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Essays in Taxation

Chapter XV
The Betterment Tax

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Chapter XV—The Betterment Tax

It has often happened that the technical name of a new custom has been borrowed from abroad; but it is rare to find a foreign institution described by an exceedingly uncommon term, which is then naturalized on the assumption that foreign usage is being followed. This, however, is the case with the "Betterment Tax" in England. The institution is indeed found in America, but the name is unusual there. Exactly when and how the term came to be introduced into England is uncertain;[1] but nine out of ten Englishmen, when using the expression, think that they are following the American custom. The term has now become so current in England that it may be considered as firmly established.

I. The Origin

The principle of betterment has recently been defined by an official commission as the principle that persons whose property has clearly been increased in market value by an improvement effected by local authorities, should specially contribute to the cost of the improvement.[2] Another official report deals specifically with "assessments according to benefits (betterment or amelioration)," and defines the custom as "assessment according to benefits, and the interception by charge upon property of a portion of the value added to such property by the expenditure of public money for improvement."[3] To all Americans it will be apparent at once that what we are dealing with is nothing but the system of special assessments.

What appears almost self-evident to Americans is hotly disputed in England. In the United States the local taxes, so far as real estate is concerned, are imposed on the owner of the land; in England the

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[1] The Duke of Argyll, in a speech in the House of Lords, referred to it as an "absurd, foreign and vulgar" word. Mr. Baumann, on the other hand, says: "The word is respectable," but "the thing is not." Almost the only state in America where the term "betterment tax" is to be found is Massachusetts: and even this is true mainly of the earlier laws and cases.

[2] *Report from the Select Committee of the House of Lords on Town Improvements* (Betterment), 1894.

[3] *Orange Book of the London County Council*, entitled *Precedents of Assessment according to Benefits*, 1893.

local rates, as they are called, are levied on the occupier. In the United States the tax is assessed on all lands; in England it is assessed only on productive or rent-yielding land. In the United States, therefore, it was comparatively easy to add to the existing tax on the proprietor this newer system of charges; in England the process is more difficult, because it implies not only a change in the principle of charge, but also a change in the method of assessment. Not the occupier but the owner of the land, is to be directly reached. Thus the proposal, which in America is regarded as in harmony with vested interests, is viewed by its opponents in England as an attack on the rights of private property.

Yet, curious as it may seem, the custom of assessments for special benefits is of English origin. In the year 1662,[1] an act was passed to authorize the widening of certain streets in Westminster and providing for the defrayal of the cost by voluntary subscriptions. In case this should not suffice, the commissioners to lay out the streets were empowered to charge the owners of the property in proportion to the benefits received.[2] The important clause reads:

> "And whereas, the houses that remain standing … will receive much advantage in the value of their rents by the liberty of ayr and

[1] It is worthy of note that two cases on betterment, prior to the law of 1662 have been discovered. The first is the Romney Marsh case in 1250. This referred to the repair of sea-walls. The ordinance provided that the officials should "measure by acres all the lands and tenements which are subject to danger within said marsh" and then "having respect to the quantity of the walls, lands and tenements which are subject to peril … shall ordain how much appertaineth to every one to uphold and repair the same walls. So that for the portion of acres of lands lying subject to danger there be assigned to every one his portion of perches" of wall to be repaired. In case of neglect the officials were to do the work and levy an assessment. The ordinance is printed in Edwin Cannan, *The History of Local Rates in England*, 2d ed., 1912, p. 11.

The second case is that of improving the rivers Lea and Thames in 1605. The law provides "for clearing the passage by water from London to … Oxford" and says: "For that it is reasonable, just and equal that those who partake in the benefit of any good work should in fit proportion contribute to the costs and charges thereof: … the commissioners … shall have power … to tax and assess . . . such of the inhabitants … as shall in their opinion be likely to receive ease or benefit by the said passage."

As to other alleged cases of precedents for betterment charges see infra, pp. 439-441.

[2] 13 and 14 Chas. XL, chap. 2, sec. 29.

free recourse for trade and other conveniences by such enlargement, it is enacted … that … a jury … shall … judge and assess upon the owners and occupiers of such houses, such competent sum or sums of money or annual rent, in consideration of such improvement and renovation as in reason and good conscience they shall judge and think fit."

Five years later a similar act was passed, to provide for the rebuilding of the city of London after the great fire. This contained an almost verbal repetition of the clause just cited. The changes were: first, that the charge was then to be made "in consideration of such improvement and melioration," instead of "improvement and renovation"; and, secondly, that, whereas the charge of 1662 was to be assessed on the "owners and occupiers," the new charge was to be levied on the "owners and others interested, of and in such houses," according to "their several interests."[1] That this law was not a mere dead letter is shown by a passage in Pepys' Diary where the actual operation of "the benefit of the melioration" is interestingly described.[2]

Thus, over two hundred years ago the principle over which so earnest a contest is now being waged was in full operation and in the very city where it is vehemently assailed as an unjust system of foreign importation.

