THE SINGLE TAX AND FRANCHISES

Sometimes when I have been exercising my political soul to find an effective means for the termination of perpetual franchises and for the gradual acquisition of public utility properties by the cities, it has been suggested to me that there is an easy way to accomplish the desired result and that there is no reason for fuming and fretting so much and being in so great a hurry when presently the general application of the Single Tax programme to franchise values will, like the magician's wand, conjure away all financial difficulties and usher in municipal ownership strident and triumphant. This suggestion has troubled me, as it seems to indicate that instead of following the line of least resistance, I have been trying to do things in the hardest way. So the question is squarely this: Can the Single Tax be used effectively as a weapon to destroy perpetual franchises and to bring about an increasing degree of control over public utilities.

In the discussion of this question the first thing to be done is to define the scope of the term "franchises" and to define the relations between franchise values and the value of land. In this discussion, I shall use the term franchises as applying to special rights in public highways for the construction and maintenance of permanent fixtures and for the collection of revenues from the public through the medium of rates for general utility services rendered by means of such fixtures. The term public highways is here used in the broad sense to include not only ordinary roads and streets but also special rights of way for transportation or transmission purposes, such as railroads, power lines, aqueducts, oil pipe lines, telephone and telegraph lines, etc., where the acquisition of the necessary rights of way is brought about through actual or potential use of the high govenmental power of condemnation. The term franchises, therefore, as here used, is broad enough to include easements and may be defined to mean

the intangible privileges of railroads and other public utilities for the special and partial use of land. A street franchise may be regarded as an undivided easement in the bed of the street, an inseparable fraction of the aggregate use—value of all the uses to which the street is put. The value of the franchise is a portion of the value of the land without its improvements. The structures themselves, such as the street railway tracks, the water and gas pipes, the electric light poles, wires and conduits, etc., are improvements on land, corresponding to buildings on ordinary residential and business property. In the State of New York, under the special franchise tax law, the intangible franchise, together with the utility fixtures located in the streets, is defined as real estate. Nothing can be more tangible than land itself; yet the easement or franchise right enjoyed by a public service corporation is wholly intangible.

Single Taxers maintain that land is a monopoly. They also maintain that the tax upon land values cannot be shifted from the landholders to anybody else. On the other hand, they generally hold that a tax levied upon buildings and other improvements of land enters into the cost of the service rendered to the tenant for which he can be compelled to pay. I have said that a franchise is an intangible part of the land—what might be termed the spiritual or life element of the material thing—and that utility structures are improvements on land. It becomes fundamentally important to determine whether there are any peculiar conditions attaching to public utilities which cause the ultimate effect of a tax like the New York special franchise tax to be different from the effects of the ordinary tax on real estate where land and buildings are included together. While it may be considered that land, in a certain sense, is a monopoly, it is obvious that any particular parcel of land is subject to the competition of other parcels for the determination of the use to which it shall be put and the consequent value that shall attach to it. In the case of a public utility, hovever, in a given urban community, the normal condition is that the entire franchise is a unit without any other similar units to compete with it. That is to say, the franchise of a street railway company, the "land"

in which the company has an easement, is not made up of a multitude of competing parcels, but is for all practical purposes one single parcel, including all the streets and private rights of way occupied for street railway purposes within that community. Franchises and easements in other communities cannot seriously affect the use or the use-value of this particular franchise. It would appear, therefore, that so far as street franchises are concerned, taxes levied on the structures in the streets, no less than taxes levied on the intangible right itself, tend to reduce or destroy the market value of the franchise. This will be seen more clearly if we assume that the public utility in question is being operated as an unregulated monopoly, charging for its service that price which will produce the greatest aggregate revenues. Under such conditions, if the tax upon the franchise or upon the physical property in the street is increased, obviously this cannot be made a reason for increasing the gross revenues of the business. Therefore, under these conditions, the total amount of the tax, whether levied upon intangibles or upon tangibles—land or improvements—goes to decrease the market value of the intangible franchise. The assumption of unregulated monopoly conditions in the operation of a public utility brings us up against a big fact which cannot be ignored except in the realm of purely hypothetical reasoning. This fact is the existence of governmental regulation of street monopolies. Whether it be regulation by legislative limitations upon corporate powers, by the terms and conditions of local franchise contracts, by municipal ordinances, by the orders of public service commissions or by the enforcement of the principles of the common law relating to monopolies and enterprises affected with a public interest, this regulation tends to destroy not merely the capital value but also the rental value of utility franchises. In this respect the effect of regulation upon the use-values of franchises is radically different from the effect of taxation upon such values. While many persons connected with the agitation to untax buildings advocate the development of the land tax theory on the assumption that the effect of the Single Tax would be to reduce rents, it is very clear that no such effect can be brought about by the increase of the land tax except

through the indirect effects of increased competition in the use of land. In a community which is compactly and normally developed, the increase of the land tax will have no substantial effect upon the use of the land or the annual rental to be paid by those who enjoy the privilege of occupying it. It is only speculative rental values, not real ones, that can be destroyed or lessened by the increase of taxation. Stated in another way, the fundamental purpose of the Single Tax is not to lessen ground rents but to appropriate them to the general uses of the community and thus relieve the people from the burden of other forms of taxation. Governmental regulation of public utility services and rates has a different purpose and a different result. If the rates are so reduced and the service requirements so increased that the patrons of the utility have to pay only the cost of the service, then by means of regulation the market value and the rental value of the franchise are destroyed at the same time. Regulation does not appropriate to the community as a whole the financial benefits of the operation of franchises, but it destroys these financial benefits entirely by requiring the franchise holder to furnish service to the patrons of the utility at cost.

