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THE FUNCTION OF CONSTITUTIONAL PROVISIONS REQUIRING UNIFORMITY IN TAXATION*

By WILLIAM L. MATTHEWS, JR.**

PART I
INTRODUCTION AND HISTORICAL ORIGINS

CHAPTER I. INTRODUCTION

For many years the state governments in this country were financed in the most part by a general property tax. During the first century of their history when real estate and personal property were appreciating in value as a result of the nation's rapid expansion, the free development of its natural resources and a parallel rise of industrialism, a fiscal system so based worked reasonably well. But in the last fifty years there has been constant agitation for tax reform which would enable the states to reach the more productive sources of revenue that exist in the complex and highly developed industrial economy of modern times. The need for money in ever increasing amount to meet the demands of modern government has caused every state to attempt improvement in its system of taxation. Considerable progress has been made, but the principal difficulty has been how to cut and alter a fiscal fabric originally woven around the general property tax to fit a new pattern of wealth measured in terms of intangible property, income, inheritance, business privilege and sales. The legislator, who is usually expected to initiate the change, has recognized the greatest obstruction to the new designs periodically devised by the economist to be constitutional limitations on the power of the legislature in matters of taxation. The citizen in his role as a recipient of governmental benefits has wanted these tailors of his to become crusaders, but as a taxpayer he has been content with their ability as craftsmen for he is slow to adopt new fashions.

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Of the constitutional limitations involved, the nearly universal provision that taxes must be "uniform" is the most conspicuous. In recent years amendments allowing classification of property and uniformity within the class have relieved some of the pressure, but in many states the power to tax still is restricted by constitutional standards of uniformity. This requirement in all its variations is the one under which the constitutionality of tax legislation has been attacked so often, it is the one which plagues the legislatures when they are confronted with drafting new tax laws to tap new sources of revenue, and it is the one which has led the courts into a maze of confusing and conflicting interpretations resulting in many kinds of uniformity andenumerable artificial categories for taxes. The problem is similar to the direct tax apportionment controversy which raged for so long under the Federal Constitution for in both situations the central question has been how to permit increasing freedom in the exercise of the essential power to tax, subject to express constitutional provisions, and still maintain the integrity of the constitution, the legislature, and the courts.

In a general way much of the confusion stems from three factors. First, since the uniformity requirement is imbedded in the constitutions rather than the statutes, its construction involves the fundamental law of the state. In various stages of our judicial history this law has been interpreted differently according to the time and place as well as the political exigencies surrounding the case. Secondly, our federal system of independent taxing sovereigns, each with its own court of last resort,
lends itself to a variety of explanations for the same concepts or at least similar language. While this quantitative feature is not peculiar to the particular problem, it has contributed materially to the host of meanings given the words used and the ideas they symbolize. Thirdly, while the economic and business life of the country has developed rapidly together with new methods of reaching new sources of revenue through taxation, the constitutional language and techniques for interpretation have remained comparatively constant. When many of the states' constitutions were written, or last amended, some of the modern notions of taxation were unknown, and the very theory on which they are based was foreign to the economic and business philosophy of that day. This lag between economic realities and judicial interpretation of long-existing constitutional provisions is harder to isolate as a true source of the confusion that exists than the other two, but it is no less important.

The traditional approach to a solution of the problem of when to invoke the limitation, where the wording in the constitution allows for exclusion of certain types of taxes, has been to look at the inherent nature of the tax in question to see if it is a property tax, or a tax on a privilege, or whether its incidence can be shifted, or if it has some other salient feature such as a reasonable basis for exemption and classification. This has been the characteristic manner of the economist, the legislator, the jurist, and the legal writer. The method has been analytical and deductive resulting in the categorization of taxes. The boundaries of the categories have been established by making traits consistently present in the nature of the tax determinative, and from the category into which the tax is fitted the legal result has been deduced. Without intending at this point to become involved in a controversy of dialectics, it is thought that the confusion has been increased by this limited approach. It has led to kinds of uniformity as well as to extremely nice distinctions concerning the nature of a tax, and has brought about a ramification of categories and near-categories. A more serious objection is its failure to account for all the factors conceded to be present by passing over lightly the function and use which the provisions

As shown in subsequent discussion, the uniformity provision of a particular state constitution may not apply to all taxes. In such cases the problem of interpretation is primarily one of determining what kind of tax has been levied.
have had as restrictions on the taxing power. Charles L. B. Lowndes in discussing rigid conceptualism in the constitutional law of taxation has stated the point in unusual words.3

“As long as the tradition persists that conclusions in constitutional cases are deduced from definitely foreordained constitutional premises rather than the exigencies of clashing individual and public interests, the active factors in a tax decision must remain more or less veiled behind a sacerdotal conceptualism. It is tremendously important, however, for the lawyer to pierce this barrier; to lift the veil of premeditated hypocrisy and come to grips with the active determinants behind the course of decision.”

In the present study an attempt will be made to understand from this additional viewpoint of function and use the limitation found in the state constitutions requiring taxes to be uniform. No purely analytical definition of the limitation or the categories into which taxes have been forced by its use is contemplated, but rather, both will be examined functionally (a) as to their historical origins, (b) as they have been defined and applied by the courts to certain basic taxes, and (c) as to their present utility

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3 Lowndes, Spurious Conceptions in the Constitutional Law of Taxation, 47 Harv. L. Rev. 628, 659 (1934).
CHAPTER II.
THE ORIGINS OF UNIFORMITY

SECTION 1.

UNIFORMITY PRIOR TO CONSTITUTIONS

It is difficult to find in the history of taxation either in this country or abroad the real beginnings of the idea that taxes must be uniform. As was the case with many of our present standards of governmental conduct, this criterion for taxation seems to have grown out of a mixture of custom and historical accident. There is a certain practical relation between its development and the emergence of a property tax based on land assessment and valuation, and yet, the idea is by no means limited in scope or theory to that type of tax alone. Its rank as a well-established constitutional provision came at a relatively late date, and still, the feeling that people should bear the expense of government in some equal and predictable fashion is one of long standing.

There is no particular precedent for the idea in our preconstitutional notions of taxation or in the systems which developed in England and the European countries during a comparable time. It seems certain that an obligation to pay taxes, or their equivalent, in return for the protection of the lord or

4 In discussing the historical development of taxation, Seligman offers one of the most plausible explanations of how uniformity originated: "It takes a far greater sense of civic obligation to submit cheerfully to direct property taxation than was necessary in primitive times. Until within a few years ago it was deemed necessary to base the theoretical justification of taxation on fanciful doctrines of contract, or protection and the like. The method of taxing everyone according to his property is the first rough attempt of a property owning community to assess each according to his relative ability." And in tracing the growth of the general property tax the idea is developed further: "The monarch, or public opinion as reflected in the government, seeks to conform the practice of taxation to this change in economic facts. The property tax continues but the assessor tries to make the tax equitable by including not only the realty, but also the new forms of personality, whether corporeal or incorporeal. The original land tax is supplemented by other taxes, or expanded into a general property tax. The attempt is intelligible and even laudable; for it is simply the manifestations of the ideas of universality and equality of taxation." SELIGMAN, ESSAYS IN TAXATION 4, 32 (10th ed. 1931).
King was well established in the feudal origins of our law, and even in the fourteenth and fifteenth centuries there was the view that each inhabitant should pay according to his ability or substance.\(^5\) There evolved in England the practice of measuring this ability by listing the value of a man's possessions, especially land, and in time the possessions and land themselves came to be taxed, but not necessarily uniformly or equally.\(^6\) The revolutionary political and economic theories which erupted in the seventeenth and eighteenth centuries contributed the belief that taxes should be levied for public purposes and according to law, and the colonial struggle in this country added the thought that taxation and representation of the governed were dependent on each other, but none of these historical tendencies was colored by the refinement that taxes so imposed should be uniform. Equality was only a general objective of government.

As a matter of fact, there is little evidence that the concept had a definite meaning or existence before it appeared in our state constitutions in the early part of the nineteenth century. Justice Kent mentions uniformity as an inseparable part of equality but does not relate either idea too directly to taxation.\(^7\) Gray, considerably later, is careful to assert that equality is the fundamental thought of government and that it is most highly developed in the law of taxation, but in support he cites only the numerous state constitutional provisions.\(^8\) Some of the statutory provisions prior to that time reflected a uniform method of assessing taxes, but this appears to have been more the result of practical necessity in administration than in recognition of any fundamental right in government or law. Any concern for uniformity in the early legal history of this country went more to the need for geographical equality between the various communities of the particular colony or state, which were expected to bear their proportion of the governmental expense. For instance, the Fundamental Orders of Connecticut in 1638, which contained the first mention of taxation, authorized the general court to agree on any sum of money to be levied on the several

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\(^5\) For a brief explanation of these feudal exactions see 3 Dowell, History of Taxation and Taxes in England 67 (2d ed. 1888)

\(^6\) Cannan, History of Local Rates in England 22, 23 (2d ed. 1912)

\(^7\) 2 Kent, Commentaries 332 (14th ed. 1896)

\(^8\) Gray, Limitations on Taxing Power and Public Indebtedness 5 (1906).
towns in the colony and further provided that a committee composed of an equal number of men from each such local unit should be chosen to determine what proportion each town should pay of the levy. The Frame of Government of Pennsylvania, drawn in 1682 and 1683, first made use of the new political doctrine previously mentioned that "taxes are to be levied and collected by general laws for public purposes only." Except for these, the colonial charters and other documents of organic law were brief and remarkably little space was given over to the subject of taxation at all. The only uniform tax levied in the early colonial period was a poll tax which soon became so oppressive and obnoxious that it fell into disuse.

