against the charge that its rates of fifty cents per hundred dollars of assessed valuation on deposits of residents in out-of-state banks and ten cents per hundred dollars on Kentucky deposits ran afoul of the due process, equal protection and privileges and immunities clauses of the Fourteenth Amendment.

29. A tax system in which all taxable property was distributed into seven separate classes and classified in terms of the tax base at different percentages of the full value of the property was held constitutional in the state of Montana as not in violation of the equal protection clause of the Fourteenth Amendment of the Federal Constitution or of the uniformity clause of the state constitution which, like the present Louisiana clause, required that taxes should be "uniform on the same class of subjects within the territorial limits of the authority levying the tax." *Hilger v. Moore*, 56 Mont. 146, 176, 182 Pac. 477, 484 (1919). In sustaining the validity of this classification the Montana Supreme Court, without particular mention of the fact that the classification was made by reference to the tax base, said:

"... it is sufficient to say that the difference in the nature and character of the property, its productivity or want of it, its utility, the difficulty of reaching some of it under the old system, the fact that the enforcement of our former tax laws operated as a practical confiscation of the entire income from some species of property, as illustrated in the case of *Cruse v. Fischl*,

how classification of real estate, however, in terms of assessment values, could be sustained since Section 12 of Article X of the Constitution requires that all real estate shall be valued at actual cash value. The court has confused the picture even as to personality. In *First National Bank v. Louisiana Tax Commission*,³⁰ the basic problem was whether or not the Louisiana system of taxation of banks operated to discriminate against national banks in favor of competing money capital and thus did not consist with Congressional consent to the taxation of national banks as Federal instrumentalities. One ground upon which it was sought to make out discrimination was Act 163 of 1924, which separately classified "bonds of any State of the United States and political subdivisions of any such State, bonds of railways, railroads and other public utilities, manufacturing and industrial corporations and bonds secured by real estate, except such as are exempt from taxation by law" and ordained that such property be assessed at ten per centum of the market value thereof. The court brushed aside this contention with the single remark that "The statute is so palpably violative of the constitutional requirement that all property that is subject to taxation shall be assessed at its actual cash value, that it has never been enforced."³¹ The trouble with this conclusion which, incidentally, has been uncritically quoted in a recent case,³² is that there is no constitutional requirement that personal property be assessed at its actual cash value. It is true that the Constitution provides that "no property shall be assessed for more than its actual cash value,"³³ but this is a mere ceiling and not a mandate that property shall be assessed at its actual cash value.³⁴ With this point conceded, however, we still would not have a happy situation as to classification in terms of assessment since it would not be available as to real estate and to that material extent the device would be ineffectual.

Despite the *First National Bank* case and Section 12 of Article X of the Constitution the legislature has enacted a number of statutes classifying both real and personal property in terms of

55 Mont. 258, 175 Pac. 878—these and other reasons equally cogent must have influenced the Legislature in making the classification indicated above."

30. 175 La. 119, 143 So. 23 (1932).

31. See *First National Bank v. Louisiana Tax Commission*, 175 La. 119, 139-140, 143 So. 23, 29 (1932).

32. See *Hibernia National Bank in New Orleans v. Louisiana Tax Commission*, 195 La. 43, 59-60, 196 So. 15, 20 (1940).

33. La. Const. of 1921, Art. X, § 1.

34. See *Soniat v. Board of State Affairs*, 146 La. 450, 461-462, 83 So. 760, 764 (1920).

assessment.³⁵ The most commonly employed percentage of actual value is ten per centum. It is significant, however, that in the cases of plants manufacturing naval stores from waste materials such as pine stumps and resinous dead pine wood and of plants making cellulose products from the waste materials of rice, cotton, sugar cane or grass, the legislature, in 1940, increased the percentage from ten to twenty-five.³⁶ Doubtless the purpose of this change was to insulate the statute against attack on the ground that the classification was merely an ill-disguised exemption. The Attorney General had previously ruled that such statutes employing a percentage of ten were unconstitutional as left-handed exemptions.³⁷ Undoubtedly the Attorney General was applying a perfectly valid idea; there is some point as to any class of property where legitimate classification leaves off and exemption begins. The matter will vary with the nature of the property. We are not persuaded that classification of intangibles on the basis which imposes upon them only one-tenth of the burden borne by productive real property exceeds the bounds of legitimate classification. The same might not be said, however, with respect to different classes of real property.

We know of no constitutional obstacle in the path of classification in terms of rates. We have in Louisiana, however, a way of flexing our property taxes from year to year which is not common in other states. Instead of taking the full assessment as the tax base each year and varying the rate of levy according to fiscal needs it is a common practice in Louisiana to make the adjustment in the tax base. Under the scheme which obtains with respect to the state property tax the levy is a continuous one made in advance by statute and it is the duty of the Louisiana Tax Commission to fix as the tax base in each tax year such a percentage of the total assessment as will, by application of the statutory rates, be expected to yield revenues which, together with anticipated revenues from other sources, cover legislative appropriations.³⁸ In these times the state property tax produces only about

35. La. Act 66 of 1924, as amended by La. Act 37 of 1932 [Dart's Stats. (1939) § 8376]; La. Act 142 of 1926 [Dart's Stats. (1939) § 8377]; La. Act 150 of 1926, as amended by La. Act 127 of 1932 [Dart's Stats. (1939) §§ 8374-8375]; La. Act 47 of 1930 [Dart's Stats. (1939) § 8373] La. Act 208 of 1936 [Dart's Stats. (1939) §§ 8380.1-8380.2]; La. Act 274 of 1936 [Dart's Stats. (1939) § 8380.3]; La. Act 266 of 1940, § 24 [Dart's Stats. (Supp. 1941) § 1305.24].

36. La. Acts 66 of 1924 and 150 of 1926, both as amended, were superseded by La. Act 198 of 1940 [Dart's Stats. (Supp. 1941) § 8376.1] which changed the percentage of valuation from ten per centum to twenty-five per centum.

37. Opinions of the Attorney General (1932-1934) 931.

38. La. Act 140 of 1916, § 10, paragraph 13, as reenacted by La. Act 211

one-tenth of the total state revenue. This situation has induced the Louisiana Tax Commission, we are informed, to regard the statutory provision as obsolete and that body, accordingly, makes no attempt to apply it. The net effect is that the full state levy is imposed each year upon the full assessed value of the taxable property in the state.

The way is paved for a local taxing unit to use a percentage of the state assessment as the local tax base by Section 1 of Article X of the Constitution. While the local taxing unit is bound by the State valuation and classification its tax authorities are authorized to adopt a "different percentage of such valuation for purposes of local taxation."³⁹

It may be that this system of flexing the tax base has been deemed an impediment to effectual classification by rates. It is not evident, however, why the system should be so regarded. The application of the classified rates and the computation of the tax would not be further complicated by this factor because the only difference would be that instead of applying the rates to one hundred per centum of assessed value of all taxable property they would be applied to some other percentage employed uniformly as to all classes of property.