It may be urged by certain Single Taxers who belong to the "most straitest sect" of individualists that street franchises should be taxed like any other landed property so that the full financial advantages arising from the unrestricted exploitation of the streets may flow into the coffers of the community. I am of the opinion, however, that those who take this view are a very small minority both among Single Taxers, and among citizens generally, irrespective of their views on taxation. In fact, it is only a relatively small number of so-called "taxpayers" who still cling to the political philosophy, largely exploited in British cities, that the operation of local utilities should be made a source of municipal profit for the relief of the general tax rate. It has come to be the generally accepted theory of American students of public utilities who approach the subject from the public point of view that all the standard utilities which have come to be vital necessities, almost characteristics, of urban life, should be

operated at or below cost. If this theory is the right one, then regulation rather than taxation is the normal means to be used in furtherance of the purposes here under discussion. It is only in abnormal conditions, where, through the obstructions presented by some irrevocable contract, the police power of the State has been so curtailed or abrogated as to render the destruction of franchise values by regulation impracticable, that taxation should be resorted to for this purpose. It is true that in many cases public utility rates and in some cases the standards and obligations of public utility service, have been fixed by agreements or quasi-agreements which are still respected as binding upon all the governmental authorities having to do with the utilities concerned. But the authority of the State, through the exercise of its police power, to fix public utility rates and standards of service irrespective of any contractual relations which may have been established between the public service corporations and the municipalities in which they operate, is gradually being established as the fixed law of the land. It may be that the authority so developed is not being properly or completely exercised by the governmental agencies to which this power is entrusted, but, if so, this does not alter the fact that the proper method of attack upon franchise values is through the further development of public regulation.

In this discussion we ought not to omit a consideration of the relation between the Single Tax and public ownership. While it is probably true that the great weight of public opinion at the present time is in favor of the operation of municipally owned public utilities on a self-sustaining basis, it is undeniable that the necessities of our great urban communities and the development of communistic thought are together giving considerable impetus to the movement for utility services rendered free or at least at prices below their actual cost. The strength of this movement is shown by the nature of the rapid transit contracts recently entered into by the City of New York, under which the taxpayers are to pay millions of dollars every year to subsidize the rapid transit companies in order to make it possible for the people of the city to be carried about at rates

which are less than the cost of the service. It is not uncommon for utilities owned and operated by cities to be subsidized out of taxation. If this movement for service below cost becomes general, it will necessarily destroy positive franchise values and in fact make them a minus quantity, leaving nothing to be taxed. While Single Taxers are not necessarily municipal ownership men, yet it would seem to be quite obvious that if the below-cost theory is to be followed out it should be through direct public ownership and operation of the utilities rather than through subsidized private corporations. The tremendous amount of private investments in public utilities and their rapid increase, under present day social and economic conditions, makes the municipalization of public utilities more and more difficult. If it is recognized that public ownership is an ultimate necessity, then in view of the facts that stare us in the face, the adoption and persistent working out of a constructive program by which municipal ownership will be brought definitely nearer is one of the most pressing political problems of the times. It may well be that the taxation of franchises and the radical reduction of rates through regulation will prove to be equally short-sighted policies at the present time. Public ownership cannot be brought about merely by the creation of public opinion favorable to it. We shall not be able to take over the utilities by a stroke of the pen "when we get ready," unless the getting ready includes deliberate and effective preparation, of which the most important factor will be the financial one. If, therefore, we ask the question, what is the proper relation of the Single Tax to franchises? —we may have to say that it is entirely an indirect one. The Single Tax as a means of getting revenue with which to pay the expenses of government, should let franchises alone. If we are not too blind to see that public regulation cannot succeed in its purposes except as it leads to ultimate public ownership, rates will not be reduced below the point where first class service can be rendered and a fund be set aside out of earnings gradually to amortize the investment and render the transfer of the utility from private to public hands financially easy. If public ownership is to be the goal, this policy is inevitable and necessary unless

the cooperation of the Single Tax be enlisted to supply, out of the appropriated annual use values of occupied land, a fund with which to pay off the private investors in public utilities or to supplement the revenues from such utilities when laboring under the burdens of over-capitalization. That the extension of public utility facilities, particularly street railway lines and water pipes, into a new district, adds greatly to the value of the land neighboring the extensions, is indisputable. This increase in land value should be taken by taxation. The use of special assessments for the construction of public utility extensions has often been advocated and has even been put into effect in a partial way in certain communities. If the fundamental idea involved in the adoption of this policy were to be extended to apply to the utility plant as a whole, it would result in the assumption of the capital charges of public utilities by the community, to be met out of the tax upon land values. It may be that the provision of the plant by means of land taxation, with the cost of actual operation charged in rates to the consumers of the utility, will be the next practicable step in the direction of free public utility service.

I would not be understood as advocating the removal of all taxes from public utility franchises if such removal is to result in an enhancement of the private value of these privileges. If, however, the remission of taxes is a part of a consistent and effective programme for the gradual municipalization of utilities and the reduction of their rates to as low a point as will be consistent with the accomplishment of this purpose, then I should strongly favor a removal of public utility property, including alleged franchise values, fron the tax rolls. I should go even further and advocate the increase of the tax on ordinary land values for the purpose of facilitating the municipalization of utilities and the reduction of utility rates.—D. F. W.