

Rational Classification Problems in Financing State and Local Government

State courts often scrutinize closely a variety of taxes imposed by state and local governments,¹ usually under due process or equal protection clauses of the state or federal constitutions.² But in judging such taxes as special assessments, subdivision exactions, and relative responsibility laws, the courts too frequently have devised rules of thumb instead of following the traditional course of constitutional analysis. A tax constitutes a legislative classification—a group is singled out to pay money for a particular purpose—and the courts should ask here, as elsewhere, whether the classification is rational. They should make the customary two-step inquiry: (1) is the burden being imposed pursuant to a legitimate legislative policy;³ and (2) is the class of individuals burdened reasonably related to that policy?⁴ A measure would fail if it reflected a forbidden policy, or if its classifications were unreasonably over- or under-inclusive.⁵

1. See pp. 1207-08 *infra*.

2. Federal Courts have virtually abandoned supervision of revenue laws under the equal protection clause. As Justice Jackson lamented in his concurring opinion: "While claims of denial of equal protection are frequently asserted, they are rarely sustained." *Railway Express Agency v. New York*, 336 U.S. 106, 111 (1949); *Bell's Gap R.R. Co. v. Penn.*, 134 U.S. 232, 237 (1890) ("the Fourteenth Amendment was not intended to compel the state to adopt an iron rule of equal taxation."); see *Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1959); cf. *McGowan v. Maryland*, 366 U.S. 420, 426 (1961); see also A. BICKEL, *THE LEAST DANGEROUS BRANCH* 221-28 (1962); Tussman & tenBroek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341, 369-70 (1949).

3. See, e.g., *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Tigner v. Texas*, 310 U.S. 141 (1940); see also Wilson, *The Merging Concepts of Liberty and Equality*, 12 WASH. & LEE L. REV. 182 (1955).

For a discussion of some of the policies on which property taxes have been based, see D. NETZER, *ECONOMICS OF THE PROPERTY TAX* 191-220 (1966). For a broader study of the non-revenue policies of taxation, see R. MUSGRAVE, *THE THEORY OF PUBLIC FINANCE* 173-79 (1959).

4. See Tussman & tenBroek, *supra* note 2, at 346: "A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law." See also *McGowan v. Maryland*, 366 U.S. 420, 425 (1961); Huang-Thio, *Equal Protection and Rational Classification*, 1963 PUB. L. 412.

5. See Tussman & tenBroek, *supra* note 2, at 348-53; Huang-Thio, *supra* note 4, at 432.

For an exhaustive review of the primary cases applying equal protection rationale to tax classifications, see Sholley, *Equal Protection in Tax Legislation*, 24 VA. L. REV. 229, 388 (1938). In few of these cases does the issue of whether the class is reasonably related to legislative purpose arise; they deal with the problem of whether the purpose is valid. The only major tax cases dealing with the problem of reasonable relationship of class to purpose are: *Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1959); *State Bd. of Tax Comm'rs of Indiana v. Jackson*, 283 U.S. 527 (1931); *Rast v. Van Deman & Lewis Co.*, 240 U.S. 342 (1915).

I. Current Approaches

Primary-Incidental Benefits

In Pennsylvania the courts have adopted a constitutional rule limiting the use of special assessments on property benefited by public improvements.⁶ The leading case, *Hammet v. Philadelphia*,⁷ declared it unconstitutional to assess property adjoining a street for the costs of street repair. The repairs, the argument went, primarily benefited the public; any private benefit was purely incidental. To assess a private individual with the costs of providing this public benefit would be to deprive him of property without compensation.⁸ The court illustrated the distinction between private and public benefits by reference to an earlier case allowing the use of special assessments to finance the construction of a street. Unlike street repair, street construction was said to provide primarily a private benefit.⁹

The Pennsylvania rule was explicated in *City of Erie v. Russell*,¹⁰ where the state supreme court held it unconstitutional to impose special assessments for the maintenance and repair of a portion of a city's sewer system. Construction of this portion of the sewer system had originally been paid for with funds collected through special assessments. The *Russell* court retained the *Hammet* distinction between assessments for the construction of a facility and for its repair, explaining that:

It [the portion of the sewer in question] was made, by the action of the city, a part of its system of sewage, which is . . . necessary for the health of its people. . . . It is now a constituent of the general system ordained by the city for the convenience and health of its inhabitants. This system confers benefits which are general . . . and the expense of maintaining it should be provided by general taxation.¹¹

6. See generally Weil, May & Watzman, *The Unsettled, Settled Law of Sewer Assessments: Simon Appeal*, 25 U. PITT. L. REV. 653 (1964); Plowman, *Municipal Assessments for Reconstruction of Streets, Sewers, Sidewalks and Water Mains*, 19 U. PITT. L. REV. 87 (1957).

7. 65 Pa. 146 (1869). Another case asserting that special assessments will not be valid where the primary beneficiary of the financed activity is the general public is *Rafkin v. City of Miami Beach*, 38 So.2d 836 (Fla. Sup. Ct. 1949) (alleged that landowners of land abutting highway do not benefit from widening, but that even if they do, the primary beneficiary is the general public which will no longer face traffic congestion on other major arterials): "If the benefit is primarily one to be enjoyed by the public, certainly the public should bear the burden." *Id.* at 838. See also *Hinman v. Temple*, 133 Neb. 268, 274 N.W. 605 (1937).

8. Cf. 14 E. McQUILLIN, MUNICIPAL CORPORATIONS § 38.02, at 23 (3d ed. 1950).

9. 65 Pa. at 154.

10. 148 Pa. 384 (1892).

11. *Id.* at 386-87.

Both *Hammet* and *Russell* recognize that the primarily public benefit resulting from maintenance may be accompanied by incidental private benefits and similarly that the primarily private benefit resulting from construction may be accompanied by incidental public health.

The primary-incidental benefit test does not jibe with rational classification theory. The courts could not have believed that an assessment on incidental private beneficiaries was not reasonably related to the legislative purpose. There is no evidence to suggest that the legislature intended only to tax primary beneficiaries.¹² Thus, the courts must have felt that a purpose to tax incidental beneficiaries is invalid, but they have never shown why a person who receives an incidental benefit should be entitled to a windfall at the public's expense.¹³ Of course, he might have had no choice in receiving the benefit. But most government programs are imposed without the individual beneficiary's consent. If taxes are permissible at all, it is difficult to see the objection to taxes based on the value of services rendered.

