Mechanisms for Urban Value Capture Resulting from Public Actions

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Abstract

In Brazil, there are no appropriate policies to capture value increments resulting from public investment. Decreases in public revenue and the current financial crisis have pushed local governments to find alternatives for new revenue sources. This project draws on a systematization of some American and Colombian experiences with value capture policies and instruments, as well as the experience of implementing public and private partnerships, to evaluate the opportunities and challenges of introducing new value capture instrument in Brazil. The goal is to implement taxation fairness and enable cities to undertake further investments. So, another issue is to discuss the nature of some instruments, to prove that Betterment Levy does not imply double taxation when it is applied together the IPTU (Property Tax).

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Table of Contents

1. Introduction **1**

2. Belo Horizonte and urban value capture **2**

2.1 - Situation of the Municipality of Belo Horizonte 2

2.2 - Constraints and Difficulties 3

2.3 - Challenges 4

3. Taxation and local governments in Brazil **5**

3.1 - Decentralizing revenues and responsibilities 7

3.2 - Centralization and municipal shortfalls 8

3.3 - The Tax Reform Bill 9

3.4 - Limits on municipal powers of taxation 10

4. Brazil´s Tax System **14**

4.1 - Tax 14

4.2 - Taxes, charges and the Betterment Levy 15

4.3 - Constitutional taxation principles 17

5. The Betterment Levy **18**

5.1 - Introduction 18

5.2 - Obstacles 19

5.3 - Limitations and Possibilities 20

5.3.1 - Cost or Valorization 21

5.3.2 - Semi-contract or Tax 25

5.3.3 - Special Assessment 26

5.3.4 - The BL, cost limit and owners´ contributory capacity 29

5.3.5 - Special Assessment: maintenance and investment 30

5.3.6 - Special Assessment: recent revenue collection 33

6. Clarifying Betterment Levy and bi-taxation **36**

6.1 - Juridical introduction 36

6.2 - Economic viewpoint 36

6.3 - Role of the IPTU 39

6.4 - Betterment Levy and the Flow and Stock concept 40

6.5 - Increased IPTU following Betterment Levy 42

7. The U.S. experience: other aspect **44**

7.1 - Structure of Government 44

7.1.1 - County 48
7.1.2 - Municipalities 49
7.1.3 - Township or Town 49
7.1.4 - Special Districts 50
7.1.5 - School Districts 55
7.2 - Public Works 55
7.3 - BID (Business Improvement District) 57
7.3.1 - What is a BID? 57
7.3.2 - Types of Benefits 58
7.3.3 - Commonest applications 58
7.3.4 - How is a BID implemented? 59
7.3.5 - Financial aspects 61
7.3.6 - BIDs in New York City 63
7.3.7 - Survey of BIDs 65
7.3.8 - Results 66
7.3.9 - The BID in Brazil 67
8. The Colombian experience 68
9. Conclusions 71
10. Bibliography 75
11. Additional reference material 78
List of Tables 79
Table 1: U.S.– Proportion of the Special Assessment in the Own Tax Revenues of States and Local Governments
Table 2: U.S.– Proportion of the Special Assessment in the Revenues of States and Local Governments, 1993
Table 3: U.S.– Proportion of the Special Assessment in the Revenues of States and Local Governments, 1994
Table 4: U.S.– Proportion of the Special Assessment in the Revenues of States and Local Governments, 1995
Table 5: U.S.– Proportion of the Special Assessment in the Revenues of States and Local Governments, 1996
Table 6: Evolution of the Special Assessment
Table 7: Evolution of the Special Assessment

Mechanisms for urban value capture resulting from public actions

1. Introduction

This text is the result of research undertaken jointly with the Lincoln Institute from April 1999 to March 2000[1] on the instruments used in property value capture resulting from actions undertaken by public authorities. `Actions´ in this context are understood to be public works and the creation of norms for the occupation and use of urban land.

The ultimate aim of the research will be encourage the application of these instruments, as appropriate, by the Belo Horizonte City Administration.

The study focused predominantly on taxation and fiscal aspects as opposed to urban planning *per se*, given that the Municipal Secretariat for Planning of the Belo Horizonte City Administration had for some time been carrying out valuable work in the latter respect[2]. The aim was therefore to complement this work and to proceed in tandem, seeking to involve the Finance Division of the City Administration more directly in the fiscal and tax aspects of the works in progress[3].

The basic research objectives were as follows:

(a) To identify the taxation and regulatory instruments available to the Municipal Authorities that would enable them to capture the property valorization (´land value increment´) resulting from actions pursued by the public authorities. This involved investigating the potential and limitations of such actions as well as ascertaining the purpose to which each instrument could be best applied, eg: (i) for urbanistic intervention *per se*; (ii) for financing works and/or (iii) for `social actions´ (popular housing etc).

(b) To review cases in which the same instrument served different purposes and was subject to different interpretations.

(c) To propose mechanisms for the financing and capture of property values that could be implemented by the Belo Horizonte City Administration (Secretariats of Finance and Planning) with a view to guaranteeing a source of finance for major structural works proposed in the City and Regional Master Plans.

(d) To suggest appropriate amendments to the municipal, state and federal laws governing tax legislation.

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[1] I undertook this study while occupying the post of Tax Auditor (*Auditor de Tributos*) of the City Administration of Belo Horizonte and also as a Visiting Fellow of the Lincoln Institute of Land Policy. The symbol in the text [*] denotes my highlighting, italics or personal comments/observations

[2] The SMPL's work on public works financing is mainly focused on urbanistic aspects. Plans for two major structural schemes are currently being scrutinised: lengthening the Av. Pedro II and widening the Av. Antônio Carlos.

[3] Consideration of the Betterment Levy (*Contribuição de Melhoria)* formed part of the *Program to Modernize Municipal Taxation Administration* drawn up by the Municipal Finance Secretariat, to be funded by the Social and Economic Development Bank (BNDES).

2. Belo Horizonte and Urban Value Capture

In the city of Belo Horizonte neither the Betterment Levy (*Contribuição de Melhoria*) nor any other land value capture instrument was employed to capture the increment value of property resulting from activities carried out by public agencies of any of the three levels of government (federal, state or municipal).

While a large number of structural public works was undertaken in the city with a direct and positive impact on the value of properties, questions were never raised regarding the appropriation by relatively few individuals of the profits arising from what amounted to investments made by the community as a whole. Examples of this included the road schemes Via Leste-Oeste, the Av. Cristiano Machado, the Av. dos Andradas, the Av. Raja Gabaglia and the Av Barão Homem de Melo.

Following the installation of the first popular-democratic municipal government and the approval, in 1996, of the City Master Plan, the issue has once again begun to attract the attention of the Belo Horizonte authorities.

Increasing public sector financial difficulties are now forcing the City Administration to seek funding alternatives for public works, especially those involving major financial outlay. "In this situation (identifying resources to defray community-related costs) the *Betterment Levy* surely plays a role. This levy, enshrined in the Brazilian Constitution, has been persistently disregarded by the authorities despite it being an efficient, fair and durable way to reduce the cost of public works. It is a device which can contribute to solving problems arising from the lack of State investment "(Santos, 1998).

It can also be argued from an ethical and juridical point of view that "absorption of the product of value capture by the authorities is perfectly legitimate when the value arises from works carried out by them. This flows from the principle that proscribes unwarranted enrichment and reflects the age-old principle of equity *(sum cuique tribure)*" (Dallari).

Other value capture instruments have been implemented in a number of countries, especially in the United States where innovative mechanisms have been thoroughly documented in research studies and surveys. The Lincoln Institute has provided support for this work and in the process has accumulated vast expertise on the subject.

2.1 The situation of the Belo Horizonte municipality

Belo Horizonte, the capital of the state of Minas Gerais, is also the capital of a Metropolitan Region comprising 26 municipalities with a population of about 4 million—2.1 million in the core municipality of Belo Horizonte and 1.7 million in the remainder. In common with large cities in developing countries, Belo Horizonte faces substantial problems in the popular housing sector (20 percent of the population live in *favelas*) as well as in education, public health, infrastructure and public transport. It also suffers from high levels of crime and unemployment.

Although in the early 1980s the city pioneered a law (*Profavela*) to incorporate slum

areas into the urban zoning scheme, serious problems remain unresolved. The aim of this law was to prevent *favela* dwellers from being removed from their homes and to provide opportunities for them to regularise tenure, in contrast to the former practice of arbitrary (and frequently violent) expulsions.

The Metropolitan Region depends heavily on the public services provided by the core municipality, particularly in the health area. Negative environmental impacts on the core area are difficult to avoid, such as pollution and obstructed watercourses. The close relationship between the capital and the other municipalities in the region can be gauged by the number of individual daily intra-metropolitan journeys: of a total of 3.2 million journeys, 2 million are within the capital, 700.000 between the capital and the other municipal areas and 500.000 between one municipality and another[4].

The annual total revenue of the City Administration is of the order of US$ one billion. The tertiary sector, comprising mainly the commercial sector and services linked to the public administration, is responsible for 81 percent of municipal GDP, while the industrial sector accounts for the remaining 19 percent. This fragile economic base severely limits the resources needed to address the municipality´s problems. To make matters worse, the classic solution, strengthening the local economy, has been impeded by the adoption nationally of recessive economic policies producing low levels of growth combined with high unemployment.

Despite the difficulties, the City Administration continues to pursue a clearly-defined agenda based on the four priority public investment areas set forth in the 1996 Master Plan:

(a) Completion and expansion of the highway system;

(b) Public transport upgrading (metro and bus system);

(c) Environmental improvement: providing green areas including parks, de-pollution and canalisation of valley bottoms etc;

(d) Popular housing: urbanisation of *favela* areas and the construction of new housing over and above the initial guidelines laid down by the *Profavel*a law.

2.2 Constraints and Difficulties

The City Administration has had to confront a number of major setbacks which have undermined its scope for action in the above areas. These include being forced to make financial outlays that often exceed its revenue capacity, problems with the revenue-collection structure itself and, most significantly, widespread ideological resistance to property-related taxes.

1. Municipal expenditure is increasing due to:

(a) The transfer of `social area´ responsibilities from the Union and the State (Minas Gerais) to the municipality. The concept of taxation decentralisation embedded in the

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[4] Source: BH Trans. 1995 data.

1988 Constitution was followed by the `municipalisation´ of responsibilities, made more unpalatable by the wave of neo-liberalism predicating `small government´ and the concurrent fiscal crisis weighing heavily on the Union and, more recently, the 26 states of the Federation.

(b) Increased social demands arising from the worsening unemployment situation.

2. Revenue losses have been caused by the following:

(a) A *cutback in municipal `own´ tax revenues* with the elimination of the tax on fuel and the unhelpful proposal by the Federal Government to withdraw from municipal control the Service Tax (*Imposto sobre Serviços*), which in 1997 alone represented 38 percent of the municipality´s own receipts.

(b) The *reduction of financial transfers from the Union and the states* as a result of constitutional changes, effectively leading to a scaling-back of the allocations normally derived from Income Tax (*Imposto de Renda*) and the Tax on the Circulation of Goods (*ICMS*).

(c) *Judicial decisions* that, despite Constitutional rulings to the contrary, effectively put an end to the fiscal progressivity[5] of the IPTU (Property Tax) based on different standards of properties (luxury, normal, popular) and eliminated a number of local taxes previously charged for eg: street lighting. In 1997 the IPTU accounted for 32 percent of `own´ resources.

3. A *shortage of investment resources* (only 5 percent available in the budget for investment). Other budget subheads include payroll (50%), general administration costs (30%), small works and infrastructure maintenance (10%) and consolidated debt (5%).

4. *Flaws in the revenue-collecting structure*. Although this has not hitherto been regarded as a serious problem (the municipality of Belo Horizonte is rated as one of the State capitals with good revenue collection) shortcomings need to be corrected[6].

5. *Significant resistance by owners* and the real estate sector in general with regards to taxation and particularly to the Betterment Levy.

2.3 Challenges

The Belo Horizonte City Administration therefore currently faces a number of major challenges:

1. The *need to identify new financial resources* by employing specific instruments to capture the value of urban property. This involves investigating the possible use of the Betterment Levy and negotiating public-private partnerships (PPPs) aimed at

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[5] Extra-fiscal progressivity remains in force and in the long term could lead to increases in the basic rate of the IPTU of unoccupied areas.

[6] IPTU indebtedness has risen to around 20% in recent years, probably reflecting problems in the collection of Active Debt and/or genuine cases of financial hardship among taxpayers.

rehabilitating distressed areas via `urban operations´ etc. Our research also raised the possibility of introducing the Business Improvement District (BID) - a kind of Special Assessment scheme widely used in the United States and Canada.

2. The need *to increase revenue* by reducing tax evasion and bad debts by upgrading enforcement procedures, providing a better service for the public, improving the cadastral records and securing payment of Active/Outstanding Debt (*Dívida Ativa*) more efficiently.

3. The need to *bolster economic development* by attracting non-polluting industries and modern service businesses (eg: informatics, financial sector, etc.) to the area.

The Belo Horizonte City Administration, through its Planning Secretariat, has been working since the previous administration on a number of studies related to the Betterment Levy. One of the first studies (1995) proposed charging a region-wide levy, based on **investment coefficients** calculated for the nine Regional Administrations within the municipality. The idea was for this charge to be levied annually providing the overall value of the investment works were at least 5 percent of the net revenues foreshadowed in the municipal budget (PBH, 1995). Following a series of questions raised by the Municipal Attorney General, the proposal was however not taken forward, but it is an interesting theory worth further investigation.

A separate study refers to the need to apply currently enforceable legislation, despite the constraints involved, so that work could commence on a public project (eg: the extension of the Av Pedro II) of major importance for the entire Metropolitan Region. This study adopted as its central motif: `greater access = higher land values´. A methodology was developed for defining the `area of influence´ of this particular initiative, the value appreciation of adjacent properties and the amounts of levy/tax applicable. Although the findings of this study have still to be implemented, a number of other studies on the feasibility of an *Urban Operation* in the region are nevertheless being incorporated (PBH, 1998).

3. Taxation and local governments in Brazil

A number of recent developments at Federal Government level have resulted in local governments having to forego resources normally derived from ´constitutionally compulsory transfers´ as well as experiencing cutbacks in their own revenues. The initiatives taken by the Federal Government were intended to engender simultaneously (i) a degree of `modernisation´ of the State and (ii) overall fiscal adjustment with a view to eliminating deficits in the national accounts. A number of contradictions have nevertheless arisen: if `modernisation´ means reducing the size of the state (ie: the reach and cost of the public sector) while decentralising competencies (ie: responsibilities and revenues), then the Brazilian government has clearly opted to press ahead with only the latter part of the scheme.

Perhaps the principal landmark in terms of `modernising´ in terms of the State apparatus occurred 10 years ago under the Collor Government (1990–92) which introduced the

Plano Nacional de Desestatização. This Plan, reformulated under the present government of Fernando Henrique Cardoso, included among its main objectives "to transfer to the private sector activities that are unjustifiably exploited by the public sector, and to concentrate on activities that are of fundamental importance to the State, and to contribute to the strengthening of the capital markets for the purpose of restructuring the private sector, especially in terms of infrastructure and industrial assets"[7].

In its attempts to achieve these objectives the Union succeeded in alienating the key steelmaking and mining sectors[8] as well as transferring to private ownership a number of vital public services - particularly in the electricity and communications areas[9].

The overall intention was to insert Brazil into the `globalised´ world (opening the economy, reducing the `Brazil Cost´, etc.). However, Brazil took the opposite direction to the prevailing international trend (especially visible elsewhere in Latin America) which involved decentralising resources[10]. This Government has in effect introduced measures to re-concentrate tax resources in the hands of the Union and has, furthermore, proposed a Tax Reform intensively focused on central government, which runs the risk of undermining the 1988 Constitution and the Federative Pact.

In addition to the above developments, decisions by the Judicial Power have impacted negatively on the collection of taxes and charges at municipal level. These decisions overall reflect the so-called `neo-liberal wave´ so much in fashion in Brazil today, of which the main feature is the propagation of the idea of `minimum government´.

Belo Horizonte, the third largest state capital in population terms, is a prime example of the results of the fiscal stranglehold affecting contemporary Brazil. Meanwhile, attempts to bolster municipal revenues have encountered a veritable obstacle course. The municipality has devoted time and effort to juggling its tax systems to try and increase revenue, while ensuring that tax justice is done through progressivity—particularly regarding urban land taxes. Unfortunately the Judicial Power is gradually narrowing the city's scope for action in this respect.

The Belo Horizonte situation highlights the impact of the fiscal crisis on the `decentralisation project´. This project has been steered off-course and is now seriously Brazil´s municipalities of funds. Government initiatives concerning `municipalisation´ have in reality produced the *decentralisation* of responsibilities and *centralisation* of resources, compounded by difficulties emanating from general taxation policies. Taxes and other charges that are `compulsory allocations´ (*aplicações consagradas*) and therefore vital for the functioning of the cities are increasingly subject to questioning by the Judicial Power.

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[7] The Plan was created under Law 8031 of 12/4/90 and reformulated by Law 9491 of 9/9/97 (Meirelles, 1999: 701).

[8] A number of other states of the Federation were similarly affected.

[9] The legal foundation for this is enshrined in Concessions Law No 8987 of 13/2/95.

[10] According to Afonso and Lobo: "Recent Latin American experience shows that a clear trend exists towards fiscal decentralisation in direct proportion to the consolidation of democracy in the region. Decentralisation is the outcome of a process whose influence varies from country to country depending on political, institutional and economic circumstances"

3.1 Decentralising Revenues and Responsibilities

In addition to their own-generated taxes, the municipalities normally receive transfers from the Union in accordance with the Constitution (the FPM and ITR) and from the States (IPMS and IPVA)[11]. The Federal Constitution of 1988 was endowed with highly decentralising tenets, giving the states and municipalities responsibility for defining a broad range of competencies and revenue-sharing arrangements[12]. The new Constitution even transferred responsibility for certain other taxes to the municipalities, for example the ITBI[13].

As expected, the decentralisation of revenues was also accompanied by a transfer of responsibilities - and therefore of costs. Municipalisation was most definitely on the agenda in response to the need to satisfy social demands (basic education, health, social welfare, sanitation and housing). The Belo Horizonte City Administration alone "increased expenditure on *Educational Maintenance and Development* by 74 percent between 1991 and 1995"[14].

The importance of the decentralisation project is indisputable from the point of view of more efficient allocation of resources. It has also given local people an opportunity to monitor more closely the activities of the local authorities[15].

However, revenue transfers (including \`non-constitutional´ SUS/National Health Service allocations etc) have not been sufficient to cover the costs now falling to the municipalities. The larger municipal areas, especially the capitals of metropolitan regions, are overwhelmed with social demands from their own populations and from those of neighbouring municipalities[16]—a situation which is steadily deteriorating with the growth of unemployment in general.

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[11] FPM-*Fundo de Participação dos Municípios* (Municipal Participation Fund). ITR-*Imposto Territorial Rural* (Rural Land Tax). ICMS-*Imposto Sobre Circulação de Mercadorias e Serviços* (Tax on Circulation of Goods and Services).

[12] "Municipalities´ own tax revenues increased from 0.7% of GDP in 1988 to 1.3% in 1994. At the same time, the tax take of the Union (excluding Social Security) declined from 9.4% of GDP to 8.4%" (Pimentel, 1998).

[13] ITBI-*Imposto sobre a Transmissão de Bens Imóveis "Inter-vivos"* (Tax on Tranfers of Inter Vivos Real Estate).

[14] Pimentel, op. cit.

[15] Spahn, despite scepticism regarding the limitations of decentralisation, recalls that "the theory of federalism argues for the decentralised provision of public services, thereby increasing efficiency, given the fact that governments are in a better position to supply such services because they benefit from information. Population mobility and competition between local governments in the provision of services will guarantee that these will satisfy the needs of both communities and local governments" (Spahn, 1998).

[16] In this respect Vazquez states that "(…) efficient provision of government-run services requires the governments involved to meet the needs and preferences of the taxpayers, insofar as this is possible. The best way to do this to ensure that services are administered by the lowest possible echelons of government, compatible with the size of the service beneficiary area. For example, the beneficiary service area for public sanitation is obviously the local community, whereas air traffic control is a service covering the entire country. To devolve public services covering larger areas to minor units of government would however probably result in inefficient under-provision of such services, e.g.: a health post providing regional health services and financed by a single municipality would attract other municipalities to \`piggy-back´, thereby reducing the efficiency of the operation. Moreover, efficiency in public services provision tends to increase if the benefits of consumption are linked to the actual costs involved in their supply on the basis of local fees or taxes" (Vasquez, 1998).

Furthermore, the fiscal crisis affecting the Union and the states has over the last few years forced the introduction of significant changes into the rules of the game governing prerogatives and responsibilities (ie: the correlation between revenues and costs of the federative entities).

3.2 Centralization and municipal shortfalls

The sequence of losses sustained by the municipalities began in March 1993, less than five years after the introduction of the new Constitution, with the promulgation of Constitutional Amendment Number 3 introducing the IPMF, a tax on the movement or transmission of amounts, credits and entitlements of a financial nature properly falling within the competence of the Federal Government. As a form of compensation for having created yet another tax, the IVVC (tax on retail sales of liquid and gas-based fuels with the exception of diesel oil)[17] formerly within the remit of the municipalities, was suppressed.

In addition to the loss of the IVVC to the municipal coffers, two further measures were introduced: the *FEF* and the *Kandir Law*.

<u>FEF</u>

Initially introduced as the Social Emergency Fund in March 1994[18], the FEF (Fiscal Stabilisation Fund[19]) has been reissued a number of times and will remain in force up to December 1999. With the aim of "improving Federal Public Finances", the FEF effectively draws from the State and Municipal Participation Funds (*Fundos de Participação dos Estados e dos Municípios*) resources derived from Income Tax (IR) based on the following calculations: (i) the portion of the income tax discounted at source relating to payments made by the Union; and (ii) 5.6 percent of the total IR take. According to the Secretariat of the National Treasury, the sum withdrawn from the Participation Funds represented in 1996 almost 13 percent of the total IR[20].

<u>Kandir Law</u>

Complementary Law number 87 of 13 September 1996, known as the *Kandir Law* (after the ex-Minister of Planning Antônio Kandir), exempted from payment of the ICMS all products for export, with the aim of making them more competitive in the world market. This law, once in force, went beyond its primary objective of providing incentives for exports by expanding the system of tax credits (compensatory discounts eliminating the cumulative calculation of the ICMS) related to those goods and services that do not

[17] The IVVC was established by Article 156, Item III of the 1988 Constitution as a municipal tax to replace the old single tax on fuels and lubricants (under Union control). For further information see Fernandes, 1998.

[18] Constitutional Amendment of Revision No. 1, dated 1/3/1994. The Emergency Social Fund during fiscal years 1994 and 1995 aimed to “substantially improve public finances and stabilize the economy, with resources to be applied as a priority for funding health and education and for providing pension benefits and continuous welfare assistance, involving meeting the backlogged liabilities of the welfare system and budgetary expenses associated with programs of relevant economic and social interest”.

[19] Introduced by Constitutional Amendment No 10 of 7/3/1996.

[20] According to a study (undated) by Deputy Paulo Bernardo (PT-PR), Brasilia, the FEF also had call on the *Fundo de Amparo ao Trabalhador* (FAT) [Workers Welfare Fund] and was allowed to withdraw 20% of the revenue produced by the PIS/PASEP and PIS (charged to financial institutions).

participate directly in the production process, regardless of the eventual destination of a given product (external or internal market).

According to the Ministry of Finance "this law created opportunities for non-application of the tax given that it was extended to primary products and semi-manufactured industrial goods for export as well as for services rendered abroad and subject to ICMS taxation. The universe of non-application of the tax was broadened even further to include export operations involving the sale of merchandise in the domestic market to commercial exporting firms, including trading companies and the subsequent dispatch of this merchandise to in-bond customs warehouses. At the same time, the exports of semi-finished industrial products were also required to comply with the new rules governing ICMS fiscal benefits (…). The right to this credit was eventually extended to all those goods and services taxed under the ICMS and acquired by firms (eg: goods incorporated as companies´ capital assets, electrical energy consumed on premises, communication and transport services, production unit consumables, etc) regardless of the final destination of the product - the internal or external market" [21].

It is obvious that since collection of the ICMS is being scaled back, this continues to have a deleterious effect on the revenues of both the states and the municipalities (the latter receive 25 percent of the ICMS).

3.3 The Tax Reform Bill

Adding to the gloomy revenue scenario of the municipalities, a Tax Reform Bill presented by the Government is being debated in the National Congress. This aims *inter alia* at the following:

(1) Suppression of:

- (i) the Tax on Industrialised Products (IPI);
- (ii) the Tax on Operations related to the Circulation of Goods and the Provision of Interstate and Inter-Municipal Transport and Communication Services (ICMS);
- (iii) the Contribution to the Social Integration Program (PIS);
- (iv) the Social Contribution Arising from Net Profits (CSLL);
- (v) the Social Contribution for Salaries in the Education Area; and (vi) the Contribution for the Financing of Social Security (COFINS).

