Exemption From the Property Tax in California

I. THE PROBLEM OF TAX EXEMPTION

The functions, commonly known as governmental, which are performed by a social group collectively, entail the diversion of a certain portion of the total income or wealth of the group to the use of the government to enable such functions to be executed. The greater part of the wealth used in carrying on these governmental functions is obtained through compulsory contributions from members of the social group. The burden of these contributions, or taxes, is now presumably apportioned, in part, roughly in accordance with the ability of individuals to contribute, and in part on the basis of benefits received. The distribution of the burden is usually made on the basis of the property which an individual owns, the amount of income he receives, or the size of his expenditures for certain commodities.¹

The granting of immunity from taxation is known as tax exemption. Exemption, in one form or another, has existed from the beginning of the history of taxation. Immunity from property taxation may be either in personam or in rem, the latter form being the more common. In either case a readjustment of the tax burden is almost certain to follow the exemption. This rearrangement of the burden, and the realization that exempting property from taxation constitutes an indirect subsidy, are facts that legislatures and courts do not always take into consideration.

Beyond blindly following tradition, the chief reasons for granting exemption from taxation are to fulfill an obligation of society to the individual, to avoid the costs to a government of taxing its own property, to reimburse private individuals who are using their property for purposes that are held to be governmental, to avoid administrative difficulties, to eliminate double taxation, to stimulate industry or agri-

¹ For discussion of the role of exemptions in each case, see VI, infra.
culture, to reward actions that are held to be socially desirable, and to promote socio-political undertakings. The laws embodying these exemptions, although they differ widely in detail in the various states, are very similar in general subject matter covered. Most of the exemptions are easily classified in a dozen categories, including personal exemptions, public property, churches, charities, educational institutions, industrial enterprises, buildings, and intangibles. The common forms of exemption constitute tax favors or subsidies of general acceptance and long standing, sanctioned by the courts and liberally extended by legislative assemblies.

II. THE EXTENT OF EXEMPTION

The value of real property and improvements exempt from taxation constitutes approximately 12 per cent of the value of all such property in the United States. In 31 states the property exempted from taxation constitutes between 6 and 14 per cent of the value of all real estate. The greatest amount of non-taxable property is found in the District of Columbia and the Rocky Mountain states, which contain large tracts of land owned by the federal government. The extent of exemption of personal property from taxation is more difficult to determine, since very few of the states attempt to evaluate such property. In the states where data are available, it is estimated that from 2 to 15 per cent of all personal property is legally removed from the tax base. A study of the data available for a period of forty years indicates that the total value of exempt property is increasing at a slightly greater rate than the value of taxable property.\(^2\)

Accurate data on the extent of exemption from taxation in California are very scarce. The state board of equalization publishes annual statistics on exemption granted to collegiate institutions and to war veterans,\(^3\) since listing is required in these cases. Accurate statistics are not available for other kinds of exempt property. The value of exempt property in Los Angeles county has been estimated,\(^4\) and the estimate is reproduced in Table I.

This estimate of exempt property in Los Angeles county contains government bonds, mortgages, and stocks of corporations. The two latter items are exempted for the purpose of avoiding double taxation, and hence are not strictly comparable with other exemptions.

\(^2\) Computations are based upon data taken from WEALTH, PUBLIC DEBT AND TAXATION (U. S. Bureau of Census, 1922), and from reports of state tax commissions.

\(^3\) See pages 206-207, infra; Table IV, infra page 209.

\(^4\) Moore, Local Tax Exemptions (1931) 9 Tax Dig. 269-271.
Securities and credits are taxed at a low rate, and hence are not exempt. Using the total estimate as it stands, however, approximately 40 per cent of the wealth of Los Angeles county is either exempt or nearly exempt from taxation.\(^5\)

**TABLE I**

**PROPERTY EXEMPT (AND NEARLY EXEMPT) FROM TAXATION IN LOS ANGELES COUNTY: 1930**

<table>
<thead>
<tr>
<th>Property</th>
<th>Value ($)</th>
<th>Totals on Basis of Assessed Value ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ITEM 1: ESTIMATED VALUES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Of state and municipalities</td>
<td>150,000,000</td>
<td></td>
</tr>
<tr>
<td>State, county, city and district</td>
<td>450,000,000</td>
<td></td>
</tr>
<tr>
<td>bonds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mortgages and trust deeds</td>
<td>1,000,000,000</td>
<td></td>
</tr>
<tr>
<td>Stocks and bonds of corporations</td>
<td>750,000,000</td>
<td></td>
</tr>
<tr>
<td>whose property is assessed locally</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Securities and credits taxed at</td>
<td>700,000,000</td>
<td></td>
</tr>
<tr>
<td>2 mills and 1 mill, respectively:</td>
<td>320,000,000</td>
<td></td>
</tr>
<tr>
<td>Securities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>3,370,000,000</td>
<td></td>
</tr>
<tr>
<td>One-half thereof as basis for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>comparison with 1930 assessed</td>
<td></td>
<td>1,685,000,000</td>
</tr>
<tr>
<td>value</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**ITEM 2: 1930 ASSESSED VALUES**

<table>
<thead>
<tr>
<th>Property</th>
<th>Value ($)</th>
<th>Totals on Basis of Assessed Value ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of householders (estimated)</td>
<td>50,000,000</td>
<td></td>
</tr>
<tr>
<td>Of veterans</td>
<td>43,000,000</td>
<td></td>
</tr>
<tr>
<td>Of churches</td>
<td>19,300,000</td>
<td></td>
</tr>
<tr>
<td>Of colleges</td>
<td>16,000,000</td>
<td></td>
</tr>
<tr>
<td>Of cemeteries</td>
<td>4,250,000</td>
<td></td>
</tr>
<tr>
<td>Of orphan asylums</td>
<td>450,000</td>
<td>133,000,000</td>
</tr>
</tbody>
</table>

Items 1 and 2 1,818,000,000

According to the United States Bureau of the Census,\(^6\) the value of tax-exempt real property in California in 1922 was $982,000,000. This

amount constituted 11.7 per cent of the total value of such property in the state. For the United States as a whole the corresponding percentage was 11.6. A consideration of all tangible property, according to data of the bureau, indicates that 6.1 per cent of the value of California property was exempt in 1890, 6.9 per cent in 1900, 5.7 per cent in 1904, 5.2 per cent in 1912, and 6.5 per cent in 1922. For the entire United States the percentage in 1922 was 6.4. The per capita value of exempt property in California increased from $129 in 1890 to $262 in 1922, while for the United States the increase was from $61 in 1890 to $186 in 1922. These estimates indicate that the percentage of property exempt from taxation in California is similar to that for the United States.

A study of the trends in types of exempt property shows that privately owned property is increasing more rapidly than publicly owned property, although the difference is not great. Property used in the field of education constitutes a constantly increasing percentage of the value of all exempt property. Churches and other property used for religious purposes, on the other hand, are declining in relative importance. The total value of exempt property, although increasing only slightly more rapidly than the value of taxable property, is great enough to be of significance in a study of the distribution of the burden of taxation.

III. The History of Exemption

A perusal of the history of tax exemption indicates that the granting of tax immunity to ecclesiastical and military property is as old as the institution of taxation. English history of the eleventh and twelfth centuries contains examples of these types of exemption. Under the Saladin tithe, which is said to be the first occasion when moveable property was regularly taxed, the books and apparatus of clergymen were exempted. During the thirteenth century, specified horses, precious metals, and household utensils were exempted from taxation. Most of the early exemption provisions had their beginning in the desire to encourage or aid those who furnished physical protection for the group; such work was in fact a social or governmental function. The exemption of church property was an outgrowth of the doctrine that such property ceased to be under human control when it was devoted to God. The exemption of church and military property was handed down as a tradition, one of many that the American colonists brought with them to their new country. The established colonial churches, in most cases, were made public institutions supported from the government treasury. It was not until after the Revolutionary War, which brought

\[\text{Ibid.}\]
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a questioning of various accepted authorities, that the established churches were swept away. The exemption of their property remained, however, although Church and State were assumed to be completely separated.

