CHAPTER IX

THE LAND TAX

§ 1. INERTIA OF A SYSTEM

THE general property tax today is one of the last survivals of the methods and attitudes that went out with the industrial revolution. In many ways it is unique among the tax systems of the world. It has little serious theoretical justification, and perhaps the most potent argument for its retention is the difficulty and complexity of the readjustment that its abolition would entail.

Yet there are probably few who realize the full extent of the economic consequences that flow from this annual imposition on a single class of property of what amounts to a capital levy for the benefit of all classes of property. (Under its true name the capital levy horrifies all right-thinking and substantial citizens.) It results in an uneven and capricious distribution of the tax load, and when applied to "inadequately improved" property produces results that often savor almost of confiscation. The very existence of a levy bearing no necessary relation to actual or potential income has been responsible for an intensity of land utilization frequently devoid of all possible economic or social justification. Elsewhere we shall discuss this point in some detail.* Here we need only add that the influence of the *ad valorem* land tax on development is apt to be multiplied and cumulated through a vicious circle mechanism: the tax forcing abnormal and premature development, which, in turn, acts upon the nominal price level of the unimproved parcels, often without corresponding increase in real values or actual selling

* See Chapter XIII.

prices; which, in turn, results in further increase of the tax burden upon them; which, in turn, intensifies still more the pressure toward development. It may, of course, be objected that the tax follows real values and does not lead them, but this objection is hardly tenable in view of all the circumstances.

Convenience is the primary reason that dictates the retention of this obsolete method of apportioning the burden of local administration, and all the other arguments in its favor amount to little more than elaborate rationalization. Neither on ethical nor economic grounds can it be justified, for it is essentially arbitrary in nature; and the best that can be said for it is that it is a tax *in rem*, relatively easy to collect, impossible to avoid by leaving the jurisdiction, impossible to dodge by concealing the property; and, since its assessment is an administrative act, independent, in the first instance, of any action by the taxpayer, that it presents no opportunity for diminution through fraudulent returns.

The general property tax originated at a time when the ownership of property was the surest test of ability to pay, and when the amount of property owned was a rough measure of income and hence of the just proportion of the tax burden. Intangible property, as it developed, came by degrees to be concealed from the assessor. At first that made little difference in the final result, for property distribution was still fairly homogeneous, and the composition of estates tended to be relatively similar.

In the end, however, it did make a difference, and a profound difference. Men of affairs in the cities came to prefer intangibles to realty; and others, regardless of their preferences, had to have land. Thus intangibles gravitated naturally to the rich, successful, and influential, the very people who could best afford to pay a tax on them, yet they came in fact to pay proportionately less and less as time went on. More and more the tax on personal property, and particularly on intangibles, tended to fall into desuetude; more and more, as time went on, aided by the full weight of informed and righteous public opinion, the general property tax became in fact a tax on real property alone. The turbulent speculation that whirled land prices higher and higher in the great cities seemed to furnish abundant justification for the proponents of the realty tax as an exclusive source of municipal tax revenues, and the old land tax has remained in force, with little modification or refinement, to the present day. Moreover, the American philosophy has been that "every old tax is a good tax," and since this real property tax is an old tax, it was continued in use, in the absence of any very effective movement to abolish it, or of any dramatic substitute to take its place.

Tax policy has always been extremely sensitive to group political pressure. It was inevitable, given the composition of the land-holding classes and their utterly heterogeneous nature, that all efforts to argue the merits of their case against the tax should shatter on the stubborn barriers of indifference, and that the active opposition of those whose class interests demanded the continuance of the land tax should have succeeded. Land had lost its primacy; it had been distributed among countless inarticulate little men; and no protest could be even formulated in dignity and pride, let alone attain some measure of effectiveness.

Behind the discussions on the theoretical plane loomed eminently practical questions of vested rights. The stormy reverberations of emotional reformers and the dusty tracts of theorists of another land or another generation were cited as self-evident truths and bore the mark of gospel when they attacked the landowner and his rent.