Local and General Improvements

Another approach examines the purpose of the activity for which appropriations are made rather than the nature of the benefits it actually confers. A distinction is drawn between local and general improvements: if the legislature intended to create a general improvement, it cannot use special levies to finance the improvement.

In *Williams v. Arkansas County Courthouse Improvement District*,¹⁴ for example, the Arkansas Supreme Court held that since the "primary

12. For example, CAL. GOV'T CODE § 39173, reads simply:

[T]he street superintendent shall proceed to assess the total expenses of the proposed improvement upon the lands in the assessment district in proportion to the benefits to be derived from the improvement.

See also CAL. STREETS & H'WAYS CODE § 5343.

13. This assumes that it is even possible to determine whether a taxpayer is a primary or incidental beneficiary. Certainly the line is difficult to draw. For example, in Pennsylvania maintenance, repair, and repaving of roads is supposed to benefit adjacent landowners only incidentally. See *Hammett v. Philadelphia*, 65 Pa. 146 (1869). However, the adjacent landowner is said to be the primary beneficiary of street widening. *Mt. Lebanon Township v. Scheck*, 159 Pa. Super. 189, 76 A.2d 53 (1946). This is the ultimate in hair-splitting.

See also Haar & Hering, *The Determination of Benefits in Land Acquisition*, 51 CALIF. L. REV. 833 (1963). Haar and Hering argue that special assessments should be used to recoup for the public the value of benefits flowing from highway construction—even though the private benefit is incidental:

[Highway construction is undertaken] for the benefit of the nation as a whole, not for the property owners who may receive some wholly incidental benefit. The mere fact that the benefit is incidental to, rather than the principal purpose for the activity does not make it any the less real nor necessitate making a gift of it.

Id. 871.

14. 153 Ark. 469, 240 S.W. 725 (1922).

purpose” of building a county courthouse is to carry on the general functions of government, the owners of property adjacent to the courthouse cannot be specially taxed for its construction—even where their property appreciates as a result. Other courts have held county auditoriums,¹⁵ war memorials,¹⁶ harbor improvements,¹⁷ railroad bridges,¹⁸ and libraries¹⁹ to be general rather than local improvements. On the other hand, downtown parking lots,²⁰ downtown redevelopment projects,²¹ water plants,²² parks,²³ and wharves²⁴ have been held not to be general improvements.²⁵

It is difficult to make sense out of this theory. Perhaps the courts have felt that the legislature cannot validly recoup the value of benefits from the unintended local beneficiaries of general improvements. This view has been challenged above.

A second explanation might be that a tax on persons benefiting from a general improvement is not reasonably related to the legislative purpose—to benefit the general public. But this confuses the purpose behind constructing the activity and the purpose behind imposing the tax.²⁶ The tax is designed to recoup benefits resulting from activity of

15. *Lipscomb v. Lenon*, 169 Ark. 610, 276 S.W. 367 (1925).
16. *St. Louis v. Pope*, 344 Mo. 479, 126 S.W.2d 1201 (1939).
17. *Boettger v. Two Rivers*, 157 Wis. 60, 144 N.W. 1097, 147 N.W. 66 (1914).
18. *Bloomington v. Chicago & A.R.R.*, 134 Ill. 451, 26 N.E. 366 (1890).
19. *Heavens v. King County Rural Library Dist.*, 66 Wash. 2d 558, 404 P.2d 453 (1965).
20. *Northern Pac. Ry. v. Grand Forks*, 73 N.W.2d 348 (N.D. Sup. Ct. 1955). *Trczyniewski v. Milwaukee*, 15 Wis. 2d 236, 112 N.W.2d 725 (1961).
21. *Crampton v. Royal Oak*, 362 Mich. 503, 108 N.W.2d 16 (1961).
22. *Santa Clara Valley Land Co. v. Meehan*, 62 Cal. App. 531, 217 P. 787 (1923).
23. *Winnetka Park Dist. v. Hopkins*, 371 Ill. 46, 20 N.E.2d 58 (1939).
24. *Solomon v. Wharf Improvement Dist.*, 145 Ark. 126, 223 S.W. 385 (1920).
25. See generally 14 E. McQUILLIN, MUNICIPAL CORPORATIONS §§ 38.11-38.29 (3d ed. 1950); 2 C. ANTIEAU, MUNICIPAL CORPORATION LAW §§ 14.01-14.02 (1965); 3 E. YORLEY, MUNICIPAL CORPORATIONS §§ 548-51 (1958).
26. This is a mistake made by Professor tenBroek in interpreting Department of Mental Hygiene v. *Kirchner*, 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488 (1964), *vacated and remanded*, 380 U.S. 194 (1965), *reaff'd*, 62 Cal. 2d 586, 400 P.2d 321, 43 Cal. Rptr. 329 (1965). See tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 17 STAN. L. REV. 614, 640-46 (1965). In *Kirchner* the California Supreme Court invalidated a relative responsibility law, holding that the cost of maintaining persons in state mental hospitals could not be imposed on relatives of the ill without violating the equal protection clause. TenBroek argues that the purpose of a public welfare institution such as a mental hospital is to promote public well-being—to care for the poor, heal the sick, protect society from the insane, etc.—not to benefit the particular individuals affected.