The story of early colonial financial history, systems of taxation used, and the evolution of the property tax toward the end of the period has been adequately treated elsewhere, but for our purpose it seems safe to conclude that uniformity, as it was later to be required in the constitutions, was not a part of the picture. The idea of uniformity, insofar as it was inchoately expressed in some of the earliest constitutional documents such as Maryland's provisions of 1777, that "every person in the State ought to contribute his proportion of public taxes according to his actual worth in real property or personal property within the State," will be dealt with in discussing the constitutional provisions themselves. Very little basis can be found for the position often taken that uniformity is an inherent and unchangeable feature of taxation supported by centuries of use and practice as well as legal protection. Similarly, few definite origins for the concept can be found in the historical literature of political economy.

The Greeks and Romans made no attempt to tax uniformly in their systems of taxation although there is evidence of geographical uniformity in modes of taxation during the Empire, and Justinian's Code contains language suggesting certain taxes were levied in proportion to the acres of land or head of cattle.

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2 THORPE, FEDERAL AND STATE CONSTITUTIONS, CHARTERS AND OTHER ORGANIC LAWS 3060 (1909).
3 For a good condensed account of taxation in this period see JENSEN, PROPERTY TAXATION IN THE UNITED STATES 21 et seq. (1931).
4 3 THORPE, op. cit. supra note 10, at 1687.
5 SCOTT, THE CIVIL LAW 110 (1910).
The literature of the Middle Ages is noted for its dearth of material pertaining to financial matters, but by the fifteenth and sixteenth centuries problems in economics were being thoroughly treated by Italian scholars without any indication that any of the burdens of government, much less taxation, were being borne equally, or that such an idea should prevail. Early economic doctrines of taxation were largely a development of French writers, and while Bodin made a comprehensive classification of taxes as early as 1579, no idea of uniformity was included. The Physiocrats formulated the first scientific theories of taxation, as well as classifications for taxes, based on the belief that all taxes, including imposts, eventually fell on land and could be most cheaply and easily collected directly from the land. None of the Physiocrats, however, not even Turgot, said that land should be taxed uniformly or equally.

In the writings of political economists with whom colonial students were most familiar, such as Adam Smith and his immediate English predecessors as well as John Stuart Mill, who followed, there is no demand for uniformity equivalent to the brand called for in the constitutions of this country. The idea never seems to have emerged at all in the English theory, although Smith refers indirectly to the unequal valuations of the land tax which he condemns as violative of his first maxim of taxation to the effect "that the subjects of every state ought to contribute to the support of the government as nearly as possible in proportion to the revenue which they respectively enjoy under its protection." That this maxim in its most strict application does not demand uniformity or equality is obvious.

In its truest sense the American doctrine of uniformity is indigenous. If we are to find any concrete historical reasons for it, we must look to the immediate background of the constitutional provisions themselves for there were no outstanding legal or economic explanations before that time. A brief survey of how these provisions came into existence with mention of some of the economic and financial conditions as well as political and governmental pressures obtaining at the time may help to explain why they were written.

\[14\] Poste, Institutes of Roman Law by Gaius 140 (4th ed. 1904).
\[15\] Bullock, Direct and Indirect Taxes in Economic Literature, 13 Pol. Sci. Q. 442, 444 (1896).
\[16\] Id. at 455 et seq.
\[17\] 3 Adam Smith, The Wealth of Nations 261 (1796).
SECTION 2.
EARLY UNIFORMITY PROVISIONS

As has been previously stated, the early colonial period was marked by surprisingly few provisions regarding taxation in the fundamental law. The main problem of taxation had centered for a long time in the struggle between the governments and the popular assemblies, during which the representatives of the people gained certain rights as to when and by whom they would be taxed, but not too often as to how. The system of taxation in vogue was a composite of the poll tax, the property tax, and an ill-defined "faculty" tax based on the income earning capacity of certain persons. The property tax frequently was imposed only upon selected types of property, and the entire system of raising money reflected the divergent business interests and economic conditions prevailing throughout the colonies. No consistent method had evolved of reaching wealth derived from commerce in New England, from agriculture in the South and from both in the Middle Colonies.

Some twenty-two constitutions were adopted between 1776 and 1796, and less than half of them contained any important provisions relating to taxation. Those included were confined almost entirely to the requirement that taxes should not be laid or levied without the consent of the people or their representatives in the legislature. It was a time when dependency on the legislature, rather than a fear of it, was a prime attitude toward government, and, as we shall see, when this feeling deteriorated, lengthy and extensive restrictions on the power to tax began to appear in the fundamental law. Vermont was the only state besides Maryland, mentioned before, to express thoughts on how the taxpayer should contribute during this period, and the provision in her constitution to the effect that "every member of society was bound to contribute his proportion toward the expense of protection" was the exception rather than the rule.

As the colonies passed into statehood during the last decade of the eighteenth century, two things happened. First, land be-

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17 JENSEN, op. cit. supra note 11 at 26. For a definition of the faculty tax as well as a discussion of its historical development in the colonies see SELIGMAN, THE INCOME TAX 368 (1911)

18 Campbell, op. cit. supra note 9 at 545.

19 See note 12 supra.

20 6 THORPE, op. cit. supra note 10, at 3470.
came increasingly important as a method of measuring wealth and as the productive foundation for the overall economy. While the economy was by no means exclusively agricultural, the ownership of realty as well as all kinds of personalty emerged as the best and most readily available means of determining how much money could be raised by taxation. This trend toward making a general tax on property the primary method for obtaining revenue was aided and abetted by the additional fact that the Federal Constitution, just adopted, limited the national government's effective taxing power to duties, imposts and excises, and denied the states the power to levy customs. It is well understood now that the so-called apportionment provision requiring direct taxes to be levied according to population was not written intentionally to create different systems of taxation as between the states and the federal government. It resulted from a compromise on the slavery question plus an unfortunate accident in choice of words, but its practical effect was to leave the states the general tax on property as their most fertile financial source. The second event was the great increase in public expenditure which followed the Revolution and coincided with the acquiring of statehood. The opening days of the nineteenth century in this country saw a rapid expansion of business.

23 Morrow, History of the Apportionment and Direct Tax Clause of the Constitution, 10 Col. L. Rev. 379 (1910)  
24 "It is doubtful if this division of sources of revenue was as premeditated as some writers would lead one to believe. See Spahr, The Supreme Court on the Incidence and Effects of Taxation 3 (1925) "Direct taxes were peculiarly appropriate for the use of the states, (and) by requiring that direct taxes be apportioned according to the same census that determined representation, the framers of the Constitution provided more effectively than they realized against the danger that the nation might tyrannically appropriate property in the wealthy states." See also: Seligman, Essays in Taxation 671 (1931) for an even more accurate statement of historical fact: "Under the new constitution the states abandoned to the federal government the power to levy import duties, and by implication, to levy taxes of any kind on interstate commerce as well. Both state and federal government were also prohibited from laying export duties. The whole remaining field of taxation was open to the states and the nation. When the new government went into effect the states concentrated on direct taxes on wealth in the form of either the general property tax or special classes of property as well as from certain taxes on business and polls. Under the statesman like guidance of Alexander Hamilton, the federal government decided to derive its revenue not only from imports and duties, which were designed to constitute the leading source of income, but also from a combination of direct and indirect taxes lumped together under the heading of internal revenue." Cf. Jensen, op. cit. supra note 11, at 35.
land settlement, trade, and many other enterprises which created a need for more spending. The most obvious way to meet this need in light of the newly assumed position as states in a federal government which could not effectively levy a direct tax was to expand the tax base so it would include practically all property.

The inequities which naturally resulted from these two events seem to have led to the first expressions in the constitutions that taxes should be uniform. Tennessee’s constitution of 1796, contained the first real uniformity provision, and it related explicitly to the question of how different land was to be taxed equally. The provision read “All lands liable to taxation shall be taxed equal and uniform in such manner that no one hundred acres shall be taxed higher than another except town lots which shall not be taxed higher than 200 acres of land each.”

While the wording may indicate a primary concern for a type of geographical uniformity, it does show an additional interest in achieving some kind of balance under a system of taxation broad enough to include various kinds of land. In other words, as the tax base of the states was expanded, inequality inherent in the levying of the tax gave rise to the desire to achieve a semblance of uniformity. This tendency alone cannot account for the great development in uniformity provisions in the forty years following 1800, but it is a reasonable explanation of why the first ones germinated.

SECTION 3.

DEVELOPMENT OF THE UNIFORMITY PROVISIONS

The trend initiated by the Tennessee provision continued in the first twenty years after 1800, but its development was sporadic, and it did not always result in uniformity provisions in the strict sense. Of nine constitutions adopted during this period, five made no mention of a uniformity provision and the other four showed no agreement on language or purpose. Illinois used some ingenuity in 1818 by providing that “the mode of levying a tax shall be by valuation so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession.” Alabama and Maine showed some

\[5\] THORPE, op. cit. supra note 10, at 3417.

\[26\] JENSON, op. cit. supra note 11, at 37.

\[27\] THORPE, op. cit. supra note 10, at 983.
influence of the Tennessee idea a year later with provisions requiring that “all land liable to taxation in this state shall be taxed in proportion to their value”, a provision which Maine revised later to include personality. In Missouri in 1820, the simple yet comprehensive requirement was established that “all property subject to taxation be taxed in proportion to its value.” It is not unusual that as the tax base was expanded value of property should become the method for measuring contribution, but why such a standard should be put in the constitution is not so clear. The general wording and brevity of the provisions indicates there was no desire to set up a complete and detailed prerequisite for taxes, but a feeling that the legislature should conform to some pattern of equality in levying taxes was beginning to assert itself. The old fear that taxes might be levied without the consent of the people was being supplanted gradually by a desire for equal valuation. The power to tax was in the hands of the legislature, and the surest way of restricting or controlling that power was by writing standards into the constitution.

