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RECIPROCAL AND RETALIATORY LEGISLATION
IN THE AMERICAN STATES

By JOSEPH R. STARR*

EARLY in this century, a distinguished Canadian scholar voiced a criticism of federal government that has become classic.¹ He pointed out that federalism is ill-suited to the conditions of modern industrialized society, and predicted that it will eventually be displaced by some form of national and centralized government. He wrote at a time when federalism was widely favored as the solution of many governmental ills. A half century earlier, the United States had been the only important example of federalism. In the second half of the nineteenth century, however, federalism was adopted by Switzerland, the German Empire, Canada, and Australia. Its seeming success in all these places suggested its extension elsewhere, and even led to such grandiose schemes as that of British imperial federation.

In the twentieth century, federalism has fared by no means so well. It was rejected in the formation of the Union of South Africa. It made an appearance in the post-war constitutions of Europe only in a questionable form in two of the democratic constitutions—those of Germany and Austria—and in the strange devices of the Soviet Union. Germany has lately abandoned federalism altogether,² and few remnants of it are left in the new Austrian constitution.³ British imperial federation was dealt a last blow by the Inter-Imperial Relations Committee in 1926. In the older federal states, the centralizing tendency has gone on apace, while in highly centralized states the demand is not for federalism, but merely for decentralization, whether it be called devolution or regionalism, or the “new federalism” of political pluralism.

A more recent contribution to the literature of federal government, like the earlier criticism mentioned, recognizes the difficulties which arise in a federal state because of industrial and commercial integration.⁴ The authors of this later contribution, however, take

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¹Leacock, *The Limitations of Federal Government*, (1908) 5 *Proc. Amer. Pol. Sci. Ass'n* 37-52.

²Pollock and Heneman, *The Hitler Decrees* (1st ed., Ann Arbor 1934) Nos. 16, 17; (2nd ed., Ann Arbor, 1934) No. 3.

³Zurcher, *Austria's Corporative Constitution*, (1934) 28 *Amer. Pol. Sci. Rev.* 664-670.

⁴Frankfurter and Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, (1925) 34 *Yale L. J.* 685-758.

a more matter-of-fact point of view in noticing the invention in the United States of legal and customary methods for the adjustment of problems common to two or more states. Two such methods were, of course, provided in our constitution, namely, the jurisdiction of the Supreme Court in interstate disputes and the interstate compacts clause. These have been supplemented by no less than six extra-constitutional means for solving interstate problems, as follows: the work of the National Conference of Commissioners on Uniform State Laws; reciprocal legislation; the conscious practice of courts to base decisions in certain fields on grounds of needed harmony between jurisdictions; conferences of state governors and other state officials, serving as opportunities for the exchange of views on state policies; federal legislation complementing state action, as in liquor and game legislation and grants-in-aid; and the regulation of interstate preserves by the practical fusion of state administrative agencies, as in the case of the Palisades Interstate Park (New York and New Jersey).⁵ The purpose of the present article is to consider the second of these extra-constitutional methods, namely, reciprocal legislation, together with the closely related subject of retaliatory legislation, in sufficient detail to enable a judgment to be formed upon their importance as factors in the partial adjustment of federalism to modern economic conditions.

Both reciprocal and retaliatory legislation are branches of interstate comity, which, by analogy with international practice, may be defined as an observance of interstate privileges beyond the requirements of the federal constitution.⁶ Reciprocal legislation is a means of dealing with matters of common concern to two or more states. It requires mutual or correlative action on the part of the legislatures of the different jurisdictions. One state enacts legislation to be operative on behalf of the citizens or officials of another state upon condition that the other state enacts like or corresponding legislation. Reciprocal legislation is thus conditional or contingent legislation, since it depends for its full effect upon an event beyond the control of the enacting legislature, that is, the passage of a similar act by a foreign legislature. Reciprocal legislation should be distinguished from, first, uniform legislation, and, second, an interstate compact. It is true that

⁵Frankfurter and Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, (1925) 34 *Yale L. J.* 685, 688-691.

⁶For a general discussion of comity, see Barry, *Comity*, (1926) 12 *Va. Law Rev.* 353-375.

uniformity, or substantial uniformity, must exist between the complementary statutes of two states in order to have a reciprocal relationship. However, uniform statutes ordinarily take effect immediately. They are not usually couched in terms that postpone the effect of the statute until another state, or other states, adopt the same uniform statute. Reciprocal legislation may always be distinguished from the larger body of uniform legislation by the fact that a reciprocal statute must contain a clause stating the necessity for similar action on the part of the other state or states.

An interstate compact is, to all intents and purposes, a treaty negotiated and ratified by two or more states. The passage of reciprocal legislation is an integral part of the process of concluding a compact. The participating states must pass uniform legislation authorizing the governor or other officials to negotiate the compact, and, unless ratification is clearly implied in the original legislation, other legislation is needed in order to declare the compact in effect. Reciprocal legislation ordinarily requires no negotiation between state officials, although it may in many cases, as discussed later, be supplemented by reciprocal agreements negotiated by administrative officials. Reciprocal legislation, moreover, requires no act of ratification on the part of the legislature. A reciprocal statute, so to speak, carries its own ratification in its own terms. It is worded so that it automatically comes into effect when the stated conditions come into existence. This, of course, often requires a decision by administrative officials as to whether the statutory conditions actually have been fulfilled, and this may in practice be a question of considerable difficulty. Reciprocal legislation is further distinguished from an interstate compact in that the former does not require the consent of the Congress of the United States.

The distinction between reciprocal legislation and interstate compacts as to subject-matter is one that is impossible to draw in any precise way, in the absence of judicial decisions delimiting the respective fields of each. So far as can be determined, no superior court has ever ruled on what matters of common concern to the states can be dealt with in reciprocal legislation, and thus escape the necessity of receiving the consent of Congress.⁷ No piece

⁷See the dissenting opinion in *Commonwealth of Massachusetts v. Klaus*, (1911) 145 App. Div. 798, 130 N. Y. S. 713. In this case a New York reciprocal statute enacted in 1902, providing a means to compel New York residents to attend as witnesses in the criminal courts of other states, was upheld. However, in the dissenting opinion written by Judge

of reciprocal legislation ever has been declared unconstitutional because it had not received the consent of Congress. There is no evidence that any reciprocal legislation ever was submitted to Congress for its consent, or that Congress ever gave its consent to any. Yet the interstate compacts clause of the constitution makes it clear that some agreements among the states require the consent of Congress. It would be ridiculous to suppose that the consent of Congress is needed for all sorts of agreements among the states upon matters of common concern.⁸ If this interpretation were placed upon the interstate compacts clause, Congress would find that entirely too much of its time would be occupied in the consideration of matters submitted by the states. The long experience in interstate relations has resulted in common consent on the rule that interstate agreements on routine matters, in the nature of business arrangements, do not need the consent of Congress. It will be obvious that practically all, if not all, the examples of reciprocal legislation discussed in this article are in fact business arrangements among the states. They do not in any way add to the political power of the states that participate in them, nor do they undermine the power of Congress as the federal legislature. It is thus clear that the settled practice allowing the enactment of reciprocal legislation without the consent of Congress is a logical and convenient arrangement, and entirely consistent with the federal constitution.

In its commonest form, reciprocal legislation is a device whereby one state, by legislative action, undertakes to secure for its citizens an advantage or an immunity by granting that advantage or immunity to the citizens of any other state on condition that the other state make a similar grant. When such a mutual interchange

Laughlin it was argued, *inter alia*, that the reciprocal statute was in fact an interstate compact, and therefore invalid because it had not received the consent of Congress. See further, for comment on this decision, Gordon Dean, *The Interstate Compact—A Device for Crime Repression*, (1934) 1 *Law and Contemp. Prob.* 460-471, and the same writer's address on *Interstate Compacts for Crime Control*, published in *Proceedings of the Attorney General's Conference on Crime, Held December 10-13, 1934, Washington, D. C.*, 64-69, and (1935) 21 *A.B.A. J.* 89-91; also *Report of the Committee on Securing Compulsory Attendance of Nonresident Witnesses in Civil and Criminal Cases*, (1922) *Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings* 358-361.

⁸See Weinfeld, *What Did the Framers of the Federal Constitution Mean by "Agreements and Compacts"?* (1936) 3 *U. Chi. L. Rev.* 453-464. It is argued that by "agreements and compacts" the framers of the constitution meant only "(1) settlements of boundary lines with attending cession or exchange of strips of land, (2) regulation of matters connected with boundaries as for instance regulation of jurisdiction of offenses committed on boundary waters, of fisheries or of navigation."

of favors has been arranged, the participating states are said to have reached the condition of reciprocity. This meaning of reciprocity should be distinguished from its more common meaning with reference to tariff legislation. Retaliatory legislation, on the other hand, is a legislative threat of the imposition of penalties upon the citizens of other states which impose penalties upon the citizens of the enacting state.

One of the most important fields in which reciprocal legislation has developed is the licensing of trades and professions. Licenses to practice trades and professions commonly are issued by the states through administrative boards upon examination of applicants who satisfactorily meet certain preliminary requirements, the chief of which is usually the presentation of a certificate of graduation from a reputable trade or professional school. The essence of reciprocity in this matter is for one state to provide for the recognition within its boundaries of the licenses issued by any other state, provided that the other state concerned maintains equal standards in the particular trade or profession and extends a like privilege to persons licensed in the first state. Reciprocity can ordinarily exist only when the employment is licensed by the state rather than by local authorities, and when the state undertakes to pass upon the fitness of applicants by administering examinations. The interstate privilege involved is, therefore, the exemption from the required examination when the applicant already has been licensed in another state. Any arrangement which results in exemption from examinations is commonly spoken of as reciprocity; but a distinction should be drawn between reciprocity, speaking properly, which involves the granting of exemptions on both sides, and the grant of such exemption as a matter of comity without any demand for a similar grant on the other side.

One way to view the interstate aspects of the licensing of trades and professions is to examine the arrangements which exist among a group of states with respect to all licensed employments. Five northwestern states—Wisconsin, Minnesota, North Dakota, South Dakota, and Montana—have been selected for this purpose. A comparison of the statutes of these states reveals that twenty-two different employments⁹ are licensed under the following gen-

⁹The statutes are cited here together for convenience of reference. The complete list of employments appears in the Minnesota citations. The subject of teachers' certification was omitted from this survey.

Wisconsin: Stat. 1935: architect, sec. 101.31; attorney, sec. 256.28 (1), (2), (3), (6); barber, secs. 158.06-.11; basic sciences, secs. 147.01-.08;

eral conditions: (1) all practitioners are required to be licensed; (2) licenses are issued by state, and not local, authorities; and (3) the state passes upon the fitness of applicants by administering an examination. Minnesota is the only one of the five states in which all twenty-two employments are licensed.¹⁰ Wisconsin¹¹ licenses twenty of them, and Montana, North Dakota,¹² and South

beauty operator, sec. 159.08; chiropodist, sec. 154.02-.03; chiropractor, sec. 147.23; civil engineer, sec. 101.31; dentist, secs. 152.03-.05; embalmer, secs. 156.04, 156.08; masseur, sec. 146.185; midwife, secs. 150.02-.03; nurse, secs. 149.04-.06; optometrist, secs. 153.03-.05 (2); osteopath, secs. 147.15-.17; pharmacist, 151.02 (2), (6); physician and surgeon, secs. 147.15-.17; plumber, secs. 145.06-.09; public accountant, secs. 135.02-.05; veterinarian, secs. 95.51-63.