In the light of the public purpose of welfare legislation and in the context of the social and economic causes of dependency, it is virtually irrelevant to say that the relatives of persons receiving assistance are specially benefited. . . . Similarly situated persons are persons who stand in the same relation to the valid purpose of a law, not persons who stand to gain more or less from the implementation of such purpose. *Id.* 642. TenBroek goes on to conclude that a law taxing the beneficiaries of the laws is not reasonably related to the legislative purpose. However, tenBroek confuses the purpose of welfare institutions with the purpose of responsibility laws—which may be to tax the beneficiaries, although unintended, of public activity. (For the suggestion that the purpose

the public. The class chosen, benefited individuals, is certainly related to that purpose. Whether the individuals obtained the benefit by legislative desire or not is immaterial.²⁷

Uniquely Public Activities

A more sophisticated explanation of the local-general improvement distinction involves the notion of the uniquely public activity. Certain activities are supposed to be "so much a responsibility of the general public" that they cannot be financed through taxes falling on a limited group.²⁸ Reps and Smith, for example, have suggested that education is a uniquely public activity²⁹ which cannot be financed by requiring subdividers to dedicate land or pay a special fee.³⁰

of relative responsibility laws is to tax the beneficiaries of confinement of their relatives, see *State Comm'n in Lunacy v. Eldridge*, 7 Cal. App. 298, 94 P. 597 (1908); see also *Guthrie County v. Conrad*, 133 Iowa 171, 110 N.W. 454 (1907); cf. *Kaiser v. State*, 80 Kan. 361, 102 P. 454 (1909).) Whether taxing relatives under a benefit theory is constitutional depends on whether they in fact benefit from care by the public of their mentally ill kin. See pp. 1215-17 *infra*.

27. A few courts have combined the primary-incidental benefit test with the local-general improvement test. To determine whether an improvement is local or general they look both to whether local landowners or the general public are the primary beneficiaries of the improvement and to whether the primary purpose of the activity was general welfare or local welfare.

Whether or not an improvement is local or general depends upon the nature of the improvement and whether the substantial benefits to be derived are local or general in their nature. If its *purpose* and *effect* are to improve a locality, it is a local improvement, although there is incidental benefit to the public, but, if the *primary purpose* and *effect* are to benefit the public, it is not a local improvement although it may incidentally benefit property in a particular locality.

Village of Downers Grove v. Bailey, 325 Ill. 186, 190-91, 156 N.E. 362, 363 (1927) (emphasis added). See also *Hinman v. Temple*, 133 Neb. 268, 274 N.W. 605 (1937). One bizarre opinion adopted the rule that if the primary beneficiary of an improvement is a particular locality, the financial improvement is a "local" one, while if the primary purpose is to benefit the general public, the improvement is a "general" one. *Duncan Development Corp. v. Crestview San. Dist.*, 22 Wis. 2d 258, 125 N.W.2d 617 (1964).

28. Reps & Smith, *Control of Urban Land Subdivision*, 14 SYRACUSE L. REV. 405, 410 (1963).

29. *Id.* For citation of cases requiring dedication of land for school or park sites or payments of money for education or recreation, see P. GREEN, CASES AND MATERIALS ON PLANNING LAW AND ADMINISTRATION xi:34 (1962). For a general description of subdivision regulations and an introduction to their pervasiveness in American planning, see J. DELAFONS, LAND USE CONTROLS IN THE UNITED STATES 60-65 (1962). A summary of current state subdivision regulations appears in R. ANDERSON & B. ROSWIG, PLANNING, ZONING AND SUBDIVISION (1966).

30. There is room for an application of something like the uniquely public activity theory outside the area of subdivision regulations and exactions. Professor TenBroek at one point seems to interpret the decision in *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488 (1964), which invalidates a California relative responsibility law, as invalidating special taxation to finance certain inherently public activities:

Once the public has assumed the responsibility [for care of the mentally ill in public hospitals], the cost must be derived from publicly apportioned taxation. It cannot be shifted to private persons—not to relatives, nor friends, nor other arbitrarily selected persons in the community who happen to have the money.

TenBroek, *supra* note 26, at 639 (emphasis added).

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The uniquely public activity approach cannot be harmonized with rational classification theory. Once again, the class of persons taxed is clearly related to the legislative purpose. The purpose in these cases is to make persons who are the source of the need for a public expenditure bear a specially large share of the cost;³¹ certainly persons moving into new subdivisions create a need for new schools.³²

Thus, the courts must assume that a legislative purpose to tax persons who are the source of the need of an activity is invalid where the activity is uniquely public. But there is no rational basis for determining whether an activity is uniquely public.³³ It might be argued, as in *Lipscomb v. Lenon*,³⁴ that uniquely public activities are those which do not confer any special benefits whatsoever. But none of the activities which have been identified as uniquely public meet this criterion. Schools, libraries, courthouses, or auditoriums often enhance the value of adjacent land.³⁵

An historical test might be used to identify uniquely public activities. Facilities which have traditionally been financed only through general funds would be classified as uniquely public.³⁶ But there is no evident reason why a legislative purpose to discontinue historical practices is invalid.³⁷ Moreover, case law suggests that past financing practices show

31. This is what Haar calls the principle of social costing. Haar, *The Social Control of Urban Space*, in *CITIES AND SPACE* 175, 189-92 (L. Wingo ed. 1963).

32. See E. YOKLEY, *THE LAW OF SUBDIVISIONS* § 58, at 130 (1963). There is one case seeming to invalidate subdivision exactions for education on the uniquely public activity theory. *Midtown Properties, Inc. v. Town of Madison*, 68 N.J. Super. 197, 209, 172 A.2d 40, 47 (1961), *aff'd per curiam*, 78 N.J. Super. 471, 189 A.2d 226 (App. Div. 1963). The other cases Reys and Smith, *supra* note 28, at 410 n.22, cite for their theory deal with fire and police protection. See, e.g., *Merrelli v. City of St. Clair Shores*, 355 Mich. 575, 96 N.W.2d 144 (1959); *University Custom Homes, Inc. v. Township of Redford*, 355 Mich. 606, 96 N.W.2d 151 (1959).

33. This is one criticism leveled at Reys and Smith in Heyman & Gilhool, *The Constitutionality of Imposing Increased Community Costs on New Suburban Residents Through Subdivision Exactions*, 73 YALE L.J. 1119, 1141 (1964).

34. 169 Ark. 610, 615, 276 S.W. 367, 369 (1925) (emphasis added):

[A]n auditorium is for the benefit of the whole community who may be served by it individually and collectively, and it cannot and does not confer any peculiar or special benefit upon the real estate assessed and taxed for its construction and maintenance.

35. In *Williams v. Arkansas County Courthouse Improvement Dist.*, 153 Ark. 469, 240 S.W. 725 (1922), the value of plaintiff's land was increased as a result of construction of a county courthouse. See also *Heavens v. King County Rural Library Dist.*, 66 Wash. 2d 558, 404 P.2d 453 (1965) (value of land increased by library).