§ 2. Real and Personal Property

The history of the real property tax in America is the history of the struggle between landed and industrial forces. And the real property tax is still the heaviest tax imposed in the country, in spite of the very great increase in the value of personal property and of its increasing ability to pay, and in spite of the diminishing ability of realty to pay.*

In 1900 the wealth of New York State was composed of two-thirds realty and one-third personalty, but realty paid three-fourths of all taxes. In 1925 the total wealth of the state was $78.5 billion, of which real estate amounted to about $24 billion. It had now shrunk to less than

* In cities of over 30,000 population, the property tax yielded, in 1928, 64 per cent of the total revenue receipts, real estate producing 53 per cent, with special charges and assessments producing 8 per cent.[1] In New York State real property has been paying over two-thirds of the total amount of all local and state taxes levied. In some years since 1900 its share has been as high as 81 per cent.[2]

one-third of the total wealth, yet it still continued to pay three-fourths of all taxes imposed within the state.[3]

As the pattern of industrial development unfolded, personalty began to take the forms of raw and processed goods, machinery, equipment, stocks and bonds, money, automobiles, and other chattels. Industry's stock in trade consisted of personalty. In the new dynamics of business, turnover and income were vastly more important than mere possessions. During the nineteenth century, personalty increased steadily in volume, both relatively and absolutely, yet during the period from 1840 to 1932, its contribution as a class to tax revenues in New York State diminished.

In 1866 the personal property tax in New York County yielded a little less than half as much as the real property levy.[4] By 1932, when the relative and absolute volume of personalty had grown immensely, its yield had diminished to practically nothing and in 1933 it was abolished.

Finally, in the New York State Constitution of 1938, a provision banning forever any levy upon intangible personal property was incorporated. This provision was quietly inserted in the "blanket" amendment and adopted with little debate by the convention. The public had no idea of its implications. With as little ceremony as possible, like the typical joker, this provision for tax-immunity of intangible personalty was written into the organic law of the state. And it should not be forgotten that the greatest concentration of intangible wealth in the United States, if not in the whole world, is in New York.

§ 3. The Logic of Power

Political pressure and even perjury and fraud have often supplied a logic to American tax policy. The public documents are replete with examples. A statement of the Governor of Ohio, dated April 6, 1887, shows the trend in the years during which industry was surging forward:

> Personal property is valued all the way from full value down to nothing; in fact, the great majority of the personal property of the state is not returned, but entirely and fraudulently withheld from taxation. So far as personal property is concerned, the fault is chiefly with the people who list their property for taxation. The idea seems largely to prevail that there is injustice and inequality

in taxation, and that there is no harm in cheating the state, although, to do so, a false return must be made, and perjury committed.

This offence against the state and good morals is too frequently committed by men of wealth and reputed high character, and of corresponding position in society.[5]

In 1900 in New York a small mortgage tax was proposed by a legislative committee, but the institutional lenders, which owned most of the mortgages in the state, organized their forces, threw the full weight of their influence against the measure, and succeeded in crippling the bill with amendments designed to make it unworkable, ultimately bringing about its repeal. Attempts to tax mortgages in other states met the same successful resistance of organized lenders and of their pressure groups.

It was the same old story of the power of organized industry, and the comparative helplessness of unorganized landowners. The holdings of the great modern corporations consist mainly of inventories, machinery, and intangibles. They are better equipped to organize effective resistance when encroachment on their privileges is threatened. While farm organizations often exert a considerable degree of counter-pressure, they have not usually been very successful in the direction of equalizing the tax burden. Real Estate Boards, generally representing the more speculative branches of real estate, rather than the home owner or farmer, often provoke a rather unfavorable popular reaction and are frequently ineffectual. In some cases they are even dominated by persons whose interests and sympathies incline to favor the lending institutions. The home owner is completely unorganized and his voice is seldom heard.

The report on Taxation prepared in 1932 for the President's Conference on Home Building and Home Ownership summarizes the current tax situation in the following words:

The concentration of the property tax upon real estate conforms neither to the law nor to sound economic principles. It is a matter of common knowledge that a far larger proportion of personalty than realty escapes taxation, either by outright exemption or evasion of the requirements of the tax law. In a few jurisdictions selected classes of personal property are carefully assessed. But in hundreds of important communities no real effort to tax tangible personal property is made; in thousands of districts only half-hearted effort is made and the major proportion of tangible personal property escapes; while exemption or evasion of intangible personal property is the rule rather than the exception.[6]

While land values were soaring, the owners were not generally disposed to be too critical of the corresponding increase in taxation, but when depression came, they found that a permanent load had been fastened on them, and they were powerless to lighten it or to cause it to be spread more equally over other forms of property better able to bear it.

