State Taxation of National Bank Stocks: Uncertainty of Its Constitutional Basis

Alfred J. Schweppe
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UNCERTAINTY OF ITS CONSTITUTIONAL BASIS

By Alfred J. Schweppe*

It has been constantly assumed in modern decisions concerning the power of the states to levy a tax on national bank stock, that such power of the states rests solely on the permissive legislation of Congress. It is the purpose of this discussion to raise two questions: (1) whether this assumption it warranted by the early decisions upon which it purports to be based; and (2)

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1People v. Weaver, (1879) 100 U. S. 539, 543, 25 L. Ed. 705: "That the provision which we have cited was necessary to authorize the states to impose any tax whatsoever on these bank shares is abundantly established by the cases of McCulloch v. Maryland, 4 Wheat. 316; Osborn v. Bank of United States, 9 Wheat. 738, and Weston v. City of Charleston, 2 Pet. 449.

"As Congress was conferring a power on the states which they would not otherwise have had. . . ."

Owensboro National Bank v. Owensboro, (1898) 173 U. S. 664, 668, 19 S. C. R. 537, 43 L. Ed. 850: "It follows then necessarily from these conclusions that the respective states would be wholly without power to levy a tax, either direct or indirect, upon the national banks, their property, assets or franchises, were it not for the permissive legislation of Congress."

Bank of California v. Richardson, (1919) 248 U. S. 476, 483, 39 S. C. R. 165, 63 L. Ed. 372, following a full discussion of the congressional intent in passing section 219 of the Revised Statutes of the United States: "Full and express power on that subject was given accompanied by a limitation preventing the exercise in a discriminatory manner, a power which from its very limitation was exclusive of other methods of taxation and left, therefore, no room for taxation of the federal agency or its instrumentalities or essential accessories except as recognized by the provision in question."

Smith v. Kansas City Title & Trust Co., (1921) 255 U. S. 180, 41 S. C. R. 243, 65 L. Ed. 360: "The same principle has been recognized in the Bank Tax Cases, declaring the power of the states to tax the property and franchises of national banks only to the extent of the laws authorized by Congress. Owensboro Nat. Bank v. Owensboro, (1898), 173 U. S. 664, 19 S. C. R. 537, 43 L. Ed. 850, involved the validity of a franchise tax in Kentucky on national banks. In that case this court declared . . . that the states were wholly without power to levy any tax directly or indirectly upon national banks, their property, assets or franchises, except so far as the permissive legislation allowed such taxation."

See also note 18.
whether, assuming that a state has no such power under the constitution, Congress has the power to grant such permission.

Although the cases of *McCulloch v. Maryland*, *Osborne v. Bank of the United States*, and *Weston v. City of Charleston* are frequently referred to as denying the power of the states to levy such a tax, it seems clear that Chief Justice Marshall, who rendered those decisions, admitted the power of the states to tax national bank stock as distinguished from a tax upon the corporation, its capital, its operations, and the federal securities held by them. In *McCulloch v. Maryland* he said:

“This opinion does not deprive the states of any of the resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the state, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the state. But this is a tax on the operations of the bank and is, consequently, a tax on the operation of an instrument employed by the government of the Union to carry its powers into execution. Such a tax must be unconstitutional.”

That in excepting from the scope of the decision “the interest which the citizens of Maryland may hold in this institution” Marshall expressly had in mind the power of the state to tax national bank stock seems clear not only from a careful reading of the language, but also because the exception was made with direct reference to, and the language of it in part adopted from, the argument of Mr. Pinkney, who, while contending that the state had no power to tax the bank itself, conceded that the state could tax the stock of the United States Bank in the hands of individual citizens. Almost simultaneously with the decision of *McCulloch v. Maryland*, the South Carolina court decided that though the state could not tax the bank as such, it could tax United States