36. For example, prior to World War II education and recreation were rarely, if ever, financed through special taxation. Heyman & Gilhool, *supra* note 33, at 1122; LAUTNER, *SUBDIVISION REGULATIONS* ch. VI (1941). Since the war the variety of activities financed through special taxes on land has increased greatly. See 14 E. McQUILLIN, *MUNICIPAL CORPORATIONS* § 39.29 (Supp. 1966); C. ANTIEAU, *MUNICIPAL CORPORATION LAW* §§ 14.01-14.02 (Supp. 1966); E. YOKLEY, *THE LAW OF SUBDIVISIONS* § 58 (1963 & Supp. 1965).

37. Indeed the change of historical practice by legislatures has frequently been upheld. See, e.g., *Louisville & N.R.R. v. Mottley*, 219 U.S. 467, 482 (1911).

Some "uniquely public activities" have not even been historically financed through

erratic distinctions in the use of assessments. For example, in *Williams v. Arkansas County Courthouse Improvement District*,³⁸ a library was held to be a general improvement. The court may have felt that neighborhood libraries have historically been financed through general funds. But major highways have frequently been financed through tolls and special assessments.³⁹ This would imply that neighborhood libraries are a uniquely public activity while highways are not.

II. Application of Rational Classification Theory

Judicial supervision of taxes and assessments will be successful only if the theory of rational classification is applied with some rigor. The first task is the identification of legislative purpose. In cases where classifications on their face reveal nothing about purpose, the courts should "remand" to the legislature by striking down the tax and forcing the legislature to act more clearly.

Remand will often be unnecessary. The purpose of a statute can frequently be inferred from the historical development of statutes of that type. For example, the early laws requiring persons to bear the expense of caring for their mentally ill relatives were expressly designed to codify the moral duty to provide necessities for one's relatives.⁴⁰ To this day every court that considers relative responsibility laws assumes, quite reasonably, that the legislature's purpose was the same as the purpose behind the early laws.⁴¹

In other cases a court can have a choice between remand and examining whether the classification is rationally related to any of several possible purposes. For example, special assessments on land to pay for adjoining public facilities were originally aimed at taxing those who had given rise to the need for the facility.⁴² But it later became common

general funds. For example, care of the mentally ill, which tenBroek suggests is uniquely public, *see* note 30 *supra*, has been financed partially through exactions from the estates of ill persons or their relatives since 1576. *See* Mernitz, *Private Responsibility for the Costs of Care in Public Mental Institutions*, 36 IND. L.J. 443, 445-50 (1961); D. Mandelker, *General Assistance in the United States*, unpublished J.S.D. thesis, Yale Law School, 1955, at 64. 38. 153 Ark. 469, 240 S.W. 725 (1922).

39. *See, e.g.,* *Thompson v. City of St. Louis*, 253 S.W. 969 (Mo. Sup. Ct. 1923), *app. dismissed per stipulation*, 269 U.S. 589 (1925). J. McCARTY, *HIGHWAY FINANCING BY THE TOLL SYSTEM* (U. of Cal. Bureau of Pub. Ad., 1951 Legislative Problems No. 3). *But see* *Abar v. City of Detroit*, 278 Mich. 228, 270 N.W. 277 (1936).

40. *See* Mernitz, *supra* note 37, at 445-50.

41. A recent example is *Beach v. District of Columbia*, 320 F.2d 790 (D.C. Cir. 1963); an older example is *People v. Hill*, 163 Ill. 186, 46 N.E. 796 (1896).

42. *Commissions of Sewers Act*, 23 Hen. VIII, c. 5, § 3 (1530-31) dealt with the use of special assessments to finance a variety of improvements to correct conditions created by careless individuals: "[The Commission shall locate and assess those persons] through whose Default the said Hurtes and Damages have happened"

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practice to use special assessments to recoup the land value increase resulting from the facilities.⁴³ Rather than remanding to determine which purpose was intended, a court could judge the special assessment in terms of both possible purposes.

Remand would be necessary in a case like *Quong Wing v. Kirkendall*.⁴⁴ The state of Montana adopted a tax which fell primarily upon hand laundries employing men; steam laundries and hand laundries employing fewer than three women were taxed at a lower rate. The opinion of the Court deals exclusively with the validity of the legislative policy behind the classification. Although it is not at all clear what policy was intended, any of the likely alternatives is valid. For example, one valid policy behind the steam laundry-hand laundry distinction would be to favor the steam laundry business.⁴⁵ A policy supporting the distinction between hand laundries employing less than three women and other hand laundries would be to exempt from taxation women who take laundry into their homes and do not really compete with the "public" laundries.⁴⁶

The classification was under-inclusive with respect to the purpose of favoring steam laundries—substantial competition occurred from hand laundries employing less than three women.⁴⁷ It was over-inclusive with respect to the purpose of exempting home laundries—a large number of "public" laundries employed less than three women and were in competition with other hand and steam laundries.⁴⁸

Since the classification in *Quong Wing* was probably either substantially over- or under-inclusive, a court wishing to maintain close supervision over tax classifications should require the legislature to define its purpose. Clear statement of the legislative purpose is needed to allow judicial determination of whether the class chosen is rationally related to that purpose. The validity of a purpose can be challenged only in the most outrageous cases, *e.g.*, blatant discrimination against redheads.

The balance of this Note will explore the problem of reasonable classification in the presence of two common legislative purposes: (1) to place the burden of paying for a public activity on persons specially

43. See, *e.g.*, *Newby v. Platte County*, 25 Mo. 258, 269-73 (1957); 14 E. McQUILLIN, MUNICIPAL CORPORATIONS § 38.02 (3d ed. 1950).

44. 223 U.S. 59 (1912).

45. This was one suggestion advanced by Justice Holmes, 223 U.S. at 63. Another suggested purpose was that Montana was trying to discriminate against Chinese laundries. *Id.*

46. This purpose was suggested in the opinion of the Supreme Court of Montana, *Quong Wing v. Kirkendall*, 39 Mont. 64, 70, 101 P. 250, 252 (1909).

47. See *id.* at 67, 101 P. at 250.

48. *Id.*

benefiting from it;⁴⁹ (2) to place the burden on persons bearing a responsibility for the activity irrespective of any benefit they may receive.

