Introduction

On February 8th, 1955, upon submitting to the Congress his recommendations concerning federal assistance to the states in the construction of school facilities, President Eisenhower stated:

These are the facts of the classroom shortage:

The latest information submitted by the States to the Office of Education indicates that there is a deficit of more than 300,000 classrooms, a legacy—in part—of the years of war and defense mobilization when construction had to be curtailed. In addition, to keep up with mounting enrollments, the Nation must build at least 50,000 new elementary and high school classrooms yearly. It must also replace the thousands of classrooms which became unsafe or otherwise unusable each year.

... Millions of children still attend schools which are unsafe or which permit learning only part-time or under conditions of serious overcrowding. To build satisfactory classrooms for all our children, the current rate of school buildings must be multiplied sharply and this increase must be sustained.

Fundamentally, the remedy lies with the State and their communities.¹

There is a profound difference of opinion concerning the extent to which the federal government should participate in the education of the nation’s children, but it is generally agreed that the task is a basic function of state and local government. Moreover, partisans from both sides of the aisle deplore further concentration of functions in Washington:

We talk about and we deplore incessantly the increasing centralization of power over our lives in Washington. But that

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tidal drift toward the Capital will go on and on unless those necessary functions of government which don’t have to be performed in Washington are performed, and properly performed, at the state and the local level.

The people will demand the services, and if they don’t get them at home they will turn to Uncle Sam. And every dollar you send to Washington to pay for them will shrink before it gets back home.

... [T]he states are the dikes which we can build more strongly against the flood waters ever sweeping toward the District of Columbia.²

The problem of the public schools is simply a single example of the many general problems facing state and local government today. There is a crying demand for the states to solve the problem of highways, to create or maintain institutions for the aged and infirm, and to provide increased services for the mentally ill, to name only a few of the many and complex services expected of modern government. If the increasing demands for state services are to be met, state revenues obviously must increase,³ which means an added strain on already creaking state tax structures. As a result,


³ For example, a press release of Commerce Clearing House, dated January 24, 1955, indicated that many state legislatures in 1955 faced a problem of reducing state services or levying new and higher taxes. Most of the reporting states heard urgent demands from their governors or tax study groups for bolstering their hard-pressed state treasuries. New York was told “the day of reckoning has come,” and that city tax authorizations must be made on a permanent, not temporary basis. A commission urged a 2 cent increase in the gasoline tax and a 3 cent increase in the diesel fuel tax. California had a bill pending to cancel scheduled reductions in gasoline and diesel fuel taxes. Massachusetts was informed that substantial new revenues must be found on a long-term basis. Vermonters received word that the state needed more money if it were to pay for increased services. West Virginia needed $7 million, and its legislators were asked to produce that sum within the framework of present taxes. Idaho was asked for $8.5
there will be demands for new sources of revenue, but in creating new tax structures the state legislatures must always operate within state constitutional limitations.

Probably the most important of the state constitutional limitations upon the taxing power is the requirement that taxation be "uniform and equal" to some degree. That limitation, which is the subject of this monograph, may have a profound effect on the choices available to a state legislature when it attempts to increase revenue yields. Therefore a comparative study of state constitutional uniformity limitations on taxation seems desirable for two reasons: (1) to determine the exact meaning of existing uniformity limitations in order to avoid unconstitutional exercises of the taxing power; and (2) to ascertain what uniformity limitations are desirable if existing ones are so strict as to preclude judicious exercise of the taxing power in the light of modern economic conditions.

The constitutions of forty-three (possibly forty-five) of the forty-eight states contain provisions which may be described as "uniformity clauses." Generalizing further about the uniformity limitation is a treacherous, though necessary, undertaking.

In the first place, there is a substantial and significant diversity in the phraseology of the several types of so-called "uniformity clauses." Moreover, much like the commerce clause and the equal protection clause in the federal Constitution, the language of these provisions is so general as to be meaningless without an extensive study of court decisions.

million. Maine proposed a 3 cent sales tax and/or a personal income tax. In New Hampshire the governor suggested new sources of revenue. These, he said, would not be a sales or income tax. A 1% income tax was proposed in the legislature. Utah reported that an automatic property tax increase for schools seemed "unavoidable." Washington was told its growing population forced tax raises. For the long pull, suggestions were for an income tax for which a constitutional amendment is required.
This is not to say that the phraseology of the basic uniformity clauses is unimportant. The courts always purport to start from the words of the governing clause. Therefore, the states will be classified in this study on the basis of the phraseology of the basic uniformity clauses found in their respective constitutions. This approach will provide significant comparisons between the "literal" limitations and the court-made "effective" limitations.

A second reason for avoiding generalizations concerning the state uniformity clauses is that a considerable number of states have extremely complex uniformity structures. The basic uniformity clause is often supplemented by other constitutional provisions directed to some particular phase of the general limitation. Therefore, the entire "uniformity structure" of each state constitution, rather than the basic uniformity clause alone, must be analyzed.