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2 *(1819)* 4 Wheat. (U. S.) 316, 4 L. Ed. 579.
3 *(1824)* 9 Wheat. (U. S.) 738, 6 L. Ed. 204.
4 *(1829)* 2 Pet. (U. S.) 449, 7 L. Ed. 481.
5 See note r.
6 *(1830)* 4 Wheat. (U. S.) 316, 436, 4 L. Ed. 579.
7 *(1819)* 4 Wheat. (U. S.) 316, 396-397, 4 L. Ed. 579: “It is objected, however, that the act of Congress, incorporating the bank, withdraws property from taxation by the state, which would otherwise be liable to state taxation. We answer, that it is immaterial, if it does thus withdraw certain property from the grasp of state taxation, if Congress had authority to establish the bank, since the power of Congress is supreme. But, in fact, it withdraws nothing from the mass of taxable property in Maryland, which the state could tax. The whole capital of the bank belonging to private stockholders, is drawn from every state in the Union, and
Bank stock held by an individual. This South Carolina case was cited to the Supreme Court in Weston v. City of Charleston, and not discussed. Chief Justice Marshall, however, in the latter case reaffirmed the exceptions made in McCulloch v. Maryland, the second of which in modern decisions has been ignored or has dropped out of sight. That Marshall and his contemporaries regarded the states as having power under the constitution to tax national bank stock, as distinguished from the bank itself, also appears from the dissenting opinion of Mr. Justice Thompson in Weston v. City of Charleston.

This view that the states had the power to tax, and that the congressional statute was declaratory merely of an existing state power of taxation subsisted as late as 1865. Up to that time then it may be safely said that the second exception in McCulloch v. Maryland was believed to recognize the constitutional power of the states to tax national bank stock.

The second stage of the history of this doctrine is revealed the stock belonging to the United States previously constituted a part of the public treasure. Neither the stock belonging to citizens of other states, nor the privileged treasure of the United States mixed up with this private property were previously liable to taxation in Maryland; and as to the stock belonging to its own citizens, it still continues liable to state taxation, as a portion of their individual property, in common with all other private property in the state.

The italics are ours. A comparison of the italicised words with Marshall's reveals a striking similarity. It should be noted, moreover, that both of those eminent men had doubts about the taxability of bank stock belonging to non-residents.


(1829) 2 Pet. (U. S.) 449, 461, 7 L. Ed. 481.

(1829) 2 Pet. (U. S.) 449, 469, 7 L. Ed. 481: "It has been supposed that a tax on stock [United States bonds] comes within the exceptions stated in the case of McCulloch v. Maryland. We do not think so."

(1829) 2 Pet. (U. S.) 449, 479, 7 L. Ed. 481: "The broad proposition laid down in McCulloch v. Maryland that the states cannot tax any instrument of the general government in the execution of its powers, must be understood as referring to a direct tax upon such means or instrument; and that such was the understanding of the court is to be inferred from the exception of bank stock from the general rule." The italics are ours.

Van Allen v. Assessors, (1865) 3 Wall. (U. S.) 573, 18 L. Ed. 229. Chief Justice Chase said in the course of the dissenting opinion at p. 595, after quoting the exceptions in McCulloch v. Maryland: "With these principles and this exception in view, Congress, in order that nothing might be left to inference, expressly authorized state taxation, of the real estate held by national banking associations, and of the interest of private citizens in them. This was done by the three provisos to the 41st section. . . . [tax on shares]." And at p. 597: "We think this is the plain sense of these provisos [section 5219]. They adopt the exception ad-
in the leading case of *Van Allen v. Assessors,* where the majority of the court recognized the original power of the states to tax national bank stock, but ruled that Congress through the doctrine of concurrent power had the right by statute to limit the power of the states in that regard. The minority of the court agreed to that view, but dissented on another point.

mitted by Chief Justice Marshall to the rule of exemption in *McCulloch v. Maryland.* *They subject the interest held by citizens in national banking associations* to a tax in common with other property of the same description, and they give to the exception a practical application by determining what property is of the same description with the interest to be taxed in common with it. The italics are ours. These expositions of the statute were by the way merely, and not called in question by the majority of the court.

"(1865) 3 Wall. (U. S.) 573, 18 L. Ed. 229.

"(1865) 3 Wall. (U. S.) 573, 585, 18 L. Ed. 229: "It is said that Congress possesses no power to confer upon a state authority to be exercised which has been exclusively delegated to that body by the constitution, and consequently, that it cannot confer the right of taxation; nor is a state competent to receive a grant of any such power of Congress. We agree to this. But as it respects a subject-matter over which Congress and the states may exercise a concurrent power, but from the exercise of which Congress, by reason of its paramount authority, may exclude the states, there is no doubt Congress may withhold the exercise of that authority and leave the states free to act... The power of taxation under the constitution as a general rule, and as has been repeatedly recognized in adjudged cases in this court, is a concurrent power. The qualifications of this rule are the exclusion from the taxation of the means and instruments employed in the exercise of the functions of the federal government.