The law of 1667 is interesting in another respect. Not only were new streets to be laid out, but the commissioners were empowered to design and set out "the numbers and places for all common sewers, drains and vaults, and the order and manner of paving and pitching the streets and lanes within the said city or liberties thereof." Then follows the significant section:[3]—

"For the better effecting thereof, it shall … be lawful … to impose any reasonable tax upon all houses within the said city or liberties thereof, in proportion to the benefit they shall receive thereby, for and towards the new making, cutting, altering, enlarg-

[1] 18 and 19 Chas. II., chap. 18, sec. 24.

[2] *Pepys' Diary*, under date Dec. 3, 1667. The passage is quoted in the London County Council's *Orange Book of Precedents*, p. 37.

[3] 19 Chas. II., chap. 3, sec. 20.

ing, amending, cleansing, and scouring all and singular the said vaults, drains, sewers, pavements and pitching aforesaid."

Here not only is the word "benefit" used, but the charge is called a tax. Still more important is the fact that while the custom itself seems to have died out in England, this act was the model upon which was framed the first law providing for special assessments in America. The province law of 1691 of New York[1] followed the law of 1667 almost word for word; and from New York, the custom later spread all over the United States. The system of special assessments or "betterment," although it fell into disuse in the country of its origin,[2] is thus primarily an English institution.

II. Betterment and Taxation

We now come to the question which really lies at the root of the whole controversy in England: Is the so-called "betterment tax" a true tax or "local rate"? What appears to be merely a question of terminology has led to a great deal of confusion. For if it is a tax or rate,[3] why should it be levied differently from other rates? And if it is not a tax or rate, under what authority can it be levied at all?

We must revert to what has already been said in a previous chapter, but it is necessary to discuss the subject somewhat more in detail.

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[1] It is worthy of note, however, that we find two instances already in New Amsterdam in 1657 and 1660. The petition for paving the *Heere Graft* with stone asked "that each one benefitted shall be made to pay a proportion of the expense." But it does not ask definitely that the payment shall be in proportion to the particular benefit. See Paulding, *Affairs and Men of New Amsterdam in the Time of Governor Stuyvesant*, 1843, pp. 14 and 16.

[2] In England we find during the eighteenth century several paving acts applicable to London which levy the entire cost, or two-thirds of the cost, of the paving on the abutting property owners. But these are conceded by all to be exceptions to the general rule. Cf. Cannan, op. cit., pp. 128-129.

[3] Mr. Edwin Cannan, *History of Local Rates in England*, p. 5, attempts to draw a distinction between rates and taxes when in reality he is merely distinguishing between apportioned and percentage taxes. According to his criterion the general property tax in the United States would not be a tax at all. Mr. Cannan is himself forced to the rather absurd conclusion that the national land tax in England is a rate! Of course the proper distinction is that a rate is simply a local apportioned tax; the land tax a national apportioned tax; and the income tax, like most of the other national taxes, a percentage tax.

As we have already seen, when the state makes the individual give up a part of his property, it does so primarily through the power of taxation, which in this wider sense denotes a forced contribution. Governments may levy, and have always levied, these forced contributions according to different principles—either that of benefit, or that of ability. They may say to the individual: We are performing a special service for you, and shall make you pay for this peculiar benefit which you derive; or they may say: we are expending certain moneys in the public interest, and shall ask you to pay your share, according to your means. The latter payment is called a tax in the narrower sense of the word. The question at once presents itself: Is not the former payment also a tax?

The difficulty here arises from confounding special with general benefits. The theory of benefits or of protection is true in the sense that if the government taxes the people, it is in duty bound to protect them and to confer upon them the advantages of good government. That is what is meant in America by the doctrine of "public purpose." Taxes must be used for public purposes, and must confer upon the public the usual benefits of government. But this is not the theory of benefit as the term is commonly employed. The theory of benefit claims that the government must give to each individual a return equivalent to the tax he has paid. If this means anything at all, it means that benefit and taxation are correlative. In this sense, the claim is unfounded; for the government, when it levies a tax, never guarantees to do a particular thing for the particular individual, or to confer upon him a special benefit. No one would be justified, legally or morally, in claiming a restitution of a tax because the action of the government was not worth quite so much to him as he thinks it is worth to his neighbor. The benefits of state action, for which a tax is paid, are quantitatively unmeasurable; or, so far as they may be measured, they accrue to the individual not as a special result, but as an incidental result, of his participation in the common weal. The benefits of the army, of the judicial system, of the consular and diplomatic service, and of all the other objects for which expenditures are made and taxes in general are levied, do not accrue to any one taxpayer more than to another. Even in local finance, where a general tax is levied to defray all the local expenditures, it cannot be maintained that the benefits arising from the action of the local judiciary,

