Edwin R. A. Seligman

Essays in Taxation

Chapter XIV
The Classification of Public Revenues

Edwin R. A. Seligman
Professor of Political Economy
Columbia University
Essays In Taxation
Eighth Edition
Completely Revised And Enlarged
The Macmillan Company
London: Macmillan & Co., Ltd. 1913

***
Digital edition 2023
Chapter XIV
The Classification of Public Revenues
By grundskyld.dk

Note:
- No proofreading of text in Italian
- Page numbers for *Infra* and *Supra* are not valid.

Contents

Chapter XIV—The Classification of Public Revenues

Among the unsettled questions of the science of finance few are more troublesome than that of classifying the different kinds of public income. Classification is indeed not of supreme importance, for matter is always more essential than form. But correct classification is helpful in many ways. It requires logical criticism and rigorous analysis, and thus becomes a test of mental vigor; it conduces to accurate definition and prevents looseness of expression and confusion of thought; it may have important practical results in deciding questions of fact and in assigning definite values to doubtful categories; it points out contrasts and resemblances, and by eliminating or combining what is common, often suggests a clearer conception of the subject-matter. Correct classification is, in truth, an essential condition of all scientific progress.

It has frequently been remarked that we must distinguish between historical and actual classifications. For example, the whole class of lucrative prerogatives—the Regalia of the Teutonic kingdoms and of early fiscal science—were formerly separated from the other categories of public revenues because of their commanding importance in mediæval countries and of their supposed points of difference; whereas well-nigh every recent writer of importance, even in Germany, has confessed that all such revenues are capable of being classified under one of the other modern categories. So, again, while the revenue from the incidents of feudal tenure played a great role in the classification of Blackstone and other early writers, the need of showing the composite nature of such revenues has been obviated by the disappearance of the tenures themselves. Finally, special assessments are a growth of comparatively recent times. Only a short time ago, a classification of public revenues might safely have ignored their existence; now a logical classification of actual revenues would be incomplete without them. What concerns us here is a classification applicable to modern conditions.

I. The Primary Classification

From the standpoint of the individual all contributions to government are either gratuitous, contractual or compulsory. Every governmental revenue must fall within one of these three great classes. Individuals

may make the government a free gift, they may agree or contract to pay, or they may be compelled to pay. The first method of securing revenue was at one time important, but its influence to-day is slight. The second and third methods correspond to the widely adopted classification suggested by Adam Smith,[1] who tells us that:

> "The revenue which must defray … the necessary expenses of government may be drawn either, first, from some fund which peculiarly belongs to the sovereign or commonwealth, and which is independent of the revenue of the people, or, secondly, from the revenue of the people."

That is, the government may in the first place act like a private individual, possessing lands or other revenue-yielding property, and engaging in mercantile, financial or industrial pursuits. As Petty, the author of the first systematic English treatise on taxation,[2] put it in the seventeenth century, the state is in some places the common cashier, the common usurer, the common insurer or the common beggar. This is what the French call in the widest sense the revenue from the private and industrial domain of the state, and what the Germans term the private-economic income. A better term, perhaps, is contractual income; since the government here puts itself in the position of a private person making a contract with another person. Such payments all rest on an agreement between the two contracting parties, in sharp contrast to the payments which the government demands by virtue of the sovereign powers delegated to it.

We often hear of the distinction between voluntary and compulsory contributions, meaning by the former the free gifts of the citizens. This distinction, however, is not perfectly accurate; for contractual contributions are also voluntary, without being gifts. In the case of a contract, the government agrees to do some particular thing in return for a payment, leasing land, for instance, in return for rent; in the case of the free gift, the government does not undertake, nor does the donor expect, any specific action in return. Yet both payments are voluntary. We must therefore distinguish not merely between

---

[1] Wealth of Nations, book v., chap. ii.

[2] William Petty, *A Treatise of Taxes and Contributions*, London, 1607, pp. 60, 61.

voluntary and compulsory contributions, but between gratuitous, contractual and compulsory contributions.

Thus far almost all writers are agreed. The difficulty arises when we desire to classify the various kinds of compulsory revenues and to distinguish between some of these subdivisions and the different kinds of contractual revenues. All possible combinations have been made, especially by recent German writers. Let us confine ourselves in this chapter to the pith of the controversy, namely, to the subdivision of the compulsory contributions and their relation to some of the contractual revenues, as, for instance, the charges made for the services of governmental enterprises, like the post-office, the telegraph and the like.

In taking the property of individuals the sovereignty of the modern state manifests itself in different ways. The government may exercise in turn the power of eminent domain, the penal power, the police power or the taxing power.

The power of eminent domain confers on the government the right of taking at its discretion, and to an indefinite extent, private property for particular uses. With the constitutional and moral limitations upon this power we have not here to deal, chiefly because the power is for the most part not a source of net revenue. The fact that in all free governments private property cannot be taken under this power except for public use, and even then not without just compensation, would in itself show that no net income to the state is contemplated. Yet such revenue may accrue incidentally; for the benefits accruing to the government through the expropriation may conceivably be greater than the damage inflicted on the private individual. Revenue through expropriation is thus the first class of compulsory income.

The second sovereign power of fiscal importance is the penal power, or right of inflicting fines and penalties, known technically as the power of sanction. This might be declared a part of the police, or regulative, power of the state, since every government regulation must carry with it the power of enforcement. But on account of the decidedly problematic fiscal importance of the police power, it seems better to separate them.

The power to adjudge fines and penalties, however, while often quite important as a source of revenue, belongs rather to penology and administration than to the science of finance; for the private

property is here taken, not in accordance with the needs of the state or with any principles of equality or uniformity or benefits or compensation, but solely as a punishment inflicted on the individual. The only limit to its fiscal significance in free countries is the vague provision, as in the constitution of the United States, that excessive fines shall not be imposed or cruel and unusual punishments inflicted. Fines and penalties thus form by themselves a class of compulsory revenues levied according to definite but non-fiscal principles. It is obviously wrong to class them with fees, as do some writers, or to ignore them entirely, as do others.

The third sovereign power of the state is the police power, or the power of regulation. This has played a great role in American jurisprudence. Yet it may be confidently stated that from the standpoint of the science of finance the distinction drawn between the police power and the taxing power is to a great extent a fiction, referable to certain difficulties in American constitutional law and to a lack of economic analysis on the part of the judges. Let us study this point more in detail.

II. The Police Power versus the Taxing Power

The commonly accepted distinction between these powers is that the former is for regulation and the latter for revenue. One argument in support of this view is that advanced by authors like Mr. David A. Wells, who contend that a so-called tax which looks to anything besides the securing of revenue is not a tax, but an unconstitutional exercise of the taxing power. But even adherents to the distinction between the police power and the taxing power, like Judge Cooley, confess "that, in the apportionment of taxes, other considerations than those which regard the production of a revenue are admissible, and that the right of any sovereignty to look beyond the immediate purpose to the general effect cannot be disputed."[1] The position of Mr. Wells is the exact opposite of that of Professor Wagner, who includes in the very definition of a tax the "socio-political" element or the duty of regulating and correcting the distribution and use of private property.[2]

---

[1] Cooley, *Taxation*, 2d edition, p. 587.

[2] Wagner, *Finanzwissenschaft*, ii. (2d edition, 1890), p. 210.

The one writer would refuse the name "tax" to an imposition looking to anything else than mere revenue: the other ought logically to withhold the name from an imposition not looking to anything else than mere revenue. These positions are mutually exclusive and equally extreme.