"The remaining question is, has Congress legislated in respect to these associations, so as to leave the shares of the stockholders subject to state taxation." And at p. 584: "Now it is this interest which the act of Congress has left subject to taxation by the states, under the limitations prescribed...."

It should be expressly noted here that the opinion does not regard bank stock as "means and instruments employed in the exercise of functions of the federal government," from the taxation of which the states are absolutely excluded, but as an object falling under the concurrent taxing power of the states and Congress. That is, this case openly recognizes that bank stock does not fall under the inhibition of the early cases on the subject.

See also *Adams v. Nashville,* (1877) 95 U. S. 19, 22, 24 L. Ed. 369: "The plain intention of the statute [section 5219] was to protect the corporations formed under its authority from unfriendly discrimination by the states in the exercise of their taxing power." And see *Bank of California v. Richardson,* (1919) 248 U. S. 476, 482, 39 S. C. R. 165, 63 L. Ed. 372, where Chief Justice White says: "The forms of expression used in the section make it certain that in adopting it the legislative mind had in view the subject of how far the banking associations created were or should be made subject to state taxation, which presumably it was deemed necessary to deal with in view of the controversies growing out of the creation of the bank of the United States and dealt with by decisions of this court." Citing the *McCulloch,* the *Osborn,* and the *Weston* cases.

See note 12. The minority dissented on the ground that a tax on
The third stage of the doctrine begins in the assumptions made in *People v. Weaver* and *Owensboro National Bank v. Owensboro*, where it is said, apparently in interpretation of the early decisions of the court, that the states had no power at all to tax national bank stock, except by virtue of the congressional permission conferred by section 5219 of the Revised Statutes of the United States.

Oddly enough, because of these assumptions, the question whether a state can tax national bank stock apart from the congressional restriction, has never been expressly decided by the Supreme Court as a constitutional question unless the *Van Allen case* be so regarded and its reasoning accepted. The early cases merely decided that under the constitution a state cannot tax national bank notes, the right of a branch Bank of the United States to do business, and United States stocks or bonds. These cases go no further than to hold that a state cannot directly tax a national bank or federal securities, and do not extend to bank stock. Moreover, the reasoning of these cases which, it has been assumed, covers national bank stock must be regarded as limited by the second exception made in *McCulloch v. Maryland*. And

the bank stock was, in effect, a tax on the government securities held by the bank and therefore void under the early cases. The majority held that the stock might be taxed although the whole of the banking capital was invested in government securities, because of the separate entity of the corporation and its stockholders.

"See note 1.

"See note 1. And see to the same effect Mercantile Bank v. New York, (1886) 121 U. S. 138, 154, 7 S. C. R. 826, 30 L. Ed. 895: "Neither the banks themselves, nor their capital, however invested, nor the shares of stock held by individual citizens could be taxed by the states in which they were located without the consent of Congress, being exempted from the power of the states in this respect, because these banks were means and agencies established by Congress in execution of the powers of the government of the United States. It was deemed consistent, however, with these national uses, and otherwise expedient to grant to the states the authority to tax them within the limits of a rule prescribed by law."

"The majority of the court held in *Van Allen v. Assessors*, (1865) 3 Wall. (U. S.) 573, 18 L. Ed. 259, that the act of Congress, rightly construed, subjected national bank shares to state taxation, even though the whole of the banking capital was invested in national securities, and that the act so construed was constitutional. The constitutional questions were but casually considered, and the reasoning in support of constitutionality has apparently long since been forgotten and departed from.


"*Weston v. City of Charleston*, (1829) 2 Pet. (U. S.) 449, 7 L. Ed. 481."
when added to this is the holding in *Van Allen v. Assessors* that the shares of the stockholders are separate and distinct from the property of the bank, and that while a tax cannot be constitutionally levied on the bank itself, a tax may nevertheless be levied on the shares because it is not a tax on the bank; there is perhaps some room for believing that the Supreme Court, on squarely facing the constitutional question, may revert to the opinion entertained by Marshall and his contemporaries, that in regard to

23(1865) 3 Wall. (U. S.) 573, 584, 18 L. Ed. 229: "This [the shareholder's] is a distinct independent interest or property, held by the shareholder like any other property that may belong to him. Now, it is this interest which the act of Congress has left subject to taxation by the states, under the limitations prescribed. . . ."