of the police, of the fire service, of the board of health, or of the other departments of local government are separately measurable for each individual. One may value the benefits greatly, while another may feel less interest in that particular branch of the administration; yet this cannot be permitted to change the measure of their obligations to the government. Every member of the community for which these expenditures are made must contribute to these expenditures in proportion to his means to pay. If the government neglect its duty and fail in protecting his person from violence or his property from fire or from destruction, he may use his political rights in overturning or in improving the administration; but he has no shadow of a claim for a diminution of his tax rate. Protection and taxation, in this sense, are not correlative.

We have thus far been dealing with general taxes, whether federal, state or local. A general tax is a tax levied for general public purposes. But it may happen that government desires to raise money for some special purpose, and the tax is then called a special tax. Thus there may be a special tax levied upon the whole community to defray the cost of a war, or there may be a special local tax to defray the cost of some particular department. So, too, in a few of the American states, like New Jersey, we find not only a special school tax, but special taxes, of the same nature as the English local rates, for police or for lighting or for fire purposes. Here, indeed, a special section of the community is singled out; and one area is subject to the poor rate, while perhaps another is subject to the watching or the lighting rate. The charge, however, is still a tax, levied according to the generally recognized criterion of ability; for although the particular area which is benefited is put into a separate class, the benefits to the individuals of the class are general, not special, exclusive, or individual benefits. Although all the persons liable to this special tax are subject to the tax only because the section, as a whole, derives a benefit, yet each individual derives a benefit, if at all, simply as a member of the section; the government does not do any one particular thing for him, as apart from the other members of the section. The "rate" is a special tax as opposed to a general tax, because it defrays a special expenditure of government; but as to every one within the section, the tax is payable whether the particular individual receives much or little benefit.

In the poor rate, for instance, the original law expressly provided for assessments according to the ability of the parishioners, or, as it was subsequently expressed, *ad statum et facultates* of the inhabitants. The degree of benefit accruing to each ratepayer is immaterial; for the rate is levied on all the inhabitants according to the English test of ability to pay, which was originally general property, but which has since then been confined to productive real estate.

On this poor rate all the other local taxes, with only one or two exceptions, were built up. Of the church rate nothing more need be said, since it has always been imposed on the same principle as the poor rate.[1] The sewers rate was originally levied by a law of 1427, which, as well as its successor of 1531, does indeed speak of the benefits or advantages to be derived. Some recent writers have been misled by this statement into the belief that it is a precedent for the principle of betterment. A careful reading of the original acts, however, proves that the benefit is jurisdictional only, i.e. that a certain district is to be selected where the inhabitants derive a benefit from this governmental action, but that the rate or tax is to be assessed on each individual according to the quantity of his lands, irrespective of the degree of benefit conferred upon him.[2]

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[1] The church rate is said formerly to have been made by common estimation. "What principle this common estimation was founded on does not appear, but it was always undoubtedly in reference *ad statum et facilitates*, that the burden was imposed." *Report of the Law Commissioners on Local Taxation*, 1843, 8vo edition, p. 43. Cf. ibid., p. 22.

[2] The law of 1427 enjoins the commissioners "to enquire … by whose default such damages have there happened, and who doth hold lands and tenements, or hath any common of pasture or fishing in those parts, or else in any wise have, or may have, the defence, profit and safeguard, as well in peril nigh as from the same far off, by the walls, ditches, gutters, sewers, bridges, causeys and wears, and also hurt or commodity by the same trenches, and then to distrain all them for the quantity of their lands and tenements, either by the number of acres or by their plow lands, for the rate of the portion of their tenure, or for the quantity of their common of pasture or fishing, together with the bailiffs of liberties and other places of the county and places aforesaid." 6 Hen. VI., chap. 4.

The law then directs the commissioners to make, repair, or cleanse or stop up the trenches, etc., "so that no tenants of lands or tenements' … nor other of what condition, state or dignity, which have or may have defence, commodity and safeguard by the said walls, ditches, etc. … or else any hurt by the same trenches … shall in anywise be spared." *Ibid.*, chap. 5.