(2) Introduction of a **Federation Tax** on the Circulation of Goods, Merchandise and Services (the **new ICMS**) with all the features of a value-added tax, to be shared between the Union and the States and between the latter and their respective municipalities in the form of a `Participation Fund´ regulated by the Union and collected and enforced by the states [*][22].

The introduction of a Federation Tax is unprecedented in the history of the Brazilian tax system. This would amount in effect to the old ICMS, with the incorporation of a number

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[21] Ministry of Finance, 1997.

[22] Tax Reform – Justification for the Bill drafted by the Ministry of Finance (www.fazenda.gov.br

of other services in addition to inter-municipal and interstate transport and communications. The municipalities would retain their 25 percent share of the revenue accruing to the states, as at present.

Embracing the main services, this new ICMS in practice represents the withdrawal of the ISS that was formerly earmarked for the municipalities. It is interesting to note that the ISS, which was traditionally an important tax for larger municipalities with no strong industrial base, was the target of criticism by the Government when justifying the need for the Tax Reform Bill: "the ISS is a narrow-based cumulative tax which is not charged on the majority of services within the economy, and in many most municipalities it was not even introduced"[23].

This statement is arguable on two counts: (i) the inclusion of new services depends on a Complementary Law, approval of which has involved long battles with the municipalities; and (ii) according to a BNDES study, 93 percent of the municipalities in fact do charge the ISS.

In the event of the Government's Tax Reform being approved, the municipalities with economies based upon services will be seriously affected. In the case of Belo Horizonte, for example, the ISS represents almost 40 percent of the total `own´ tax revenue.

3.4 Limits on municipal powers of taxation

Given the re-concentration of tax revenues in the hands of the central government and ongoing cash flow difficulties, local governments are now seeking to increase their `own´ revenues. A further obstacle has appeared in this respect: the reformulation of concepts enshrined in tax law such as the progressive nature of the IPTU (tax on urban properties and land). This is unquestionably a tax with a `social function´ (particularly important in a country known for its inequalities) levied on property.

Municipalities such as Belo Horizonte which have over the last few years improved their collection of the IPTU (bringing their cadastral records up-to-date, revamping their property value assessment rolls and upscaling progressivity) suffered a major defeat.

The judicial discussion of taxation questions involving the financial authorities and taxpayers is an ongoing democratic exercise in Brazil. However, legal actions have tended to become the norm over the past few years and the doctrinaire assaults on taxes and levies ordinarily collected by the municipalities (concerning basic tax law questions) have frequently ended in defeat for the local Prefectures.

A judicial ruling with major repercussions was issued by the Federal Supreme Court (STF) in 1996 when it extinguished the progressivity of the IPTU[24], changing the system under which the tax rate percentages were calculated according to the standard of finish (built properties) and venal value (plots).

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[23] Idem.

[24] The suit (referring to urban land plots) was brought against the Municipality of Belo Horizonte which hitherto had won all the previous cases submitted to the Federal Supreme Court (RE 153.77 1-0 / MG.

The argument presented by the STF[25] was that the IPTU, on account of being a `real´ tax[26] (objective and nonpersonal) "cannot be regarded as a progressive tax given that the progressivity of tax rates based on the concept of contributory capacity (…) is something subjective and not objective: thus income or asset levels reflect variegated opportunities for owners to contribute to costs defrayed by the public authorities"[27].

Without entering into legal technicalities, this argument reminds one of situations in which a person, often a retired widow, lives in a mansion but has insufficient income to pay the IPTU ("property rich but cash poor"), although according to the law this would constitute an exceptional case and the tax would not in theory be levied.

The 1988 Constitution is explicit on this point, citing the progressive nature[28] of the IPTU twice (both in the sections relating to municipal taxes and in the chapter on Urban Policies). According to the STF, only the part related to Urban Policy needs to be applied since progressivity is only the **extrafiscal** objective as a means of "indirect coercion (…) not effectively a sanction, so that the social function of property is achieved"[29].

The Reporter of the legal proceedings concerned with this issue (voted down) disagrees, citing among others Geraldo Ataliba [30] who affirms that "extrafiscality consists of the employment of taxation instruments for non-collection objectives, for encouraging, inducing or restricting behaviors directed towards other ends and for underpinning other constitutionally-enshrined values, in this case urbanistic values (…), but this does not imply in any shape or form censuring progressivity for purely fiscal purposes, bearing in mind that this is the best and most perfect method reflecting the contributory capacity of owners within the climate of social solidarity predicated by the 1988 Constitution".

The text of the Federal Constitution is abundantly clear on the question of progressivity. One chapter (on the National Taxation System) refers to **fiscal** progressivity and another to **extra-fiscal** progressivity - in the section dealing with urban (not taxation) policies. In the latter case the phrase "progressive IPTU **in time**" is used [*].

[25] The decision was unanimous in favour of progressivity. (Reporter: Min. Carlos Veloso).

[26] According to the definition by Gianini (Istituzioni di Diditto Tributario), Milan, 1974, cited by Min. Moreira Alves "…real taxes are incurred on special goods/properties or yields or also on groups of goods or yields. These are considered objectively, without account being taken of the personal circumstances of the subject liable to pay the tax".

[27] Vote by Min. Moreira Alves (STF, RE 153.771-0 / MG).

[28] Article 156, Para.1 of the Constitution sets forth that the IPTU "can be progressive, in accordance with municipal legislation in order to ensure compliance with the social function of property". Furthermore, Article 182, Para. 4, states that "the Municipal Public Sector, on the basis of a specific law related to the area covered by the Master Plan, shall be entitled under Federal Law to demand that the owner of urban land that is not built upon or that is under-used or not used, promote its most advantageous use, failing which the owner shall be liable to a penalty of (…) time-sensitive progressive IPTU."

[29] Vote by Min. Moreira Alves (STF, RE 153.771-0 / MG).

[30] Ataliba, page. 235.

In any case, the decision has been taken and the repercussions of it are already apparent[31]. Elimination of progressivity began with the plots of land, followed by built properties, and other taxes will eventually go down the same route. The ITBI tax on `inter vivo´ transfers of real estate within the remit of the municipality could be among these and moves are already underway in this respect.

Other judicial disputes involving collection of taxes and other charges (many of which tend to end in defeat for the local administrations) have been held up by the courts[32]. Examples are the Inspection Fee for the Location and Functioning of Non-Residential Premises (TFLF), the Health Inspection Fee (TFS) and the Street Lighting Charge (TIP).

With regard to the first two charges above, the arguments contrary to their application can be resumed as follows: (i) the TFLF and the TFS employ the same basis for calculation (the floor area of the property) that is used to calculate the IPTU, vetoed under Article 145, Paragraph 2 of the Constitution and (ii) inspection under the TFLF regime does not in reality take place because the size of the area makes inspection difficult (and involves high costs) and delays arise for a number of reasons. The municipalities are for example responsible for drawing up details of the type and complexity of the inspections involved (eg: inspecting a hospital is quite different from inspecting a meatpacking plant)

The second argument depends on the circumstances of each municipality. Regarding the Public Street Lighting Charge, various courts have argued that this service does not fulfill the basic requirements for collection (specificity and divisibility) since the service is provided for the population as a whole and the resulting benefits do not accrue to individual taxpayers[33].

However, this was not the reasoning of the first-level judge (magistrate) who declared that "public street lighting falls within the category of public service[34] and is specific and divisible insofar as it can be effectively, directly or potentially used by property owners and occupiers, although it necessarily benefits all the persons living in a

[31] The City Administration of Belo Horizonte discovered a way of minimizing the loss by employing an average percentage tax rate on residential property of 0.8%, and on non-residential property of 1.6%, and by updating some of the official value assessment rolls. In order to avoid discriminating against taxpayers who were subject to increases, Law 7633 of 30/12/98 provided a discount: "Art. 2 - The person liable to pay the IPTU will be eligible for a discount equivalent to the amount of the value of the tax arising from the enhanced tax rates established by this Law."

[32] It is interesting to note that the municipalities frequently won their cases in the lower (*Primeira Instância*) courts.

[33] See *inter alia* the rulings handed down by the Civil Jurisdiction Court (*Tribunal de Alçada Cível)* of the State of Rio de Janeiro vs. the Municipality of Niterói (1994); of the Court of Justice of the State of Santa Catarina vs. the Municipality of Anita Garibaldi (1994) and of the High Court of Justice (*Superior Tribunal de Justiça*) vs. the Municipality of Rio de Janeiro (1997).

[34] Judge Janny Mary Kuss Serrano, of the Public Finance 3rd Divisional Court of the State of Paraná, gave a favorable ruling to the municipality of Curitiba in 1993, citing Hely Lopes Meirelles, in *Direito Municipal Brasileiro*, 6th Edition: "It would appear that the legal conceptualisation has not been particularly advantageous with respect to the "specific" nature of such services. It is our view that services exist that can be considered to be autonomous intervention units of public necessity or utility that are nevertheless generic - such as policing, public street lighting and street surfacing. On the other hand, "specific" services should be understood to be those services provided for particular categories of users. Such services are different from the "generic" services that are provided or put at the disposal of the community as a whole.

particular municipality".

It can be argued in favour of the Public Street Lighting Charge that an analogy exists with the Public Cleaning Charge for garbage collection and street-sweeping. Would it be possible, for example, to charge individually (eg: by the kilo?) for the amount of rubbish produced by each individual citizen? And how could individuals be assessed for street-sweeping?

The present position of the municipalities can be summed up as follows:

(1) Mounting costs as a result of the *transfer of responsibilities* from the Union and the States to satisfy social demands. Tax decentralization enshrined in the 1988 Constitution was followed by the municipalisation of liabilities and intensified by the `neoliberal´ wave predicating `small government´ and the onset of the fiscal crisis affecting the Union and more recently the States.

(2) A trend towards *loss of revenue,* especially `own´ tax revenues, as a result of the tax-centralising systems that have already been put in place and/or have been proposed by central government, to a great extent generated by the fiscal crisis and aggravated by a plethora of court actions.

(3) Efforts have been made to increase the tax take (modernisation and improved inspection methods, updating the cadastral registers, revising the portfolios/assessment rolls of real estate values, seeking new sources of income such as the Betterment Levy and examining schemes for public/private partnerships etc) with a view to responding to social demands and recouping lost revenue[35].

(4) A contradiction exists in the application of the `modernising´ neoliberal agenda which in essence extols the reduction of the State and decentralisation of competencies in an effort to generate efficiencies in the public sector. The Federal Government has however chosen to adopt only one part of this recipe, largely resulting in the decentralisation of *competencies* and centralisation of *resources*. Municipalisation of public services has not produced efficiency gains because the municipalities find it increasingly difficult to absorb the new competencies and the costs of the same. In short, decentralisation in Brazil has meant the municipalisation of public services without the money being made available to pay for these services.

Given the above circumstances, application of the Betterment Levy could be an important mechanism for capturing urban value resulting from public sector initiatives—resources that could be used for funding public investment.

[35] In the case of Belo Horizonte, in common with the larger municipalities of Minas Gerais, losses occurred with the new system of ICMS transfer that comes under the aegis of state legislation (25% losses on the municipal segment). The law that created the new criteria is known as the "Robin Hood Law" because, in theory at least, it `takes from the rich to give to the poor´, disregarding the fact that the largest concentration of poor people happens to be precisely in the State capital.

4. The Brazilian Tax System

In order to understand and evaluate the suitability of urban property value capture, a brief description of the structure of the Brazilian Tax System is called for. This involves examining the basic concepts of taxation in Brazil: the taxation assumption, the chargeable event, the tax basis calculation and taxation principles enshrined in the Constitution.

4.1 Tax

The National Taxation Code, Law Number 5172/66, Article 3, defines tax as follows: "*A tax is a compulsory pecuniary charge in cash or in a manner in which the value of the same can be expressed that does not constitute sanction for an illegal act, and is enshrined in law and collected on the basis of fully-binding administrative action*".

An interesting analysis of this definition is made by tax specialist Paulo de Barros Carvalho (1998), summarized as follows:

(a) "C*ompulsory pecuniary charge*" effectively means obligatorily making a charge in money that overrules any inherent concept of a voluntary charge. These charges are therefore totally divorced from the free will of the **passive subject** [36] (the taxpayer) who is obliged to pay this charge even when it militates against his interests [*].

(b) The expression "*in cash or in a manner in which the value of the same can be expressed*" contains two errors: the first is one of tautology, given that it has already been averred that the charge is a *pecuniary charge,* and the second given that it overstates the scope of tax charges because almost all goods can indeed have a *monetary significance*.

(c) The expression "*that does not constitute sanction for an illegal act*" is important for understanding the *specificity* of the tax, since illicit events are always linked to a degree of sanction. The <u>licit</u> character of the taxable event is clear, given that the juridical aspect of the tax is separate from the juridical relationship involving penalties imposed as a result of non-compliance.

(d) The phrase *enshrined in law* conveys the precept that no-one is obliged to do or fail to do something unless required to do so by law. "This is the canon of legality peremptorily enshrined in Article 5, Item II, of the Federal Constitution".

(e) The following phrase "*collected on the basis of fully-binding administrative action*" (an activity foreshadowed and set forth expressly in the Law, endowing the taxation authority with rights and duties) must be understood to mean, without the textual embellishments, that some important tax collection procedures depend on the will or the judgment of given administrators authorised to adopt the relevant procedures under the Law. However, it is impossible to foresee **all and every** action [*] (see Carvalho,

[36] In terms of the Betterment Levy the passive subject is the owner of the property in question that has appreciated in value exclusively as the result of a public investment.

1998).

4.2 Taxes, Charges and Betterment Levy

The 1988 Constitution establishes under Article 145 three kinds of taxes[37]:

> "The Union, the States, the Federal District and the Municipalities can institute the following:
>
> I. Taxes;
>
> II. Charges by virtue of the exercise of policing powers or for the effective or potential use of specific and divisible public services rendered to the taxpayer or made available to him;
>
> III. A Betterment Levy arising from the execution of a public work".

The distinction between a tax, a charge and Betterment Levy can be more clearly understood by describing the function of a Chargeable Event (*Fato Gerador*).

A definition of this is provided by Santos (1998): "Taxation provisions concern human behavior. When the individual undertakes in the physical world that foreshadowed in law (*a taxation assumption*)[38], a duty arises for this individual to pay the tax to the Public Authority. This concrete and real event is called a *chargeable event* that can incur a tax liability consisting of a legal association between the State on the one hand, as the *active* subject, and the individual on the other as the *passive* subject, with an obligation placed on the latter to deliver a given sum of money to the former".

According to Machado (1996), "*Tax* is characterised by the presence of a chargeable event separate from any specific state activity concerning the passive subject by whom the taxes are paid. *Charges* and *Betterment Levies* on the other hand are characterised by chargeable events inherent in the State". The chargeable events to tax are "events that are completely separate from any involvement by public bodies, such as to possess an income or an automobile, to distribute goods and certain services etc" (Santos, 1998). Hence, it can be said that tax is a non-binding tribute because there is no immediate countercharge to the taxpayer. On the other hand, *Betterment Levies* and C*harges* are binding but qualitatively different taxes: the Betterment Levy arises from execution of a public work, while the Charge[39] is the cost resulting from the provision of a service rendered by the public authority or a policing power.

The chargeable event of the Betterment Levy is the **benefit accruing to the property**

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[37] In RTJ-138, page 608, Min. Carlos Veloso draws attention to four types of charges: a) taxes b) fees c) other fiscal means such as Betterment Levy, charges raised to benefit social actions (policing, education etc), special charges, and d) compulsory loans.

[38] This is known in juridical terms as *taxation assumption* (Port: `*hipótese de incidência*´). The *taxation assumption* of the Betterment Levy is closely linked to property value appreciation.

[39] Charge and public price are frequently confused. The latter does not carry the compulsory nature of a tax, being essentially voluntary. The *public price* is by nature a service that is not provided exclusively by the State, leaving the citizen to select, if he wishes, other alternatives to meet his requirements. An example of this would be a photocopying service available in a public office – customers can either use it or avail themselves of a private sector facility.

as a result of a public work [*][40] and <u>not</u> the work in itself. Cases exist where a public work can actually cause the devaluation of certain properties, in the case for example of the construction of a deep trench in front of the properties. In other words, the `work´ is implicit.

Another important concept for understanding taxes is the *Calculation Basis*. This, as the name suggests, is the material criterion which determines the value to be paid by the taxpayer to the public authority - an important element that gives a concrete dimension to the chargeable event and, from a taxation point of view, constitutes the reference basis for determining a specific tax rate. Three examples of the tax calculation basis are (i) income, (ii) the venal value of a property and (iii) the price of a service or the sale of merchandise etc. *Charges,* on the other hand, have as their basis of calculation the cost of any service provided by the public authorities.

In summary, the overall process can be described as follows: (a) the law foresees a situation whereby the value of a particular property appreciates as the result of the execution of a public work (*taxation assumption* or *hypothesis*); (b) the value of a particular property actually occurs (*chargeable event*); and (c) the public authorities are obliged to apply the law by charging the tax (*Betterment Levy*). This charge must obviously be based upon something (the *basis for calculation*) for it to be collected.

With regard to the Betterment Levy, controversy has arisen concerning the `basis for calculation´. On the one hand many experts believe that the basis should be the *quantum* of the appreciated value (valorization) of the property, given that the objective is to **capture value** obtained by the private individual. For others, the basis for calculation is the **cost of recovering the costs of the public work** itself.

This as yet unresolved dispute was reignited on account of the excessively simplified treatment given to the subject by the 1988 Constitution." The courts, including the Federal Supreme Court, were inclined to employ the criterion of valorization arising from the property of an individual as the sole result of the public work and since this value appreciation is the main element in the assumption of tax incidence, this should be reflected in the basis for calculation" (Santos, 1998). The controversy continues.

A clearer definition of the basis for calculation of the Betterment Levy would help to resolve the problem of the upper limit to be placed on the charge[41]: the cost of the work on a *pro rata* basis or the total valorization of the area of influence occasioned by the specific public work. "The proponents of the `basis of calculation according to the cost of the work´ approach argue that this would be simple to calculate and would render the tax easier to collect. However, even if we adopt this criteria, we would still have to calculate the *quantum* of the average appreciation of the properties since the individual limit is the alleged difficulty which, despite not existing in reality, will nevertheless still

[40] Federal Supreme Court, Extraordinary Appeal no.140.779-4-SP, 2/8/95, cited by Santos, 1998.

[41] Regarding the limits of charging, the Judge of the TRF-5th Region affirms: "the municipality cannot charge a Betterment Levy amounting to more than was disbursed because this would imply the charging of a tax, and it cannot charge a Betterment Levy over and above the value that accrued to the properties because this would also constitute a tax" (Machado, 1996)

persist" (Santos,1998).

The following chart summarizes the Chargeable Event and the Basis for Calculation associated with each tax/charge.

Tributes	Chargeable event linked to State action	Basis for calculation
Tax	NO	Yield, cost of the service, value of the property etc.
Charge	YES	Cost of the service
Betterment Levy	YES	"Quantum" of Valorization or Cost of Public Work

4.3 Constitutional Taxation Principles

Carvalho (1998) lists the 10 main constitutional taxation principles, summarized as follows:

(1) The principle of *strict legality*: any individual can only charge taxes or effect increases in existing taxes by increasing the basis for calculation or the tax percentage rate pursuant to current legislation.

(2) The principle of *antecedence*: the law must be in force during the period preceding the beginning of the Fiscal Year in which it is proposed to collect the tax that has been created or increased.

(3) The principle of *non-retroactiveness* of the taxation law: the acquired rights or the perfect legal statute and judgement chronologically constituted before the issuance of a law are not subject to further liabilities.

(4) The principle of *taxation typology*: the taxation category is defined by the conjunction of two factors - the incidence assumption and the basis for calculation.

(5) The principle of *outlawing a tax* with a confiscatory effect: a complex principle - the idea of confiscation is not difficult, but problems arise with the actual definition of the concept.

(6) The *binding force* principle of taxation: in theory, all the taxation rights and duties

of the taxing authority are set forth expressly in law. In practice it is impossible to foresee every eventuality given that a large number of administrative actions are based upon discretionary acts dependent on the judgment or the volition of the appointed administrator.

(7) The principle of *geographic uniformity*: taxes enacted by the Union should apply uniformly throughout the entire national territory. According to the Federative Pact, no distinction or preference should exist between a State, a Municipality or the Federal District to the detriment of the remaining states and municipalities.

(8) The principle of *non-tax discrimination* based upon the origin or the ultimate point of delivery of the goods: individuals (or taxpayers) are prevented from grading their taxes in accordance with (i) the region of origin of any kind of goods or services or (ii) the locality to where the goods are being sent.

(9) The principle of *taxation territoriality*: means that Federal Law applies to the whole of the national territory, to the states within its borders and to the Federal District and the municipalities.

(10) The principle of *non-delegation of tax competence*: the legislative competence to enact taxes and decide on their use cannot be delegated. Nevertheless, the legislator can transfer this capacity to an active practitioner (who collects the tax) without this implying a transfer of tax capacity (ie: to create or increase taxes).

5. Betterment Levy

5.1 Introduction

Discovering when and where the idea of the Betterment Levy originated is not an easy task. Santos states that "many of the references consulted revealed nothing in this respect apart from the different forms of collecting monies in exchange for public investment, in other words similar to the rates or public charges existing under today's legal system. Roman law refers to tax-collection based upon improvements made to Roman cities but these failed to provide a reliable reference point" (Santos, 1998).

An important landmark was the execution by the British Crown in 1250 of works to contain flooding of the River Thames. After the conclusion of the works the property in the area appreciated in value and Parliament began to charge a `Betterment Tax´. In this case, the basis for calculation almost certainly reflected the appreciated value of nearby properties.

Elsewhere in Europe, the German authorities financed whole areas destroyed during wars by charging the *Beitrag* to property owners who were direct beneficiaries of restoration work, based on actual costs. Other countries also adopted this tax modality aimed at property value capture or simply to recover the costs of works undertaken[42].

[42] Information found in the writings of Santos. However no details are given about the dates of incidence of the charges.

In the 19th century, the United States used the *Special Assessment* system mainly to finance urban expansion. Meanwhile, in Latin America, the first experiments according to Furtado (1997) were in Mexico where "the first property assessments dating from 1607 were carried out in order to provide finance for public works (Perló, 1996). As for Brazil, the *Ordenações Filipinas* were established in Portugal in the 16th century to ensure that *public works were paid for by those benefiting from them*. From 1605 the *fintas* consisted of contributions made by property owners for the purpose of building walls, bridges and roads" (Gadret, 1956, In Furtado, 1997).

History reveals that the basis for calculation of this charge has varied from country to country. More recently in Republican Brazil, the Betterment Levy made an appearance in the Federal Constitution of 1934[43], as an autonomous fee that together with taxes and other charges formed the basis in Brazilian law for the *trychotomic theory* of taxation[44].

The Betterment Levy is mentioned in all the Brazilian Constitutions[45] except that of 1937. It has invariably been described as a type of `tribute´ distinct from taxes and charges - a description which in fact made little difference to whether it was implemented or not.

5.2 Obstacles

The subject of taxation depends in the final analysis on something similar to a "social pact" in which State, civil society and private sector practitioners establish a minimum agreement on a particular tax, on who will charge it and on who will pay it. The Betterment Levy in Brazil was not viewed in this light and remained a virtual dead letter, as did the subsequent Tax on Large Fortunes[46].

The Betterment Levy, together with the Tax on Large Fortunes—both intimately linked to questions of patrimonial property—has over the years generated endless sterile debate. Instead of contributing to solving practical problems the subject has become bogged down in legal squabbling—a major obstacle to collection of this levy, along with the basic political problem.

Does the Betterment Levy depend on complementary law[47] or is it self-applicable? The complementary law currently in force containing the general provisions of Taxation Law is the *National Taxation Code* (Law Number 5.172 of 1966). This deals with the

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[43] The Republic's first Constitution contained no reference to the Betterment Levy.

[44] Santos (1998) quotes the tax specialist Alfredo A. Becker who was "partial to the dichotomist theory of taxation and who did not regard the Betterment Levy as a third kind of tax. This renowned specialist only viewed the levy as a tax if its base for calculation reflected the property increment values or if it took into account the cost of the public investment".

[45] Constitution of 18/9/46; Constitutional Amendment 18 of 1/12/65; Constitution of 24/1/65; Constitutional Amendment 1 of 7/10/69; Constitutional Amendment of 23/1/83 and the Constitution of 5/10/88.