The history of exemption laws in the American colonies follows closely the history of political and economic development. The early colonies, such as Carolina and New York, found it expedient to encourage immigration. This they did by offering freedom from taxation for a period of five or ten years after settlement. Similarly they sought to attract mechanics by means of tax exemption, and in like manner to build up shipping and shipbuilding. Each great war was followed by the enactment of tax exemption laws. Care of the wounded and the impoverished called attention to the need for more hospitals and a greater amount of charitable work. Moreover, there was always the problem of rewarding the men who had taken part in war. Tax exemption was an expedient method of assisting charitable work and rewarding war veterans, since it was a subsidy not easily or immediately recognized by the tax-payers.

The history of taxation in California illustrates the development of exemption in the American states. For more than a century and a half after its acquisition of what is now California, Spain made no attempt to establish settlements in the territory. Toward the middle of the eighteenth century, the Spanish rulers, stimulated by rumors of possible Russian colonization, and aided by Catholic missionary groups who were interested in the religious welfare of the Indians, initiated the first colonizing expeditions into California. The Franciscan missionaries, the first and greatest of whom was Junipero Serra, were entrusted with the religious side of the colonization. The first expedition resulting in settlements was in 1769, and the period of Spanish rule lasted until the establishment of the Mexican republic in 1822. The history of these 53 years is almost entirely a history of the missions, which extended as far north as San Francisco. Individual ownership of land was not common in the mission settlements or in the civic pueblos. As trade began to develop, export and import duties brought some revenue into the local treasuries, but the chief source of support continued to be the "pious fund" and other contributions from Spain and Mexico. Goods purchased for the use of the church or the padres were exempt from the duties. In addition to the export and import taxes, the Spanish government obtained a small amount of revenue from the sale of indulgences, the sale of tobacco (government monop-

8 1 Bancroft, History of California (1890) c. 4; Hunt and Sanchez, A Short History of California (1929) 56 et seq.

9 1 Bancroft, op. cit. supra note 8, at 693.
the postal service, and the annual tax upon settlers who had been
in California more than five years. This five-year exemption from tax-
ation, granted to newcomers, beginning in 1779, was intended as a
stimulus to the settlement of the civic pueblos. Provision for these
communities, running under a definite civil government, was made in
1777, the first two pueblos being San Jose (1777) and Los Angeles
(1781). A certain amount of land was granted provisionally to each
settler, together with the loan of stock and implements, and an allow-
ance of clothing and supplies during the first three years. The five-year
exemption from taxation was a part of the bounty bestowed upon the
new settlers; it was continued into the Mexican period.\(^1\)

California became a province of Mexico in 1822. Revenue laws were
modified to increase the funds available for building highways and
maintaining schools. Import duties were increased, an anchorage tax
was levied on vessels, and the tonnage tax was increased.\(^1\) Export
duties were abolished in 1825. A number of new taxes were imposed.
Exemption from the tonnage and anchorage taxes was granted in 1841
to persons engaged in the whaling industry, because of their threat to
withdraw from California and establish their base of supplies in the
Sandwich Islands.

In 1823 a tax on crops grown and cattle branded did not exempt
the products of the missions. The \textit{padres} protested, but since most of
the crops and stock produced at that time were from lands belonging
to the missions, the revenue would have been insignificant if such ex-
emption had been permitted. In the law of 1824 the five-year exemp-
tion from taxes granted to new settlers was again included.

It was during the Mexican period that large grants of land were
made to individuals, which resulted in the development of the \textit{ranchos}.
Secularization of the missions was attempted in 1827, being finally
accomplished in the years 1834 to 1836, with the result that large
tracts of land were opened to individual ownership. Cattle-raising
became the chief industry, with lesser developments in sheep, hogs
(the lard used in soap-making), flax, hemp, and cotton.

As a result of the Mexican War, California became a part of the
United States in 1846. Its government was in a state of confusion,
the people scarcely knowing to whom they owed allegiance, because
the distance between the Pacific coastal region and the Atlantic states
made communication so difficult at that time. Among new trade regu-
lations (1847) was the free admittance into California of mining ma-

\(^{10}\) Hunt and Sanchez, \textit{op. cit. supra} note 8, at 98, 99, 111; Fankhauser, \textit{A Finan-
\(^{11}\) 2 Bancroft, \textit{op cit. supra note} 8, at 494; 3 \textit{ibid.} 117.
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chinery and United States stores. Other trade measures were adopted, to encourage commerce and to assist in prosecuting the War.

In 1848 California had a white population of approximately 14,000, and by the end of the following year, because of the influx of gold-seekers, the figures stood at 100,000. The delegates to the constitutional convention of that year decided to form a state government rather than organize as a territory. This decision involved difficulties in financing, and elaborate arguments were constructed to show why the United States should grant a subsidy to the new state. It was said that the large land-holders of southern California were so impoverished through loss of laborers to the mining sections that they could bear very little in the way of a tax burden, and it was almost impossible to collect taxes on the gold produced in the mining region. With daily wages at the mines ranging from ten to twenty dollars and higher, enormous salaries would be necessary to draw people into state or municipal offices.

A few of the delegates expressed an opposing point of view, calling attention to the fact that many of the southern ranchers were obtaining gold from the mining sections, that a northern market for southern cattle was being developed with the rapid increase in population, and that the mining towns actually were developing public works at private expense. The strongest argument in favor of federal assistance was found in the fact that California was omitting a territorial stage during which the United States would have helped in developing public buildings, roads and other improvements.

After considerable argument, especially regarding the extent to which the constitution should restrict the legislature in the choosing of assessors, the financial section of the new constitution was adopted. It provided for equal and uniform taxation of all property in proportion to its value, which was to be ascertained as directed by law. Assessors and collectors were to be elected by the town, county or district in which the property to be assessed was located. The constitution of 1849 was drawn chiefly from the constitutions of New York and Iowa. The tax uniformity clause came from the constitution of

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13 The census report of 92,597 is inaccurate, according to Hunt and Sanchez (op. cit. supra note 8, at 380), who estimate the white population at 115,000. See Browne, Report of the Debates in the Convention of California on the Formation of the State Constitution in September and October, 1849 (1850) 366 et seq., where the population is said to be between 70,000 and 100,000.
14 Ibid. 201-202. An illustration of high wages is found in the payment of $16 per day to the door keeper at the convention. See Ibid. 363.
15 Ibid. 373 et seq.
17 Copies of the recently drafted Iowa constitution were printed for use of the convention, and the document became a working model for the delegates. The constitution of New York also was used as a guide. See Cleland, History of California; The American Period (1922) 252-253.
Texas. No mention was made of the exemption of property from taxation.

The uniformity clause in the constitution did not prevent the legislature from exempting from taxation a large amount of property. The act of 1850 exempted the property of any person exonerated from taxation by any law of the state; property of the United States and of the state; lands sold by the United States for the term of five years after such sale; schools, courthouses and jails, with not more than ten acres of land upon which each of such buildings was situated; every church and its appurtenances used for religious purposes; every graveyard or cemetery, not exceeding fifty acres unless authorized by general law; buildings and personal property used by any literary, benevolent, charitable, or scientific institution, including such property of towns or counties, the land in any case not to exceed twenty acres; all unsold lands granted for the use of common schools; the property of all manual labor schools or colleges incorporated in California, when used for the purposes of such institutions, the real estate not to exceed 320 acres; the personal property of every widow and orphan, to the extent of $1,000.