On the other hand, the distinction of Judge Cooley is almost quite as untenable. Cases where the primary purpose is regulation, he thinks, are referable to the police power; cases where the primary purpose is revenue are referable to the taxing power. Mr. Cooley himself confesses that import duties with incidental protection are taxes. But suppose, as has often occurred, that they are protective duties with incidental revenue. Are they any the less taxes on that account? How about the tax on bachelors, which was imposed for the express purpose of diminishing celibacy? How about the ten per cent tax on state bank notes, imposed avowedly to destroy the state bank issues? How about the American tax on oleomargarine, confessedly of a regulative nature? How about taxes on spirituous liquors in the shape of liquor licenses, to regulate and diminish the liquor traffic? How about the many indirect taxes enacted in consequence of sumptuary laws? How about certain inheritance taxes, whose imposition is demanded on the express ground that they will limit fortunes? How about the single tax, "whose only *raison d'être* is the attempt to change the existing distribution of wealth? Shall we call the Indian duty on opium a tax, and refuse the name to the American internal revenue charge, because India looks primarily to revenue, and the United States to regulation? Shall we call the French *impôt des patentes* a tax, and deny the name to the analogous license or privilege taxes in some of the Southern commonwealths, because in the latter case the object is sometimes distinctively regulative? In fact, if this is to be our line of cleavage, we must reconstruct the science of finance and remove from the class of taxes whole categories of impositions to which no one has ever thought of denying the character or name of tax.

The confusion in the American law is at once complimentary and uncomplimentary to the judiciary. It is complimentary in the sense that the judges, when brought face to face with the conflict between constitutional limitations and the demands of social evolution (or what is known in legal parlance as public policy), have sought to

remain true to their function as the final interpreters of social progress. This they have been able to do, however, only through legal fictions and divergent decisions. Anyone who has studied the American law of taxation as a whole must have become painfully conscious of the hopeless contradictions among the laws of the several states on many important points. This condition is due in great measure to the fact that the constitution or laws of one state by implication forbid what the constitution or laws of another state expressly permit. In order to take an actual case, which is perhaps in line with public policy, out of the range of the legal inhibition, the courts of the first state are forced to adopt an interpretation wholly unnecessary in the second. Thus the continuity of social development is preserved, even at the sacrifice of legal consistency or uniformity. For instance, in New York street-car licenses are held to fall under the taxing power, while in Pennsylvania they are put under the police power, simply because, under the particular conditions, it seemed to be a matter of equity, in the one case to uphold, and in the other to object to, such a charge.[1] The payment in the two instances was the same, both in amount and in principle; but the attempt to make the same laws conform to a public policy which differs in the different states has brought about a contradiction. So, too, the whole system of high license or liquor taxes is in some states brought under the taxing power; but in others, because of certain constitutional difficulties, it is put under the police power.[2] To this extent the police power has been a legal fiction to enable the courts to uphold what could not well be brought under the taxing power; although in another leading case[3] the liquor tax was upheld under the taxing power because there was a constitutional obstacle to its being put under the licensing or police power. The police power is of great and growing legal importance in the United States, largely because of the peculiar principles of American governmental relations, whereby local bodies are deemed to have only those powers expressly delegated to them, in

[1] Cf. 2d Avenue Railroad Cases, 32 N. Y. 261, with Railroad Company vs. Philadelphia, 5S Pa. 119. What was held "reasonable " in one case was declared "unreasonable" in the other.

[2] Burch vs. Savannah, 42 Ga. 596. Cf. 50 Texas, 86.

[3] Youngblood vs. Sexton, .32 Mich. 406.

contradistinction to the European method according to which local bodies possess, in certain respects, all powers not expressly withheld from them.[1] Many of our cities and towns have no taxing power; and even when they have the power, it is strictly construed. The courts, therefore, have been compelled to uphold much under the police power that under other and more favorable conditions they would and could have upheld under the taxing power.

On the other hand, there is an element which is not quite so complimentary to the judges. The courts have frequently confused taxes in the narrower sense with the exercise of the taxing power in the wider sense. As we shall see, there are various forms in which the taxing power may manifest itself: taxes in the narrower sense are only one form. Special assessments for instance, have been almost universally upheld as an exercise of the taxing power, while sharply distinguished from taxes in the narrower sense. Yet in a leading case sidewalk assessments, which as a matter of principle do not differ at all from other special assessments upheld under the taxing power, have been declared police regulations.[2] The court has here simply confused taxes with the taxing power. It is, moreover, impossible to see any difference between the various cases of sewer and levee assessments quoted by Mr. Cooley as an exercise of the police power and the cases of sewer and levee assessments quoted by him in another chapter as falling under the taxing power.[3] The whole distinction, in fact, rests upon a confusion. So, again, while both taxes and fees are an exercise of the taxing power, because it has frequently been deemed necessary to uphold license fees by distinguishing them from taxes, many of the courts have declared license fees to be an exercise not of the taxing power but of the police power, thus confusing taxes with the taxing power. There is, as we shall see, a decided difference between a license fee and a tax; but it is not the one stated by the courts. It is this groping after the real distinction between fees and taxes, to be explained in a moment, which has led judges, not

---

[1] Goodnow, "Powers of Municipalities respecting Public Works," *Publications of the American Economic Association*, ii., pp. 72-79. Professor Goodnow terms these respectively the systems of legislative and of administrative control.

[2] Godard, Petitioner, 16 Pick. 504, 509, quoted by Cooley, Taxation, p. 589.

[3] Cooley, *Taxation*, pp. 588-591, compared with pp. 616-620.

trained in economics, to draw the line between payments under the police power and those under the taxing power. The distinction between fees and taxes is not synonymous with the distinction between the police power and the taxing power; for there are many classes of fees, like court fees, fees for legal documents and school fees, which cannot possibly be put under the police power.

While, then, it may be expedient from the legal point of view to distinguish between the police power and the taxing power, ruling that the one is for regulation and the other for revenue, and while the constitutional importance of the police power, especially in the United States, is in many respects considerable, the distinction from the economic and fiscal standpoint is, nevertheless, wholly unnecessary. A tax is no less a tax because its purpose is regulation or destruction; and a fee or payment for regulation brings in just as much revenue as a precisely identical fee imposed primarily for revenue. From the standpoint of finance the test is not whether the payment is for regulation, but, as we shall see later, whether it is primarily for special benefit or primarily for common benefit; that is, it is a distinction not between police power and taxing power, but between fees and taxes. In other words, payments that are legally put under the police power ought scientifically to be classed under the taxing power.

III. Fees

We come finally to what is from the fiscal standpoint the chief sovereign power of the state—the power of taxation. Expropriation is not fiscally important, the significance of fines and penalties does not lie in the financial domain, and the police power, as we have just seen, is of no consequence from the standpoint of revenue; but the taxing power is of an entirely different nature.

The taxing power may manifest itself in three different forms, known respectively as special assessments, fees and taxes. These three forms are all species of taxation in the wider sense, so far as they differ on the one hand from contractual revenue or quasi-private income, and on the other hand from the remaining divisions of compulsory revenue, like expropriation and fines. What is common to all three is that they are compulsory contributions levied for the support of government or to defray the expenses incurred for public pur-

poses. That is the essence of the taxing power. But, although they are all forms of taxation in this wider sense, the differences between fees and special assessments on the one hand, and taxes in the narrower sense on the other, arc so marked that they must be put into separate categories. Let us study their characteristics, taking up first those payments, like fees, tolls, costs and charges, which may be summed up under the general head of fees (the German *Gebühren*, the French *taxes,* the Italian *tasse*).

The distinction between fees and taxes, although sometimes ascribed to Rau, is really much older. Adam Smith already speaks of certain expenses "which are laid out for the benefit of the whole society." "It is reasonable, therefore," he adds, "that they should be defrayed by the general contribution of the whole society, all the different members contributing as nearly as possible in proportion to their respective abilities." These, as he afterward explains, are taxes. On the other hand, he speaks of certain outlays, as for justice, for "persons who give occasion to this expense," and "who are most immediately benefited by this expense." The expenditures, therefore, he thinks, "may very properly be defrayed by the particular contributions of these persons," that is, by fees of court. And he extends this principle to tolls of roads and various other expenses.[1] The "particular contributions" of Adam Smith, in distinction from general contributions, are nothing but fees in distinction from taxes. The same distinction is found several decades before Adam Smith in the work of Justi. He, however, like the other Germans of his time, looked upon the *Regalia*, or lucrative prerogatives, as a separate class; and hence classified public revenues into (1) domains, (2) regalia, (3) taxes, and (4) casual revenues, including prices and payments for special privileges.[2] Later on, Rau gave these latter payments the name of *Gebühren* or fees; but the essence of the distinction is to be found in Justi, and still more clearly in Adam Smith.

