CHAPTER IV
Uniformity and Equality in Taxation Required by the Federal Equal Protection Clause

THE primary purpose of this monograph is to make a comparative study of the state constitutional limitation of uniformity in taxation. Such a study would not be complete, however, without some consideration of the equal protection clause of the fourteenth amendment to the United States Constitution, as it is applied to state taxes. The equal protection clause provides a minimum standard of uniformity within classes. Therefore, it protects the interests of the taxpayer wholly apart from any state constitutional uniformity limitation and regardless of the identity of the state levying the tax. However, because an analysis of this federal limitation is essentially collateral to the primary purpose of this monograph, the degree of uniformity required of state taxes by the equal protection clause will only be briefly outlined.¹

Prior controversy was settled in 1890, when Justice Bradley stated, in Bell’s Gap Railroad Co. v. Pennsylvania,² that the equal protection clause does limit state revenue legislation.³ The “formula” by which the court has guided itself

¹A comprehensive analysis of the meaning of the federal equal protection clause as it applies to state taxes was made in 1938 by Professor Sholley, “Equal Protection in Tax Legislation,” 24 Va. L. Rev. 229, 388 (1938). Also see The Constitution of the United States of America, 1146-1153 (Edward S. Corwin, Editor; S. Doc. No. 170, 82nd Cong., 2d Sess., 1953); and Rottschaefer, Handbook of American Constitutional Law, 664-675 (1939). The present writer is greatly indebted to these sources.
²134 U.S. 232 (1890).
³See the discussion in Sholley, supra note 1, at 230-232, which traces the development from the position taken by Justice Miller in Davidson v. New Orleans, 96 U.S. 97 (1878), to the statement by Justice Bradley in
in cases concerning the validity of state taxes under the equal protection clause has been restated as late as the spring of 1954. Justice Jackson, speaking for the court, stated:

Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatment be not so disparate, relative to the difference in classification, as to be wholly arbitrary. 4

This standard determines the legitimacy of state legislative classifications in general, 5 and here it is applied in particular to tax legislation.

This formula is not too helpful in determining results in particular cases. Just when do classifications rest on "real and not feigned differences?" More significantly, when is "different treatment . . . so disparate, relative to the difference in classification, as to be wholly arbitrary?" As for "the purpose for which the classification is made," remember that ostensibly, at least, the purpose of revenue legislation is to obtain revenue. Consequently, while the "purpose" test can have real meaning in cases involving police power regulation, one may doubt the extent to which it aids in evaluating classifications in tax legislation. 6 Nevertheless, the standard is used, and the decisions of the court may be arranged according to coherent patterns. It will be helpful for the purposes

the Bell's Gap case, supra note 2. Also see The Constitution of the United States of America, supra note 1 at 1146.


5 However, classifications based on either race or alienage must be excepted from any generalizations made in the text. See, for example, the court's latest major pronouncement on such classifications in Brown v. Board of Education, 347 U.S. 483, 74 S. Ct. 686 (1954), discussed in Kauper, "Segregation in Public Education—The Decline of Plessy v. Ferguson," 52 Mich. L. Rev. 1137 (1954).

6 For a hypercritical view of the court's "verbal formula," see Sholley,
of this monograph to follow the outline used for analysis of the state uniformity limitations. However, it should be noted that the Supreme Court has never made a distinction between property and nonproperty taxes for the purpose of applying a stricter limitation to the former. Nevertheless, for comparative purposes that distinction can be made.

First, as for property taxes, the federal equal protection clause, in general, does not contain a rule of universality, requires only a uniformity within classes for effective rates, and does not restrict the method of taxation of property to the ad valorem method. The precise issues have not too often been ruled upon, perhaps because it is simply accepted as dogma not open to challenge that the equal protection clause does not prohibit state legislatures from classifying property, either for the taxation of such classes at different effective rates or for their exemption. The validity of the broadest types of classification of property such as realty and personality, tangible and intangible, was early established in principle. The United States Supreme Court decisions have for

The principal problem under the equal protection clause has been the degree of classification permitted thereby. The rule, as generally stated, is that it prohibits unreasonable classifications only. The decisions show that there exist no universally applicable tests by which to determine whether a given classification is reasonable or unreasonable. A classification on a given basis may be valid with respect to one tax and invalid with respect to another.

7 Cf. the analysis by Sholley, supra note 1, and his arrangement according to the characteristics of the classifications reviewed by the Supreme Court.

8 For the first two propositions, see the cases in notes 9 through 20, infra. On the second proposition, see, for example, Lake Superior Mines v. Lord, 271 U.S. 577, 46 S. Ct. 627 (1926).