The next twenty years, from 1820 to 1840, saw no marked change in the trend, although there was less constitutional modification with respect to taxation than in the following twenty years. The constitutions of Virginia in 1830, Delaware in 1831, Mississippi in 1832, Michigan in 1835, and Pennsylvania in 1838, included no limitations on taxation. In the last named year Florida accepted a broad provision to the effect that “the general assembly shall devise and adopt a system of revenue having regard to an equal and uniform mode of taxation, to be general throughout the state”, and Tennessee in her third constitution made her position even more complicated by saying, “All lands liable to taxation town lots, bank stock, slaves and such other property as the legislature may deem expedient, shall be taxable. All property shall be taxed according to its value and no one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value.”

29 1 Thorpe, Federal and State Constitutions, Charters and Other Organic Laws 109 (1909), 3 Id. at 1162.
24 4 Id. at 2164.
30 7 Id. at 3819; 4 Id. at 1930; 1 Id. at 832; 5 Id. at 3104.
51 2 Id. at 675; 6 Id. at 3432.
Although this period did not see too many changes in the constitutions it was a time of great expansion into the Mississippi Valley and beyond. A new-found democracy in this territory was felt in succeeding years in all activities of government, particular in constitutional conventions. Land speculation, the beginnings of industrial development in the East, the panic and bank crisis of Jackson's administration, the rumblings of the slavery problem in the territories all bear witness that this was a period of intense growing pains for the country and its economic system. The clashing of interests in taxation, as in many other fields, which took place in these two decades brought forth a rash of constitutional revision in the following years, and it was from 1840 on that uniformity as a constitutional limitation really developed.

Between 1840 and 1860 twenty constitutional conventions met in eighteen states, and the tendency to require uniformity was stronger than ever. Eight states previously without the uniformity rule adopted it, and five others wrote provisions with certain elements of the rule present. In 1845, Louisiana provided that "taxation shall be equal and uniform throughout this state", and that "all property on which taxes may be levied in this state shall be taxed in proportion to its value." Later in the year Texas included these provisions in her first constitution. California in 1849, Virginia in 1850, Oregon in 1851, and Kansas in 1859, all adopted a uniformity rule. In 1851, Ohio wrote her now famous provision requiring the passage of laws taxing by a uniform rule "all real and personal property according to its true value in money", and in 1857, the first constitution of Minnesota required that "all taxes to be raised in this state shall be as nearly equal as may be and all property on which taxes are to be levied shall have a cash valuation and be equalized and uniform throughout the state." Rhode Island's constitution in 1842, provided that "the general assembly shall from time to time provide for making new valua-

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2 Jensen, op. cit. supra note 11 at 38.
3 See Thorpe, Federal and State Constitutions, Charters and Other Organic Laws, at 1406 (1909)
4 Id. at 3562.
5 1 Id. at 404; 7 Id. at 3840; 5 Id. at 3000.
6 Id. at 2830.
7 Id. at 2011.
tions of property for the assessment of taxes in such manner as they may deem best', and Wisconsin in 1848, provided that "the rule of taxation shall be uniform and taxes shall be levied upon such property as the legislature shall prescribe.' Michigan adopted her second constitution in 1850, and required the legislature to provide "a uniform rule of taxation, except on property paying specific taxes and taxes shall be levied on such property as shall be prescribed by law.'

Part of this marked increase in uniformity provisions can be attributed to the fact that some states followed the older states in adopting constitutional provisions without any particular regard for their own needs and problems. For instance, the Ohio provision was taken over by a number of states in spite of its obvious weaknesses. The real source of the development, however, seems to have been the increased fear of the power of the legislatures. Railroads, land development organizations, corporations, and many other newly organized institutions produced by an economy no longer based exclusively on agriculture had received preferential treatment at the hands of the legislatures to aid them in the tasks of building the country required by the times. Too, more and more of the wealth of the country consisted of intangibles, and the first classified property taxes were being attempted in the quest to reach this new wealth. All of these conflicting pressures led to a distrust of the people's representatives, both by the people and by special interests. A basic tendency to be distrustful of government conditioned by a long struggle for political and economic freedom was now turned against the legislatures. One of the principal techniques used was to fetter the taxing power with these limitations written into the constitutions.

After the Civil War the continuing development of an industrial economy and settlement of the West were matched by further development in uniformity. Between 1860 and 1880 activity in changing the fundamental law of the state governments was more vigorous than ever. While the specific changes occurring in these years may be less significant than during the preceding periods, they were no less pronounced and the causes seemed to be the same. There was the additional factor in this period that the Southern States were attempting to bring order

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36 Id. at 3228.
3 Id. at 1963.
out of the upheavals caused by the war. In these twenty years at least twenty-one states changed their constitutions, some as many as three times. Those states which had the uniformity rule continued to readopt it and the newer states followed suit as they were admitted to the Union. West Virginia, in 1864, included in her first constitution two familiar provisions. One was positive to the effect that "taxation shall be equal and uniform," and the other was negative in forbidding "taxation of one species of property at a higher rate than that on another species of equal value." The new state of Nevada fell in line in 1864, and the second constitution of Nebraska in 1875, adopted the Illinois rule verbatim. Illinois extended her provision to cover corporations in 1870. South Carolina in 1868, Mississippi in 1868, New Jersey in 1875, North Carolina in 1876, and Georgia in 1877, all adopted uniformity.

What had begun as a trend was now the well-established rule, and by the end of the period a reaction had set in. The same problems of inequality inherent in applying a property tax to all kinds of land, which had given rise to the early provisions, now assumed further significance as the basis of wealth changed and the property tax no longer produced the revenue necessary to meet the expense of government. Some method was needed which would permit reasonable uniformity and still allow the states to reach effectively different kinds of property as well as to enact new types of taxes. In 1873, Pennsylvania came up with the first constitutional solution by adopting a provision which read "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." Uniformity was not abolished, but economic necessity was strong enough to bring about a modification which limited the rule to uniformity within a class.

The last twenty years of the century saw only slight changes in the constitutions on the point in question. Of seven new states adopting constitutions, six included uniformity provisions and only one provided for classification. Since 1900 the trend

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4 Id. at 1963; JENSEN, op. cit. supra note 11 at 40.
7 THORPE, FEDERAL AND STATE CONSTITUTIONS, CHARTERS AND OTHER ORGANIC LAWS, at 4028.
4 4 Id. at 2418; 4 Id. at 2379; 2 Id. at 1035; 6 Id. at 3298; 4 Id. at 2086; 5 Id. at 2834; 2 Id. at 854.
5 5 Id. at 3141.
JENSEN, op. cit. supra note 11 at 41.
has been toward classification with considerable reliance on such a method as one solution to the difficulties of the classical rule. Progress has been made in this respect, but its development is beyond the scope of our discussion here except as it indicates the way uniformity, in spite of its obscure origins, finally emerged as a well-established constitutional rule from which newer trends could stem.

That a doctrine founded partially on a desire to remedy inequalities in an expanding tax base, partially on a desire to limit the power of recalcitrant legislatures, and partially on a rather blind adoption by one state of another’s constitutional provisions, should emerge as one of the leading rules of taxation is a strange commentary on the fiscal history of the states. Even more unusual is how taxes have been labeled in order that the courts might apply or not apply the uniformity limitation to the taxing power. A brief recounting of the economic history of tax classification is appropriate here with a fuller description of how courts use the classification process reserved for later discussion.

SECTION 4.

HISTORICAL CLASSIFICATION OF TAXES

The habit of labeling a tax and placing it in a category along side other taxes of the same nature dates from about the time of the Physiocrats. Most of the well-known writers in political economy since then have followed such a method in solving the problem of direct and indirect taxation which is itself the classic terminology of classification. The legal aspect of the proposition arose in this country soon after the adoption of the Federal Constitution due to the particular wording of the limitations on the taxing power established therein, and the courts of the various states have been faced with variations of a similar problem in the sense that often they must decide if a tax is on property, or is an excise, in order to determine the legal consequences flowing from its enactment. In spite of the fact that such a practice has existed for a relatively long time, no great amount of success has been achieved in finding a permanent foundation for the classifications advanced.


See notes 23 and 24 supra."
The Physiocrats, as mentioned before, developed the first scientific basis for classifying taxes and borrowed the terminology of direct and indirect from others before them who had used the expression haphazardly. True to their theory that all taxes were paid ultimately out of the revenue of land, they held that a tax on land was the only direct tax and that all other taxes of necessity fell into the category of indirect. This idea was replaced gradually with a realization that the incidence of taxation was a more appropriate basis for categorizing. Locke referred to "laying a tax directly where it will at last settle," and other English writers used the terms direct and indirect, but it was James Mill who eventually explained this theory of distinction as resting on whether the taxpayer was the taxbearer or whether the payment of the tax was shifted to another. Adam Smith, meanwhile, advanced his own basis of classification, grouping taxes as those levied on rents, profits, and wages. He added materially to the direct and indirect controversy by saying, "The state, not knowing how to tax directly and proportionately the revenue of its subjects endeavors to tax it indirectly by taxing their expense." This expense or expenditure criterion eventually developed into the British notion of indirect taxes, i.e., that they were primarily customs and excise duties. The theory of classifying on the basis of shifting incidence led to including taxes on rents, profits, and wages in one group, and putting commodities in the other, although the former could often be shifted in much the same manner as the latter. John Stuart Mill recognized this when he made his basis for classification turn on the mind of the legislator. He said one group should be composed of those taxes which the legislature intended should be borne by the taxpayer and another group formed by those borne by someone other than the taxpayer. The intention of the legislature was no easier to determine on this question than on any other so this distinction was short-lived.