Benefit

Under the benefit theory of taxation, a person's tax is said to be offset by the value of the services he receives from public facilities. Thus, the class of taxed persons is reasonably related to a legislative purpose to tax benefited individuals if the amount of the tax paid by members of the class is equal to the value of the benefit received. The class is over-inclusive, hence invalid, if it includes a substantial number of persons who are taxed more than the value of the benefit they received.⁵⁰ The problem is to appraise the benefit.

If the state merely offers its services for a price, we can assume that a person who voluntarily accepts the offer has received his money's worth.⁵¹ This kind of "proprietary" levy is often accomplished through direct user charges. Thus, on a toll road, the amount of the charge is precisely related to the amount of use.⁵²

Often it is impractical to finance an activity through direct user charges because of the high cost of measuring each person's use of the activity.⁵³ Toll sidewalks, for example, would be a total nuisance. In such a case, the government may levy special assessments on land as a substitute for the direct user charge.⁵⁴ The theory is that persons living

49. In theory every public activity benefits everyone by adding to the general welfare. What is referred to here is the special benefit an individual may receive from a public activity in addition to the benefits in terms of general welfare.

50. The federal rule is probably far less strict. See *Railway Express Agency v. New York*, 336 U.S. 106 (1949); *A. BICKEL, THE LEAST DANGEROUS BRANCH* 221-28 (1962); *Tushman & tenBroek, supra* note 2, at 372. The federal courts seem likely to require a very heavy degree of over-inclusivity before they will strike down a classification. On the other hand, the penchant for intervention often expressed by state courts suggests that they would be receptive to a rule that classes with only a *substantial* number of persons not bearing traits reasonably related to legislative purpose will be considered invalid. See *Hetherington, State Economic Regulation and Substantive Due Process of Law*, 53 *Nw. U. L. REV.* 13 (1958).

51. See *Introduction, MEASURING BENEFITS OF GOVERNMENT INVESTMENTS* 4 (R. Dorfman ed. 1963):

In the usual economic transaction, the user is charged for the good or service he consumes, the amount he is willing to pay measures the value of the commodity to him, and, since his use of the commodity precludes anyone else from benefiting from it, the value of the commodity to the user is also its value to the entire society.

52. See generally *Vickrey, Pricing in Urban and Suburban Transport*, 53 *AM. ECON. REV. SUPP.* 452 (1962).

53. *Id.* 453; *McCARTY, supra* note 39.

54. Of course, the facility can be made available without charge, creating what Dorfman calls a "collective good."

In general, a *collective good* is a facility or service that is made freely available to all comers without user charge, either because to assess a charge on each occasion of use

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on adjacent land normally use a street improvement.⁵⁵ Special assessments can be said to charge the average person what he would be willing to pay if it were possible to collect direct user charges from him.

Special assessments can be justified under a *voluntary* benefit theory only when they closely approximate this hypothetical market price.⁵⁶ This will occur where the public facility is likely to be used very uniformly by residents of an area. A sidewalk meets this test, a sewer system probably does not. Different families may use systems at quite different rates; some may have septic tanks and may not use the government systems at all.⁵⁷

Windfall Benefits

When an individual's property increases in value as a result of public activity, he receives a pure windfall. A wide range of measures are designed specifically to appropriate this kind of benefit. Special assessments on land benefiting from street construction and repair, retaining walls, street lighting, water works, and parks are common.⁵⁸

Some jurisdictions have imposed non-land taxes on persons purportedly receiving windfall benefits from public activity. For example,

would be excessively cumbersome or because use is not voluntary or even clearly definable.

Dorfman, *supra* note 51, at 4.

55. In *McCoy v. City of Sistersville*, 120 W. Va. 471, 199 S.E. 260 (1938), a town imposed a special assessment to finance fire protection pursuant to a statute allowing municipalities to charge the users of such facilities. The court upheld the assessment as a suitable substitute for a direct user charge:

The ordinance as to fire protection provides for an assessment on buildings and chattels. Giving to the statute, and the ordinance adopted thereunder, a liberal construction, the owners of the buildings and chattels may fairly be said to be the users of the services provided for their protection.

Id. at 478, 199 S.E. at 263.

56. Otherwise the person making less than average use of a facility is required to pay more than he receives in offsetting benefits. Where the taxed class includes many such persons, it is over-inclusive.

57. For example, in *Southwest Delaware Municipal Authority v. Aston Township*, 413 Pa. 526, 198 A.2d 867 (1964), a landowner with clearly adequate facilities for sewage disposal was required to connect to a public sewer system and pay connection charges. In *Weber City Sanitation Comm'n v. Craft*, 196 Va. 1140, 87 S.E.2d 153 (1955), a landowner who had spent \$2,500 on a well and did not want or need additional water was required to connect with a public waterworks system and pay the standard rate. *See also* *Mills Mill v. Hawkins*, 232 S.C. 515, 103 S.E.2d 14 (1957).

A rule greatly restricting the use of special assessments as a substitute for direct user charges may not have a drastic impact on financing practices. First, special assessments can often be justified under other theories. Second, direct user charges can be used much more frequently than they have in the past:

Fare collection procedures are sometimes urged as an excuse for not going to a more rational fare structure, but here there has been a deplorable lag behind what a little ingenuity or modern technology makes possible.

Vickrey, *supra* note 52, at 453.

58. *See* 14 E. McQUILLIN, MUNICIPAL CORPORATIONS § 38.33 (3d ed. 1950), and cases cited therein.

persons confined in mental hospitals—against their wishes—have been said to benefit from the publicly provided care and treatment and, hence, properly charged for it.⁵⁹ Exactions from inmates in prisons have been justified on similar reasoning.⁶⁰

When fixing special assessments on land the government can usually ensure that the benefit is at least equal to the tax, since the value of special benefits to land is usually reflected in its market price.⁶¹ A number of courts have allowed assessments based on benefits which take the form of convenience, sanitation, safety, and health even where these benefits are clearly not reflected in increases in land values;⁶² but these benefits are extremely difficult to appraise.⁶³

The value of the intangible benefit is sometimes presumed to be the cost of providing the public facility.⁶⁴ But there is no necessary correlation between cost and benefit. In eminent domain cases, courts rarely compensate for economic losses not reflected in the market value of the land⁶⁵ (e.g., lost profits). Valuation of these losses is said to be impos-

59. See *In re Estate of Yturburru*, 134 Cal. 567, 569, 66 P. 729 (1901): "The money ordered paid herein is for the maintenance of the patient. It goes to the support of the hospital, only because of the presence of the patient therein."