A fee, then, is a manifestation of the taxing power. It is a compulsory contribution for a service in which the element of public pur-

---

[1] *Wealth of Nations*, book v., chap, i., part iv. (vol. ii., p. 402, of Thorold Rogers' edition). Compare book v., chap, i., part ii. and iii., passim.

[2] Justi, *Staatswirthschaft*, 2d edition, 1758, ii., pp. 95, 400-429.

pose must be present; but it differs from a tax in several important points.

First, a tax is levied as a part of a common burden; a fee is assessed as a payment for a special privilege. The basis of taxation is the ability or the faculty of the taxpayer; the basis of a fee is the special benefit accruing to the individual. In the case of a tax, this ability, it is true, may be influenced to a certain extent by the opportunities or privileges or benefits received. But the difference is the test. In the case of a fee, the benefit is measurable; in the case of a tax, the benefit is not susceptible of direct measurement. In the case of a fee, the particular advantage is the very reason of the payment; in the case of a tax, the particular advantage, if it exists at all, is simply an incidental result of the state action.

The question of special benefit was originally of minor importance; the mediaeval monarch exacted in the shape of fees and charges about what he chose, disguising exactions under the mask of payments for special privileges. Even there, however, it may be said, not that the idea of benefit was absent, but that the monarch made himself the judge of the amount of benefit. That his despotic estimate often resulted in hardship does not alter the theory. Gradually, however, the idea of actual benefit came to the foreground, until it has finally become the controlling factor.

A second distinction between fees and taxes is that a fee does not normally exceed the cost of the particular service to the individual. This, however, although commonly made much of, is of subordinate importance. In the first place, it can obviously apply only to those fees paid in return for some positive work done by government. The government, indeed, must always give something in return for a fee; but in many cases it may give only a permission to do something—a permission which costs almost nothing, and for which a considerable fee may be exacted. The controlling consideration here is not cost, but measurable special benefit. Historically, we know that these special charges were made entirely irrespective of cost.[1] But even in the case of a positive action by the government, cost is simply another

[1] Professor Brontano calls attention to this historical fact. Cf. Faber, *Die Entstehung des Agrarschutzes in England*, p. 58. Both fail to notice the points made in the text.

method of measuring special benefit.[1] This has been overlooked, but is none the less true. In all competitive private enterprises the benefit to the individual is the cost. That is, the amount which the individual is willing to pay—and he is the best judge of the benefit to be derived—is the price; and the price is fixed ultimately at the cost of production. The whole modern theory of marginal utility as the regulator of price is simply a way of stating the degree of special benefit to the individual; and the true theory of price confesses that marginal utility in competitive enterprises resolves itself ultimately into cost of production. The benefit to the individual, therefore, is the cost. As soon as we have a private monopoly, however, the benefit to the individual diminishes in proportion to the sacrifice he is compelled to make in paying more than the cost of production; and the excess of price over the normal benefit (as measured by cost) represents to this extent a tax on the individual.

The same is true of governmental action. It may, and often does, happen that a government is not actuated by motives of profit, but, like a private competitor, sells its services for cost. Special benefit to the individual and cost to the government are then synonymous. But if the government seeks to make a monopoly profit and charges more than cost, then as before the special benefit to the individual may be said relatively to diminish as the charges increase, until finally the exaction becomes so great that the special benefit is merged in the special burden and the charge becomes not a counter-payment, but a special tax. On the other hand, the government may decide to charge less than cost, or even to offer its services gratuitously, in which cases the special benefit to the individual may gradually be swallowed up in the common benefit. Here the very reason of the gratuitous service is that no special benefit exists, or that it results only incidentally from general state action. Thus we see that special benefit to the individual is correlative with cost to the government. If the charge is less than cost, the special benefit is *pro tanto* converted into a common benefit, until finally there is no charge, because no special benefit. If the charge is more than cost, the special benefit is *pro*

[1] The cost here referred to is at once the cost to the individual and the cost to the government. They arc synonymous, because under the supposition the government gives its services for cost.

tanto converted into a special burden, until finally the charge is all tax, because it is all burden, and no special benefit.

This point of view helps us out of a difficulty as to the line of cleavage between fees and taxes. Thus, if a charge is made for the cost of judicial process, the payment is a fee, because of the special benefit to the litigant. If no charge is made, the cost of the process must be defrayed by general taxation; and the litigant pays his share in general taxes. If the charge is so arranged as to bring in a considerable net revenue to the government, the payment by the litigant is a tax—not a general tax on all taxpayers, but a special tax on litigants, like the tax on lawsuits in some of our Southern commonwealths. The character of fee disappears only secondarily because the principle of cost is deviated from, but primarily because the special benefit to the litigant is converted in the first case into a common benefit shared with the rest of the community, and in the second case into a special burden. The failure to grasp the basis of this distinction, which is equally true of other fees, has confused many writers.

A third distinction between fees and taxes may be found in the conditions attached to the service which the government performs. It may be said that in the case of a fee the government does some particular thing in return, while in the case of a tax it gives no special service. The particular thing done by the government in return for a fee may be either the display of some positive energy, as in furnishing a water supply, or it may be a simple permission to do something. The government may create direct utilities, or it may permit the individual to create utilities; but in each case it demands a return for the privilege. In the case of a tax, on the other hand, the government simply refrains from doing; or, if it does anything at all, does it only as a general governmental action. This distinction applies to so-called special taxes, as well as to general taxes; for even in the case of a special tax, the government does not pledge itself to do any special thing for the individual as an individual. It agrees to do some special thing for the community or for the particular class involved, but it is wholly immaterial to the government whether the individual avails himself of the incidental advantage accruing to the class as a whole. Even in the case of special taxes we are not confronted with the principle of give and take, or quid pro quo, as regards individuals.

A further distinction that has been very fruitful of confusion is that between the business licenses or fees, and business taxes. The legal terms applied to such payments must not lead us astray. For instance, a given charge levied on certain retail businesses is called in various American states a fee, a license, a license fee, a license tax, a special tax, a specific tax, a privilege tax and an occupation tax.[1] A certain payment exacted from insurance companies is called indifferently an insurance fee, an insurance license, an insurance license fee, an insurance tax and an insurance license tax. A certain payment imposed on some corporations is called variously a charter fee, a bonus on charters, a license tax, a tax on certificates, an organization tax, a corporation tax and even a corporate franchise tax.[2]

The real distinction between a license charge and a business tax is that the non-payment of a license charge normally renders the exercise of the business illegal, while the non-payment of a business tax does not render it illegal. More broadly, it may be stated that a license charge is a condition precedent, while a business tax is a condition (if a condition at all) subsequent.

A license charge, however, may be either a license fee or a license tax;[3] and in order to ascertain which it is, we must fall back on the preceding distinctions. When the license is imposed to cover the cost of regulation or to meet the outlay incurred for some improvement of special advantage to the business, it may truly be said that the licensee gets a special benefit from the privilege, a special benefit measured by the cost. The charge would then, as in the common case of cab licenses, be a fee. When, however, the charge for the license to carry on a business, which before the imposition of the restrictive law was open to anyone, is purposely so high as to bring in a distinct net revenue to the government above the cost of regulation, we can no longer properly speak of special benefits to the licensee, since the special benefit is converted into a special burden; the charge is then

---

[1] Compare my monograph on *Finance Statistics of the American Commonwealths,* 1889, pp. 88-96.

[2] Compare supra, p. 216.