This doctrine has since been many times reasserted. See Owensboro Nat. Bank v. Owensboro, (1898) 173 U. S. 664, 681, 19 S. C. R. 537, 43 L. Ed. 850, where it is said: "It cannot be doubted that as a general principle it is settled that taxation of the property, franchises, and right of a corporation is one thing, and the taxation of the shares of stock in the names of the stockholders is another and different one." See to the same effect Home Savings Bank v. Des Moines, (1907) 205 U. S. 503, 57 S. C. R. 571, 51 L. Ed. 601; Bulow & Potter v. City of Charleston, (1819) 1 Nott & McCord (S. C.) 527; see, however, Bank of California v. Richardson, (1919) 248 U. S. 476, 485, 39 S. C. R. 165, 63 L. Ed. 372, where it is said (three justices dissenting): "But it is undoubtedly that the statute for the purpose of preserving the state power of taxation, considering the subject from the point of view of ultimate beneficial interest, treated the stock interest, that is, the stockholder, and the bank as one, and subject to one taxation by the methods which it provided." That such a view of the identity of the corporation and the stockholder is erroneous and unnecessary to the decision, which might have been rested on the exclusiveness of the statute alone, see the dissenting opinion of Mr. Justice Pitney in the same case. And see Eisner v. McComber, (1920) 252 U. S. 189, 213-214, 40 S. C. R. 189, 64 L. Ed. 521, where the doctrine of separate entity of a corporation from the stockholders was reasserted by the court.

24It is true that the argument here suggested was referred to in the dissenting opinion of Mr. Chief Justice Chase in *Van Allen v. Assessors*, (1865) 3 Wall. (U. S.) 573, 592-593, 18 L. Ed. 229, as follows: "But it was urged in the argument that though the capital of a bank, so far as it consists of national securities, is exempt from state taxation, the shares of that capital may be taxed without reference to the legislation of Congress, and without regard to the national securities which they represent. . . ."

"We do not understand the majority of the court as asserting that shares of capital invested in national securities could be taxed without authority of Congress. We certainly cannot yield our assent to such a proposition."

But it must be borne in mind that the reason for the dissent was that a tax on the bank stock was an indirect tax on the bonds, a view expressly denied by the majority of the court. The reason for the dissent appears more fully on p. 596, where the court, admitting that the early cases never passed upon state taxation of national bank stock, asserts that Marshall "would have detected taxation of bonds under the disguise of taxation of the capital or shares of capital, in which they were invested."
national bank stock *McCulloch v. Maryland* "does not deprive the states of any resources which they originally possessed."\(^2\) States whose taxing programs have been endangered by the recent decisions of *Merchants' National Bank v. Richmond*\(^2\) and *Eddy v. First National Bank of Fargo*\(^2\) will have an opportunity of asking the court to determine the power of the states in this matter under the federal constitution.

The second question is this: assuming that the Supreme Court will hold that the state does not have an original power under the constitution to tax national bank stock, whence does Congress derive its authority to give the states permission to do so? In *Van Allen v. Assessors* it was said that Congress and the states possess a concurrent power to tax national bank stock, but that Congress has the right to restrict the exercise of state power in that regard,\(^2\) and that therefore section 5219 was within the legislative province of Congress. This view seems to overlook the doctrine of *Gibbons v. Ogden*\(^2\) that the taxing power of Congress and the taxing power of the states are separate and distinct, and sovereign in their own sphere. That is, they are not

\(^{2a}\)See text for note 6.

\(^{2b}\)(1921) 41 S. C. R. 619; see for full discussion of the case 6 MINNESOTA LAW REVIEW 56.

\(^{2c}\)(C. C. A., eighth circuit, 1921) 275 Fed. 550. For a discussion of this case, see in this issue RECENT CASES, p. 239.

\(^{2d}\)See note 14.