[46] The 1988 Constitution, Article 15, propounds: "*It is the responsibility of the Union to charge taxes on: ...VI – large fortunes*, ***under the terms of the complementary law*** [*]. It is clear from this that application of this tax depends on a further law, yet inexistent. No future timescale has been set for the introduction of such a law.

[47] Regarding the need for a complementary law, Santos (1998) agrees with Prof. Sacha Calmon that "the constitutional measure regarding Betterment Levy (Art. 145, III), in order to be efficacious, would need to be applied immediately, but it could be by complementary law to correct any shortcomings in previous law".

Betterment Levy in Articles 81 and 82, "defining it and expressly stating its individual and total limits"(Santos, 1998). In order to endow the National Taxation Code with specific references to the Betterment Levy, Decree Law[48] number 195 was issued in 1967 to serve as a parameter for partial juridical verdicts, but this Ordinance exceeded its remit, undermining the autonomy of the states and municipalities by even defining rules on timescales and forms of payment of the levy[49].

Another major obstacle in addition to the question of double taxation (see below) was "the increased tax burden resulting from an increase in property taxes, particularly the rise in the IPTU generated by property value appreciation" (Guedes and Gonçalves, 1996).

The Betterment Levy is in effect subsumed in a technical/legal morass involving legal precedence, the autonomous status of public bodies, definitions of the basis for calculation, problems of charge capping´ and application methodology.

It is clear from the above that the effective collection of value increments resulting from actions by the public authorities calls for the already established limits to be clarified and surmounted and for new mechanisms and instruments to be identified.

5.3 Limitations and Possibilities

If the Betterment Levy were employed in Brazil it would amount to an instrument confined to recovering for the public authorities the incremented values of properties (urban value capture), either in total or in part, arising from public investments (generally connected with some type of public work)[50]. The opportunities for value capture arising from the regulation of urban land (use and building potential) and from value capture generated by the community have been invariably excluded under Brazilian law. Furthermore, the adoption by Brazilian basic or complementary legislation of the *total maximum limit* arising from the cost of the work[51] and from the *semi-contractual element* in its application has traditionally reduced the Betterment Levy to a `cost recovery´ type of tax.

The Betterment Levy is in effect much less than a `works levy´. Given the strict and detailed requirements of complementary laws and the need to take into consideration the various interests associated with land questions, it is virtually non-existent in practice. The Brazilian experience with the Betterment Levy reflects the drawbacks and ambiguities of the levy´s track record in other Latin American countries (described in

[48] Some legal experts nowadays question the application of Decree Laws.

[49] Regarding the legislation of the Municipality of Belo Horizonte (Municipal Organic Law, III, Art. 115 and the Municipal Taxation Code, Law 1310, dated 31/12/66, Articles 305 to 320) the situation is identical - in other words, inspired by federal complementary legislation.

[50] Recent experiences in the state of Paraná are a sign that things are finally moving forward. However it should be noted that the amounts collected are relatively modest: around 14% of the total cost of the works. See Goelzer et al., 1999.

[51] The *individual limit* is another possibility. This would result from the value appreciation of each property.

Fernanda Furtado's thesis)[52].

The history of this tax would probably have been different if at the beginning of its institutionalisation the proposal for a Parliamentary Bill formulated by the Itamaraty Constitutional Commission had been accepted by those responsible for the drafting of the 1934 Constitution. The proposal was in the following terms:

"Article 127- **At least half** of the value increments resulting from **public services** or from **social progress** [*] without the involvement of the property owner shall belong to the Public Financial Authority"[53].

This wide-ranging proposal draws on a number of factors: (i) the presence in the wording of *public services* rather than *investment* or *public work*; (ii) the implications of the phrase *social progress*; and (iii) the nonexistence of a *maximum* limit, replaced by the adoption of a *minimum* limit of a least half of the incremented value of the property.

The proposal was not accepted due perhaps to the intervention of the jurist Bilac Pinto who rejected the concept as "a doctrine that unmistakably embraces the socialisation of property"[54].

As a basis for his analysis, Bilac Pinto affirms that he used the English expression "unearned increment" (*incremento immeriato* in Italian and *plus value non gagnée* in French), stating that "[…] this fiscal device aims at recovering for the community all and any property value increase that is not due to work or capital investment […] this economic-fiscal principal is genuinely English in origin"[55].

Bilac Pinto goes on to say that in addition to *unearned increment*, "two further technical-fiscal problems existed regarding property valorization: *Excess Condemnation* and *Special Assessment* or Betterment Levy"[56]. The solution adopted was that of the Betterment Levy in the following terms:

"Article 124 - when the increased value of the property as a result of public works has been proven the Administration that has effected such works shall charge the beneficiaries a Betterment Levy"[57].

No limit was adopted in this draft, reflecting the current Constitution which refers simply in Article 145, clause III, to: "A Betterment Levy resulting from public work".

5.3.1 Cost or Valorization

Limits, particularly those affecting total costs, are relevant insofar as they determine the

[52] Furtado, 1997.
[53] Bilac Pinto, *Revista Forense*, September 1947.
[54] Bilac Pinto, op. cit.
[55] Bilac Pinto, op. cit.
[56] Bilac Pinto, op. cit.
[57] Bilac Pinto, op.cit.

scope of the Betterment Levy. Without *limits* or *total cost* the charge would effectively be a genuine Betterment Levy, but with limits it is merely a `charge on work´ confined to cost recovery.

To clarify the relevance and specificity of the Betterment Levy, we prefer to deal with the subject in terms of `cost or valorization´ instead of the more usual `cost or benefit´.

Key differences exist between *benefits* and *valorization*. All valorization is a benefit but not all benefits involve valorization. A benefit can exist without valorization - for example, cases of maintenance work or the existence of a public service whose cost is covered by a charge (in the case of specific services) or by a tax (in the case of a broader service or utility).

A distinction also needs to be made between *investment* and *maintenance*. Investment, depending on size and coverage, can lead to valorization of the property. Maintenance on the other hand by definition does not produce valorization. Even periodic maintenance (more than routine maintenance) such as the resurfacing of an entire street, would not increase the values of adjacent properties. The maximum accrued benefit would arise from the reinstatement of the value of the properties that had suffered depreciation on account of a deteriorated street surface.

The question of the cost limit of a particular work has been the subject of many judicial rulings. Supreme Court Minister Carlos Veloso recalls that "according to Geraldo Ataliba, property valorization arising from a public development is at the heart of the Betterment Levy and constitutes its incidence assumption. The *actual* cost of the public work as a basis for determining and collecting this charge is not relevant: the work can have been done at minimal cost but have generated significant valorization. Similarly, high-cost public works may have had minimum effect on the appreciation of nearby properties. The individual limit - the appreciation in value of a property benefiting from a public work - is the essence of this levy"[58].

Even when the Constitutions (eg:1934 and 1988) contained no references to limits, complementary legislation, often consisting of a highly complex set of provisions, set out to restrict the practical application of the charge to recoup the costs of the public work by adopting the *total cost limit*. Such laws made collection unviable in view of a spate of unreasonable demands - many of them inspired by the often semi-contractual approach to the charge in the United States (see Chapter 7 below).

If the real intention were to capture the value resulting from public investments, no restriction should be placed on the total charged, which would be limited to the cost of the public work[59].

In the event of the cost being greater than the sum of the individual valorizations, the entire `incremented value´ could be captured. This would occur if the public work were

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[58] RTJ - 138 page 612

[59] Fernanda Furtado makes a lucid analysis of the question of work costs and the resulting value increases. (Furtado, 1997).

`too big´ or the valorization ´too small´. However, it is commonly accepted that major public works, particularly of a structural nature, usually have enormous repercussions because they add direct and indirect value to entire areas. Consequently, valorization would normally exceed the costs involved. However, it is worth recalling that even in the case of major structural works situations can arise in which the cost of the work exceeds the sum of all the valorizations. This would be the case, for example, of public works requiring massive expropriation and/or the resettlement of slum populations and where the impact of the works predominantly affected already occupied areas (valorization of built properties on serviced land tends to be less than that of empty plots[60]).

On the other hand, small increments in value can arise either as the result of the existence of a small number of properties in the areas of influence of the public work or simply from the fact that the work has little overall impact. Any law seeking to place individual limits on the basis of the valorization of each property [61] would give rise to more confusion because this would involve the need to undertake individual appraisals—in practice, virtually impossible.

The following chart indicates the existence or not of limits set forth in Brazilian constitutional law:

Law (*)	Individual limit	Total limit
1934 Constitution	NO	NO
1946 Constitution	YES	YES
Const. Amendment 18 of 1965	YES	YES
Constitutional Charter of 1969	YES	YES
Const. Amendment 23 of 1983 [62]	NO	YES
1988 Constitution	NO	NO

(*) The 1891 and 1937 Constitutions made no mention of the Betterment Levy.

With regard to complementary fiscal legislation in force at the time of the 1934 Constitution, Decree Law 21.390 of 1932 does not refer directly to the Betterment Levy but limits the payment of a special local charge or benefit to the actual **cost** of the service involved[63].

[60] Lélio do Carmo, in a study on the lengthening of the Av Pedro II, in Belo Horizonte, affirms that houses and buildings increase in value much less than land plots, but that the former would earn a net profit at time of sale. We are of the opinion that the increased liquidity would also produce a degree of valorization but that the latter would be difficult to gauge (PBH, 1998).

[61] Carlos Alberto A. de Carvalho Pinto opines that: "The limitation placed on the valorization produced is intuitive and this genuinely justifies the imposition of the charge. To demand more than this value would be to surpass the bounds of legitimacy, exposing the excess to "non-appealable nullity". *Revista de Direito Administrativo*, Rio de Janeiro - Vol 13 – July/September 1948 – page 13.

[62] Constitutional Amendment 23, known as the *Passos Porto Amendment,* attempted to simplify the collecting of a Betterment Levy by changing the phrase "valorized properties" to "benefited properties" and eliminating the individual limit.

[63] Proceedings reported by magistrate Samuel Silva, *Revista Forense*, November 1941, page 159.

Nowadays, complementary legislation, the validity of which is questioned by many legal practitioners[64], consists of the National Taxation Code (Law 1.310 of 1966, Articles 81 and 82) and Decree Law 195 of 1967, both of which impose limits.

Before entering into details it is worth outlining some of the concepts employed here. Hitherto we have used the phrase *to recover value*[65] (meaning that the State seeks to take back that which was transferred to someone by means of a public investment or a regulatory action, by specifically employing the Betterment Levy) and to *recover the cost of the work* (a subsection of the former limited to the cost of the actual work and individual valorization). We should like to add yet another concept: *value capture* (the state appropriates the incremented value generated not by the State but by the community).

Bearing in mind the property valorizations arising from activities undertaken by the public authorities in the form of investments or urban regulation and in a variety of ways by the community, the following chart presents the relationship (larger or smaller) between the total cost of the work and total valorization; the limits prevailing in each situation (total cost of the work or individual valorization) and the total or partial scope for recovery (of the cost or of the valorization) and of value capture:

Items	Public Authority			Community
	Procedure			Procedure
	Investment	(work)	Urban Region	Miscellaneous
	Cost<Total Valorization	Cost>total Valorization	-	-
Prevailing limit	Cost of the work	Individual valorization	Individual valorization	Individual valorization

In summary, the limit applying to the cost of a public development is a good indicator of what it is intended to recoup. Using this limit as a `measurement facilitator´ for the purpose of dividing taxation among the valorized properties makes no sense because an estimate of *total valorization* would also need to be made. It would be vital in this case to identify an upper limit in order to charge all the properties located in the area of influence of the work, regardless of the existence or not of a *total cost* limit. Obviously this estimate would apply to entire areas rather than to individual properties. This practice was adopted by the Belo Horizonte City Administration as a prelude to drawing up the assessment roll.

Without an estimate of valorization how is it possible to charge Betterment Levy on each individual property? The solution would be a *cost distribution scheme* - a charging

[64] Among them Geraldo Ataliba in "the Decree Law in the Constitution of 1967", cited by Luciana Batista dos Santos.
[65] Use of the verb to recover or recoup (*recuperar*) was well defined by Fernanda Furtado.

procedure which sets aside the idea of value capture[66].

With the imposition of the total limit of the cost of the work, even calculating the valorization placed on each property, the benefit would function (when the cost was greater than that of the valorization) only as a differentiating and qualitative factor vis-à - vis the overall tax burden distribution. We would thus have **qualitative distribution**.

When valorization is not taken into account, the distribution among owners is done in a purely quantitative manner (re: frontage of the plot, size of the land, distance from the public work etc). When valorization is taken into account, without a cost limit, areas of land of equal size and in apparently similar conditions could return different yields. Consequently, calculation of the Betterment Levy would include *quantitative* (the distance from the public work is an important factor in the definition of areas of influence) as well as *qualitative* aspects.

According to current legislation, the public authorities would only succeed in capturing the full valorization of each property or group of properties if the sum total of the valorizations were inferior or equal to the cost of the public work.

5.3.2 Semi-Contract or Tribute

A further important constraint imposed by complementary legislation on the charging of the Betterment Levy concerns the detailed procedures—which exceed the remit of a complementary law which, according to Luciana Santos, should "govern conflicts of competence arising between the Union, the states and municipalities; regulate the limitations on taxing power and **establish general taxation legislation provisions**" (Santos, date unspecified). [*]

Despite the resistance of property owners and the real estate sector as a whole (private appropriation of urban value increments in Brazil is considered to be almost normal) no clear political will exists on the part of governments to apply the Betterment Levy, and the complementary legislation is regarded as impracticable for most purposes. Belo Horizonte provides an example of this: in 1977 the City Council Chamber approved an unconstitutional law (since repealed) that would render the charge \`voluntary´[67].

In the view of many legal experts, Brazilian Betterment Levy legislation was inspired by the U.S. experience with *Special Assessments*.

Ataliba goes further to say that an erroneous version of the Special Assessment was imported to Brazil and this undermined the Betterment Levy because "(…) nowhere in the world do taxes exist that depend upon the consent of the taxpayer".

Furthermore, Ataliba averred that instead of adopting "the authentic Betterment Levy

[66] The total limit based on cost means that the public authority can only recover something that has had a cost - evidently making it difficult to introduce a legal change involving value capture resulting from regulatory or community actions.

[67] Law 2732 of 12/5/77 said that "the charging of the Betterment Levy is conditional upon prior awareness of the budgets and the **express authorization of the obligated taxpayer".** [*]

(or *benefit assessment*) Brazilian legislation mistakenly adopted the concept of *cost assessment.* This in effect amounted to the financing of public works through the use of a semi-contractual instrument:

(a) To fulfill the requirements of interested parties;

(b) With the consent of the parties interested in the project and its costs;

(c) Interested parties could discuss and question the planning, suitability, timeliness and even the budget of the public work;

(d) Payment in line with the cost divided proportionately among all interested parties.

"The *cost assessment* modality was copied under the mistaken impression that it was a *benefit assessment*, (…) where this corresponded to the Betterment Tax drawn from English law. (…) The model described in Decree Law 195 was transposed in error"[68].

We believe that this jurist is partially correct because a faithful copy of the benefit assessment modality would involve the concept of *unearned increment* only in theory.

In practice the United States uses the concept of *benefits* in a generic and frequently ambiguous manner. The context is generic in the sense that any service (investment, road maintenance, garbage collection or mosquito eradication) generates a benefit whether property valorization takes place or not. The ambiguity arising from the above—and also from the difficulty of estimating value increments—persists, given that the *Special Assessment* charge is based upon the cost of the work even when the cost is linked to the work (investment) which gives rise to valorization.

We conclude that the confusion surrounding the Betterment Levy has persisted for many years, as we shall attempt to demonstrate below.

5.3.3 Special Assessment

It is clear at the outset that the *Special Assessment* modality is `contaminated´ by limits. The American author Philip Cornick has observed that the total limits (perhaps only a percentage of the cost) and the individual limits are "practically universal"—as if they were incontrovertible—and affirms that "…the practically universal dual limit established by law for the apportionment of benefit assessments, that is, the use of total cost or a percentage thereof as a limit on aggregate assessments, and of benefit as the limit on individual assessments …"[69].

Cornick goes on to distinguish four types of *Special Assessment*[70]*:*

1. *Levies for the Cost of Abating Nuisances* resulting from the state policing power (enforcement and sanctions) ensure that those responsible for the nuisance are taxed

[68] Ataliba.

[69] Philip Cornick in Buck, 1930

[70] The author explains that the term "assessment" has two meanings: "the valuation of property or other criterion of taxable capacity as a basis for the levying and apportionment of tax" and "the levy of a tax".

directly on the basis of the cost of abatement. An example would be a public work undertaken to drain floodwater flowing off private land onto adjacent properties.

2. *Levies for the Cost of Constructing Appurtenances* - a similar situation to the above, likewise dependent on policing powers. A Special Charge would be levied against owners failing to maintain a public area for which they were responsible, eg: the construction and maintenance of sidewalks.

3. *Levies within Benefited Districts in Proportion to Arbitrary Measures* - works that benefit specific areas and whose cost is distributed according to adjudicated criteria. The author points to the notion of *benefit* because the consequences of the work do not affect the specific property as such but an entire area. The levy is charged generally on the basis of the size of the frontage or the area occupied by the properties. Cases exist in which the value inherent in the land and/or of the building(s) thereon prior to the improvement works is also taken into consideration.

Even when the *ad valorem* variable is considered, this can be taken as a pure and simple distribution device because valorization arising from the work has not been incorporated. Nevertheless, even if the valuation had been incorporated into the value of the property[71], this model would be liable to distortions in the event of built and non-built properties not being calculated separately[72]. The main source of ambiguity regarding this levy resides in the confusion between benefits and valorization.

4. *Levies in Proportion to Benefits* - a levy applied in proportion to the benefits derived from **improvements or public services** [*].

Cornick affirms that this is rarely practised in spite of it being considered in theory to be the fairest way of employing the accrued benefit as a basis for calculation. According to him, this is the genuine form of recouping unearned yield: "In its purest form, a benefit assessment is neither more nor less than a tax proportionate to the **unearned increment** accruing to properties as a result of certain public improvements or public services, the rate of the tax up 100 per cent of the increment being determined by the ratio between the public expenditures for the purpose and the aggregate of all individual increments resulting therefrom" [*].

This author goes on to point out that the difficulties of delimiting the area of influence of a particular work and of calculating the valorization of each property, in addition to the deficiencies of the public administrative machine and judicial problems, effectively

[71] Distortions as in the case of Ecuador related by Fernando Pauta C., when the properties were valued higher in the case of empty plots paid a lower Special Betterment Levy (*Contribuición Especial de Mejora)*. This occurred because the distribution cost of the work was done proportionate to the value of the property and built properties generally have a higher value, thereby occasioning higher payment despite their lower valorization. In this respect, Donald and Dean add that "Both the California law and the Massachusetts bills authorizing special assessment for rapid transit systems established land only as the assessment base". This problem could be resolved by the use of the value of the ideal piece of land (equal to 1 in the case of land and equal or less than 1 in the built areas). In this way the valorization factors inherent in buildings would be eliminated according to the methodology developed by Lélio do Carmo, urbanist of the SMPL of Belo Horizonte.

[72] Cornick, in Buck, op. cit

forced the adoption of the Type 3 modality outlined above and its charging criteria became the predominantly accepted norm.

Cornick assembles the four types of *Special Assessment* into two groups, acknowledging the confusion but failing to elucidate the question of *cost assessment* and *benefit assessment*: "It is apparent from the foregoing analysis that the four distinct types of Special Assessment which exist in legal theory resolve themselves into two major classes from the standpoint of administration. At one extreme, there is the form of special levy which both in theory and practice is apportioned among the property owners affected, on the basis of mathematical functions of costs, such as, for example, the area or frontage of properties. At the other, there is the assessment in proportion to benefits. Because, however, of the lag between administration on the one hand and economic and legal theory on the other, the majority of the special assessments which purport to be made in proportion to benefits are in fact made in proportion to costs (…) The failure to recognize the existence in theory and in practice of these two categories is responsible for much confused thinking on the subject"[73].

This author is unable to go deeper into this question because he is not totally familiar with or does not acknowledge the concept of urban value capture. He fails to see that property valorization (appropriated privately) can be greater than the cost of the investment that generated it. When he talks about evaluating what each property received he is more concerned with `being fair´ to owners than to recouping the costs that the public authorities effectively transferred to owners. Since difficulties exist with this assessment, criteria have been adopted (that can include even the value of the property) for applying the levy, but always taking into account the cost of the improvement or the service[74].

Another US author criticises this definition, affirming that "it is a valid classification in administration; but it does not exist in law or theory" (Graham, 1930: 25). In our opinion this statement added nothing to discussion of the subject.

It can be averred also that the above-mentioned `universal´ understanding that the total limit of the charge linked to the *Special Assessment* is effectively the cost of the work must have made it more difficult to apply the concept of *unearned increment*, transforming the levy into a kind of `tax on works´ - effectively a distribution of the costs of the investment.

Hagman & Misczynski discuss this question using two theories: the *assessment-at-not-more-than-cost* in contrast to the *unearned increment tax*. They affirm that both "(…) are correct in a logical sense, and both are consistent with the benefit principle. Which is more valid from a legal standpoint? The weight of legal tradition probably falls with the *assessment-at-not-more-than-cost* version. Most assessments are carried out in this way, and some State statutes authorizing communities to `especially assess´ explicitly limit the amount of assessment to the cost of the project. Regarding this statutory

[73] Cornick, in Buck, op. cit

[74] The mere fact that they are considered to be **services**, apart from engineering services, the question of valorization (insofar as concerns privately accrued yield) is not relevant.

declaration, a few courts have opined that assessments may never legally exceed the cost of the improvement. But the issue really does not seem to have come up in a form that would establish any ruling on the point. Both case law and statutes seem to vacillate between these two theories or to confuse them" (Hagman & Misczynski, 1978: 320)[75].

Given the American experience, the semi-contractual aspect of procedures for applying this *Special Assessment* - one of the main impediments to the use of the Betterment Levy in Brazil - has a long history.

It is worth reproducing the text of Robert Murray Haig (1915) in which he discusses what would be, in spite of variations from city to city, the typical model for utilising the *Special Assessment*:

> "Assessment projects may legally be initiated either with or without a petition signed by the owners affected. In practice the council requires a petition signed by the owners of a majority of the frontage and area affected but then proceeds to ignore it. This is done because experience has shown that fewer difficulties are encountered when the project does not rest for its legal justification upon a petition. The petition is filed with the city engineer, who checks it and refers it to the council, but, without waiting for action by that body, he proceeds immediately to make a preliminary estimate of cost of the work and of charges which will rest upon the land benefited. After the council has passed upon the project a date is set for a public hearing. The property owners affected are notified of proposed improvement and are invited to confer with the council as to its desirability. Unless strong opposition develops the council then passes an ordinance ordering the improvement to be made. Bids are advertised for, on the basis of preliminary estimate, the contract is let, and the improvement is constructed under the supervision of the engineer. This official also apportions the final cost among the property owners and prepares an assessment roll, which, after a second hearing, is approved by the council and sent to the treasurer for collection"[76].

5.3.4 The Betterment Levy, cost limit and owners´contributory capacity

In defence of the Betterment Levy, without the limit of the cost of the public work, reference can be made to the framework in which Brazilian tax legislation was formulated, based upon taxes, charges and contributions.

Geraldo Ataliba summarizes the subject as follows:

"From the financial point of view, the tax is required from all recipients of the social benefits created or maintained by the government. The charge is a financial

[75] The authors also aver that Colombia, at least according to law, would be an exception to the traditional practice of owners to pay part of the cost of the work: "The [valorization] tax ostensibly aims at recapturing a substantial portion of the benefit from a public project. In practice, however, assessment there tends to be quite limited and seldom exceeds cost". Page 613.

[76] Haig,1915

compensation for services and activities supplied on an individual basis to the users. Contributions charged on those people who (a) receive special benefit arising from a particular activity undertaken by the public authority or who (b) on account of the particular circumstances pertaining to their properties or because of the particular activities in which they are engaged, demand the undertaking of a specific State activity related to those goods or activities."

From this arises the financial criterion of the tax as representing the contributory capacity of all the members of a specific society (in other words, the tax is a financial instrument designed to share general expenditure among the whole community). The criterion of the charge is based upon the cost of public activity shared among the direct beneficiaries who are effectively the users of public services. The criterion of contributions is the size of the special benefit that a private person receives as a result of actions by the State regardless of the cost of this action, or a special expenditure that the State is obliged to make on that individual's behalf.

(…) In the case of the Betterment Levy, its **basis and criterion is property valorization** resulting from a public work. The essence of this approach is that it is **not the actual work but its consequence** or special effect (valorization) on the property belonging to the taxpayers themselves [*].

(…) From the financial perspective, its characteristic trait is in the strict and direct proportionality inherent in the property valorization caused by the public work. **It is a device for returning to the community a special benefit received (valorization**)" (Ataliba) [*].