The French at one time attempted to make a distinction on the basis of whether a tax involved the preparation of a tax roll or list, but this theory went only to the administrative end of

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47 Bullock, op. cit. supra note 24 at 444.
48 SELIGMAN, THE INCOME TAX 537 (1911).
49 Id. at 538.
50 Bullock, op. cit. supra note 15 at 457.
51 SELIGMAN, op. cit. supra note 48 at 539.
the problem. Other classifications have been used at one time or the other, for instance, categories resting on possession as against consumption, income as against expenditure, compulsory payment as against voluntary, and so on. Professor Bullock has pointed out in a thorough treatment of the problem that at least ten distinct theories for classifying taxes as direct or indirect have existed in economic literature alone, and these do not include all the economists who have attempted to classify.52

If the constitutional provisions requiring uniformity had contained words clearly defining the type of taxes to which they were to be applied, this question of labeling taxes would have remained a problem of the science of economics more appropriately solved in the academic classroom than the courts. Unfortunately, this was not the case. The provisions not only were written loosely as to the meaning of uniformity, but they included various expressions to identify the type of taxes that must be levied under a uniform rule. For instance, some say all taxes, some say property taxes, one says specific taxes, and others are silent to the extent that only the word "taxes" itself is used.53 This has left the courts faced with determining in many instances the actual nature of the tax, which has led inevitably to the problem of classifying taxes. It may be said without too much fear of contradiction that the courts have had no more success in labeling particular taxes than the economists have had, historically or otherwise.

During our early legal history there was no real basis for identifying taxes on property, or taxes on the products of land, or taxes on a privilege, to name a few of the possibilities, in the purely legal sense. About all the courts had to rely upon was the doctrine which had grown up around the Supreme Court's explanation of a direct tax. While this problem is more general than the one faced by the state courts, its solution in the Hylton Case afforded some guidance for labeling taxes.54 A wealth of historical material has been unearthed on this phase of our constitutional history since the Pollock Cases of 1895, and it shows that hardly any scientific legal classification of taxes existed at

52 Bullock, op. cit. supra note 15 at 459.
53 For a listing of uniformity provisions by states see Table I, which appears as an appendix to this article.
54 Hylton v United States, 3 Dall. 171 (U. S. 1796). This case is the first in the group on which the Supreme Court based its theory of a direct tax prior to the Pollock Cases. Actually, there is little in
all in the colonial period.\textsuperscript{55} Alexander Hamilton, in arguing the \textit{Hylton Case}, admitted that he thought direct taxation meant property and poll taxation exclusively, but he was far from convinced as to the nature of a tax on carriages.\textsuperscript{56} It was possible as late as 1895 to convince the Supreme Court that a tax on income from property was a tax on the property and therefore direct.\textsuperscript{57} It is little wonder that the state courts have found themselves in just as difficult a position both historically and at the present time when attempting to classify taxes. The important point in our understanding of historical origins at this point is to realize that the labeling technique was used in interpreting the uniformity provisions. How it worked out and how the classifications made compare with those advanced historically by economists will be enlarged on later.

\textbf{SECTION 5}

\textbf{Summary}

It has been shown that historically the origins of the idea of uniformity in taxation are obscure. At least there was no early express requirement for it either in economic literature or legal practice, although the related concept of equality in burden undoubtedly preceded by some length of time the constitutional limitations written in this country during the first half of the nineteenth century. These uniformity provisions in the state constitutions had their immediate origins in an attempt to remove inequalities resulting from adoption by the states of the general property tax with its ever-expanding tax base and, in some instances, in the mere acceptance of such provisions from other states. They emerged by way of constitutional limitations rather than by statute because their origin coincided with a general movement to restrict the power of the legislatures at a time when the country was undergoing great growth in land settlement and it to suggest an elaborate system for classifying taxes, but since the cases between the \textit{Hylton} decision and the \textit{Pollock} opinions coincided in point of time with the interpretation of the uniformity provisions by the state courts, they may have been influential on them. At least the problem in both instances is one of restricting the taxing power by invoking a constitutional limitation.

\textsuperscript{55} For a thorough historical analysis on the point see Morrow, \textit{History of the Apportionment and Direct Tax Clause of the Constitution}, 10 Col. L. Rev. 379 (1910).

\textsuperscript{56} \textit{Ibid.}

\textsuperscript{57} The \textit{Pollock} Cases, 157 U. S. 429 (1894), 158 U. S. 601 (1895)
in the initial change from an agricultural to a commercial and industrial economy. Finally, the technique of labeling and categorizing taxes on the basis of their nature, long practiced with questionable success by economists, was used by the courts as one means of construing the provisions where the language contained in them was not clear as to the type of taxes to which they applied.
PART II
UNIFORMITY AS DEFINED AND APPLIED BY COURTS

CHAPTER III
KINDS OF UNIFORMITY

SECTION I.
In General

A Wisconsin court in analyzing a tax statute once said, "whether the legislative rule operates uniformly is not to be determined by hypothetical mathematical results from the application of the rule to various situations which human genius may devise." The same general comment is appropriate to the task of determining what uniformity means when the constitutional provisions are applied by the courts, for human genius is seldom more inventive than in devising tax legislation, and the results reached by the courts are far from mathematical. Nevertheless, unless an understanding of the concept is to be purely hypothetical, a consideration of its legal meaning is necessary.

However uncertain and haphazard may have been the historical origins of these constitutional limitations, they circumscribe the state's taxing power at its very foundation, and their underlying purpose or objective, as most often described, is to bring about an equality of burden in taxation. The thought

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\(^{91}\) In re West, 207 Wis. 557, 242 N.W. 165, 168 (1938).
\(^{92}\) People ex rel McDonough v. Illinois Central Railroad Company, 355 Ill. 605, 190 N.E. 82 (1934).
may find expression in such brief statements as "public burdens of taxation must be equally imposed upon every citizen," or it may be more comprehensively put as in Michigan where the court said, "The phrase 'taxing by a uniform rule' means taxing by an unvarying standard and requires uniformity in rate of taxation, and in mode of assessment upon taxable valuation, and implies equality in burden of taxation, and that such uniformity must be co-extensive with the territory to which the tax applies." It is not always clear whether the equality of burden sought is an equality between individuals, or between property, or between both; and even equality of taxation is not always the term used, for a court in Virginia has said, "the burdens of government, as near as may be, must be ratably apportioned." The demand for such an idea may be strong enough to lead the courts to hold that "the constitutional provisions impose upon the legislature the duty of passing laws which will secure equality in burden of taxation", but normally the provisions are conceived to be the basis for a constitutional standard or limitation only. Too, the need for equality is not always based exclusively on a specific constitutional mandate. Sometimes it is considered an inherent feature of the power to tax. The court in an Illinois case takes such a position when it says, "in the exercise of the power to tax, the purpose always is that a common burden shall be sustained by common contribution, regulated by some fixed general rule, and apportioned by law according to some uniform ratio of equality", and Iowa, in the absence of an explicit provision relating to taxation, has reached

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6 Walker v City of Richmond, 173 Ky 26, 189 S.W 1122 (1916).
6 Huron-Clinton Metropolitan Authority v. Board of Supervisors, 304 Mich. 328, 8 N.W 2d 84 (1943)
6 Jersey City v. Martin, 126 N.J.L. 353, 19 A. 2d 354 (1941).
6 Washington County National Bank v. Washington County, 176 Va. 216, 10 S.E. 2d 515, 518 (1941)
a comparable conclusion under a provision that all laws of a
general nature shall have a uniform operation. Emphatic as
the courts are in their recognition of equality of burden as a
paramount objective, they realize certain impossibilities are
bound to exist in achieving this end. One of the often cited uni-
formity cases, Wheeler v Whiteman, clearly states that "the
rule of uniformity has reference to uniformity of burden, not
necessarily uniformity of methods of imposing burdens and
realizing thereon", and it is frequently found that absolute
equality is impossible to attain.

Although the courts are surprisingly consistent in holding
the broad purposes of constitutional uniformity to be the estab-
lishment of equality in burden, they make little or no mention of
the theory of burden. That is, whether there shall be an equality
of sacrifice or an equality of contribution in determining the
ability to pay. Adam Smith's proposition that "the subjects of
every state ought to contribute towards the support of govern-
ment, as nearly as possible, in proportion to their respective
abilities, that is, in proportion to the revenue which they re-
spectively enjoy under the protection of the state" presupposes
possession of property as the primary source of revenue. This
doctrine is more or less reflected in the uniformity provisions be-
cause possession of property was the best criterion of wealth at
the time they were written. In more recent times attention has
shifted to other means of measuring wealth, and with the change
equality of burden may mean something entirely new. The point
is not raised here for final solution, but to indicate that the con-
sistent language of the courts is more deceptive than would ap-
pear on the surface.

Since some of the more recent cases clearly reiterate the
burden idea, it may be well to examine uniformity in some detail
before arriving at a final conclusion as to the purpose and ob-
jectives of the constitutional provisions. At least a functional
analysis of how these provisions have been construed, the taxes

Pierce v. Green, 229 Iowa 170, 294 N.W 235 (1941).
96 Kan. 50, 149 Pac. 977; see also Texas Pipe Line Company v.
Anderson, 100 S.W 2d 754 (Tex. App. 1939)
City and County of Denver v Lewin, 106 Colo. 376, 105 P 2d
2d 249 (1939), Washington County National Bank v Washington
County, 176 Va. 216, 10 S.E. 2d 515 (1941)
Adam Smith, Wealth of Nations 368 (1828).
to which they have been applied, and the related problems of classification, assessment, et cetera, should throw more light on whether their use has led to a successful accomplishment of the purpose attributed to them by the courts.

It is believed the functional approach is best maintained by considering first, various kinds of uniformity in terms of phraseology, scope, and effect, and secondly, the results reached on the constitutionality of certain types of taxes. The latter problem is primarily one of labeling the nature of the tax and determining the validity of classifications. In the interest of accuracy it should be said that even these categories for the purpose of discussion are illusory, for in the cases the distinctions shade and blend into each other until it is impossible to think of assessment according to value, a kind of uniformity, except in terms of property, and uniformity within the class is an inseparable part of excise taxation. Similarly, the constitutionality of a graduated income tax depends largely on the effect of the constitutional provisions on the power to classify.