Minnesota: Mason's 1927 Stat. (unless indicated as Supp. 1936): architect, Supp. 1936, sec. 5697-9; attorney, sec. 5685; barber, Supp. 1936, secs. 5846-5, 6, 7, 11, 12; basic sciences, secs. 5705-6, 5705-7, 5705-9; beauty operator, sec. 5846-39, Supp. 1936, sec. 5846-34; chiropodist, Supp. 1936, secs. 5772, 5773, 5782; chiropractor, sec. 5729; civil engineer, Supp. 1936, sec. 5697-9; dentist, Supp. 1936, sec. 5762-4; electrician, secs. 5873, 5874, 5876; embalmer, secs. 5818, 5819; masseur, Supp. 1936, secs. 5784-16, 17, 18; midwife, sec. 5722; nurse, sec. 5751, Supp. 1936, sec. 5747; optometrist, Supp. 1936, sec. 5790; osteopath, sec. 5737; pharmacist, sec. 5802, Supp. 1936, sec. 5800; physician and surgeon, secs. 5707, 5709, 5710; plumber, Supp. 1936, secs. 5887-19 to 29; public accountant, sec. 5701, Supp. 1936, sec. 5700; stationary engineer, sec. 5487; veterinarian, sec. 5848.

North Dakota: architect, Supp. 1925, secs. 2999a18, 2999a20 to 25; attorney, Supp. 1925, sec. 790, Laws 1931, ch. 90; barber, Laws 1927, ch. 101, secs. 6, 11, and sec. 5 as amended, Laws 1931, ch. 99; beauty operator, Laws 1927, ch. 157, secs. 12, 14; chiropodist, Laws 1929, ch. 95, secs. 6, 9, 11; chiropractor, Supp. 1925, sec. 523a3, Laws 1933, ch. 82; dentist, Laws 1933, ch. 104, sec. 4; electrician, Laws 1927, ch. 139, sec. 2, 4; embalmer, Laws 1931, ch. 141, sec. 1; nurse, Supp. 1925, sec. 506a9; optometrist, Supp. 1925, sec. 528; osteopath, Laws 1933, ch. 202, secs. 4, 5; pharmacist, Comp. Laws 1913, sec. 486, Laws 1935, ch. 232, sec. 1; physician and surgeon, Comp. Laws 1913, secs. 461, 464, 465, Supp. 1925, sec. 465; public accountant, Supp. 1925, secs. 557a8, 557a9; veterinarian, Comp. Laws 1913, secs. 2713, 2717.

South Dakota: Comp. Laws 1929 (unless otherwise indicated): architect, secs. 8194-G, H, K; attorney, secs. 5284, 5285; barber, Laws 1931, ch. 209, secs. 5-10; beauty operator, Laws 1931, ch. 213, sec. 1; chiropodist, Laws 1931, ch. 212; chiropractor, secs. 7730-D, E, L; civil engineer, secs. 8194-G, H, K; dentist, sec. 7751; embalmer, Laws 1931, ch. 216, secs. 2, 3; nurse, secs. 7772, 7773; optometrist, sec. 7759, Laws 1935, ch. 166, sec. 2; osteopath, sec. 7722; pharmacist, sec. 7738, Laws 1931, ch. 205, sec. 1; physician and surgeon, secs. 7705, 7706, 7708; public accountant, Laws 1931, ch. 208, secs. 3-6; veterinarian, sec. 8077-B.

Montana, Rev. Code 1935: architect, sec. 3231; attorney, secs. 8936, 8937, 8940; barber, sec. 3228.21; beauty operator, secs. 3228.1-.8; chiropodist, sec. 3154.3; chiropractor, secs. 3142, 3143, 3152; dentist, secs. 3115.5, 3115.6; embalmer, sec. 2456; nurse, secs. 3210, 3211; optometrist, sec. 3159; osteopath, secs. 3127, 3135; pharmacist, secs., 3176, 3183; physician and surgeon, sec. 3118; public accountant, secs. 3241.1-.2; stationary engineer, secs. 2719, 2720; veterinarian, secs. 3220, 3224.

¹⁰But an examination for the license as architect or civil engineer is required only when the board is in doubt as to the applicant's fitness.

¹¹But an examination for a license as midwife is required only when the applicant is not a graduate of an approved school giving a one-year course.

Dakota¹³ sixteen each. Persons licensed in one of these states can, of course, move into a nonlicensing state without any need for reciprocity.

All the twenty-two employments are licensed in at least two of the five states considered. It will thus appear that there is a total of ninety instances in which statutory arrangements might be made for the interstate recognition of licenses. In twenty-six instances, no such arrangements are made; in thirty instances, licenses are recognized on a reciprocal basis; and in thirty-four instances, licenses are recognized on a basis of comity without any reciprocal requirement.¹⁴ It thus appears that these northwestern states make genuine efforts to provide for freedom of movement across state lines by persons engaged in licensed employments. Two methods of making such arrangements, reciprocity and comity, are available, and one is used about as frequently as the other. It is further significant that the instances in which no arrangements are made for the interstate recognition of licenses occur most frequently with respect to employments for which the period of training is not long, nor the other qualifications especially difficult to satisfy, such as the trades of barber, beauty operator, electrician, and stationary engineer.

Interstate recognition of licenses is provided for by all five states in only six employments, namely, attorney, dentist, nurse, optometrist, physician and surgeon, and public accountant; and by four states in six employments, namely, architect, chiropodist, chiropractor, embalmer, osteopath, and pharmacist. It would seem that practitioners of these employments, having once qualified for a state license, might move with relative freedom from one of these neighboring states to another with a fine disregard for the internal political boundaries accompanying our federal form of government. This may not be so, because the formula providing for the interstate recognition of licenses almost invariably stipulates that the other state concerned in the exchange must maintain equal standards for entry into the employment.¹⁵ The

¹²But architects are not required to be licensed.

¹³But no examination or special training is required for a license as veterinarian.

¹⁴Both Minnesota and Wisconsin recognize the licenses of physicians and surgeons by comity, but in each case the statute contains a retaliatory provision. The Wisconsin law also applies to osteopaths. The Minnesota law formerly was both reciprocal and retaliatory, but the reciprocal feature has been repealed.

¹⁵Sixty-two statutory provisions for the interstate recognition of licenses divide as follows: (1) use of words "equal standards," "equivalent require-

freedom of movement of licensees therefore depends not only upon the statutory provisions for comity and reciprocity, but also upon uniformity in the statutes fixing the standards for licensed trades and professions. There is a high degree of uniformity in the statutes relating to the licensing of trades and professions, and national trade and professional groups exert a constant pressure for more uniformity. At the same time, there are many variations in the standards fixed by different states. Some of these are, of course, inconsequential, and are often disregarded by the licensing boards having jurisdiction. Others are substantial, and operate as a bar to the interstate recognition of licenses. As examples of substantial variations, it may be noted that some states permit the training for such employments as attorney, barber, embalmer, optometrist, and veterinarian to be gained through apprenticeship, while others require graduation from an approved school;¹⁶ the minimum duration of the professional instruction,¹⁷ or the period of preliminary experience required for some employments,¹⁸ is subject to variation; and there is considerable difference of opinion among the states as to whether the pre-professional education to be required for certain employments should be fixed at completion of the eighth grade, the high school, or the junior college.¹⁹ When such considerations

ments," or "same educational qualifications," forty-eight instances; (2) use of words "substantially equal," three instances; (3) no specification of this kind, eleven instances.

¹⁶Graduation from approved trade or professional school not required: attorney, North Dakota, South Dakota; barber, Minnesota; embalmer, Wisconsin, Minnesota, North Dakota, Montana; optometrist, Minnesota; pharmacist, Montana; veterinarian, Wisconsin, South Dakota.

¹⁷Length of professional course; chiropractor—three years, Wisconsin, North Dakota, South Dakota; four years, Minnesota, Montana; nurse—two years, Wisconsin; three years, Minnesota, North Dakota, South Dakota, Montana; osteopath—three years, South Dakota, Montana; four years, Wisconsin, Minnesota, North Dakota; veterinarian—eighteen months, Minnesota; three years, Montana.

¹⁸Length of experience required: architect—none, Montana; three years, North Dakota; five years, Wisconsin, Minnesota; six years, South Dakota; civil engineer—six years, Minnesota, South Dakota; seven years, Wisconsin; pharmacist—none, Montana; one year, Wisconsin, North Dakota, South Dakota; two years, Minnesota; public accountant—none, Wisconsin, Montana; one year, South Dakota; three years, Minnesota, North Dakota; stationary engineer—three years, Montana; five years, Minnesota.

¹⁹Length of pre-professional education required: chiropractor—high school, Wisconsin, Minnesota, South Dakota, Montana; two years college, North Dakota; dentist—not specified, Minnesota, South Dakota, Montana; high school, Wisconsin; one year college, North Dakota; nurse—not specified, South Dakota; eighth-grade, Minnesota, North Dakota; one year high school, Wisconsin; two years high school, Montana; physician and surgeon—not specified, Minnesota, South Dakota, Montana; high school, Wisconsin; two years college, North Dakota.

as these are taken into account, it appears that the interstate recognition of licenses is in fact existent among all the five states of the northwest region in not a single employment, although among four states it is existent with respect to six employments, namely, chiroprapist, dentist, nurse, pharmacist, physician and surgeon, and public accountant.

Another way to gain a conception of the extent of reciprocity in the licensing of trades and professions is to examine the statutes of all the states with reference to a selected trade and a selected profession. Such a survey has been made for the trade of barbering and the profession of dentistry.

Forty-one states require barbers to be licensed.²⁰ Until recently, only a few states licensed barbers, and the requirements were relatively simple.²¹ The older statutes required applicants to be nineteen years of age, of good moral character, and free from infectious, contagious, and blood diseases, and to pass an examination to test skill in the use, care, and disinfection of tools and an elementary knowledge of skin diseases. More recently, many states have passed statutes which fix higher standards for barbers' licenses. An eighth-grade education frequently is required,²² and formal instruction in the trade must be obtained either as an apprentice or in an approved school of barbering. Moreover, the schools are required to give instruction in, and the examinations test knowledge of, a wide range of subjects designed to put barbering on a more scientific basis. The most important difference in the standards fixed by the states is as to whether graduation from a school of barbering is required or optional. On this basis, the forty-one states licensing barbers fall into two classes. Seventeen will not admit applicants to examination until they have completed the course of an approved school, while twenty-four permit the training to be gained in any way desired.²³ Even if the statutes

²⁰The states which do not license barbers are: Arkansas, Maine, New Hampshire, New York, South Carolina, Vermont, and Virginia.

²¹Ten years ago, only fourteen states licensed barbers. See U. S. Bureau of Labor Statistics, Bulletin, No. 28 (May, 1925).

²²Eighth-grade education required: Alabama, Arizona, California, Connecticut, Florida, Idaho, Illinois, Iowa, Louisiana, Nebraska, Ohio, Oregon, South Dakota, and West Virginia; tenth-grade: Wisconsin; seventh-grade: Michigan; sixth-grade: Minnesota. Required to read and write English: Colorado, Mississippi, Texas, Washington, and Wyoming.

