How "Sapiro the Hero" upheld California's property tax

Foreword by Mason Gaffney, April 2012

Stanley Sapiro, of blessed memory, in his last years entrusted to me a document he thought might make a good article. He was right! It is a legal brief that he fortified with a deep study of history surrounding California's creating its State Board of Equalization (BoE), enshrined in its new Constitution of 1879. "Board of Equalization", "Legal Brief", and "State Constitution" may look dry and musty, but not in Stan's hands, and not in fact.

In modern writing "Georgism" is often treated as the hobby of an individual, Henry George, but that is a major error. California in 1870-79 was the matrix that generated Henry George and his major work, *Progress and Poverty*. George was simply the avatar who came to personify a widespread movement and social philosophy that outlived him, and reached its peak in the 20 years after he died in 1897[1]. The BoE was the control needed to make the State property tax work, by overcoming the abuse called "competitive underassessment", a device by which each county sought to slough off its share of the statewide property tax to other counties. Stan brings the era to life as no historian has done, although he cites many historians to support his points.[2]

Now a pal's last wish is a sacred trust, and I would publish this for that reason alone. After all, it was Stan who originated and carried on this regular column, "Insights", for many years before entrusting it to me, when he felt his powers ebbing. But the present piece more than merits your reading for its own sake, and yours. It was for Stan a labor of love, as you will quickly see, and he went well beyond what he needed to make his case. One of the judges volunteered to him that it is the best-researched brief he had ever seen, and I predict you will agree. The main point for us, though, is that a BoE can work, and did work, when the people got their weight behind it.

More, there is an urgent current reason to revive the idea of a Board of Equalization. This is a bit less direct, and at the Federal level. It involves the interaction between the Federal Income Tax and local property tax assessors, in dividing real estate value between capital, which is tax-depreciable, and land value, which is not. The I.R.S. has no in-house capacity to appraise real estate, so it advises tax filers who own income property to allocate value the same way their local assessor does. Your imagination, and perhaps personal experience, can fill in the rest of the story, which is too long to detail here and now. It creates a tax loophole so huge that all the income property in the U.S.A. reports taxable income of zero! Feder and Hudson have documented this in a paper they published with The Levy Institute. The problem and a proposed solution will appear in full in "Insights" in the next issue of *Groundswell*.

2nd Civil No. 27977

In the District Court of Appeal

[1] For one example see the attached statement by Mayor Stitt Wilson of Berkeley, CA, 1911.
[2] References and bibliography are available from m.gaffney@dslextreme.com.

Second Appellate District
State of California

Wanda Lee Knight Hanks, also known as Wanda Lee Knight, petitioner and Appellant,
vs.
State Board of Equalization of the State of California, Defendant and Respondent

Appellant's Opening Brief

Appeal from Superior Court of Los Angeles County, Hon. Steven S. Weisman, Judge

Stanley Milton Sapiro, 1741 North Ivar, Hollywood 28, California, Attorney for Petitioner

Of Counsel: R. Edward Brown[3], Leon J. Garrie

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Petitioner will show that not only did the Constitutional Convention of 1879 fully intend that Article 13, section 9 be used to enforce full cash value assessments, but that the enactment of this section was a major ground for the calling of that Constitutional Convention. Further, as it will be shown, that section and its intention and effect were widely discussed during the Convention debates; and the enactment of that section requiring true value assessment was a major reason why the 1879 Constitution was approved by the voters.

In Spencer v. Hibernia Bank, 186 Cal. App. 2d 7021, 706, the Court stated:

"If as Judge Jerome Frank has written, each case is but an excursion into history, we must view the litigation in its historical setting and in the context of the times in which it originated."

The political and economic history of California, as related by our leading historians throws revealing light on the cause and purpose of the enactment of Article XIII, Section 9, by the 1879 Constitutional Convention.

The 1870's were years of economic disruption and social unrest, as increasing unemployment allowed the demogogic agitator, Dennis Kearney, to seize the leadership of the discontented workers in the cities. There was equal discord among the small farmers. Their economic difficulties increased their envy of the railroad companies, gigantic estates and speculators who had by somewhat unorthodox methods obtained control of a large portion of the available land, and who were assessed at much lower rates for taxation than the small holders. Much of the blame for the economic difficulty was placed on alleged defects in the 1849 Constitution, particularly as to taxation matters.