9 For example, see the following dictum from Justice Bradley in the Bell's Gap case, supra note 2 at 237:

[The equal protection clause] was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may,
the most part been concerned with more refined classifications. A number of decisions have sustained subclassifications of intangibles. For example, in *Klein v. Board of Tax Supervisors*,\(^\text{10}\) the Supreme Court sustained a Kentucky statute which taxed shares of stock in all corporations, but excepted shares in corporations which had paid property taxes in Kentucky upon seventy-five per cent or more of their total assets. In a later decision, *Madden v. Kentucky*,\(^\text{11}\) the court sustained a tax of fifty cents per one hundred dollars on deposits in banks out of the state, in contrast with a rate of ten cents per one hundred dollars on deposits in the state.\(^\text{12}\) Other cases have sustained the subclassification of tangible personality; for example, in *Heisler v. Thomas Colliery Co.*\(^\text{13}\) the court sustained a Pennsylvania special ad valorem tax on hard coal, although no similar tax was laid on soft coal or other personal property. It will be recalled that that tax was a good illustration of the Pennsylvania uniformity limita-

if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. . . . [I]t may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. . . . We think that we are safe in saying, that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation. If that were its proper construction it would not only supersede all those constitutional provisions and laws of some of the States, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require. . . .

\(^{10}\) 282 U.S. 19, 51 S. Ct. 15 (1930).

\(^{11}\) 309 U.S. 83, 60 S. Ct. 406 (1940).


\(^{13}\) 260 U.S. 245, 43 S. Ct. 83 (1922).
tion.\textsuperscript{14} It has been said, "Another classification of property which has always been sanctioned by the Supreme Court is that between railroad property and all other property."\textsuperscript{15} However, the court has found certain classifications of property to be arbitrary. For example, in \textit{Wheeling Steel Corporation v. Glander},\textsuperscript{16} decided in 1949, the court held invalid that part of the Ohio ad valorem property tax which levied the tax on accounts receivable owned by foreign corporations, but exempted accounts receivable of an identical nature which were owned by residents and domestic corporations.\textsuperscript{17}

The general principle is well illustrated in those cases concerning the application of a different ratio of valuation to a complaining taxpayer's property. In another recent case, \textit{Hillsborough Township v. Cromwell},\textsuperscript{18} the court indicated that the consistent, systematic, and intentional discrimination in the assessment of a taxpayer's property for the purposes of ad valorem taxation would be invalid under the equal protection clause. However, it should be noted that the application of a different ratio of valuation will not run afoul the equal protection clause.

\textsuperscript{14} See the discussion in the Pennsylvania study, chapter III, part G supra.

\textsuperscript{15} Sholley, \textit{supra} note 1, 235, with citation of authorities.

\textsuperscript{16} 337 U.S. 562, 69 S. Ct. 1291 (1949).

\textsuperscript{17} The court said that the inequality was not based on the owner's relation to the decisive transaction but solely on a difference in residence of the owners of accounts receivable, and that the foreign corporation was due as equal a treatment as that given domestic corporations, at least in so far as the ad valorem tax was concerned.

Also see \textit{Louisville Gas & Electric Company v. Coleman}, 277 U.S. 32, 48 S. Ct. 423 (1928), in which the court held invalid a tax on the recording of mortgages because it applied only to mortgages which did not mature within five years. A very severe and telling criticism of the Coleman case is found in Sholley, \textit{supra} note 1 at 241-243. The opinion of the majority did not square with numerous prior cases, and it is not consistent with the trend of subsequent decisions.

protection clause if the property affected might reasonably be placed in a separate class for purposes of taxation. Thus, it is clear that under the equal protection clause the state legislatures retain a great deal of discretion in classifying property, subject only to a minimum standard protecting the taxpayer against patently arbitrary classifications, an extreme case being the singling out of an individual’s property.

Second, as for nonproperty taxes the same limitation applies, namely, a requirement of uniformity within classes. This, of course, is substantially the same limitation which was found to limit nonproperty taxes in practically all of the forty-eight states. More significant is the ruling of the


20 Cf. Independent Warehouses v. Scheele, 331 U.S. 70, 67 S. Ct. 1062 (1947), in which the court sustained a New Jersey municipal license tax. The court held that the fact the ordinance applied only to commercial storage facilities, and that there were no other commercial storage facilities in the municipality subject to taxation, did not result in a violation of the equal protection clause. The principal issue concerned state taxation of interstate commerce, and on that issue there were dissents.