Most of the early exemptions from taxation were copied from laws of other states, and are not traceable to any condition peculiar to California, except that possibly the large number of exemptions may be due to the prodigality of a new state where gold was plentiful and everyone thought in terms of extremely high money quotations. The special consideration of manual labor schools was a result of the need for trained mechanics and artisans in a new community. Similar provisions are found in the early history of other states. The special consideration of widows and orphans is not usually found in the beginning of a state's history. Many hardships had been endured by immigrants who came across the plains and mountains in 1849, and such catastrophes as that of the famous Donner party resulted in a considerable number of dependent widows and orphans.

The policy of tax exemption continued to find public favor during the early 1850's while the optimism engendered by the mining interests prevailed. Provision was made that the owner of stock in a corporation, liable to a tax on its capital, should not be taxed as an individual for such stock. The exemption of unsold land granted for the use of public schools, under the law of 1850, was expanded to include all

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18 People v. McCreery (1868) 34 Cal. 432.
20 California was not admitted as a state until later in the year 1850.
21 See Journal of the Senate of the State of California (1850) 424-426.
22 Cal. Stats. 1851, p. 154; see Ibid. 1851, p. 56.
property granted for educational purposes so long as it remained unsold.\textsuperscript{23} The law of 1852\textsuperscript{24} made special mention of various kinds of public property that were to be exempt, particularly that belonging to cities, towns and villages. The property of hospitals was added to the list, and the acreage limitations were removed from the property of churches, educational institutions, charities and cemeteries. Any amount of real or personal property of these institutions was now exempt, so long as it was used for the relevant purpose of such associations. The personal property tax exemption to widows and orphans was eliminated, but it reappeared in the act of 1853,\textsuperscript{25} and was not confined to personal property.\textsuperscript{26} Considerable elaboration of details appeared in the act of 1853, and the property of a number of institutions similar or related to those already exempt was added.

The years 1854 and 1855 marked a precipitate change from the prosperous times that had existed since 1849.\textsuperscript{27} In 1854 growing crops and mining claims were included among the exempt property.\textsuperscript{28} This provision was not only for the purpose of encouraging these industries, but was almost an administrative necessity. By 1857 the pendulum had begun to swing away from the extreme liberality in granting exemption privileges.\textsuperscript{29} The act of 1857\textsuperscript{30} exempted the property of educational institutions, churches, and charities, only when no rent or profit was derived from them. The act of that year also provided that "no property belonging to any person which has arrived, across the plains, in this State after the first of July, in any year, shall be assessed in the same year, unless such property exceed $1,000 in value; and in case it does exceed such sum, then only the excess above that sum shall be assessed to such person."\textsuperscript{31}

Grape culture, which had been introduced from Mexico during the early years of Spanish rule, occupied an important place in California agriculture. By 1850 Los Angeles was producing some 57,000 gallons of wine each year.\textsuperscript{32} Well known varieties of grapes were brought from central Europe. During the 1850's the state took an interest in grape production; it induced Agoston Haraszthy, known as "father of vini-

\textsuperscript{23} Ibid. 1851, p. 165.
\textsuperscript{24} Ibid. 1852, p. 19.
\textsuperscript{25} Ibid. 1853, pp. 234-235.
\textsuperscript{26} In 1861 it was provided that the exemption be limited to one member of a family. Ibid. 1861, p. 421.
\textsuperscript{27} See 6 BANCROFT, \textit{op. cit. supra} note 8, at 766; HUNT AND SANCHEZ, \textit{op. cit. supra} note 8, at 433-434.
\textsuperscript{28} Cal. Stats. 1854, p. 105.
\textsuperscript{29} See Fankhauser, \textit{op. cit. supra} note 10, at 141.
\textsuperscript{30} Cal. Stats. 1857, p. 326.
\textsuperscript{31} Ibid. 331. Repeated in \textit{ibid.} 1860, p. 372; \textit{ibid.} 1861, p. 421.
\textsuperscript{32} 7 BANCROFT, \textit{op. cit. supra} note 8, at 44 ff.
culture” in California, to visit Europe as commissioner to study the subject and bring back cuttings.\textsuperscript{33} The interest in grape and wine production became state wide, as vineyards were developed far up the Sacramento Valley. The revenue act of 1859\textsuperscript{34} exempted from taxation (except for future irrigation levies) vines under four years of age and olive trees under seven years. California legislators saw in the cultivation of these fruits a potentially great industry and believed that its development should be hastened as much as possible.

The revenue act of 1861\textsuperscript{35} increased the exemption provisions to include the property of Masonic and “I.O.O.F.” societies, property of the society of California Pioneers, and property used by turn-verein associations. During the 1850’s, however, public opinion had begun to question the propriety of these exemptions and the constitutionality of legislative acts granting tax exemptions. One court\textsuperscript{36} had already said that the legislature did not have the power to exempt property from taxation, because of the constitutional requirement that all property be taxed uniformly. The general depression of the middle 1850’s was no doubt a factor in the movement to reduce governmental expenditures,\textsuperscript{37} which in turn caused people to question the liberal exemption policy that was in evidence during the earlier years.\textsuperscript{38} In 1860 the opponents of exemption—this time the agricultural and commercial sections of the state, who had been opposing exemption of mines since 1850\textsuperscript{39}—were able to secure the passage of an act subjecting machinery and improvements on mining claims to taxation. Furthermore, in 1864, an act repealed all provisions of law exempting mining claims from taxation “so far as they apply to lands or mines in the condition of private property, and granted as such by the Spanish or Mexican Government, or the Government of the United States, or of this state.”\textsuperscript{40}

Mention might be made of two other cases of tax exemption that appeared about this time. Foreign insurance companies were exempted from the tax on premiums if they had invested at least $50,000 in bonds of the state or its subdivisions, or in California real estate, or in first mortgages upon productive city property of the state worth double the amount loaned thereon; provided such investment had been in existence a year and had been subjected to taxation.\textsuperscript{41}

\textsuperscript{33} Ibid.; Hunt and Sanchez, op. cit. supra note 8, at 611.
\textsuperscript{35} Ibid. 1861, pp. 420-421.
\textsuperscript{36} Minturn v. Hays (1852) 2 Cal. 590.
\textsuperscript{37} 6 Bancroft, op. cit. supra note 8, at 766.
\textsuperscript{38} Fankhauser, op. cit. supra note 10, at 184.
\textsuperscript{40} Cal. Stats. 1864, p. 471.
\textsuperscript{41} Ibid. 1862, p. 246.
encourage investment in California bonds, which were in none too favorable a situation during this period, was no doubt a factor in explaining this exemption. The other case referred to was a special exemption from taxation of certain land and buildings in San Francisco, donated to the San Francisco Ladies’ Protection and Relief Society, so long as they were used for the benevolent purposes of that society.

The revenue act of 1866 contained further restrictions on tax exemption. Railroad subsidies and war expenditures were turning public attention toward economy, but more significant in explaining reduction in tax exemption was the opinion of more and more people that the legislature lacked constitutional power to grant exemptions. Property of widows and orphans, and of the California Pioneer Society and the turn-verein associations, were subjected to taxation, and the exemption favor to persons arriving across the plains after July 1 of any year was eliminated.

The exempt land upon which church edifices were situated was limited to 15 feet on each side of the building, and only those cemeteries incorporated under an act of 1859 were exempted.

In 1866 the governor approved an act requiring that all privately-owned exempt property be listed. The value of this tax-exempt property is shown in Table II.