The uniformity limitation has taken a definite form in each of the forty-eight states. In order to evaluate the limitation properly, one must remember that in comparing state constitutional limitations it can *not* be said that a "single" requirement of uniformity in taxation applies throughout all of the states, or throughout several of the states. Even if identical effective limitations were found in all states, there would still be forty-eight such limitations. Therefore when the constitutional provision is framed in the equivocal language common to the so-called uniformity clauses, it should come as no surprise that there may be several different interpretations of identically phrased provisions. The following comment, though made in another context, is quite appropriate here:

Indeed, in view of our constantly growing body of cases and statute law, it is believed that an increasingly fruitful type of legal research is that which concentrates on the law of a single jurisdiction. Not only does it provide a more pre-
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cise statement of legal doctrines of one state than can be de­

erived from more general treatises, but it also furnishes a unique basis for generalizations as to rules which are applicable in all jurisdictions. After all, general statements about the American common-law, when in one sense there are in fact some forty-eight or more American common-law sys­
tems, are not uniformly helpful. 4

Substitute “state constitutional law” for “common-law,” and justification is had for the approach and method of this monograph, the main body of which will consist of individual studies of the law in each of the forty-eight jurisdictions.

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Confusion will be kept at a minimum if certain basic defi­
nitions are set forth and used throughout the monograph. In this way it is hoped that some apparent conflicts may be re­
solved, conflicts which stem from the fact that words de­
scribing the general limitation of uniformity are not always used with the same meaning. The particular rules of the gen­
eral limitation may be classified and studied according to the following elements of a “tax.” (1) The object of a tax, which is the thing taxed; for example, property, sales of goods, income, the privilege of engaging in a certain type of business. (2) The base of the tax, which is the unit of taxation; for example, the value of the property taxed, a unit of weight or measure, the income from a business taxed, the price of a thing sold. (3) The rate of taxation, which is the amount per unit. The rate is usually stated in percentages; for example, three per cent of net income, four mills per dol­
lar of the value of property taxed. However, the rate may be stated as a flat rate, a certain sum per unit of taxation (e.g., two cents per bushel of grain taxed, or so many dollars

4 Simes, Lewis M., Foreword to Fratcher, Perpetuities and Other Re­

straints, viii-ix (1954).
for each additional store operated by a single management). If the rate is uniform for each unit taxed, it is proportional. If the rate increases as the tax base increases, it is progressive. (4) The method of taxation, which depends upon the combined base-rate structure. Thus, ad valorem refers to a combined base-rate structure of value-percentage rate. The method of taxation is primarily identified by the base used.

The application of particular rules of uniformity depends upon the nature of the tax. All taxes fall into a dichotomy of property taxes and nonproperty taxes. This study of the uniformity limitation demonstrates, without doubt, that a sharp distinction has been made between these two types of taxes, with a stricter uniformity limitation usually being applied to property taxes. The basis of this classification of taxes is the object of the tax. Property taxes have property as their object. All other taxes are denoted nonproperty taxes. However, a very few states have not employed this distinction. One may fundamentally disagree with any effort to distinguish between property and nonproperty taxes, and it appears quite clear that the dichotomy is the source of considerable confusion. Nevertheless, in order to understand the meaning of the uniformity limitation as it is applied in each of the several states, one must accept and work with the distinction. Defects in theory cannot obviate its existence.

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For reasons which will be made clear by the state by state analysis, it will be helpful to break down the general uniformity limitation into particular rules of uniformity. The particular rules, which apply to property taxes, correspond to the elements of the tax.

Uniformity required of the object of property taxes. This particular rule concerns the exclusion from or inclusion within the object of a property tax. The basic question is:
must all property within the territory of a taxing authority, except that expressly designated as exemptible by the constitution, be selected for the object of any property tax imposed by that authority? Conversely, is the exemption of classes of property from the property tax prohibited? If all property must be selected, and no property may be exempted, there is said to be a requirement of universality. The further question arises: is the universality requirement derived from the basic uniformity clause, or is the requirement found in phrases apart from the basic clause?

Uniformity required of the effective rate of a property tax. The effective rate of a property tax is the combined base-rate structure. This combination is significant because property selected for property taxation may be classified for the application of different effective rates in either of two ways. First, all property may be assessed for taxation at the same ratio of valuation and different percentage rates applied to different classes of property. The ratio of valuation is the per cent of "actual" value at which property is entered on the tax rolls. Second, all property may be subject to the same percentage rate, but classified for the application of different ratios of valuation. Is an absolute uniformity required so that all property must be taxed at the same effective rate? Or, is there only a requirement of uniformity within classes, so that property may be classified for the application of either different ratios of valuation or different percentage rates?

The uniformity limitation is a territorial requirement. That is, rates imposed by the state must be uniform throughout the state, those by the county throughout the county, etc. There is no requirement that the rates of the different taxing authorities be correlated.

Double taxation is one aspect of the problem of uniformity.

— Generally see Leland, The Classified Property Tax in the United States, Ch. II, especially at 52 (1928).
in effective rates. If an item of property is either subject to two taxes by the same taxing authority, or subject to the same tax twice, it is apparent that the effective rate for that class of property will vary from the effective rates applicable to other property. If absolute uniformity is required, double taxation would obviously violate the requirement. The issue of double taxation becomes acute when representative intangible property is taxed. This raises the only really difficult question: just when is the "same property" being taxed twice? This question necessitates a consideration of the relationship between representative intangible property and the tangible property which it represents. For example, X farm is encumbered with a mortgage. Are the farm land and the mortgage to be considered, for purposes of uniformity in taxation, the "same" property? If so, the taxation of both (the farm as realty and the mortgage as intangible property) results in double taxation.

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An understanding of these definitions and particular rules of uniformity will assist immeasurably in comparing the state constitutional uniformity and equality limitations.