SECTION 2

DEPENDING ON THE PHRASEOLOGY OF THE PROVISIONS

The variety of language used in the various constitutions gives rise to the first, or most elementary, differences existing in the meaning of the concept of uniformity. The courts have followed closely the inexact wording of the constitutional provisions in the process of finding a definition in their respective jurisdictions, and have been little influenced by any apparent tendency to set up standards divorced from the plain meaning of the constitutions. While this difference in phraseology has not led to any profound deviations from the general objectives of the provisions discussed before, it has afforded an accessible method for restricting or expanding the effect of the limitations on the taxing power when the courts have felt that such a course of action was called for on their part.

On the face of the constitutional provisions the major differences in phraseology occur in the modifiers which describe the system of taxation required, or how taxes must be levied. The terms used include uniform, uniform rule, uniform rate, levied.

73 For a listing of constitutional provisions by states see Table I, which appears as an appendix to this article.
according to value, and assessed in proportion to value. If the usage in each state was confined to any single one of the terms enumerated, much of the confusion and litigation which has accompanied the interpretation would have been avoided, but such is not the case. Many provisions combine the descriptive terms used in a single clause, and also have different modifiers in different clauses. For instance, some of those provisions grouped under the term uniform provide additionally for property taxes to be levied according to value. Those using the uniform rate phraseology provide for a uniform rate of assessment and taxation, or of assessment alone, and the according-to-value provisions may describe either the act of levying or the act of assessment, or both.

Insofar as phraseology is concerned, however, differences in kinds of uniformity are relatively simple and few. Where the wording centers in the general adjective "uniform", a general kind of uniformity in the method of taxation usually is meant. The same is true of the term uniform rule. If the word rate appears, the court most often will find that a general uniformity in terms of rates of taxation is what is intended, unless there is a specific reference to assessment or valuation. Although the word uniform does not actually appear in the constitution, the phrase levied according to value is construed to mean a uniformity of valuation and assessment of property. Where the constitutional language leaves some ground for doubt most jurisdictions will find that a standard of uniformity must be applied to both the rate of taxation and the manner of valuation. Usually, however, such a standard will not be extended to cover the method or technique for arriving at a particular assessment.

76 Schelman v Connecticut General Life Insurance Company, 151 Fla. 96, 9 So. 2d 197 (1943), Pierce v. Green, 229 Iowa 170, 294 N.W 235 (1941).
79 State v. Cedar Grove Refining Company, 178 La. 810, 152 So. 531 (1934), Hannett v. Kansas City, 173 S.W 2d 70 (Mo. 1944) But see San Bernadino County v. Way, 18 Cal. 2d 674, 117 P 2d 354
The generic expression "uniformity", then, in relation to the descriptive phraseology found in the constitutions, can mean either a general uniformity of taxation, or a more specific reference to an ad valorem basis for property taxation, both as to rate or assessment. The two meanings are fundamentally distinct, and it is essential to clear thinking that an effort be made in each case to recognize which one is involved. Such a conclusion obviously goes only to the substantive meaning of the word. A geographical connotation is a part of the complete idea symbolized in the term, and quite often the expression "within the territorial limits of the taxing authority" occurs in the constitutions, but geographical uniformity is not a primary basis for limiting the taxing power, either of the states or the federal government. Its purpose is to create what may be thought of as an administrative rule for the uniform execution of such tax legislation as the legislature may enact, and logically falls outside the expressed concern of this discussion.

Just where the distinctions underlying the meaning of uniformity cross the boundary line between phraseology and function is problematical. The cases seem to confuse the issue by sliding over the fact that the creation of kinds of uniformity, two of which have been traced to phraseology, also may be a means of extending or restricting the limitations on the taxing power. By so doing the importance of the extent or scope of these provisions is ignored.

SECTION 3

DEPENDING ON THE SCOPE OF THE PROVISIONS

An attempt to find something distinctive about uniformity on the basis of the scope of the constitutional provision may be too empirical a technique in analysis, but it does help to understand that the basic requirement does not apply to the same taxes in all jurisdictions. To this extent the meaning of uniformity in one state is different from the meaning in another state, and the same is true under different clauses in the same constitution. A full and complete understanding of the concept in its broadest

(1942) "The word taxation as used in the constitution embraces both assessment and collection and both the levy of taxes and collection thereof must be uniform and equal."

sense must account for this fact. The scope or extent of application contemplated here is not concerned so much with whether a particular tax is construed so as to come within the purview of the constitutional restrictions as it is with the general types of taxes which may be levied outside of, or beyond, a particular constitutional provision. This difference in kind of uniformity, based on the scope of the limitation, stems from the language of the provisions which describes the types of taxes to which the constitutional mandate applies.

The constitutions in some states require that all taxes shall be uniform, but in most states the provisions are limited to property taxes. Michigan uses the adjective specific to make a distinction, and some states have provisions excluding excise, privilege, and occupation taxes from the rule applying to property taxes. Those states which rely on a provision calling for taxation according to value must interpret the scope of the requirement, unless the adjective "property" actually occurs, or can be inferred. Nearly all the cases indicate that the kind of uniformity varies with the kind of taxation being considered.

The question of scope can arise in numerous ways. Where the constitutional provision is not explicit, the court must declare initially the boundaries of its application. A more frequent situation is where the provisions on their face do not apply to non-property taxes. Here the problem normally is presented in determining whether any restrictions comparable to those placed on property taxes are to be placed on excises, privilege taxes, franchises, et cetera. Practically all jurisdictions sustain the great majority of these types of taxes on the ground that they are not property taxes and do not have to be levied any more uniformly than would be required under the Fourteenth Amendment to the Federal Constitution. Some, however, cling to the idea that even excises must be governed by some kind of uniformity.

To state the proposition of scope directly, uniformity in non-property taxation may be quite different from the kind ap-

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10 For a listing of constitutional provisions by states see Table I, which appears as an appendix to this article.

11 See for example: Waring v. Mayor and Alderman of the City of Savannah, 60 Ga. 93 (1878), Reed v. Bjornson, 191 Minn. 254, 253 N.W. 102 (1934), Knox v. Gulf etc. Railroad Company, 138 Miss. 70, 104 So. 698 (1926).
plied to property taxation where the legislature is permitted by
the constitution to classify in the case of excises, franchises, etc.
A counterpart of this position is that one basis of classification
is permitted for property taxes and another for excises. In
Illinois, for instance, such a question arose in the case of
*Bachrach v Nelson*, where a graduated income tax was con-
tested. If, as the court held, it was a property tax, the kind of
uniformity required for such taxation, i.e., according to value,
would not permit classification on any other basis. On the other
hand, the kind of uniformity required for excises, i.e., uniformity
within the class, while permitting of classification, might not be
as broad as an equal protection clause would allow.

Where such a delineation is not created by the language of
the constitution some states have created it by decision. Ken-
tucky, for example, has developed a distinctive basis for classifi-
cation in the case of excise taxes to meet a standard of uniformity
not expressly called for by the constitution. Pennsylvania on
the other hand has failed to decide categorically whether her
typical provision that “all taxes shall be uniform on the same
class of subjects” includes both property taxes and excises.
Nevertheless, a stricter rule of uniformity is applied in testing
property taxes than where non-property taxes are involved.
The situation in Missouri also is interesting. There the courts in
the process of reconciling one provision that reads “taxes shall
be uniform upon the same class”, with an earlier statement that
“all property subject to taxation shall be taxed in proportion to
value” have achieved a compromise. The former is held to gov-
ern excises and the latter property taxes so that classification is
permitted in excise taxation, but not extended to property taxes
in spite of the use of the general term “taxes” in the first
provision.

Most states fit in at least one of three ways into the scope

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81 349 Ill. 579, 182 N.E. 909 (1932).
82 Trumble, *Excise Taxes and the Uniformity Clause of the Ken-
tucky Constitution*, 25 Ky. L. J. 342 (1937), Matthews, *Constitutional
Uniformity as a Rule for the Validity of License Taxes in Kentucky*,
36 Ky. L.J. 357 (1948).
83 Note, *Constitutional Requirement of Uniformity in Taxation*,
87 U. of Pa. L. Rev. 219 (1937)
84 Id. at 225.
85 Gorden, *Uniformity of Taxation in Missouri*, 24 Wash. U. L. Q.
242, 245 (1939).
pattern as presented above. If their constitution explicitly limits the uniformity provisions to property taxes, they apply a strict and general standard of uniformity in valuation, but are free to enact excises subject only to the restrictions of the Fourteenth Amendment. If there are two provisions, including one to govern property taxation, they apply the appropriate kind of uniformity to the appropriate kind of tax. If their constitution is ambiguous, they show an inclination to distinguish between a rule for property taxation and a rule for excises so that the former is governed by a standard, in point of strictness, somewhere between absolute uniformity and equal protection. If there is a trend in the cases as to kinds of uniformity, it is to turn more and more to the type which follows closely the standards required by equal protection.

It is evident from the discussion that the kind of uniformity applied in any case is, in a practical sense, a question of how much freedom of classification is allowed in exercising the taxing power. Whether the difference in uniformity is one of kind or degree is not nearly so important as the effect a given type has on the validity of distinctions established between classes in a tax statute. This is a fundamental problem. Its solution is the object of many modern tax reforms, and the institution of new systems of taxation devised to take advantage of the new sources of wealth mentioned so often before. In order to get at this phase of a decision a court must consider the phraseology of its constitution, and mark out the scope of the limitations on the taxing power contained therein, but these are largely preliminary to deciding the real issue—the effect of these limitations on the taxing power of the legislature.

SECTION 4.