### TABLE II

**Property Exempt from Taxation in the State of California:**

<table>
<thead>
<tr>
<th>Property</th>
<th>Value ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public libraries</td>
<td>57,250.00</td>
</tr>
<tr>
<td>Hospitals</td>
<td>127,970.00</td>
</tr>
<tr>
<td>Church property</td>
<td>1,436,291.00</td>
</tr>
<tr>
<td>Rural cemeteries</td>
<td>62,800.00</td>
</tr>
<tr>
<td>Public schools</td>
<td>210,037.10</td>
</tr>
<tr>
<td>Masonic halls</td>
<td>87,802.00</td>
</tr>
<tr>
<td>Odd Fellows halls</td>
<td>106,267.00</td>
</tr>
<tr>
<td>Growing crops</td>
<td>1,574,825.50</td>
</tr>
<tr>
<td>Mining claims</td>
<td>2,233,300.00</td>
</tr>
<tr>
<td>United States bonds</td>
<td>60,400.00</td>
</tr>
<tr>
<td>Engine houses and public charities</td>
<td>143,060.00</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>1,664,712.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7,764,714.60</strong></td>
</tr>
</tbody>
</table>


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45 Fankhauser, *op. cit. supra* note 10, at 184.
The culmination of the movement to eliminate tax exemption was the decision of the Supreme Court of California which held\(^{46}\) that the legislature had no power to exempt private property from taxation. The existing exemption provisions, in so far as they applied to such private property, were declared unconstitutional.

Thus two decades passed before the courts reached the conclusion that the constitution of 1849 gave the legislature no power to exempt private property from taxation. The economic conflict between the agricultural and commercial sections of the state, on the one hand, and the mining districts which were so strong during the early years of California’s statehood, on the other, finally culminated in the success of a movement to abolish not only mining property exemptions but all others as well.\(^{47}\) During the next few years several exemption laws were enacted, but they were merely clarifications of constitutional provisions, for the purpose of avoiding double taxation.\(^{48}\)

In 1872 California’s laws were codified. Section 3607 of the Political Code provided, “All property within this State, except the property of the United States, of the State, and of municipal corporations, is subject to taxation.” It is unfortunate that California could not retain this freedom from tax exemption throughout the remainder of her history.

A convention was held in 1879 for the purpose of formulating a new constitution. The depression that prevailed in agriculture and business, and the general discontent that grew out of it, were to some extent responsible for undertaking the formulation of a new constitution.

\footnote{Since the value of taxable property in California in 1857 was $212,205,339 (Ibid. 195) the exempt property constituted 3.5 per cent of the value of all property. The percentage would be higher, of course, if data for all counties were available.}

\footnote{People v. McCreery, \textit{supra} note 18. The decision was based upon the uniformity clause of the constitution. This clause had been copied from the constitution of Texas, but the Texas provision for exemptions to be granted by the legislature had been omitted. Thus the framers of the California constitution must have intended that the legislature was not to exempt property from taxation. For further discussion, see pages 212-213, \textit{infra}. See also the later case of People v. Eddy (1872) 43 Cal. 331, which held that the framers of the constitution did not intend that the legislature should have the power to exempt any kind of property from taxation.}

\footnote{The San Francisco Alta, Oct. 5, 1869, at 2, said: “The mines were exempted from taxation when they were in the most luxuriant condition, and when a burden that is now oppressive would scarcely have been felt. Thus it is that counties with poor public buildings, few good public wagon roads, no railroads, and in fact, with no property worthy of notice, are overwhelmed with debt.”}

\footnote{Cal. Stats. 1870, p. 584: “No mortgage or lien given and held upon real estate, or the debts thereby secured, or promissory notes secured by mortgage, shall be assessed upon the books of any assessor, State, County, or otherwise.” Ibid. 1870, p. 393: “There shall be no separate listing or assessment made of ‘growing crops’, but the assessor shall, in making the assessment, treat growing crops as part of the land producing such crops.”}
tion at this time. The collapse of mining stocks in 1875 served to usher in the business depression. The dry winter of 1876-1877 brought about a general failure of the grain crops, and thousands of cattle perished from lack of food. Labor parties became active in behalf of a more equitable distribution of wealth. Many people believed that a new constitution would cure the ills from which they were suffering. The workingmen carried the City and County of San Francisco, electing 50 delegates out of a total of 152 for the entire state. The workingmen's party restated its platform of the preceding year. The platform called for exemption from taxation of growing crops and of the property of every person up to $500 in value, and advocated the taxation of mortgages. Other delegates, too, wanted growing crops to be freed from taxation. Various suggestions were made for exempting a minimum amount of property, and for the exemption of mechanics' tools up to $200, farming implements to $5,000, and all railroad property. The taxation section that finally appeared in the constitution provided:

"... growing crops, property used exclusively for public schools, and such as may belong to the United States, this state, or to any county, city and county or municipal corporation within this state, shall be exempt from taxation, ... The legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this State."

Another section provided that, except as to railroad and other quasi-public corporations, mortgages and deeds of trust were to be taxed to their owner, and the land mortgaged was to be valued and taxed to its owner at total value less the value of the mortgage. The new constitution also prohibited the legislature from passing local or special laws exempting property from taxation.

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49 See 7 BANCROFT, op. cit. supra note 8, at 372.
50 HUNT AND SANCHEZ, op. cit. supra note 8, at 541; Fankhauser, op. cit. supra note 10, at 257-8.
51 7 BANCROFT, op. cit. supra note 8, at 373.
52 Ibid. 374.
53 CAL. CONST. (1879) art. XIII, §1.
54 Ibid. §4. This section was repealed in 1910, and section 1 of article XIII now includes the provision that "a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall not be considered property subject to taxation."
55 CAL. CONST. (1879) art. IV, §25. In 1881 an amendment to the code provided that "nothing in this code shall be construed to require or permit double taxation." Cal. Stats. 1881, p. 56. Another amendment the same year provided that "credits, claims, debts, and demands due, owing, or accruing for an account of money deposited with savings and loan corporations shall, for the purpose of taxation, be deemed, and treated as an interest in the property of such corporation, and shall not be assessed to the creditor or owner thereof." Ibid. p. 57.
The general condition of agriculture during the years immediately preceding the formulation of the constitution of 1879 was partly responsible for the provision exempting growing crops from taxation. It was argued that to assess growing crops would discourage planting and sowing.56 This exemption proved to be an opening wedge for the extension of exemption privileges, as the years passed. These exemptions can be secured only through amendments to the constitution, as the courts have held that the constitutional provision is restrictive in content. In 1889 an unsuccessful attempt was made to define "growing crops" so as to include all "growing crops, cereals, vines, nut-bearing, fruit and ornamental trees."57 It was found necessary to amend the constitution, however, as fruit and nut growers had become too strong to be denied this favor.58

Expansion in the field of education in the 1890's resulted in the adoption of a constitutional amendment to include libraries and free museums among institutions whose property was not taxed.59 In 1900 another amendment gave the legislature the power to exempt from taxation the property of Leland Stanford Junior University, used for educational purposes, including endowment, provided that no tuition fees be charged to residents of California unless authorized by act of legislature.60 Another amendment exempted the property of The California School of Mechanical Arts, located in San Francisco.61 A few years later similar amendments extended the exemption privilege to the California Academy of Sciences62 and to Cogswell Polytechnical College.63 Once the exemption to educational institutions had started, there was no reason to stop. Accordingly, in 1914 a general amendment was adopted, which provided exemption to any educational institution of collegiate grade within the state, not conducted for profit, the grounds not to exceed one hundred acres.64 The value of college prop-