\(^{2e}\)(1824) 9 Wheat. (U. S.) 1, 199, 6 L. Ed. 23: "Congress is authorized to lay and collect taxes, etc., to pay the debts, and provide for the common defense and general welfare of the United States. This does not interfere with the power of the states to tax for the support of their own governments; nor is the exercise of that power by the states an exercise of any portion of the power that is granted to the United States. In imposing taxes for state purposes, they are not doing what Congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the states. When, then, each government exercises the power of taxation, neither is exercising the power of the other." And at p. 201: "But the power to levy taxes could never be considered as abridging the right of the states on that subject." See to the same effect Lane County v. Oregon, (1868) 7 Wall. (U. S.) 71, 76-78, 19 L. Ed. 67, where the doctrine of *concurrency* of the taxing power is construed to mean two co-existing independent powers, except that "in case of a tax on the same subject by both governments, the claim of the United States, as the supreme authority, is to be preferred; but with this qualification it [the state taxing power] is absolute. . . . There is nothing in the constitution which contemplates or authorizes any abridgment of this power by national legislation." See also Passenger Cases, (1849) 7 How. (U. S.) 282, 298-299. That the expression "the claim of the United States is to be preferred" does not mean that Congress may restrict existing state power, but that the federal claim may be first collected, see 26 R. C. L. 108; 11 Encyc. of U. S. Reports 386.
concurrent except perhaps in the sense of being coexistent; they are not one power exercised by both, but two powers exercised separately, and each within its proper bounds is not under the control of the other. Just why Congress then can undertake to restrict the power of the states to tax an article which Marshall conceded to be within the sphere of state power is not clear. If the view of Mr. Justice Nelson in the Van Allen case is correct, to-wit, that the taxing power, at least in regard to bank stock, is "a concurrent power" exercisable by both the states and Congress, "but from the exercise of which Congress, by reason of its paramount authority, may exclude the states," it is not perceived why the same definition of concurrency does not apply to the taxing power in general, nor what limit is fixed on the excluding or restricting power of Congress, nor what becomes of the division between state and federal taxing power made by Marshall in Gibbons v. Ogden, where the meaning of the word concurrent was discussed by counsel and court at great length.

Moreover, the change of view taken in People v. Weaver, that rather than being a restriction of existing state power, section 5219 was a delegation of power by Congress to the states, "which they would not otherwise have had" is answered by the reasoning of Mr. Justice Nelson in Van Allen v. Assessors. In Home Saving Bank v. Des Moines it is said: "It may well be doubted whether Congress has the power to confer upon the state the right to tax obligations of the United States." Since the power to delegate to the states the right to tax shares of national bank stock, provided that the court should find that the states have no original power in spite of McCulloch v. Maryland and Van Allen v. Assessors, must rest upon the same basis as the power to confer the right to tax obligations of the United States, the court is faced with the duty of determining whether such power can be delegated at all, and whether the answer of Mr. Justice Nelson is not conclusive upon the question.

See note 29.

See note 29, and for arguments of counsel on the point see Gibbons v. Ogden, (1824) 9 Wheat. (U. S.) 1, 42, 88, et passim, 6 L. Ed. 23.

See note 1.

See first half of quotation in note 14; see also Gibbons v. Ogden, (1824) 9 Wheat. (U. S.) 1, 207, 6 L. Ed. 23, Marshall, C. J., speaking: "Although Congress cannot enable a state to legislate, Congress may adopt the provisions of a state on any subject."

(1907) 205 U. S. 503, 27 S. C. R. 571, 51 L. Ed. 901.

See first half of quotation in note 14.
If the states have no original power to tax national bank shares, and if Congress has no authority to delegate such power, the shares can never be subjected to state taxation except by constitutional amendment; and state banks, unless their shares are also exempted from taxation, will soon find that their taxable

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In Van Allen v. Assessors, (1865) 3 Wall. (U. S.) 573, 583, 18 L. Ed. 229, Mr. Justice Nelson, in meeting the argument advanced by counsel and supported by the minority of the court, says: "Were we to admit, for the sake of argument, this to be tax of the bonds or capital stock of the bank, it is but a tax upon the new uses and privileges conferred by the charter of the association; it is but a condition annexed to the enjoyment of this new use and new application of the bonds; and if Congress possessed the power to grant these new rights and privileges, which none of learned counsel denies, and which the whole argument assumes, then we do not see but the power to annex the conditions is equally clear and indisputable. . . . The tax is the condition for the new rights and privileges conferred upon these associations." And in Clark Distilling Company v. Western Maryland Ry., (1917) 242 U. S. 311, 326, 37 S. C. R. 180, 61 L. Ed. 326, Mr. Chief Justice White, speaking for the court, says: "The argument as to delegation of power to the states rests upon a misconception. It is true that the regulation which the Webb-Kenyon Act contains permits state prohibitions to apply to movements of liquor from one state to another, but the will which causes the prohibitions to be applicable is that of Congress, since the application of state prohibitions would cease the instant the act of Congress ceased to apply."