[3] R. Edward Brown is not to be confused with Edmund G. (Pat) Brown, former Governor of California

This discontent, and particularly that of the small farmers, was reflected in the official statements of every California Governor in the 1870's. In his first and later, in his final message to the Legislature on December 5, 1871, Governor Haight, a Democrat, charged that: "Our land system seems to be mainly framed to facilitate the acquisition of large bodies of land by capitalists or corporations, either as donations or at nominal prices. Three days later, Haight's successor, Newton Booth, a Republican stated in his inaugural address that California taxpayers contributed in inverse ratio to their ability, "the wealthiest paying the least proportion on the value of their property". To remedy this, Booth suggested removal of taxes on improvements of personal property and imposition of a single tax on land values, which Booth stated would stop land speculation and encourage property development of land.

In his biennial address to the Legislature on December 5, 1873, Booth reiterated his belief in the necessity of a single tax on land values, and claimed that:

". . . (A) large portion of the lands of California are held 'on speculation' for the advance in value, to the detriment of the growth and prosperity of the State, and in contravention of the natural right of every one born on the earth to as much of its soil as is necessary for his subsistence."

Governor Booth remarked, however, that great advances had been made in the assessment of property by the newly formed State Board of Equalization which agency had increased the total assessments in the State from $267 million in 1871 to $637 million in 1872!

The State Board had been created in 1870 at the behest of Haight, as a result of constant complaints that the legal requirement that property be assessed at its full cash value, was being ignored by county assessors so as to "curry favor with their constituents and to roll a portion of the state tax on to some other counties." The State Board was created to enforce the provisions of section 3627 of the Political Code which required assessment of all property "at its full cash value" (See Political Code, sections 3692, et. Seq.).

In 1874, the Supreme Court made a momentous decision in Haughton v. Austin, 47 Cal. 646, wherein it held that the statutes empowering the State Board to raise assessments were violative of the 1849 Constitution. The local assessors soon returned to their old habits of under-assessing political favorites. The total assessment of property in the state shrunk to $618 million 1875-1876, $595 million 1876-1877, $586 million in 1877-1878 and $584 million in 1878-1879.

In Bancroft's monumental History of California, he discussed the chaos and inequity that existed in local assessments in the middle 1870's. Bancroft noted that in 1876, there were approximately 5 million acres of cultivated and 21 million acres of uncultivated land and he stated:

"The owners of the 5,000,000 acres were probably taxed 8 or 10 times as much as the owners of the 21,000,000. The average assessment of land held in tracts ranging from 5,000 to 125,000 acres was not much, if any, above $1.80, while their market value averaged not less than

$15. In 1877 the real estate, outside of San Francisco, was assessed at $203,803,446 of which $41,000,000 was on town lots, the remaining $162,803,446 being on lands. Of this, the small farmers paid at least $125,000,000 while the remaining $37,803,446 was paid by the large owners who produced little, and held the land for speculation or leased a part to cultivators at three times as much per year as it was valued for taxes . . . "

And see the biennial report of the State Board of Equalization of October 1, 1877, wherein it complained bitterly because the Haughton decision removed its power to increase local assessments to full cash value; and it set out glaring examples of under-assessment.

There was a strong popular movement for full cash value assessments in the 1870's. The independent political group called the "Dolly Vardens", whose platform called for "The Taxation of all property at its cash value", won the election of 1873, receiving much strength from the newly organized Grangers.

In 1875, William Irwin, a Democrat was elected Governor. (Booth having been made United States Senator.) Irwin's platform called for "the breaking up of the land monopoly". Irwin commenced his inaugural address with the assertion that equitable enforcement of our revenue laws was impossible without a State Board of Equalization empowered to supervise assessments. He spent a large part of that speech discussing alleged inequities brought about by the Haughton decision; and he requested that the Constitution be amended to reinstate the powers of the state Board.

In his biennial address of December 6, 1877, Irwin again devoted much time to the under-assessment problem. He referred to the rule requiring full cash value assessments and charged that local assessors acted with "the most utter disregard of the law in assessing, and placed the lowest valuation on property". He again stated the necessity for a change in the Constitution to reconstitute a State Board of Equalization with power to increase assessments.

It was with this background that the 1878-1879 Constitutional Convention was called. The make-up of the delegates were from the extremist Workingmen's Party created by Dennis Kearney. Eleven delegates represented the Republican Party, ten the Democrats, and seventy-eight were nonpartisans.

The Granger delegates representing small farmers, demanded that all property be assessed at true market value. They formed an alliance with the Workingmen's Party delegates at the Convention, and the two groups thus obtained a working majority.