[3] This distinction is overlooked by the American legal writers. Thus Black on Intoxicating Liquors, § 108, makes a labored argument to distinguish taxation from license, while in reality he is distinguishing license fees on the one hand from license taxes and business taxes on the other.

no longer a license fee, but a license tax. This is the case with some of the so-called license or privilege taxes in the Southern commonwealths.[1] Finally, if the payment is not conditional upon taking out a license, but is assessed on certain elements of the business, such as purchases, sales, capital, etc., as in the French *patentes*, the German *Gewerbesteuer*, and some of the American payments, then we have not license taxes, but business taxes, because the condition is not precedent, but subsequent. The distinction between license tax and business tax is one of condition of payment: the distinction between license fee and license tax is one of benefit and cost.

There is, therefore, some truth at the basis of the distinction drawn by the American judges between the police power and the taxing power; but it is to be understood in a sense quite different from that usually adopted. The distinction should really be drawn between a license fee and a license tax on the one hand, and between a license tax and a business tax on the other. The distinction between police power and taxing power is not valid, because from the broad scientific point of view a fee may be equally an exercise of the taxing power, while a tax is none the less a tax because it is regulative. When the American judges hold that a license fee must "not exceed the necessary or probable expense of issuing the license and of inspecting and regulating the business,"[2] they are drawing the line between license fees and license taxes, although legal complications may compel them to assert that it is a distinction between the police power and the taxing power. For instance, the decision that high liquor licenses are not taxes—a decision quite untenable from the standpoint of public finance—is due simply to certain constitutional limitations, and to the policy of upholding such payments. Liquor licenses, if high enough, are no less taxes than the Southern license or privilege taxes; and the attempt to call them license fees, in order to uphold them under the police power, is the result of a praisewor-

[1] This is really the basis of the decision of the United States Supreme Court in the case of Harmon vs. City of Chicago, Supreme Court Reporter, xiii., no. 10, p. 306 (Feb. 13, 1893). A license charge for using the Illinois River is declared to be a tax, and in conflict with the interstate commerce provision of the constitution, because it is not a compensation for any specific improvement. In the latter case it would be a license fee or toll, and perfectly valid, as decided in Huse vs. Glover. 119 U. S. 543.

[2] Cooley, Taxation, p. 598.

thy but palpable legal fiction. To say, as Cooley does, that a high liquor license is only a license fee covering the cost of regulation, because "it is reasonable to take into account all the incidental consequences that may be likely to subject the public to cost" (such as prevention of resulting crime and disorder), is a considerable stretching of the term. It seems impossible to state how much of pauperism and crime is due to drink and how much to other causes.

The truth which the judges have vaguely seen, and which they have attempted to realize in their decisions, then, is simply this: a fee is a payment for a service or privilege from which a special measurable benefit is derived, and normally does not exceed the cost of the service; a tax is a payment where the special benefit is merged in the common benefit, or is converted into a burden. A fee remains a fee, whether levied under the taxing power or the police power; and a tax is no less a tax when classified under the police power than when put under the taxing power.

It seems, then, that writers like Professor Bastable, who desire to discard fees as a source of revenue co-ordinate with taxes, are taking a step backward, and are abandoning a distinction dating back at least to Adam Smith.

It is, however, useless to oppose the creation of a class of revenues co-ordinate with taxes; for, even if we disregard fees, we cannot shut our eyes, as most writers have done, to the existence of another important class of compulsory revenues which are not taxes. These are known as special assessments.

IV. Special Assessments

It has already been pointed out that classification of public revenues has depended upon historical conditions. Special assessments are a comparatively modern and a specifically American development, although the germ of the system may be found in the Roman edict: *Construat vias publicas unusquisque secundum propriam domum.*[1] In France and England they have been so rarely used as to escape detection, although of late years the policy of introducing the princi-

[1] Quoted in entirety in another connection by Sax, *Die Verkehrsmittel in Volksund Staatswirthschaft*, i., p. 186.

ple more widely has begun to be discussed in England.[1] In Belgium and Germany they have been introduced in the past few decades, and are occasionally mentioned in the latter country under the head of *Beitrage*.[2] Even so recent writers as Leroy-Beaulieu and Bastable ignore them completely, in the earlier editions of their books on public finance. Nowhere do we find any adequate discussion of special assessments in theory or in practice, or any successful attempt to correlate them with other forms of compulsory contributions.

No American who treats of public finance as a whole can fail to be struck with the importance of special assessments in actual practice. To take only two examples: in New York city, in 1891, special assessments yielded over $2,400,000; while in Chicago, in 1890, they yielded $8,790,443—a sum actually larger than that raised by taxes. The courts have been filled with litigation respecting special assessments, and certain valuable principles have been slowly evolved. Yet no one has attempted to construct a theory of special assessments, or to assign them to their proper place in the list of public revenues. Thus the theory of special assessments has not been worked out in Europe, because the facts were not deemed sufficiently important; and it has not been worked out in America, because there have been almost no American theorists in public finance.[3]

---

[1] In France they may be traced back to 1672 and to a more general law of 1807, known as the law on "l'indemnité pour payement de plus-value." But only about twenty to twenty-five cases of application are known. Compare Aucoc, *Droit Administratiff,* ii., p. 732 et seq. For the earlier cases, see Clement, La Police sous Louis XIV., p. 144.—For England see infra, chap. XV.

[2] In Prussia they are legally known as Interessentenzuschusse. Compare Leidig, *Preußisches Stadtrecht*, p. 375, and Loening, Verwaltungsrecht, p. 580. Other forms of special assessments are known as *Deichbeitrage*, and in Baden as *Soziallasten*. The whole system seems to have received a greater development in Belgium than anywhere else in Europe, and yet it has not been noticed at all. The Belgian, Denis, does not mention it in his recent work, *L'Impôt*. The details of the system may, however, be found in Leeman's *Des Impositions Communales en Belgique*, 2d edition, chaps, v.-x. He calls them taxes, but confuses them continually with taxes proper, including special taxes.

[3] Shortly after the above words were originally published, Dr. Victor Rosewater, now editor of the *Omaha Bee*, completed his monograph on *Special Assessments: a Study in Municipal Finance*, which appeared as vol. ii., no. 3 of the *Columbia University Studies in History, Economics and Public Law,* 2d ed., 1998. This mono-

A special assessment may be defined as a compulsory contribution, levied in proportion to the special benefits derived, to defray the costs of a specific improvement to property undertaken in the public interest. When a new street is opened, for instance, it is deemed equitable that the expense should not be entirely borne by the whole community, but that it should be defrayed in part or in whole by the owners of abutting real estate, whose property receives an undeniable benefit in the immediate enhancement of value. The advantages of the particular government services accrue in great part to the property owners; and it is therefore right that they should bear the burden in proportion to the advantages received. Without going into the history of the system, we may say that, beginning in New York in the seventeenth century, it has been well-nigh universally adopted in the United States. Its operation extends to improvements like the following: opening, laying out, grading, paving and repaving, planking and curbing the streets; sprinkling them with water, illuminating them with gas and electric light, and even ornamenting them with shade-trees; constructing drains, sewers, levees and embankments; laying wire conduits and water pipes; bettering waterways and dredging rivers; laying out and developing public parks, squares and drives. In all these cases the entire expense, or a certain portion of it, is met not by general taxes, but by special assessments. We are here to consider the theory of special assessments.

In the first place, special assessments represent an exercise of the taxing power. In the early days various attempts were made to justify them under the power of eminent domain and under the police power; but in 1851 a leading New York case[1] swept away all these refinements, and decided that special assessments were a constitutional exercise of the taxing power. The reasoning of Judge Ruggles in that case is so convincing as to need no comment or defence; and the whole development in the United States has since proceeded on the line he laid down.

---

graph contains a comprehensive treatment of the whole subject, historical, legal, statistical and theoretical, and is now the chief authority on the topic.

[1] People vs. Brooklyn, 4 N. Y. 419. Some of Judge Ruggles' *obiter dicta* on the principles of taxation are open to serious question. But as they have really nothing to do with the point decided in the case, we pass them by.