The constitution requires uniformity of taxation upon the "same class of subjects." The question arises whether permissible classification is confined to the creation of classes based on differences in types of properties to the exclusion of classification made by reference to the character of the owner. As a matter of fact our legislature has on occasion undertaken classification in terms of assessment by reference to the character of the ownership of property rather than the characteristics of the property itself.⁴⁰ No help is to be derived on this problem from the Louisiana cases but such classification has been left in doubt in other states.⁴¹

ASSESSMENT

The legal embroglio which we confront here is astounding.

of 1918, § 1; La. Act 161 of 1938, § 1; and La. Act 236 of 1940, § 1 [Dart's Stats. (1939) § 8321 (13)].

39. See *Parker v. Cave*, 198 La. 267, 3 So. (2d) 617 (1941), discussed in *The Work of the Louisiana Supreme Court for the 1940-1941 Term* (1942) 4 LOUISIANA LAW REVIEW 165, 224.

40. La. Act 274 of 1936, § 1 [Dart's Stats. (1939) § 8380.3] and La. Act 266 of 1940, § 24 [Dart's Stats. (Supp. 1941) § 1305.24].

41. See *Gillen v. Essex County Board of Taxation*, 91 N.J. L. 76, 102 Atl. 676 (1917); *Northern Pac. Ry. Co. v. Sanders County*, 66 Mont. 608, 214 Pac. 596 (1923); *State ex rel. Northern Pac. Ry. Co. v. Duncan*, 68 Mont. 420, 219 Pac. 638 (1923).

The laws governing assessment are in such a state that the Louisiana Tax Commission, the highest administrative authority in this field of administration, does not profess to be able to identify all the laws relating to the subject. It has recently issued a booklet under the revealing title "Principal Assessment Laws of the State of Louisiana."

In its foreword the Commission had this to say:

"The Louisiana Tax Commission, in compiling these constitutional and statutory provisions of the law of Louisiana governing assessment for ad valorem tax purposes in this State, has endeavored to include the principal laws relating to this subject matter, but does not represent that all laws pertaining to property tax assessment have been included."

There is little wonder that the Commission has suggested that codification and revision of the laws governing assessment is needed.

One of the more troublesome aspects of the present situation is that although we shifted, by the Constitution of 1921, from a system of separate assessments for state and local purposes to a plan under which the valuation for state purposes serves as the valuation for local purposes, the governing statutes have not been fully adjusted to the change. In the matter of review of assessments, for example, the old statute designed to make the decisions of the parish boards of reviewers final, short of judicial review, with respect to assessment for purposes of local taxation,⁴² has not been changed although obviously under the present scheme the state assessment governs for local purposes and the Louisiana Tax Commission makes the final administrative determination of assessed values for state purposes.⁴³

Although the state valuation is the only valuation, the Tax Commission statute, as amended through 1940, still makes it the duty of the Commission to confer with the parish assessors about valuation for other than state purposes.⁴⁴

This statute still, in terms, leaves "to the lawful authorities of each parish or other subdivision levying, assessing and collecting taxes, full liberty to assess taxes on, and fix valuations at, less than actual cash valuation as they deem fit; provided, that the

42. La. Act 170 of 1898, § 24, as amended by La. Acts 130 of 1902, § 2, and 63 of 1906 [Dart's Stats. (1939) § 8396].

43. La. Act 140 of 1916, § 10, as amended by La. Acts 211 of 1918, § 1, 161 of 1938, § 1, and 236 of 1940, § 1 [Dart's Stats. (1939) § 8321].

44. *Id.* at paragraph 5.

percentage of the actual cash valuation of the property assessed in any parish, for other than State purposes, shall not fall below twenty-five per cent of the actual cash valuation, as fixed by the Board (Louisiana Tax Commission) for State purposes; . . ." This is loose language in relation to the present system. Section 1 of Article X of the Constitution appears to use "assessment" and "valuation" interchangeably to denote the fixing of the value of property upon which the rates of levy will be laid. If this be so, the statute should clearly ordain that the state valuation governs but that a political subdivision may take a percentage of that valuation in fixing its tax base.⁴⁵

There has not been even an adequate effort to modify the referential language of the statutes to conform to constitutional and statutory changes. As amended by Act 236 of 1940, Section 10 of Act 140 of 1916 still refers to Articles 225 and 226 of the Constitution as the authority for the assessment of all taxable property for state purposes by the Louisiana Tax Commission. There are, of course, no such articles in the present constitution and the reference is to the constitution that existed in 1916, namely, that of 1913. The same statute is still fraught with references to the old Board of State Affairs, which was a predecessor of the Louisiana Tax Commission, and to the old State Board of Equalization.

Section 17 of Act 170 of 1898,⁴⁶ the ancient basic property tax statute, is a veritable gem of statutory obsolescence. It begins by providing that the assessors of the several parishes, other than Orleans, shall be furnished by the Auditor of Public Accounts "with blank forms of assessments, as follows, . . ." Then follows a list of the most diverse sorts of properties from geldings to silver plate and from goats to jute. Included also are white and colored children between the ages of six and eighteen years, registered by race and sex!

This amazing section goes on to provide that the assessors shall list and assess all property within their respective parishes in accordance with the prescribed blank only to wind up by admonishing them in a separate paragraph which does not even constitute a complete sentence, as follows: "The true intent and object of this provision being for the purpose of gathering information and not especially for assessment for purposes of taxation."

45. Direct language of this sort is used in the pertinent special statute, which governs in Orleans Parish. La. Act 227 of 1936, § 7 [Dart's Stats. (1939) § 8346.5].

46. Dart's Stats. (1939) § 8339.

(a) Procedural Aspects

Assessment procedure in Louisiana has its complications. With respect to the state in general, apart from New Orleans, one may search in vain for a statutory designation of tax day, that is, the day as of which property is to be valued for purposes of a given tax year. The courts have, of course, filled the gap by determining that January 1 is tax day.⁴⁷ There is authority that in the case of movables, on the other hand, property brought into the state after January 1 is to be assessed,⁴⁸ and property moved from one parish to another after January 1 is assessable in the parish to which removed if not already assessed in the other parish.⁴⁹ Just how such rulings could be given practical effect in administration is a matter not at all clear to us. Obviously, the various steps involved in the total process of imposing and collecting property taxes must be taken in an orderly sequence and it is not at all evident how the assessor can be expected to reflect upon the tax rolls personal property brought into his parish at any time during the tax year. A practical disposition of the matter has been largely made, as we have already seen, by constitutional and administrative exemption of most types of personalty.

In order to get taxpayers to list their taxable property the statute requires them to file their individual lists or returns not later than April 1st of the tax year.⁵⁰ The only sanction to support this requirement, however, is the so-called "doom of the assessor," which means that if the taxpayer fails to comply he will be bound by the determination of the assessor. The supreme court has made it clear that the taxpayer will be bound only on the question of valuation and not as to any matter of law affecting the validity of the assessment.⁵¹ The statute, if we are correctly informed, is not effective. In Caddo Parish, for example, a parish blessed with an able assessor, less than a third of the property taxpayers file returns.