In recent years many cities have borrowed up to their full debt limits, and have taxed realty to the last penny permitted by law. They have then been forced to seek new sources of tax revenue. The concealment and false swearing prevalent in earlier years cannot be employed so easily today. The officials of large corporations can no longer afford to use those nineteenth-century methods. Industry has therefore often resorted to the new device of migration, already discussed, or has freely exercised its prerogative to threaten migration and has thereby accomplished the same purpose. Wealthy individuals, too, move from state to state or set up holding corporations ostensibly as bona-fide owners of their property, but actually as instruments of tax evasion. The same constitutions and charters that circumscribe the boundaries of cities and counties and limit their powers, supply the privileges and immunities to the owners of personalty which enable them to shift and dodge when taxation is threatened. Land, on the other hand, is immobile, and even when the tax burden is increased an owner has no choice but to pay it or abandon the property.

§ 4. The Farmer and the Tax

Six days of labor at farm wages would have sufficed to pay the taxes of the average farmer a hundred years ago; by 1929, thirty-seven days of labor were required. They could have been paid then with three bushels of wheat; by 1929, one hundred and four bushels were necessary. In most states, taxes were from two to three times as high after the World War as before.[7]

Real estate forms the larger part of the capital in farming. Land taxes must be paid whether there is a surplus over expenses or not. In New

York State, there were only three-quarters as many farms in 1930 as there were in 1910. During this same period, farm acreage in New York declined 20 per cent; the yield per acre over and above cash farm expenses was $10.97 between 1913 and 1916, and $11.94 between 1925 and 1930, with no allowance for interest on investment, reimbursement for unpaid labor, or taxes. Yet the taxes per acre averaged $0.61 in the earlier period and $1.20 in the latter period.

In 1913-1916 the average yield per farm over and above cash farm expenses was $1305. Deducting the value of unpaid labor (by the farmer and his family) at current cost of hired labor, with 5 per cent for interest on investment, and real-estate taxes, the farmer was left an average profit of $102 per farm. But in 1925-1930, while the average yield per farm over and above cash farm expenses was $1720, after deducting the same items there was a loss to the farmer of $288 per farm.

Even if there had been no real-estate taxes at all in the latter period, the loss per farm would still have been $115. The fact is that all costs had increased more rapidly during these years than gross receipts. Gross receipts per farm increased 74 per cent while the value of unpaid labor on the farm increased 101 per cent, cash farm expenses increased 125 per cent, and taxes increased 137 per cent. It is clear that rising taxes are important factors contributing to the agricultural crisis, but even if taxes were completely eliminated there would still be a considerable average deficit.[8]

When we view the government's present agricultural program in the light of these figures, we must conclude that a good part of the federal farm subsidies is paid to neutralize the injustices of local tax policy. Rationally, if taxes are to be measured by ability to pay, the farmer should pay nothing in many cases. But he does pay, and pay relatively large amounts, toward the upkeep of local government, regardless of his position. Yet if land taxes were substantially reduced, the local governments would have considerable trouble in meeting their expenses. The federal government therefore continues without protest to pay subsidies to the farmer which he uses in whole or in part to satisfy the local levies.

We have thus accepted these injustices, and refrain from correcting them for fear of even worse complications. Instead of reëxamining the tax question from the ground up, and adjusting at their roots whatever inequities appear, we are anxious to avoid disturbance of the status quo—a safer course no doubt so long as we can continue paying the cost entailed by this procedure.

§ 5. The City and the Tax

What is true of farm taxes is also true on the urban front. It is difficult to gather precise statistics on the difference between real value and assessed valuations, though instances of gross overassessment or of other substantial injustice could be selected almost at random in any of the cities. Sales prices after 1932 show a marked tendency to deviate sharply from the more arbitrary figures of assessed valuation. This emphasizes still more the heavy load that is placed upon the property owners. On the other hand, in cities where assessed valuations are lower, the tax rate is usually high enough to absorb as large a part of the revenue as where the rates are lower, but valuations higher.

The example of a building on Fifth Avenue near 31st Street in Manhattan selling for $25,000, though assessed for $125,000, is typical of many a sale in that borough. It is a curious paradox that if that same building were assessed for only $50,000, it would probably sell for that amount, so great a difference does the capitalized value of the tax represent.