It can be concluded that however important the question of the contributory capacity of the population might be - particularly in a country with substantial social inequality such as Brazil - a criterion is needed that is much more applicable to taxes than to the Betterment Levy or charge. It is clear that social aspects need to be considered when applying any kind of tribute.

5.3.5 Special Assessment: maintenance and investment

In addition to the good reasons[77] for applying the Betterment Levy, an attractive argument for the public authority—especially local governments—is that significant resources have been (and still are) collected on the basis of the *Special Assessment*[78] in the United States, applied to urban investment in infrastructural projects (highways, streets, metro systems, basic sanitation etc).

However, the available information reveals that historically the *Special Assessment* has also been charged to fund maintenance and general administrative costs. As a result the figures need to be put into context. This does not detract from the amounts collected in

[77] Ethical, financial, political and technical - to be discussed later.

[78] In 1915, Haig wrote "In the city of New York, during the last 10 years the assessment amounted to the enormous sum of $124,000,000 ". Also according to Haig: "…in 1915 the cities of the United States raised nearly $80,000,000 by assessment - one dollar for every seven raised by property taxes i.e.: $2.56 per capita".

this way because the relative weight of investment costs of this type is generally much greater than the costs involved in maintenance and ongoing administration expenditure.

Defining the *Special Assessment*, Graham mentions "public improvement or public services"[79], defining five different sectors in which the assessment is generally applied: public highways and streets; parks; sanitation, public health and miscellaneous (eg: irrigation or drainage).

A range of services in addition to investment works is included in the above: street-cleaning; garbage collection; parks maintenance; public street-lighting and sewage; grass-cutting; mosquito eradication etc. According to Graham, of 250 cities in the United States with more than 30,000 inhabitants in 1927 only 90 used the charge for operational and maintenance costs. While these amounted to US$ 5,709,644 in 1927, they in fact represented barely 2.54 percent of overall investment costs, which would suggest a decline in relative share compared with the average over the years 1908-1927 (3.24%).

The percentage values in themselves are not particularly revealing because the investments are incomparably greater. But the reduction from 3.24 percent to 2.54 percent would suggest that this was a period of major investment and that over time and with the conclusion of the works the trend would be for the operation and maintenance expenses to increase.

Despite subscribing to the general view that the *Special Assessment* should not be used for current expenditures (operation and maintenance), Cornick also takes a pragmatic view: "The current costs involved in the maintenance and operation of ornamental lighting systems and high-pressure fire-fighting systems would seem also to confer local special benefits in excess of the general benefits accruing to the city as a whole, and *Special Assessment* for the benefits could logically be used for their support" (Cornick, In Buck, 1930: 398).

The above author concludes by suggesting that neither a legal foundation nor an economic explanation exists for restricting the charging of the tribute solely on the basis of the public investment.

Inclusion of operation and maintenance expenditures in the *Special Assessment* reinforces the ambiguous character of this US tribute.

It is difficult to imagine an operation or a series of maintenance operations run by the public authorities benefiting a particular area of the city to the extent that the values in an area were increased, making the imposition of a Betterment Levy necessary. Expenditures of this kind, aptly called *current expenditures*, should be paid specifically via charges over an indeterminate period of time (while the service continues to be provided) or by a tax when the services are of a general nature. In addition, certain specific services exist (eg: mosquito eradication) that involve only the provision of relevant capital expenditure on equipment etc.

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[79] "Aside from the general property tax, special assessments are the most important source of revenue in American cities" (Graham, 1930).

Our understanding is that the logic behind Cornick's reasoning relates to a `spatial´ view of the subject[80]. In other words, if the service is provided for one particular part of the city, the only fair approach would be for the people living in the area to pay for specific operation and maintenance activities - expenditure that should be definitely covered by raising a charge.

This `mixture´ [81] of Charge with the Betterment Levy is highlighted in the text "*Special District - a useful technique for financing infrastructure"* (Porter et al., 1992).

Referring to the financing sources for infrastructural services, the authors of the above text declare that "Special assessment districts can choose revenue sources and tailor their fees and assessments to match their financial needs. Districts can impose fees and assessments on all properties or the entire population within the district or restrict this to a specific segment, collect them periodically or impose them only once (the impact fee, for example) and use a variety of assessment standards as long as the revenues collected are in proportion to the benefits received from district services" (Porter et al.:25).

Three basic types of "special fee or assessments"[82] are identified:

1) *User fee directly charged for a service or use of a facility* is a typical *charge* (in the sense in which we use it in Brazil) charged directly to the users of a particular service located within district boundaries. The most commonly-used services are water and sewage fees dependent on how much is consumed or on estimated future use in the case of special consumers such as industrial concerns.

2) *Indirect assessments for benefits received even when the public facility supported by the fees was not directly used* is a kind of hybrid between the Charge and the Betterment Levy. This is incumbent on those who derive direct benefit from an investment (landowner or residents),[83] calculated according to the type of investment (eg: distance from the work, value of the property, size of land area, built area or of the frontage). An example would be a charge for the cost of sewage pipes running near to properties located on the side of a lake. Although some of the properties do not front the lake they are nevertheless benefited by the sewage installation and their values correspondingly incremented. The authors recognise that the distinction between Types 1 and 2 is not clear when in Type 1 (*user fee*) the fee is charged in the form of an estimate which can also be employed for calculating the Type 2, ie: *indirect fee*.

The authors observe that although the assessment charge applies to some districts on the basis of property values, the revenue generated is not considered to be a tribute

[80] It is easy to understand this approach in a country such as the United States with almost 90,000 local government units.

[81] The word "mixture" is not meant in a pejorative way. This is a comparison with the Brazilian taxation structure where the taxes are separated (or inert?).

[82] Other types also exist. For example, *user fee* can be put together with *capital fee* for the same development.

[83] No systematic distinction exists between the old and new residents (people who occupy properties after the investment is finalized). This distinction is widely used in the US, as will be seen in the section in the main text dealing with the different tributes).

based upon the value of the property itself. On the contrary this is regarded as a *non ad valorem assessment* based on the benefits generated by the public expenditure. It is taken that the benefit is proportional to the value of the property and therefore this value is employed as a *proxy* of the benefits generated. This distinction is particularly important when a restriction is imposed on property charges as in the case of *Proposition 13* in California[84].

(3) *Improvement or capital fees: charges based on capital improvement and maintenance costs* - charges based on capital improvement and maintenance costs are fees to defray expenditure on the expansion, maintenance or repair of a particular infrastructure. These charges are incumbent on all members of a district or simply on \`new occupants´[85] either through a single payment or by installments. In both cases the value of the cost of providing infrastructure is charged to the relevant occupiers.

The charge restricted to \`new occupants´ occurs when the density of already serviced areas implies overloading the existing infrastructure. This overload will represent pressure on the existing system resulting in its expansion or depreciation and the consequent need for replacement.

The so-called *impact fee* is used here. The criteria for imposing this are the same as those employed for the above ie: the fees are based on a number of physical variables such as square meterage, number of bedrooms etc, or on the overall value of the property depending on the most appropriate facility targeted within a property in relation to the specific type of infrastructure benefit being installed.

5.3.6 Special Assessment: recent collection

Tables 1–7 (see pages 80–88) display the *Special Assessment* collection track record in the United States between 1993 and 1996. The data was obtained from recent US Government Censuses.

During this period, according to Bilac Pinto[86], the *Special Assessment* accounted for an average of 12 percent of the amounts collected under the Property Tax over the first 20 years of the century in 245 out of 250 cities of over 30,000 inhabitants. The data relating to the period 1994-1996 indicate only 1.5 percent[87]. However, the comparison

[84] In summary, the 1978 Law, *Proposition 13*, effects six key changes to the Constitution of the State of California – which in different ways had repercussions in many other states of the country: 1) *One percent rate cap* – limited to the property tax rate (a charge similar to the IPTU) to 1% of the value of the property at the time it was acquired; 2) *Assessment rollback* – rolled back the values of the properties to those practised in 1975–76;
3) *Responsibility for allocating property tax transferred to the State* – transferred to the State Legislature responsibility for allocating the revenues arising from the *property tax* among the local governments. Previously these governments established both the percentage rates and the revenues; 4) *Reassessment upon change of ownership* – replaced annual revaluations with the method based on the purchase price of the property. Therefore, for the application of the tax, assessment based on market value is done only at the time the property is transferred. Annual increases in line with inflation are limited to 2%; 5) *Vote requirement for state taxes* – any proposal to increase the revenue will depend on 2/3 approval by each house of the State Legislature and 6) *Voter approval for local 'special' taxes* – requiring the approval of 2/3 of the electors. Source: *California Budget Project*, April 1997, cbp@cbp.org.

[85] Densification of already urbanized areas with the addition of residential and non-residential properties.

[86] Bilac sources Graham's work.

[87] In 1996, for example, all the local governments collected around US$ 200 billion with the *Property Tax* and US$

between these two percentages must be put into perspective because the more recent data refer to a much larger universe covering all the local governments including those of smaller cities where urban expansion was probably less marked.

The different methodologies used for obtaining statistical information present a problem: as the result of significant discrepancies between public accounting processes and actual census data, much of the assembled material is missing from the statistics. A further concern is that the *Special Assessment*, in view of its widespread use, could in our view end up as a kind of `catch-all' tax to defray maintenance and general administrative expenses in addition to investment costs[88].

The US Census however adopts a criterion that we believe to be correct: it includes investment data and excludes that relating to current services. Data is computed for example on "compulsory contributions and reimbursements from owners of property who benefit from specific public improvements; and *impact fees* to fund water, sewerage, roads, and other infrastructure facilities in new developments", while data on maintenance assessment for ongoing services such as street lighting, leaf sweeping, and weed control is excluded[89].

A third observation is worth making. Since this is a non-recurring tax (maintenance and general administrative costs are excluded) an analysis spanning a period of only four years must be approached with caution. Although this falls outside the scope of our present paper, the ideal approach would be to examine a longer series so that the changes registered in the longer term record of each state could be appropriately tracked.

The estimated [90] (ie: not officially accounted by government units) census data point to widespread use of the *Special Assessment* in a number of US states. 18 states in fact represent 90 percent of the total revenue collected by the states and local governments. In 1996, California (25%) and Florida (20%) together were responsible for 45 percent[91].

In terms of the share in local government receipts represented by the *Special Assessment,* North Dakota collected the most (6%), followed by Montana (3.4%), Minnesota (2.7%), and Florida (2.4%). The percentage in California was relatively low (1.4%) due to the fact that total revenue collection was unusually high - California was responsible for almost 13 percent of the total collected by local governments throughout the entire country followed by New York (12%), Texas (7%) and Florida (6%),

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3 billion with the *Special Assessment*.

[88] The NY City Council calculates as *Special Assessment* all the resources collected by the BIDs (mainly earmarked for maintenance and administration).

[89] See instruction manual of the US Census, Code U01, Item: *Special Assessment.*

[90] These are estimates because the data are not calculated officially by each unit of government. See *State and Local Government Finance Estimates, by State*: 1993 to 1994, www.census.gov/govs.

[91] It would appear that the notable share of these two states is due to charging of the *impact fee* if the information provided by Ross (1992) is taken as a basis: "The use of development *impact fees* (DIFs) to finance public facilities necessary to accommodate new growth is a concept that has gained acceptance in recent years. California and Florida are considered by many to be the leading areas for the development of theory, practical models and legislation for determining growth-related costs and calculating impact fees for new construction".

On average the *Special Assessment* represented about 1 percent of the own revenues of local governments in the 18 sampled states, representing 0.2 percent of the remaining local governments and 0.7 percent in the country as a whole.

In census years 1993–1996, the data referring to total revenue (not confined to `own´ receipts), the *Special Assessment* as a collection mechanism contributed around 0.5 percent in the 18 states in the sample and 0.4 percent throughout the rest of the country (See Charts 2, 3, 4 and 5),

The track-record of the revenues collected can be seen in Charts 6 and 7 (1993 [base=100] and 1992 [shifting base]).

Over a four-year period, total collection throughout the US increased by about 20 percent. In contrast to the 18 states in the sample (4%) the `other´ states registered a substantial upturn (47%).

As regards the *Special Assessment*, an increase of 17 percent was noted across the whole country—with a rise of 23 percent in the 18 sampled states and a decrease in the remainder. The increase in the 18 states would have been higher if revenue shortfalls in a number of them had been less pronounced. These occurred in 1996, resulting basically from: (i) a decrease of *Special Assessment*- generated charges in New Jersey where relevant state revenue collection declined from US$20 million to zero and local government contributions fell back from US$7 million to US$5 million and (ii) decreases in the *Special Assessment* revenue collected in California (from US$95 to US$51 million, Kansas (US$18 to US$11 million) and New York (from US$7 to US$4 million).

In 1994, the amounts accruing from the *Special Assessment* mechanism exceeded those of the previous year, accounting for an increase of 15 percent in local government revenues.

The performance of the *Special Assessment* in California (over one quarter of the total collected in the US) could be explained by the limits imposed by *Proposition 13* which led to the *Special Assessment* being used to compensate for Property Tax losses[92].

The values computed by the census as *Special Assessment* include the *Impact Fee,* suggesting that these two charges were used in order to counterbalance losses incurred elsewhere[93]. The very different reactions of those states that suffered some type of `capping´ strongly reflected the genuine federative nature of the United States. In Massachusetts, for example, which under *Proposition* $2^{1/2}$ was heavily capped, state collection in 1996 through the *Special Assessment* was zero and local governments in that state collected only US$15 million under *Special Assessment* - in contrast to California in the same year (US$800 million),

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[92] My thanks to Fernanda Furtado for comments on this.

[93] According to Ross, 1992, "The taxpayer revolt of the 1970s, led by California's *Proposition 13*, has been credited with (or been responsible for, depending on your perspective) the increase in fees charged by public agencies. The decline in property taxes available for public projects has resulted in the agencies seeking alternative sources of revenue".

6. Clarifying Betterment Levy and Double Taxation

One of the most controversial debates related to the Betterment Levy concerns possible bi-taxation (*bitributação*), which can be summarized as follows[94]:

After the Betterment Levy is applied (with total value capture) a possible increase of the IPTU (Property Tax) resulting from updating of the Assessment Roll and not from an increase of the percentage tax rate would effectively mean the application of bi-taxation since the entire additional revenue would be collected and the IPTU would only be levied on previous income.

6.1 Juridical introduction

The first question to ask is what is bi-taxation?

Based on studies by the legal expert Antônio Carlos Lovato (1984), we understand from a juridical point of view that the subject under discussion concerns double taxation and not bi-taxation. This distinction is not entirely irrelevant because, in addition to the question of legality (bi-taxation is unconstitutional) we are effectively dealing with two different concepts which are, according to Lovato, the following:

"*Bi-taxation* is the exercise of a tax imposition by different individuals on the same taxpayer, with a charge on the liability arising from an identical chargeable event and an identical incidence assumption, from a legal point of view.

Double taxation is a tax imposition by different individuals or by the same individual, on an identical *economic factor,* on the same taxpayer, using different assumptions of incidence and chargeable events."

If we understand by *economic factor* the property valorization arising from a public work, this same factor could lead to chargeable events applied to different taxes. Valorization (which is in itself a chargeable event related to the Betterment Levy) increases the assets (tenure of which constitutes the chargeable event of the IPTU) and simultaneously produces a capital yield (the chargeable event related to Income Tax). On this basis, bi-taxation cannot apply to the IPTU-Betterment Levy or the Betterment Levy-Income Tax (IR). At most this would be a case of *double taxation*[95].

6.2 Economic Standpoint

In order to relate our subject to economics, the following simulations are of interest.

Let us imagine an example containing numerical data approximating a real situation but set out in a simplified form to assist calculation: (i) acquisition of a plot of land; (ii) execution of the public work increasing the value of (i); and (iii) virtually simultaneous

[94] A simpler viewpoint would be that the Betterment Levy cannot be applied because the beneficiary owner would already be paying for what he received with the new value of the IPTU increased by the valorization of his property.
[95] CSLL and Income Tax (IR) are examples of double taxation.

updating of both the cadastral records and the Assessment Roll [96].

Let us suppose that somebody buys a plot for US$10,000 in a city with an IPTU rate of US$100 on the basis of a percentage tax rate of 1 percent. The City Administration then immediately undertakes works which increase the value of the property by 50 percent (ie: by US$5000). With an updated cadastral register (reflecting the new circumstances of the street) and the revised Assessment Roll, the City Administration, retaining the same tax rate, begins to receive a nominally higher IPTU of US$150.

If this purchase had been made in Belo Horizonte in a street with fewer than three improvements (surfacing, light, water, sewage etc) and if the public work undertaken had improved the local environment with three or more betterments, the City Administration - in compliance with Municipal Law - would be able to increase the IPTU rate from 1 percent to 3 percent and would also be allowed to charge a Betterment Levy.

Data also includes an average market interest rate of 10 percent and a gross yield [97] (without the IPTU discount) equal to the interest rate. Potential inflation is not taken into account.

In addition to the increased yield and IPTU, the period of return of the amount applied (arising from the cost of the plot and/or the cost of the Betterment Levy payment and/or the cost of the private betterment) will be estimated as a parameter of the financial assessment of the investment.

The basic data is as follows:

N = Number of years required for return on investment

C = Cost of the plot = US$10,000

C'= Cost of the plot when the owner pays the Betterment Levy or when he makes an improvement of his own accord. C'= C + V

R = Annual net yield (with the IPTU discount)

i = Interest-Rate = 10% per annum

t = IPTU rate= 1%

T = IPTU rate with the increase = 3%

V = valorization = US$5,000 = Betterment Levy

Basic formula:

$$N = \frac{C}{R}$$

[96] This supposition would be more feasible if the valorization were the outcome of a zoning change.

[97] Net yield is obtained through the IPTU discount in the event that the owner fails to pass on the tax to the tenant.

Let us now imagine the period of return in eight different situations **(A, B, C, C.1, D, D.1, E, and F),** applying the basic formula for comparison:

A) Initial situation of the land.
Where R = C (i-t)
R = US$900 and IPTU = US$100

$$\text{Period of return: } N = \frac{C}{C\ (i\text{-}t)} = \frac{10.000}{10.000\ (0.1 - 0.01)} = \textbf{11 years}$$

B) Land with public improvements and without charging the Betterment Levy
Where R = (C + V) (I – t). Here the yield was increased by the valorization (V).

R = US$1,350 and IPTU = US$150

$$N = \frac{C}{(C+V)\ (i\text{-}t)} = \frac{10{,}000}{15{,}000\ (0.1 - 0.0\ 1)} = \textbf{8 years}$$

C) Land with public improvements and including the Betterment Levy. Where C' = (C + V), because payment of the Betterment Levy was added to the cost of the plot = valorization (V).

Where R = US$1,350 and IPTU = US$150

$$N = \frac{C'}{R} = \frac{C + V}{(C+V)\ (i\text{-}t)} = \frac{15{,}000}{15{,}000\ (0.1 - 0.01)} = \textbf{11 years}$$

C.1) Land with improvements made by the owner himself. The cost of the improvement is equal to the valorization arising from it (US$5,000).

This formula is identical to situation **C.**

D.) Improved land, with charging of the Betterment Levy and with an increase of the IPTU percentage tax rate - 3% (T),

Where R = US$1,050 and IPTU = US$450

$$N = \frac{C'}{R} = \frac{C + V}{(C+V)\ (i\text{-}T)} = \frac{15{,}000}{15{,}000\ (0.1 - 0.03)} = \textbf{14 years}$$

D.1) Land with improvements made by the owner himself with an increase of the IPTU rate - 3% (T).

This formula is identical to situation **D.**

E.) Initial status of the land but with the increase in the IPTU rate from 1 percent to 3 percent (i.e: an imaginary situation of an increase not linked to changes in the number of improvements made in the street).

Where R = C (i-T)

R = US$700 and IPTU = US$300

$$N = \frac{C}{C\,(i - T)} = \frac{10{,}0000}{10{,}000\,(0.1 - 0.03)} = \textbf{14 years}$$

F) Land with public improvements made, without charging the Betterment Levy and with an increase in the aliquot of do IPTU, Where R = (C+V) (I-T). Here the IPTU would be exercising the role of the Betterment Levy.

R = US$1,050 and IPTU = US$450

$$N = \frac{C}{(C+V)\,(i\text{-}T)} = \frac{10{,}000}{15{,}000\,(0.1 - 0.03)} = \textbf{9.5 years}$$

Based on the above situations let us try to understand the role of the IPTU and the Betterment Levy, the concepts of flow and stock, the significance of increased IPTU following charging of the Betterment Levy and, finally, the IPTU as an instrument of value capture.

6.3 The role of the IPTU

When an individual buys a piece of urban land, regardless of his motives - security, reserve value, speculation etc - he is simultaneously making an ordinary but special investment. It is *ordinary* because people daily buy and sell properties. From the economic point of view it represents the purchase of an asset which in theory will provide a guaranteed return because the property possesses a regular and practically unlimited yield which effectively renders it *special.* The size of the yield will depend on a number of different factors.

Taking situation "**a**" as a reference, it can be affirmed from the strictly economic point of view that the IPTU captures a part of the yield of that particular property (with a yield of US$1000 the IPTU was US$100 based on a 1% rate).

In an attempt to understand the genesis of this yield two questions may be asked: What is its origin? What is does it consist of?

It could be said that one portion of the yield arises from the investment made by the owner (purchase of the land and attendant betterments in the form of drainage or leveling etc) and the other portion arises from factors/actions that have nothing to do with his efforts. These factors consist for example of population increase, urban growth, public works, urban zoning etc. These factors and actions are exceptional sources[98] of

[98] We refer to these as *exceptional* because they enable land to generate (only land can do this) income based on

income that the owner receives free of charge when they are not recovered by the community as a whole.

6.4 Betterment Levy and the Concept of Flow and Stock[99]

The Betterment Levy arising from public works plays a very different role to that of the IPTU. While the IPTU captures a part of the yield of the property, the Betterment Levy recovers a part of the special sources (ie: related to public works). We could say that the IPTU impinges on the consequence (the yield as such) and the Betterment Levy on one of the causes that brings about the generation of this yield. A qualitative difference therefore exists. However, this is not always entirely clear, because while cause and consequence can be understood as a single concept, the IPTU - depending on how it is collected - could be fulfilling, within certain limitations in our view, the role of the Betterment Levy. It is obvious that if the IPTU were to capture the entire yield from this land it would be difficult to insist on charging the Betterment Levy, as we shall see below.

Despite the fact that the IPTU is a tax on patrimonial asset we could view it from a strictly economic point of view as a **charge** on flow**,** while the Betterment Levy is **applied** to the stock (a part of it)[100].

Stock possesses two components: the property-based capital invested by the owner[101] and the capital stock (`*capital social'*[102]) which has little to do with the owner's effort but which is nevertheless incorporated into the land as a result of its increased value[103].

On the other hand, flow would be the regular and inexhaustible yield generated by the property-based and capital stock taken together. The IPTU captures part of the yield based upon the value of the property, taxing it as an entirety (which does not mean capturing **all** the yield) regardless of the component and weighting of the capital that led to its formation. In the event of an increase in the value of the land resulting from the enhanced value of any component in this capital, the IPTU simply captures a new yield (in addition to the primary yield) in the same proportion as formerly captured (providing there has been no increase in the percentage tax rate).

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something that arose from nothing. Therefore it is common to attribute to whoever has the ownership of the land the right to avail himself of that income as a "natural" right.

[99] This idea was put to me originally by the Belo Horizonte Secretary of Planning, Maurício Borges, but the ideas developed here and the mathematical model are entirely my responsibility.

[100] Here the words "applied" and "charge" are highlighted in order to draw attention to the fact that despite the IPTU having as a **base for calculation** the total value of the property in question, the IPTU is effectively taxing the yield (flow) and not the value.

[101] Henry George accepts only the recovery of the investment in betterments related to the land and buildings and suggests the introduction of a *land value tax* (See Brown, 1997). A form of this tax was introduced in Brazil in the 1930s in the city of Garibaldi, according to King, 1935: "The City of Garibaldi in Brazil taxes land and exempts all improvements".

[102] Unlike the "*capital social"* of a firm (in which "*social*" refers to a society of members/partners), "*social*" is taken here to refer to the community as a whole. [Translator's note: This distinction is not made in English. "*Capital social*" = Share Capital or Capital Stock, denoting the "amount of money subscribed by shareholders, at par, to a company" (Source: European Investment Bank, Tech. Glossary, 1991).

[103] This is not *value* in the Marxist sense of the word since it does not arise as a product of work (*força de trabalho*). If this approach is taken a more correct word would perhaps be price.

If the increased value of the property arises as a result of an investment [104] by the owner (see situation "**C1**"), the yield would increase together with the amount collected under the IPTU (employing the same tax rate and an up-to-date database). Furthermore, the period of return—11 years—would be the same as that foreshadowed in the initial situation.