In the case of merchandise January 1 of the tax year does not

47. *Southern Ins. Co. v. Board of Assessors*, 49 La. Ann. 401, 21 So. 913 (1897); *Gulf Public Service Co. v. Louisiana Tax Commission*, 167 La. 757, 120 So. 286 (1929); *New Orleans Bank and Trust Co. v. City of New Orleans*, 176 La. 946, 147 So. 42 (1933).

48. *Griggsby Construction Co. v. Freeman*, 108 La. 435, 32 So. 399 (1902).

49. *Hammond Lumber Co. v. Smart*, 129 La. 945, 57 So. 277 (1912). It should be observed that at that time the constitution required that all property be taxed in proportion to its value. La. Const. of 1898, Art. 226. There is no such mandate in the present constitution.

50. La. Act 182 of 1906, § 3 [Dart's Stats. (1939) § 8335].

51. *Louisiana Long Leaf Lumber Co. v. Vines*, 150 La. 311, 90 So. 660 (1922).

govern. On the contrary, the assessment is based on inventories taken during the calendar year preceding tax day. The form of list or return prescribed for use by the taxpayer calls for totals of inventories on January 1, July 1 and December 31 of the preceding calendar year. The Tax Commission has advised the assessors that the taxpayer should furnish as many inventories as possible and that he, the assessor, should not accept less than two.⁵² The assessment is based on an average of such inventories, subject to a deduction for obsolescence. Such statutory basis as there is for this practice is to be found in Section 7 of Act 170 of 1898, as amended.⁵³ In that section is to be found the following remarkable passage:

“. . . in the assessment of merchandise, or, stock in trade on hand during the year preceding the calendar year in which the assessment is made, the inventory value of such merchandise, etc., shall be arrived at by computing the cost or purchase-price of said shipment at the point of origin, plus the carrying charges to the point of destination, and the average value arrived at as above required shall be the basis for fixing the assessable value. . .”

This linguistic monstrosity defies intelligent application. The way the tax authorities have attempted to apply it has just been outlined.

There is an old statute, which goes back to 1894,⁵⁴ which authorizes the sheriffs throughout the state, except in the case of the Parish of Orleans, to list for taxation all merchandise or stock in trade brought into the several parishes for sale after completion of the assessment rolls for the tax year. It is expressly inapplicable to merchants or other parties “who have been regularly assessed.” Under present conditions, moreover, its significance is at a minimum because it applies only to merchandise or stock in trade brought into a parish for sale after the assessment rolls for the year are completed; the assessment rolls are not finally completed under present practice until late in the year and, in some instances, not until after the end of the year.

The form of list or return which is prescribed for the use of the taxpayer calls for the listing of credits on a similar basis as merchandise. It contemplates a similar averaging of the credits as of different dates during the preceding calendar year subject

52. Assessment Suggestions to the Assessors and Police Juries (1942) 20.

53. See La. Act 78 of 1932, § 1 [Dart's Stats. (1939) § 8328].

54. La. Act 33 of 1894, § 1 [Dart's Stats. (1939) § 8354].

to deductions for bills and accounts payable. The Tax Commission's "Assessment Suggestions to the Assessors and Police Juries" states that, in the case of credits of loan and finance companies, the assessor should determine from the taxpayer's books the average loans for the year, excluding loans secured by mortgages on property in Louisiana.⁵⁵ This suggestion is not supported by any citation to statute. We have been unable to find any clear statutory basis for the use of such an averaging scheme in the case of credits. It is true that Act 24 of the Extraordinary Session of 1918 does permit the deduction of bills and accounts payable but, as to the manner of assessment in other respects, it simply provides that credits shall be assessed in the same way as all other personal property. Certainly, personal property in general is not assessed on the basis of the average holdings during the preceding calendar year. The fact that the suggestion of the Tax Commission referred simply to loan and finance companies merely punctuates the proposition that the credits of other classes of taxpayers simply are not listed. While the constitutionality of the deduction of bills and accounts payable had been upheld in earlier cases,⁵⁶ the supreme court, in support of a 1940 decision invalidating as a statutory exemption a statute excluding an important element of value in the assessment of bank shares,⁵⁷ quoted approvingly from the opinion in a South Dakota case,⁵⁸ in which such a deduction was declared unconstitutional because not on the exclusive constitutional list of exemptions. The court, thus, unwittingly, no doubt, cast a cloud over the Louisiana deduction.

By Section 16 of Act 170 of 1898 the parish assessor is required, either personally or by deputy, to visit individuals, firms and corporations to obtain sworn lists of their taxable property.⁵⁹ Act 38 of 1884,⁶⁰ which presumably has not been repealed, renders an assessor liable to a penalty in the event that he has failed to visit any piece of taxable property within his jurisdiction, directly or by deputy, and it shall thereby escape assessment. In parishes where there are adequate assessment maps there is little doubt but that these provisions have no further practical meaning as sanctions to secure the listing of taxable real property. But it is

55. Pp. 23-24.

56. *New Orleans Securities Co. v. City of New Orleans*, 173 La. 1097, 139 So. 635 (1932).

57. *Hibernia National Bank v. Louisiana Tax Commission*, 195 La. 43, 196 So. 15 (1940).

58. *In re Construction of Revenue Law*, 2 S.D. 58, 48 N.W. 813 (1891).

59. *Dart's Stats.* (1939) § 8337.

60. *Dart's Stats.* (1939) §§ 8350-8351.

not every parish which has such a map or maps and, of course, improvements may be erected from time to time. The surmise that there is considerable real as well as personal property, which is legally subject to taxation but is not listed on the assessment rolls, is hardly a wild guess. It is not to be supposed, on the other hand, that any attempt is made to enforce this provision. Visitation by assessors is not the order of the day.

The valuations made by the parish assessors are submitted to the Louisiana Tax Commission for final administrative determination of assessments. The Commission may require, for this purpose, that an assessor deliver to it one of the three copies of his assessment roll which is required by law, or an abstract thereof, as the Commission shall see fit. The Commission would hardly be expected to change many valuations made by the assessors on this basis; the work of the assessors doubtless remains largely determinative as a practical matter in the process of assessment. Of significance in this connection, however, is the fact that the legislature, by Act 18 of the Second Extraordinary Session of 1934,⁶¹ authorized the Commission to change and correct any and all assessments at any time before the "taxes assessed" shall have actually been paid. Under this scheme the Commission is empowered to make such a correction or change simply by issuing written instructions to the assessor to modify the assessment roll or, in the event that the assessment roll has been delivered to the tax collector, to direct him to make the modification and to collect taxes accordingly. The taxpayer must be furnished with a copy of such instructions by registered mail and he is allowed thirty days following the date of the instructions within which to institute suit to challenge the Commission's action. The political character of this enactment is patent. It is obviously open to substantial abuse; the Commission may act summarily without being subject to any of the common safeguards upon administrative action such as a hearing. The opportunity to challenge the action of the Commission may save the act on the score of constitutionality but it does not necessarily help the taxpayer who has to

61. Dart's Stats. (1939) § 8324.1 et seq.

It has been contended that under the present tax statutes the power to assess is vested exclusively in the Louisiana Tax Commission but the only decision on the point squarely rejects that interpretation. *G. R. McKinney Co. v. Louisiana Tax Commission*, 150 So. 452 (La. App. 1933). In a very effective opinion the court made it clear that the local tax authorities are very much a part of the assessment picture even though the work of the parish assessors and boards of reviewers is only tentative.

choose between the expenses of a law suit and a boost in his taxes.