As one historian noted: "The subject of taxation received much attention. It was one of the main issues with the farmers and working men. The claim was made that the railroad and other large owners of uncultivated land held for speculation did not pay their just proportion of taxes."

The three volumes of the official Debates and Proceedings of the 1878-1879 Convention are replete with attacks on the large estates and their favored treatment by local tax assessors.

One of the more restrained statements was that made by Marion Briggs, president of the State Agricultural Society, who asserted: ". . . I want to reach all these large land monopolies. I want to see the land taxed at its full valuation, and that is the only way to reach it, by having a competent Board of Equalization, tax it at its full value, large estates as well as small."

The original draft establishing a State Board of Equalization, as prepared by the Convention Committee on Revenue and Taxation, did not specify any standard to which assessments should be equalized by the the Board. The amendment thereto, later adopted, which empowered the State Board to increase assessment rolls so as to make the assessments "conform to the true value in money" was introduced by delegate Wyatt of Monterey. In supporting his amendment Wyatt described the impossibility of a private citizen obtaining an increase in the assessments of such big landowners as Miller & Lux when only local assessors were involved.

In the extensive debates that followed the true meaning of the section was fully explained. See, for example, the remarks of one of the leading proponents of this provision, one Herrington, as reported in this discussion set forth on page 930 of the Debates and Proceedings:

"Mr. Townsend: What is the object of this amendment?

"Mr. Herrington: The object is to give the Board the power to determine the question of value.

"Mr. Townsend: Don't the sections as reported by the committee give the Board the power?

"Mr. Herrington: Not upon the same basis.

"Mr. Townsend: Isn't the object of this amendment to give them the power to act without notice?

"Mr. Herrington: The object is to get at a certain basis, and that is to its true cash value. That is the purpose of it, and it subserves the purpose admirably."

Note also the following question asked by Mr. Herrington relative to the powers of the proposed Board (p. 930 of Debates):

". . . (T)hey have power to raise and lower these assessments when they are not in conformity with the true cash value of the property. What objection can the gentlemen have to having the assessment at the true cash value?"

No objection was stated.

In addition to what is now Article XIII, section 9, the small farmers (assisted by the Workingmen's Party) enacted other provisions which they felt would assist in the breakup of the big estates. This included Article XII, section 9 (repealed in 1930), providing that no corporation could hold any real estate over five years except "such as may be necessary for carrying on its business"; Article XIII, section 2, requiring that land and improvements be separately assessed, and that equally valuable cultivated and uncultivated land be assessed at the same value; Article XVII, section 3, limiting State land grants to actual settlers, and in quantities not exceeding 320 acres; and Article XVII, section 2, stating that: "The holding of large tracts of land, uncultivated

and unimproved, by individuals or corporations, is against the public interest and should be discouraged by all means not inconsistent with the rights of private property."

The more radical members of the Workingmen's Party claimed that this program did not go far enough. They favored the Minority Report of the Committee on Land and Homestead Exemption which demanded prohibition of land holdings of over 640 acres and the forfeiture of all present holdings over 160 acres not in actual use and occupation (page 1136 of Debates and Proceedings).

An extended argument ensued between the two groups, as set out from pages 1136 to 1155 of Debates and Proceedings. The agrarians uniformly insisted that enforcement of assessment at actual value was a more equitable method of breaking up the big estates than arbitrary confiscation.

See for example, the rhetorical speech of delegate Murphy from Del Norte, formerly Chairman of the Legislative Committee on Land and Monopoly. Murphy quoted figures of the State Board of Equalization showing that 122 landowners held over 20,000 acres, claimed that a great part of it was acquired by "fraud and by treachery of the deepest dye", and referred to "this monopoly of the fairest portion of God's footstool, the soil of California". But he concluded that under the law, taxation and not confiscation, was the only proper remedy for this evil, stating; "We cannot disturb these men in their possessions."

Delegate Howard of Los Angeles added: "The system of taxation which *{we}*have adopted will soon end land monopoly in this State."

Even one of the San Francisco Workingmen, Vacquerel, was won over and he stated: "If the owners are compelled to pay taxes as other men do they will sell the land, or put it to some use. If you will do that there will be an end to land monopoly and very soon."

Probably the turning point in the debate was the stand taken by the extremely influential Larkin of El Dorado, a farmer from El Dorado, and a delegate from the Workingmen's Party. The Workingmen had nominated Larkin for president of the Convention and he had received 49 votes on the first four ballots before withdrawing.