56 7 BANCROFT, op. cit. supra note 8, at 383n.
57 Cal. Stats. 1889, p. 205. Cottle v. Spitzer (1884) 65 Cal. 456, 4 Pac. 435, had held that fruit trees were not growing crops within the meaning of article XIII, section 1, of the constitution, and were subject to taxation.
58 The constitutional amendment of 1894 reads: "Fruit and nut-bearing trees under the age of four years from the time of planting in orchard form, and grapevines under the age of three years from the time of planting in vineyard form, shall be exempt from taxation, and nothing in this article shall be construed as subjecting such trees and grapevines to taxation." Cal. Const. (1894) art. XIII, §1234.
59 Ibid. §1.
60 Ibid. (1900) art. IX, §10.
61 Ibid. §11.
62 Ibid. (1904) art. IX, §12.
63 Ibid. (1906) art. IX, §13.
64 Ibid. (1914) art. XIII, §1a. In 1926 a proposed amendment to extend this provision to educational institutions of secondary grade was defeated.
erty exempt under this provision has increased from $1,329,745 in 1915 to $23,393,082 in 1930. The number of colleges receiving such exemption has remained close to forty, the 1930 figure.65

Religious institutions were granted exemption privileges in the year 1900, when a constitutional amendment provided for the exemption of all buildings, and so much of the real property on which they are situated, as may be required for the convenient use and occupation of said buildings, when the same are used solely and exclusively for religious worship, provided that no building so used be rented for religious purposes and rent received by the owner.66 Church organizations had developed rapidly in California, especially after the rough life of the mining days began to subside. Bancroft estimates the value of church property in the state in 1870 to have been more than $7,000,000, an increase of nearly $6,000,000 since 1860.67 In 1914 the church property in San Francisco alone was valued at $7,750,000.68 In 1930 the assessed value of exempt churches in Los Angeles county was estimated to be $19,300,000.69

In 1902 an amendment to the constitution exempted from taxation "all bonds hereafter issued by the State of California, or by any county,

<table>
<thead>
<tr>
<th>YEAR</th>
<th>STATE ($)</th>
<th>COUNTY DISTRICT ($)</th>
<th>MUNICIPAL ($)</th>
<th>TOTAL ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1911</td>
<td>5,677,500</td>
<td>22,655,890</td>
<td>65,573,033</td>
<td>93,906,423</td>
</tr>
<tr>
<td>1914</td>
<td>22,909,500</td>
<td>41,292,025</td>
<td>106,924,759</td>
<td>171,126,284</td>
</tr>
<tr>
<td>1917</td>
<td>34,493,500</td>
<td>64,003,252</td>
<td>139,451,712</td>
<td>237,948,464</td>
</tr>
<tr>
<td>1920</td>
<td>50,239,500</td>
<td>96,062,069</td>
<td>142,189,039</td>
<td>288,510,608</td>
</tr>
<tr>
<td>1923</td>
<td>81,389,500</td>
<td>169,357,218</td>
<td>201,234,192</td>
<td>451,980,910</td>
</tr>
<tr>
<td>1926</td>
<td>100,350,500</td>
<td>262,362,554</td>
<td>309,433,146</td>
<td>672,166,200</td>
</tr>
<tr>
<td>1928</td>
<td>114,374,500</td>
<td>294,530,919</td>
<td>347,413,378</td>
<td>756,318,697</td>
</tr>
</tbody>
</table>

66 Cal. Const. (1900) art. XIII, §13/. It will be noted that this exemption is liberal in its terms, and is based upon use only. An amendment to the Political Code in 1929 provided that failure to make a return of property showing reasons for exemption constituted a waiver of the exemption. Cal. Stats. 1929, p. 1928. This provision was made necessary because of the decision in First M. E. Church of Santa Monica v. Los Angeles County (1928) 204 Cal. 201, 267 Pac. 103, holding that failure of a religious corporation to make such return did not constitute a waiver of the exemption.

67 7 Bancroft, op. cit. supra note 8, at 731.
68 Biennial Report of the State Controller, 1913-1914, p. 27.
69 Moore, op. cit. supra note 4, at 270.

* Data from Moody’s Manual of Investments, Government Securities (1930) 1156.
city and county, municipal corporation, or district (including school, reclamation, and irrigation districts) within said state.\textsuperscript{70} State and local bonded debts in California for selected years between 1911 and 1928, are presented in Table III.

The development of irrigation on a large scale in California began, with the passage of the Irrigation District Law of 1887. Bancroft estimated that the projects begun in the year 1889 would double the irrigable area of the state.\textsuperscript{71} An irrigation district, a political subdivision of the state\textsuperscript{72} with power to irrigate and drain lands in the district and to develop and distribute hydro-electric power, may be organized by a majority (in value) of the landholders in the proposed district subject to the approval of the state engineer. The importance of irrigation in the agriculture of California, and the interest taken by the state in the formation of irrigation districts, brought about the exemption of bonds issued by these districts. The bonds must be properly certified by a bond certificate commission. In 1929, there were outstanding approximately $105,941,998 of California irrigation district bonds,\textsuperscript{73} an increase of nearly 400 per cent over the figure for 1919.\textsuperscript{74}

Popular pressure for exemption from taxation of a minimum amount of the property of every person, expressed in the platform of the workingmen's party and advocated by a large number of the delegates to the constitutional convention of 1879, finally culminated in an amendment to the constitution exempting "the personal property of every household to the amount of one hundred dollars."\textsuperscript{75}

Every resident of California who has served in the army, navy, marine corps, or revenue marine service of the United States in time of war, and received an honorable discharge therefrom, has been favored, since 1911, with property tax exemption to the amount of $1,000, provided that he (or his wife) does not own property valued at $5,000 or more.\textsuperscript{76} Property belonging to the wife of such person may be in-

\textsuperscript{70} Cal. Const. (1902) art. XIII, §13\(\frac{1}{2}\). In 1923 an attempt to include in this provision the bonds of public utility districts failed.

\textsuperscript{71} Bancroft, op. cit. supra note 8, at 742.

\textsuperscript{72} In Reclamation District No. 551 v. Sacramento County (1901) 134 Cal. 477, 66 Pac. 668, the court held that a reclamation district is a public agency of the state, and that such of its property as is indispensable to the execution of its objects is public property within the meaning of the constitution and hence exempt from state and county taxes. See page 214, infra.

\textsuperscript{73} Moody's Manual of Investments, Government Securities (1930) 1143.

\textsuperscript{74} Ibid. (1919) 67-105.

\textsuperscript{75} Cal. Const. (1904) art. XIII, §103\(\frac{1}{2}\).

\textsuperscript{76} Ibid. (1911) art. XIII, §11\(\frac{1}{2}\). This section was amended slightly in 1922 and in 1926, to cover cases where such person "has been released from active duty because of disability resulting from such service in time of peace or under other honorable conditions."
EXEMPTION FROM PROPERTY TAX

cluded if necessary to make up the $1,000 total property to be exempted. The exemption privilege is extended to the widow or, if there be no widow, to the widowed mother, of every person who has so served; and also to pensioned widows, fathers, and mothers, of soldiers, sailors, and marines. All real property owned by the Ladies of the Grand Army of the Republic, and all property owned by the California Soldiers’ Widows’ Home Association, are exempt from taxation.

As a result of demands for clarification of the amendment of 1911, the wars in which a person may have served, to be eligible for the exemption, were enumerated. The amount of property exempted under the provision grew very rapidly, especially after the close of the World War. The number of claimants and the value of exemptions granted are presented in Table IV.