(b) *Substantive Aspects*

While, as has been indicated in the discussion of classification, it is only real estate, which, as a constitutional matter, must be assessed at actual cash value, the Legislature has not attempted to give effect to any such distinction. On the contrary, real property and personal property generally are subject to the same statutory rule as to valuation. Prior to 1934 the statute required valuation at actual cash value and defined that phrase to mean a price that any piece of property would "sell for, for cash in the ordinary course of business, free of all encumbrances, otherwise than by forced sale."⁶² This definition goes all the way back to the 1880's.⁶³ The court always accepted it as a proper interpretation of the words "actual cash value" as used in the Constitution. We would not undertake to say just what the meaning of the phrase is, as used in the constitution, but its reference to cash value certainly suggests a conception of market value because it measures value in terms of the medium of exchange. Such a notion is altogether artificial in times of financial stringency. Thus, it is not surprising that the Legislature of 1934 so amended the statutory definition of "actual cash value" as to permit the assessors to consider "every element of value."⁶⁴ In times of depression, when there is no market for most real property, it is obvious that there would be no hope of applying the old definition.

Even in better times, the market value conception is not applied. While it would be difficult to generalize because assessment practices vary, buildings on urban real property, for example, are valued separately from the land on some such basis as original cost plus cost of improvements less depreciation rather than on the unitary basis of an individual determination as to what each parcel would bring at a voluntary sale. As a matter of practical administration it is too much to expect that the assessors would perform each year the tremendous task that the application of this latter method would involve. In fat years, moreover, valuations might run relatively high in contrast with the hopelessly

62. La. Act 170 of 1898, § 91, paragraph 6, as amended by La. Act 130 of 1902, § 5.

63. La. Act 98 of 1886, § 93.

64. La. Act 126 of 1934, § 1 [Dart's Stats. (1939) § 8200]. If "actual cash value" is a "willing-seller, willing-buyer" notion of market value, this statute, liberally interpreted, might be hard to square with the constitution.

meager tax base in lean years. Such fluctuations have not been permitted in fact because of the obvious need for stability of public revenue.⁶⁵ The constitutional limitations on the parish and municipal general alimony taxes preclude resort to increased levies to solve the problem.⁶⁶

The "actual cash value" criterion would be the source of further difficulties if the court were to give constitutional status to its theory of "unitary" assessment. The court has taken the position that the statute law requires that parcels of real property be valued as a unit, which would render it improper to determine total value by first valuing land and timber or a city lot and improvements separately.⁶⁷ In so ruling as to improved urban realty the court did not refer to a statute of 1916,⁶⁸ which as amended in 1918,⁶⁹ expressly requires separate assessment of improvements. Doubtless this was an oversight of counsel. The point we wish to make is that, on the merits, it could with some force be argued that actual cash value is a conception of market value and that it would do violence to that conception to break up into several parts for assessment purposes that which is a market unit.⁷⁰ At all events, the Louisiana Tax Commission has instructed the assessors to follow the statutory requirement of separate assessment

65. The point has been neatly put by Professor Bonbright: "During a depression, therefore, assessors and judges must conspire in a gigantic legal lie about property values—a lie which is concealed by all sorts of loose talk about the stability of real values as contrasted with the collapse of mere market prices. In short, then, as long as the law gives to taxpayers the nominal right to insist on assessments which do not exceed the 'fair market value' or the 'actual value' of their real property, this law must be violated in fact through quibbling interpretations of the meaning of value or through the imposition on the taxpayers of burdens of proof that are deliberately made impossible to sustain." I Bonbright, *Valuation of Property* (1937) 471.

66. The normal limit as to parishes is four mills on the dollar of assessed valuation and that as to municipalities is seven mills. La. Const. of 1921, Art. XIV, §§ 11 and 12. As tax limitations go, these are pretty drastic.

67. *Delta Land and Timber Co. v. Police Jury*, 169 La. 537, 125 So. 585 (1929) (timber land); *Whited v. Louisiana Tax Commission*, 178 La. 877, 152 So. 552 (1934) (improved urban realty).

68. La. Act 140 of 1916, § 10, paragraph 3.

69. La. Act 211 of 1918, § 1.

70. "Although a separate valuation of land and of improvements is called for by many of the statutes as well as by the practice of assessors, the fictitious nature of this separation is apparent. One simply cannot find the value, say, of the Stevens Hotel property in Chicago or of Mr. Schwab's residence in New York by adding the value of the ground devoid of the building, to the value of the building devoid of the ground. The attempt to do so would result in the same error that would be committed were we to seek the value of Raphael's *Sistine Madonna* by adding the separate value of the lower half of the canvas to the separate value of the upper half." I Bonbright, *Valuation of Property* (1937) 485.

as to urban property,⁷¹ and to assess timber separately from the land.⁷²

The transparently artificial quality of the "actual cash value" criterion need not be labored. That in the hands of those determining assessments and even of the courts it regularly gives way to individual more or less intuitive value judgments is evident. One is likely to be told, moreover, that common sense and practical experience are what it takes to make an assessor and that scientific techniques in valuation are the "bunk."⁷³ The vagaries of assessment must, under such a system, be great.

Our assessors do not even have the benefit of a manual of assessment based on a study of Louisiana values and on the best valuation thought of the country as a whole. The Commission's annual "Assessment Suggestions to the Assessors and Police Juries" doubtless affords the assessors some guidance but it is far from a manual. What enlightenment, for example, does it give an assessor to tell him that lands with growing pecan groves shall be assessed according to their "intrinsic worth," all lands producing salt shall be valued at their "actual worth" and miscellaneous lands at "actual values"?⁷⁴

Soniat v. Board of State Affairs,⁷⁵ is instructive. Under the old dual system of assessment the actual cash value of a taxpayer's property had, for state purposes, been fixed at \$277,480 and, for local purposes, at \$428,210. After the period provided by statute for bringing an action to correct an assessment (a remedy available to one who had filed a return and thus avoided the doom of the assessor) had expired the taxpayer brought suit to nullify the assessments. He contended that two actual cash values had been fixed whereas the constitution contemplated only one and that,

71. Assessment Suggestions to the Assessors and Police Juries (1942) 16-17.

72. *Id.* at 12.