In opposing the acreage limitation proposal Larkin reviewed the Constitutional provisions adopted to correct land monopoly and he stated:

"When you come to assess these large tracts of land at what they are really worth then they will divide them up into small farms and that will correct these abuses. . . . Now in order that the abuses which have grown up in the assessment of land shall not continue, that even the Assessors of each county may be under control of the land owners no longer, we have provided a State Board that will place the land upon its cash value. That limits large tracts of land because they could not make it profitable.":

It was not just the radical Granger elements who supported use of the State Board of Equalization to tax the big estates into extinction. Note for example, the statement of Van Dyke of Alameda County, then Chairman of the State Republican State Committee, later Justice of the California Supreme Court from 1898 to 1905. Van Dyke stated that the new system of assessments would " . . . place it within the State Board of Equalization to raise assessments upon these tracts of land to a proper valuation . . . . Now, sir, they will be obligated to pay for the luxury of holding these large tracts of land, and I tell you that when it comes to paying their just and reasonable portion of the taxes of the State they will be glad to dispose of that property".

These arguments carried the day and actual value assessment rather than arbitrary acreage limitation was selected as the chosen instrument for ending land monopoly.

The popular vote on the 1879 Constitution was a very close one and agrarian confidence in the effectiveness of Article XIII, section 9, was evidently a factor in its passage. One historian stated: "The rural vote, swayed by Granger optimism concerning the Railroad Commission and the board of Equalization, carried the Constitution by a margin of not less than 11,000 out of 145,000."

Popular sentiment for full cash value assessment was very strong when the Constitution was adopted in 1880. A reading of the Debates and Proceedings indicates that the delegates believed that they were giving the State Board the right to raise individual assessments to true market value. When the Supreme Court held otherwise in Wells Fargo v. Board of Equalization, supra, Governor Perkins, a Republican, who succeeded Irwin, stated in his annual message of January 3, 1881 the need of a Constitutional Amendment so that the Board might raise individual assessments, as well as County rolls, to full cash value.

The bi-partisan support of true value assessments was best exemplified in the party platforms of this period. The Democratic Convention of March 5, 1882, resolved that: "The property of every corporation, as well as that of every individual, should be assessed at its true value, and the payment of the resulting tax strictly and impartially enforced."

The Republican Party, in almost identical language, resolved at its convention on August 30, 1882: "The property of corporations, like other property, should be assessed at its actual cash value, and the corporations and individuals alike should be compelled to pay their just taxes without abatement, diminution or compromise."

Viewing the Constitution "in its historical setting", and in the "context of the times in which it originated", there can be no doubt that the Convention which created it meant that it should be enforced as written; and that it had no hidden or esoteric intention which would allow the construction given to its words by the trial court.

Evidently the same inequality that contributed to the demand for Constitutional Revision 85 years ago still exists. As Petitioner pointed out in the lower Court, California county assessors still consistently assess improved property at a much higher ratio in proportion to true value than they assess unimproved land. The Final Report to the Joint Interim Committee on

Assessment Practices showed that Contra Costa County assessed improved property at 25% of true value, and unimproved land at 10.2%; San Diego assessed improved property at 21.8% of true value and unimproved lands at 9.1%; San Mateo assessed improved property at 21.2% and unimproved property at 11.8% of true value, etc.

It is evidently as true now as it was when the Constitution adopted that assessment at full cash value is "the surest method possible of attaining 'equality and uniformity' - so harped on by critics of all taxing systems" (as stated in Ray v. Armstrong, 131 S.W. 1039, 1043, 140 Ky. 800).

But the issue before the Court is not whether assessment at true value is superior to assessment at 23% of true value or 230% of true value. The sole issue - and one which permits but one answer - is whether the Convention meant what it said when it provided that assessments should be raised or reduced to conform to true value.

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CONCLUSION

It is true that for many years the Respondent has refused to obey the Constitutional mandate. But no vested right lies in any administrative agency to ignore the basic law of the State. As the Court said in Pierce v. Green, supra, 294 N.W. 237, 248, 229 Iowa 22, relative to mere statutory requirement of actual value assessment:

"The duties which they have knowingly and deliberately refused to perform are imperative duties. They are commands of the legislature. The defendants have no discretion in the matter with respect to obeying those commands. Since the statute requires that all property shall be assessed at its actual value, they have no right to disregard this legislative injunction because they deem it it unwise or inexpedient, or because others in their position in the past have so violated the law."