60. *Auditor General v. Hall*, 300 Mich. 215, 222, 1 N.W.2d 516, 518 (1942): "Both [insane persons and criminals] require institutionalization for their own benefit as well as that of the public at large."

61. The amount of the special benefits attaching to the property, by reason of the local improvement, is the difference between the fair market value of the property immediately after the special benefits have attached and the fair market value before the benefits have attached.

Appeal of Schmitz, 44 Wash. 2d 429, 434, 268 P.2d 436, 439 (1954).

62. See *Chicago Union Traction Co. v. Chicago*, 202 Ill. 576, 67 N.E. 333 (1903) (benefit in terms of greater facility with which fire protection can be provided); *St. Joseph Township v. Municipal Finance Comm'n*, 351 Mich. 524, 88 N.W.2d 543 (1958) (benefit is increased fire protection); *Beals v. Brookline*, 174 Mass. 1, 54 N.E. 339 (1899) (benefit is improved sanitary condition of neighborhood due to sewer construction); *Maplewood Township v. Smith*, 112 N.J.L. 233, 169 A. 855 (1934) (benefit is removal of surface water from lot more speedily than before); *City of Glendale v. Trondsen*, 48 Cal. 2d 93, 308 P.2d 1 (1957) (benefit is availability of rubbish collection service).

63. Some courts have adopted the rule that only benefits which take the form of land value increases will support taxes. The valuation problem is undoubtedly one of the main factors behind the rule. See, e.g., *Overbridge Realty Corp. v. City of Hackensack*, 13 N.J. Misc. 702, 708-09, 180 A. 666, 669 (Cir. Ct. 1935) ("The special benefit which legalizes an assessment must be a present benefit immediately accruing and represents the difference between the market value of the lands before the improvement and the market value of the lands immediately after the improvement."); *Savannah v. Knight*, 172 Ga. 371, 157 S.E. 309 (1931) (assessment allowed only for the benefits from street repaving reflected in increase in market value of land); *Crampton v. City of Royal Oak*, 362 Mich. 503, 108 N.W.2d 16 (1961) (benefits in terms of better parking facilities and relief of traffic congestion will support assessment only to extent they increase land value); *In re Taylor Ave. Assessment*, 149 Wash. 214, 270 P. 827 (1928) (benefit in form of increased "traffic access" will not support assessment).

64. This seems to be the rationale accepted by the court in *State Comm'n in Lunacy v. Eldridge*, 7 Cal. App. 298, 94 P. 597 (1908) (benefit received from treatment of mentally ill person is equal to the cost of providing such treatment).

65. See, e.g., *Sawyer v. Commonwealth*, 182 Mass. 245, 65 N.E. 67 (1902); 2, 4 P. NICHOLS, EMINENT DOMAIN § 5.76, § 13.3 (3d ed. 1963).

Rational Classification and State Taxation

sible. If it is impossible to tell the extent of government-caused loss, it must be equally impossible to measure government-caused gain.

Needless to say, it is even more difficult to estimate the benefits conferred by jails and mental hospitals.⁶⁶ Courts which presume that a person always receives a benefit equal to the cost of providing him with public facilities have pushed benefit theory too far. There may be no correlation between costs of services and benefit received; some might even think that confinement in an asylum or jail confers no benefit.⁶⁷ The courts should require the government to bear the burden of proving the value of intangible benefits. In some cases the burden can be met; for example, landowners in a block receiving special police protection might be said to benefit to the extent of the cost of providing the protection.⁶⁸ But in the jail and mental hospital cases, the government will be unable to meet its burden.⁶⁹

So far over-inclusive taxes have been considered—those which tax some people in excess of the benefit received. Under-inclusiveness may also invalidate a tax. A tax on some benefited individuals which fails

66. The California Supreme Court emphasized the benefit to the person charged with a special levy in *State Comm'n in Lunacy v. Eldridge*, 7 Cal. App. 298, 305, 94 P. 597, 599 (1908):

[T]he principal purpose [of confinement in a mental institution] was and is to care for indigent insane who in some cases may be successfully treated for the malady.

Frequently levies of the type involved in the *Eldridge* cases have been justified on the grounds that the government provided a "substantial equivalent" to the levy charged in the form of services to the person. This is the grounds on which the state of Michigan charges prison inmates for the costs of confinement. *Auditor General v. Hall*, 300 Mich. 215, 1 N.W.2d 516 (1942).

It also has been suggested that there is a benefit flowing to a confined person's family: [T]he family may derive a special benefit from having the state care for the incompetent relative. His care will be provided at less expense than the smaller economic unit could arrange. Those problems created by his presence within the family structure will be reduced, with a possible concurrent reduction in the stress-resentment-guilt-anxiety complex.

Comment, *The Allocation of Financial Responsibility for Mental Illness or Defect*, 39 So. CAL. L. REV. 574, 583 (1966).

67. A person confined to a mental institution might receive a benefit in cases where he is treated and cared for. However, he is presently required to remain in the institution even if he is receiving no treatment or if he is untreatable. There is, nonetheless, some judicial reaction to this requirement. See *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1956) (a person confined to a mental institution has a "right to treatment"). Certainly in many cases a person would prefer "care as a dependent person" by his own family or in a private mental hospital to confinement in the average state hospital. It is an untenable assumption that a person generally receives a benefit from confinement in a public institution equal in value to the cost of "services rendered."

68. Thus, *St. Joseph Township v. Municipal Finance Comm'n*, 351 Mich. 524, 88 N.W.2d 543 (1958), allowing special assessments for local fire protection, may be a correct decision.