In a special assessment the element of public purpose must always be present; for if levied solely for private purpose it would be an act of confiscation, not an exercise of the taxing power. Again, a special assessment must be capable of apportionment: there must be an assessment district, and the assessment must not be arbitrary. The countless cases which enforce these points show, in short, that special assessments, like fees, are an exercise of the taxing power.

Special assessments, like fees, are not, however, taxes in the ordinary or narrower sense. Taxes, as we know, are compulsory contributions levied to defray the expenses incurred in the common interest, without any reference to particular advantages accruing to the taxpayer; but in special assessments, as in fees, the services for which the expenses are incurred redound to the particular benefit of the individual. The primary test of a tax is that it imposes a common burden: the primary test of a special assessment is that it implies a special benefit. From this one great distinction flow all the others, which may be summed up as follows:—

First. In a special assessment the special benefit to the individual is measurable. In a tax the special benefit does not exist, or, if it exists at all, results incidentally from the individual's share in the common benefit; it is not separately measurable. No one, perhaps, will be apt to confound a special assessment with a general tax; but there is also a clear line of distinction between a special assessment and a special tax. An adequate discussion of the relation between a general tax and a special tax belongs to the question of the sub-classification of taxes in particular, and would lead us too far astray here. But we can say at all events this: a general tax, like the ordinary state or local tax in America, is not levied for any definite, particular expenditure, but is assessed for general governmental purposes: a special tax, like the English local rates or the local taxes in some American states, like New Jersey, is assessed for the accomplishment of some special task to which the government is pledged, and is levied on a definite section of the population.[1] The police rate, the sewer rate, the poor rate, the lighting rate, are each levied for the special purpose and on

[1] These taxes must of course not be confounded with the so-called "special taxes" in some of the Southern commonwealths, which are known as license or privilege or business taxes in the other commonwealths.

the definite class of taxables subject to the rate. But this special tax is none the less a veritable tax; it is levied for a public purpose, it is assessed on what is deemed to be the faculty or "means" of the taxpayer; and there are no particular benefits accruing to him as an individual. Even if he does perchance derive a benefit, it is not a special, measurable, individual benefit apart from the common benefit that the other members of the class derive; it is simply an incidental result of his share in the common benefit. In the special assessment, on the other hand, the special individual benefit is distinctly measurable and forms the basis of the assessment. The English local rates, for instance, might seem to be in no wise distinguishable from the American assessments. It is a clear principle of the English system of local rates, however, that "the exact measure of the benefit is not the measure of the liability to be taxed," while the reverse is true in the American system of special assessments. In other words, the test of the special assessment is measurable special benefit: the test of the special tax is special taxable capacity or faculty, just as the test of the general tax is general taxable capacity or faculty. The distinction is quite clear; yet the few writers who have spoken of special taxes at all have almost universally confused them with special assessments.

Secondly. Taxes may be proportional to property, or to income, or to expense, or to any other test of faculty, or they may be progressive rather than proportional; special assessments can never be progressive, but must always be proportional to benefits. This is the recognized principle in American jurisprudence; and the only difficulty now is to decide what is to be regarded as the most equitable standard for the measurement of benefit. Acreage, frontage, value, superficial area of the property—all these have been upheld as proper guides to apportionment, and as constitutional tests of presumptive special benefit. Not only are special assessments void when there is no special benefit; they are also voidable when the charge exceeds the special benefit;[1] for to charge more than the exact benefit would be equivalent to taking private property without due compensation. In the special assessment there must be compensation; in the tax there is no question of compensation. The only matter in dispute in

[1] Cf. the celebrated Agens cases in New Jersey. State vs. Newark, 37 N. J. L. 415; Bogert vs. Elizabeth, 27 N. J. Eq. 508.

the American courts is whether the special benefit need be actual or may be presumptive; the general tendency of the decisions is to make the legislative and administrative discretion rather wide.[1]

Thirdly. Special assessments are confined to specific local improvements, while the sphere within which taxes operate is in this respect unlimited.

Fourthly. For a special assessment the government performs a definite, particular act in return; it is an instance of service and counter-service, of give and take. For a tax the government does not pledge itself to do a particular thing for the particular individual in return. The reasoning here is precisely the same as that adduced above in discussing the distinction between taxes and fees. A special assessment is here on exactly the same footing as a fee.

Fifthly. Taxation is resorted to in order to defray the running expenses of government, and to effect in time the amortization of the debt; while the object of special assessments is in the main to provide for the capital account—to increase, as it were, the permanent plant of the community.[2]

The distinction between special assessments and taxes has been widely recognized in American jurisprudence; and the constitutional limitations applied to taxation have generally been declared inapplicable to special assessments. As Cooley puts it, "The overwhelming weight of authority is in favor of the position that all such provisions for equality and uniformity in taxation by value have no application to special assessments." Exemptions from taxation, moreover, do not imply exemptions from special assessments. Special assessments are none the less a distinct class because in some laws they are called taxes. In some cases, in their anxiety to uphold the distinction, the same courts interpret the word "assessment" in the phrase "uniform rate of assessment and taxation" sometimes in one way, sometimes in the other. That is, when special assessments must be put under the taxing power in order to be upheld, "assessment" is held to be used in the general sense, and to mean taxation; when in other cases special

[1] Cf. Matter of Church, 92 N. Y. 6; Allen vs. Drew, 44 Vt. 174, and other cases cited in Rosewater, Special Assessments.

[2] Only very rarely is there a departure from this rule, as, e.g. where the cost of sprinkling the streets is occasionally defrayed by special assessments.

assessments can be upheld only by being distinguished from taxes, "assessment" is held to be used in the technical sense, and to mean something different from taxation. All the ingenuity of the American judges has been needed to attain the result now achieved—the marked distinction between special assessments and taxes;[1] but their efforts have been sensible, and the result is in accord with the teaching of the science of finance.

Special assessments hence are not taxes. They differ from taxes in the same way that fees differ from taxes, since both fees and special assessments rest on the doctrine of equivalents. Fees, special assessments and taxes have points in common in that they are all manifestations of the taxing power. Fees and special assessments have additional points in common, which they both possess in distinction from taxes. But, finally, fees and special assessments differ in some respects from each other. We have distinguished special assessments from taxes; it remains to distinguish them from fees.

It may, indeed, be claimed that there is no distinction, and that special assessments simply constitute a sub-class of fees. It is true, as has just been pointed out, that what characterizes taxes proper as against the other manifestations of the taxing power is general bene-

[1] One recent case is especially noteworthy as illustrative of ingenious distinction. The general trend of authority, as we have shown, is to give a wide discretion, and to uphold assessments per front foot as a good presumptive test of special benefit. Yet in the celebrated Illinois case of Chicago vs. Larned, 34 111. 203 (1864), the court held that the provisions of the constitution as to uniformity and equality of taxation were unusually stringent, and were applicable also to special assessments. The court was really mistaken here, as the Illinois constitution did not differ from many others where the contrary interpretation was adopted. Still, as a consequence of their view, assessments could be made on each lot only up to benefit actually proved, while the remainder of the cost would have to be defrayed by general taxes. Assessment by front foot was held to be invalid. Yet later the courts, evaded this case by a very fine distinction. The constitution of 1870 gave local authorities the right to levy "special taxes for local improvement;" and in White vs. People, 94 111. G13, the court held that a special tax was not a special assessment, and that a special tax might exceed the actual benefits to the particular lot. An assessment by front foot is hence valid, and the system in Illinois to-day is the same as in other states. Of course the "special tax" of the Illinois constitution is simply the "special assessment" of other states, and is even known by the latter name in Illinois itself. There is, as we have seen, a distinction between a special tax and a special assessment; but it is not the distinction drawn by the Illinois court.

fit as against measurable special benefit. If we name the first kind taxes, we might indeed give to the second kind some generic name. Special assessments would then be simply a distinct sub-class. But they are so extremely important and so far overshadow all the other cases of special benefit taken together, that it seems advisable to put them into a separate category. Especially in the United States, where the judges are just beginning to wrestle with the actual problems, it would tend to confuse rather than to clarify, if we put special assessments and cab licenses, for instance, into the same category. Let us then attempt to point out in what respects special assessments differ from fees.