These anomalies in tax assessments result, of course, from the necessity of circumventing the constitutional provisions which, in most states, limit city debt to a fixed percentage of the total ratables, and prohibit the imposition of a municipal tax in excess of a certain fixed rate. Nowhere is the essential absurdity of the present methods more strikingly revealed; for, in spite of the existence of vast masses of other taxable wealth, our cities today are confined in practice to the real estate levy as almost their only source of substantial tax revenue.

Urban land is subject to an annual tax that averages about 3 per cent of its assessed valuation; so that even if a lot is owned free and clear of mortgage debt, the initial investment would soon be eaten up by taxes, unless it is improved so as to produce enough revenue to carry it, or unless a remarkable and unlikely capital appreciation occurs. To a great extent the unearned increment, seen and denounced by the prophetic land-reformers, resolves itself on closer statistical analysis into little more than a lottery prize paid from the losses of less fortunate participants in the game of buying and selling. Other components of that increment, where realized, are, of course, the normal profits resulting from long-term depreciation of money (i.e., the secular uptrend of all prices), from long-term increase of population, and from the payment of that portion of real-estate taxes and assessments for benefit which may be viewed as compulsory capital investment in the real estate affected. It may be surprising to note that the curve of real-estate prices (in all but the first hectic years when a city is carved out of the plains) is usually far below the curve of compound interest accumulation at, say, 6 per cent.

This is, nevertheless, the fact. The continuous absence of earnings on an investment in vacant land and the mounting taxes accruing against it tend to dictate its improvement if the necessary funds are made available. Every site waits upon the realization of that prospect. But the wild growth of the great cities is measurably slowing down as the rate of population increase falls toward zero. The site-owner has therefore considerably less to look forward to than his predecessor. Many encumbered parcels have already been turned back to the mortgagees, while the value of most unencumbered sites is rapidly cut by the increased tax load. Valuations for taxation purposes, however, often keep pace with any increment, so that even if the site value rises, the owner must still look to a quick improvement if his investment is to remain intact.

In some sections, development may be so rapid as to force lot prices up to levels where the increment, if realized by sale, takes care of taxes for many years.* In most cases, however, the wait is long. Banks will lend little or nothing on unimproved property, for they have learned by bitter experience the risks of owning vacant land. Landowners no longer

* It is very interesting, if fanciful, to speculate on the reaction that a proposed tax on unrealized appreciation of marketable securities would call forth. Yet owners of such securities are far better able to pay such a tax than the owners of real estate, for units of such securities are relatively small, and a portion could always be sold to meet such a tax. This is seldom if ever the case with real estate. Spread between bid and asked is here usually very great, and negotiations for sale may take months.

enjoy that "ease and security" which, according to Adam Smith, was once characteristic of their position. On the contrary, uneasiness and insecurity perturb their days and haunt their nights.

§ 6. Unearned Decrement

It is unnecessary to moralize upon the injustice of the property tax. So much has been written on the subject that reiteration would serve no purpose.

According to Professor Seligman:[9]

> The general property tax in the United States is a dismal failure. No language can be stronger than that of the officials charged with the duty of assessing and collecting the tax. Whole pages might be filled with such testimony from the various states. Only the following extracts from the New York reports are given, as samples:
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> "A more unequal, unjust, and partial system for taxation could not well be devised."
>
> "The defects of our system are too glaring and operate too oppressively to be longer tolerated."
>
> "The burdens are so heavy and the inequalities so gross, as almost to paralyze and dishearten the people."
>
> "The absolute inefficiency of the old and rickety statutes passed in a bygone generation is patent to all."
>
> "The hope of obtaining satisfactory results from the present broken, shattered, leaky laws is vain."
>
> "The system is a farce, sham, humbug."
>
> "The present result is a travesty upon our taxing system, which aims to be equal and just."
>
> "A reproach to the state, an outrage upon the people, a disgrace to the civilization of the nineteenth century, and worthy only of an age of mental and moral darkness and degradation, when the 'only equal rights were those of the equal robber.' "