²³Class I (graduation from barber school required): Arizona, Laws 1935, ch. 51, secs. 6, 7, 8, 11, 12; Florida, Laws 1931, ch. 14650 (No. 12), secs. 5, 6, 7, 11; Indiana Stat. (Baldwin) 1934, ch. 18, secs. 4058 to 4061; Iowa, Code 1935, secs. 2585-b13, 14; Kentucky, Stat. (Baldwin) 1936, secs. 165 b-5, 6, 7, 11; Louisiana, Gen. Stat. 1932, secs. 9371, 9372, 9373, 9377; Montana, Rev. Code 1935, sec. 3228.21; Nebraska, Comp. Stat. 1929, secs.

contained reciprocal clauses, there could be no recognition of licenses by states in the former class when issued by states in the latter class. This would be true because of the usual provision that equal standards must be maintained. As a matter of fact, not one of the statutes of the first class contains a reciprocal clause. On the contrary, they specifically provide that barbers from other states must take the usual examination.²⁴ The interstate recognition of barbers' licenses is also rare among the states having the less strict requirements. The statutes of only four states make provision for such recognition—three by comity and one by reciprocity.²⁵

All the states license dentists.²⁶ The requirements are sub-

71-2004, 6, 9, 12; Nevada, Comp. Laws 1929, sec. 767 and secs. 764, 765, as amended, Laws 1931, ch. 207, secs. 3, 4; North Carolina, Code 1935, secs. 5003 (c), (e), (1); North Dakota, Laws 1927, ch. 101, secs. 6, 11, and sec. 5, as amended, Laws 1931, ch. 99; Ohio, Gen. Code 1931, secs. 1081-13, and secs. 1081-9, 12, 19, 20, as amended, Laws 1931, pp. 314-319; Oregon, Code Supp. 1935, 68-405, 406, 407, 411; South Dakota, Laws 1931, ch. 209, secs. 5-10; Texas, Complete Stat. Supp. 1934, 734a7, 8, 9, 13; Utah, Rev. Stat. 1933, 79-4-2 to 6, 13; Wisconsin, Stat. 1935, secs. 158.06-.11.

Class II (graduation from barber school not required); Alabama, Laws, 1931, No. 508, secs. 4, 5; ex. sess. 1936, No. 113, sec. 1; California, Gen. Laws (Deering) 1931, Supp. (Deering) 1933, secs. 6, 12, Stat. and Amendments to the Codes 1935, ch. 297, sec. 11; Colorado, Comp. Laws Supp. 1932, secs. 4746, 4747; Connecticut, Gen. Stat. Supp. 1935, sec. 1194c; Delaware, Laws 1935, ch. 103, sec. 5; Georgia, Code 1933, sec. 84-409; Idaho, Code 1932, secs. 53-605, 606, 611; Illinois, Laws 1931, p. 200 seq., secs. 3 to 6, 8, 10; Kansas, Laws 1933, ch. 224, sec. 2; Maryland, Code Supp. (Flack) 1935, art. 43, sec. 275, 276, 277; Massachusetts, Gen. Laws 1932, ch. 112, sec. 87H; Michigan, Comp. Laws Supp. (Mason) 1935, secs. 8700-1, 8700-2; Minnesota, Stat. Supp. (Mason) 1936, secs. 5846-5, 6, 7, 11, 12; Mississippi, Laws 1932, ch. 118, secs. 6, 7, 11; Missouri, Rev. Stat. 1929, sec. 13528; New Jersey, Laws 1933, ch. 175, secs. 3, 5, 9; New Mexico, Laws 1935, ch. 111, secs. 4, 5, 6; Oklahoma, Stat. Supp. 1936, secs. 4336, 4340; Pennsylvania, Stat. (Purdon) 1936, tit. 35, secs. 658, 659; Rhode Island, Laws January, 1935, ch. 2222, sec. 1; Tennessee, Code 1932, secs. 7122, 7123, 7127; Washington, Rev. Stat. (Remington) 1932, secs. 8277-3 to 6, 10; West Virginia, Laws 2nd ex. sess. 1933, ch. 82, secs. 5, 6, 7; Wyoming, Rev. Stat. 1931, secs. 11-105, 11-115.

²⁴The usual provision is that an applicant from another state who presents either (1) the license of a state maintaining equal standards, or (2) sworn evidence of five years' practice in another state, will be issued a journeyman's license, entitling him to practice until the next regular examination. See the statutes of Florida, Indiana, Iowa, Louisiana, Nebraska, North Dakota, and South Dakota. Some states require a shorter term of experience; three years: Kentucky; two years: Indiana, Ohio, Oregon, and Texas.

²⁵Georgia, Idaho, Pennsylvania, and Washington (reciprocal).

²⁶Alabama, Code 1928, secs. 328, 329, 354; Arizona, Laws 1935, ch. 24, secs. 14, 18, 19; Arkansas, Laws 1921, No. 289, secs. 3, 9, 20; California, Gen. Laws (Deering) 1931 and Supp. 1933, Act 2048, sec. 7; Colorado, Laws 1935, ch. 103, sec. 6; Connecticut, Gen. Stat. Supp. 1935, secs. 1142, 1146c; Delaware, Code 1915, as amended, Laws 1933, ch. 48, secs. 892B, C; Florida, Laws Gen. 1931, ch. 14708 (No. 70), secs. 9, 10; Georgia, Code 1933, ch. 84-7, secs. 84-709, 84-710; Idaho, Code 1932, secs. 53-1306,

stantially uniform, consisting in the main of graduation from a reputable dental college²⁷ and examination by a board of dental examiners. Eight states—Arizona, California, Colorado, Florida, Kentucky, Michigan, Oregon, Rhode Island—make no provision for the recognition of licenses issued by other states, although it appears that all these will admit to examination the graduates of dental colleges in other states. Thirteen states—Alabama, Delaware, Idaho, Illinois, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, North Carolina, Washington, and West Virginia—make only a limited provision for such recognition, since they authorize their boards of dental examiners to require dentists from other states to take a practical or clinical examination. This

07, 18, 20; Illinois, Rev. Stat. (Cahill) 1929, ch. 91, par. 82, and Laws 1933, p. 708, sec. 4; Indiana, Stat. (Baldwin) 1934, ch. 29, sec. 5588; Iowa Code 1935, secs. 2438, 2567; Kansas, Rev. Stat. Supp. 1930, sec. 65-1404; Kentucky, Stat. (Baldwin) 1936, secs. 2636-3; Louisiana, Gen. Stat. 1932; secs. 9519, 9522; Maine, Rev. Stat. 1930, ch. 21, secs. 28, 29, 31; Maryland, Code Supp. (Flack) 1935, art. 32, sec. 4; Massachusetts, Gen. Laws 1932, ch. 112, secs. 45, 46, 48; Michigan, Comp. Laws Supp. (Mason) 1933, sec. 6780-6; Minnesota, Stat. Supp. (Mason) 1936, sec. 5762-4; Mississippi, Code 1930, secs. 4303, 4304, 4306; Missouri, Rev. Stat. 1929, secs. 13560, 13570; Montana, Rev. Code 1935, secs. 3115.5, 3115.6; Nebraska, Comp. Stat. 1929, secs. 71-202, 71-503, 71-1203, and 71-501, 71-1210, as amended, Laws 1933, ch. 122, sec. 2; Nevada, Comp. Laws 1929, secs. 2336, 2338, 2348; New Hampshire, Pub. Laws 1926, ch. 205, secs. 7, 8, 21; New Jersey, Comp. Laws Supp. 1924, sec. 56-22; New Mexico, Comp. Stat. 1929, secs. 37-104, 37-105; New York, Con. Laws (Cahill) 1930, secs. 1306, 1308, as amended, Laws 1933, ch. 609; North Carolina, Code 1931, secs. 6631, 6643; North Dakota, Laws 1933, ch. 104, sec. 4; Ohio, Gen. Code 1931, secs. 1321, 1321-1, 1322, 1324; Oklahoma, Stat. Supp. 1936, secs. 4371x, 4371z1; Oregon, Code Supp. 1936, sec. 69-1004; Pennsylvania, Stat. (Purdon) 1936, tit. 63, sec. 122; Rhode Island, Gen. Laws 1923, ch. 169, sec. 4, as amended, Laws 1929-30, ch. 1588; South Carolina, Code 1932, secs. 5199, 5206; South Dakota, Comp. Laws 1929, sec. 7751; Tennessee, Laws 1935, ch. 126, secs. 6, 24; Texas, Complete Laws 1928, arts. 4544, 4545, 4545a, as amended, Laws 1935, ch. 244, secs. 2, 3; Utah, Rev. Stat. 1933, secs. 79-6-1, 79-6-2; Vermont, Pub. Laws 1933, secs. 7501, 7502, 7505; Virginia Code 1930, sec. 1646; Washington, Laws 1935, ch. 112, secs. 4, 5, 13; West Virginia Code 1931, secs. 30-4-6, 30-4-8; Wisconsin, Stat. 1935, 152.03-.05(2); Wyoming, Rev. Stat. 1931, sec. 34-110, and sec. 34-104, as amended, Laws 1935, ch. 61, sec. 1.

²⁷All the states have a general requirement that applicants for the dental license shall be graduates of an approved dental college. New Jersey will admit to the examination a dentist who is not a graduate but who is licensed in a foreign country; New York, a nongraduate who has practiced in another state for twenty years, in which case only the practical examination is required. The length of the dental course is specified by only eight states; four years: Arkansas, Idaho, Michigan, Washington; three years: Illinois, Massachusetts, Wisconsin; one or two years: Missouri. Nineteen states have enacted requirements as to the pre-dental training; high-school education: Connecticut, Maine, Mississippi, Missouri, New Jersey, Ohio, Oklahoma, Oregon, South Carolina, Vermont, West Virginia, Wisconsin; one or two years' college: Arizona, Delaware, Illinois, Massachusetts; preliminary education prescribed by board: New York, North Carolina, Pennsylvania.

is made mandatory upon the boards of dental examiners in six states—Kansas, Missouri, Montana, Nebraska, Washington, and West Virginia—while it is left to the discretion of the boards in the other seven states.

Certain conditions frequently are attached to the recognition of dentists' licenses, but none of these is inconsistent with the principles of interstate comity. The commonest condition is that the other state concerned must maintain equal standards for entry into the profession,²⁸ but this has little significance because of the similarity of the requirements in all the states. Many states also require that the applicant must have been in the legal and ethical practice of dentistry for a period of five years in another state.²⁹ An applicant also is commonly required to present a duly attested copy of the out-of-state license, and a statement by the board of dental examiners of his former state certifying his good moral character and professional ability.³⁰

The forty states which recognize the dental licenses of other states divide as follows according to the method of granting such recognition: thirty-two states make the grant on a reciprocal basis; six states make the grant by comity without demanding the same favor on the other side;³¹ one state has a comity provision, while at the same time authorizing its board to negotiate reciprocal agreements;³² and one state has a comity provision with a retaliatory clause to protect its own licensees.³³

It may be concluded that there is substantial freedom of movement for dentists of five years' experience among nearly all the states. Thirteen states, to be sure, require a clinical examination; but this is not a serious invasion of interstate comity, as it is the written or theoretical examination which men in the profession wish to avoid in later life. Many of the disabilities affecting members of this profession and arising from our federal form of government have been removed, and reciprocal legislation is the means chiefly responsible for this desirable state of affairs.

²⁸This condition is expressed in the statutes of twenty-nine states.

²⁹Twenty-eight states require five years' practice in the former state of residence; two states require three years' practice.

³⁰Twenty-two states require the certificate of recommendation. Seven of these require that such certificate must be presented within six months of the date of issue.

³¹The states which recognize dental licenses by comity are: Connecticut, Kansas, Maine, Maryland, New York, and Tennessee.

³²Comity with authorization to negotiate reciprocal agreements: Georgia.

³³Nebraska, Comp. Stat. 1929, sec. 71-503, is a general retaliatory provision applicable to all trades and professions licensed by the state.