In the first place, special assessments are levied only for specific local improvements: fees may be levied for any services. The field of operation of special assessments is restricted; that of fees is unrestricted.

Secondly, special assessments are paid once and for all ; fees are paid periodically, according to each successive service. The only qualifications to this statement are that special assessments may, in a few cases, be spread over a longer period, and may then be payable by regular installments;[1] while, on the other hand, a fee is of course paid only once if the service is demanded only once, as in the case of a marriage fee. That, however, does not invalidate the distinction. In the special assessment -the payment is capitalized in a lump sum, payable generally at once, but occasionally by installments; in the fee, on the other hand, the payment is, so to speak, fragmentary and irregular. In a given case there may be a choice of methods. For instance, in constructing a bridge, the cost may be defrayed either by levying a special assessment on the owners of the abutting property or by charging tolls on those using the bridge, who are presumably in great part also the owners of abutting property or their friends and dependents. If the benefits redound in greater part to these property owners, the cost should be paid by a special assessment; if the bene-

[1] Cf. the New York Law of 1912, chap. 372, which provides that if the assessment exceeds five per cent of the tax valuation for the preceding year, the collector shall divide the assessment into ten installments, as nearly equal as may be. Each installment after the first is to bear five per cent interest until due, and seven per cent thereafter until paid.

fits redound in greater part to individuals who are not property owners, the cost should be paid by a fee (toll); if the benefits are so widespread that the whole community is almost equally interested, the cost should be paid by neither a special assessment nor a fee, but by a general tax.

Thirdly, a fee is levied on an individual as such: a special assessment is levied on an individual as a member of a class. That is, in the case of special assessments there must always be an assessment area over which the whole assessment is levied, to be then further distributed according to a definite rule of apportionment. It is, for instance, a settled rule of the American law, that in assessing benefits the assessors cannot restrict themselves to the cost of the improvement in front of a particular lot.[1] In the case of a fee, on the other hand, the government looks not to a class or to an area, but to the separate individual.

Fourthly, a special assessment must always involve a benefit to real estate: a fee is paid for a service which may benefit other elements than real estate, such as personal property, or other attributes of the individual without any reference to property.

There is one further distinction, which, however, is more imaginary than real. It might be maintained that special assessments are like direct taxes, and fees like indirect taxes, in the sense of taxes on consumption or on acts and communication, because the former are compulsory and the latter voluntary. But this distinction is badly expressed, and really untenable; for, notwithstanding the contrary statement, which has frequently been made, indirect taxes are not a whit more voluntary than direct taxes. It is true that if a man chooses to go without tobacco he may escape the tobacco tax; but it is equally true that if a man chooses to go without certain kinds of property or income, he may escape to that extent the property tax or the income tax. Indirect as well as direct taxes are compulsory, not voluntary, contributions. In the same way, there is no truth in the statement that a fee is voluntary and a special assessment compulsory. It is true that we do not need to pay a peddler's license fee if we do not care to peddle; but, on the other hand, we do not need to pay a special assessment if we do not care to own the land. Further, when the pay-

[1] *Ex parte* Mayor of Albany, 23 Wond. 277.

ment of a fee is connected with necessary every-day transactions, as are mortgage registrations fees or marriage fees, there can be no question of the compulsory nature of the transaction. Birth and death cannot well be termed voluntary actions; yet a registration fee for a birth or death certificate does not differ in character from any other fee. Fees and special assessments, indirect and direct taxes, are all compulsory contributions.[1]

It is clear, then, that there is a line of distinction between fees and special assessments, although not so sharp as between fees and special assessments on the one hand and taxes on the other. There is no danger of confusing them in practice; yet very little has been done to differentiate them in theory. Even Wagner, though compelled in the last edition of his work to recognize the existence of "Beitrage," mentions them in a few lines as merely an unimportant addendum to fees. Of course, it would be easy to follow Professor Bastable's example, and deny the existence of fees as a separate class, in order to avoid the "creation of a distinct group of state receipts coordinate with that derived from taxation.[2] But even he, when confronted with the existence of special assessments, will have to revise his classification, and create at least one "distinct group co-ordinate with" taxes. And if this one group is separated from taxes, it will be difficult to refuse to cut off another group, for the arguments that apply in the one case apply equally well in the other.[3]

V. Prices

We now come to a final problem which has given rise to considerable difficulty. Where shall we class the payments made for services rendered by certain governmental enterprises, like canals, post-

---

[1] Neumann, who is the only writer to attempt a distinction between fees and special assessments, makes it turn on a very dubious distinction between direct and indirect taxes. *Die Steuer und das öffentliche Interesse*, pp. 327, 334.

[2] *Public Finance*, p. 221.

[3] Professor Plehn, *Introduction to Public Finance*, New York, 3(1 ed., 1909, p. 354, prefers to consider special assessments as a class of fees. On the other hand, my contention has now been accepted by Leroy-Beaulieu, *Traité de la science des finances* since the 6tli ed., 1899, vol. i., chap, vii.; and by Graziani, *Istituzinni di Scienza delle Finanze*, 2d ed., 1911, p. 193; as well as by other writers including Nicholson, Principles of Political Economy, iii., 282; and II. C. Adams, The Science of Finance, 1899, p. 227.

office, telegraph and railroads? Are they taxes, are they fees, are they compulsory payments at all, or are they not rather to be called prices, and classed with the contractual income of the state?

Some writers say that if the government goes into a public business, like the post-office, the charges are compulsory; but that if it goes into a private business, like a shoe factory or a coal yard, the revenue belongs to the industrial domain. This seems to be a decided mistake; for there is no such sharp line of demarcation between a naturally public and a naturally private business. Everything depends on the view taken for the time being as to the policy of governmental interference. The post-office is everywhere in the hands of the government, simply because the enterprise arose at a time when there was no dispute over the policy. The telegraph, the telephone, and still more the railroad are controlled by the government in some countries, and by individuals in other countries, because these industries developed after the discussion as to the limits of governmental interference arose. Where shall we put the gas industry, which in some municipalities is a public, and in others a private, business? Where shall we put the water-supply and the street-railway business? Some countries have monopolies of the manufacture of salt and of tobacco, which are then regarded as modes of taxing the people who use salt and tobacco. Would there be any difference in principle if the government went into the coal business or into the shoe business, in order to tax the people using coal or shoes? It might indeed be very bad policy for the government to extend its functions; but there is no natural and immutable line of cleavage between a public and a private business, between a monopoly of tobacco and a monopoly of bread or of iron. The limit is always fixed in accordance with temporary public feeling as to the proper social policy; but the question as to how far vital public interests are at stake has been answered, and will always be answered, differently in different countries and in different ages.

The distinction, therefore, is not, as most writers have assumed, dependent on the nature of the enterprise.[1] As a matter of fact, the

[1] For instance, Wagner classes telegraph and postal charges among fees, railroad charges among industrial revenues. Schall limits fees to services for "essential state purposes" (*wesentliche Staatszwecken*). Compare Schönberg's *Handbuch der politi-*

payment for the same service may be a price in one state, a fee in a second, or a tax in a third. The explanation of the difficulty is to be sought in an elaboration of the very principle which has just been employed to show the difference between special assessments, fees and taxes. In other words, the controlling consideration in the classification of public revenues is not so much the conditions attending the action of government or the kinds of business conducted by the government as the economic relations existing between the individual and the government.

Let us attempt to make this clear by taking up in turn the various classes of revenue.