73. In rejecting assessment of city realty based on appraisals in which the front-foot unit was employed the Supreme Court of Pennsylvania, in *Harleigh Realty Company's Case*, 299 Pa. 385, 390, 149 Atl. 653, 655 (1930), had this to say: "The argument of appellant which we have outlined apparently proceeds upon the assumption that tax assessments are a matter of formula, but they are not—they are a matter of judgment in each individual case. 'Common sense and practical everyday business experience are the best guides for those intrusted with the administration of tax laws': P. & R. C. & I. Co. v. Northumberland Co. Comrs., 229 Pa. 460, 471."

Front-foot valuation of urban land is, of course, a commonplace under the familiar standardized method of valuation, variations of which are, we understand, employed in Louisiana.

74. These phrases appear on pages 12 and 13 of the 1941 edition of the pamphlet.

75. 146 La. 450, 83 So. 760 (1920).

in any event, the local valuation, so far as it exceeded that for state purposes, was void. Chief Justice Monroe answered him as follows:

“ . . . ‘Actual cash value’ (as that term is used in the statute) is the price which the law (Act 130 of 1902, § 5, subd. 6, p. 226), arbitrarily and for the purposes of taxation, assumes that property will bring if sold for cash under certain conditions. ‘Valuation,’ upon the other hand, is merely the estimate in dollars and cents which, for the same purposes, the assessors (state board and local authorities) are required to make of the ‘actual cash value’ or ‘just and true value’ of all taxable property within their respective jurisdictions. It is clear, then, that neither the value of property (whether ‘actual cash’ or ‘just and true’) nor yet its ‘valuation’ is a determined factor, like the length of a yardstick or the weight of a minted coin, and that though property can have but one value at one and the same time, determinable as it is by varied conditions of time and place and the state of the money market, and which neither the assessors nor the lawmakers can fix or change by mere declarations, there may be, and frequently are, as many estimates, or valuations, of that value as there are individuals who are called on to express their opinions upon the subject.”⁷⁶

The suit was dismissed.

Since a taxpayer has a constitutional right to judicial review of his assessment,⁷⁷ persons with large holdings justifying expensive litigation have extra strings to their bows. The review afforded is direct review; the court sitting in a statutory action to correct an assessment does not merely lay down the law to the administrative authorities and tell them to reassess accordingly but proceeds to make the valuation itself.⁷⁸ The court’s value judgment is not necessarily any better than the administrator’s but it has the last word.

REVIEW

Administrative review of individual assessments is a widely

76. 146 La. 450, 458-459, 83 So. 760, 763 (1920).

77. La. Const. of 1921, Art. X, § 1.

78. See La. Act 97 of 1924 [Dart’s Stats. (1939) § 8360 et seq.]. Cases in which the courts have directly changed valuations by their judgments are common. For example see *Baton Rouge Electric Co. v. Board of State Affairs*, 149 La. 383, 89 So. 244 (1921); *Baton Rouge Waterworks Co. v. Board of State Affairs*, 149 La. 391, 89 So. 247 (1921).

recognized safeguard designed to afford the individual property owner protection against over-assessment. This step in the property tax process has long been a part of Louisiana property tax procedure. The statutory provisions on the subject are, however, in a sad state. Most of the trouble stems from the fact, as previously intimated, that despite the provisions of the Constitution of 1921 which established a single assessment under which the state assessment governs for all purposes in lieu of the old system of separate assessments for state and local purposes, the statutes still deal with review in terms of the dual system.

Prior to the Constitution of 1921 the police jurors of a parish constituted a board of reviewers to perform the reviewing function for their parish.⁷⁹ A taxpayer who complained of an assessment was entitled to review by the board.⁸⁰ Its determinations were final, short of judicial review, for purposes of local taxation. Now, it is obvious that the reviewing function should be performed after the primary function of assessment has been completed. But since the parish assessor no longer does the ultimate assessing for local purposes violence would be done to logical sequence if the boards of reviewers sat prior to final assessment by the Louisiana Tax Commission. The situation involves a further difficulty arising out of the fact that the law contemplates that the police juries serve as boards of reviewers with respect to assessment for state purposes of all property not assessable by the state authorities prior to the adoption of Act 140 of 1916.⁸¹ With respect to these assessments the conclusions of a board of reviewers were and remain merely recommendatory. The difficulty that such review now presents is that if the local boards are to review assessments before the rolls are submitted to the Tax Commission double review will be entailed since there would have to be a second review after the Tax Commission had fixed the valuations for state purposes. The Tax Commission, however, has authority to determine when the local boards shall sit.⁸² Thus, the simple solution to the problem is for the Commission to fix a time which shall come after the Commission has per-

79. La. Act 170 of 1898, § 23, as amended by La. Act 135 of 1940, § 1 [Dart's Stats. (1939) § 8395].

80. La. Act 170 of 1898, § 24, as amended by La. Acts 130 of 1902, § 2, and 63 of 1906, § 1 [Dart's Stats. (1939) § 8396].

81. La. Act 140 of 1916, § 15, as amended by La. Act 211 of 1918, § 4 [Dart's Stats. (1939) § 8417].

82. La. Act 140 of 1916, § 10, paragraph 11, as amended by La. Acts 211 of 1918, § 1, 161 of 1938, § 1, and 236 of 1940, § 1 [Dart's Stats. (1939) § 8321].

formed its assessing function. And this, we understand, is exactly what the Commission has done.

The process of review received a serious statutory blow in 1924. In that year the legislature enacted that:

"... any taxpayer in this State, the Parish of Orleans excepted, who has filed a sworn list or return of his property for taxation on or before April 1st of any year shall have the right to institute suit in the court having jurisdiction of the cause of action, for the purpose of contesting the correctness or legality of any assessment made against the property listed on the said return . . .

"... No other condition precedent than those specified herein shall be required of the taxpayer in order to permit him to exercise the right of action hereby granted."⁸³

This enactment renders it unnecessary that the complaining taxpayer first exhaust his administrative remedies before resorting to the courts.⁸⁴ He may ignore the board of reviewers. Does this not devitalize administrative review? Would it not be much sounder policy to condition judicial review upon previous exhaustion of administrative remedies? The system of administrative redress should not, of course, be calculated to block ultimate access to the courts. But the constitutional right to judicial review of assessments is not so absolute as to preclude reasonable conditions precedent of an administrative character.⁸⁵

It is evident that, at the very minimum, the statutory provisions governing the process of review of assessments should be brought up to date and fully adjusted to the constitutional fact that the state assessment governs for all purposes.

EQUALIZATION

Parish boards of equalization performed the equalization function for local purposes for two decades beginning in 1920.⁸⁶ The legislature abolished those boards in 1940.⁸⁷ Today, there is no provision for systematic intra-parish equalization. Undoubtedly, a rough measure of equalization is achieved by the assessors

83. La. Act 97 of 1924, §§ 1 and 3 [Dart's Stats. (1939) §§ 8360 and 8362].

84. *Bowman-Hicks Lumber Co. v. Reid*, 169 La. 905, 126 So. 232 (1930).

85. *Marston v. Elliott*, 138 La. 574, 70 So. 519 (1916), is squarely in point. At that time resort to the board of reviewers was a statutory condition precedent to suit and the court upheld the scheme.