At that period the test of ability to pay was the quantity of land, but later the test became the rental value of the land. It has, moreover, been repeatedly decided that the sewers rate must be levied on the principle of ability, so that the official commission tells us that the sewers rate "is commonly imposed in exactly the same manner" as the poor rate.[1]

Even American commentators have been led astray by the example of the sewers rate.[2] It is true that landholders lying beyond the area in question cannot be taxed, because they do not belong to the class; but the essential point is that all the members of the class are taxed, not according to the benefits they receive, but according to their abilities. The official commission tells us explicitly: "It is an indispensable condition (of the sewers rate) that a person taxed may by possibility receive benefit from the expenditure of the tax, and therefore holders of mountainous or high ground which cannot be surrounded, are in general exempt. *Still, the exact measure of the benefit is not the measure of the liability to be taxed.*"[3]

The law of 1531 contains almost the same words, and assesses the rate "after the quantity of their lands, tenements and rents, by the number of acres and purchase, after the rate of every person's portion, tenure or profit." 23 Hen. VIII., chap. v. There is no mention of any varying degree of benefit as the basis of the rate.

[1] *Report of the Poor Law Commissioners on Local Taxation*, p. 22.

[2] Cooley, *Taxation*, chap. xx. Baumann, *Betterment* (1893), p. 6, correctly enough calls attention to this: "It is most important not to confuse rating zones … with betterment. All the individuals within a rating zone pay the same proportion irrespective of the quantum of benefit which each individual may receive. But the quantum of benefit received by the individual is the essence of betterment."

[3] *Report of the Poor Law Commissioners on Local Taxation*, p. 65. The statement in the text is strictly true of the ordinary sewers rate. Yet in more recent years there is an occasional instance of a charge under special sewers acts, where we find not only a separate area for the property benefited, but where it is permissible to levy a charge on each separate piece of land according to the benefits specially derived. These isolated examples would indeed be precedents for "betterment taxation" or assessment according to special benefit. So the *Metropolitan Sewers Act* of 1848 gave the commissioners power to levy the charge on the various "lands or tenements in proportion to the several lengths of frontage abutting on such sewer as aforesaid or when all the lands or tenements specially benefited or drained by such works, or when in any other case an assessment according to frontage shall appear to the commissioner inequitable, then in such proportion as the commissioner shall determine, such lands or tenements to be benefited by such work." 11 and 12 Vict., chap, cxii., sec. 81. This is quoted in the Orange Book of the London County Council. But

A possible approximation to the principle of benefits is found in the English lighting and watching rates, where a distinction is drawn between land proper and improved property, and where the occupiers of land pay only one-third as much as the occupiers of houses and

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the compiler, Mr. Charles Harrison, docs not always adequately distinguish between such cases and many of the other so-called precedents, where the matter of benefit is jurisdictional only. He may have been led astray by the *Report of the Select Committee of the House of Lords on Conservancy Boards*, 1877, no. 371, which accepted the statement of one of the witnesses of "the principle introduced by the statute of Henry VIII., and observed ever since, of taxing in proportion to the benefit conferred in each particular case." See *Report*, vi. The statute of Henry VIII., as we now know, spoke only of a jurisdictional benefit.

As to the later sewer acts, it has been repeatedly decided that "if property is situate within the area benefited by the sewers, it must contribute without any reference to the amount of benefit derived." See Reg. vs. Head, 3 B. & S. 419; 32 L. J. M. C. 115; 9 Jur. (N. S.) 871; 8 L. T. 708; 11 W. R. 339. Cf. Boyle and Davies, The Principles of Rating practically considered, 1890, p. 426.

Mr. Edwin Cannan, in his book mentioned above, which appeared since the above was originally published, seems to be guilty of the same confusion. In fact, he goes even further and seems to posit the benefit principle (betterment) and the ability principle as two contrasted, but historically almost equally valid bases of local taxation. Cf. *The History of Local Rates in England*, p. 50. As a matter of fact, however, with only two exceptions noted supra, p. 434, every one of the instances of so-called benefit rates which he adduces is an example only of jurisdictional benefit. Thus the act providing for the rebuilding of the Scarboro pier in 1546, printed in full in Cannan, pp. 35-37, mentions only that if the pier were so repaired, all the lands and houses within the precincts of the town "might be set or letten for much greater rents or farms," and then proceeds to levy one-fifth of the rents on all owners irrespective of whether the particular rent was increased or not. The next case, the act of 1566 for the preservation of grain {op. cit., pp. 41-42), levies a tax on all lands according to quantity, to defray the expense of exterminating birds and vermin, irrespective of whether the particular piece of land was benefited or not. So the act of 1555 for re-edifying forts in Scotland (ibid.) taxes all property owners in the four counties according to the size of their estates, their profits, or "other commodities there." The few remaining cases mentioned by Cannan cannot even remotely be regarded as betterment rates.