The simplest case arises when government decides to go into a purely private business. The government sees private individuals making money out of certain occupations, and considers why it also should not do likewise. It therefore enters upon the business, and conducts it in precisely the same way as would an individual. Such instances were very common in former times, when governments carried on all kinds of private occupations, such as manufacturing pottery, loaning money, or conducting commercial enterprises; but in modern times this has become less usual. Many states, nevertheless, still own real estate, either renting or utilizing it and selling the produce in the open market; some states still carry on a banking business; and others deal in commodities, like Holland in tobacco, Chili in guano, and India in opium. In all such cases the chief consideration with the government is fiscal; and the charges are precisely the same as would be made by private individuals. In fixing the price, the government is actuated by the same motives that obtain in private business, whether the business be competitive or monopolistic. It is immaterial to the purchaser whether he buys from the state or from a private person; for he has to pay the same in each case. The commodity or service supplies his own private wants, and there is nothing public about the transaction except the mere accident that the seller is a public agent rather than a private person. The charge made by the government is therefore a quasi-private price; it is a purely

---

schen Ökonomie, iii. (3d edition), p. 98. Roscher (*Finanzwissenschaft*, p. 22) and Vocke (*Die Abgaben, Auflagen und die Steuer*, pp. 223-565) also except payments for post, telegraph and railroads from the category of fees.

contractual payment, resting on an agreement between the government and the purchaser. The special benefit which the individual receives is to him the controlling consideration; and the matter of general interest or of public purpose is only an incidental matter.

We now come to the next case, where the government decides, for special reasons not purely fiscal, to enter upon certain enterprises which have more or less of an industrial nature. It is found by experience that the retention of these enterprises in unregulated private hands is not thoroughly satisfactory. The government, therefore, either leaves these occupations to private initiative, but subject to careful regulation, or takes such business into its own hands. The reason for interference is not public gain, but public policy; it is now a matter of common interest, and no longer purely and solely of private interest.

The familiar examples of such enterprises are the post-office, the telegraph, the telephone, the railway, the water, gas and electric-light supply. These are often called economic monopolies, because in them through the working of economic forces competition tends to become entirely inoperative. In most cases, too, they can be carried on only in virtue of some privilege or franchise conferred by the government. The public interest is therefore admittedly strong; and whether it takes the shape of governmental regulation or of governmental ownership is, for our special purpose, immaterial.

Let us assume the latter case. The problem then arises: What is the nature of the charge made by the government for the service or for the commodity which results from the operation of these enterprises?

The chief point is still the private interest of the individual. He buys his gas or his telegraph service to satisfy his private wants, very much as he would buy it from any individual or corporation. But a new element has entered,—the element of public interest, the satisfaction of the wants which one feels as a member of the community. The very reason why these enterprises have been made government enterprises is that the individuals who compose the community feel that they have a common, public interest in the assumption of the business by the government. They believe in municipal water-supply, for instance, because they are convinced for various reasons that this business ought not to be left in private hands. The government, indeed, may make a charge, which is undoubtedly a price paid by the

individual; but it differs from private prices. In the case of the private business the monopoly seeks only the greatest possible profits; in the case of the public monopoly the government seeks the greatest possible public utility. Even when the government makes a high charge, it does not aim simply at the maximum monopoly profits; for the public element always modifies the charges in some particular. If it did not so modify the charges, or at all events give better facilities for the same charge, there would be no reason for the assumption of the business by the public.

The charge to the individual is thus a price; but, instead of being quasi-private, it is now a public-Price.[1] The relation of the government to the individual is not the same as in the preceding case. The special benefit to the individual, although it is still preponderant, is relatively less; the public purpose has become of more importance.

We come now to the really important point: The feelings of the citizens may undergo a further change, and the government may conclude to manage the enterprise in a different way. The element of private interest or special benefit may diminish, and the feeling of public interest may increase so as to become the controlling consideration. The government, because of these changed conditions, will now decide no longer to run the business on the principle of profits. It will reduce the charges somewhat, so as perhaps only to cover the cost of operation, or not even to cover this cost. While it will still roughly endeavor to charge each individual according to the benefit he derives, it will still further modify these charges in the direction of the public interest, charging less to those who can afford it less. In other words, special benefit to the individual is still measurable and charged for; but since the common interest of the community is now of more importance, the charge for special benefit may be slightly

[1] Professor Plehn prefers the term "rates" to "prices" on the ground that we ordinarily speak of water rates, telegraph rates and the like, introduction to *Public Finance*, 3d ed., 1909, pp. 88-89. To this, however, there is a double objection—first because the usage is by no means universal—witness water "rents," telephone "tolls," railway "fares," etc., and second, because in countries like England they would at once be confused with the local "rates" or taxes.—The United States Census Bureau's Classification of Public Revenues as published in the volume on *Wealth, Debt and Taxation* (Twelfth Census, 1907) accepts the category of public prices.

modified by other considerations, as in the case of the postal service, where newspapers are put into a lower class than letters. The charge to the individual has now become a fee.

Finally, another change may occur. The citizens may become convinced that the public purpose has become the exclusive consideration, and that the special interest of the individual is swallowed up in the general interest. The government will now entirely abandon the principle of charging according to special benefit for one of two other methods: it will either make no charge at all to the individual for the special service; or, if it still makes a slight charge, it "will levy this not according to the principle of special benefits, but primarily according to the principle of faculty or ability to pay. The expenditure must indeed be defrayed, but it will now be met by a general charge on the whole community, or by a charge upon that section of the community which avails itself of the ser\ice; but even in the latter case it will not measure the special charge to the individual by the benefits he may personally receive. In other words, the payment is now a tax—in some cases general, in others special.

Let us illustrate this process: While a railway is in private hands, the individual traveller or shipper pays a private price. If the government buys up the railways and manages them in precisely the same way, the payment made by the individual is still a price—a quasi-private price, because demanded by the government acting as if it were a private party. But the government, although it still seeks to make a profit, is likely soon to introduce some changes in the public interest. Because of the resulting changed relations between the enterprise and the patron, the payment becomes a public price. After a short time the government may reduce its charges considerably, barely covering the cost, and may modify them still further in regard to individuals or to sections of the country by considerations of public policy. The payment is then practically a fee or toll. Finally, the demand may be made in the public interest, as in Australia to-day, for free railway travel. The payment then made by the community to defray the gratuitous railway service would be a tax. In the case of the common highways and the canals, this same evolution is discernible; and the final stage of free travel has actually been reached.

As another illustration take the water-supply. At first often in the hands of a private company, it may then be managed by the city, but

according to the same principles. Every one pays in proportion to his consumption, but pays more than it costs the city to supply the water; the enterprise is managed on the principle of profits. Then comes a change. The city, still charging according to consumption, limits its charges to cost. Then often comes another change; and the city, while still trying to make both ends meet, often charges each individual a lump sum, but makes the richer consumer pay more than the poorer, even though he consumes no more. Finally, we reach the stage already attained in some European cities, and also demanded for Detroit by Mayor Pingree, where the water is supplied to the citizens without charge, and where the expense of water-supply is put in the same category as the expense of street cleaning. The charge for water-supply has thus run through the various stages—private price, quasi-private price, public price, fee, and tax. Some cities, indeed, may have jumped over the intermediate stages, may have started with the final stage, or may never have reached this stage. In fact, although this is unusual, the principle of development may even be reversed, the public interest may lag, and the methods of private management may again be introduced. The principle itself is, however, everywhere discernible, whether it works forward, as it usually does, or backward, as in some exceptional cases.

Again, at the present time the charge for a postal stamp, like a canal or road toll, is almost everywhere a fee;[1] yet the charge might be so high that the special benefit would become a special burden, and the payments would become taxes on communication or on transportation. This was very common in former times. Highways were at first in private hands, and the charge was an extortion levied by the feudal lord. Later the charge became a monopoly tax on transportation; then it became a toll; until to-day the charges have generally disappeared, and the highways are managed on the principle of gratuitous service, and are supported out of the proceeds of a general tax.