A digest of the rules relating to the licensing of attorneys reveals that all the states have made arrangements for the recognition of licenses issued by other states.³⁴ Only six states, however, have passed reciprocal legislation on this subject,³⁵ all the others providing for the recognition of attorneys' licenses by comity. The principal condition attached to such recognition is that the applicant must have been in the practice of law for a period of one to ten years in another state, three or five years' practice being the common requirement.

Reciprocity also exists with respect to civil engineers among most of the states requiring them to be licensed.³⁶ This condition was brought about by the formulation of national standards for the profession by a council of the state boards of engineering examiners, and by a multilateral agreement entered into by most of the boards. Engineers are required to have ten years' experience in responsible positions before they may apply for the recognition of their licenses in other states.

A few states have reciprocal statutes relating to the licensing of nonresident auctioneers.³⁷ In this case, reciprocity has no relation to a qualifying examination in order to practice a trade, because no such examinations are administered, but relates to the right to conduct sales and possibly also the exemption from certain fees. The statute may generally prohibit nonresident auctioneers from conducting sales, but make an exception in favor of residents of states which provide for the admission of residents of the enacting state. The statute may also have a retaliatory clause, providing for the imposition of the same fees and disabilities required by a neighboring state.

One state, Utah, has enacted a general reciprocal provision permitting the recognition of licenses for all trades and professions issued by other states; and two states, Iowa and Nebraska, have enacted general retaliatory provisions applicable to all trades and professions, authorizing the imposition of the same penalties and disabilities experienced by their licensees in other states.³⁸ The

³⁴Rules for Admission to the Bar in the Several States and Territories of the United States, in Force March 1, 1934, 21st ed.

³⁵Georgia, Idaho, Mississippi, Nevada, North Carolina, and Oregon.

³⁶(1929) Annual Report of the Iowa State Board of Engineering Examiners 5-8.

³⁷Iowa, Code 1935, sec. 9864; Minnesota, Stat. Supp. (Mason) 1934 and 1936, sec. 7322; North Dakota, Laws 1927, ch. 89; South Dakota, Laws 1931, ch. 85; Vermont, Laws 1935, No. 37.

³⁸Iowa, Code 1935, secs. 2483, 2489; Nebraska, Comp. Stat. 1929, sec. 71-503; Utah, Rev. Stat. 1933, sec. 79-1-19.

Iowa code also authorizes the negotiation of reciprocal agreements with respect to a number of employments affecting public health.³⁹ According to this plan, the department of health is required to negotiate such agreements with any state which is certified by the board of examiners concerned as having requirements substantially equivalent to those maintained in Iowa. A considerable number of such agreements apparently have been negotiated, and Iowa is in reciprocal relations with many states respecting several employments.⁴⁰

It is an interesting question whether reciprocal legislation relating to the licensing of trades and professions should be self-executing, or should come into effect only when supplemented by administrative agreements negotiated by the respective boards of examiners. The comprehensive plan of Iowa is not the only example of the statutory authorization of such agreements,⁴¹ and boards have been known to enter into such agreements without specific authorization.⁴² The great number of agreements necessary to cover a score or more of employments among forty-eight states undoubtedly places grave disadvantages upon this plan, a parallel being offered by the bilateral negotiation of treaties in the international field. If administrative agreements are necessary at all, it would seem that multilateral ones arranged by the national organizations of the professions concerned would be a more practicable procedure.

This question of reciprocal agreements is closely connected with the problem of the interchange of information concerning the requirements set up by different states for entry into trades or

³⁹Iowa, Code 1935, secs. 2438, 2481, 2482, 2484, 2485.

⁴⁰(1930) 24th Biennial Report of the Iowa State Board of Health, 47-49.

⁴¹Georgia, Code 1933, sec. 84-710 (dentist); Illinois, Rev. Stat. (Cahill) 1929, ch. 91, par. 82 (dentist); South Dakota, Comp. Laws 1929, sec. 8077-B (veterinarian); Virginia, Code 1930, sec. 1646 (dentist); Wisconsin, Stat. 1935, sec. 101.31 (8) (a) (architect). See also Alabama, Laws ex. sess. 1936, No. 177, sec. 1, which authorizes the state tax commission to enter into reciprocal agreements with other states "for an exchange of rights for the operation of motor vehicles that will be considered as a fair exchange of rights and privileges." Statutory authorization to make rules for the reciprocal recognition of licenses has been interpreted to permit the negotiation of agreements with the boards of other states. Indiana Stat. (Baldwin) 1934, sec. 5600; see Indiana State Board of Dental Examiners v. Davis, (1923) 193 Ind. 543, 139 N. E. 311.

⁴²Boards which enter into agreements with Iowa or the states named in note 41 supra evidently do so without statutory authorization. See also Thiedemann v. Michigan State Board of Dental Examiners, (1921) 214 Mich. 369, 183 N. W. 228, in which an agreement made without statutory authorization was condemned.

professions. The statutes almost invariably invest the boards of examiners with discretionary authority to decide whether the state where the applicant formerly resided maintains equal standards for licensing.⁴³ Now and then a reciprocal statute suggests that the board of examiners concerned is not to look behind the statutes of the other states, but to take them at their face value as fixing the standards for the profession.⁴⁴ Such a plan, however, seems to impose too serious limitations upon the discretion of the board, and could lead to grave errors. For example, changes in the educational structure of a state might occur which would in no way be reflected in the statutes. Another solution to this problem is

⁴³The statutes ordinarily say that the board "may," or "may in its discretion," issue a license without examination to an applicant who presents a license issued by another state maintaining like standards. Such words cannot be disregarded, and are interpreted as carrying their ordinary significance and as vesting a broad discretion in the board. *Ruffu v. New Jersey Board of Medical Examiners*, (1932) 10 N. J. Mis. 1209, 163 Atl. 15. The decision of a board of examiners in such a matter has been held not appealable to the courts in the absence of express statutory authorization. *Williams v. Minnesota State Board of Medical Examiners*, (1913) 120 Minn. 313, 139 N. W. 500. In *Ex parte Hollis*, (1909) 82 S. C. 230, 64 S. E. 232, the court did not inquire into the reasons for the board's refusal of a reciprocal license. In *Fernel v. California State Board of Medical Examiners*, (1928) 81 Cal. App. 712, 267 Pac. 561, it was held that such decisions are reviewable by the courts only to correct the arbitrary, unreasonable, or improper exercise of discretion. For a board to refuse a reciprocal license merely because of the use in another state of a different system of grading examinations is an arbitrary exercise of discretion. *United States ex rel. Thomson v. Custis*, (1910) 35 App. D. C. 247. The discretion of a board extends to other related matters in addition to the determination of whether the other state maintains equal standards, for example, to the question of whether the candidate is of good moral character. *Fernel v. Board of Medical Examiners*, (1928) 81 Cal. App. 712, 267 Pac. 561.

A few instances have been observed when the statutes say that the board "shall" issue a license on a reciprocal basis. Wisconsin, Stat. 1935, sec. 101.31 (architects and civil engineers); Washington, Rev. Stat. (Remington) 1932, sec. 8277-10 (barbers), sec. 10030-13 (dentists); Arizona, Rev. Code Supp. 1934, sec. 2545 (dentists). When the statute is in this form the issuance of the license is mandatory upon the board, after it has determined that the other state maintains equal standards. *Thiedemann v. Michigan State Board of Dental Examiners*, (1921) 214 Mich. 369, 183 N. W. 228.

⁴⁴Board to issue reciprocal license when other state maintains "equal statutory requirements." North Dakota, Laws 1929, ch. 95, sec. 9; Montana, Rev. Code 1935, sec. 3154.3; Mississippi Code 1930, sec. 4306; South Carolina, Code 1932, sec. 5206. Other statutes imply that the administrative practice in the other state is the determining factor (see for example North Carolina, Code 1931, sec. 6643), while most reciprocal statutes provide indefinitely that the license may be issued if the other state "extend a like privilege." *Thiedemann v. Michigan State Board of Dental Examiners*, (1921) 214 Mich. 369, 183 N. W. 228, lends support to the view that only the statute of the other state should be taken into account: "Does the law of Wisconsin accord the privilege of registration to those registered in Michigan? We think that an examination of their statute answers this question in the affirmative."

to place the burden of proof upon the applicant for the license by reciprocity, who must show to the satisfaction of the board that equal standards are maintained by the state which issued his original license.⁴⁵ This will be regarded by many as an injustice, for when an administrative board has difficulty in getting the necessary information, it is hardly likely that an individual can do so more easily. Reciprocal agreements among boards of examiners might bring them into friendly relations and greatly facilitate the interstate recognition of licenses. It will occur to some that another possible solution to these problems would be the development of complete uniformity in the legislation of the states relating to entry into trades and professions. Complete uniformity is, however, impossible to attain, and it would be undesirable if possible. A thinly populated, relatively undeveloped state must generally be content with somewhat lower standards in professions affected with a public interest.

When a board of examiners is authorized in general terms by the statute to negotiate reciprocal agreements, it apparently is invested with something resembling a treaty-making power. The courts will not inquire into the reasonableness of any specific provision of such an agreement, because they recognize the discretionary authority of the board, and because they confess inability to determine whether any provision is integral to the whole, without which the agreement might have been unacceptable to the parties.⁴⁶ Such an agreement may make not unreasonable additions to the statutory requirements for the reciprocal recognition of licenses.⁴⁷

To conclude the discussion of the interstate aspects of the licensing of trades and professions, it may be observed that the states are under no obligation to recognize the licenses issued by other states.⁴⁸ The right to practice in another state is not one of the privileges of interstate citizenship guaranteed by the federal constitution. A license to practice in one state does not

⁴⁵"The applicant shall, upon the request of the department, be responsible for securing information from the proper authority of the place from which he comes, of the standards maintained there and the laws and rules relating thereto." Nebraska Comp. Stat. 1929, sec. 71-502.

⁴⁶State Board of Dental Examiners v. Davis, (1923) 193 Ind. 543, 139 N. E. 311.

⁴⁷State Board of Dental Examiners v. Davis, (1923) 193 Ind. 543, 139 N. E. 311, where the additional requirement was that the applicant must be a member of his state dental society and receive its recommendation. See also Thomas v. State Board of Health, (1913) 72 W. Va. 776, 79 S. E. 725, where the reciprocal agreement went beyond the statute by requiring that the applicant must have practiced in his state for one year.

⁴⁸The authorities are collected, respecting physicians and surgeons, in 49 L. R. A. (N.S.) 150, and respecting dentists, in 56 L. R. A. (N.S.) 538.

confer a like right in other states, and is recognized by other states, if at all, only on principles of comity.⁴⁹ Such a license creates no vested right which other states are bound to recognize.⁵⁰

Another field in which reciprocal legislation is common is in the interstate recognition of motor vehicle licenses. Recent compilations of the laws of the forty-eight states relating to motor vehicle registration show that practically all the states make some provision for the recognition of the licenses of pleasure vehicles issued by other states.⁵¹ The period of time during which states will permit nonresidents or new residents to operate automobiles with foreign licenses varies from a few days to a year, or the balance of the year in which the license was issued. Some states require the owner to register his automobile, but no fee is charged. About half of the states provide for such recognition only upon a reciprocal basis, while the others grant the privilege as a matter of comity. The latter method is probably better because of the special difficulties of administering a reciprocal statute relating to this subject. Some experiments in the enforcement of registration requirements have been made by the stationing of checkers at the principal points of entry into the state during the touring season, and by the checking of parked cars by police. Such methods, however, are expensive and troublesome, and enforcement is usually lax. The result is that full recognition is made by comity, and the statutes might as well be made to conform to the practice. The National Commissioners on Uniform State Laws have endorsed the method of comity in preference to the method of reciprocity, with respect to both vehicle registration⁵² and drivers' licenses.⁵³ In recent years much attention has been given to the

⁴⁹People v. Griswold, (1914) 213 N. Y. 92, 106 N. E. 929.