86. La. Act 231 of 1920, as amended by La. Acts 228 of 1936 and 144 of 1938 [Dart's Stats. (1939) § 8331 et seq.]

87. La. Act 134 of 1940.

themselves in the performance of the primary function of assessment. But, the police jurors sitting as boards of reviewers have no power with respect to equalization. Under Section 24 of Act 170 of 1898,⁸⁸ it was their duty to go over the rolls in detail on a comparative basis with a view to determining whether the valuations were "equitable and just and in accord with the requirements of the Constitution." The supreme court has declared that the provisions of Section 15 of Act 140 of 1916, which relate to the powers and functions of boards of reviewers operate to exclude this general review of the lists and to confine the boards to consideration of individual assessments only upon complaints of taxpayers.⁸⁹

With respect to equalization as between the several parishes the most significant observation we can offer is that, whatever the statutes may say on the subject, there has in fact been no such equalization in many years. This condition is bound to involve substantial inequality. It requires little acumen to perceive that the assessors and police jurors of the several parishes are not going to maintain the same ratios of assessed to full value. The net effect, of course, is to impose upon taxpayers in some parishes relatively higher state property tax burdens than are sustained by taxpayers in other parishes. As a matter of law and of tax policy and equity this condition is entirely unjustifiable.

We do not profess to know just what considerations have moved the Louisiana Tax Commission to ignore its statutory duties in this respect. We would sympathize with them in any effort to give reasonably close application to the statutes on the subject for they certainly are confusing. We refer particularly to the provisions with respect to equalization of the assessments of personal property, which are quoted below.⁹⁰ Considerable

88. Dart's Stats. (1939) § 8396.

89. Bowman-Hicks Lumber Co. v. Reid, 169 La. 905, 126 So. 232 (1930).

90. Sections 8 and 9 of La. Act 182 of 1906 [Dart's Stats. (1939) §§ 8411 and 8412] read as follows:

"Section 8. Said board in equalizing the valuation of property as listed and assessed in different parishes, shall consider the following classes of property separately, to wit: Personal property, lands, and town and city lots and shall further subdivide these classes as they may deem necessary and upon such consideration, determine such rates of addition to, or deduction from the listed or assessed valuation of each of said classes of property in each parish, as may be deemed by the board to be equitable and just, such rates to be in all cases even and not fractional.

"Section 9. In equalizing the value of personal property between the several parishes, said board shall cause to be obtained the state averages of the several kinds of enumerated property, from the aggregate footings of the number and value of each; and the value of enumerated property thus obtained, as compared with the assessed value of said property in each par-

speculation has not enabled us to formulate a sensible interpretation of these provisions.

The section governing equalization of lands is more understandable.⁹¹ As a matter of fact, because of the dominant rôle played by real property in the general property tax picture it is here that the equalization factor is most important. The unhappy fact remains that such equalization is not even attempted.

It may be that the problem of equalization as between the parishes is to a certain extent obviated in advance by the printed suggestions which the Louisiana Tax Commission each year issues to the local assessors. As to a good many types of property these suggestions are quite specific in laying down unit values. To the extent that the suggestions or instructions are this explicit the process is simply a mathematical one as far as the assessors are concerned. In the matter of oil storage tanks, filling station equipment, oil and gas wells and pipe lines, for example, the specific unit values are laid down by the Commission. It is to be borne in mind, however, that this practice, apart from any question as to its acceptability as a method of determining taxable values, leaves untouched the problem of equalization with respect to the more valuable classes of land and improvements upon land.

LEVY

This step in the property tax process does not call for much separate comment in this discussion. This, however, is not to say that reexamination on the level of policy is not highly in order. Many policy questions merit consideration. Should not the state, for example, give over the general property tax entirely to local government? Are the tax limitations applicable to local government too stringent?⁹² Conversely, are not the constitutional debt limitations to which local government is subject too lax, with the effect of permitting too free resort to unlimited debt-service taxation?⁹³

ish, shall be taken by said board to obtain a rate per cent to be added to or deducted from the total value of personal property in each parish; provided, that whenever in the opinion of the board it is necessary to a more just and equitable equalization of personal property, that a rate per cent be added to or deducted from the value thus obtained in any one or more of the parishes, said board shall have the right to do so; but the rate per cent hereinafter required shall first be obtained to form the basis upon which the equalization of personal property shall be made."

91. La. Act 182 of 1906, § 10 [Dart's Stats. (1939) § 8413].

92. See note 66, *supra*.

93. A local borrowing unit may not issue bonds for any one purpose of issue, which, in the aggregate, exceed ten per centum of assessed taxable values within the unit. La. Const. of 1921, Art. XIV, § 14(f). Since there are

As the reader will already have observed, the legislature has imposed a continuous levy of the state property tax by statute.⁹⁴ Local taxes, on the other hand, are levied from year to year by the local authorities upon whom that power has been conferred by law. The local levies break down into two main categories, namely, the general alimony tax, which is imposed for the general support of government, and debt-service levies, which are laid to provide for principal and interest requirements of bonds issued by the local units of government.

There is one interesting quirk which we would like to mention in passing. Louisiana has not only a rigid doctrine of separation of powers,⁹⁵ but also a special constitutional provision forbidding any non-judicial function to be attached to any court of record or the judges thereof.⁹⁶ If there is any power of government, moreover, which is clearly legislative it is the power to levy taxes. Yet our courts feel free to change local tax levies by their judgments! In *Tremont Lumber Co. v. Police Jury of Winn Parish*,⁹⁷ the district court, on complaint of a taxpayer, had reduced a special levy of ten mills on the dollar for 1925 to meet road district bond principal and interest to nine and a half mills. If fully collected the levy would have produced \$91,074.25, which was \$11,324.25 more than principal and interest maturing that year. Some \$4,000 of this difference was necessary to cover assessor's and collector's commissions. It was clear that a tax of nine mills would have been inadequate. But a nine and a half mill rate would allow a \$2,000 margin for failure to collect part of the tax. The supreme court affirmed without making any reference to the legislative character of what it was doing. Even apart from this basic difficulty, one would suppose that the exercise of local discretion as to the amount of tax overlay to cushion partial failure of collection should be disturbed by the courts only in flagrant cases because the responsibility and the authority are those of the local taxing body.⁹⁸

numerous authorized purposes of issue this limitation is farcical as to a municipality, for example.

94. La. Act 109 of 1921 (E.S.), § 1 [Dart's Stats. (1939) § 8292].

95. La. Const. of 1921, Art. II.

96. La. Const. of 1921, Art. VII, § 3.

97. 164 La. 257, 113 So. 839 (1927).

It is interesting to observe that the bondholders, although their interests were directly and substantially affected, were not represented in the case.

98. See *East St. Louis and The Treasurer of East St. Louis v. United States ex rel. Zebbley*, 110 U. S. 321, 4 S.Ct. 21, 28 L.Ed. 162 (1884).