---

[1] As early as 1765 Benjamin Franklin perceived, in part at least, the difference between a fee and a tax. In reply to the question of the parliamentary committee, "Is not the post-office a tax as well as a regulation?" he replied, "No: the money paid for the postage of a letter is not of the nature of a tax: it is merely a *quantum meruit* for a service done." Dowell, *History of Taxation and Taxes in England*, ii., p. 46. Franklin, however, failed to see that it might become a tax.

What has been said of the railway and of the water-supply, of the postal and of the highway systems, may be repeated of all other governmental enterprises—the canal, the telegraph, the telephone, the gas and the electric light, the horse railway and the trolley line, the docks, the markets and the ferries. Moreover, if the socialistic scheme is ever introduced, the same principle will apply to all the cases of governmental management of what once were private enterprise. Whether the government ought to assume these enterprises is, of course, a question quite apart from this discussion of the economic and fiscal nature of the payments made by the citizens.

The demands made by government for supplying the individual with commodities or services differ in character, then, according to the economic relations between the government and the individual. Just as a fee may become a tax, so it may become a price and vice versa. While a price can never be a tax, the payment for the same service may take the form of a price in one state, a fee in a second, and a tax in a third. The real test is the economic relation between the individual and the government, and the relative strength of the individual private interest as compared with the common or public interest.

While there is thus a clear distinction, chiefly of degree, between a price and a fee, and between a fee and a tax, we find in actual life some payments which combine separate elements, and which it is difficult for anyone but a trained observer to classify. Take, for instance, the combination of price and of tax. If the liquor business is in private hands and the government imposes a tax on each glass sold, the individual pays a certain amount which includes both price and tax. If the price of a glass of liquor was five cents and the government levies a tax of one cent, the individual pays six cents, of which five is the price, and one is the tax. When the government has a monopoly of the liquor manufacture or trade, as in some countries, the relation is exactly the same, and the charge may be even more than six cents. In fact, that is generally the reason why the monopoly is introduced; but it is only the surplus over five cents that is the real tax. The same reasoning applies to other fiscal monopolies, like the tobacco or the sugar or the salt monopoly; the amount which the individual pays over and above what he would have to pay to a private vendor is the indirect tax. This might be true also of the charges

for railway or for water-supply; but at present rarely applies, because they are not fiscal monopolies. They may be monopolized by the government; but in almost every ease the object is not to raise the price, but to diminish the price—not to make profits, but to secure general social utility. Yet just as the French and Italian governments impose taxes on the private railway tickets, the amount of which is separately printed, thus enabling the purchaser to distinguish between the price and the tax, the distinction might be made if the railways were owned and managed by the government. The payments would be economically separable.

In the same way, as has already been abundantly illustrated, a given payment may include a fee and a tax. Governments, however, do not usually make this sharp distinction. For instance, some American states speak of insurance fees; other states call the identical payments insurance taxes. In some of the Southern states agricultural fees are sometimes called fertilizer taxes; and on the continent the terms "fees" and "taxes" are often indiscriminately applied. Practically, this may not always be of great importance; but in theory the distinction is clear, and it is beginning to be recognized by the courts.

A more difficult and more confusing case arises when one payment is levied in the form of another, as when a public price is levied in the shape of a tax. Take for instance the water or the gas supply. In Europe, when the towns bought out the private water or gas companies, they at first continued, as some do yet, to charge according to individual consumption. In some cases, however, for purposes of convenience, they assumed that each household would use a certain quantity; and as some of the local taxes were levied on the occupier, they simply added a certain amount to the tax, as in some English towns where a special water rate is levied like the other local rates, or as in Austria where an addition is made to the local tax on house rent. The payment is nevertheless a price, and not a tax; for if more than the assumed normal quantity is used by anyone, especially by a business man or by a factory-owner, the charges are increased according to the consumption. If the charges were reduced, or if all idea of special benefit were abandoned and the charge were assessed on the whole community or on a part of community irrespective of the relative quantities consumed, then the payment might become a fee or even a tax, whether general or special. As a matter of fact,

however, in most places to-day the payment is still a price, even though sometimes levied in the shape of a tax. Thus, the English have a separate class of municipal revenues called income from "gas and water undertakings," which shows that the distinction is dimly recognized. In New York the charge for Croton water is technically called the "water rate," or "water rent," although most people call it the water tax, and confound it with a genuine tax. Here, it is true, this "rate" is paid separately; but in some of the European cities, for purposes of convenience, it is simply added to an existing tax. Nevertheless so long as the economic relation of individual to the government is different, the charges, even though confused under the same appellation, are really distinct.

VI. Conclusions

To sum up the preceding discussion, we find that under actual conditions all public revenues are either gratuitous, contractual or compulsory contributions; that the compulsory contributions are levied in virtue of the power of eminent domain, of the penal power (either as a separate power or as the fiscally important part of the police power), or of the taxing power; and, finally, that the taxing power manifests itself in three forms of fees, special assessments and taxes.

In regard to the charges known as prices, there is no doubt that we must put quasi-private prices under the head of contractual payments; but public prices—the charges made for industrial enterprises under certain conditions—occupy a middle position, and might be called semi-compulsory. If the government manages an enterprise just like an individual, the price is virtually a contractual payment; if the government makes the whole community or part of the community pay, it is a compulsory payment; but if the government employs the intermediate principle^ of charge, the payment is neither wholly contractual nor wholly compulsory, but contains elements of each. The classification would then be as follows:—

Revenues	Gratuitous	… … … … … … … … … …	Gifts
	Contractual	Publiv Property and Industry	Prices
	Compulsory	Eminent Domaine	Expropriation
		Penal Power	Fines and Penalties
		Taxing Power	Fees
			Special Assessments
			Taxesa

But if the real distinction is, as we have suggested, the economic relation of the individual to the government, the classification of charges would depend upon the importance of the individual interest measured by the special benefit to the individual, as compared with the common interest or public purpose measured by the ability of the individual to contribute to public charges. In the one case the individual is the chief or only factor; in the other case the individual sinks his own importance in the common welfare of the community, and whatever benefits he derives come to him only incidentally as a result of his membership in the community. At one extreme the prices, which depend upon the relation of the government to some particular industry or individual; at the other extreme lie taxes, which depend upon the relation of the government to all industries or individuals; midway between these extremes lie fees. From this point of view, if we omit, as of no importance, expropriations and fines, there are only three great classes: viz., prices, fees and taxes. The essential characteristic of a fee is the existence of a measurable special benefit, together with a predominant public purpose: the absence of public purpose makes the payment a price; the absence of special benefit makes it a tax.

As these elements are, however, present in varying degree in different payments, the charges shade off into each other almost imperceptibly, forming intermediate classes which are of great practical importance. Thus the public price has certain elements of the price and certain elements of the fee; but it is of sufficient importance to warrant its separation in a distinct category. Again, as we have seen, a special assessment has many points in common with the fee, but has a decided significance of its own. Our final classification would then be as follows:—

1. Special benefit the exclusive consideration.	Public purpose incidental.	Quasi-private Price.
2. Less special benefit, although still preponderant.	Public purpose of some importance.	Public Price.
3. Special benefit measurable.	Public purpose of still greater importance.	Fee
4. Special benefits still assumed.	Public purpose the controlling consideration	Special Assessment

5. Special benefits only an incidental result.	Public purpose the exclusive consideration, principle of faculty or ability	Tax

The above classification would result in the following definitions:—

A quasi-private price is a voluntary payment made by an individual for a service or commodity sold by the government in the same way as a private individual would sell.

A public price is a payment made by an individual for a service or commodity sold by the government primarily for the special benefit of the individual, but secondarily in the interest of the community.

A fee is a payment to defray the cost of each recurring service undertaken by the government primarily in the public interest, but conferring a measurable special advantage on the fee-payer.

A special assessment is a payment made once and for all to defray the cost of a specific improvement to property undertaken in the public interest, and levied by the government in proportion to the particular benefit accruing to the property owner.

A tax is a compulsory contribution from the person to the government to defray the expenses incurred in the common interest of all, without reference to special benefits conferred.