⁵⁰State v. Crombie, (1909) 107 Minn. 171, 119 N. W. 660.

⁵¹Howard, *Tax Systems of the World*, 6th ed., pp. 152-157; *Registration Fees and Special Taxes for Motor Vehicles* (Issued by the National Highway Users Conference, Washington, D. C., 1936). See also an earlier compilation, *Federal and State Motor Vehicle Taxes in Force January 1, 1928* (Issued by the Motor Vehicle Conference Committee, New York, 1928); and cf. "Reciprocal and Retaliatory Tax Statutes," (1930) 43 *Harv. Law Rev.* 641-646.

⁵²See Uniform Motor Vehicle Registration Act, sec. 20, (1926) 9 *Uniform Laws Ann.* 281, (1926) 51 *A. B. A. Rep.* 569. This act has been adopted by ten states: Colorado, Delaware, Idaho, Kansas, Louisiana, Nevada, New Mexico, North Carolina, North Dakota, and Utah. See (1926) 9 *Uniform Laws Ann.* 296, and *Supp.* 1935, 126.

⁵³See Uniform Motor Vehicle Operators' and Chauffeurs' License Act, sec. 4, (1926) 9 *Uniform Laws Ann.* 319, 51 *A. B. A. Rep.* 591. This act has been adopted with changes by twelve states: Colorado, Delaware, Idaho, Indiana, Iowa, Kansas, Kentucky, Michigan, Oregon, Utah, Virginia, and Washington. See 9 *U. L. A.* 320, and *Supp.* 1935, 129.

possibility of extending the interstate recognition of motor vehicle licenses to include trucks, busses, and vehicles operated for hire.⁵⁴

The states have undisputed authority to require nonresidents to comply fully with the local laws relating to vehicle registration and drivers' licenses, and there is no legal obligation requiring the inclusion of a reciprocal exemption in statutes relating to these matters.⁵⁵ The states may not deny the right to operate commercial vehicles in interstate commerce, but aside from this limitation they have extensive powers to regulate and to tax such vehicles when owned by nonresidents.⁵⁶

Reciprocal legislation frequently is used as the method of bringing about cooperation between two or more states, or of making arrangements of any other nature relating to matters of common concern. One such matter dealt with in this way is the return of nonresident public charges to their states of residence. The statutes of a number of states authorize the board of control of public institutions or similar department, or the attorney-general, to enter into reciprocal agreements with the appropriate authorities of other states which enact similar legislation in order to facilitate the return of nonresident public charges, such as insane persons, imbeciles, epileptics, and the inmates of reformatories for minors.⁵⁷ The laws of New York and Pennsylvania seem to contemplate such arrangements only for mental defectives, while the law of Oregon applies to inmates of all state institutions, which would seem to include the discharged inmates of state prisons. All these laws provide for the payment of the expenses of deportation by the deporting state. In 1917, the National Commissioners on Uniform State Laws proposed a model act to provide for the return of persons of unsound mind to their residences.⁵⁸ This act does not contain a reciprocal clause, but

⁵⁴(1933) 6 State Govt. 3-6; (1934) 7 State Govt. 177-180; (1936) 9 State Govt. 148.

⁵⁵*Kane v. New Jersey*, (1916) 242 U. S. 160, 37 Sup. Ct. 30, 61 L. Ed. 222.

⁵⁶George, *Motor Carrier Regulation in the United States* 214-237.

⁵⁷Arizona, Rev. Code (Struckmeyer) 1928, sec. 2932; California, Pol. Code (Deering) 1931, sec. 2191; Indiana, Stat. (Baldwin), sec. 4133; Kansas, Rev. Stat. 1923, sec. 39-109; New Hampshire Laws 1931, ch. 91; New York, Laws 1924, ch. 550, sec. 6; Oregon Code 1930, sec. 68-2303; Pennsylvania, Stat. (Purdon) 1936, tit. 50, secs. 121, 122; Vermont, Pub. Laws 1933, secs. 3954, 3955, 3956; Wisconsin, Stat. 1935, sec. 49.026.

⁵⁸See Uniform Act to Provide for the Extradition of Persons of Unsound Mind, (1926) 9 Uniform Laws Ann. 132, 42 A. B. A. Rep. 361. This act has been adopted by nine states: Illinois, Indiana, Louisiana, Maryland, Nevada, South Dakota, Tennessee, Vermont, and Wisconsin. See (1926) 9 Uniform Laws Ann. 136, and Supp. 1935, 44.

institutes instead a procedure similar to that followed in the interstate rendition of persons charged with crime. The model act also differs from the reciprocal plan in providing for the payment of the expenses of deportation by the state of residence.

Reciprocal legislation sometimes is used as the method of bringing about cooperation between, or the practical fusion of administrative authorities. An example of this is the construction and maintenance of bridges across boundary waters.⁵⁹ Statutes commonly authorize the state highway department, or the county board concerned, to contract with the similar department of the adjoining state for the construction of interstate bridges. The reciprocal feature of such statutes is that they ordinarily have no effect until the adjoining state enacts similar legislation. Another example is the reciprocal appointment of game and fish wardens, as arranged between Wisconsin and Minnesota.⁶⁰ The respective conservation commissioners may appoint the wardens of one state as deputy-wardens in the other. Minnesota also offers to reciprocate in the supervision of commercial fishing in boundary waters.⁶¹ In the same connection, it may be mentioned that Wisconsin and Minnesota have provided by reciprocal legislation for the partial recognition on boundary waters of fishing and hunting licenses.⁶²

The nation-wide publicity given to some recent criminal cases of unusual interest served to focus attention upon the interstate aspects of crime control. Reciprocal legislation has been considered along with interstate compacts as a means for the solution of the problems common to the states in connection with the administration of criminal law. Suggestions designed to bring about interstate cooperation in the control of crime have been made by the Attorney General's Conference on Crime, held in Washington in December, 1934; by Congress, in passing the Act of June 6, 1934, which gives blanket consent to interstate com-

⁵⁹Idaho, Laws 1927, ch. 191; Indiana, Laws 1927, chs. 10, 238; New Jersey, Comp. Stat. Supp. 1930, sec. 26-119C (6); New Jersey, Laws 1930, ch. 80; Pennsylvania, Laws 1927, No. 441, sec. 6; Texas, Laws 1927, ch. 175.

⁶⁰Wisconsin, Stat. 1935, sec. 29.08; Mason's 1927 Minnesota Stat., sec. 5629.

⁶¹Mason's 1927 Minnesota Stat. Supp. 1936, sec. 5595.

⁶²Wisconsin offers to grant reciprocal recognition on boundary waters to all kinds of fishing licenses issued by Minnesota and Iowa. Stat. 1935, sec. 29.16. Iowa has passed no reciprocal legislation on this subject. Minnesota reciprocates only with respect to commercial licenses. Mason's 1927 Minnesota Stat. Supp. 1936, sec. 5595 (7). Minnesota also offers to recognize on Big Stone Lake all kinds of fishing licenses and licenses to take water fowl issued by South Dakota. Stat. Supp. (Mason), sec. 5647.

pacts relating to the enforcement of criminal law;⁶³ by the National Commissioners on Uniform State Laws; by the Interstate Crime Commission; and by other agencies.

There were already some precedents for the use of reciprocal legislation to facilitate the enforcement of criminal law. Minnesota and Wisconsin for some time have granted extraterritorial powers on a reciprocal basis to game wardens, permitting the officers of one state to pursue and capture violators in the territory of the other state.⁶⁴ For a number of years, all the New England states and Iowa, New York, Pennsylvania, South Dakota, and Wisconsin have had statutes—not all of which are reciprocal in character—providing a means to compel the attendance of witnesses at criminal trials in the courts of other states.⁶⁵ The general enactment of uniform legislation along these lines is now being advocated by influential agencies.

In 1935, South Dakota enacted a law which in very broad terms grants power to the peace officers of reciprocating states to pursue persons charged with felony, and to capture them within its boundaries.⁶⁶ The Uniform Act on Close Pursuit, sponsored by the Interstate Crime Commission, which has been adopted by four states,⁶⁷ is not reciprocal in form. Under its terms, a state grants by comity the privilege to the officers of another state to follow fugitives in hot pursuit across the state boundary; but a person so captured must be taken immediately before a magistrate for a hearing, and possible commitment to await extradition proceedings. The Uniform Act on Close Pursuit seems to meet the problem squarely, without introducing the sweeping invasion of territorial sovereignty and individual liberty implied in the South Dakota act. The Uniform Act to Secure the Attendance of Witnesses, approved by the National Commissioners and the American Bar Association in 1931,⁶⁸ and now adopted by thirteen

⁶³73d Cong. 2nd Sess., ch. 406.

⁶⁴Wisconsin, Stat. 1935, sec. 29.08; Mason's 1927 Minnesota Stat. sec. 5646. Vermont makes a reciprocal grant of jurisdiction permitting Massachusetts' officers to serve criminal process in buildings situated partly in both states. Vermont, Pub. Laws 1933, secs. 2544, 2545.

⁶⁵See Report of the Committee on Securing Compulsory Attendance of Nonresident Witnesses in Civil and Criminal Cases, (1922) Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings 358-361; Interstate Extradition of Witnesses, (1902) 6 Law Notes 159-160; Commonwealth of Massachusetts v. Klaus, (1911) 145 App. Div. 798, 130 N. Y. S. 713.

⁶⁶South Dakota, Laws 1935, ch. 115.

⁶⁷(1936) 9 State Govt. 17, 106. The text of the Uniform Act on Close Pursuit may be seen conveniently as Rhode Island, Acts 1935-36, ch. 2383, and Virginia, Laws 1936, ch. 188.

⁶⁸(1931) Handbook of the National Conference of Commissioners on

states,⁶⁹ contains a reciprocal clause. It provides a means to require residents of the enacting state to attend as witnesses in criminal cases in the courts of states that have enacted similar legislation. This desirable aid in the administration of criminal justice thus exists at the present time among over one third of the states. Other measures to bring about interstate cooperation in the control of crime include the Uniform Act on Criminal Extradition, sponsored by the National Commissioners, and containing no reciprocal provision;⁷⁰ the plan to negotiate interstate compacts to arrange for the reciprocal supervision of parolees and probationers;⁷¹ and various proposals to create joint crime detection laboratories and similar agencies by interstate compacts.

A question which deserves serious consideration is whether interstate cooperation in these matters can be brought about better by uniform and reciprocal legislation or by the method of interstate compacts. The variations in the legislation authorizing the negotiation of compacts,⁷² and the large number of jurisdictions to be brought together in the negotiations, strongly suggest that the desired result might be obtained more quickly and easily by uniform and reciprocal legislation. Ideally, the compact method is doubtless the better, because the conditions of cooperation may be made clearer and more certain—and this is especially important with respect to the grant of extraterritorial privileges.⁷³ In the absence of a binding compact or contract, it must usually be left to the administrative authorities to determine whether the legislation of another state satisfies the conditions of cooperation stipulated in a particular statute. But when cooperation is desired

Uniform State Laws and Proceedings 41-69, 120-122, 417-423; (1935) 9 Uniform Laws Ann. Supp. 6.