69. If the purpose of the relative responsibility law invalidated in *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488 (1964), was to tax the beneficiaries of public activity, the decision was correct. The confined person was very probably untreatable and might well have preferred care by her relatives. Benefit was not equal to the cost of services rendered, if there was in fact benefit rather than detriment.

to include similarly benefited individuals is not reasonably related to the legislative purpose. For example, it is common to base special assessments on land adjoining highways on increments in land value resulting from the highway. Persons living a block away are often not taxed,⁷⁰ although they frequently receive similar land value increments.⁷¹ Of course, persons miles from a highway may receive very minor increments in land value as a result of the activity. The government is not required to undertake the expensive administrative task of taxing all conceivable beneficiaries. But a classification is under-inclusive unless it includes substantially all major beneficiaries.⁷²

Classifications Based Upon the Police Power

Many taxes which cannot be justified as recoupment of benefits can, nonetheless, be sustained as police power taxes—as burdens placed upon persons thought to bear some special responsibility for a public activity.⁷³ Commonly this special responsibility arises because the persons charged create the need for the activity. For instance, a firm which pollutes a river can be made to contribute to the cost of a purification plant.⁷⁴

The amount of financial burden which can be required under the

70. See *Moore v. Yonkers*, 235 Fed. 485, 490 (2d Cir. 1916) (entire cost of improvement assessed against abutting property although other property in area also benefited); *McLemore v. Heriot*, 215 Ark. 779, 223 S.W.2d 502 (1949); *contra*, *In re Bowdoin St.*, 240 Iowa 64, 35 N.W.2d 571 (1949); *Bowers v. Gardner*, 187 Kan. 720, 360 P.2d 17 (1961).

71. Property abutting an improvement such as a highway may benefit no more than non-abutting property due to the nature of the impact of the improvement—it is reduction in travel time to urban centers which is important, not direct access to the stream of cars on a highway. See Statement of Rudolf Hess, Chief Right-of-Way Agent, California Division of Highways, in R. NETHERTON, *CONTROL OF HIGHWAY ACCESS* 511-12 n.22 (1963): [T]he value increase [of residential developments] follows practically a constant pattern. As additional land becomes available for residential development by reason of travel time reduction from the centers of population, land selling for \$500 for agricultural purposes will increase to approximately \$2,000. When it is apparent that the freeway will be constructed and offer commuter service within the near future, prices rise to about \$7,500 per acre.

72. In many cases under-inclusivity will not be a problem. In *Philadelphia, B. & W.R.R. v. Hazen*, 116 F.2d 543 (D.C. Cir. 1940), the court upheld an assessment based on benefits where the sole users of a highway to be improved were the taxpayer and his business associates. Under this situation there was no problem in attributing the benefit solely to assessed persons:

Under the impact of the heavy hauling required by motor-driven traffic, the old pavement created the necessity for constant repair and upkeep at excessive expense to the District. The net effect was that the public was supplying the plaintiff with means of ingress and egress at no cost to itself and at excessive cost to the public.
Id. at 549.

73. See generally Heyman & Gilhool, *supra* note 33; 6 E. McQUILLIN, *MUNICIPAL CORPORATIONS* § 24.05 (3d ed. 1949).

74. The contribution can take two forms: the firm can be required to contribute to the cost of a publicly constructed plant or it can be required to correct the condition by building the plant itself. In either case, the economic effect is the same—a financial burden is placed upon the firm.

police power is limited; at some point, the burden becomes a governmental taking of private property for public use. The boundary is not well marked.⁷⁵ Neither courts nor commentators have formulated a satisfactory theory of takings.⁷⁶

The most commonly accepted theory is based on a balancing of public need and private economic loss.⁷⁷ It identifies a limit on the police power which is similar to the prohibition against over-inclusive legislative classifications. For example, in *Nectow v. City of Cambridge*⁷⁸ the city passed an ordinance zoning as residential an area which included a plot adjoining an industrial complex. The Court held that the ordinance constituted a taking when applied to the plot adjoining the industrial area. The public need was not sufficient to justify the severe economic loss suffered by the plaintiff whose property was suitable only for industrial use.⁷⁹ The case could also be described as one of over-inclusiveness: the affected class included a person whose economic loss could not be justified under the police power. Both eminent domain and over-inclusiveness attempt to ensure that *only* those persons who bear a reasonable economic loss in proportion to the public need are burdened under the police power.⁸⁰

75. As one observer has noted, "drawing the lawyer's line between the police power and eminent domain without compensation is like trying to put thread through the eye of a thin needle." G. LEFCOE, *LAND DEVELOPMENT LAW* 327 (1966).

76. The most recent, and perhaps the most thoughtful, discussion of takings is Michelman, *Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law*, 80 HARV. L. REV. 1165 (1967). A short summary of the various theories is contained in G. LEFCOE, *LAND DEVELOPMENT LAW* 327-32 (1966). See also Dunham, *A Legal and Economic Basis for City Planning*, 58 COLUM. L. REV. 650 (1958); Sax, *Takings and the Police Power*, 74 YALE L.J. 36 (1964). An interesting study applying the concepts of welfare economics to the problem is Comment, *The General Welfare, Welfare Economics, and Zoning Variances*, 38 SO. CAL. L. REV. 548 (1965).

For cases developing the balancing theory of the distinction between takings and the police power, see I C. RATHKOFF & A. RATHKOFF, *THE LAW OF ZONING AND PLANNING* 6-20 to 6-25 (3d ed. 1956). The development of the theory is usually attributed to Justice Holmes. See, e.g., his opinion in *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922):

Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. As long recognized some values . . . must yield to the police power. But obviously the implied limitation must have its limits . . . One fact for consideration in determining such limits is the extent of the diminution. When it reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to sustain the act.

Id. at 413.

77. The best discussion of the theory is in Kratovil & Harrison, *Eminent Domain—Policy and Concept*, 42 CALIF. L. REV. 596 (1954).

78. 277 U.S. 183 (1928).

79. *Id.* at 187.

80. *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488 (1964), invalidating a California relative responsibility law, may be an application of taking theory in a non-real property context. Since exactions from the relatives of insane persons could not be justified under a benefit theory, see note 69 *supra*, they would have to be justified under the police power as a burden upon those bearing a special duty

A financial burden based on the police power may also suffer from under-inclusiveness. A class made up of persons who are valid subjects of police power exactions may fail to include a substantial number of similarly situated persons. The burden on the persons in such a class should be categorized as a taking due to its under-inclusivity.