COLLECTION OF TAXES

There is no forfeiture for non-payment of property taxes in Louisiana, nor are those taxes normally enforced by suit.⁹⁹ Instead the collector's chief sanction is sale. In the case of immovables the only property subject to sale is the specific property on which the delinquent taxes were laid.¹⁰⁰ While the Constitution is clear on this, the statute blandly continues to require the tax collector to seize and sell any other property of the tax debtor in order to effect collection, whenever it shall be necessary.¹⁰¹ Taxes on movables are collected by seizure and sale of any movables of the taxpayer sufficient for the purpose but the collector may proceed against incorporeal rights only if he can find no movables.¹⁰²

It has been decided that this provision and the pertinent statute create, in effect, a privilege in favor of taxing units upon all movable property of a delinquent taxpayer "whether assessed or not assessed . . . for *any* taxes due by said delinquent upon *any* personal property."¹⁰³ In a later case the court has cited this decision as authority for the proposition that taxes on personal property become a personal liability of the person assessed and are "collectible out of any property belonging to the person assessed."¹⁰⁴ Surely this proposition goes too far; it means that personal property taxes are collectible out of real property, for which there is no basis whatever in the constitutional provision.¹⁰⁵ It seems to us unwarranted, moreover, to say that the delinquent is personally liable for taxes on movables. If he is personally liable he is subject to unconditional judgment for the amount of the taxes and such judgment could, of course, be satisfied out of his real property.

The constitution ordains that, at the expiration of the tax

99. La. Const. of 1921, Art. X, § 11.

100. This is the effect, not the express wording, of paragraph 1 of Section 11 of Article X of the Constitution.

101. La. Act 170 of 1898, § 54 [Dart's Stats. (1939) § 8442.].

102. La. Const. of 1921, Art. X, § 11. There is no redemption of movables.

103. *Cleveland Steel Co. v. Joe Kaufman Co.*, 155 La. 529, 532, 99 So. 428, 429 (1924).

104. *Louisiana Oil Refining Co. v. Louisiana Tax Commission*, 167 La. 605, 606, 120 So. 23 (1929).

105. *Whitney National Bank of New Orleans v. Socola Rice Mill Co.*, 182 La. 879, 162 So. 651 (1935), is significant. The court upheld the action of an assessor in correcting an erroneous original assessment of machinery as personalty by a supplemental assessment on the premises to which it was attached. Surely the reason the assessor was moved to do this was the fact that only by such a correction could the tax on the machinery be made a charge on the realty.

year, the tax collector shall proceed, after notice to the delinquent, to advertise for sale and sell the immovables on which taxes are due.¹⁰⁶ Interest begins running with the new year.¹⁰⁷ The actual process of assessment, review, and so on, culminating in a copy of the final tax roll on which the state and parish taxes have been extended being placed in the hands of the collector,¹⁰⁸ not uncommonly falls so far behind the statutory tax calendar that one's taxes may not even have become fixed by the end of the tax year. At such a time we witness the anomaly of taxes being delinquent and interest accruing although tax liability has not been finally determined! This is a practical administrative aspect of the general property tax that invites searching inquiry.

The parish tax collectors bear the responsibility of collecting the state and parish taxes. They are accountable to the state auditor for the former. Municipal taxes are collected by the municipalities themselves on the basis of tax rolls made up by reference to the parish rolls.¹⁰⁹ The constitutional provisions governing the collection of state taxes are expressly made applicable to local taxes.¹¹⁰

In the event of tax sale of immovables for state and parish taxes at which no bid equal to the taxes plus costs and interest is received it is the duty of the collector to bid in the property for the state.¹¹¹ This is the familiar adjudication to the state.

The constitution provides that property sold at tax sale shall be redeemable at any time during three years from the date of recordation of the tax sale.¹¹² This provision has been interpreted to apply only to sales to private purchasers to the exclusion of tax adjudications.¹¹³ Consistently with this constitutional background

106. La. Const. of 1921, Art. X, § 11.

107. La. Act 170 of 1898, § 40, as amended by La. Act 171 of 1912, § 1 [Dart's Stats. (1939) § 8423].

108. La. Act 170 of 1898, §§ 30, 34 [Dart's Stats. (1939) §§ 8399, 8403]. The tax collector is forbidden to receive the assessment rolls from the assessors until they are approved by the Tax Commission or to collect any of the taxes until authorized to do so by the Tax Commission. La. Act 140 of 1916, paragraph 3, as amended by La. Act 211 of 1918, § 1 [Dart's Stats. (1939) § 8321, paragraph 3]: *Vernon Parish Lumber Co. v. Word*, 170 La. 580, 128 So. 522 (1930).

109. La. Act 136 of 1898, § 35 [Dart's Stats. (1939) § 5442]. Special provisions on the subject are to be found in the various city charters. For the parish of Orleans see La. Act 170 of 1898, § 31 [Dart's Stats. (1939) § 8400].

110. La. Const. of 1921, Art. X, § 14.

111. La. Act 170 of 1898, § 53, as amended by La. Acts 315 of 1910, § 1, and 235 of 1928, § 1 [Dart's Stats. (1939) § 8441].

112. La. Const. of 1921, Art. X, § 11.

113. *Police Jury of Parish of Jefferson Davis v. Grace*, 182 La. 64, 161 So. 22 (1935).

the state auditor has been authorized to permit tax debtors to redeem their property adjudicated to the state for delinquent taxes at any time so long as the state has not disposed of the lands.¹¹⁴

Here again the tax statutes have not kept pace with constitutional change. The period of redemption was changed from one to three years by constitutional amendment in 1932.¹¹⁵ The statutes, however, still prescribe a form of tax sale advertisement, which recites that the redemption period is one year, and provide that the property shall be redeemable during one year from the date of recordation of the deed.¹¹⁶ Obviously the constitutional provision is controlling but the statutory discrepancy should not be perpetuated.

In accordance with Section 11 of Article X of the Louisiana Constitution of 1921, the legislature has provided a procedure for confirming or quieting tax titles.¹¹⁷ Under the terms of this act the tax purchaser may institute suit against the former proprietor of the property, notifying him that the title will be confirmed unless a proceeding to annul the sale is instituted within six months from the date of service of the petition and citation. Such a suit does not put at issue the validity of the tax title. It merely invites an attack upon it, which may be made either by a separate, independent suit to annul the tax sale or by reconventional demand.¹¹⁸ It has been held that the plaintiff may be permitted to file an answer to the defendant's reconventional demand in a suit to cancel a tax sale.¹¹⁹

The institution of suit as just described is a means of serving the notice of sale contemplated by Section 11 of Article X of the Constitution. This notice may not be served until the time of redemption shall have expired. If never served suit to annul may be brought at any time within five years of the date of recordation of the tax deed.¹²⁰

114. La. Act 170 of 1898, § 62, as amended by La. Acts 315 of 1910, § 6, 41 of 1912, § 1, 72 of 1928, § 1, and 175 of 1934, § 1 [Dart's Stats. (1939) § 8466]; *Charbonnet v. Forschler*, 138 La. 280, 70 So. 224 (1915); *St. Bernard Syndicate v. Grace*, 169 La. 666, 125 So. 848 (1930).