It is sufficient to add that many home owners today are unable to pay the taxes levied on their homes; that owners of vacant urban land have often paid the city its value many times over in a period of ten or twenty years; that the realty tax, by its nature inflexible, unavoidable, and even confiscatory, has done much to bring property ownership to its present disastrous state. It might have been reasonable, half a century ago, to inveigh against the injustice of "the unearned increment," but it is as reasonable today to protest against the injustice of this unearned decrement, which is inflicted upon all property but falls with the most crushing force upon the small farmer and the owner of a modest home.*

§ 7. History Repeats Itself

What has happened in the United States is not new in tax history. It was true as far back as the twelfth century in Europe, when taxes were sought to be levied on movables as well as on land and the yield of the tax steadily diminished as fewer and fewer owners paid their full share on their goods. Then, as now, the tax came to be levied on land alone. Subsequent efforts to tax personalty likewise ended in the same way. Personalty could be moved or concealed, while land could not be. Collection of taxes on goods is difficult. Collection of taxes on land is easier. Increasing the burden of the landowner is less troublesome than making the owner of personalty pay. The evasion and subterfuge practiced by the Florentine bankers in the fifteenth century to avoid the personalty tax-levies were simply repeated in a later age when personalty had grown to be the major form of wealth in America.

Two hundred years ago Walpole remarked that it was easier to tax real than personal estate, because

> Landed gentlemen are like the flocks upon their plains, who suffer themselves to be shorn without resistance; whereas the trading part of the nation resemble the boar, who will not suffer a bristle to be pluckt from his back without making the whole parish to echo with his complaints.[11]

While in America land is not owned by gentlemen, the same fundamental principles still appear to inform the modern tax system.

Until the adoption of the federal income tax amendment, industry's contribution to government support was negligible. But even after that, realty received little relief, for after land had paid the direct tax it still had to pay a tax on the remaining net income as well. What evolved was nothing less than a double tax on land and a single tax on personalty.

* There is considerable evidence of regressivity in assessment, that is, there is a tendency to assess the less valuable parcels on a higher basis than the more valuable parcels. A study of taxation in North Carolina shows an even regression from 66.5 per cent for property under $4,000 to 56.7 per cent for property over $50,000. This and other studies in various parts of the United States show a more or less uniform regression.[10]

And even in the latter the tax was on a net income in most cases rather than on the value of the corpus.

§ 8. Pro and Con

Those who urge that personalty already pays its just share in the form of the income tax can furnish no justification for the present *ad valorem* tax on land, in the absence of a differential tax rate for realty income.

Some authorities feel, however, that the abolition of the land tax would be unwise. Among the reasons assigned for this position, the following may be mentioned:

1. It would result in an unexpected and undeserved bonus to owners who, in making their purchases, anticipated the continuance of the tax load without diminution and allowed for it in the purchase price.
2. The real-estate tax is a benefit tax and can be justified on account of the actual benefits which accrue to the property charged.

The first argument is not concerned with the initial fairness of the realty levy, merely with the inadvisability of lifting it now that it has been imposed. It holds that the existing taxes have already been capitalized and that they are no longer a real burden, since they have been diffused among successive owners who have bought subject to the tax. This only amounts to saying that however illogical the tax may have originally been it must now remain since it cannot be eliminated without resulting in the unjust enrichment of some owners.

The argument fails to consider the possibility of adjustment. The increment that would accrue to the owners if the real property tax were abolished might be subjected to a "windfall" tax. Such a tax might be payable over a period of years until it had been liquidated. This method would eliminate the injustice of any undeserved bonus to the owners and still permit far more equitable forms of taxation to be substituted. Finally, realty income might be differentially treated, not only according to amount but also according to yield based on actual investment.

The benefit argument is based upon the theory that the revenues paid by real estate buy for the taxpayer a variety of governmental functions which directly benefit the property, as well as certain other services which inure to the owner's benefit indirectly. Services such as garbage collection, sewer and street maintenance, fire and police protection, and similar services and facilities, it is urged, exert a favorable influence on rents and make property more desirable, thus enhancing values or at least improving marketability. In any case, some of them would have to be provided by the owners and residents themselves, if the community did not do so.

The argument, in this form, is purely a general one and is very difficult to prove or disprove statistically. But if we examine the cost of community services rendered in two groups of different-sized cities in 1929,* we will see at a glance that most of these services seem to be primarily for the benefit of the community as a whole, rather than for the benefit of landowners as such. Of course the retort to this is obvious. It is that life in a community without these services would probably not be very attractive to most people, and then where would the landowner get his rents?

