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Walter Hellerstein

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Which Model of “Fiscal Federalism”?

FISCAL FEDERALISM IN THE UNITED STATES

Walter Hellerstein
Francis Shackelford Professor of Taxation
Distinguished Research Professor
University of Georgia Law School

Torino
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US Fiscal Federalism

- Introduction and Overview
 - Lack of a discrete body of foundational rules
 - “A page of history is worth a volume of logic”
 - Fiscal constitution
 - Distribution of taxing powers
 - Control and coordination of taxing powers
 - Effective exercise of taxing powers



The Fiscal Constitution

- Federal Fiscal Powers
 - Federal taxing power
 - Federal spending power
 - Other federal fiscal powers
- State Fiscal Powers
 - State taxing power
 - State spending power
- Intergovernmental Tax Immunities



The Fiscal Constitution

- Federal Taxing Power
 - “Power to lay and collect Taxes, Duties, Imposts and Excises”
 - Limitations
 - Revenue bills must originate in House
 - No taxation of exports
 - No “direct” tax without apportionment
 - 16th Amendment
 - Due process limits on retroactive legislation



The Fiscal Constitution

- Federal Spending Power
 - “Power to lay and collect Taxes, Duties, Imposts and Excises ... to pay the Debts and provide for the common Defense and General Welfare of the United States”
 - Limitations (*South Dakota v. Dole* (1987))
 - Pursuit of general welfare
 - Conditional grants to states must be explicit
 - Relation to federal interest
 - Cannot violate other constitutional provisions



The Fiscal Constitution

- Other Federal Fiscal Powers
 - Power to borrow
 - Power to coin money and regulate value



The Fiscal Constitution

- State Fiscal Powers: Overview
 - States retain all “sovereign” powers not delegated to federal government
 - Taxing and spending powers are essential attributes of state “sovereignty”



The Fiscal Constitution

- State Taxing Power: Limitations
 - No taxation of imports or exports
 - No “duty of tonnage”
 - “Horizontal” federalism restraints
 - Compact Clause – no compacts enhancing state vis-à-vis federal power
 - “Negative” Commerce Clause – no burdens on interstate commerce
 - Due process clause – territorial restraints
 - Equal protection clause – classification restraints



The Fiscal Constitution

- Intergovernmental Tax Immunities
 - Historical development of doctrine
 - State taxation of the federal government and its instrumentalities
 - Federal taxation of state government and its instrumentalities



Distribution of Taxing Powers

- Property Taxes
 - Effective “tax assignment” to states
 - “No ... direct tax shall be paid, unless in proportion to the Census.”
 - “Direct taxes shall be apportioned among the several states”
 - Historical precedent: federal property taxes (1813, 1815, 1861)



Distribution of Taxing Powers

- Concurrent Taxing Powers
 - Income Taxes
 - Consumption and Other Excise Taxes
 - Prohibition on federal taxation of exports
 - Prohibition on state taxation of imports and exports
 - Wealth Transfer Taxes



Control and Coordination of Taxing Powers

- Congress's Plenary Power to Control and Coordinate Taxing Powers
- Property Taxes
- Income Taxes
 - Federal-State Base Conformity
 - Tax "Concessions"
 - Deductibility of State and Local Taxes from Federal Base
 - Exclusion of State and Local Government Bond Interest
 - Other Congressional Legislation Addressing State Power to Tax Income



Control and Coordination of Taxing Powers

- Consumption and Other Excise Taxes
 - Federal legislation addressed to state taxation
- Wealth Transfer Taxes
 - Federal estate tax of 1916 and state death tax credit
 - Federal-state death tax coordination: 1926-2001
 - Repeal of federal estate tax and the end of federal-state death tax comity



Effective Exercise of Taxing Powers

- Federal, State, Local Tax Revenues (FY 2009)
 - Total: \$3,307,842M (\$3.3 trillion)
 - Federal: \$2,052,872M (\$2 trillion) (62%)
 - State and Local: \$1,254,970M (\$1.25 trillion) (38%)
 - State: \$691,613M (\$692 billion) (21%)
 - Local: \$563,357M (563 billion) (17%)

Effective Exercise of Taxing Powers

■ Federal Tax Revenues (FY 2009)

■ Individual income	\$915M	44.6%	} 95%
■ Corporate income	\$138M	6.7%	
■ Payroll*	\$891M	43.4%	
■ Excise	\$62M	3.0%	
■ Estate/gift	\$23M	1.1%	
■ Customs duties	\$22M	1.1%	

*Social Security



Effective Exercise of Taxing Powers

- State and Local Tax Revenues (FY 2009)
 - Individual income \$252M 20.1%
 - Corporate income \$48M 3.8%
 - Property \$458M 36.5%
 - General sales \$285M 22.7%
 - Selective excise* \$83M 6.6%
 - Other \$128M 10.2%

*Motor fuel, tobacco, alcohol, etc.



Effective Exercise of Taxing Powers

- State Tax Revenues (FY 2009)
 - Individual income \$235M 34.0%
 - Corporate income \$41M 5.9%
 - Property \$13M 1.9%
 - General sales \$224M 32.4%
 - Selective excise* \$80M 11.6%
 - Other \$99M 14.3%

*Motor fuel, tobacco, alcohol, etc.



Effective Exercise of Taxing Powers

- Local Tax Revenues (FY 2009)
 - Individual income \$17M 3.0%
 - Corporate income \$6M 1.2%
 - Property \$445M 79.1%
 - General sales \$62M 11.0%
 - Selective excise* \$3M 0.7%
 - Other \$30M 5.2%

* Motor fuel, tobacco, alcohol, etc.



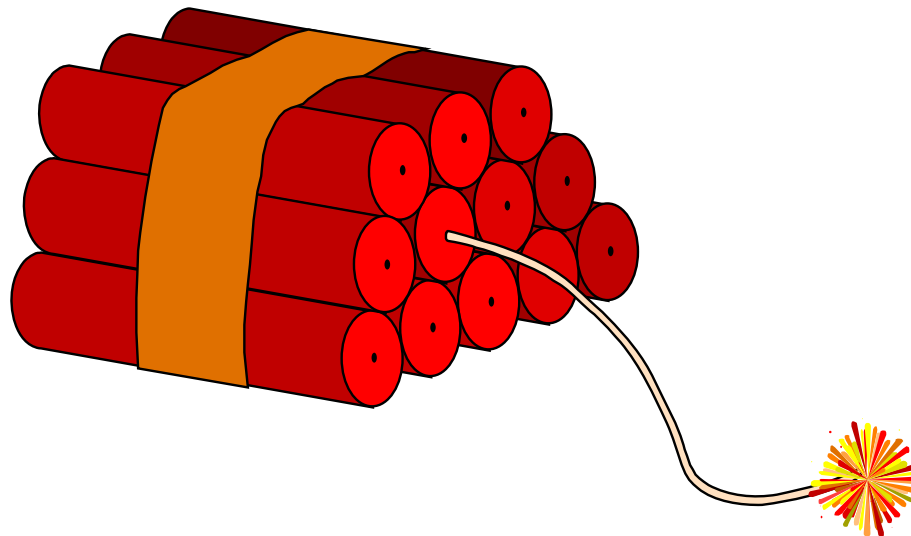
Effective Exercise of Taxing Powers

- Functional Allocation of Taxing Powers
 - Income – concurrent
 - Consumption – state
 - Property – local
 - Wealth transfer – historical footnote
- “American Exceptionalism”
 - 95% of national revenues from income
 - No national consumption tax



Conclusion

- “A page of history is worth a volume of logic.”
- Pragmatic work in progress or



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