⁶⁹Arkansas, Idaho, Indiana, Maine, Nevada, New York, North Dakota, Oregon, Pennsylvania, South Dakota, West Virginia, Wisconsin, Wyoming. See (1935) 9 Uniform Laws Ann. Supp. 6.

⁷⁰This act was adopted in 1926. (1935) 9 Uniform Laws Ann. 108. It has been enacted by fourteen states. (1935) 9 Uniform Laws Ann. Supp. 26.

⁷¹See Lutz, *Crime and Punishment: The Best Use of Parole Requires Interstate Cooperation*, (1936) 9 State Govt. 133, and cf. Indiana, Stat. Supp. 1936, secs. 9-3001 to 9-3004; Michigan, Comp. Stat. Supp. 1935 (Mason), secs. 17509-1 to 17509-4; Mason's 1927 Minnesota Stat. Supp. 1936, sec. 10778-1; Rhode Island, Acts 1935-36, ch. 2381.

⁷²See a mimeographed report on *Interstate Crime Compacts*, issued by the Council of State Governments, October 7, 1935.

⁷³Cf. Freund, *Concurring Memorandum to Report of the Committee on Interstate Compacts*, (1921) *Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings* 357-361. See also J. P. Chamberlain, *Current Legislation*, (1923) 9 A. B. A. J. 207-209.

among all the states on a number of subjects, the compact method is so cumbersome as to be impractical.

Uniform legislation, while less perfect in these respects, may accomplish the essential purpose of a compact in a much simpler way. Legislation which is both uniform and reciprocal has the special advantages of protecting the rights of citizens and the territorial sovereignty of the states during the progress of the movement towards uniformity, and of offering an incentive to other states to adopt the uniform legislation. The chief objection to reciprocal legislation as a means of securing cooperation in the control of crime is that this would extend reciprocal legislation into a definitely political field. It is ordinarily a means of dealing with the less spectacular matters of distinctly secondary importance. The further objection that reciprocal legislation, when relating to a political matter, becomes an interstate compact and needs the consent of Congress, is readily met by the observation that the advance consent of Congress, contained in the Act of June 6, 1934, is broad enough to cover any possible uses of reciprocal legislation in connection with the interstate control of crime.⁷⁴

Another use of reciprocal legislation is to arrange for the interchange of information between officials in charge of tax collection or law enforcement. The one instance in which this has been realized to any extent is in connection with the exchange of income tax records. The personal income tax laws of some states grant to the appropriate authorities of the United States or any state the right to inspect their income tax records, provided a similar privilege is granted on the other side.⁷⁵ This provision had its origin in the model personal income tax law of the National Tax Association.⁷⁶ In 1932, a committee of the National Tax Association prepared a draft law designed to prevent the bootlegging of gasoline by providing for the reciprocal exchange of information between administrative authorities regarding ship-

⁷⁴See Dean, *The Interstate Compact—A Device for Crime Repression*, (1934) 1 *Law and Contemp. Prob.* 460-471, at p. 470. The South Dakota act extending extraterritorial privileges to the peace officers of neighboring states on a reciprocal basis contains the statement that "this act . . . is authorized by the Act of Congress of June 6, 1934." South Dakota, *Laws* 1935, ch. 115, sec. 4.

⁷⁵Arizona, *Rev. Code Supp.* 1934, sec. 3182z21 (c); California, *Codes Supp.* 1935 (Deering), p. 1995, sec. 33 (c); Kentucky, *Stat. (Baldwin)* 1936, sec. 4281b-11 (2); Mason's 1927 *Minnesota Stat. Supp.* 1936, sec. 2394-56 (a); Montana, *Code* 1935, sec. 2295.30 (3); Washington, *Laws* 1935, ch. 178, sec. 67 (f); West Virginia, *Laws* 1935, ch. 89, sec. 57(3).

⁷⁶See *Model Personal Income Tax Act*, sec. 805 (3), (1921) 6 *Bul. Nat'l Tax Ass'n* 100; (1928) 21 *Proc. Nat'l Tax Ass'n* 422.

ments across state lines.⁷⁷ In 1936, New York passed a statute providing for the reciprocal exchange of the records of violations of the motor vehicle laws by nonresidents.⁷⁸

One instance has been observed of the use of reciprocal legislation to arrange for the payment of tuition for nonresident high-school pupils.⁷⁹

The code of Georgia has a peculiar provision to the effect that entry to her courts is to be had only upon a reciprocal basis.⁸⁰

Much attention has been given in recent years to reciprocal legislation as a method of avoiding double and multiple inheritance taxation. An early and short-lived reciprocity movement was initiated in 1903 by the enactment of a Connecticut statute providing for the remission of inheritance taxes on the personal property of nonresident decedents whose states did not levy a similar tax upon the estates of Connecticut residents. In the following year, West Virginia enacted a similar reciprocal provision, and Vermont, more generously, exempted all property of nonresident decedents without any demand for a reciprocal exemption in favor of her citizens. In 1907, Massachusetts passed a reciprocal statute; in 1909 Kansas followed suit, and Maine enacted an exemption provision similar to that of Vermont. In 1911, Minnesota adopted a reciprocal statute,⁸¹ but here the movement stopped. It will be observed that these statutes applied to all kinds of personal property. The Kansas and Massachusetts statutes were held to create the exemption, not only in favor of a reciprocating state, but also as between those states and a state which exempted all estates of nonresidents from inheritance taxation.⁸² The Minnesota statute was, however, interpreted as creating no exemption in favor of residents of states which either levied no inheritance tax at all or levied no tax in like circumstances.⁸³ These interpretations were,

⁷⁷(1932) 25 Proc. Nat'l Tax Ass'n 184.

⁷⁸(1936) 9 State Govt. 106, 143. On the reciprocal exchange of information relating to the payment of inheritance taxes, see *infra* note 116.

⁷⁹Nebraska, Comp. Stat. 1929, sec. 79-905.

⁸⁰Georgia, Code 1933, sec. 79-305.

⁸¹Connecticut, Laws 1903, ch. 63, sec. 2, Gallup's Appeal, (1904) 76 Conn. 617, 57 Atl. 699; Kansas, Gen. Stat. (Dassler) 1909, sec. 9266; Maine, Laws 1909, ch. 187, sec. 7; Massachusetts, Acts 1907, ch. 563, sec. 3, re-enacted, 1909, ch. 490, pt. 4, sec. 3, 1911, ch. 502, sec. 1; Minnesota, Laws 1911, ch. 209, sec. 2, subdiv. 2; Vermont, Laws 1904, No. 30, secs. 3, 4; West Virginia, Laws 1904, ch. 6, sec. 6.

⁸²State v. Davis, (1913) 88 Kan. 849, 129 Pac. 1197; Bliss v. Bliss, (1915) 221 Mass. 201, 109 N. E. 148.

⁸³State ex rel. Graff v. Probate Court, (1915) 128 Minn. 371, 150 N. W. 1094.

of course, entirely consistent with the principle of reciprocity, which implies the granting of exemptions on both sides.

In 1907, Connecticut repealed her reciprocal statute and substituted for it a retaliatory feature applying only to stock and registered bonds of domestic corporations.⁸⁴ The effect of this statute was that stock and registered bonds belonging to the estates of nonresident decedents were subjected to the inheritance tax only when the domiciliary state would in like circumstances tax such property belonging to Connecticut residents. While this statute was in effect, Connecticut did not collect inheritance taxes on stocks and bonds of domestic corporations when belonging to estates of persons resident in states which levied no inheritance tax at all, or which levied inheritance taxes only upon property physically present within the jurisdiction; but it was used to retaliate against eight states which at that time did tax the stocks and bonds of domestic corporation when located outside the state and owned by nonresident decedents.⁸⁵ West Virginia, in 1909, changed her reciprocal law to a retaliatory one similar to that of Connecticut.⁸⁶ The National Tax Association, in its early conferences, condemned these retaliatory statutes.⁸⁷

All these reciprocal, retaliatory, and exemption laws were repealed soon after their enactment, the last falling in 1917.⁸⁸ The failure of this early movement to avoid multiple inheritance taxation probably was due to the fact that no organized group chose to support the idea of reciprocity with any vigor.⁸⁹ Three states later passed reciprocal laws offering to exempt from inheritance taxation the tangible property of resident decedents, when the property was located outside the enacting state, if the state in

⁸⁴Connecticut, Laws 1907, ch. 179, secs. 1, 6.

⁸⁵See *The Reciprocal Feature of the Act Concerning Taxes on Inheritances*, Connecticut Public Document, No. 48, Special No. 4 (Hartford, 1908), and remarks of the then Connecticut tax commissioner, W. H. Corbin, (1908) 2 Proc. Nat'l Tax Ass'n 171-194.

⁸⁶West Virginia, Laws 1909, ch. 63, sec. 6.

⁸⁷(1907) 1 Proc. Nat'l Tax Ass'n xviii; (1908) 2 Proc. Nat'l Tax Ass'n 26.

⁸⁸Connecticut, Laws 1915, ch. 332, secs. 3, 7, 14; Kansas, Laws 1913, ch. 330, sec. 1; Maine, Laws 1917, ch. 266, sec. 2; Massachusetts, Laws 1912, ch. 678, sec. 2; Minnesota, Laws 1913, ch. 565, sec. 1; Vermont, Laws 1912, No. 60, sec. 3; West Virginia, Laws 1913, ch. 25, sec. 6.

⁸⁹In 1910, the National Tax Association adopted a draft of a model inheritance tax law. For the avoidance of multiple taxation it relied, not upon reciprocity, but upon the principle that each state should tax only that portion of the tangible personal property of nonresident decedents actually present within its jurisdiction. (1910) 4 Proc. Nat'l Tax Ass'n 26, 279-290.

which the property was located made a similar exemption in favor of its resident decedents.⁹⁰

As the inheritance tax became more common among the states, the problem of multiple taxation grew more serious. In their search for revenues, the states taxed, not only the gross estates of their residents, but also all property of nonresidents which could by any device be brought under their taxing power. In the years immediately following the World War, much study was given to the problems of inheritance taxation, and particularly to the evils of multiple taxation. There was never any serious objection to the taxation of real property by the state in which it is located, and the decision of the United States Supreme Court in *Frick v. Pennsylvania*⁹¹ in 1925 established the rule that tangible personal property can be subjected to inheritance taxation only by the state in which it has an actual situs. Thus the problem was reduced to devising means to avoid the taxation of intangible property by more than one state, and, until later decisions by the highest court in the land supplied a more perfect solution,⁹² reciprocal legislation proved a useful means to this end.

In his message approving the Revenue Act of 1924, President Coolidge recommended the correction of abuses in state inheritance taxation.⁹³ The seventeenth annual meeting of the National Tax Association at St. Louis, September 15-19, 1924, gave much consideration to the reform of inheritance taxation, but reached no decision other than to propose a special conference on inheritance and estate taxation.⁹⁴ Before this special conference convened in

⁹⁰Arizona, Laws 1922, ch. 26, sec. 4 (7), Code (Struckmeyer) 1928, sec. 3162; Montana, Laws 1923, ch. 65, sec. 4 (4); North Dakota, Laws 1919, ch. 225, sec. 1 (1), Comp. Laws Supp. 1925, sec. 2346b1 (1). These provisions were rendered meaningless by the decision in *Frick v. Pennsylvania*, (1925) 268 U. S. 473, 45 Sup. Ct. 603, 69 L. Ed. 1058; cf. Pinkerton and Millsaps, Inheritance and Estate Taxes, sec. 261.

⁹¹(1925) 268 U. S. 473, 45 Sup. Ct. 603, 69 L. Ed. 1058.