In the first of these excerpts the court argues that, assuming national bank stock and federal securities to be in the same class, the taxing power of the state is permitted to operate as a condition precedent to the right of the banking corporations to do business. In the second excerpt the contention of the court is that while Congress does not confer any power upon the states, it so acts as to strip intoxicating liquor of its immunity from the operation of state laws. What difference there is between making the operation of state power a condition precedent, and a recognition of power in the states; and what difference there is between stripping an article of its constitutional immunity from the operation of state laws and a delegation of power to the states to act in regard to that subject-matter, is not perceived. If in substance the act of Congress amounts to a delegation of power, the questions still remain whether Congress may constitutionally affix a condition that amounts to a delegation of power, and whether Congress may strip of an immunity when it amounts to a delegation of power. Would such a condition and such a removal of immunity, involving a delegation of power, be constitutional? See discussion of this phase of the Clark Distilling case in an article by Noel T. Dowling and F. Morse Hubbard, entitled Divesting an Article of its Interstate Character, 5 Minnesota Law Review 100, especially at pp. 114-116.

A caution should here be observed not to misconceive the language of Marshall C. J., in Gibbons v. Ogden at p. 202, where he says: "'A duty on tonnage,' is as much a tax, as a duty on imports or exports; and the reason which induced the prohibition of those taxes, extends to this also. This tax may be imposed by a state with the consent of Congress; and it may be admitted that Congress cannot give a right to a state in virtue of its own powers." Congress is expressly authorized by the constitution, art. 1, sec. 10, clause 3, to consent to such a tax; and it does not follow that Congress can consent to any other tax, where such consent is not authorized by the constitution. As a matter of fact it would seem a
shares, as compared to the tax-exempt shares of national bank stock, will go begging for want of purchasers. The only manner in which the present congressional legislation, or any future congressional legislation with whatever retroactive clauses\(^2\) may be appended thereto, is sustainable seems to be adopting the reasoning in *Van Allen v. Assessors*, that the taxing power under the constitution is a *concurrent* power, with authority in Congress to restrict the exercise of state power. If that be true, the Supreme Court will be obliged to define anew what is the meaning of the word *concurrent*\(^3\) as applied to the taxing power.

The conclusions to be drawn from this discussion are: (1) that beginning with Marshall's time the Supreme Court has regarded the states as having, at first, full constitutional power to tax national bank stock, later, a power restrictable by Congress because of the concurrent nature of the taxing power, and finally, no power at all except such as has been delegated by Congress; (2) that the extent of the original power of the states to tax national bank stock has never been expressly decided, unless the *Van Allen* case be so regarded and its reasoning accepted; and (3) that the basis of the right by which the states to-day assume to tax national bank stock is not clear, the Supreme Court having shifted\(^4\) its ground from considering it to be a restriction of existing state power, on the one hand, to a delegation of congressional power, on the other, the constitutional basis of both of which is involved in much uncertainty. It would seem that the time is ripe for a thorough reconsideration of all the leading cases on the important constitutional questions of the state power to

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reasonable interpretation, that since the constitution has expressly defined those instances in which Congress can consent to state taxation, that Congress cannot consent in any other case. See Noel T. Dowling and F. Morse Hubbard, Divesting an Article of its Interstate Character, 5 *MINNESOTA LAW REVIEW* 100, at pp. 116-117.

\(^2\)In 6 *MINNESOTA LAW REVIEW* 56, at p. 58, the advisability of a retroactive clause is suggested. This suggestion seems to have been adopted by the Minnesota State Tax Commission and at its recommendation incorporated in a bill now pending before Congress.

\(^3\)It is significant that the word *concurrent* appears nowhere in the federal constitution except in the nineteenth amendment, and that the meaning of the word, although often used in the Supreme Court cases, does not seem to have a clearly defined meaning.

\(^4\)It should be pointed out here that the Court has shifted only in its language concerning the constitutional question; and that in regard to the interpretation of the phrase that state taxation "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens," the Supreme Court in a long line of decisions has not deviated. See 6 *MINNESOTA LAW REVIEW* 56.
tax" and the congressional power to restrict or delegate," so that the doubt arising from the variances in the cases up to the present time may be set at rest.