The Constitution does not state that the State Board shall raise or reduce assessments "to such ratio of assessed value to true value as shall be consistent with the state-wide average", as Respondent contended, and as the lower Court decided. By such violation of the law the board has allowed the chaotic under-assessment that has discriminated against small home owners such as petitioner and has subsidized the very type of large holders of unimproved property whom the Constitution intended to control.

The State Board of Equalization is required, by the plain language of the law to be the policeman that would wield the baton of State authority over errant local assessors failing to abide by the legal standard of full cash value assessment. It was intended to be an intrepid independent agency, free from the selfish demands of local politics and of special pressure groups.

Instead, the State Board has consistently condoned, and does now attempt to put its official brand of approval on, the very breach of legal duty that it was organized to terminate. It

has attempted to institutionalize that same fractional system that one tax authority has referred to as “the graveyard in which assessors bury their mistakes”.

Every day in which the Constitutional mandates of true and full cash value assessment are flouted some taxpayers pay more and some pay less property taxes. Almost invariably, the small property holders and the low income groups are the persons injured. But even if the only beneficiary of proper law enforcement were a single large corporation, as was the case in Southern Pacific co. v. County of Cochise, 377 P. 2d 770, 92 Ariz. 395, there would be no excuse for further violation of the law.

Every day in which the law is broken both the State Board and everyone of our county assessors are violating their oath of office. As noted in the above-cited case of People v. Schumacher, supra, 370 P. 2d 209, the local assessors are either guilty of misfeasance or nonfeasance, depending on whether they use full cash value as a standard or not. Whether misfeasance of nonfeasance is involved, each under-assessment is a violation of the oath of the assessor to enforce the law and to assess all property at its value (Revenue Taxation Code, SS616). And every day in which the State Board violates the constitutional provisions which control its existence further disregard for our basic law is engendered.

In California, as in every other State that has faced this problem, the Court can have no other course than to require that our Constitution be obeyed, and that Mandamus issue to compel that obedience.

It is submitted that the judgment rendered herein should be reversed and that either this Court issue its own Findings or that it instruct the Court below to issue its Findings and Writ instructing Respondent to enforce the law as it is written.

Respectfully submitted,
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APPENDIX 1. Berkeley Mayor Wilson's vision during the crescendo of the single tax movemet in California, which peaked in around 1916

"J. Stitt Wilson was Mayor of Berkeley from 1911 – 1913 and helped lead the efforts in 1912 and 1914 to allow local governments to tax land differently from improvements. He was a socialist, feminist and single-taxer and this statement is a remarkable synthesis of all three." - Stephen Barton, letter, May 1, 2012

Berkeley Mayor J. Stitt Wilson's vision of the City, 1911

"Man is a social animal. Every aspect of his nature, physical, intellectual and moral, tends to community life. … Land is the physical basis of his social existence. The earth is his home… and since land is limited in quantity and varied in quality, there is a struggle or competition among men for the most desirable sites and values in land. Hence, as the community grows, site values and land values increase. This increase in site values is not made by the industry, skill, labor or forethought of any individual. It is an increase in value arising out of the association or coming together of men. It is an outgrowth of his life as a public or social or communal being in competition or association with his fellows. …

The wealth the individual creates should go to the individual. The values which are created by the social body by its very sociality should go to the social body. That social body is as much a reality as the individual person. It is the city or the state. And the city or the state has great public needs which must be supplied.

If we should personify the city or state we would say that this Social Mother, in whose household we all live, needs streets and sewers for us all; schools for all our children; peace officers and fire fighters; and social administrators of all these affairs. She, the city, provides or ought to provide social necessities, public utilities, communal enjoyments and civic equipment for all the people. And to do these things she must have money. She must have her own purse. That purse must fill and refill from her own earnings. She is well able to take care of herself. She has no need to be a pauper, or a beggar, or a thief. The social body, the city or state, should pay its own bills out of that wealth which it has itself socially created. Let the values she herself socially creates fall into her own treasury, and from this, her own treasure, let her pay her own bills. … The city or state should be a queen in her own domain, living on her own legitimate earnings… taxation on land values."[4]

[4] Wilson, J. Stitt, "Some Suggestions for Reform in Taxation", pp.152-159 in *Proceedings, Fourteenth Annual Convention, League of California Muncipalities*, Santa Barbara, California, October 25, 1911. (bold in the original)