However, if valorization[105] were the result of a public work, the Betterment Levy would enter the picture (see situation "**C**").

The charging of the Betterment Levy basically concerns four parameters:

Ethical - it is fair that a resource that has been privatised should be returned to the community;

Financial - the constraints on public sector resources for investment are common knowledge;

Political - redistribution of wealth, particularly in a country with major inequalities such as Brazil, should always be borne in mind[106]; and

Technical - our understanding is that the Betterment Levy will do what the IPTU "saw but never achieved".

Technically, the Betterment Levy would capture that portion of the stock arising from the increased value produced by the public work. The levy (regardless of whether in installments or not) recoups the public investment and withdraws [107] from the stock an amount equivalent to that that the public authorities have previously invested[108]

This does not signify capture of the entire additional yield - this is theoretically an indefinite yield in contrast to a *real* asset with a predetermined *useful* life.

In summary, the IPTU was able to "see" that portion to the extent that the basis on which it was charged was increased by it but the IPTU failed to capture it even when taxing a larger yield.

By taxing the "new" yield (the original plus the additional yield) the IPTU did not interfere with the stock because the capture of part of the additional yield[109] did not bring with it any portion of its increase. This is also valid for cases of tax rate increases, as we shall attempt to demonstrate below.

The application of the Betterment Levy can be understood simply as the payment for a new asset that the owner acquired regardless of whether he wanted to or not.

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[104] Investment in land could be considered as drainage, leveling etc.

[105] Level 8 valorization according to the typology done by Fernanda Furtado (1999).

[106] Regarding redistribution see Furtado (1999).

[107] "*Withdraw*" does not carry the same meaning as "*expropriation*" because the land continues under the ownership of the owner and, obviously, producing income.

[108] To facilitate this reasoning let us consider the valorization equal to the cost of the work.

[109] Of the additional yield of US$5,000, the IPTU captures US$50 without an increase in the percentage tax rate.

Meanwhile, the IPTU continued to fulfil its regular role - see situation "**Cl** ".

On the other hand, however absurd it may seem, an increase in the stock resulting from an investment made by the owner would be captured with the new value collected by the IPTU (an increase from US$100 to US$150), and on the basis of consistency or capitalist logic, this would have to be returned to the owner given that it did not arise as a result of the public investment. This is the case of situation "**Cl** ".

6.5 Increase of IPTU after charging the Betterment Levy

Following application of the Betterment Levy, with the recovery of all the valorization involved, could an eventual increase of IPTU mean bi-taxation since the entire additional yield would be covered and IPTU would only be charged on the previous yield? We think not.

In the light of the above, we understand that after the Betterment Levy has been applied, an eventual increase[110] of the IPTU would not constitute bi-taxation since the \`new´ IPTU would only be capturing a larger part of the yield (flow) which for its part would have been increased as a result of valorization. With the increase in the percentage tax rate, the IPTU would simply capture a larger part of the yield.

If we compare situations "**D**" and "**E**" above, we can see that the increase in the period of return (now 14 years) was the result in both of the increase of the rate, regardless of whether there was or not additional yield and/or recovery of that yield.

Application of the Betterment Levy does not rule out future increases of IPTU even if the levy has captured the entire valorization of the property.

The Betterment Levy basically recoups for the public authorities the amount incorporated into the stock without withdrawing from the additional stock its capacity to generate additional yield. This can and should continue to be the target for IPTU capture regardless of variations in the tax rate. If the Betterment Levy captures an amount that can also be measured by the additional yield multiplied by a specific number of years (depending on interest rates) this does not mean that the levy will capture the additional yield.

By capturing a greater part of the yield, the higher rate is acting solely from a quantitative point of view without interfering directly in the stock. Despite being to all intents and purposes hidden, the stock continues to generate income (at least potentially) and it will only make a *de facto* appearance at the time the owner decides to sell the property. From that point onwards all the valorization will be apparent, whereas until that moment only the result (the additional yield) was perceptible.

For this reason, charging the Betterment Levy to capture all the valorization would not impede an eventual increase in the IPTU, the consequence of which would simply be a

[110] \`Increase´ is understood to be the outcome of the application of a higher percentage rate since the increases resulting from changes in the database do not directly impinge on this discussion, providing we take it that the database is up to date.

reduction in the yield accruing to the owner.

Following the conclusion of the public work and the application of the Betterment Levy, the same reasoning would also be valid for the other part - that relating to valorization - because that also generates income and the owner in reality had to pay for it exactly as he did when he acquired the land. The amount paid in terms of Betterment Levy (similar to acquiring any asset, given that valorization generates an income) involves a longer period of return as a result of the increased tax rate. The previous period of 11 years is now 14 years (situation "**D**").

The IPTU would only capture part of the stock if it was directed to do so. This could occur if at any particular moment the authorities determined that the increment[111] in the tax would represent `payment´ for the valorization.

This however would meet with a number of difficulties (discussed below).

The following chart summarizes the simulated situations:

Type	Situation	BL	Increase rate	Net yield ($)	IPTU ($)	Return
A	Initial	NO	NO	900	100	11
B	Public improvement	NO	NO	1,350	150	8
C	Public improvement	YES	NO	1,350	150	11
C.1	Private betterment.	NO	NO	1,350	150	11
D	Public improvement	YES	YES	1,050	450	14
D.1	Private betterment	NO	YES	1,050	450	14
E	Initial (higher tax rate)	NO	YES	700	300	14
F	Public improvement	NO	YES	1,050	450	9.5

The following conclusions can be extracted from the above chart:

(1) The improvements made by the public authorities produced an additional net income of US$450 - the difference between US$1350 and US$900 and an increased IPTU from US$100 to US$150 (situation "**A**" compared with situation "**B**").

(2) The Betterment Levy captured the value on the basis of valorization of US$5000 but failed to draw the additional yield (situation "**B**" compared with "**C**"). This manoeuver barely re-establishes the situation of initial profitability. Since it applies to income from land, the additional yield theoretically will continue to exist indefinitely.

(3) The public authority, by charging the Betterment Levy, only withdraws (the valorization) with one hand that which had been applied with the other without altering the investment possibility - measured by the same period of return (11 years) in the comparison between "**A**" and "**C**". The Betterment Levy only re-establishes a

[111] The increase in the tax would result from a higher rate than that "usually" employed.

profitability situation that previously existed. But this manoeuver also involves an important outcome: an increase of the IPTU from US$100 to US$150.

(4) The IPTU increased because of the **reference base** employed but without it acting upon it. This increase was not able to capture the valorization, so the profitability increased and was measured by the reduction of the period of return from 11 to 8 years (situation "**A"** compared with "**B**").

(5) Profitability was reduced (with the increase in the period of return from 11 to 14 years) when the Betterment Levy was applied together with an increase in the tax rate ("**A"** compared with "**D"**). This increase was caused by the percentage rate and not by the Betterment Levy. Proof of this is that when there was only an increase in the rate ("**A"** compared with "**E"**), the period of return increased also from 11 to 14 years.

(6) Situation **F** represents the hypothesis of the IPTU fulfilling the role of the Betterment Levy. In summary it could be said that:

(6.1) Over the short-term this situation was advantageous to the owner because it diluted the payment for valorization and produced a return in a shorter time, comparing situation "**C"** with "**F".** It was of no interest to the public authority, because instead of receiving in theory US$5000 straightaway, it would receive a monthly payment of US$300.

(6.2) In the long-term, the owner would lose from the 17th year onwards (US$5000/ US$300).

(6.3) The IPTU is not the most appropriate tool for capturing `current´ values but it is a powerful instrument for past value capture, unlike the Betterment Levy ("**F**" with "**B**"). However, capture of past values must be understood as being *redistribution* of wealth generated largely by public investment rather than a simple question of *recovery*. This occurred because the owner (considered to be the `founder´) at the time the public improvement was made, received his (unmerited) windfall by possibly selling the property to a third person. Thus it is virtually impossible to recover the yield specifically through the IPTU.

7. Other aspects of the American experience

7.1 The Structure of Government

The structure of government in the United States is complex, multilevelled and split into approximately 90,000 different units. Government is not homogeneous in all the states where the variations (eg: even of nomenclature) are the product of the history and tradition of each of the states comprising the Confederation.

However, what on the surface might seem complicated and bureaucratic in practice actually works. A significant degree of social control of public expenditure is made

possible by extensive decentralisation[112].

Every five years in the fiscal years ending in 2 and 7, the US Census Bureau undertakes the Government Census covering all the different levels of government - Federal, State and Local.

In June 1997, 87,504 units of government were in existence: the Federal Government, 50 State governments and 87,453 local governments, distributed as follows: 3043 counties, 19,372 municipalities, 16,629 townships and towns, 13,726 school districts and 34,683 *Special Districts*. The latter are areas covered by public services such as water supply, sewerage, fire prevention or are coterminous with eg: highways, public parking facilities or nature reserves.

A `unit of government´ is defined on the basis of three principal attributes: (1) to exist as an organised body defined by law; (2) to possess the power to tax and to provide public services and (3) to have substantial autonomy including fiscal, budgetary and administrative independence.

The US Census groups local governments into <u>five</u> basic types: three reflect the *general* remit of government (ie: county, municipality and township), and two types are related to *specific* purposes (ie: School Districts and Special Districts).

From the point of view of taxing power, particularly with regard to urban land taxation - the Property Tax and *Special Assessment* - the *county* is the unit primarily responsible for collecting taxes and reallocating them to what the official censuses term `s*ub-county level governments´.*

In contrast to the Brazilian experience—in which decentralization based upon unwarranted emancipation of the municipalities led to the duplication of government units (all with executive, legislative and judicial functions) and with a corresponding duplication of public expenditure—the United States retained the same number of local governments but increased the number of *Special Districts*, which are basically units for planning and supplying public services that operate outside the executive, legislative and judicial apparatus.

The chart below is a good illustration of this. During the 55 years from 1942 to 1997 (a period of rapid urban, particularly suburban, expansion) the number of local governments —county, municipality and township/towns—increased from 38,189 to 39,044, an increase of only 2 percent. Meanwhile, the number of *Special Districts* [113] increased 318 percent, from 8,299 to 34,683.

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[112] This degree of decentralisation has a downside: segregation. One example is schools: in the better neighborhoods, the public schools are of better quality. New York City (a key example) does not follow this because it runs a single budget for education and has no *Special District*.

[113] Urban expansion and the increase in the number of *Special Districts* are closely linked because new services or the upgrading of the existing structure are generally financed and maintained by the "new" occupants in the area covered by the new *Special District*.

Moreover there was a significant reduction (44%) in the number of units of government, mainly brought about by the reduction (87%) of *School Districts* from 108,579 to 13,726 —a result, according to the US Census, of School District consolidation and reorganization.

Number of Government Units (1942 and 1997) and Population (1994, in 000s)

Type of government	1942	1997	Variation %	Population	Percentage
Federal	1	1	-	260,341	100
State	48	50	4		
Local:					
County	3,050	3,043	- 0,23	236,107	91
Municipal	16,220	19,372	19	161,605	62
Township or Town	18,919	16,629	- 12	54,662	21
Subtotal:	38,189	39,040	2		
School district	108,579	13,726	- 87		
Special district	8,299	34,683	318		
Total local government	155,067	87,453	- 44		
Overall total	155,116	87,504	- 44		

Source: From data provided by the US Census Bureau, Statistical Abstract of the Unites States, 1999

It is interesting to contrast the evolution of the number of municipalities and districts in Brazil over a similar period:

Evolution of Municipalities and Districts in Brazil - 1938 to 1997
(Index number - base 1938=100 and in % compared to the previous year)

	Municipalities			Districts		
Year	Number	Index	% Prev Year	Number	Index	% Prev Year
1938	1,574	100	100	4,842	100	100
1949	1,894	120	120	5,427	112	112
1959	2,763	176	146	N/A	-	-
1969	3,954	251	143	N/A	-	-
1979	4,011	255	101	8,189	169	151
1990	4,794	305	120	9,196	190	112
1995	4,982	317	104	9,282	192	101
1997	5,507	350	111	9,516	197	103

Source: Drawn from annual statistical records of IBGE, 1940, 50, 60, 70, 80, 91, 96 and 98.

Over 60 years the number of municipalities in Brazil more than tripled, with substantial increases in the 1940s (20%), 1950s (46%), 1960s (43%) and 1980s (20%). The biggest `district´ increases were during the 1950s and 1960s (97%).

The expansion of the number of districts in Brazil was a result of the creation of many `new´[114] municipal areas directly resulting from the process of colonisation and expansion of the so-called internal frontiers of Brazil, especially in the North and Center-West. The dismemberment of municipalities (`intractable´ from the public administration point of view) was responsible for the major part of this increase.

The state of Minas Gerais stands as an example of the situation in the country as a whole[115]. The number of municipalities practically tripled and districts increased by 60 percent, as illustrated by the following chart.

Municipalities and Districts in Minas Gerais — 1938 to 1997

(Index number - base 1938=100 - and in % compared to the previous year)

	Municipalities			Districts		
Year	Number	Index number	% previous year	Number	Index number	% previous year
1938	288	100	100	944	100	100
1949	388	135	135	1102	117	117
1959	485	168	125	N/A	0	0
1969	722	251	149	N/A	0	0
1979	722	251	100	1399	148	127
1990	723	251	100	1429	151	102
1995	756	263	105	1471	156	103
1997	853	296	113	1535	163	104

Source: Drawn from annual statistical records of IBGE, 1940, 50, 60, 70, 80, 91, 96 and 98 (N/A: not available)

A further indicator that could explain the excessive number of municipalities (together with their administrative structures) is their distribution vis-à-vis the population in Minas Gerais. Almost one third of the municipalities (32%) represents an urban/rural population of fewer than 5000 inhabitants, making up a mere 6 percent of the total population of the state and the majority of municipalities (62%) have a population of under 10,000. The latter account for only 17 percent of the total population of the state.

The municipalities with extremely small populations present many problems in addition to those affecting public expenditure. From a taxation point of view the smaller number of people living in the municipalities generally means that a closer relationship exists between the local inhabitants and the public authorities - thereby putting tax-collection on

[114] In the final analysis, the increase in the number of municipalities is directly due to (growth of) previously existing municipalities. The distinction made here attempts to separate the "old" colonisation processes (especially in the Northeast and Center-South of the country) from the "new" (i.e.: from the 1940s).

[115] National development was strongly influenced by Minas Gerais. In the 1980 the state possessed 18% of all the municipalities in the country. Since then this has declined to 15%.

an almost personal basis[116].

Given the above figures it is interesting to look at the possibility of regrouping the municipalities in the cause of administrative rationality.

Number and population of municipalities in Minas Gerais, by population segment — 1996

Bracket	Pop (000s)	Pop (%)	Num. Munic.	Munic. (%)
Under 5000	952	6	269	32
5–10,000	1,776	11	255	30
10–20,000	2,451	15	174	20
20–50,000	2,537	15	99	12
50–100,000	2,862	17	36	4
Over 100,000	6,095	37	20	2
Total	16,673	100	853	100

Source: IBGE, Population Count 1996.
João Pinheiro Foundation, Statistics and Information Center.

The following are outline descriptions of the government units in the United States.

7.1.1 County

The *county* is a level of government inherited from Britain[117] and has no equivalent in Brazil. In our country it would amount to a type of commune (*comarca*) covering a number of municipalities and undertaking functions over and above those in the mandate of the judicial power.

With the exception of the states of Connecticut, Rhode Island and the Federal District of Columbia, all the other states are organised on the basis of *counties*, although there is no particular homogeneity about this[118]. It follows that not all the areas known officially as *counties* are treated as such. This occurs when municipal governments and *counties* work together, consolidate long-term and are considered for census purposes as Municipal Governments.

[116] Goelzer, 1999, page 24, analyses the factors that may have influenced the level of non-payment of the Betterment Levy in the State of Paraná. He identified a powerful connection to do with the size of the population of the various municipalities: "(...) the smaller the municipality, the closer the personal relation-ship forged between the municipal authorities and the members of the community, and the lower the revenue collected from that community. This possibly indicated the existence of practices impeding collection of the tax.

[117] *"County"* originated in Britain around 1000AD (the area historically designated under the control of certain members of the nobility). [Translator's note: In most of the United Kingdom today the *county* is the chief civil unit and administrative division outside the seven largest conurbations. In the United States it is normally the next civil division below a State].

[118] *Counties* in the US came to be called by two different names. In Louisiana, C*ounty* is officially known as a *Parish,* and in Alaska as a *Borough* – both classified however as *counties* in the official census statistics. In 1994, 9% of the population of the US lived in areas not belonging to any county, i.e.: 91% lived in counties.

Some examples of exceptions:

Areas with governments designated as *city counties* but mainly acting as cities eg: San Francisco (California) and Denver (Colorado).

Areas with specific attributions of a *county* but forming part of another type of government (city, township or state). This is the case of the *counties* of the Bronx, Kings, New York, Queens and Richmond - all part of the city of New York. Philadelphia (the County of Philadelphia) in Pennsylvania also falls into this category.

An area classified as a *county* but with a separate status in terms of population statistics and considered for government census purposes as a municipal government.

Areas designated as metropolitan governments and acting as *cities* - as in the case of Nashville and Davidson County (Tennessee).

Cities that are located outside any *county* but that share common functions with the counties, eg: Baltimore (Maryland), St Louis (Missouri) and Alexandria (Virginia).

The number of *counties* varies considerably from state to state. Delaware has 3, California 57 and Texas a total of 254.

Taking into account all the exceptions, 9 percent of the total population of the United States lived in areas not belonging to any county (in 1994). Thus *county* residents accounted for 91 percent of the total population of the country.

7.1.2 Municipalities

Municipal governments are concentrated on specific populated areas, including governments designated as *cities, villages, boroughs* (except Alaska) and *towns* (except for the six states of New England, Minnesota, New York and Wisconsin. In Brazil these would be *municipalities.*

The number of municipal governments varies considerably from state to state. Illinois for example has 1288 municipal governments, Texas 1177 and Pennsylvania 1023. On the other hand, eight states have only 50 municipalities each: Connecticut, Hawaii, Maine, Massachusetts, Nevada, New Hampshire, Rhode Island and Vermont. Six of these states are in New England where the *townships* (occasionally also known simply as *towns*) generally provide the kind of public services that in other states are the responsibility of municipal governments.

The total population residing in localities defined as municipal governments amounted to 62 percent of the total population of the United States in 1994.

7.1.3 Township or Town

The *township* (also known as a *town* in the states of New England, *plantations* in the state of Maine and *locations* in Wisconsin) would be the rough equivalent of Brazilian *districts.*

Of the 50 American states only 20 fall into this category of government, all of them located in the Northeast (eg: New England) and the Midwest[119]. Within this universe only Indiana possesses *townships* throughout its whole area and population, while in the other states *townships* exist only in certain counties. In 11 states the functions of the *municipal* governments overlap with *township*-type governments.

7.1.4 Special Districts

The US Census defines as a Special District[120] an entity of local government that is not a *county, municipality, township* or *school district* and that is authorised by law to assume one or a limited number of services or public activities. The Special District must have sufficient fiscal and administrative autonomy to qualify it as a local government. It follows that the Special District has its own budget with the power to tax (particularly to charge fees and the *Special Assessment*), to issue bonds, to elect its management body (cases exist in which selection of this is done at another level of government), hire employees and consultants and undertake activities with little or no supervision by the local governments[121].

In Brazil the *Special Districts* would amount to roughly what we know as *condominios fechados* (closed condominiums) with the difference that in the United States the districts are not enclosed by walls.

According to the Urban Land Institute, the Special Districts have formed part of the government structure of the United States for many years: the first of these appeared in 1797 in Rhode Island[122]. Historically, they were set up to deal with laying down or expanding infrastructure, particularly road and water supply systems.

In the 1930s, the Special Districts experienced considerable growth and they were used as an instrument to issue bonds for capturing resources (since government reforms at the end of the 19th century had placed strict limits on the indebtedness capacity of state and local governments).

Since the Great Depression had reduced their main source of revenue (Property Tax), local and State governments thereafter started to depend on resources arising from Federal programs for infrastructural investment. To obtain a share in these programs many states passed laws authorising the creation of Special Districts. As a result, in addition to capturing Federal resources, local governments were able to retain their investment capacity by issuing *Special District Bonds* without exceeding the limits imposed on their public indebtedness.

Political and financial abuses of the system in some Special Districts made it necessary to reform state laws in order to increase public control over the management of resources.

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[119] The 20 states are the following: Connecticut, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont and Wisconsin.

[120] The *Special Districts* are also known as authorities, boards, commissions or simply `districts´.

[121] See Porter et al., 1992.

[122] Porter et al., op cit.

The group of Special Districts evolved in absolute numbers in line with the period of most intensive urban expansion—growing almost 50 percent during the 1940s and 1950s (see chart below). In the 1960s, 1970s and 1980s their growth tended to be slower and on a declining curve—30 percent, 17 percent and 12 percent respectively. However figures for 1992–1997 (the latest available) show an increase of almost 10 percent - from 31,555 to 34,683 Special Districts representing a faster rate of growth in the 1990s compared with the 1980s and effectively reflecting the renewed cycle of economic growth of the United States over the past decade. This is also a clear indication that the Special Districts are used by governments to respond to the demand for services and urban expansion without increasing the tax burden in general - recently subject to major constraints[123].

The number of local governments, excluding *School Districts*, has been remarkably stable over the past few decades. It is worth noting that they were cut back by 3 percent in the 1940s on account of the reduction of townships from 18,919 to 17,202.

Percentage growth of Special Districts and other local governments(1) by decade

Year	Spec. District	Growth %	Other Govts.	Growth %
1942	8,299	-	38,189	-
1952	12,340	48.7	37,061	-3.0
1962	18,323	48.5	38,185	3.0
1972	23,885	30.4	38,552	1.0
1982	28,078	17.6	38,851	0.8
1992	31,555	12.4	38,978	0.3

1) County, Municipality and Township.
Source: From data provided by the U.S. Census Bureau, Statistical Abstract of the United States: 1999.

The following supplementary information concerns the purpose, location and finances of the Special Districts in 1987[124].

Special Districts fall into two large groups: districts with a *sole function* or *multiple functions.* The first group is divided into six subgroups[125]: (1) Education and Social Services (libraries, hospitals and school buildings); (2) Transport (freeways, airports, public parking, public transport and water transport); (3) Housing and Environment (parks, housing and community development, sewage systems and nature reserves); (4) Public Utilities (water supply, electricity and gas); (5) Public Safety and Firefighting and (6) Miscellaneous. *Multiple-function* districts obviously cover two or more of the aforementioned subgroups.

[123] See *Propositions 13 and 2 ½.*
[124] Porter et al., op. cit. (1987) refer to a total of 29.427 *Special Districts* and the Census (Statistical Abstract 1999), 29.532, indicating a shortfall of 105 Special Districts. Despite the time gap of 13 years, the data give a good idea of the number of existing districts in the US.
[125] Note that this sub-division includes school buildings and water transport. In theory, school buildings should form part of the school districts. In the case of water transport, we imagine that this relates to piping or surface channeling.

Number and percentage distribution of Special Districts according to function (1987)

Type of District	Number	Percentage
A) Single Function	**27,387**	**93**
1-Education and Social Services	2,802	10
2-Transport	1,473	5
3-Environment and Housing	12,517	42
4-Electricity, Gas and Water	3,225	11
5-Public Safety and Firefighting	5,063	17
6-Miscellaneous	2,307	8
B) Multiple-function	**2,040**	**7**
Overall Total	**29,427**	**100**

Source: Porter et al. 1992.

This chart shows that the overwhelming majority (over 90%) of the Special Districts have a single function, with the main one (applying to 42% of the Districts) concerned with the Environment and Housing Group (6,421 deal with Natural Reserves and 2,264 with Housing). 17 percent deal with Public Safety and Firefighting, 11 percent with Electricity, Water and Gas and 10 percent with Education and Social Services.

The following chart shows the number and financial situation of the Special Districts by state in 1987.

Number of districts, revenue, expenditure and debt in 1987 (in US$ million)

Order	State	Number	%	Revenue	%	Expenditure	%	Debt	%
1	Illinois	2,787	9	3,416	7	3,394	6	4,382	3
2	California	2,774	9	10,147	20	9,896	19	17,611	13
3	Texas	1,859	6	4,108	8	4,242	8	15,898	12
4	Pennsylvania	1,805	6	3,610	7	3,114	6	17,715	13
5	Kansas	1,387	5	305	1	281	1	449	0
6	Missouri	1,202	4	626	1	613	1	535	0
7	Washington	1,176	4	3,371	7	3,568	7	12,023	9
8	Nebraska	1,103	4	1,473	3	1,422	3	3,291	2
9	Colorado	1,077	4	893	2	934	2	2,284	2
10	New York	980	3	1,482	3	1,711	3	3,047	2
	Sub-total	**16,150**	**55**	**29,431**	**58**	**29,175**	**56**	**77,235**	**56**
	Other states	13,277	45	21,223	42	23265	44	59945	44
	Total	**29,427**	**100**	**50,654**	**100**	**52,440**	**100**	**137,180**	**100**

Source: Porter et al. 1992.