21 The most recent decision is Walters v. City of St. Louis, supra note 4, in which the court upheld the constitutionality of the St. Louis “income tax.” The ordinance on its face classified income for taxation according to its source. One category consisted of salary and wage income, the other of profits from self-employment or business enterprise. The court did not pass upon regulations under the tax which granted employers deductions for taxes paid the federal government, but which did not allow employees a deduction for the same tax. Justices Douglas and Black expressly suggested that this latter classification raised a “serious and substantial question under the Equal Protection Clause. . . .” (p. 510). Selected important cases are Quong Wing v. Kirkendall, 223 U.S. 59, 32 S. Ct. 192 (1937) (sustaining a state license tax on hand laundries employing more than two women); Magnano Company v. Hamilton, 292 U.S. 40, 54 S. Ct. 599 (1934) (sustaining a discriminatory tax on oleomargarine); Southwestern Oil Co. v. Texas, 217 U.S. 114, 30 S. Ct. 496 (1910) (sustaining a two per cent tax on the gross receipts of wholesale dealers in mineral oils against the contention that dealers in other commodities were not subject to comparable tax burdens).
Supreme Court that progressively graduated rates are reasonable classifications. The court has rarely found a classification under a nonproperty tax to be unreasonable and arbitrary.

Thus, there is a minimum standard of uniformity to which state tax legislation must conform, apart from any state constitutional limitation. The federal equal protection clause stands as a barrier to "unreasonable" classifications in state tax legislation. Of course, the difficulty here is in the use of the question-begging term "unreasonable." And like the due process limitation, the equal protection limitation permits a margin for differences of opinions even as to this minimum standard of uniformity.

In the leading case, Magoun v. Illinois Trust & Savings Bank, 170 U.S. 283, 18 S. Ct. 594 (1898), the court sustained the provisions of an Illinois inheritance tax law which granted exemptions and established rate differentials depending on the total amount of the legacy and the relationship of the beneficiary to the deceased. Also see Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221 (1920) (graduated net income tax); Metropolis Theater Co. v. Chicago, 228 U.S. 61, 33 S. Ct. 441 (1913) (graduated license tax on theaters, the rate graduated according to the price of admission). The graduated rate principle embodied in the ordinary chain store tax was approved in Great Atlantic & Pacific Tea Company v. Grosjean, 301 U.S. 412, 57 S. Ct. 772 (1937), in which the court sustained a tax on chain stores graduated according to the total number of stores in the chain, including stores located outside of the state. In Grosjean the court distinguished L. K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481 (1933), in which the court had held invalid a chain store tax under which the graduation depended upon whether the chain had stores in more than one county in the state. The first of these chain store tax cases was State Board v. Jackson, 283 U.S. 527, 51 S. Ct. 540 (1931), in which the court upheld the Indiana tax under which the graduated rate depended only on the number of stores within the state. To be contrasted with these cases is Stewart Dry Goods Co. v. Lewis, 294 U.S. 550, 55 S. Ct. 525 (1935), in which the court held invalid a chain store tax under which the graduated rate depended upon total volume of business and was applied to gross sales. See the discussion in Sholley, supra note 1 at 250-256, 261-265. Also see the discussion in Chapter V, Part C, infra.

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In substantially all cases the state constitutions have the equivalent of an "equal protection" limitation—that is, some clause of the state constitution will bar "unreasonable" classifications in state legislation. While the United States Supreme Court will have the last word as to the meaning of "reasonable" under the federal equal protection clause, so will the forty-eight state courts have the last word to say as to the meaning of "reasonable" under their respective state constitutional limitations.

But in the final analysis the important point is, that even though as to some individual cases there will be differences of opinion concerning the reasonableness of the classification, the state and federal equal protection limitations will afford this minimum standard of protection even in the absence of state constitutional uniformity in taxation clauses. Indeed, many would contend that the abolition of the state uniformity in taxation clauses would not be undesirable, since legislative discretion—though obviously increased—would still be subject to this minimum standard of reasonableness, which would, however, permit a great flexibility in arranging a state revenue structure to approach more nearly a just distribution of the tax burden.24 Again, however, a question-begging term is used. For, indeed, advocates of the strictest degree of uniformity in taxation will insist that such absolute uniformity is the key to a "just" distribution of the tax burden. Thus, ultimately, the decision must be one of fiscal policy, which in turn governs the choice of constitutional doctrine. If one does accept the view that absolute uniformity is not necessarily the sine qua non for a wise fiscal policy, then the needed protection against arbitrary legislative action is found in the federal and state equal protection limitations.