On this plane, it is clear, argument back and forth will make little progress. Yet the landowner derives much the same benefit from these services as any other resident, as much as industry does. In most cases it is impossible to apportion benefits with any measure of precision.

* Average per capita expenditures in 1929 for various community services in two groups of different-sized cities.

Community Service	*Group I*	*Group II*
General government	$4.99	$1.88
Protection of life and property	9.95	6.61
Health and sanitation	5.15	2.54
Charities, hospitals, and correction	4.02	1.05
Education (schools and libraries)	17.33	15.51
Recreation	1.96	.97
Highways	4.82	2.77
Miscellaneous	2.91	1.21
Total	$51.13	$32.54

Group I: New York, Chicago, Philadelphia, Detroit, Los Angeles, Cleveland, St. Louis, Baltimore, Boston, and Pittsburgh.

Group II: Evansville, Ind., Duluth, Utica, Lowell, Knoxville, Canton, O., Tacoma, Wichita, Elizabeth, and Tulsa.[12]

Streets are kept clean for the benefit of all. Courts must be maintained to settle differences between all citizens, not only between landowners. The need for free public hospitals originates more from general inadequacy of income than from any cause attributable to the landowner. In any event, capital value is not a fair measure of benefit. Rental income might be.

§ 9. When All Is Said

The tax policy of our local governments has done much to discourage home ownership, and has contributed to the increase of tenancy and the maintenance of slum conditions in the cities and on the farms. It has forced the home owner and the farmer to pay taxes not only upon the equity owned but also upon the debt incurred. The mortgagee does not pay the tax, but the owner does.

The tax is determined by the requirements of the local government. Once fixed, substantial reduction is difficult, no matter what happens. Even when values collapse and charges can no longer be met, the farmer and the home owner must continue to bear the tax burden or take the consequences.

Moreover, the tax on land has contributed more than any other factor to the intense overdevelopment and to the premature use of land which should have been kept out of use. The weight of a heavy tax load is one of the main factors responsible for the intensive and harmful utilization of land, as to height, as to coverage, and as to total amount in use.

The general property tax on land has become an integral part of local policy, yet no one would think of the same kind of capital levy on other forms of wealth. Such a suggestion would raise the cry of confiscation. It is precisely this form of levy, however, that has been imposed upon the farmer, the home owner, and often the tenant, since the first days of national existence. For some strange reason the landowner is expected to pay a heavy annual tax on "value," win, lose, or draw; though with the flow of wealth in ever increasing volume into the newer intangible forms, we find these far more liquid than land and by far more capable of paying an annual percentage of value.

REVOLUTION IN LAND

§ 10. Revaluation

But we must now face revaluation of all the land in and near our cities. Much land, held for capital appreciation, valued and taxed on the basis of a population curve bound to keep on climbing tirelessly for an indefinite but long period, land that sold at prices justifiable only if skyscraper development were imminent, vast wooded areas tapped by many suburban lines and held for subdivision—soon all these may have little, if any, realizable value; for whatever possible value may still remain for practical and probable uses, after the deflation of all those visionary hopes and dreams, must soon be absorbed by the implacable insistence of a tax load, the capitalized value of which far exceeds any reasonable value imputable to the land.

Even this is not the whole story. The capitalized value of anticipated future tax-charges may far exceed any reasonable present value on the basis of possible utilization and income. This present value may even come in time to be generally exceeded—as it is already in very numerous instances—by the arithmetic sum of unpaid tax-charges.

With the rate of population growth approaching zero, that mysterious component of value based on growth alone must also tend to approach zero. There are huge tracts of land that can now never find utilization even for agricultural purposes, for there is a great oversupply even of land that is fertile and ready for the plow. There are vast areas with some hope of utilization still remaining, the value of which must disappear, in a few decades at most, swamped by the rigid burden of the tax load. How, for instance, can acreage near a large city, assessed on the basis of neighboring land on which successful improvements have already been made, justify the same land valuation when development of even a part of the acreage by the owners would not only fail to find its use but undermine the value of the already developed site? The whole theory of urban assessments is based upon the hope that only one or two, not ten or all, will build, but that all will dream.

The valuations erected on the basis of potential development must now be adjusted to the realities of stabilization; and those sources of revenue, upon which cities once relied and on the basis of which they