The majority of the districts (55%) in 1987 were concentrated in only 10 of the 50 American states—1/5 of the total was accounted for by two states alone (California and Illinois).

A clear link exists between the number of *districts* and the volume of revenue and expenditure by state. One exception is California where the revenue and expenditure of

around 20 percent accounts for over twice the number of districts (9%), which could indicate the presence of larger-than-average districts. On the other hand, Kansas and Missouri data point to the opposite: the districts in those states are smaller than average - each state has around 5 percent of the districts but with a financial movement of only 1 percent.

As for debt, a relationship exists between percentage share in the level of indebtedness and the volume of revenue and expenditure of each state. The states that fall outside the pattern of indebtedness of the others are Illinois and California - both with a level beneath their relative weight. Pennsylvania and Texas are above this level. Considering that bond-issuing is an important mechanism for financing the implementation of Special Districts, this data may indicate that Illinois and California possess a longer history of Special Districts than Pennsylvania and Texas since in theory they would have amortised a large part of their debt. On the other hand, Illinois and California may have resorted less to the indebtedness option.

The following chart presents the main sources of revenue of the *Special Districts*:

Revenue Profile, 1987 (in US$ million)

Type	Amounts	%
1) Transfers	**10,783**	**21**
Federal government	5,763	11
State governments	1,951	4
Local governments	3,069	6
2) Taxes	**5,491**	**11**
Property Tax	3,862	8
Others	1,629	3
3) Charges	**27,392**	**54**
Water	3,320	7
Electricity	7,196	14
Gas	672	1
Public transport	1,928	4
Other services	14,276	28
4) Miscellaneous	**6,988**	**14**
Special Assessment	454	1
Financial receipts (interest)	3,528	7
Pensions (retirement)	416	1
Other	2,590	5
5) Total	**50,654**	**100**

Source: Porter et al. 1992.

The revenue profile for 1987 shows that almost 1/5 of the total arises from transfers from other levels of government. Over 54 percent of the total revenue arises from charges for services, particularly electricity.

The small share (8%) accounted for by Property Tax is explained by the fact that this

tax on the whole is earmarked for the school system.

The proportion of financial receipts (7% of the total) is relatively high by the standards of local government in Brazil at a time of stable currency.

It is also worth mentioning that the *Special Assessment* (Betterment Levy) accounted for only a small share in 1987 (1%) probably demonstrating the low investment made during the year since the US Census excluded possible current administrative expenditure that might have been included under this subhead. However, crosschecking with other expenditure data shows a different situation: 24 percent of total disbursement was on Capital Expenditure, as illustrated in the following chart:

Distribution of expenditure of Special Districts by type in 1987 (%)

Type of Expenditure	%
Current	55
Capital	24
Personnel	21

Source: From census data, In Porter et al., 1992.

Expenditure of Special Districts by function, 1987(in US$ million)

Type of District	Expenditure	%	Quant. %
A) Single Function	45,363	87	93
1-Education and Social Services	8,968	17	10
2-Transport	9,3 14	18	5
3-Environment and Housing	10,745	20	42
4-Electricity, Gas and Water	14,093	27	11
5-Public Safety and Firefighting	858	2	17
6-Miscellaneous	1,385	3	8
B) Multiple-function	7,077	13	7
Overall Total	52,440	100	100

Source: From census data, In Porter et al., 1992.

The group of districts with the highest share (27%) was that concerned with Electricity, Water and Gas despite these districts representing numerically only 11 percent of the total. In 1987 only 142 districts were concerned with supplying electrical energy but this amounted to 20 percent of total expenditure. These figures could signify the high relative cost of the services and/or a high demand by district.

On the other hand, Environment and Housing (42% of the districts) accounted for only 20 percent of the expenditure, which might reflect the relatively lower costs of operation and maintenance.

7.1.5 School Districts

According to the 1997 US Census, of the 15,178 public school systems, 13,726 were in the *School District* category. The remainder (1452) were units operating under other levels of government (state, *county*, municipality or *townshi*p), classified as belonging to the `dependent´ public school systems.

Whereas 31 states possess school systems organised in the form of independent districts, the District of Columbia and Alaska, Hawaii, Maryland and North Carolina do not possess school districts. In the other 15 states (including California, New York, Massachusetts, New Jersey and Arizona) a mixed system predominates.

7.2 Public Works

Given the main purpose of the present paper—to study forms of urban value capture—it is of interest to examine the government-level public works expenditure structures.

The chart below shows expenditure on public works such as highways, airports, public transport and water/sewage services. It is obvious from this data that local governments are of great importance since they account for almost two thirds of the total public works in general (investment and maintenance). The states account for almost 30 percent and the Federal Government for less than 10 percent. Over the 15 year period the total expenditure recorded on public works increased by 167 percent.

Expenditure on Public Works in general, according to level of government 1980–1995

(US$ million)

Government	1980		1990		1994		1995	
	US$	%	US$	%	US$	%	US$	%
Federal	5,114	7	7,911	5	10,021	6	12,837	7
State	22,832	32	43,787	30	52,534	29	56,392	29
Local	44,231	61	95,064	65	118,079	65	123,756	64
Total	72,177	100	146,762	100	180,634	100	192,985	100
Increase*	**100**		**203**		**250**		**267**	

Source: US Census Bureau, Statistical Abstract of the United States, 1999, pag 313. *Base: 1980=100

The next chart shows that Federal Government expenditure on highways is around (1%) while that of State and local governments accounts for around 60 percent and 70 percent respectively. Expenditure growth on highways was slightly lower than the total spent on other works—around 130 percent over 15 years.

Expenditure on highways, according to level of government 1980–1995

(in US$ million)

Government	1980		1990		1994		1995	
	US$	%	US$	%	US$	%	US$	%
Federal	434	1	856	1	691	1	731	1
State	20661	61	36464	59	43812	60	46893	60
Local	12650	37	24593	40	28255	39	30216	39
Total	33745	100	61913	100	72758	100	77840	100
Increase*	**100**		**183**		**216**		**231**	

Source: US Census Bureau, Statistical Abstract of the United States, 1999, p 313. *Base: 1980=100

The figures above relate to investment and maintenance works. If we consider that the investment works alone are eligible for value capture, particularly those concerning public highways, capital outlay on highways could provide a reference point for identifying resources that theoretically could be recouped by governments through the Special Assessment/ Betterment Levy[126].

Unfortunately the data referring to state and local governments is aggregated in the following chart. However, it would seem that in the years recorded, capital expenditure accounted for over half (55%) of total expenditure, which could be explained either by the growth of the highway network or by a substantial road repair bill, or both (see footnote[13]).

Capital expenditure on highways according to level of government 1980–1995

(in US$ million)

Government Federal	1980		1990		1994		1995	
	US$	%	US$	%	US$	%	US$	%
State	132	1	181	1	203	1	185	0
Local	19133	99	33867	99	39503	99	42561	100
Total	19265	100	34048	100	39706	100	42746	100
Increase*	**100**		**177**		**206**		**222**	
Ratio: capital/total	0.57		0.55		0.55		0.55	

Source: US Census Bureau, Statistical Abstract of the United States, 1999, p 313, * Base: 1980=100

[126] According to understanding of the US Census definitions, the values equivalent to what is known in Brazil as periodic maintenance relate to repairs (not in the same category as *routine maintenance*, carried out on a less frequent basis- i.e.: not periodically) and would have to be excluded from capital expenditure. The US Census informs that: "*Capital Outlay (...) includes amounts for additions, replacements, and major alterations to fixed works and structures*". Source: Government Finances, Appendix A, page A-1.

7.3 Business Improvement Districts (BIDs)

The deterioration of the downtown areas of large urban centers, a common feature of Brazil today, occurred over 30 years ago in many American cities, caused basically by middle-class families moving out to the suburbs and by the competition arising from large shopping centers located in the peripheral areas. One of the solutions for revitalising downtown mainly commercial-use areas tried out in the United States and Canada has been to establish Business Improvement Districts (BIDs)[127].

7.3.1 What is a BID?

A Business Improvement District consists of a partnership forged between the public sector and business people, property owners and residents in a specific area of a city[128].

The above usually organise themselves in a non-profit association with the aim of raising funds for providing services and making small investments to upgrade dilapidated areas of a city. The BIDs normally involve predominantly commercial areas covering a few blocks in downtown areas.

The services normally consist of sidewalk cleaning, providing unarmed auxiliary/supplementary public safety personnel, social services (eg: refuges for street dwellers etc), small markets, cultural activities, tourist support etc. Investments are generally made in basic street furniture, eg: seating, kiosks, newspaper outlets, traffic lights, trees, repairs to the fronts of buildings, lighting for special occasions etc.

A BID is not restricted to a partnership in the form of a sponsorship or voluntary effort in which private initiative and/or community initiative collects donations, provides a range of services or `adopts´ public spaces (squares etc). The business improvement concept goes beyond this, seeking to combine cooperative action with a compulsory tax - in this case a kind of `special assessment´ to cover investment and administration. Once the Business Improvement District has been defined geographically, all the shopkeepers, property owners and other occupants in the area are obliged to contribute to the costs of services and investments during its existence[129]. The City Administration takes charge of collecting the tax in the same way as the Property Tax and is responsible for remitting the revenue without deductions to the BID management board. According to the New York City Council´s Department of Business Services (DBS) "the BIDs derive their legitimacy from state and municipal legislation that allows tradesmen and property owners to engage municipal tax collection facilities in order to tax themselves (…) effectively this is self-help based upon self-taxation" (New York City, Department of Business Services,1999).

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[127] The BIDs are also known by the following names: BIA (Business Improvement Areas); SAD (Special Assessment Districts); SSD (Special Service Districts) and SID (Special Improvement Districts).

[128] The first BID was established in 1965 in Canada and the first in the US in New Orleans, in 1975.

[129] In New York City, the City Council and the Association sign a 5-year contract, renewable every 5 years thereafter. At the end of each 5-year period, the public authority conducts an appraisal. In the event of a negative verdict the contract is not renewed. No cases of non-renewal of contract have to date been reported.

According to the DBS, the Business Improvement Districts function best in commercial areas:

(1) Where a substantial number of commercial properties exists;

(2) Where the tax base is sufficiently large to generate the necessary resources;

(3) Where relatively few unoccupied or residential properties exist, or where the properties are occupied by public sector organisations or religious and charitable entities (exempt from property and land taxes);

(4) Where benefits can be derived from additional services or investments likely to attract new businesses and consumers and

(5) Where a group of traders, businessmen and property owners exist who are prepared to invest their time in managing the BID.

7.3.2 Types of Benefits

Houston (1997:12) divides the benefits arising from the BIDs into six different types:

(1) Supplementary public services - security, cleaning, maintenance of parks and other public spaces;

(2) Non-governmental services - sweeping public places, snow-clearing, marketing, events organisation, institutional announcements etc;

(3) *Advocacy* [130]to ensure that the business people involved adopt joint positions with respect to the local economy and improvement of public services;

(4) Cooperative ventures - joint activities to satisfy specific demands eg: advertising and contracting services (of interest to some business people);

(5) Investment financing - the BID secures loans for investing in public areas;

(6) Research and planning services - economic and demographic surveys and data analysis, defining targets, undertaking appraisals, adopting multi-year programs.

7.3.3 Commonest Activities

The commonest activities resulting from the Business Improvement District initiatives are the following:

(1) *Maintenance* - garbage collection, graffiti removal, sidewalk cleaning, snow clearance, pruning trees, grass-cutting and planting;

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[130] Houston claims that this is more a kind of “benefit” awarded by the BIDs. On the other hand, Mitchel is clearer on this point, claiming that it seeks also to protect the interests of the developers: "(…) lobbying government on behalf of business interests". Page 18.

(2) *Security* - contracting `supplementary´ security firms and `street guides´, purchasing vehicles and ancillary equipment;

(3) *Marketing* - organisation of exhibitions and fairs, sales promotion, distribution of maps and journals, erecting banners, undertaking publicity campaigns;

(4) *Business support* - market research and production of economic reports with information on financial incentives aimed at potential investors in the creation or expansion of businesses/marketing;

(5*) Regulation of the public space*[131] - controlling street vendors, buskers, protecting street furniture, code compliance, loading and unloading of trade vehicles;

(6*) Parking and public transport* (restricted to specific areas) - managing public parking, maintaining bus shelters and operating *ride-sharing* services;

(7) *Urban design* - drafting guidelines for urban design and programs aimed at improving the front of buildings;

(8) *Social services* - support for street-dwellers, training programs for unemployed youngsters;

(10) `V*isioning´* - long-term strategic planning;

(11) *Investments* - repairs to fronts of buildings, replacing windows, installing special lighting (especially at Christmas), servicing urban equipment, planting trees etc.

7.3.4 How is a BID implemented?

Establishing a BID varies from state to state. The initial decision might emerge from the interested parties themselves (property owners, ordinary traders, residents, trade or community associations etc) and/or from the public authorities (city authority, regional administration or Council Chamber). In general, interested parties submit an application to the City Administration with an outline of the geographic scope of the BID (eg: blocks and streets), indicating the services and improvements that they intend to carry out as well as presenting a formula for collection of the `special assessment´. This procedure is followed by a series of public meetings before final approval is given.

In the case of New York City, the formal procedures consist of a petition signed by at least 51 percent of the property owners whose properties must be worth at least 51 percent of the venal value[132] of all the properties in the area that the BID proposes to cover.

[131] In the case of New York, the City Council transfers to the BIDs the right to use or permit the use of commercial activities undertaken in the street.
[132] This refers to *venal value* - the value of a property as stipulated by the public authorities in the case of the City Council of New York - as a taxation reference basis (basis for calculation).

Until the management body has been formally established[133], working groups attempt to convince people to accept the idea and make it politically and technically viable. At this stage, the scope of the BID can be amended to include the maximum number of commercial properties possible and to limit residential properties and those that are not liable to taxation (public sector properties) or those that are fully exempt such as religious bodies. "The BID must be large enough to generate the necessary financial resources but not too large that it does not become administratively unviable" (New York City,1999).

The technical, economic and political viability of the demarcated district must be demonstrated. In the case of New York, the authorities insist on a *District Plan* to establish exactly what can be done, where, how and by whom. This plan must contain the following:

(1) A map of the district;

(2) A profile of the area in question: urban zoning, types of use, means of transport etc;

(3) Services and investment proposed;

(4) Sources of funds arising from (a) *Special Assessment*/Betterment Levy - specifying costs distribution between interested parties; (b) donations and transfers; (c) loans and (d) licences "(`rights of use´ fees etc);

(5) Annual budget detailing direct and indirect administrative costs and contingency reserves;

(6) A list of the benefited properties, with accurate address details;

(7) Definition and composition of the management body responsible for the BID. In New York the concept of *District Management Associations* was adopted (private non-profit associations). The Lincoln Square BID for example includes the following categories of members[134]: property owners, tenants of commercial properties; residential tenants; public sector representatives; members of the community (without voting rights) and representatives of non-profit entities (with no voting rights) of importance to the district - eg: the American Bible Society, Fordham University and Lincoln Center;

(8) Definition of the activities to be undertaken directly by the BID or to be transferred to third parties, charging for rights of use[135]. The Lincoln Square BID in New York lists information, advertising and cab-hire kiosks, newspaper stands, public restrooms, bus-shelters and restaurants.

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[133] Mitchel (1999) informs that three types of organisation can manage a BID: a non-profit making body, a quasi-public authority and a mixed public-private enterprise. In the majority of cases, the entities involved are of the first kind – non-profit private law entities. The choice of management entity depends on the degree of governmental control anticipated.

[134] The BID management body consists of 7 "category A" persons (6 related to commercial properties and 1 to residential properties); 3 from category B; 1 from C; 4 from D; 2 from E and 4 from F. A total of 15 members have the right to vote. The Stanway Street BID comprises 13 representatives in category A; 4 in B; 1 in C and 4 in D.

[135] The user rights are transferred by the City Council to the BID on the basis of a bilateral contract.

Final approval of the application for a BID must be made by overwhelming majority[136]. In Mississippi, 70 percent of the owners must vote positively and in Indiana, Utah, Wyoming and Georgia representatives of 75 percent of the sum total of the venal value of the properties (Houston, 1997). In New York, a BID is turned down if 51 percent of the local owners representing 51 percent of the sum total of the venal value of properties vote against.

7.3.5 Financial Aspects

The main financial question regarding BIDs concerns the formula for cost distribution drawn up on an annual basis. The three basic features to be considered are:

(1) The venal value of the property stipulated by the local government;

(2) The area of the property; and

(3) The square meterage of the frontage of the property.

Combinations of the above are frequently adopted and occasionally include differentiation between uses (residential and/or commercial), type of premises (built or not) and the status of the property (owned or rented). Distinctions are also made between different types of commercial use, as in the Lincoln Square BID where the initial distribution of US$1 million involves payment by the shops of US$0.25 cents per square foot[137], US$0.23 cents for offices and US$0.10 cents per foot for garages and sheds. Empty properties are also charged at US$0.10 cents per foot while residential properties in the area pay a symbolic one dollar per year per property.

Lincoln Square has limited any contribution to a maximum of 20 percent of the property taxes to be paid on each individual property, with an upper limit of US$300,000.00[138.] In the Lincoln Square Business Improvement District a half dozen large companies including ABC TV and Sony are responsible for paying almost all the charges.

In the Times Square BID 20 large firms account for around two thirds of revenue (64%).

Houston states that the amounts paid by the majority of the BIDs is probably around US$0.10 to US$0.15 per square foot for commercial buildings. If charging is done on the basis of property value, the tax is around 5 percent to 6 percent of the value, which can occasionally exceed the 20 percent paid in property taxes. This happens when the BID contains a small number of properties or when government taxation is low.

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[136] However in certain states approval is granted more as the result of a decision by the municipality than on the basis of consultation with the interested parties – in order to encourage the establishment of BIDs. Examples are New Jersey, Virginia and Arizona.

[137] One square foot = 0.0929 square meters. 10.76 square feet = one square meter. On this basis a shop paid US$2.69 per m^2.

[138] The upper limit of 20% is imposed in the law regulating the BIDs in New York City (*N.Y. Administrative Code*). Limits are also imposed by the same law on investment indebtedness for capital improvement. The absolute indebtedness limit for the City Council is 10% or 7% in the case of the sum total of venal values of the properties located in the BID.

Kelley (1991) makes an interesting comparison between the contribution paid in 1991 by owners of properties located in the Grand Central BID and those who paid real estate taxes. Payment for the BID amounts to 11.7 US cents per square foot while the real estate taxes were roughly around 6-12 cents per square foot. If this information is correct, the upper limit of 20 percent would not apply in this case.

The BIDs are obliged to publish an annual financial statement containing revenue and expenses, a description of assets, names of directors, firms contracted by the BID, together with a budgetary forecast for the subsequent year.

The following chart is a summary of the financial movement of BIDs in New York City - the completed 1999 budget year for the Times Square BID and the budget forecasts for the year 2000 for Grand Central, Lincoln Square and Steinway Street[139].

Revenue and Expenditure (in US$ 1000s)

BID	**Times Square**		**Grand Central**		**Lincoln Square**		**Steinway Street**	
Item	Value	%	Value	%	Value	%	Value	%
Revenue	**8613**	**100**	**10635**	**100**	**1132**	**100**	**274**	**100**
Special Assess.	5933	69	10050	94	1000	88	250	91
Financial	0	0	200	2	25	2	1	0
Contrib/Grant	1049	12	0	0	107	9	0	0
Other	1631	19	385	4	0	0	23	8
Expenditure	**8753**	**100**	**11956**	**100**	**1134**	**100**	**262**	**100**
Security	2017	23	2066	17	359	32	95	36
Public cleaning	1400	16	2577	22	276	24	50	19
Marketing/promotion	1703	19	637	5	101	9	43	16
Social services	398	5	210	2	81	7	0	0
Administration	1288	15	2269	19	162	14	50	19
Others	1947	22	4197	35	155	14	24	9
Balance	**-140**	**-2**	**-1321**	**-12**	**-2**	**0**	**12**	**4**

Source: BIDs Financial Reports.

[139] The BID reports were not presented uniformly (i.e.: adopting the same format). This may have led to greater dissagregation as far as expenditures were concerned.

Two of the largest BIDs in the country, *Grand Central* and *Times Square*, account for an annual revenue of approximately US$20 million - over one third of the resources of all the BIDs in New York City (see chart below).

All the four BIDs in the above chart have as their main source of income the S*pecial Assessment*/Betterment Levy. However, the Times Square BID depends slightly less on this tax (70%) because the greater part of its income, approx. US$1.5million, arises from programs executed by the BID and from licensing public space.

On the expenditure side, the principal items concern security, cleaning and marketing. Administration costs vary between 15 percent and 20 percent of total expenditure. Among the miscellaneous expenses of the Grand Central BID is the payment of US$ 3.1 million for amortisation of the loan raised for improving streets, sidewalks and other public spaces.

With regard to the balances, the Grand Central BID possesses a substantial deficit, corresponding to 12 percent of revenue. Payment of this amount will be settled with the US$5 million held in account.

7.3.6 New York City BIDs

New York has the highest number of the BIDs in the country—40 distributed throughout the city. Manhattan, for example, has 17, the Bronx 3, Queens 7 and Brooklyn 13. Almost 90 percent of the revenue of the New York BIDs is concentrated on Manhattan. Brooklyn is responsible for around 8 percent and the Bronx and Queens together account for around 5 percent of total receipts. The three large BIDs—the *Alliance for Downtown*, *Grand Central* and *Times Square*—are jointly responsible for 55 percent of total revenue.

BIDs in New York City and revenue forecast for year 2000, by area (in US$ thousands)

Order	BID	Revenue	%
	Bronx		
1	HUB – Third Avenue	270	0.5
2	Mosholu-Jerome-East G, Hill Road	209	0.4
3	White Plains Road	68	0.1
	Sub-total	547	1.0
	Brooklyn		
1	Brighton Beach	150	0.3
2	Church Avenue	110	0.2
3	East Brooklyn Industrial Park	60	0.1
4	Flatbush Avenue	250	0.5
5	Fulton Mall	1192	2.1
6	Graham Avenue	125	0.2
7	Grand Street	76	0.1
8	Kings Highway	200	0.4
9	Metro Tech Area	1990	3.6
10	Montague Street	108	0.2
11	North Flatbush Avenue	93	0.2
12	Pitkin Avenue	125	0.2
13	Sunset Park – 5th Avenue	200	0.4
	Sub-total	4679	8.4
	Manhattan		
1	Alliance for Downtown NY	11250	20.3
2	Bryant Park	950	1.7
3	Columbus - Amsterdam	168	0.3
4	Fashion Center	3000	5.4
5	Fifth Avenue	1818	3.3
6	47th Street (Diamond & Jewelry)	300	0.5
7	14th Street – Union Square	915	1.6
8	Grand Central	10635	19.2
9	Lincoln Square	1132	2.0
10	Lower East Side	200	0.4
11	60–80 Madison Avenue	1350	2.4
12	**NOHO**	350	0.6
13	125th Street	275	0.5
14	34th Street	7043	12.7
15	Times Square*	8613	15.5
16	Village Alliance	509	0.9
17	Washington Heights	218	0.4
	Sub-total	48726	87.8
	Queens		
1	82nd Street	140	0.3
2	Jamaica Center Mall	520	0.9
3	Myrtle Avenue	223	0.4
4	165th Street Mall	169	0.3
5	180th Street	54	0.1
6	Steinway Street	274	0.5
7	Woodhaven	160	0.3
	Sub-total	1540,00	2.8
TOTAL		55492,00	100.0

Source: Report of the Department of Business Services, July 1999. *1999 data.

7.3.7 Research on BIDs

In the summer of 1999 a survey was carried out on Business Improvement Districts throughout the United States (Mitchel, 1999). Questionnaires were sent out to 404 BIDs, of which 264 were returned—a response rate of 65 percent[140]. States with the largest number of BIDs were: California (73), New York (63, of which 40 were in New York City), Wisconsin (54), New Jersey (35), and North Carolina (32). These five states accounted for 257 BIDs, representing around two thirds of the total (64%). None of the remaining states had more than 12 BIDs.