DEPENDING ON THE EFFECT OF THE PROVISIONS

Some of the more recent cases dealing with the power to tax have taken a very liberal view of what that power permits in the

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8 Hiers v. Mitchell, 95 Fla. 345, 116 So. 91 (1928), Re Watson, 17 S. D. 466, 97 N.W 463 (1903), State v. Sheppard, 79 Wash. 328, 150 Pac. 32 (1914)
86 Re Martin, 62 Kan. 638, 64 Pac. 43 (1901), Strater Bros. Tobacco Company v. Commonwealth, 117 Ky. 604, 78 S.W 871 (1904)
87 State v. Montgomery, 228 Ala. 93, 151 So. 856 (1933), State v Applegarth, 81 Md. 283, 31 Atl. 961 (1895), Commonwealth v. Hutzler, 124 Va. 133, 97 S.E. 775 (1919)
way of classification of property and subjects, and by so doing furnish a focal point from which to consider the effect of the constitutional limitations on this sovereign power of the state. In New York, where there is no express provision requiring uniformity, it has been said that "the taxing power includes the right of selection and such right is unrestrained provided persons similarly situated are treated alike and the tax is imposed equally." Even in a state which does have the conventional uniformity restriction the courts have found that a "state is free to select subjects of taxation," and as an Oklahoma court put it in upholding a 1945 gift tax statute, "The state has the inherent power to classify its subjects of taxation for the purpose of levying a property tax or an excise tax, which includes the power to classify gifts as subjects of taxation." Strangely enough, one decision in Florida goes so far as to base such power directly on the uniformity provision by holding that "the constitution in requiring a uniform and equal rate of taxation contemplates rather than forbids property classification for tax valuation."

These illustrative cases, together with the general movement toward giving the legislatures broad discretion in classification, open the way for departure from the traditional general property tax which saddled the fiscal system of most states for so many years. They also place in sharp relief one of the primary functions of constitutional uniformity that of acting as a limitation on the taxing power by restricting the power to classify.

If the taxing power inherently includes the power to select and classify, a concept of uniformity based on distributing the burdens of taxation equally must of necessity be reconciled to a full exercise of that power. The problem of uniformity becomes essentially a problem in deciding whether all property, individuals, or subjects of taxation must be taxed exactly the same. If such a question is answered in the negative, as it almost always is, the problem then becomes one of determining how, and to what extent, certain classes may be created, subject to a kind of uni-

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89 In re Howell's Estate, 255 N.Y. 211, 174 N.E. 457 (1931).
91 Daube v. Oklahoma, 194 Okla. 432, 152 P. 2d 690 (1945)
formity which allows some classification. It has been said that all tax legislation includes some classification, and it could equally as well be said that all classification includes an explicit concern for constitutional uniformity. As a practical matter, if for no other reason, since provisions calling for uniformity are the principal constitutional limitation on the power to tax, the exercise of that power, as it manifests itself in the establishing of classes, must be fettered or left unrestrained on the strength of the classification made. It is improbable that a legislature will attempt to extend its power to include types of taxes not provided for in the fundamental law because it is sensitive to the constitutional phraseology involved. Neither will it consciously limit the geographical extent of its legislation. By elimination as well as logic, therefore, the power to tax is most vulnerable where an attempt is made to exercise legislative discretion in choosing between individuals and things to be taxed. Similarly, the weapon most readily available for an attack is the constitutional requirement for uniformity. This logic is borne out in the cases as will appear in subsequent discussion.

In order to measure the effect of uniformity on the power to classify, some base or index concept is needed. Fortunately, one is at hand in the basic idea and standards of equality which exist under the equal protection clause of the Fourteenth Amendment to the Federal Constitution and similar clauses in the state constitutions. Even more fortunate is the fact that the courts have made frequent reference to this concept in comparing the effect of the uniformity provisions. In fact, the reference might be called a trend. It is not necessary here to make an elaborate study of the restrictions imposed on a state's power to classify in tax legislation by the Fourteenth Amendment, for such details as are essential to the comparison will be revealed in analyzing the constitutionality of various taxes.

A comparison between the effect of uniformity and equal protection limitations indicates that the states may be divided into different categories as follows: Those states which deny the legislature any power to classify, those states which have express constitutional classes, those states which interpret uniformity to

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83 Birmingham v. Goldstein, 151 Ala. 473, 44 So. 113 (1907).
84 State v. Mirabal, 33 N.M. 553, 273 Pac. 928 (1928), Ex Parte Shaw, 53 Okla. 654, 157 Pac. 900 (1916), State ex rel Davis-Smith Company v. Clausen, 65 Wash. 156, 117 Pac. 1101 (1911).
be more restrictive than equal protection, those states where uniformity and equal protection are essentially the same, either with or without a uniformity provision in the constitution.

For the states in the first group the problem is principally whether property can be classified for the purpose of taxation at all, because few states take the categorical position that excise, privilege, occupation, and franchise taxes must be levied in such a uniform manner as to deny the power to classify. Generally, cases in jurisdictions under this heading proceed on the theory that the uniformity provision, especially if it is the *ad valorem* type imposed on property taxes, was adopted specifically to prevent the classification of property. The Ohio courts, until the comparatively recent adoption of a constitutional amendment, contributed much of the historical support for this position, and Kansas, North Dakota, Tennessee, and Illinois still maintain it.

The court in the last named state in *Bachrach v. Nelson*, previously discussed, showed at some length how the uniformity provision was adopted historically to insure that all property would be taxed according to value, and, after reviewing the decisions over a number of years, expressly denied the power to classify by saying, "by an unbroken chain of decisions this court has consistently interpreted the plain and unambiguous language of the constitution, by which all needful revenue shall be raised 'by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, or her or its property' as intended to cast the burdens of taxation equally upon all property of every description in the state."

The second mentioned group is illustrated by California whose constitution in Article XIII, section 2, provides that "the legislature may classify any and all kinds of personal property for the purposes of assessment and taxation in a manner and at a rate or rates in proportion to value different from any other property in this state." Maryland, likewise, makes a special classification for personal property and improvements on land, and Florida, in Article IX, section 1, subjects in-

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95 Saviers v. Smith, 101 Ohio St. 132, 128 N.W. 269 (1920).
97 349 Ill. 579, 182 N.E. 909 (1932), discussed at p. 58.
98 Id. at 584, 182 N.E. at 913.
tangible property to special rates. As a matter of fact, the problem of uniformity in jurisdictions such as these has been only partially solved in that the need for classification in some particular case has been given constitutional recognition.

The great majority of jurisdictions fall into the last two categories, for there has been widespread recognition of the need for classification since the turn of the century. It is here, also, that the ramifications in kinds of uniformity appear according to the degree of restriction imposed on the power to classify. Once a state concedes that some classification is or should be permitted, its courts are confronted with a number of questions which must be answered before any general theme as to the nature of uniformity can be evolved. May certain subjects be exempted from taxation according to the quantity of the thing taxed? May different kinds of property and other subjects be taxed according to different rates? May the rate vary according to quantity? May valuation be made a basis of classification? These are only a few of the questions that arise. The answers to these questions, together with the criteria used to determine the validity of non-property tax classification under uniform within the class provisions, determine the category in which a particular jurisdiction may find itself as regards uniformity versus equal protection. The determination is made in light of the particular provision involved, both as to type and scope.

The jurisdictions included in group three involve two situations. The first arises when some degree of classification is allowed under a provision requiring property to be taxed according to value. The second is where a provision exists permitting uniformity within a class, but the power to classify is restricted to a greater extent than if the rules of equal protection were applied. Classification under an "according to value" provision is largely a question of assessment, because such a provision by its express wording assumes as far as theory is concerned that all property will be taxed the same. The classification resulting from this type of provision, if indeed it is proper at all to speak of it as classification, arises from denial of relief to the taxpayer when he makes one of three most prevalent complaints where he contends that uniformity is lacking because in determining the assessed value of his property the full value was not debased to the same level as other property in the taxing dis-
or where he claims that his property has been over-valued, or where he contends that there is an actual discrimination between classes, that is, that some other class of property is assessed at a lower level, or omitted entirely from the tax roll. The proposition that all property shall be taxed in proportion to its value is obviously violated in any one of these three situations, and the reports are full of cases dealing with this aspect of uniformity. In the eyes of the taxpayer this is one of the most vital problems arising under the uniformity provisions. Since a more detailed discussion of property tax classification appears later, it is sufficient to the discussion here to point out that some jurisdictions deny relief in the situations mentioned and thereby allow what amounts to administrative classification. The classification so created usually rests on a distinction between real property and personal property. The express constitutional classification characterizing the category of the two jurisdictions mentioned above, reflected to some extent the distinction thus created, and much of the incentive for constitutional revision which brought about uniform within the class provisions can be traced to the same source. In the sense that any breakdown in the enforcement of uniformity provisions represents a lessening of their effect, these cases illustrate a kind of uniformity somewhere between the classical concept and the standards of equal protection.

