CHAPTER VI

Conclusion

SEVERAL general conclusions may be drawn from the preceding study of the state constitutional limitation of uniformity and equality in taxation. First, there should be unanimous agreement that the so-called uniformity clauses and their supplementary provisions dealing with particular rules of uniformity have produced, more than anything else, confusion and litigation. This has been accomplished without achieving to any substantial degree the ideal of “absolute uniformity” in the distribution of the property tax burden when such was the ideal. The Illinois experience illustrates as well as any, how if legal classification is outlawed a de facto classification tends to come to life, but without the safeguards of a system of classification based on law. However fair-minded tax officials may be, their own private views and administration of a classification system is hardly a substitute for a legal classification carrying with it procedural safeguards. The Illinois experience also illustrates how a de facto classification system can eventually have a semblance of de jure characterization bestowed upon it. Furthermore, this study has concerned itself only with the problem of classification for effective rates and exemptions. There is no consideration of the very acute problem of actually achieving equal assessment under some method of valuation.¹

Second, it should also be clear that no policy, whether it favors a strict or liberal limitation, has profited by the overlapping and redundant uniformity structures which were so often

¹ See Jensen, Property Taxation in the United States (1931), especially Chapters 12 and 18.
found. Too often there has been a tendency to clutter up the constitution with a prolix and complicated uniformity structure which still left many of the really hard problems unsolved. Whatever policy one adheres to, it would profit by a clarification of the uniformity structures in many of the states. Of course, to the other extreme, some uniformity structures consist primarily of nothing more than one of the several types of basic clauses. In those instances problems and controversies are bound to arise as to the particular rules by which the general policy might be implemented since there is an insufficient guide to or delineation of the policy underlying the provision.

Third, a definite trend to "return" to a policy permitting some degree of classification in the taxation of property was revealed. The situation is now in a near balance, but with a slant toward the liberalization trend. There remains considerable room for future development.

Fourth, and perhaps most important, it should be clear that whatever one's policy might be, the concept of uniformity and equality in taxation as a desirable goal should be fully understood before an attempt is made to formulate that policy in the form of a constitutional limitation. Probably a good part of the confusion has stemmed from a failure to adhere to that fundamental principle. This is so because "uniformity and equality in taxation" as a policy goal is subject to much controversy. If the fundamental tenet is to ensure a "fair distribution" of the tax burden, that alone is not a sufficient guide because opposite viewpoints claim that their way—classification or absolute uniformity, as the case might be—is the means to fulfillment of such a policy. Thus, a more definite policy must be formulated—precisely what is necessary to achieve the policy goal which underlies the constitutional limitation of uniformity in taxation?

In the absence of a sufficiently formulated policy—even
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when such a policy is clearly had, in the absence of sufficient guides in the constitutional limitation to implement that goal—, the problem of interpreting and applying the uniformity limitation will remain unsettled and subject to considerable controversy. It is suggested that the wise solution to the problem is to spell out, in a general way, in the constitution the degree of uniformity desired of all taxes. The writer emphasizes "in a general way" because this is quite a different thing from putting the details of a tax structure into the constitution, such as is done in Louisiana. Rather, the suggestion is to be more precise in formulating the general limitation of uniformity. This requires a real understanding of the many ramifications of the limitation which have developed over a period of years, and the degrees of uniformity which may be possible. Consequently, for property taxes it is suggested that the uniformity limitation be spelled out in terms of the three basic particular rules of uniformity used throughout this monograph: universality, effective rates, and method of taxation. The many words, the different phrases of the numerous court opinions can be fitted into these rules and make sense wholly apart from apparent clashes in language used. The actions of the courts in fact have followed this division of uniformity, and future action can well be planned on the basis of the three particular rules of uniformity with a result which should leave little room for controversy in the application and interpretation of the limitation. Thus, if property may be exempted, say so. If not, spell that out. Again, this limitation should be in general terms, it is not necessary to clutter up the constitution with innumerable classes of property enumerated as exemptible. Certainly, if property may be exempted a limitation of reasonable classifications should suffice. Again, the policy desired as to the degree of uniformity in effective rates should be spelled out in general terms.
Finally, the method by which property may be taxed should be specified. In the same vein, the controversial taxes such as the income tax can be dealt with by the same method.

Of course, there can be no specific recommendations of particular phraseology because much depends on local policy factors. There is no reason for uniformity among the states in dealing with this matter. Different areas will very properly differ as to a desirable fiscal policy. Consequently, once that policy is agreed upon in terms of the content of the uniformity limitation which will effectively implement that policy, then the problem of drafting the individual clauses can be accomplished without substantial difficulties.