If the distinction between a special benefit and a jurisdictional benefit is borne in mind, and if, as is proper, the term "benefit principle" is reserved for the former, it will be realized that to put the benefit principle on an alleged equality with the ability principle in local taxation as Mr. Cannan does is to present a distorted view of the real state of affairs. Hallgarten, *Die kommunale Besteuerung des unverdienten Wertzuwachses in England*, Stuttgart, 1906, pp. 46-47, accepts my position.

other buildings.[1] Whether this act really had in mind the question of benefit at all is doubtful. The question assuredly played no role in the adoption of the present rule under which the ordinary poor rate is charged upon only one-half of the rateable value of land. Even if the matter of benefit was considered in the lighting and watching rate act, it must be remembered that here there are still only two classes—lands and improvements—and that the charge upon the individual occupier is not proportioned to the special benefits he receives; he is thrown into a general class with all others in the same category, and within this category every one pays according to his ability.[2] The lighting and watching act, however, being optional, is now in force only in a few hundred rural parishes, which have adopted it; and in most cases, as well as in all urban parishes, the lighting and watching rates, like all the other English local rates, are at present commonly levied in exactly the same manner as the poor rate—that is, according to the ability of the rate-payer.[3]

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[1] *Lighting and Watching Act of 1833*. See also 18 and 19 Vict., chap. 120, sec. 165.

[2] This is overlooked by Mr. Harrison in his collection of precedents in the *Orange Book.*

[3] "All these legal varieties are disregarded in practice," and the rates are made "on the same persons, on the same basis, and by the same scale as the poor's rate." *Report of the Poor Law Commissioners on Local Taxation*, pp. 65, 67. The only exception to the rule that all local rates are assimilated to the poor rate is at present (1912) in addition to the lighting rate (for watching is of course obsolete since the advent of the police system), the sanitary rates, which are legally chargeable on agricultural land, railways, etc., at one-fourth only of the rateable value.

While the above-mentioned report is exceedingly valuable for its facts, it is sometimes confused in its economics. Thus we find the following passage:—

"For any system of taxation to be fair, it must bear a proportion both to the benefit conferred upon the taxpayers by the expenditure of the tax and to the means which the person possesses of paying the tax. It is, however, in all cases found to involve insuperable practical difficulties to combine both these conditions in the imposition of a tax, and it seems most usual to assume that the benefit derived is in proportion to the ability to pay, or that the ability to pay is in proportion to the benefit derived. In most of the local taxes the ability to pay is the standard of taxation. In some, however, where the taxpayer has a definable share of the benefit of the expenditure, the proportion of the benefit enjoyed is made the standard of taxation. In other cases both principles are attempted to be combined," p. 43.

As a matter of fact, the only examples of "benefit" adduced by the commission are the sewers rate and the lighting and watching rate. In the former the assessment

The English rates are thus nothing but taxes—special taxes, it is true, but levied according to the principle of all direct taxation, on faculty or ability to pay. Whether the local expenditure is defrayed by one general tax, as in some counties, or by a number of special taxes, as in England, is immaterial—in each case we are dealing with a tax proper.[1]

But when we leave the principle of ability—as measured by property or by rental value or by any other test—and come to a payment which differs in each particular case, and which is proportioned to the special or exclusive benefit accruing to the particular individual, it is apparent that we are dealing with a very different kind of charge. Instead of the principle of faculty, we now have the principle of equivalents. The charge is not a rate or tax except in the wider sense that every compulsory charge levied by government may be called a tax, because it can be imposed only by virtue of the power of taxation. As we have seen above, however, the taxing power may manifest itself in different forms; a local rate is an example of one form, a highway toll or a cab license fee of another, a betterment charge of still another. Few Englishmen would say that a highway toll or a cab license is a rate or tax; yet a toll and a tax differ from each other scarcely more than do a local rate and a betterment charge. A local rate is levied for the purposes of the whole community or of a definite class of the community, according to the principle of capacity or

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by acreage is assumed by the commissioners to represent the principle of benefit; the assessment according to "profitableness," the principle of ability. This is a mistake, because, as we have seen, taxation of land by mere quantity was at one time everywhere the test of ability. In the lighting and watching rate "both principles," we are told, "are adopted, though very clumsily and inadequately." As has been explained, however, in the text there is no question here of assessment according to special benefits to particular individuals. Thus the only examples adduced by the commission admit of a different interpretation, and the commission itself states "that the whole of our local taxation is imposed either by law, or by usages regardless of the law, on the same basis as the poor's rate."

[1] Professor Bastable, *Public Finance,* p. 364, thus errs in stating that the English local rates are "measured for each payer by the benefit of the service," and that "local taxation should be in proportion to advantage." In Rex vs. Mast, 6 T. R. 154, the principle of local taxation is laid down that "each inhabitant should contribute according to his ability, which is to be ascertained by his possessions in the parish." Cf. also Boyle and Davies, op. cit., p. 99.

ability to pay; a highway toll or a cab license fee or a betterment charge is imposed on particular persons for special benefits accruing to the individual as such.