Another middle ground of effect is represented by jurisdictions which build up a particular, or peculiar, basis for classification, on the theory that such is required by uniformity provisions over and above the Fourteenth Amendment. Insofar as classification of property is concerned, the question of degree of classification allowed revolves around the purposes for which the legislature may classify. Some courts will permit classes to be established for the purpose of determining the taxability of subjects. Still others permit a varying rate of taxation with the class, and usually such a classification is valid if based on kind of property. The marginal type of case is where dif-

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60 Drew v Tifft, 79 Minn. 175, 81 N.W 839 (1900), Ex Parte Shaw, 53 Okla. 654, 157 Pac. 900 (1916).
62 Galfill v Bracken, 185 Ind. 551, 145 N.E. 312 (1924), State v. Lawrence, 108 Miss. 291, 66 So. 745 (1914), State v. Ingalls, 18 N.M. 211, 135 Pac. 1177 (1913).
ferent kinds of property can be taxed at different rates, but the rate of taxation is not allowed to vary with the quantity or value of the thing taxed. This is the interpretation of uniformity which has led to the finding of graduated income taxes unconstitutional on the ground that income is property, and to so graduate its levy is a contravention of the uniformity provision.\textsuperscript{102} It serves as one of the fairly distinct dividing lines for the jurisdictional categories assumed in this discussion at the outset. The tendency to allow classification, but to construe uniformity within the class as more restrictive than equal protection, ordinarily is not extended to non-property taxes although at least one jurisdiction, Pennsylvania, has some cases peculiar in this respect.\textsuperscript{103}

The states which compose group four represent the modern trend both in the kind of uniformity provisions adopted and in the judicial interpretation given them. They reflect a rather advanced understanding of the fact that broad powers of classification are necessary if the legislature is to effectively reach present day sources of wealth. Included in the group are those states which do not have a uniformity provision as such. The Connecticut case of \textit{State v Travelers' Insurance Company},\textsuperscript{104} decided in 1900, charted the course for a state which does not have a uniformity provision. There, the insurance company attacked a tax levied on stock of non-resident shareholders on the ground that it was far in excess of the rate on the same class of stock held by resident shareholders, and therefore violated an inherent uniformity in taxation. The court expressly denied the contention and indicated its opinion of uniformity by saying\textsuperscript{105}

"Every line of objection raised by the defendant must invoke for its final support the aphorism. ‘Taxation shall be uniform and equal’ is contained in the Constitution and operates as a limitation on the power of taxation which this court is bound to enforce. Express provisions of that nature may be found in the local constitutions of many states, and have proved a source of practical difficulties for legislatures and courts. They are not found in our own, which assumes

\textsuperscript{102} Windham v. State, 16 Ala. App. 383, 77 So. 963 (1918), Re Hoffert, 34 N.D. 271, 148 N.W 20 (1914)


\textsuperscript{104} 73 Conn. 255, 47 Atl. 299 (1900).

\textsuperscript{105} Id. at 257, 47 Atl. at 300.

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that experience has taught that the power of taxation cannot be cabined within a theory of uniformity and equality."

Then the court pointed out with considerable vigor that no standard comparable to the one urged here could be found under equal protection clauses, either in its own state constitution or the Federal Constitution. It indicated that the power to tax in Connecticut was no more restricted than any other legislative power since "The Fourteenth Amendment seeks to add the security of national protection to the two guarantees common to the State Constitutions, by which life, liberty, and property are free from invasion, except under authority of law consistent with the Constitution, and by which any person or class of persons within state jurisdiction is secured against hostile discrimination in providing equal protection under the law in the enjoyment of rights belonging to all." This is substantially the position taken by other states having no uniformity provision.

Likewise it represents the result reached by those states which give a liberal interpretation to provisions which require taxes to be uniform within a class. The cases are full of statements similar in language and intent to that of a Delaware court when it says, "The constitutionality of an act under the equal protection clause of the Federal Constitution, and under the provision of the State Constitution requiring uniformity of taxation on the same class of subjects within the territorial limits of the authority levying the tax, is to be determined by the reasonableness of the classification attempted." This idea that the legislature has as wide a discretion in classification under uniformity provisions as it has under equal protection is sufficiently settled to cause an occasional question as to whether uniformity provisions serve any useful purpose at all.

SECTION 5.

Summary

By way of recapitulation the interpretation given the uniformity provisions from the functional viewpoint includes various kinds of uniformity in terms of phraseology, scope, and effect. A difference in constitutional language, especially in the

106 Ibid.
107 Ibid.
108 Conard v State, 41 Del. 107, 16 A. 2d 121, 124 (1938)
use of modifiers, has created a situation where uniformity in one instance may refer to the general standard for taxation and in another to the *ad valorem* rule applicable to property taxation. Further, either kind may apply to all types of taxes or may be limited in scope to include only property taxes as contrasted with non-property taxation. If the latter circumstances obtain, one kind of uniformity constitutes the rule in one state and another kind in a different state. Such a difference may come from express wording of the constitution or result from decision, and both kinds may be applied in the same jurisdiction to reconcile two or more uniformity clauses in the same constitution. The principal effect of the uniformity provisions is to limit the power to tax, especially that portion of the power which enables the legislature to classify. Recognition of this effect lends itself to judicial thinking about uniformity in terms of various kinds and measurable by comparison with the standards of equality expected under equal protection clauses.

By such an index the states may be grouped according to the degree of classification allowed into those which permit none, those which create a specific constitutional class, those which permit a freedom of classification hardly distinguishable from that permitted under the Fourteenth Amendment to the Federal Constitution. A particular jurisdiction will fall in one group or the other depending on the kind of uniformity it applies to the type of tax involved in light of the resulting effect on classification. A given jurisdiction may even appear in more than one of the categories assumed if it has more than one kind of uniformity clause. In point of effect many of the cases reflect a tendency to allow an increasing degree of classification of property under the *ad valorem* provisions and to leave the legislatures a broad discretion and considerable freedom in classification under the uniform-within-the-class provisions, subject to a test of reasonableness quite comparable to equal protection. Finally, all the distinctions made blend into each other in any given case so as to become the general basis for the decision. Quite often a court must attempt to isolate all of them in order to determine the constitutionality of tax legislation and it is surprising that confusion is no more rampant than it is.

(To Be Continued)
APPENDIX

TABLE I.

Constitutional Provisions by States
(Only that portion of the respective provisions pertaining to uniformity is given.)

Alabama

Art. 11, Sec. 211.
All taxes levied on property in this state shall be assessed in exact proportion to the value of such property, but no tax shall be assessed upon debt for rent or hire of real or personal property, while owned by the landlord or hirer during the current year of such rental or hire, if such real or personal property be assessed at its full value.

Arizona

Art. IX, Sec. 1.
The power of taxation shall never be surrendered, suspended, or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only.

Arkansas

Art. XVI, Sec. 5:
All property subject to taxation shall be taxed according to its value, (a) that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the state. (b) No one species of property from which a tax may be collected shall be taxed higher than other species of property of equal value, (c) provided the General Assembly shall have power from time to time to tax hawkers, peddlers, (d) ferries, exhibitions, and privileges, in such manner as may be deemed proper. Provided further, that the following property shall be exempt from taxation.

California

Art. XIII, Sec. 1.
All property in the state except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. The word "property" as used in the article and section, is hereby declared to include moneys, credits, bonds, stock, dues, franchises, and all other matters and things, real, personal and mixed, capable of private ownership;

Colorado

Art. X., Sec. 3:
All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levy-
ing the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal; Provided that the personal property of every person being the head of a family to the value of $200.00 shall be exempt from taxation.

**Connecticut**

Art. First, Sec. 1.

That all men, when they form a social compact, are equal in rights; and that no man, or set of men, are entitled to exclusive public emoluments or privileges from the community (Other than what may be derived from the above, there is no provision in this constitution which has any apparent bearing on uniformity or equality of taxation.)

**Delaware**

Art. VIII, Sec. 1.

All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, but the General Assembly may by general laws exempt from taxation such property as in the opinion of the General Assembly will best promote the public welfare.

**Florida**

Art. IX, Sec. 1.

The legislature shall provide for a uniform and equal rate of taxation, except that it may provide for a special rate or rates on intangible property, but such rate or rates shall not exceed five mills on the dollar of the assessed valuation of such intangible property, which special rate or rates, or the collected taxes therefrom, may be apportioned by the legislature and shall be exclusive of all other State, county, district, and municipal taxes; and, shall prescribe, such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, education, literary, scientific, religious, or charitable purposes.

**Georgia**

Art. VII, Sec. 2, Par. 1.

All taxes shall be levied and collected under general laws and for public purposes only. All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. Classes of subjects for taxation of property shall consist of tangible property, and one or more classes of intangible personal property including money. The General Assembly shall have the power to classify property including money for taxation, and to adopt different rates and different methods for different classes of such property.

**Idaho**

Art. VII, Sec. 2:

The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to
the value of his, her, or its property, except as in this article hereinafter otherwise provided.

Art. VII, Sec. 5:
All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulation as shall secure a just valuation for taxation of all property, real and personal; provided that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just.

Illinois
Art. IX, Sec. 1.
The General Assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property—such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct and not otherwise; but the General Assembly shall have power to tax peddlers, [et cetera] by such manner, as it shall from time to time direct by general law, uniform as to the class upon which it operates.

Indiana
Art. 10, Sec. 1.
The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law.

Iowa
Art. I, Sec. 6:
All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which upon the same terms shall not equally belong to all citizens.

Kansas
Art. 11, Sec. 1. *
The legislature shall provide for a uniform and equal rate of assessment and taxation, except that mineral products, money, mortgages, notes, and other evidences of debt may be classified and taxed uniformly as to class as the legislature shall provide.

Kentucky
Sec. 171.
The General Assembly shall provide by law an annual tax, which, with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within
the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws.

Sec. 174:
All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this Constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this Constitution shall be construed to prevent the General Assembly from providing for taxation based on income, licenses or franchises.

Louisiana
Art. X, Sec. 1.
and all taxes shall be uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only. No property shall be assessed for more than its actual cash value, ascertained as directed by law, and all taxpayers shall have the right of testing the correctness of their assessments before the courts at the domicile of the assessing authority.

Maine
Art. IX, Sec. 8:
All taxes upon real and personal estate, assessed by authority of this state, shall be apportioned and assessed equally, according to the just value thereof; but the legislature shall have power to levy a tax upon intangible personal property at such rate as it deems wise and equitable without regard to the rate applied to other classes of property.

Maryland
Declaration of rights, Art. XV, Sec. 6:
That the levyng of taxes by the poll is grievous and oppressive and ought to be prohibited; that paupers ought not to be assessed for the support of the government; that the General Assembly shall, by uniform rules, provide for separate assessment of land and classification and sub-classifications of improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the counties and by the City of Baltimore for their respective purposes, shall be uniform as to land within the taxing district, and uniform within the class or sub-class of improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy; yet fines, duties, or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community.