In *Pioneer Trust and Savings Bank v. Village of Mount Prospect*,⁸¹ the Illinois Supreme Court invalidated a subdivision regulation which required a subdivider to dedicate land for school purposes before approval of his subdivision plan would be granted. The village argued that the subdivision would require new educational facilities. The court found, however, no evidence that the need for new facilities would be uniquely attributable to the subdivision.⁸² The decision implies that it would be unconstitutional to charge some of the persons creating the need for an activity and not others.⁸³

toward the public activity. See *Beach v. District of Columbia*, 320 F.2d 790, 793 (D.C. Cir.), cert. denied, 375 U.S. 943 (1963) ("Placing a secondary obligation upon the father finds its validity in the reasonableness of attaching legal significance to the natural bonds of consanguinity."). Perhaps the *Kirchner* court, under a balancing theory of takings felt that the private economic loss was too large in proportion to the public need.

A number of comments on the *Kirchner* case have argued that the moral responsibility of persons toward their mentally ill relatives should justify a financial exaction. See Note, 77 HARV. L. REV. 1523 (1964); Note, 49 CORNELL L.Q. 516 (1964). But these comments fail to recognize that a special responsibility under the police power can at some point become a taking. The *Kirchner* court provided no illumination as to where the line should be drawn, but it did find that a line existed.

81. 22 Ill. 2d 375, 176 N.E.2d 799 (1961).

82. The agreed statement of facts shows that the present school facilities of Mount Prospect are near capacity. This is the result of the total development of the community. If this whole community had not developed to such an extent or if the existing school facilities were greater, the purported need supposedly would not be present. Therefore, on the record in this case the school problem, which allegedly exists here is one which the subdivider should not be obliged to pay the total cost of remedying, and so to construe the statute would amount to an exercise of the power of eminent domain without compensation.

Id. at 381-82, 176 N.E.2d at 802. See also *Gruber v. Mayor and Township Comm. of the Township of Raritan*, 68 N.J. Super. 118, 172 A.2d 48 (1961).

83. Other courts have failed to recognize the discriminatory nature of many appropriations based upon the police power. This failure is illustrated by the decision in *Ayres v. City Council of the City of Los Angeles*, 34 Cal. 2d 31, 207 P.2d 1 (1949).

The *Ayres* case involved a subdivision regulation under which a subdivider was asked to dedicate a strip of land for the widening of a major street as a condition for the approval of his subdivision plan. The street for which the dedication was asked was used primarily by the general public without charge. The court upheld the regulation against an attack that it constituted a taking of property without compensation. But the court never discussed the problem of charging a small portion of the persons who create the need for an activity while allowing the persons creating the major need for the activity to go without a charge. Thousands of persons using the street in the *Ayres* case—persons certainly creating a need for the street—had been entitled to its free use in the past. In the future the non-residents would continue to have free use while the residents of the subdivision were required to pay for use of the street.

See Note, 23 So. CAL. L. REV. 261 (1950), applauding the *Ayres* case because it enables control of future growth by forcing the creators of sprawl subdivisions to bear the external costs resulting from their building. See also G. LEFCOE, LAND DEVELOPMENT LAW 324-25 (1966). For a classic exposition of the view that taxation should be used to slow growth at

It is, of course, impossible to expect perfect equality in police power regulation. The most that can be hoped for is a check on blatant discrimination. One possible rule would invalidate levies for activities when the major users are not required to pay. Police power levies would thus be restricted to very local improvements such as sidewalks, residential streets, and residential street lights.

Also police power levies could not be imposed for one local improvement, unless they were imposed for all similar local improvements.⁸⁴ Persons on one block would not have to pay a special levy for their sidewalk while persons on a nearly identical block could walk free.⁸⁵

the urban fringe, see Clawson, *Urban Sprawl and Speculation in Suburban Land*, 38 LAND ECON. 99, 109 (1962). These writings take a naive view of the causes of sprawl and are highly over-optimistic about the possibility of eliminating it through such measures as taxation. In all probability sprawl is a natural outgrowth of modern urban dynamics. See M. McLuhan & Q. Fiore, *THE MEDIUM IS THE MESSAGE* 72 (1967):

The circuted city of the future will not be the huge hunk of concentrated real estate created by the railway. It will take on a totally new meaning under conditions of very rapid movement. It will be an information megapolis. What remains of the configuration of former "cities" will be very much like World's Fairs—places in which to show off new technology, not places of work or residence. They will be preserved, museum-like, as living monuments to the railway era.

For a more analytical approach to the multi-faceted causes of urban sprawl, see Harvey & Clark, *The Nature and Economics of Urban Sprawl*, 41 LAND ECON. 1 (1965).

Even if one agrees with the desirability of "planned" growth of the urban fringe, the *Ayres* case can still be disapproved. It remains to be shown why one group of persons should bear the expense of planning while similarly situated persons are allowed free use of public facilities.

84. See *Dorsey v. Atlanta*, 216 Ga. 778, 119 S.E.2d 553 (1961) (where similarly situated streets or similar portions of the same street are paved, it is improper to assess different portion of cost of the improvement to abutting landowners).

85. The under-inclusiveness argument could be extended to the use of special levies over time. If over a period of time a governmental unit uses general funds to finance public activities, the persons utilizing these activities receive a public subsidy. If the city then decides to switch to financing the same type of activities through special levies, any persons living in new areas of the community would be forced to pay for obtaining a facility which the majority of the community received without special charge. This can be illustrated by the *Pioneer Bank* fact situation. To charge a person in a new subdivision a levy for construction of a school would be to make him pay for what residents of the older portions of town have received without special charge. See *Pioneer Trust & Savings Bank v. Village of Mt. Prospect*, 22 Ill. 2d 375, 176 N.E.2d 801 (1961).

The argument against extending that rationale in this way is simply that a person has no vested right in the continuance of past practices. The practices of governments could never change if they were required to extend every right, privilege, or windfall in the future which they have extended in the past. For example, under this argument a state could never construct a toll highway if all its existing highways are free. It seems highly unwise to extend the argument to cover changes in financing practice over time.

For a proper refusal to invalidate a police power regulation which represents a deviation from past financing practices, see *Longridge Estates v. City of Los Angeles*, 183 Cal. App. 2d 533, 6 Cal. Rptr. 900 (1960) (subdivision exaction to finance sewage system part of which had originally been financed from general community funds).