### TABLE IV
**NUMBER OF CLAIMANTS AND VALUE OF PROPERTY OF WAR VETERANS EXEMPTED FROM TAXATION IN CALIFORNIA: 1912-1930**

<table>
<thead>
<tr>
<th>Year</th>
<th>Claimants</th>
<th>Value of Property Exempted ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1912</td>
<td>10,692</td>
<td>7,220,992</td>
</tr>
<tr>
<td>1913</td>
<td>13,902</td>
<td>8,868,302</td>
</tr>
<tr>
<td>1914</td>
<td>14,989</td>
<td>10,180,506</td>
</tr>
<tr>
<td>1915</td>
<td>15,647</td>
<td>10,942,175</td>
</tr>
<tr>
<td>1916</td>
<td>16,459</td>
<td>9,451,574</td>
</tr>
<tr>
<td>1917</td>
<td>17,365</td>
<td>11,824,887</td>
</tr>
<tr>
<td>1918</td>
<td>17,982</td>
<td>11,601,432</td>
</tr>
<tr>
<td>1919</td>
<td>20,623</td>
<td>12,728,419</td>
</tr>
<tr>
<td>1920</td>
<td>30,611</td>
<td>18,361,786</td>
</tr>
<tr>
<td>1921</td>
<td>120,938</td>
<td>69,127,986</td>
</tr>
<tr>
<td>1922</td>
<td>140,790</td>
<td>78,038,009</td>
</tr>
<tr>
<td>1923</td>
<td>148,903</td>
<td>83,895,259</td>
</tr>
<tr>
<td>1924</td>
<td>158,764</td>
<td>94,992,007</td>
</tr>
<tr>
<td>1925</td>
<td>163,738</td>
<td>102,354,510</td>
</tr>
<tr>
<td>1926</td>
<td>176,218</td>
<td>108,677,494</td>
</tr>
</tbody>
</table>

In 1911 a statute declared every fraternal benefit society organized under the California act providing for such societies, to be a charitable and benevolent institution, and its funds exempt from all taxes other than taxes on real estate and office equipment.

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77 Legal residence in California is required of the person claiming the exemption.

78 CAL. CONST. (1926) art. XIII, §1½.

79 For discussion of the need for such clarification in California, see Biennial Report of the State Controller, 1911-1912, p. 37; ibid. 1913-1914, pp. 54-55.


* Data from Biennial Reports of State Board of Equalization.

81 Cal. Stats. 1911, p. 1333.
According to the constitution, property acquired by a county, city, and county, or municipal corporation, even though located outside its territorial limits, and used for such purposes as the development of water works for the use of its inhabitants, was exempt from taxation. An amendment of 1914 provided that such property should not be exempt when located outside the territorial limits of the political unit owning it. It has been said that this amendment was aimed against property owned by Los Angeles and San Francisco and used in supplying water to those cities.

In 1914 all vessels of more than fifty tons burden, registered at any California port and engaged in the transportation of freight or passengers, were exempted from taxation except for state purposes, until and including January 1, 1935. Nearly all of the vessels affected were registered in the City and County of San Francisco, and about $8,000,000 was lost from the tax rolls.

Instead of maintaining state orphan asylums, California grants aid to local institutions, both public and private, provided they comply with specified requirements. A constitutional amendment of 1920 exempted from taxation “all buildings and so much of the real property connected therewith as may be required for the occupation of institutions sheltering more than twenty orphan or half-orphan children, receiving state aid,” provided that none of such property be rented.

In 1921 the code was amended to exempt from taxation date palms under the age of eight years from the time of planting in orchard form. The constitutional validity of this exemption provision is doubtful, since the legislature has no power to grant exemptions not provided in the constitution. No test case has yet arisen, however.

The rapid development of date production is shown in Table V. The number of trees not of bearing age— exempt from taxation since 1921— was more than three times as great in 1920 as in 1910.

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82 Cal. Const. (1879) art. XIII, §1.
83 City & County of San Francisco v. McGovern (1915) 28 Cal. App. 491, 152 Pac. 980.
84 Cal. Const. (1914) art. XIII, §1.
85 Turlock Irrigation Dist. v. White (1921) 186 Cal. 183, 189, 198 Pac. 1060, 1062, 17 A. L. R. 72, 74. See page 215, infra.
87 Biennial Report of the State Board of Equalization, 1915-1916, p. 8. The decrease is shown in the assessed value of “personal property other than money and solvent credits”, in the city and county of San Francisco. This valuation dropped from 53,393,555, in 1914, to $45,942,943 in 1915. Ibid. 1913-1914, p. 73; ibid. 1915-1916, p. 38.
89 Cal. Stats. 1921, p. 184.
90 Professor C. C. Plehn expresses this doubt (in a private letter).
TABLE V
DATE AND PALM TREES IN CALIFORNIA: 1910, 1920*

<table>
<thead>
<tr>
<th>Year</th>
<th>Farms Reporting</th>
<th>Number of Trees</th>
<th>Farms Reporting</th>
<th>Number of Trees</th>
<th>Pounds of Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1910</td>
<td>.</td>
<td>30</td>
<td>19,552</td>
<td>8</td>
<td>325</td>
</tr>
<tr>
<td>1920</td>
<td>.</td>
<td>153</td>
<td>69,896</td>
<td>122</td>
<td>17,299</td>
</tr>
</tbody>
</table>

The constitution was amended in 192691 to grant tax exemption to immature forest trees planted on lands not previously bearing merchantable timber, or upon lands from which the original growth timber to the extent of 70 per cent of all trees over sixteen inches in diameter has been removed. Such trees are to be considered mature at such time, after forty years from the time of planting, as a specified board shall determine. This provision marks California's first attempt to encourage forestation through tax exemption. The law is too recent for any statement as to its effects. California contains approximately 6,000,000 acres of forest area under private ownership, as compared with 19,000,000 acres of government-owned forest lands.92 The people of the state are interested in the reforestation program, especially because of the desire to conserve the relatively small area of large redwood trees.93 Tax exemption is, of course, only a minor step in the program of reforestation.94

Another constitutional amendment of 1926 exempted from taxation "all property used or held exclusively for the burial or other permanent deposit of the human dead or for the care, maintenance or upkeep of such property or such dead, except as used or held for profit."95

In 1929 an attempt was made to exempt from taxation the property and income of any hospital or sanitarium, charitable or otherwise, not organized or conducted for private profit.96

The following year a constitutional amendment was adopted exempting from taxation all property "held in trust for the founding,

* Data from 5 Fourteenth Census of the United States (1920) Agriculture, 874.

92 California State Board of Forestry, Report to the Legislature on Senate Concurrent Resolution No. 27 (1923) 99.
93 Metcalf, Deferring Taxation on Growing Timber (1927) 4 Tax Dig. 27-29.
94 See Bulletin of State Board of Equalization, Proceedings of Tenth Annual Convention of County Assessors' Associations of California (1912) 36-38.
95 Cal. Const. (1926) art. XIII, §1b.
96 Cal. Stats. 1929, p. 2217. See (1930) 8 Tax Dig. 355, for a discussion of this proposed exemption. The opinion there expressed is not favorable to any extension of tax exemption, especially in this case where no provision was made for regulating the sum that might be paid as salaries to officials of "non-profit" hospitals.
maintenance or benefit of the Henry E. Huntington Library and Art Gallery and the increments thereof and all personal property received in exchange therefor." The legislature reserved the right to modify, suspend or revive the exemption at will. This library, located on the Huntington estate near Pasadena, is one of the most valuable in the United States. With the death of Mr. Huntington, and in accordance with his will, it has been made more accessible to the public.

The history of taxation in California is typical of the history in other American states, except for the fact that for a period of twenty years publicly owned property alone was granted immunity from taxation. California was thus given an opportunity to start over again, free from most of the exemption difficulties that all states have today; but the opportunity was cast aside and the usual forms of exemption were permitted to develop.

IV. COURT INTERPRETATIONS

The history of the development of tax exemption legislation carries with it the history of the attitude of the courts. Judicial decisions have made it clear that the power to tax and apportion the burden is inherent in government. Exemption is a part of this power. It is equally well settled that taxation must be for a public purpose, although it is sometimes difficult to determine which purposes are public. The content of the term "public" changes as the economic system develops. It is a significant fact, in the study of tax exemption, that indirect subsidies, in the form of immunity from taxation, are upheld by the courts in spite of the fact that a direct subsidy to the same institutions would be denied under the rule of direct public purpose. Such is the case in regard to churches, sectarian schools, and private industries. Tax exemption for paupers or war veterans, on the other hand, is not inconsistent with the public purpose doctrine, since direct aid may be extended to such classes of people. Courts in most cases have failed to see tax exemption as a subsidy whose burden rests upon the taxpayers.