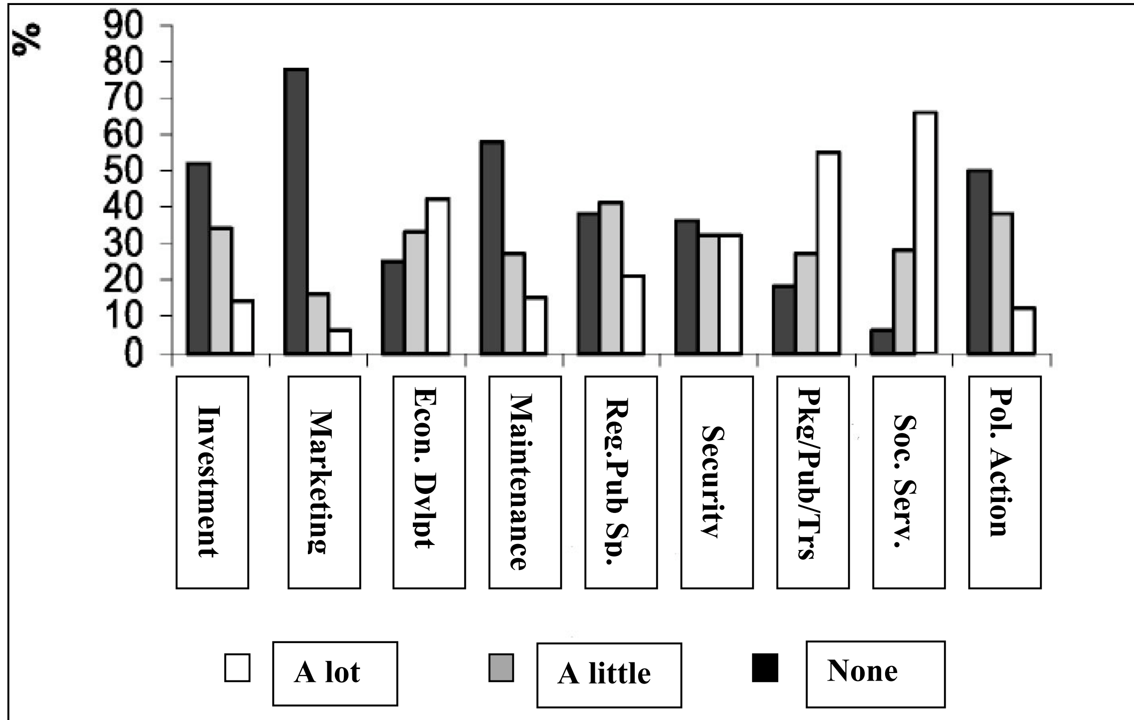
The results of the above survey can be summarized as follows:

- Around 6 percent of the BIDs were created recently (from 1990 onwards) while 28 percent were set up after 1995.
- BIDs are present in cities of varying size, with populations between 1 and 7 million. A quarter of the BIDs are located in cities with populations of over 700,000.
- The number of people employed by the BIDs varies from zero to 155, with an average of eight.
- Annual expenditure of the BIDs varies from US$8,000 to US$15 million, with an average budget of US$200,000.
- Bids can call on other sources of income apart from their own revenue: 50 percent of the BIDs receive donations; 27 percent grants from Federal or State governments; 24 percent obtain resources from local government funds; 21 percent receive money from selling merchandise and services and 7 percent issue bonds.

[140] The author states that according to the *International Downtown Association*, over 1,000 BIDs are operating in North America, of which around 300 are in Canada. Only those BIDs were selected that had formed autonomous entities and that possessed the authority via local governments or were authorized of their own volition to charge fees or taxes from local businesses or property owners in the area concerned. Hence those BIDs that were effectively an extension of official Finance or Planning Secretariats were excluded.

The following chart shows the level of involvement by BIDs in each of the different functional areas[141].

INVOLVEMENT OF BIDS IN SPECIFIC FUNCTIONS



The number of blocks covered by the BIDs varies from one to 300, with an average of 20. The average number of individuals on BID management bodies is 16—the smallest with three and the largest 51.

The research focused on nine different function types and attempted to assess the level of involvement of individual BIDs in each of these ("a lot, a little or none"). These functions are similar to those adopted by Houston: Investment, Marketing, Economic Development (Business Support), Maintenance, Regulation of Public Space, Security, Parking and Public Transport, Social Services and Policy Advocacy.

7.3.8 Results

Throughout the 1990s the track record of the BIDs was almost entirely positive. Crime rates were reduced and public cleaning services improved[142]. Progress was also made in terms of increased property appreciation, number of jobs generated, number of street dwellers dealt with, bigger influx of tourists, higher hotel occupation rates etc.

While *in loco* observations in New York City, particularly in Manhattan, revealed

[141] Only 264 BIDs appear in this chart.

[142] The New York City Council keeps a street and sidewalk cleaning scorecard.

significant differences in the quality of street-cleaning and the presence of beggars between areas with a BID and those without, the question nevertheless remains: can these results be genuinely ascribed to the BIDs at a time of substantial economic growth and falling unemployment rates in the United States?[143].

A further point is that the local public authorities need to encourage the spread of BIDs and avoid segregating benefited from non-benefited areas. Special efforts are needed in the residential areas not yet covered by BIDs.

7.3.9 The Business Improvement Development concept in Brazil

The establishment of BIDs to revitalise distressed areas in our large Brazilian cities could certainly be tried out. We would need to adopt a different taxation instrument from that used in the United States (it would be a *Charge* and not a *Betterment Levy*) but the overall process would be similar. For example, approval by interested parties and the form of collection of the tribute would be based on the U.S. experience.

A key question is whether this would be accepted by our taxpayers. The robust opposition of Brazilian shopkeepers in 46th Street in New York would probably be repeated in Brazil. According to *O Estado de São Paulo* of 1 May 2000, "the Brazil-U.S. Trade Association (ACB), founded in 1997 by a group of 18 shopkeepers, was disbanded on account of a lack of members resulting from the serious financial crisis caused by the devaluation of the Real against the U.S. dollar, causing the loss of many clients".

Even in better times, the "ACB, set up like New York neighborhood trade groups, never took off. *The Brazilians could not even come to an agreement on contracting somebody to clean the street*" [*] (*O Estado de São Paulo*, 05/01/00).

In Belo Horizonte, community response to increased crime probably comes closest to the idea of an albeit informal BID, with people living in a specific street or neighborhood contributing fees to contract private unarmed security services[144]. This experiment could probably be taken further if suitable projects were drawn up by the public authorities.

A further experiment in Belo Horizonte involves a kind of partnership whereby local people are responsible for certain expenses (eg: gasoline) to ensure visits by Military Police patrol vehicles giving priority to the streets which make contributions. This approach however seriously distorts the role of the State in matters of crime prevention and leads to segregation between those who can and those who cannot pay for an `extra service´.

[143] In the first half of 2000 the unemployment rate was around 4%—effectively meaning full employment.
[144] Eg: The Novo São Lucas and Santa Efigênia neighborhoods.

8. The Colombian Experience

As in Brazil, experience with urban value capture elsewhere in Latin America, particularly with the Betterment Levy (*Contribución de Mejoras*) has followed a similar pattern: laws exist (some of them dating back many years) but they have been rarely applied[145]. The revenue collected from value capture mechanisms has generally had minimum impact on public budgets. The obstacles are invariably the same: resistance on the part of property owners and widespread indifference by the public authorities[146].

The notable exception is Colombia. From 1921 onwards Colombian municipal governments understood the benefits of financing urban and rural public works with the *Contribución de Valorización* (CV). This amounted to a tribute in the form of a tax focused on a specific objective. According to Jaramillo (1997), unlike in other Latin American countries, Colombia during the first decades of the 20th century possessed a `particularly weak´ central government incapable of establishing a workable urban infrastructure and public services. This forced local governments to assume responsibility for infrastructure and services and to seek resources to finance the activities. As result "a tradition emerged of local bodies that were relatively strong in comparison with other countries in the region" (Jaramillo, op.cit.).

In 1943 a major amendment was made to the legislation: the decoupling of the *Contribución de Valorización* from costs related to public works to a charge on the appreciated value of a particular property. This increased the scope of the CV, which effectively became a value capture mechanism.

However in the mid-1960s the charging basis reverted to the `cost of the work´ plus an additional 10 percent for contingencies and 30 percent for administrative costs. At the same time, application of the CV was extended from the municipalities to include both the central government and the Colombian departments.

The CV reached its height in `collected revenue terms´ at the end of the 1960s and in the early 1970s. Smolka and Botero (1999) cite 1968 as a case in point, when the CV accounted for 16 percent of the own revenue of Bogotá and around 45 percent of that of Medellin, while in the early 1980s it accounted for 30 percent of the total receipts of the city of Cali.

Since then, revenue from the CV has declined in relative and real terms. Jaramillo affirms that between 1968 and 1978 CV revenue lost 21 percent in real value. Between 1980 and 1990 it receded a further 27 percent and by the end of the decade the CV share of Colombian municipal revenues had fallen to 5 percent.

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[145] According to Clichevsky (1998), the precursor of the Betterment Levy in Argentina goes back to 1892, when it was charged to landowners in Buenos Aires Province for defraying the costs of the construction of a drainage canal.

[146] An interesting – as yet unpublished – study exists on the history of the Betterment Levy in Latin America undertaken in the course of the project coordinated by the Lincoln Institute of Land Policy*: "The Experience with Value Capture Mechanisms in Latin America".*

This was attributed by Jaramillo to the following: (i) growing resistance at the political level - problems encountered in conducting precise evaluations of the impact of public works caused the authorities to adopt simplified procedures which distorted payment modalities, with some owners paying more and others less as a result of incorrect appraisals and (ii) property owners being allowed to participate in the calculation of tax owed - in the words of Jaramillo this was " a long and extremely costly process both from the practical and political point of view" (Jaramillo, 1997).

Even at the time when the CV was producing significant revenues, a further distortion occurred with regard to actual location of the works. Since the question of financing was a primary concern, better-off communities (with higher contributory capacity) were the beneficiaries of most public developments, effectively segregating them from those who were unable to pay the contribution.

Such problems however do not invalidate the application of the CV from the fiscal point of view or undermine its value as an important ingredient of urban planning.

More recently, Law 388 of 1997[147] led to the creation of the device known as *Participación em Plusvalías* (PP) to serve as a complementary instrument to the *Contribución de Valorización.* This new law (which has not yet been given a regulatory framework), requires municipalities to approve a Master Plan (Territorial Ordering Plan) for a period of 10 years and to include the PP as one of its sources of revenue. The funds would be earmarked for social housing, infrastructure in deprived areas and public works in general. The PP can be applied in cases of **changes in area category** (from rural to urban classification), **increased building potential** and **change of use** (from residential to commercial).

The adoption of the PP can be seen as a step forward from the public interest point of view since urban value capture takes on a dimension beyond that of an appropriation based on the cost of public works. With the PP, the focus of the issue becomes clearer: an owner who has received free of charge something in which he has invested no effort should pay for the benefit received regardless of whether costs are involved or not[148] (eg: in the case of straightforward urban regulation).

Perhaps the only questionable point regarding *Participación em Plusvalías* concerns the application of the charge in the event of an increase in building potential. The latter would appear to be a "double-edged sword". While the other two categories (change of classification and use) would appear to go hand-in-hand with the expansion or consolidation of urban areas, *increased building potential* frequently heads in the opposite direction. In other words, situations exist in which urban planning calls for a *reduction* and not an *increase* in the usage coefficients of buildings. This raises the question of *wipeout.* In cases where for example an owner paid for a higher coefficient

[147] Smolka (op.cit.) states that the deadline for approval of the regulatory framework of the law, initially foreshadowed for 31/12/99 was postponed until 30/06/2000. The postponement was due to government officials, researchers and lawyers involved with the subject requiring more time to study the issue.

[148] This was a "present from heaven" – in other words a **windfall**. The opposite of windfall is **wipeout**, when the property owner suffers losses.

and years later this coefficient is reduced, would it be fair for him to gain[149] on the basis of what he has lost?

A risk exists of creating financial and political problems in the planning of cities in the future[150].

It would seem highly unlikely that the change of classification and use conditions will be reversed. It is difficult for example to imagine an urban property reverting to rural status or being subject to change of use. The most likely change would be *limitations* imposed on specific activities to be carried out at the property.

This observation does not however invalidate nor does it detract from the merit of the PP which has had to face, according to Smolka, substantial obstacles and challenges for it to be put into effect.

One problem raised by Smolka is that property owners are disinclined to pay the CV because the benefits produced by it are not as clear-cut as those arising from a specific public development.

Another difficulty concerns the accurate measuring of the incremented value of a particular property. The core of this complex problem resides in the comparison of initial and final values.

Estimates of *initial* value would be qualitatively higher if the value were not `contaminated´ by the common expectations and speculations that arise before zoning changes are made and which can have a negative impact on the definition of a *base* date.

Two complications arise with regard to the question of *final* value. The first concerns the technical/political definition of whether the current or potential values should be taken into account. The second, considering the state of the market (in recession or not), is how to calculate the values - since either (current or potential) might be undervalued or overestimated[151].

According to Smolka (at the seminar which took place in Colombia in December 1999) a number of ways forward were proposed for dealing with these problems: (i) based on the experience of the city of Cartagena, one idea would be to calculate the increased value

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[149] It must be made clear here that this situation does not apply to cases of preservation orders justified on historical, architectural or environmental grounds. In such situations, the owner (the first beneficiary, known as the "founder") would not be losing but rather returning a coefficient earned thanks to upscaled urbanization. For the "non-founders" (those who acquire a property where the value already incorporates the increase in the coefficient) many cities (Belo Horizonte is a case in point), adopt the transfer of the `right to build´ as a compensatory mechanism.

[150] Urbanistic legislation is often dynamic and can change quickly. In Belo Horizonte, for example, 3 important changes took place in the space of 20 years, with different laws covering use and occupation of land in force in 1975, 1985 and 1996.

[151] As regards the CV, my opinion is that the problem of initial value remains the same. However, the final value in theory is open to an easier solution because the impact (valorization) afforded by a public work is more immediate, while the *Participacion en Plusvalía* concerns potential situations over a longer period of time, particularly in cases involving change of use. Undoubtedly the `market moment´ interferes in the calculation of both the CV and the PP.

resulting from the change of *potential* based upon similar situations in other areas of the city; (ii) to restrict the application of the *Participación en Plusvalías* only to those areas considered stategic and where the benefits are more substantial and therefore more visible and (iii) before adopting Master Plans municipalities should make efforts to identify areas eligible for change and to draw up prior value appraisals in order to minimise uncertainty.

9. Conclusions

Our main conclusion is that this subject raises more political than technical issues regarding taxation. If taxation is the outcome of a `social pact´ in the sense of meeting public expenditure and redistributing income, then Brazil still has a long way to go to adhere to this pact. We remain in a kind of prehistoric limbo, focused more on formal than on practical questions, whereas in the case of the United States—where taxes are firmly linked to the value of property and urban public services—our impression is that a kind of *formal flexibility* applies with regard to taxation. This flexible (certainly not illegal) approach in the United States has produced highly effective results and, despite significant opposition and a multiplicity of theoretical problems, the laws tend to be obeyed.

Disregarding historical and cultural questions, a general predisposition exists—once the tax is agreed—towards the idea of paying taxes[152]. In the absence of such an approach, everything becomes an excuse—principally in so-called elite quarters—for taxpayers failing to comply with their civic responsibilities. Excuses range from complaints about the high levels of taxation, to waste and corruption in the public sector, excessive size of the State etc. Many of these questions are serious (eg: waste and corruption) and others relatively innocuous, but nothing can justify tax evasion.

This is not to say that the taxation scenario in the United States is a bed of roses, and we are not opposed to citizens´ legitimate right to appeal to the courts. We observed in the course of our study that *Proposition 13* type constraints were imposed on the Property Tax as the result of a taxpayers´ revolt in the 1970s, although this basically was a protest against the *quantum* rather than the *existence* of the tax itself.

In Brazil on the other hand, much presumptive concern is raised (frequently with the support of the judicial authorities) about the nature and application of taxes, particularly those associated with urban land. Even embedded practices such as the fiscal progressivity of the IPTU and the Public Street Lighting Tax have been overturned by the Federal Supreme Court.

The Betterment Levy is practically nonexistent. When a government takes the rare step of charging it in Brazil a bogus democratic process is unleashed, invariably involving bureaucratic consensus-making leading to unwarranted questioning and delay. If, on the other hand, the government attempts to charge some type of tax on public works, it soon discovers that such taxes can only be charged to cover "**specific and devisible** public

[152] Schmedel et al., 1994, affirm that among North Americans a high level of tax compliance exists compared to other countries: "The rate of voluntary compliance is estimated at 83 %, a very high rate compared with most other countries".

services" under Article 145 of the Federal Constitution [*]. While public works might directly benefit certain properties, they rarely fit into this category. In short, neither the Betterment Levy nor a *tax on works* is charged.

In a country where the business sector[153] continues to complain about the extortionate tax burden and outmoded labour laws (part of the `Brazil Cost´) it is doubly difficult to find solutions to existing social inequalities.

The main argument of the business sector against the Federal Revenue Service (*Receita Federal*) is that tax represents a full 31 percent of GDP. At the same time, the much-maligned `tax burden´ in Brazil must be put into context and carefully analysed. It is worth recalling for example that taxes cover all the outgoings of the Federal, State and municipal governments as well as the substantial Social Security Budget (the latter accounting for 9.91% of the GDP in 1998[154]).

The `formal flexibility´ adopted in the United States can be compared with Brazilian taxation typology using two examples: the ambiguous character of the Property Tax (on the same lines as the IPTU)[155] and the widespread use of the *Special Assessment* for the operation and maintenance costs of public services etc - more or less equivalent to the Betterment Levy in Brazil.

Unlike in Brazil, where all the different levels of government are regimented by the Federal Constitution, in the United States each local government has to comply with `State´ legislation, with a number of important variations.

Even taking into account possible differences between states, the U.S. Property Tax is in effect a hybrid consisting of a *charge* <u>and</u> a *tax*. It is (i) a *charge* related to the distribution cost of a particular service and simultaneously (ii) employs a typical *tax-related* mechanism by applying a percentage tax rate on a specific taxable event i.e.: the taxpayer's asset.

The Property Tax is used to pay for different kinds of public services. Services in Brazil such as water supply fall into this category, while others (eg: education) are covered by direct taxes. Each year the Property Tax can carry a different rate in order to produce money for activities that are already `earmarked´. In New York State this works in the following way: "each year the taxing units—counties, cities, towns, villages, schools and special districts (sewerage, water supply, fire services, libraries, etc)—determine how much revenue needs to be raised from the Property Tax to pay for local government services and public schools. This amount is divided by the assessed taxable value of all the property in the tax area to determine the rate for that year. The tax rate is expressed as

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[153] On 24 May this year around 800 business people took to the streets of Belo Horizonte demanding labour and labour law reforms.

[154] See www.receita.fazenda.gov.br. Even including Security, 31% is comparable to the US where following the Reagan Government tax cuts the total tax burden amounted to 29.9% of GDP, according to information provided by Schmedel et al., 1994. The same authors claim that figures for France, Italy and Japan were 43.7%; 39.1% and 31.3% respectively.

[155] The equivalent of the IPTU is probably the *Real Property Tax*, since the Property Tax includes capital goods in the form of machinery, equipment etc.

the amount to be paid on each US$1000 or US$100 of assessed property value"[156].

On the other hand the Property Tax as a main source of local government own resources becomes an `ingrained´ tribute from the point of view of (i) the calculation of the tax rate and (ii) the purpose for which the money will be used (eg: budgets to cover schools and other local services).

As the result of cutbacks in intergovernmental transfers, local governments have been forced to apply other taxes and mechanisms to finance public works[157] resulting from urban expansion and increases in the Property Tax rates have been capped in certain circumstances eg: under *Propositions 13* (California) and 2½ (Massachusetts).

The *Special Assessment* is therefore a tribute applicable to different situations (or taxable events) given that it is a charge and a Betterment Levy combined: it is a charge to cover investments[158] as well as a device to defray the costs of administration, operation and maintenance of a large number of public services.

Describing the following four types of *Special Assessment*, Cornick was well aware of this ambiguity: a charge (i) for the cost of inconvenience reduction eg: draining water from a private property causing flooding in adjacent properties); (ii) for the cost of a public work in a public place for which the property owner was responsible (eg: construction of a sidewalk); (iii) based on the benefit derived from a public work within a specific district and undertaken for a specific purpose - with the charging criterion based on arbitrary measurements such as floor area, frontage, distance from the work, value of the property etc) and (iv) based on the benefit derived from measuring the upscaled value of the property using the conceptual reference of **unearned increment** (Cornick. In Buck, 1930).

Charge (iii) above is a mixture of a charge and a Betterment Levy and (iv) is a `genuine´ Betterment Levy - an instrument to capture property value resulting from a public work.

The main reason for this ambiguity in our view is the gap between the concepts of *benefit* and *valorization*: benefit ceases to reflect valorization (measured by the difference between the initial value of the property and its value following execution of the work) resulting from a public work. This concept emphasizes the *expenditure* and not the *yield* resulting from expenditure. In other words, following execution of the work, it is the responsibility of the public authority to divide the costs between the benefited properties - a typical taxation procedure - by adopting a *linear* criterion. One example of this would be road surfacing, where the distribution cost of the work would be levied according to the frontage or the area of the properties facing the street or road.[159]

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[156] Government of New York site on the internet.

[157] Eg: the *Impact Fee*.

[158] This does not rule out the instrument for value capture.

[159] Cases exist where the value of the property (not to be confused with valorization) is considered that leads to serious distortions, particularly between built properties and vacant land plots. The latter tend generally to possess a lower total value but receive a higher level of valorization.

However, *Special Assessment* type (iii) approaches the status of Betterment Levy when the benefited properties include not only those adjacent to the street in question but a whole group of properties in a specific area or district where the same work impacts in different ways. In this case, other variables such as distance from the work are compared with the previous variables (frontage, size of plot etc) and this `weighted´ criterion would constitute the elements of a Betterment Levy.

According to Cornick, the difficulty of delimiting an area of influence of a public work and calculating the increased value of each property, together with shortcomings in the public administrative machine compounded by judicial problems, have made it necessary to adopt a Type (iii) modality - with a charging criteria based upon the *total limit* represented by the cost of the work.

Cornick refers to the tribute being applied to maintenance, operation and administrative costs in addition to actual public works. Graham, defining *Special Assessment,* refers to "public improvement or public services" (1930).

The practice of the *Special Assessment* became a kind of broad catch-all charge to be applied to the <u>sources</u> of revenue (the chargeable event of the tribute is generic) as well as the <u>purpose</u> of the revenue (investment, maintenance and administrative costs). This practice, despite the many ambiguities involved, is of great interest to us. *It is preferable to have a `works tax´ that can be collected rather than a `Betterment Tax` that cannot* [*].

Another interesting difference between Brazil and the United States is the way in which the costs of urban infrastructure are paid for directly by urban developers. According to surveys carried out in the United States at national and local levels in the 1950s, various local governments (cities and towns) made developers responsible, in different ways and at different times, for meeting the costs of new developments (Sternheimer, 1958).

The city of Abilene in Texas is an interesting example of this. Over the years the local authority succeeded in getting developers to meet the total costs of infrastructural work involved in new developments. According to one official: "It was a long, hard fight that required the patience of Job, the wisdom of Solomon and the stamina of Joe Louis" (Sternheimer, 1958).

This example highlights the contrast between the approaches of the United States and Brazil: the relative autonomy shown by the local governments in the U.S. and the degree of pragmatism where charging instruments are created in response to on-the-ground situations has yet to be seen in Brazil. In other words, the U.S. possesses the flexibility and pragmatism that need to be reflected in Brazil´s Law 6.766/79[160] in order to make it genuinely workable.

[160] Law 6.766 of 19/12/79 deals with the parcelling of urban land, determining that it is the responsibility of developers to defray the costs of urban infrastructure of the area to be parcelled – of which 35% should be devoted to public spaces.

Bibliography

Afonso, J. R. Rodrigues, and Thereza Lobo. (undated) "Descentralización fiscal y participación en experiencias democráticas rezagadas", mimeo.

Ataliba, Geraldo. *IPTU – Progressividade*. Revista de Direito Tributário, São Paulo, 93-233.

Bilac Pinto. September 1947. Revista Forense, volume 113. Rio de Janeiro.

Buck, A.E. 1930. *Municipal finance*. New York, NY: Macmillan Company.

Câmara Municipal de Belo Horizonte. 1989. *Lei Orgânica do Município de Belo Horizonte*.

Carvalho, Paulo de Barros. 1998. *Curso de Direito Tributário*, São Paulo, Ed. Saraiva 10th edition.

Clichevsky, Nora. 1998, *La Captación de plusvalías urbanas en la Argentina: un Futuro Intrumento de Equidad Social*? CONICET, Buenos Aires, mimeo.

Dallari, Adilson Abreu. *Desapropriações para fins urbanísticos*. Ed. Revista Forense.