⁹²The rules as now developed prevent all forms of double and multiple inheritance taxation by the states, except that arising from claims that a decedent was domiciled in two or more states. The decisions have been discussed in many articles in the law reviews, such as the following: Rottschaefer, The Power of the States to Tax Intangibles, (1931) 15 MINNESOTA LAW REVIEW 741-766; Rottschaefer, State Jurisdiction to Impose Taxes, (1933) 42 Yale L. J. 305-332; Brady, Death Taxes: Recent Statutory and Judicial Solutions of Multiple Taxation, (1930) 16 A. B. A. J. 532-535; Lowndes, Tendencies in the Taxation of Intangibles, (1930) 17 Va. Law Review, 146-163; Mason, Jurisdiction for the Purpose of Imposing Inheritance Taxes, (1931) 29 Mich. Law Review 324-338.

⁹³See his Address at the National Conference on Inheritance and Estates Taxes, Washington, D. C., February 19, 1925, (1925) 10 Bul. Nat'l Tax Ass'n 169-171.

⁹⁴(1925) 10 Bul. Nat'l Tax Ass'n 3.

Washington in February, 1925, the discussions at the St. Louis meeting bore fruit in another way. In December, 1924, the Pennsylvania tax commission, under the leadership of its chairman, Franklin S. Edmonds, invited the tax commissioners of neighboring states to meet with it informally at Harrisburg to consider problems of multiple inheritance taxation.⁹⁵ Out of the discussions at the series of conferences so initiated arose the plan of reciprocity.⁹⁶ The solution actually favored by the tax commissioners at that time was the unconditional abandonment by all states of taxation of the intangibles of nonresident decedents. They recognized, however, the difficulties in getting their legislatures to take such action with no guaranty that other states would enact uniform legislation. The idea of reciprocity appealed to them as just the device to safeguard the interests of states, and at the same time to accomplish the desired reform.⁹⁷ After an exchange of correspondence with the New York and Massachusetts commissions, the Pennsylvania commission recommended a reciprocal measure to the Pennsylvania legislature at its 1925 session, which enacted it into law, thus formally initiating the reciprocity movement in inheritance taxation.⁹⁸ The legislatures of New York, Massachusetts, and Connecticut, then in session, quickly followed suit.⁹⁹

In the meantime the special conference of the National Tax Association met at Washington, February 19-20, 1925.¹⁰⁰ The idea of reciprocity was not unknown to the members of this conference, but it entered very little into the discussions.¹⁰¹ The conclusion was reached that the taxation of the estates of nonresident decedents ought to be abandoned, but reciprocity was not endorsed

⁹⁵See Edmonds, *Progress in Reciprocity in State Inheritance Taxation*, (1925) 18 Proc. Nat'l Tax Ass'n 246-254, at p. 246.

⁹⁶(1927) 20 Proc. Nat'l Tax Ass'n 414, 416, 432.

⁹⁷See Edmonds, *Reciprocity in Inheritance Taxation*, (1927) 20 Proc. Nat'l Tax Ass'n 415-431.

⁹⁸(1925) 18 Proc. Nat'l Tax Ass'n 249; Pennsylvania, Laws 1925, No. 391, sec. 1 (d).

⁹⁹New York, Laws 1925, ch. 143; Massachusetts, Laws 1925, ch. 338; Connecticut, Laws 1925, ch. 239; Gerstenberg, *A Brief Survey of the Statutory Changes of 1925 in Inheritance Taxes*, (1925) 10 Bul. Nat'l Tax Ass'n 265-267.

¹⁰⁰On the planning of this conference see (1925) 10 Bul. Nat'l Tax Ass'n, 3, 69, 101.

¹⁰¹President Coolidge referred to reciprocity in his opening address. See his address, (1925) 10 Bul. Nat'l Tax Ass'n 169-171. R. L. Bradford definitely proposed reciprocity; see his paper, *Uncertainties in Death Duty Legislation and Interpretations*, *Proceedings of the National Conference on Inheritance and Estates Taxes*, held at the New Willard Hotel, Washington, D. C., February 19-20, 1925, 12-24, at p. 23. See pp. 81, 83, 84, for mention of it, mostly unfavorable, by other members.

as a means of getting legislatures to take this action. To study the problems involved more thoroughly, this conference authorized its chairman to appoint a committee to report to a second special conference.¹⁰² Upon the recommendation of this committee, the second conference at New Orleans, in November, 1925, definitely endorsed reciprocity.¹⁰³ A model reciprocal statute was adopted at the same time.¹⁰⁴ The National Tax Association, then in conference, formally gave its approval to the reciprocity movement.¹⁰⁵

In anticipation of the 1927 sessions of the legislatures, other organizations took up the idea of reciprocity in inheritance taxation. The Chamber of Commerce of the United States ascertained by referendum that its member organizations were strongly in favor of the plan.¹⁰⁶ These efforts were not without effect, for in 1927 eight more states adopted reciprocity.¹⁰⁷ With these successes the movement gained momentum, the lists being entered by such organizations as the Investment Bankers Association and the American Bankers Association.¹⁰⁸ In 1928, the National Commissioners on Uniform State Laws proposed a uniform reciprocal law which closely followed the model act of the National Tax

¹⁰²See a statement of the results of the conference, (1925) 10 Bul. Nat'l Tax Ass'n 166.

¹⁰³See the report of this committee in Proceedings of the Second National Conference on Inheritance and Estate Taxation, held at New Orleans, November 10, 1925, 23 seq., and for an analysis see Brady, Statutory Solutions of Multiple Death Taxation, (1927) 13 A. B. A. J. 147-150.

¹⁰⁴Proc. of the Second Special Conference 77.

¹⁰⁵The 1925 conference adopted a resolution endorsing the plan. (1925) 18 Proc. Nat'l Tax Ass'n 244, 366-367. The 1926 conference resolved that a committee should be appointed to study reciprocity as a practical solution for inheritance tax problems. (1926) 19 Proc. Nat'l Tax Ass'n 377. This committee reported to the next conference, strongly favoring the idea. (1927) 20 Proc. Nat'l Tax Ass'n 415-431, 466-467.

¹⁰⁶Chamber of Commerce of the United States, Referendum No. 49 on Taxation Committee's Report on State and Local Taxation, October 23, 1926. Reciprocity was approved by the vote of 2,290 to 100. See (1927) Fifteenth Annual Meeting of the Chamber of Commerce of the United States 41.

¹⁰⁷Kentucky, Laws 1926, ch. 176, sec. 2; California, Laws 1927, ch. 646; Georgia, Laws 1927, No. 331, sec. 5; Illinois, Laws 1927, p. 748; Maine, Laws 1927, ch. 231; Maryland, Laws 1927, ch. 350; New Hampshire, Laws 1927, ch. 104; Ohio, Laws 1927, p. 103; Oregon, Laws 1927, ch. 118, sec. 1. See also Saylor, Reciprocal Inheritance Tax Legislation, (1927) 13 Bul. Nat'l Tax Ass'n 4-6; Brady, Statutory Solutions of Multiple Death Taxation, (1927) 13 A. B. A. J. 147.

¹⁰⁸2 Public Dollar, No. 1 (January, 1929). On the further activities of the Chamber of Commerce of the United States, see the files of the Public Dollar; Moore, Fiscal Problems of the States, a pamphlet published by the Finance Department; and the resolutions adopted at the sixteenth annual meeting held at Washington, D. C., May 11, 1928.

Association.¹⁰⁹ In 1929, thirteen more states joined the reciprocity ranks, bringing the movement to its high-water mark.¹¹⁰

The states which levy no inheritance tax on the intangible personal property of nonresident decedents ordinarily have been counted as within the reciprocal ranks, so that the movement has seemed to embrace almost all the states.¹¹¹ The elimination of multiple taxation was, however, never as general as the proponents of the plan of reciprocity wished to make out. This was true because of considerable variation in the reciprocal legislation on the subject, and also because of certain administrative difficulties which developed. Most of the states followed quite closely the model statutes of the National Tax Association and the National Commissioners on Uniform State Laws, both of which provide that the exemption shall be made, if (1) the state of residence levies no inheritance tax upon the intangibles of nonresident decedents, or (2) the state of residence has a reciprocal law. This left doubt as to whether the exemption should be made in favor of residents of a state which levied no inheritance tax of any kind. A few states stipulated that the exemption would not apply in such circumstances. The statutes of some states contained only the second of the two alternatives of the model acts, and others offered to make the exemption only in favor of the residents of states which unconditionally exempted the intangibles of nonresident decedents.¹¹² The situation was further complicated because the existence of reciprocity depended, not only upon the interpretation of the statutes, but also upon the administrative practice, or even the court decisions, of other states.¹¹³

¹⁰⁹(1927) 52 A. B. A. Rep. 404; (1928) 53 A. B. A. Rep. 90, 92, (1928) 9 Uniform Laws Ann. 381, and Supp. 1935, 174.

¹¹⁰Mississippi, Laws 1928, ch. 191, sec. 3; Arkansas, Laws 1929, No. 106, sec. 2; Idaho, Laws 1929, ch. 243, sec. 8; Indiana, Laws 1929, ch. 65, sec. 4; Iowa, Laws 1929, ch. 203; Michigan, Laws 1929, No. 231; Missouri, Laws 1929, ch. 102; North Carolina, Laws 1929, ch. 345, sec. 13; New Mexico, Laws 1929, ch. 86; South Carolina, Laws 1929, No. 194; Texas, Laws 1st sess. 1929, ch. 50; Washington, Laws 1929, ch. 220; West Virginia, Laws 1929, ch. 57, sec. 6; Wyoming, Laws 1929, ch. 111.

¹¹¹In the table in *Tax Systems of the World* 5th ed., at pp. 110-111, only nine states are listed as not being members of the reciprocal group, as follows: Arizona, Kansas, Kentucky, Louisiana, Montana, North Carolina, Oklahoma, South Dakota, and Utah.

¹¹²The reciprocal states are classified into these different groups in *Reciprocal and Retaliatory Tax Statutes*, (1930) 43 Harv. Law Rev. 641-646.

¹¹³In *Commonwealth v. Taylor's Executor*, (1929) 297 Pa. St. 335, 147 Atl. 71, the court looked at the administrative practice in New York to determine whether reciprocity existed. In *City Bank Farmers' Trust Company v. New York Central R. R. Co.*, (1930) 253 N. Y. 49, 170 N. E. 489, the court looked at the Pennsylvania decision just cited for the same purpose.

All these doubts were, of course, swept away by the recent decision of the United States Supreme Court relating to the situs of personal property for inheritance tax purposes, and the reciprocal statutes are no longer necessary as a partial solution of the problems of multiple taxation. The experience with reciprocal legislation in connection with inheritance taxation clearly reveals all its defects as a device for the solution of interstate problems. The difficulties encountered in trying to get all, or nearly all, the states to adopt a reciprocal statute are the same as for a uniform statute. The variations in the plan which many state legislatures will inevitably introduce create uncertainties, and may defeat the principle of reciprocity. As a method of checking multiple inheritance taxation, decisions of the Supreme Court under the due process clause proved infinitely superior to reciprocal legislation, but that solution is not always available. These incidents also revealed the special advantage of reciprocal legislation, which is to enable states to trade valuable considerations to the mutual advantage of all concerned.