Decisions of California courts in the field of tax exemption present two developments not found in most states: first, the opinion holding that the tax uniformity clause of the state constitution denied the legislature the power to exempt private property from taxation; second, the opinions exempting property of reclamation districts from taxation.

The Supreme Court of California, in People v. McCreery, held that laws exempting from taxation any private property within the state were contrary to the constitutional provision requiring taxation to be

97 CAL. CONST. (1930) art. IX, §15.
98 Supra note 18.
uniform. The defendant in the case had objected to a tax on the ground “that the legislature having, in defiance of constitutional requirements, imposed the burden of taxation upon a portion only of the property in the State, and expressly relieved a large portion from taxation, the law is neither equal nor uniform in its operation, does not tax ‘all the property in the state,’ and is therefore void.”

While holding the provisions exempting private property from taxation to be void, the court said that the remainder of the revenue act was valid and enforceable.

In reaching the decision that exemption of private property from taxation was contrary to the uniformity clause, the court called attention to the fact that the taxation provision in the California constitution had been taken from the constitution of Texas, which read:

“Taxation shall be equal and uniform throughout the state. All property in this state shall be taxed in proportion to its value, to be ascertained as directed by law, except such property as two-thirds of both Houses of the Legislature may think proper to be exempt from taxation.”

As inserted in the California constitution the italicized portion was omitted. The court was of the opinion that “accepting as a fact that our constitutional Convention borrowed the first portion of the section relating to taxation from the Constitution of Texas, and seeing that the clause in that constitution is omitted from our Constitution the conclusion is inevitable that it was not intended that the Legislature should possess the power to exempt property from taxation, if the previous clauses of the Constitution did, in fact, limit the power of the legislature, in that respect.” Furthermore, the court said that “all property in this state” meant all privately-owned property, since the word “property” is so defined in the constitution.

In applying the tax exemption provisions of the constitution, California courts have announced a policy of strict interpretation. A statute which exempts persons or property from taxation is to be strictly construed, said the court in In re Bull's Estate. A later court held that a statute enacted after the adoption of the constitutional amendment providing for exemption of collegiate institutions, could in no way limit or extend the terms of that amendment. This court, in denying exemption to a university whose largest classes of enrolled students

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99 Ibid. at 447.
100 Texas Const. (1845) art. VII, §27 (italics added).
101 34 Cal. at 451.
102 See Mackay v. City & County of San Francisco (1896) 113 Cal. 392, 45 Pac. 696.
104 Pasadena University v. Los Angeles County (1923) 190 Cal. 786, 214 Pac. 868.
were not within the collegiate grade classification, said that while it was the duty of courts to construe liberally all laws benefiting educational institutions, yet it was equally the duty of courts to deny exemptions unless the intention to grant the exemption privilege was expressed in direct terms or was fairly inferable from the language of the instrument by which the right was claimed.

Examples of strict interpretation appear in a number of other cases. Alfalfa, since it is a perennial plant, was held not to be in the category of "growing crops", under the constitutional provision exempting growing crops from taxation. The maintenance by a school district of a free circulating library did not exempt property in the district from taxation for the support of a county library. As to public property, however, the rule is that such property is not to be taxed unless there is express authority therefor. All lands opened for settlement under the State Land Settlement Act, and lands purchased by the state land settlement board to carry out the objects of the Act, belong to the state and are exempt from taxation.

In holding that property acquired by a reclamation district for the purpose of constructing a pumping plant was exempt from taxation, the court said:

"It is not necessary to hold this property, thus acquired to be the property of a municipal corporation, in order to make it exempt from taxation. It would be sufficient to hold that it is public property of the state, within the meaning of the constitution. The whole scheme of reclamation originates with the State, and is carried to a conclusion by agents of the State,—the district, as we have already seen, being a public agency,—in furtherance of public policy. The property mentioned in Section 3471 of the Political Code is public property, acquired by the agents of the State, for state purposes and we think is exempt from taxation, as such."

This treatment of the property of irrigation districts as property of the state rather than of municipal corporations, saved such property from being taxed after the adoption of the constitutional amendment of 1914, which provided for taxation of property of municipal cor-

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105 Miller v. Kern County (1902) 137 Cal. 516, 70 Pac. 549. The court said that "the plant—the permanent root which is what is here in controversy—is part of the land, and is realty ..." Ibid. at 526, 70 Pac. at 554.


107 City of Pasadena v. Los Angeles County (1920) 182 Cal. 171, 187 Pac. 418.


109 Reclamation Dist. No. 551 v. Sacramento County, supra note 72, at 479, 66 Pac. at 669.

110 CAL. CONST. (1879) art. XIII, §1.
porations located outside the corporate limits. In *Turlock Irrigation Dist. v. White*,\(^1\) the court said:

"In view of the general policy of the law and the great necessity on which that policy rests, that property held by public corporations shall not be taxed by the State, much less by other public corporations, and the plain fact that this particular amendment of the constitution was manifestly inspired by the desire of three counties to prevent Los Angeles and San Francisco from escaping taxation on property owned by them situated outside their limits for the carrying on of public water systems, together with the further fact that the constitution itself in other parts thereof describes ‘municipal corporations’ and provides for their creation in such a way that it cannot be doubted that none other than the ordinary municipal corporations were referred to, it is clear that irrigation districts were not made taxable by the exception contained in the amendment in question."

Since the property of irrigation districts is property of the state, it was argued that these districts were entitled to cancellation of all county taxes and assessments levied against property which they have acquired as a result of delinquent irrigation assessments and the state supreme court so held. On rehearing, however, it was held that liens for county and municipal taxes and special assessments, under the authority for state agencies for public purposes, are all on an equality and that the district was not entitled to have canceled the liens of county and municipal taxes on the property at the time the tax deed was acquired by the district.\(^2\)

California courts hold that property is not exempt from taxation merely because the income from it is applied to exempt uses. A hotel, purchased by a cemetery association and the income used exclusively for improvement and preservation of the cemetery, was held to be taxable, since the hotel was used and owned for profit and not directly for cemetery purposes.\(^3\)

An interest in tax-exempt property may be taxed. The legislature has the power to tax the interest which a private individual has acquired in a mining claim, although the mines, as property of the government, were exempt from taxation under the act admitting California into the Union.\(^4\) Although land occupied under a preemption law of the United States, and not paid for, is not itself subject to taxation by the state, the possessory interest and value of improvements of the

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\(^1\) Supra note 85, at 189, 198 Pac. at 1062, 17 A. L. R. at 76.
\(^3\) Cypress Lawn Cemetery Ass'n v. City & County of San Francisco, supra note 103.
\(^4\) State v. Moore (1859) 12 Cal. 56.
occupant may be taxed. When land leased is owned by the state or a municipality, the tax of the usufructuary interest falls on the lessee, in the absence of agreement to the contrary, the reversion being exempt from taxation.

A number of decisions have been made concerning the taxation of credits. Loans are not exempt from taxation merely because they are secured by tax-exempt property. United States treasury checks issued for interest accrued on registered bonds of the United States, may be taxed as "solvent credits" in the hands of the owner, without violating the United States statute exempting obligations of the United States from state taxation. A mortgage held by the University of California was held to be exempt from taxation, as "property belonging to the State." A statute requiring the inclusion of interest from non-taxable securities in the net income base by which the state franchise tax of the bank or corporation is measured, was held not in violation of the constitutional provision exempting certain securities from taxation. Profits received by banks and corporations from the purchase and sale of non-taxable securities are not exempt from taxation.

