A QUESTION vital to the continuation of our federal system is whether states will or can take care of the demands made for governmental services in the areas where they are competent to act, or whether by failing to respond to this need, pressures will continue to be placed upon the federal government for increased intervention by way of financial assistance. It is hardly deniable that the states on the whole have access to economic resources and wealth which are adequate to support a tax structure yielding the revenues needed to finance their programs. The truth is, however, that, whatever the reason, the states in many instances are facing financial crises in attempting to meet budgetary demands. In a number of areas the federal government is already lending assistance financed by means of federal taxes derived from the same sources that lie within the competence of the states to reach. Perhaps one explanation is a more conservative political leadership in the states with respect to taxation and spending. Perhaps also citizens share the illusion that money which comes from the federal government does not dip into their pockets as much as local taxes do. But certainly also an important part of the picture is that states by their constitutional provisions have imposed limitations upon their taxing problems which often create very real barriers to effective financing of state programs. These limitations have usually had a long history and go back to an earlier time when the property tax was relied upon almost exclusively as a source of state revenue. They reflect a distrust and skepticism with respect to unlimited taxing power and the feeling that constitutional safeguards should be inserted to protect against abuse of the taxing authority. Prob-
ably the foremost of these limitations imbedded in state constitutions is that one which requires uniformity and equality of taxation. A common result of these provisions is to hamstring the legislature in attempting to make the property tax system more flexible through exemptions, diversification of tax rates and classification of taxable property. Moreover, these provisions as judicially interpreted have often stood as barriers to the development of other kinds of taxes, notably the income tax, which are capable of yielding substantial revenues, which may temper the burden of the property tax and contribute to a more equitable and better balanced tax structure.

Professor Newhouse's work is a very valuable contribution to the study and understanding of the uniformity and equality limitations. This is the most complete and thorough treatment of these constitutional provisions that has appeared to date. Professor Newhouse has examined these provisions, state by state, has set forth their history, and analyzed the judicial interpretation placed upon them. He has done all this with painstaking and methodical thoroughness in order to determine the conceptual and practical significance of these limitations as they relate to each of the states and also to assess the total results on a comparative basis. The separate treatment of each of the states in the various divisions included in the author's treatment furnishes a series of monographs which in themselves constitute highly valuable analyses and commentaries. But the book also assumes a wider significance because of the conclusions drawn and the comparisons made on the basis of the separate state-by-state studies. The author's total treatment reveals an extraordinary intimacy with the large body of constitutional provisions and judicial decisions embraced in the study.

In order to facilitate the comparative study and thereby make the entire project more meaningful, the author has
very carefully divided the uniformity provisions into nine different classes and has conducted the state studies by reference to the appropriate class in which a given state is found. Moreover, he has at the very outset, and the reader is well advised to note this carefully, defined his terms very accurately in order to furnish more useful tools of analysis in dealing with the problems of judicial interpretation. The overall study makes clear another conclusion which of course is evident in other fields of constitutional interpretation, namely, that courts, starting with the same or approximately the same language, reach widely divergent results based on the approach they make to these provisions. As the author points out, the judicial conception of basic economic policy and the need for flexibility in the tax structure may readily induce one court to adopt an interpretation which makes words meaningful in a sense quite different from the result reached by another state court which may be more literally or conceptually minded and reaches decisions without regard to present fiscal policy considerations.

The writer deals with the case materials in each state in a very critical way in order to see the underlying ideas that have been developed, the consistency and coherence in results reached, and the extent to which policy considerations have entered into these decisions. In turn, he draws upon the common fund of knowledge derived from a separate study of each of the states to make his illuminating comparative studies in a later chapter. As an illustration of the problems faced in regard to new types of taxes and the difficulties involved in fitting them into constitutional limitations premised on historical considerations, Professor Newhouse has devoted a chapter to the history of state income tax laws and the problems faced by the courts in adapting them to uniformity limitations. As Professor Newhouse points out, the later trend has been to find a basis for justifying income
taxes notwithstanding an earlier view that an income tax was a tax on property and therefore had to meet the uniformity requirement. The chapter on the income tax is a good commentary on the need of revision of constitutional provisions in order to make them adequate to modern fiscal needs.

The author concludes in the end that while much can be achieved by liberal interpretation of these provisions to prevent their becoming unduly rigid as a limitation on legislative tax power, there is need for clarification of these constitutional provisions through the amendment process so as to define more precisely the objectives of these limitations, the exceptions to them and the particular taxes that may be authorized notwithstanding these restrictions. Certainly it has placed an almost intolerable burden upon the courts to accommodate these provisions to modern needs. They are faced with the choice either of adhering to judicially established conceptual interpretations that may severely circumscribe legislative discretion in devising a modern, equitable and adequate tax structure or of resorting to liberal interpretations founded on policy considerations which may have the effect of diluting the significance of these provisions to the point where they are no longer meaningful. There is much to be said for the idea of complete revision of these provisions in the interest of clarity and greater precision. Perhaps, indeed, the time has come to eliminate the separate uniformity provisions altogether and to rely instead upon the broad limitations of due process and equal protection to protect against arbitrary exercise of the tax power. Flexible and adequate taxation powers must be accorded state legislatures if the states are to preserve a substantial degree of self-reliance as opposed to looking for aid to the federal government with its virtually unlimited tax powers.

Professor Newhouse is to be congratulated on the thor-
ough and patient research, careful and critical analysis, excellent organization and clarity of presentation which combine to make this volume a very useful sourcebook and commentary in dealing with the vital problems raised by these constitutional limitations. Here is a work that should prove to be of enduring value to lawyers, legislators and judges in dealing with the concrete problems arising under these limitations at the present time. It should also prove invaluable to students of public finance and to those who are concerned with the problems of constitutional revision.

Paul G. Kauper
Preface

The method of approach and arrangement of materials are developed during the course of the monograph. Therefore, it is not necessary to repeat them here. The purpose of the study is twofold. First, it should provide background material for constitutional revision. Second, it should aid counsel and court in deciding cases arising under existing constitutional limitations and state legislatures in drafting tax measures in such a way that pitfalls in existing limitations are avoided.

The greater part of this monograph was prepared during a two year period from June 1951 to 1953, while I was a Research Assistant with the Legislative Research Center, University of Michigan Law School. It was completed during succeeding summers, and I have attempted to reflect all cases decided through the summer of 1956. It is a great pleasure for me to acknowledge my indebtedness to Professor William J. Pierce, Director of the Center, with whom I had day to day contact while writing the monograph, and to Professor Paul G. Kauper, who read the manuscript and gave helpful criticism. Of course, the views and conclusions expressed are those of the writer, who accepts full responsibility for any defects as may appear.

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