Thus the problem is solved. A betterment charge (or special assessment) is at once a tax and not a tax. It is a tax in the sense that all compulsory charges are taxes, because they are imposed by the taxing power of government. But it is not a tax in the narrower and common sense of the term. It is not a tax in the sense that the income tax or the house duty is a tax; it is not a tax in the sense that a local rate is a tax; it is just as much or as little of a tax as a marriage license fee. If we persist in employing the term tax for all manifestations of the taxing power, it will be necessary to coin a new word for taxes in the narrower sense, as distinguished from fees and special assessments. It is the thing, not the name, that is important; and the confusion has arisen simply from the fact that we employ the same term, sometimes for the one conception, sometimes for the other. Much trouble would be avoided if the payment were called simply a betterment charge or a special assessment, as opposed to a local rate or tax.[1]

[1] The entire contention of Baumann, *Betterment, Worsement, Recoupment* (1894), p. 36, in opposition to Mr. Harrison's statement that betterment in the United States has been decided not to be taxation, rests on a failure to observe the distinction made in the text. "Special assessments" may indeed be "an exercise of the taxing power"; and yet "betterment" is not necessarily the same thing as "taxation." So also Mr. Baumann's criticism of Mr. Cripps' distinction (pp. 39-40) rests on a complete misconception.

This is a convenient place to call attention to the errors in Mr. Baumann's earlier book, Betterment (1893). He entirely misunderstands Judge Cooley in imagining that that author condemns the practice of estimating the benefits accruing to each lot separately. As Mr. Rosewater points out in the *Political Science Quarterly*, viii., p. 764, what Judge Cooley really disapproves, and what is now quite generally held to be unconstitutional, is the practice of charging upon the abutting owner the cost of the particular improvement in front of his lot only, without reference to the benefits along the whole line of the work—in fact, without apportionment. From this misconception, Mr. Baumann has fallen into grievous error. He also fails to distinguish the safeguards thrown about the exercise of eminent domain in the American commonwealths from the procedure required in levying special assessments. It is, in most cases, merely an accident that the proceedings for the two operations happen to be joined together.

There are many other mistakes in the volume, as, for instance, the statement that special assessments are unconstitutional in Minnesota (p. 75); that their constitution-

III. The Principle

The theory of the betterment charge or assessment according to benefits is very simple. It rests upon the almost axiomatic principle that if the government by some positive action confers upon an individual a particular measurable advantage, it is only fair to the community that he should pay for it. The facts may be in question, for it may happen that the particular advantage is only ostensible, or that the special benefit is not measurable. But the facts being given, the principle seems self-evident.

In our discussion of the single tax, it was pointed out that there is a distinction between unearned increment in general and the betterment principle in particular. The single tax on land values was found to be inequitable because benefit is not the general principle of taxation, and because, even if it were, it would not mean a single tax. The benefits of general governmental action are quantitatively unmeasurable; we do not, by paying taxes, purchase a definite amount of advantages from the government as we buy a certain quantity of tea from the grocer. But if the government performs some special service for us, there is no reason why the public at large should pay for it: to the extent that the community as a whole is interested in the service, it is proper that it should contribute to the expense. If it is wholly a matter of common interest, the community should pay all; if it is wholly a matter of individual benefit, the individual should pay all; if it is partly common and partly individual, the cost should be divided and the individual should pay up to the amount of his measurable special benefit. In the one case, the expense is met by a tax or rate; in the second, by a fee or toll, or by a special assessment or betterment charge; in the third, by a combination of both methods. To object to a betterment charge because it is not levied according to the principle of ability to pay is as illogical as to object to a tax because it is not levied according to the special advantage derived. We must not apply

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ality is still doubtful in Illinois (p. 76); that Adam Smith lays down value as the only standard by which taxes can be apportioned (p. 81); and that American judges allow special assessments for benefit with reluctance (p. 100). On p. 80 we find the same confusion as that alluded to above in the later work. Most of the objections in this later book are too frivolous to deserve any reply.

to one principle of public contribution the test peculiar to another principle.

When, therefore, the local government performs a definite act and makes a definite expenditure the result of which is a clear and measurable accretion to the value of some particular piece of property, every consideration of logic and justice demands a special contribution by the owner to defray this expenditure.