In the field of religion there have been several rather unusual cases. The holding that the failure of a church to file an affidavit as to the use of its property did not constitute a waiver of its right to exemption from taxation, made necessary an amendment to the Political Code declaring that such failure to file an affidavit waives the right to exemption. Exemption was denied to property sold by a church congregation, but still used by them for religious purposes, interest being paid to the vendee in lieu of rent. A church lot in a congested district, used by the congregation for free parking of automobiles, and affording light and air for the church, was held to be within the pro-

115 People v. Shearer (1866) 30 Cal. 645; People v. Frisbee (1866) 31 Cal. 146; People v. Cohen (1866) 31 Cal. 210.
117 Savings & Loan Soc. v. City & County of San Francisco (1901) 131 Cal. 356, 63 Pac. 665.
118 Hibernia Savings & Loan Soc. v. City & County of San Francisco (1906) 200 U. S. 310.
119 Webster v. Board of Regents of University of California (1912) 163 Cal. 705, 126 Pac. 974.
120 Pacific Co. Ltd. v. Johnson (1931) 212 Cal. 148, 298 Pac. 489.
121 Ibid.
122 First M. E. Church of Santa Monica v. Los Angeles, supra note 66.
123 Cal. Stats. 1929, p. 1028.
vision exempting land required “for the convenient use and occupation of said buildings.”

The decisions of courts in California are similar to those found in most of the other states, except for the strict application of the uniformity clause of the constitution which eliminated the exemption of privately owned property in 1868.

V. ADMINISTRATIVE PROVISIONS

A state may have statutes and constitutional provisions rigidly restricting the exemption of property from taxation and yet have a large amount of property escaping from the tax rolls. Effective administration of tax laws must be provided. Only a few provisions for the administration of exemption laws are found in the California statutes. In the case of church property the claimant must make a return of the property annually to the assessor, and must accompany the same by an affidavit showing that the building is used exclusively for religious worship, that the described portion of the real property claimed as exempt is required for the convenient use and occupation of such building, and that the property is not rented.

War veterans applying for exemption from taxation must appear before the assessor or his deputy and give all information requested of them, in the form prescribed, and shall swear that the answers are correct. Any false statement in the affidavit constitutes perjury. Failure to make the affidavit or furnish the evidence requested, between the first Monday in March and the first Monday in July of each year, is treated as a waiver of the right to the exemption.

Applicants for exemption of educational institutions of collegiate rank must make a return of the property to the assessor, and accompany it with an affidavit that the institution is of collegiate grade and not for profit, that the grounds for which exemption is claimed are those within which its buildings are located and that they do not exceed one hundred acres in area, and that the securities and income for which exemption is claimed are used exclusively for purposes of education. False statements are punishable as perjury. Failure to make the affidavit and furnish the information requested, within the proper time each year, constitutes a waiver of the exemption.

It is desirable that similar provisions be made for the listing of other kinds of exempt property. The requirements for listing the property...

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127 Ibid. §3612.
128 Ibid. §3613.
and justifying its exemption have apparently had satisfactory results in the case of churches, colleges and war veterans. Tax administrators have advocated the extension of the principle to all types of exempt property, the listing to be under the assessor of each county, the returns to be sent to the state board of equalization for consolidation and publication. The chief object of such listing would be the "deterrent effect as to future pleas for exemption."  

VI. CONCLUSION AND RECOMMENDATIONS

In general it is safe to conclude that when the voters decide that government aid should be extended to the owners (other than governments) of property, such assistance should be in the form of a direct subsidy rather than tax exemption. The preference for a direct subsidy rests upon several facts. First, the amount of the bounty should depend upon such factors as the actual needs of the favored institution or the extent of its benefactions, rather than upon the value of the real property that it happens to own or use. Second, a direct subsidy is more quickly detected by the public, is more easily understood, and is more certain as to cost. Many existing subsidies would never be permitted if they were direct and open. Another objection to tax exemption is the fact that the area of benefit and the area of cost are not always coterminous, a condition that may result in an unjust distribution of the tax burden. A direct subsidy can be allocated in such a way that these areas more nearly coincide. A final preference for direct assistance is found in the ease with which exemptions, like other hidden subsidies, expand after they are started. The granting of tax exemption to a church opens the door to religious clubs, organizations for moral improvement, and many other groups whose claim to tax favors is as strong, or almost as strong, as that of the church. Political considerations, also, demand that no immunity from taxation be granted, for people who have a part in determining the fiscal policies of governments should not be freed from a direct share in the burdens of those governments.

In regard to churches, for example, it seems clear that there is no valid reason for exemption. Religion is no longer a governmental function. Assistance that is denied in the direct form, should not be permitted indirectly. If governmental aid to churches be desirable, let it take the form of a direct subsidy apportioned according to other criteria than the value of property used. It is recognized that charity is a

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129 Biennial Report of the State Controller, 1913-1914, p. 27; see Moulton, Exemptions, Biennial Report of the State Board of Equalization, 1913-1914, pp. 228-229. For number of claimants and value of exempt property of colleges and veterans, see pages 206-207, supra; Table IV, supra page 209.
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governmental function. In spite of that fact, however, the exemption of private charitable institutions from taxation is not a desirable policy. So far as it is possible, the state should itself perform the work of charity. If it be politically or economically impossible to assume such obligations at the present time, private institutions should be granted assistance in the form of a direct subsidy, contingent upon the supervision and coordination of charitable undertakings by the government. Such a program leaves no place for tax exemption apportioned in accordance with valuations of real property and carrying with it no governmental control.

The influence of exempt institutions upon the value of contiguous land has been cited as a justification of tax exemption, particularly in the case of churches. A study of this problem indicates that many exempt institutions have a depressing influence upon the value of contiguous land, and that such is sometimes the case even with churches. Furthermore, many other types of property, such as banks and business houses, have a buoyant influence upon neighboring land values. Such an influence is certainly not a valid reason for exempting properties from taxation.

In the case of publicly owned property, justice demands that such property be taxed by each taxing district within which it is situated, with the exception of the owning district itself. This treatment is essential to an equitable distribution of the tax burden. Publicly owned industries should be taxed in most cases, even by the government owning them. This treatment is essential to an equitable and economical apportionment of the costs of these industries among the users of the service produced. Thus the only justifiable case of exemption of publicly owned property is where the property is within the boundaries of the owning government, and then the exemption should be from the taxes levied by that government only, and should in most cases apply only to strictly governmental property.

The same principle—that a direct subsidy is preferable to tax exemption—applies in most of the other cases where immunity from taxation is now granted. War veterans, for instance, can be rewarded—if such be the wish of the voters—much more effectively by means of a direct subsidy than through a grant of tax exemption. Many veterans own no property, and they may be fully as deserving of a reward as are those who happen to be property owners. Furthermore, large property owners may not need any assistance, even though they have served their country to the same extent as have the less fortunate veterans. It should be remembered that whenever a parcel of property is re-
moved from the tax base the burden resting upon property owners who pay taxes is increased.

A consideration of intangible property leads to the conclusion that there are cases where exemption is justified. When intangibles are representative of property that is already adequately taxed, taxation of the intangibles constitutes an unjustifiable duplication. Mortgages and the shares of stock of corporations usually fall in this category. Not all intangibles are representative of tangible property, however. Some of them cover good-will, patent rights and the like; and in such cases the intangibles should be taxed, unless such considerations as that of expediency require their exemption.

The final judgment, therefore, is against all forms of exemption from property taxes, except in the case of certain intangibles and in the case of publicly-owned property situated within the owning district. Even in the latter case, exemption is not always justified. It is custom and tradition together with political expediency, that postpone the realization of the ideal system where tax exemption no longer exists.

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