115. The proposed amendment was initiated by the legislature by Act 147 of 1932 and adopted by the voters November 8, 1932.

116. See La. Act 170 of 1898, § 53, as amended by La. Acts 315 of 1910, § 1, and 235 of 1928, § 1 [Dart's Stats. (1939) § 8441] and La. Act 170 of 1898, § 63, as amended by La. Act 228 of 1932, § 1 [Dart's Stats. (1939) § 8490].

117. La. Act 106 of 1934 [Dart's Stats. (1939) § 8502].

118. *Fellman v. Kay*, 147 La. 953, 86 So. 406 (1920); *Regina Lumber Co. v. Perkins*, 175 La. 15, 142 So. 785 (1932).

119. *Green v. Thrash*, 174 La. 56, 139 So. 757 (1932).

120. Under Section 11 of Article X of the Constitution no valid judgment

If the tax debtor or his transferee remain in undisturbed possession of the property sold, the courts have held, despite the unqualified language of the governing provision in that respect, that such possession is in continuous conflict with the claim of the tax purchaser arising under his tax title and is a continuous protest against the sale, and, consequently, the prescription or preemption of three years does not run in favor of the holder of the tax title.¹²¹ The prescriptive or preemptive period is suspended, however, only when the owner remains in actual, corporeal possession of the property adjudicated, either in person or through tenants or co-owners;¹²² mere civil or constructive possession resulting from the registry of the title of the original owner will not suffice to prevent the running of "prescription" in favor of the tax purchaser.¹²³

The courts have variously spoken of the period for bringing a proceeding to annul a tax sale as a period of prescription¹²⁴ and preemption,¹²⁵ and have even, by verbal misadventure, referred to "pre-emption" in several cases.¹²⁶ This matter ought to be put at rest. It is obviously consequential to the lawyer in preparing pleadings and in reckoning the period in terms of possible interruption or suspension, as by minority.¹²⁷

annulling a tax sale can be rendered until the price and all taxes and costs, with ten per centum interest, are paid to the purchaser. The pertinent sentence of this section reads: "No judgment annulling a tax sale shall have effect until the price and all taxes and costs are [sic] paid, with ten per cent per annum interest on the amount of the price and taxes paid from date of respective payments, be previously paid to the purchaser. . . ." The queried "are," which did not appear before this section was amended in 1932, was obviously inserted through error and must be ignored to give the provision meaning.

121. *Carey v. Cagney*, 109 La. 77, 33 So. 89 (1902); *Bonvillain v. Richaud*, 153 La. 431, 96 So. 21 (1923); *Federico v. Nunez*, 173 La. 957, 139 So. 18 (1931). If the period of limitation is properly a period of preemption there could be no suspension of the period, as in the case of prescription, by the original owner's remaining in possession of the property.

122. *Levenberg v. Shanks*, 165 La. 419, 115 So. 641 (1928); *Pill v. Morgan*, 186 La. 329, 172 So. 409 (1936).

123. *Baldwin Lumber Co. v. Dalferes*, 138 La. 507, 70 So. 493 (1916); *Commercial Securities Co. v. Smith*, 126 So. 97 (La. App. 1930).

124. *Wall v. Hamner*, 182 La. 1049, 162 So. 769 (1935); *Skannal v. Hespeth*, 196 La. 87, 198 So. 661 (1940); *Ward v. South Coast Corp.*, 198 La. 433, 3 So. (2d) 689 (1941).

125. *Hollingsworth v. Schanland*, 155 La. 825, 99 So. 613 (1924); *Levenberg v. Shanks*, 165 La. 419, 115 So. 641 (1928); *Federico v. Nunez*, 173 La. 957, 139 So. 18 (1931); *Jackson v. Irion*, 196 La. 728, 200 So. 18 (1941).

126. *Kivlen v. Horvath*, 163 La. 901, 113 So. 140 (1927); *Calcasieu Inv. Co. v. Corbello's Heirs*, 175 So. 101 (La. App. 1937).

127. However, it has been held that the prescription of three years, established by the constitution, against actions to annul tax titles, applies to actions brought by minors, without depriving them of their property without due process of law. *Doyle v. Negrotto*, 124 La. 100, 49 So. 992 (1909), cited with

As we have seen, the constitutional redemption provision is deemed inapplicable to adjudications to the state or other taxing authority.¹²⁸ Yet they are treated as within the scope of the provision fixing the period for annulment suits.¹²⁹ An explanation would be helpful. So far as appears on the face of the Constitution both provisions refer to the same kind of tax sales.

Doubtless enough has been said to indicate that our system of property tax collection is due a thorough "going-over." This is clear as a legal and administrative matter. Preliminary study suggests policy aspects which invite thoughtful inquiry. Might not some effective way be found to reduce the insecurity of tax titles without unfairness to the tax delinquents? Should not a tax policy which permits a large shift of land ownership from private hands to the state through tax adjudications be reconsidered? Why do we not give more thought to the problem of providing local government a relatively even flow of revenue by means other than the costly system of borrowing in anticipation of the collection of taxes, which our single, lump-payment plan of tax collection forces us to employ?

THE SPECIAL TREATMENT OF ORLEANS PARISH

More than one-third of the total assessed values in the state is to be found in Orleans Parish. This tremendous amount of taxable values is governed by a congeries of special statutes, which give New Orleans a property tax calendar materially different from that which is followed in the rest of the state and many special variations in the total tax process.

We do not know to what extent this exceptional treatment of the state's metropolitan parish is justified or desirable. We are not prepared to comment on the special statutory provisions. We have heard only faint rumblings as to the quality of tax administration in that parish and do not know the facts. We merely call attention to the situation with the suggestion that it should figure

approval in *McNamara v. Marx*, 136 La. 159, 66 So. 764 (1914). On the other hand, Article 3543 of the Louisiana Civil Code of 1870, which has been applied to tax sales [*Kent v. Brown*, 38 La. Ann. 802 (1886); *Stille v. Shull*, 41 La. Ann. 816, 6 So. 634 (1889)], extends the period of prescription against informalities in judicial sales from two years in the case of persons sui juris to five years in the case of minors.

128. Note 113, supra.

129. See *Chapman-Storm Lumber Co. v. Board of Com'rs for Atchafalaya Basin Levee Dist.*, 196 La. 1039, 200 So. 455 (1941). This case involved a tax adjudication governed by the Constitution of 1898 but we note no material difference between that and the present constitution for instant purposes.

prominently in any adequate reconsideration of property tax policy in Louisiana.

CONCLUSION

The reader may judge for himself the sufficiency of the foregoing indictment of the Louisiana general property tax in its legal and administrative aspects. We claim for it no artistry of formulation; we ask merely that its substance be pondered. In our view, to permit the present situation to continue year in and year out, legislative session after legislative session, without more than superficial consideration can and will reflect nothing but discredit upon the state's political leadership, its bar and its better-informed citizens in general. We are glad to have had the privilege of doing a bit of spade-calling. At this writing we are not in a position to do more. But there are others who can—if they but will.