As a principle, this is really no longer debatable. Even so conservative a body as the Committee of the English House of Lords, after hearing all the arguments in opposition, has recently come to the conclusion that—

> "The principle of betterment—in other words, the principle that persons whose property has clearly been increased in market value by an improvement effected by local authorities should specially contribute to the cost of the improvement—is not in itself unjust, and such persons can equitably be required to do so.[1]

This concession practically marks the close of the contest on the question of principle, in England. The methods of carrying out the principle are indeed debatable; but in its broad lines, the theory is now accepted in the chief quarter where opposition could be expected.[2]

A subject much discussed in connection with betterment is that of "worsement." If an individual has to pay for a benefit, it was claimed that his neighbor should be recompensed for damages to his property, caused by a public improvement. The committee, however, decided that injury to property was to be taken into account only

[1] *Report of the Select Committee on Town Improvements*, 1894, p. iii.

[2] The legislative history of betterment in England is interesting. The first bill was the Strand Improvement bill of 1890, in which the betterment provisions inserted by the London County Council, and adopted in the chairman's draft report, were struck out by the Select Committee of the House of Commons. The next was the Cromwell Road Bridge bill of 1892, in which the betterment clause was struck out by the committee by a majority of one. Then came the London Improvements bill of 1893, providing for a new central street from the Strand to Holborn. This passed the House of Commons but was defeated in the House of Lords' committee. Finally came the Tower Bridge Southern Approach bill of 1894, which after various mutations was approved by the House of Lords' committee, and became law in 1895, as 58 and 59 Vict., ch. cxxx. In this act the payment is termed an "improvement charge."

when a betterment charge was imposed upon the same owner for benefits accruing to his property in the immediate neighborhood, by the very same improvement. Further than this it was unwilling to go. As it has been well said, it is nothing less than a grotesque absurdity to suggest the creation of new vested interests in the perpetuation of such public evils as overcrowded and insanitary slums and in circuitous modes of communication.[1] In the Tower Bridge Act of 1895, as well as in the Standing Orders of the House of Lords adopted in July, 1895, the legitimacy of "worsement" has been recognized, but only within the above very narrow limits.

A plan sometimes urged as calculated to attain the same results as the betterment system is that of "recoupment." It has occurred that in making an improvement the municipal government or other public body has taken more land than was actually necessary, and after the execution of the work has sold the land at a higher price, thus retaining for the community the increment in value. In was shown by the testimony before the Lords' committee that, as a matter of fact, these transactions had generally resulted in loss rather than in gain; but it was claimed that this was due in large part to certain defects in the law. The committee reported itself "as not satisfied that it has ever been tried under circumstances calculated to make it successful."[2] Subsequent experience with the principle, however, has proved to be far more satisfactory and the recent successful application of the principle in the construction of the Kings Highway in London and in various other notable improvements has thus paved the way for what is now being strongly urged in many American states under the name of "excess condemnation."[3]

It is evident, however, that the real difficulty with betterment lies in the details of its execution. In the United States, where the system has for a long time been thoroughly at home, it has been deemed sufficient to approximate roughly to the benefits conferred. In no department of public contribution is it ever possible to gauge with

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[1] G. H. Blunden, *Local Taxation and Finance*, 1895, p. 95.

[2] "No sufficient power has ever yet been given to the local authorities to become possessed of the improved properties without buying out all the trade interests—a course which is inevitably attended with wasteful and extravagant expenditure." *Report*, no. 10 (of recommendations).

[3] This principle was adopted by constitutional amendment in Ohio in 1912.

precision the exact relation of the individual to the public purse. With special assessments, as with other operations of public finance, the best that governments can do is to reach substantial justice. The decision is left to the legally constituted authorities, and the assumed benefit, which is to guide the authorities in their decision, is not always necessarily the exact actual benefit, a fair approximation to the real benefit being now considered adequate for practical purposes. This result, however, has been reached only after considerable experience.

In England, on the other hand, where the principle has only recently been introduced, far more solicitude is shown, because the opposition of the vested interests is naturally stronger. The committee recommended certain rules, most of which have been incorporated into the Tower Bridge Act of 1895, which are intended to limit the charge to the amount of actual benefit, and to protect the owner against any possible abuse of the system.

He must be notified not only of the proposed charge before the commencement of the projected improvement, but also of the alleged increase in the value of his property within some reasonable period after the completion of the work.[1] Furthermore, if the owner objects, the matter is to be decided by an arbitrator or a jury, the costs being borne in general by the local authority. Finally, if the owner still thinks that the charge exceeds the enhancement of value to his property, he may demand that the local authority purchase the property at its market value.[2]

These provisions are interesting, the last being almost identical with the provisions of the recent New Zealand law explained in another chapter. In New Zealand, it is applied to progressive taxation; in England, it is recommended for the betterment charge. In each case it is simply a protection of the individual against arbitrary administrative action. The other provision as to costs seems to be a

[1] "The period should not be so short that the effect of the improvement could not be adequately tested, and it should not be so long as to make the property intended to be charged suffer in its market value by the suspension of the decision as to the charge." *Report,* no. 3. In the Act of 1895 the limits are twelve months and three years. 58 and 59 Vict., ch. cxxx., sec. 36 (4).