Massachusetts
Part I, Chapt. I, Sec. I, Art. X.
Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged con-
sequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent when necessary

Part 2, Chapt. 1, Sec. I, Art. IV.

...and while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practiced, in order that such assessments may be made with equality, there shall be a valuation of estates within the Commonwealth, taken anew once in every ten years at least, and as much oftener as the general court shall order.

(and) the legislature is authorized to levy proportional assessments and taxes upon property within the state.

**Michigan**

Art. X, Sec. 3:

The legislature shall provide by law a uniform rule of taxation, except on property paying specific taxes and taxes shall be levied on such property as shall be prescribed by law. Provided, That the legislature shall provide by law a uniform rule of taxation for such property as shall be assessed by a state board of assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes.

Art. X, Sec. 4:

...the legislature may by law impose specific taxes, which shall be uniform upon the classes upon which they operate.

**Minnesota**

Art. IX, Sec. 1.

The power of taxation shall never be surrendered, suspended, or contracted away. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes.

**Mississippi**

Art. 4, Sec. 112:

Taxation shall be uniform and equal throughout the State. Property shall be taxed in proportion to its value. The legislature may, however, impose a tax per capita upon such domestic animals as from their nature and habits are destructive of other property. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.

**Missouri**

Art. X, Sec. 3:

Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

Art. X, Sec. 4:

All property subject to taxation shall be taxed in proportion to its value: Provided, That all motor vehicles
subject to taxation in this State shall be subject to li-
cense taxes, the rate for State and Municipal purposes
to be fixed by the General Assembly;

**Montana**

Art. XII, Sec. 1.

The necessary revenue for the support and maintenance
of the State shall be provided by the Legislative Assem-
by, which shall levy a uniform rate of assessment and
taxation, and shall prescribe such regulations as shall
secure a just valuation for taxation of all property, ex-
cept that specifically provided for in this article. The
Legislative Assembly may also provide for a license
tax, both upon persons and upon corporations doing
business in the state.

Art. XII, Sec. 1a:

The Legislative Assembly may levy and collect taxes
upon incomes of persons, firms and corporations for
the purpose of replacing property taxes. These income
taxes may be graduated and progressive and shall be
distributed to the public schools and to the state gov-
ernment.

**Nebraska**

Art. VIII, Sec. 1.

The necessary revenue of the state and its governmental
sub-divisions shall be raised by taxation in such man-
ner as the legislature may direct; but taxes shall be
levied by valuation uniformly and proportionately
upon all tangible property and franchises, and taxes
uniform as to class may be levied by valuation upon all
other property. Taxes, other than property taxes, may
be authorized by law.

**New Hampshire**

Part 2, Art. 6:

The public charges of government, or any part thereof,
may be raised by taxation upon polls, estates, and other
classes of property, including franchises and property
when passing by will or inheritance; and there shall be
a valuation of the estates within the state taken anew
once in every five years, at least, and as much oftener
as the general court shall order.

**New Jersey**

Art. I, Sec. VII, Par. 12 (Constitution of 1844, as amended)

Property shall be assessed for taxes under general laws
and by uniform rules, according to its true value.

**Nevada**

Art. X, Sec. 1.

The legislature shall provide by law for a uniform and
equal rate of assessment and taxation, and shall pre-
scribe such regulations as shall secure a just valuation
for taxation of all property, real, personal and posses-
sory, except mines and mining claims, when not pat-
tented, the proceeds alone of which shall be assessed
and taxed,
New Mexico
Art. VIII, Sec. 1.
Taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class.

Art. VIII, Sec. 6:
Lands held in large tracts shall not be assessed for taxation at any lower value per acre than lands of the same character of quality and similarly situated, held in smaller tracts. The plowing of land shall not be considered as adding value thereto for the purpose of taxation.

New York
There is no general constitutional provision specifically requiring equality of taxation in this state.

North Carolina
Art. V, Sec. 3:
The power of taxation shall be exercised in a just and equitable manner, and shall never be surrendered, suspended or contracted away. Taxes on property shall be uniform as to each class of property taxed. Taxes shall be levied only for public purposes, and every act levying a tax shall state the object to which it is to be applied. The General Assembly may also tax trades, professions, franchises and incomes: Provided, the rate of tax on incomes shall not in any case exceed ten percent, and there shall be allowed the following exemptions to be deducted from the amount of annual incomes,

North Dakota
Art. XI, Sec. 176, as amended by Art. 29:
Taxes shall be uniform upon the same class of property, including franchises within the territorial limits of the authority levying the tax. The legislature may by law exempt any or all classes of personal property from taxation and within the meaning of this section, fixtures, buildings, and improvements of every character, whatsoever, upon land shall be deemed personal property.

Ohio
Art. II, Sec. 26:
All laws, of a general nature, shall have a uniform operation throughout the state;
Art. XII, Sec. 2, as amended in 1933:
Land and improvements thereon shall be taxed by uniform rule according to value.

Oregon
Art. I, Sec. 26:
No tax or duty shall be imposed without the consent of the people or their representatives in legislative assembly; and all taxation shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax.
Art. IX, Sec. 1.
The legislative assembly shall, and the people through the initiative may, provide by law uniform rules of
assessment and taxation. All taxes shall be levied and collected under general laws operating uniformly throughout the state.

Oklahoma
Art. X, Sec. 5:
The power of taxation shall never be surrendered, suspended, or contracted away. Taxes shall be uniform upon the same class of subjects.
Art. X, Sec. 8:
All property which may be taxed ad valorem shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale.
Art. X, Sec. 22:
Nothing in this constitution shall be held or construed to prevent the classification of property for purposes of taxation; and the valuation of different classes by different means or methods.

Pennsylvania
Art. IX, Sec. 1.
All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;

Rhode Island
Art. IV, Sec. 15:
The general assembly shall, from time to time, provide for making new valuations of property, for the assessment of taxes, in such manner as they may deem best. A new estimate of such property shall be taken before the first direct state tax, after the adoption of this constitution, shall be assessed.

South Carolina
Art. 1, Sec. 6:
All property subject to taxation shall be taxed in proportion to its value.
Art. 10, Sec. 1.
The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe regulations to secure a just valuation for taxation of all property, real, personal, and possessory, except mines and mining claims, the products of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes: Provided however, that the General Assembly may impose a capitation tax upon such domestic animals as from their nature and habits are destructive of other property; and provided further, That the General Assembly may provide for a graduated tax on incomes and for a graduated license on occupations and business.

South Dakota
Art. VI, Sec. 17:
No tax or duty shall be imposed without the consent of the people or their representatives in the legislature, and all taxation shall be equal and uniform.
Art. XI, Sec. 2:
To the end that the burden of taxation may be equitable upon all property, and in order that no property which is made subject to taxation shall escape, the legislature is empowered to divide all property including moneys and credits as well as physical property into classes and to determine what class or classes of property shall be subject to taxation and what property, if any, shall not be subject to taxation. Taxes shall be uniform on all property of the same class and shall be levied and collected for public purposes only. Taxes may be imposed upon any and all property including privileges, franchises, and licenses to do business in the state. Gross earnings and net incomes may be considered in taxing any and all property, and the valuation of property for taxation purposes shall never exceed the actual value thereof. The legislature is empowered to impose taxes upon incomes and occupations and taxes upon incomes may be graduated and progressive and reasonable exemptions may be provided.

Tennessee
Art. II, Sec. 28:
All property, real, personal, or mixed, shall be taxed, but the legislature may except. All property shall be taxed according to value, and that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of the same value.

Texas
Art. VIII, Sec. 1.
All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The Legislature may impose a poll tax. It may also impose occupation taxes (et cetera). It may also tax incomes of both natural persons and corporations.

Utah
Art. XIII, Sec. 2:
All tangible property in the state, not exempt under the laws of the United States, or under this Constitution shall be taxed in proportion to its value.

Art. XIII, Sec. 3:
The Legislature shall provide by law a uniform and equal rate of assessment and taxation on all tangible property in the state, according to its value in money and shall prescribe by law such regulations as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property, provided the legislature may determine the manner and extent of taxing livestock. Intangible property may be exempted from taxation as property or it may be taxed in such manner and to such extent as the legislature may provide.
Vermont
Chapt. I, Art. 9:
That every member of society hath a right to be protected in the enjoyment of life, liberty, and property and therefore is bound to contribute his proportion towards the expense of that protection, and yield his personal service when necessary, or an equivalent thereto.

Virginia
Art. XIII, Sec. 168:
All property, except as hereinafter provided, shall be taxed; all taxes, whether State, local or municipal shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. The General Assembly may define and classify taxable subjects, and except as to classes of property herein expressly segregated for either state or local taxation, the General Assembly may segregate the several classes of property so as to specify and determine upon what subjects State taxes and upon what subjects local taxes may be levied.

Washington
Art. VII, Sec. 1.
The power of taxation shall never be suspended, surrendered or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits levying the tax and shall be levied and collected for public purposes only. The word "property" as used herein shall mean and include everything, whether tangible or intangible, subject to ownership. All real estate shall constitute one class; Provided that the Legislature may tax mines and mineral resources and land devoted to reforestation by either a yield tax or an ad valorem tax at such rate as it may fix, or by both.

West Virginia
Art. X, Sec. 1.
Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than other species of property of equal value.

Wisconsin
Art. VIII, Sec. 1.
The rule of Taxation shall be uniform, but the legislature may empower cities, villages, or towns to collect and return taxes on real estate located therein by optional methods. Taxes shall be levied upon such property with such classifications as forests and minerals including or separate or severed from the land, as the legislature shall prescribe. Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided.
Wyoming

Art. I, Sec. 28:
all taxation shall be equal and uniform.

Art. XV, Sec. 11.
All property, except as in this constitution otherwise provided, shall be uniformly assessed for taxation, and the legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.