Fernandes, de Rodrigo Barroso. 1998. *Receitas Municipais: pacto federativo ameaçado*. Belo Horizonte, Mimeo.

Furtado, 1997.

Furtado, Fernanda. 1999. *Recuperação de mais-valias fundiárias urbanas na América Latina: debilidade na implementação, ambigüidades na interpretação*. Doctoral Thesis. University of São Paulo: Faculty of Architecture and Urbanism.

Brazilian Government, 1988 Federal Constitution.
Legislation: National Tax Code.

Goelzer, Jorge, and Paulo Saad. 1999. *O Desempenho da Contribuição de Melhoria no Programa Paraná Urbano*. Government of Paraná, Secretariat for Urban Development.

Graham, George Adams. 1930. *Special Assessment in Detroit*. University of Illinois.

Guedes and Goncalves, 1996.

Hagman, Donald G., and Dean J. Misczynski. 1978. *Windfalls for wipeouts: land value capture and compensation*. Washington, DC/Chicago, IL: Planners Press, American Planning Association.

Haig, Robert Murray. 1915. *The American System of Special Assessment and Its Applicability to Other Countries*. Washington, DC: Paper presented to the Second Pan-American Scientific Congress. (Microfilm).

Houston, Lawrence O. 1997. BIDs - Business Improvement Districts. Washington, DC: Urban Land Institute / International Downtown Association.

Jaramillo, Samuel. 1997. *La experiência colombiana: la Contribución de Valorización y la participación en Plusvalías*. (mimeo).

Kelley, Katharine W. 1991. *The Business Improvement District as a Means to Rescue our Cities.* (in partial fulfillment of the requirements for the MSc in Real Estate Development). New York, NY: Columbia University.

King, Clyde L. 1935. Public Finance. New York, NY: Macmillan Company.

Lovato, Antônio Carlos. 1984. Teoria da imposição obrigatória da contribuição de melhoria. Specialist dissertation in Osasco Faculty of Law, published in the journal *Forense,* volume 288.

Machado, Hugo de Brito. 1996. Impostos, taxas e contribuição de melhoria em nível municipal, isenções e imunidades. Lecture at First Seminar on Brazilian Municipal Law. Belo Horizonte. 14 June 1996. Published by NDJ Ltda.

Meirelles, Hely Lopes. 1999. Direito Administrativo Brasileiro, 24th ed. Malheiros Editores, São Paulo.

Ministry of Finance. 1997. Medidas de Redução do "Custo Brasil", Brasilia. www.fazenda.gov.br.

Mitchel, Jerry. 1999. Business Improvement Districts and Innovative Service Delivery. Arlington, VA: PriceWaterhouse Coopers Endowment for the Business of Government.

Moreira Alves. STF, Recurso Extraordinário 153,77 1-0 / MG.

New York City, Department of Business Services. July 1999. Starting and Managing BIDs.

Pimentel, Fernando. 1998. Pobres municípios. Belo Horizonte. (mimeo).

Porter, Douglas. 1930. *Special districts: A useful technique for financing infrastructure*. Washington, DC: The Urban Land Institute. (2nd Edition).

City Administration of Belo Horizonte, Municipal Secretariat for Planning. 1998. "Contribuição de Melhoria – Av, Pedro II" (mimeo).

Ross, Dennis H., and Scott Ian Thorpe. 1992. Impact fees: Practical guide for calculation and implementation. *Journal of Urban Planning and Development*, 118(3):106–118.

Santos, Luciana Batista. 1998. Contribuição de melhoria: um tributo esquecido. *CAAP Journal*. Belo Horizonte.

Morris, Kenneth M., Virginia B. Morris, Scott R. Schmedel, Alan M. Siegel. 1994. *The Wall Street Journal guide to understanding your taxes*. New York. NY: Lightbulb Press.

Smolka, Martim, and Carolina Barco de Botero. 2000. Challenges in implementing Colombia's Participación en Plusvalías. *Land Lines* 12(2):March. Cambridge, MA: Lincoln Institute of Land Policy.

Spahn, Paul Bernd. 1998. *Relações intergovernamentais, estabilidade macroeconômica e crescimento econômico*. Course on Intergovernamental Fiscal Relations and the Financial Management of Local Governments, Brasilia. (mimeo).

Sternheimer, Anna. 1958. *Subdivision Improvement Costs: Who Pays for What. A summary of existing practices.* Tennessee State Planning Commision, Publiction N, 282. (Org.)

U.S. Census Bureau.

Vasquez, Jorge M. 1998. A atribuição da responsabilidade pelas despesas. Course on Intergovernamental Fiscal Relations and the Financial Management of Local Governments. Brasilia. (mimeo).

Veloso, Carlos. RTJ-138.

11. Additional Reference Material Consulted

1. Brown, H. James. 1997. *Land use and taxation - applying the insights of Henry George*. Cambridge, MA: Lincoln Institute of Land Policy.

2. Cushman, Robert Eugene. 1917. Excess Condemnation. The National Municipal League Series, D. New York and London: Appleton and Company.

3. Ladd, Helen F. (with B. Chinitz and D. Netzer). 1998. *Local government tax and land use policies in the United States: understanding the links. Studies in fiscal federalism and state-local finance*. Wallace Oates, ed. Cambridge, MA: Lincoln Institute of Land Policy; and Cheltenham/Northampton: Edward Elgar Publishing.

4. Levitt, Rachelle L., and John J. Kirlin. 1990. *Managing development through public/private negotiations*. Washington, DC: Urban Land Institute / American Bar Association.

5. Lima, Paulo Castilho. 1996. *Contribuição de Melhoria: Uma Proposta de Ação*. Doctoral Thesis. University of São Paulo: Faculty of Architecture and Urbanism.

6. Meisner, Laurence J., and Laura Firtel. 1990. *Private Funding for Roads*. Report Number 426. Washington, DC: American Planning Association / Planning Advisory Service.

7. Mudge, Richard R. 1987. *Financing infrastructure: Innovations at the local level*. (Earth Science Series). Washington, DC: National League of Cities.

8. Musgrave, Richard A., and Peggy B. Musgrave. 1980. *Public finance in theory and practice*. Third Edition. McGraw-Hill Book Company.

TABLE 1

UNITED STATES – Proportion of the Special Assessment in the Own Tax Revenues of States and Local Governments 1996 (in US$ million)

	State	St & Local Rev.	State Rev.	Local Rev.	% State SA	Local SA	St + Local SA	%.St + Loc SA	% SUM	Loc SA/ Loc Rev
1	California	124,280.8	69,098.0	55,182.8	51.3	748.5	799.8	25.61	25.61	1.36
2	Florida	51,343.2	24,529.3	26,813.9	0.7	638.4	639.1	20.46	46.07	2.38
3	Minnesota	21,076.8	12,572.5	8,504.3	-	225.4	225.4	7.22	53.29	2.65
4	Ohio	38,750.6	20,740.6	18,010.0	2.0	117.8	119.8	3.84	57.13	0.65
5	Maryland	18,905.8	10,771.4	8,134.4	-	117.9	117.9	3.78	60.90	1.45
6	NY	97,20.3	43,550.9	53,656.3	4.2	106.8	111.0	3.55	64.46	0.20
7	Michigan	35,687.9	23,939.5	11,748.4	5.6	90.5	96.1	3.08	67.53	0.77
8	Texas	61,059.5	29,879.9	31,179.4	-	89.7	89.7	2.87	70.4 1	0.29
9	Kansas	9,265.8	5,197.7	4,068.1	11.5	74.2	85.7	2.74	73.15	1.82
10	Wash	22,409.8	13,304.9	9,104.9	-	81.1	81.1	2.60	75.75	0.89
11	Oregon	12,092.7	6,914.6	5,178.1	-	80.7	80.7	2.58	78.33	1.56
12	Wisconsin	20,488.0	12,211.1	8,276.9	14.7	62.1	76.8	2.46	80.79	0.75
13	Illinois	43,596.1	22,143.4	21,406.4	-	67.3	67.3	2.15	82.95	0.31

	State	St & Local Rev.	State Rev.	Local Rev.	% State SA	Local SA	St + Local SA	%.St + Loc SA	% SUM	Loc SA/ Loc Rev
14	Arizona	13,709.4	7,761.7	5,947.7	-	63.9	63.9	2.05	84.99	1.07
15	Penn	41,959.8	24,360.9	17,598.9	-	57.8	57.8	1.85	86.84	0.33
16	N. Dakota	2,238.3	1,484.3	754.0	-	46.0	46.0	1.47	88.32	6.10
17	Montana	2,758.1	1,794.4	963.7	-	32.6	32.6	1.04	89.36	3.38
18	Colorado	13,877.2	6,715.6	7,161.4	-	29.0	29.0	0.93	90.29	0.40
	Total	**630,707.1**	**336,970.7**	**293,689.6**	**90.0**	**2,729.7**	**2,819.7**	90.29	-	0.93
	Other States	357,223.1	212,176.6	145,046.8	11.9	291.4	303.3	9.71	9.71	0.20
	Total USA	**987,930.2**	**549,147.3**	**438,736.4**	**101.9**	**3,021.1**	**3,123.0**	**100.00**	**100.00**	**0.69**

Source: U.S.Bureau of the Census (www.census.gov)—State and Local Government Finance Estimates, by State: 1995-1996.

TABLE 2

UNITED STATES - Proportion of the Special Assessment in the Revenues (own taxation + transfer) of States and Local Governments 1993—(in US$ million)

State	St & Local Rev.	State Rev.	Local Rev.	% State SA	Local SA	St SA+ Local LSASA SA	%StSA+Loc	% LocSA/loc Rev
Arizona	17,599.7	10,843.4	10,256.1	-	49.6	49.6	1.86	0.48
California	172,663.2	108,597.7	106,366.3	64.6	629.9	694.5	26.11	0.59
Colorado	17,241.9	10,027.7	9,693.6	-	68.4	68.4	2.57	0.71
Florida	60,136.0	33,215.7	36,099.8	0.8	439.0	439.8	16.54	1.22
Illinois	52,461.4	30,350.9	29,921.0	-	14.9	14.9	0.56	0.05
Kansas	10,876.2	6,756.7	5,704.5	19.6	63.9	83.5	3.14	1.12
Maryland	23,392.7	14,841.5	11,248.5	-	89.7	89.7	3.37	0.80
Michigan	45,305.6	28,448.9	23,865.0	5.4	89.4	94.8	3.56	0.37
Minnesota	25,505.5	16,245.0	14,068.6	-	213.6	213.6	8.03	1.52
Montana	3,873.6	3,022.7	1,386.6	-	32.0	32.0	1.20	2.31
NY	129,770.3	78,209.4	80,096.6	7.0	106.6	113.6	4.27	0.13
N. Dakota	2,961.0	2,247.6	1,155.0	-	42.5	42.5	1.60	3.68

State	St & Local Rev.	State Rev.	Local Rev.	% State SA	Local SA	St SA+ Local LSASA SA	%StSA+Loc	% LocSA/loc Rev
Ohio	55,828.,6	38,341.5	25,556.1	3.8	79.1	82.9	3.12	0.31
Oregon	16,285.2	10,825.7	7,727.3	-	74.9	74.9	2.82	0.97
Penn	56,712.2	37,841.6	27,520.0	-	14.6	14.6	0.55	0.05
Texas	74,111.1	42,019.0	44,703.2	-	27.7	27.7	1.04	0.06
Wash	30,098.1	20,087.1	15,086.3	-	80.8	80.8	3.04	0.54
Wisconsin	26,734.5	18,676.8	12,947.4	15.4	67.8	83.2	3.13	0.52
Total	**821,556.8**	**510,598.9**	**463,401.9**	**116.6**	**2,184.4**	**2,301.0**	**86.51**	0.47
Other States	445,975.0	294,572.8	216,026.8	35.1	323.6	358.7	13.49	0.15
Total USA	**1,267,531.8**	**805,171.7**	**679,428.7**	**151,7**	**2.508.0**	**2,659.7**	100.00	**0.37**

Source: U.S.Bureau of the Census (www.census.gov)

TABLE 3

UNITED STATES - Proportion of the Special Assessment in the Revenues (own taxation + transfer) of States and Local Governments, 1994—(in US$ million)

State	St & Local Rev.	State Rev.	Local Rev. State SA		Local SA	St + Local SA	% St + Loc SA	% Loc SA/ Loc Rev
Arizona	18,940.7	11,748.6	11,064.0	-	62.2	62.2	2.08	0.56
California	179,279.0	111,633.4	113,28 1.0	78.8	811.5	890.3	29.78	0.72
Colorado	18,387.1	10,430.0	10,472.0	-	48.8	48.8	1.63	0.47
Florida	64,401.0	34,805.0	39, 158.0	0.6	490.1	490.7	16.4 1	1.25
Illinois	55,660.0	3 1,990.0	3 1,977.6	-	23.7	23.7	0.79	0.07
Kansas	12,105.5	7,474.0	6,585.1	14.0	67.0	81.0	2.71	1.02
Maryland	24,350.2	15,58 1.3	11,877.5	-	103.4	103.4	3.46	0.87
Michigan	48,191.5	30,746.6	24,534.0	5.5	98.5	104.0	3.48	0.40
Minnesota	26,3 13.8	17, 18 1.6	14,854.9	-	234.8	234.8	7.85	1.58
Montana	4,125.2	3 ,166.2	1,588.3	-	36.4	36.4	1.22	2.29
NY	135,265.8	82,670.0	82,615.0	7.2	119.6	126.8	4.24	0.14
N. Dakota	3,080.7	2,289.0	1,121.0	-	50.1	50.1	1.68	4.47
Ohio	58,171.3	40,836.4	25,551.3	3.2	89.0	92.2	3.08	0.35

State	St & Local Rev.	State Rev.	Local Rev. State SA		Local SA	St + Local SA	% St + Loc SA	% Loc SA/ Loc Rev
Oregon	16,602.6	10,886.4	8,122.3	-	64.2	64.2	2.15	0.79
Penn	57,970.2	38,252.3	28,428.8	-	33.3	33.3	1.11	0.12
Texas	78,821.3	45,049.0	46,806.0	-	35.2	35.2	1.18	0.08
Wash	30,381.0	19,488.7	16,275.1	-	75.5	75.5	2.53	0.46
Wisconsin	28,280.8	19,617.2	14,057.3	13.6	70.5	84.1	2.81	0.50
Total	**860.327.7**	**533.845.7**	**488.369.2**	**122.9**	**2,513.8**	**2,636.7**	**88.20**	0.51
Other States	471.114.3	307.856.2	232.470.7	34.6	318.2	352.8	11.80	0.14
Total USA	**1,331,442.0**	**841,701.9**	**720,839.9**	**157.5**	**2,832.0**	**2,989.5**	100.00	**0.39**

Source: U.S.Bureau of the Census (www.census.gov)

TABLE 4

UNITED STATES - Proportion of the Special Assessment in the Revenues (own taxation + transfer) of States and Local Governments, 1995—(in US$ million)

State	Stsat & Local Rev.	State Rev.	Local Rev.	State SA	Local SA	St SA + Local SA	% State + Loc SA	Loc SA/ Loc Rev
Arizona	20,314.1	12,593.4	11,962.4	-	67.2	67.2	2.16	0.56
California	188,961.2	118,303.4	115,058.7	95.6	778.5	778.5	25.07	0.68
Colorado	19,919.2	11,558.0	11,213.6	-	46.3	46.3	1.49	0.41
Florida	68,226.3	37,359.4	41,615.7	0.8	537.0	537.0	17.29	2.00
Illinois	60,093.1	34,689.1	34,333.4	-	74.7	74.7	2.41	0.22
Kansas	12,152,6	7,374.4	6,872.9	18.4	67.3	67.3	2.17	0.98
Maryland	25,501,7	16,429.7	12,300.7	-	116.2	116.2	3.74	0.94
Michigan	49,479.5	35,909.3	26,007.4	5.6	92.3	92.3	2.97	0.35
Minnesota	28,361.1	18,288.7	16,078.1	-	232.3	232.3	7.48	1.44
Montana	4,356.4	3,392.7	1,698.1	-	35.3	35.3	1.14	2.08
NY	146,884.6	90,997.1	87,381.4	7.3	90.3	90.3	2.91	0.10
N. Dakota	3,276.2	2,448.5	1,289.2	-	42.9	42.9	1.38	3.33
Ohio	61,807.4	42,517.0	27,896.2	3.3	106.6	106.6	3.43	0.38
Oregon	19,078.1	12,985.9	8,997.6	-	65.7	65.7	2.12	0.73
Penn	60,905.1	40,444.1	29,540.0	-	29.8	29.8	0.96	0.10
Texas	83,524.2	48,958.4	48,330.2	-	66.9	66.9	2.15	0.14
Wash	35,765.2	23,575.8	17,837.1	-	87.6	7.6	2.82	0.49
Wisconsin	25,906.3	16,826.3	14,850.0	14.4	66.3	66.3	2.13	0.45
Total	**914,512.3**	**574,651.2**	**513,262.7**	**145.4**	**2,603.2**	**2,748.6**	88.50	0.51
Other States	503,412.2	331,753.0	244,137.7	34.4	322.8	357.2	11.50	0.13
Total USA	**1,417,924.5**	**906,404.2**	**757,400.4**	**179.8**	**2,926.0**	**3,105.8**	100.00	**0.39**

Source: U.S.Bureau of the Census (www.census.gov)

TABLE 5

UNITED STATES – Proportion of the Special Assessment in the Revenues (own taxation + transfer) of States and Local Governments, 1996—(in US$ million)

State	St&Local Rev.	State Rev.	Local Rev.	State SA / Local SA		St SA + Local SA	% St SA+ Local	Loc SA/ Loc Rev
Arizona	16,872.7	10,866.6	10,5 11.1	-	63.9	63.9	2.05	0.61
California	115,497.4	98, 185.3	103,549.0	51.3	748.5	799.8	25.61	0.72
Colorado	16,979.0	9,461.5	10,461.5	-	29.0	29.0	0.93	0.28
Florida	60,702.9	33,022.6	38,648.2	0.7	638.4	639.1	20.46	1.65
Illinois	52,928.3	30,537.3	3 1,754.6	-	67.3	67.3	2.15	0.21
Kansas	12,873.5	7,864.2	7, 169.9	11.5	74.2	85.7	2.74	1.03
Maryland	25,843.1	16,041.2	13, 153.2	-	117.9	117.9	3.78	0.90
Michigan	52,580.5	37,617.6	28,030.6	5.6	90.5	96.1	3.08	0.32
Minnesota	30,794.1	20,525.3	16,75 1.4	-	225.4	225.4	7.22	1.35
Montana	4,5 04.6	3,430.4	1,716.0	-	32.6	32.6	1.04	1.90

State	St&Local Rev.	State Rev.	Local Rev.	State SA	Local SA	St SA + Local SA	% St SA+ Local	Loc SA/ Loc Rev
NY	154,432.3	94,277.5	91,382.7	4.2	106.8	111.0	3.55	0.12
N. Dakota	3,439.1	2 ,568.6	1,326.9	-	46.0	46.0	1.47	3.47
Ohio	64,53 8.3	43,708.3	30,203.8	2.0	117.8	119.8	3.84	0.39
Oregon	22,125.9	15,722.9	9,648.9	-	80.7	80.7	2.58	0.84
Penn	64,439.4	42,796.1	31,499.2	-	57.8	57.8	1.85	0.18
Texas	89,3 18.1	51,459.2	51,020.1	-	89.7	89.7	2.87	0.18
Wash	35,557.3	24,790.0	18,650.9	-	81.1	81.1	2.60	0.43
Wisconsin	33,829.0	24,365.1	15,814.0	14.7	62.1	76.8	2.46	0.39
Total	**857,255.5**	**567,239.7**	**511,292.0**	**90.0**	**2,729.7**	**2,819.7**	90.29	0.53
Other States	656,377.8	399,568.4	292,444.8	11.9	291.4	303.3	9.71	0.10
Total USA	**1,513,633.3**	**966,808.1**	**803,736.8**	**101.9**	**3,021.1**	**3,123.0**	**100.00**	**0.38**

Source: U.S.Bureau of the Census (www.census.gov)

TABLE 6

Evolution of the Special Assessment
(index number - (base 1993=100)

		State and Local Rev	Index	State Revenue	Index	Local Revenue	Index	State SA	Index	Local SA	Index	State + Local SA	Index
92–93	**Total**	**821,556.8**	100.0	**510,598.9**	100.0	**463,401.9**	100.0	**116,6**	100.0	**2,184.4**	100.0	**2,301.0**	100.0
	Other States	445,975.0	100.0	294,572.8	100.0	2 16,026.8	100.0	35,1	100.0	323.6	100.0	358,7	100.0
	Total USA	**1,267,531.8**	100.0	**805,171.7**	100.0	**679,428.7**	100.0	**151,7**	100.0	**2,508.0**	100.0	**2,659.7**	100.0
93–94	**Total**	**860,327.7**	104.7	**533,845.7**	104.6	**488,369.2**	105.4	**122,9**	105.4	**2,513.8**	115.1	**2,636.7**	114.6
	Other States	471,114.3	105.6	307,856.2	104.5	232,470.7	107.6	34,6	98.6	3 18.2	98.3	352.8	98.4
	Total USA	**1,331,442.0**	105.0	**841,701.9**	104.5	**720,839.9**	106.1	**157,5**	103.8	**2,832.0**	112.9	**2,989.5**	112.4
94–95	**Total**	**914,512.3**	111.3	**574,651.2**	112.5	**513,262.7**	110.8	**145,4**	124.7	**2,603.2**	119.2	**2,748.6**	119.5
	Other States	503,412.2	112.9	331,753.0	112.6	244,137.7	113.0	34,4	98.0	322.8	99.8	357.2	99.6
	Total USA	**1,417,924.5**	111.9	**906,404.2**	112.6	**757,400.4**	111.5	**179,8**	118.5	**2,926.0**	116.7	**3,105.8**	116.8
95–96	**Total**	**857,255.5**	104.3	**567,239.7**	111.1	**511,292.0**	110.3	**90,0**	77.2	**2,729.7**	125.0	**2,819.7**	122.5
	Other States	656,377.8	147.2	399,568.4	135.6	292,444.8	135.4	11,9	33.9	291.4	90.0	303.3	84.6
	Total USA	**1,513,633.3**	119.4	**966,808.1**	120.1	**803,736.8**	118.3	**101,9**	67.2	**3,021.1**	120.5	**3,123.0**	117.4

Source: U.S.Bureau of the Census (www.census.gov)

TABLE 7

Evolution of the Special Assessment — (Index number - (base previous year)

		St &Local Revenue	Index	State Revenue	Index	Local Revenue	Index	State SA	Index	Local SA	Index	State + Loc SA	Index
92–93	**Total**	**821,556.8**	100.0	**510,598.9**	100.0	**463,401.9**	100.0	**116.6**	100.0	**2,184.4**	100.0	**2,301.0**	100.0
	Other States	445,975.0	100.0	294,572.8	100.0	216,026.8	100.0	35.1	100.0	323.6	100.0	358.7	100.0
	Total USA	**1,267,531.8**	100.0	**805,171.7**	100.0	**679,428.7**	100.0	**151.7**	100.0	**2,508.0**	100.0	**2,659.7**	100.0
93–94	**Total**	**860,327.7**	104.7	**533,845.7**	104.6	**488,369.2**	105.4	**122.9**	105.4	**2,513.8**	115.1	**2,636.7**	114.6
	Other States	471,114.3	105.6	307,856.2	104.5	232,470.7	107.6	34.6	98.6	318.2	98.3	352.8	98.4
	Total USA	**1,331,442.0**	105.0	**841,701.9**	104.5	**720,839.9**	106.1	**157.5**	103.8	**2,832.0**	112.9	**2,989.5**	112.4
94–95	**Total**	**914,512.3**	106.3	**574,651.2**	107.6	**513,262.7**	105.1	**145.4**	118.3	**2,603.2**	103.6	**2,748.6**	104.2
	Other States	503,412.2	106.9	331,753.0	107.8	244,137.7	105.0	34.4	99.4	322.8	101.4	357.2	101.2
	Total USA		106.5	**906,404.2**	107.7	**757,400.4**	105.1	**179.8**	114.2	**2,926.0**	103.3	**3,105.8**	103.9
		1,417,924.5											
95–96	**Total**	**857,255.5**	93.7	**567,239.7**	98.7	**511,292.0**	99.6	**90.0**	61.9	**2,729.7**	104.9	**2,819.7**	102.6
	Other States	656,377.8	130.4	399,568.4	120.4	292,444.8	119.8	11.9	34.6	291.4	90.3	303,3	84.9
	Total USA	**1,513,633.3**	106.7	**966,808.1**	106.7	**803,736.8**	106.1	**101.9**	56.7	**3,021.1**	103.3	**3,123.0**	100.6

Source: US Bureau of the Census (www,census,gov)