[2] *Report,* no. 7. The clause as adopted in the Act of 1895, sec. 36 (9), provides that the option of selling must be exercised before the arbitration.

little unfair to the government, as it puts a premium on litigation and is calculated to interfere with the prompt completion of the work. All these points are, however, matters of detail which can easily be adjusted.

The Tower Bridge Act of 1895 was the first of the new English laws to incorporate the betterment principle. A few years later the same principle was recognized in the London County Council Improvements Act of 1897,[1] followed by a similar act in 1899."[2] In fact between 1895 and 1902 there were no less than nine London County Council Improvements acts which provided for betterment charges. But from then to the end of the decade the pace seems to have slackened and we find no more improvement acts at all. In 1909-1910, for instance, the receipts from betterment charges in the budget of the London County Council amounted only to the paltry sum of £395 out of a total revenue of £11,988,699.[3] The system seems, however, to be making its way slowly throughout the Country, for the Housing and Town Planning Act of 1909 which is of general application, contains the following clause:

> "Where by the making of any town planning scheme any property is increased in value, the responsible authorities, if they make a claim for the purpose within the time (if any) limited by the scheme … shall be entitled to recover from any person whose property is so increased in value one-half of the amount of that increase."[4]

Allowance, moreover, is made for this in the new land value taxes referred to below,[5] by the following provision: "When any capital sum or any installment of a capital sum has been paid to any rating authority in respect to the increased or enhanced value of any land due to any improvements made or other action taken by the authority, the amount of that capital sum shall be deducted" in estimating the increment value duty or site value duty or reversion duty.[6]

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[1] 60 and 61 Vict. ch. ccxlii., sec. 42.
[2] 62 and 63 Vict. ch. cdxvi.
[3] *London Statistics*, 1910-1911, vol. 21, p. 413.
[4] Ed. VII, ch. xliv., sec. 58, subsec. (3).
[5] Cf. infra, chap. xvii.
[6] *The Finance* (1909-1910) Act, 1910, 10 Ed. VII., ch. viii., sec. 36.

The benefit principle, even though it is not applicable to taxation proper, has thus its undoubted place in the sphere of local revenue. That it is liable to abuse may be conceded;[1] but so is the principle of ability to pay. Taxes, like special assessments, have not always been levied with perfect fairness; but the departure from fairness must in these two cases be measured by entirely different standards. The system of special assessments, as has already been pointed out,[2] embodies a part at least of the truth in the unlearned increment doctrine. Dr. Rosewater puts the point admirably as follows:[3]—

> "Special assessment undoubtedly transforms a certain part of the enhancement of land values from an unearned increment into an earned increment. It does this at the very time that the benefit arises, thus avoiding every taint of confiscation of vested interests. Through it may be secured the chief advantages of the appropriation of the future unearned increment, without destroying the healthful stimulus arising from the private ownership of landed property. The total increase is seldom appropriated, but only so much as is required to defray that share of the cost of the particular improvement which may represent the special benefit conferred. We have here no uncharitable begrudging of all rise in value due to conditions other than those created by the party who reaps the advantage. All that is demanded is that when a person secures an enrichment to his estate, and the expense, if not borne by him, must be borne by some one,—in this instance, the taxpaying public—he shall make compensation therefor. This is the true equitable principle. The contributor pays not alone because he obtains a benefit, but because that benefit is joined to an expense the burden of which finds a fitter resting place upon his shoulders, than upon the shoulders of others not specially benefited."

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[1] For a history of these abuses, see Rosewater, *Special Assessments*, chap, iii.; also ibid., pp. 142-144.

[2] George A. Black, *The History of the Municipal Ownership of Land on Manhattan Island*, p. 78. Columbia University Studies in History, Economics and Public Law, vol. i., no. 3.

[3] Rosewater, *Special Assessments*, p. 140. Cf. the articles on "The Betterment Tax," by the Duke of Argyll and by John Rae, in *Contemporary Review*, vols. lvii. and lviii.

In the United States the betterment principle has long been firmly rooted in the revenue system; and although there may be particular cases in which it has not worked well, the evidence of experience and the popular verdict as to the methods employed are overwhelmingly in its favor. On the continent of Europe the system is now fast spreading because of the growing importance of municipal finance and of the more careful analysis of its underlying principles. England, which has taken the lead in the reform of the national fiscal system, cannot afford much longer to lag behind in the movement for the just distribution of local burdens. Without the application of the betterment principle, such justice can scarcely be secured.