One of the by-products of the movement for reciprocity in inheritance taxation was the simplification of the administration of the estates of nonresident decedents. Shortly after the first of the reciprocal statutes went into effect, the taxing authorities of several states agreed in conference that securities making up part of an estate to be relieved of taxation through reciprocity may be transferred immediately upon the filing with the transfer agent or institution concerned of the affidavit of the executor, to the effect that the deceased was a resident of a reciprocal state. Thus, the employment of counsel, the filing of copies of the will and other documents, the securing of tax waivers, and other inconveniences formerly encountered are now frequently avoided.¹¹⁴

More recently, attention has been directed to the fact that the intangibles of an estate may escape taxation altogether, if the estate is administered in the courts of a state other than that in which the deceased was resident.¹¹⁵ The National Tax Association is at the present time sponsoring, already with considerable success, another reciprocal statute designed to make such avoidance of tax-

¹¹⁴Progress of Reciprocity in Inheritance Taxation, (1925) 11 *Bul. Nat'l Tax Ass'n* 9-10; Smith, A Substitute for Inheritance Tax Waivers: Benefits Derived from Reciprocity in Inheritance Taxation, (1926) 12 *Bul. Nat'l Tax Ass'n* 41-43; Brady, Death Taxes—Flat Rates and Reciprocity, (1928) 14 *A. B. A. Jour.* 309-312.

¹¹⁵Re Martin, (1931) 255 *N. Y.* 389, 173 *N. E.* 878.

ation an impossibility.¹¹⁶ Another problem which has arisen from the rule that intangible property can be taxed only by the domiciliary state is that of double domicile in inheritance taxation. Due to the uncertainties of the rules for determining the domicile for taxation purposes, an estate may be required to pay inheritance taxes in two states. A committee of the National Tax Association, which considered this problem, rejected reciprocal legislation in favor of interstate compacts as the method of solving this difficulty.¹¹⁷

The general problem of the duty of one state to enforce the tax claims of another has come to the front in recent years.¹¹⁸ It has been held that in some circumstances the tax claims of one state are entitled to full faith and credit in another state.¹¹⁹ In 1935, North Carolina enacted a reciprocal law, providing for the recognition and enforcement in her courts of liabilities for taxes imposed by other states.¹²⁰ North Carolina officials are authorized to bring suits in the courts of other states for the collection of taxes, and the officials of reciprocating states are admitted to the courts of North Carolina for the same purpose. The general adoption of reciprocal legislation of this kind would solve a perplexing problem, and bring a large amount of property within the reach of the taxing powers of the states.

The recent decisions operating to prevent multiple inheritance taxation have not affected income taxation.¹²¹ On the contrary,

¹¹⁶The model statute was brought forward in 1931 as a committee report, and was adopted by the Association. It provides that the executor of a nonresident decedent must file proof that the inheritance taxes have been duly paid to the domiciliary state; in the absence of such proof, a reciprocating state agrees to notify the appropriate authorities of the domiciliary state, who may demand an accounting; and the executor will not be discharged until settlement is made. See (1931) 24 Proc. Nat'l Tax Ass'n 381, 393. Fourteen states have so far enacted this statute. See (1933) 26 Proc. Nat'l Tax Ass'n 260; Manning, *State Tax Legislation, 1935*, (1935) 28 Proc. Nat'l Tax Ass'n 27-60, at p. 37; Maryland, *Laws spec. sess.*, 1936, ch. 124, sec. 2.

¹¹⁷See Report of the Committee of National Tax Association on Double Domicile in Inheritance Taxation, (1935) 28 Proc. Nat'l Tax Ass'n 201-212.

¹¹⁸Manning, *State Tax Legislation 1935*, (1935) 28 Proc. Nat'l Tax Ass'n 27; Blinkoff, *Extra-territorial Collection of Taxes Validly Imposed*, (1933) 18 *Corn. L. Q.* 581-586.

¹¹⁹*People of the State of New York v. Coe Mfg. Co.*, (1932) 10 N. J. Misc. 1161, 162 Atl. 872; *Milwaukee County v. M. E. White Company*, (1935) 296 U. S. 268, 56 Sup. Ct. 229.

¹²⁰North Carolina, Code 1935, secs. 7880 (194) a, b.

¹²¹Beuscher, *Overlapping State Income Tax Laws*, (1933) 8 *Wis. Law Rev.* 320-333; Saxe, *State Income Taxation of Nonresidents*, (1935) 28 Proc. Nat'l Tax Ass'n 215-221.

judicial sanction has recently been given to the long established practice of the levy of taxes upon the entire net income of residents.¹²² The states also have the undoubted right to tax the incomes of nonresidents, and of foreign corporations, if derived from property located within the state or business carried on within the state.¹²³ A large majority of the states which now have net income tax laws reach out in all these directions, thus creating many possibilities of multiple taxation.¹²⁴ These problems have not seemed very serious because of the limited use of this form of taxation by the states; but with the present rapid spread of income taxation a solution will be as necessary as with inheritance taxation in the last decade. The solution for some time advocated by the National Tax Association, which is to encourage the states to abandon the taxation of the incomes of nonresidents and to tax business only upon the income derived within the jurisdiction, has made little headway.¹²⁵ The improbability of a ready solution by

¹²²*Lawrence v. Mississippi*, (1931) 286 U. S. 276, 76 L. Ed. 1102, 52 Sup. Ct. 556.

¹²³*Shaffer v. Carter*, (1920) 252 U. S. 37, 64 L. Ed. 445, 40 Sup. Ct. 221.

¹²⁴Thirty-three states have personal net income tax laws, as follows, the citation in each instance referring to matters pertinent to this study: Alabama, Laws, ex. sess. 1932, No. 117, secs. 1(b), 14, 22; Arizona, Code Supp. 1934, secs. 3182b, 3182u, 3182x; Arkansas, Laws 1929, Act 118, secs. 3, 15; California, Codes Supp. 1935 (Deering), p. 1968, Act 8494, secs. 5, 25; Delaware, Laws 1929, ch 8, sec. 1(b); Georgia, Code 1933, sec. 92-3112; Idaho, Code 1932, secs. 61-2412, 61-2416, as amended, Laws 1933, ch. 159, secs. 4, 7, sec. 61-2428; Iowa, Code 1935, secs. 6943-f5, 29; Kansas, Laws 1933, ch. 320, sec. 3; Kentucky, Stat. (Baldwin) 1936, secs. 4281b-14, 15, 16; Louisiana, Laws 1934, No. 21, sec. 34, as amended, Laws 1936, No. 143, sec. 1; Massachusetts, Gen. Laws 1932, ch. 62, sec. 25; Mason's 1927 Minnesota Stat. Supp. 1936, secs. 2394-3, 2394-23; Mississippi, Laws 1934, ch. 120, secs. 3, 7 (11), 37, as amended, Laws 1936, ch. 151, sec. 11; Missouri, Rev. Stat. 1929, secs. 10115, 10120; Montana, Rev. Code 1935, secs. 2295.3, 2295.7(3), 2295.8(11); New Hampshire, Pub. Laws 1926, ch. 65, secs. 2, 3(1); New Mexico, Laws 1929, ch. 85, sec. 29, as amended, Laws, spec. sess. 1934, ch. 29, sec. 3, and secs. 1, 21, 24, 25 of original act; New York, Con. Laws (Cahill) 1930, ch. 61, secs. 214, 351, 351a, 359, 363; North Carolina, Code 1935, secs. 7880 (125), (140) (10), (143); North Dakota, Laws 1931, ch. 283, sec. 2; Ohio, Laws 1931, S. B. No. 323 (p. 714 seq.), secs. 5328-1, 5328-2, 5388, 5638; Oklahoma, Stat. Supp. 1936, secs. 12498e, f, h (d); Oregon, Code Supp. 1935, secs. 69-1307, 1503; Pennsylvania, Stat. (Purdon) 1936, tit. 72, secs. 3402-201, 3402-303 (c), 3402-310; South Carolina, Code 1932, secs. 2437, 2439, 2449(9), 2451; South Dakota, Laws 1935, ch. 205, secs. 5, 15a; Tennessee, Code 1932, sec. 1090; Utah, Rev. Stat. 1933, secs. 80-13-21, 80-14-1; Vermont, Pub. Laws 1933, secs. 872, 881, 888; Virginia, Code (Tax Code), secs. 38, 39, 40, 54; West Virginia, Laws 1935, ch. 89, secs. 3, 4, 34; Wisconsin, Stat. 1935, secs. 71.01, 71.02 (j) 3 (d).

¹²⁵See the model system of state and local taxation, (1919) 12 Proc. Nat'l Tax Ass'n 426-470, and the model personal net income tax law, (1921) 6 Bul. Nat'l Tax Ass'n 100, (1928) 21 Proc. Nat'l Tax Ass'n 422. This plan has been recently reaffirmed; see (1933) 26 Proc. Nat'l Tax Ass'n 353-420, at p. 366.

means of judicial decisions as with inheritance taxation, or of some type of federal interference, suggests that the possibilities of reciprocal legislation should be explored thoroughly.

Reciprocal legislation as a method of affording relief from multiple income taxation was first introduced by the state of New York in 1919. New York then, as now, taxed the entire incomes of residents wherever derived, and the incomes of nonresidents earned or derived within the state. It will be obvious that, if New Jersey had a similar law, her citizens earning incomes in New York would be subjected to double taxation. To mitigate this evil, and at the same time to protect the interests of her citizens, New York in 1919 enacted a reciprocal credit provision. The principle was that a nonresident in calculating his income tax to be paid to New York might deduct the amount of tax to which he was liable in his own state, if the other state made a similar provision in favor of residents of New York.¹²⁶ Thus, if the rates of taxation were the same, a nonresident would pay no tax at all to New York, provided of course that his own state enacted reciprocal legislation. This provision was amended in 1920 to allow the same credit to residents of a state which, while levying a tax upon the entire incomes of residents, levies no tax on the incomes of nonresidents.¹²⁷ Residents of a state having no income tax law cannot profit from this provision of the New York law. This is consistent with the principle of reciprocity, for otherwise the citizens of New York would gain no advantage to compensate for the revenue relinquished by their state.

It will be clear that if all the states modeled their income tax laws after that of New York in these particulars, there would be no possibility of multiple taxation, except as occurring because of differences in the rate of taxation. Only ten states have done so, namely, Alabama, California, Kentucky, Mississippi, New Mexico, North Carolina, Pennsylvania, South Carolina, Virginia, and West Virginia. Thus, reciprocity in income taxation exists among a group of eighteen states, including the eleven states having reciprocal provisions, and seven states having income tax laws but not taxing nonresidents, namely, Delaware, Iowa, Massachusetts, New Hampshire, Tennessee, Utah, and Vermont.

There is another statutory device for the avoidance of multiple

¹²⁶New York, Laws 1919, ch. 627, sec. 363; see also remarks of Seligman, claiming the authorship of this section, (1919) 5 *Bul. Nat'l Tax Ass'n* 40-50.

¹²⁷New York, Laws 1920, ch. 691, sec. 2.

income taxation which has been enacted with variations by nine states — California, Minnesota, Missouri, New Mexico, North Carolina, Ohio, South Carolina, Vermont, and Virginia.¹²⁸ These states resign all or part of the revenue which they might gain by taxing the incomes of their residents derived outside of the state, and upon which an income tax is paid to another state. This plan does not completely eliminate the possibilities of multiple taxation on the incomes of residents of the states involved, because the exemption or credit is not ordinarily allowed on all forms of income. No element of reciprocity is present in this plan, because there is no way in which a state can demand a favor on the other side to compensate it for its lost revenue.

Corporations doing business in two or more states are not as likely to be subjected to multiple income taxation. Twenty-nine states levy taxes based upon the net incomes of corporations,¹²⁹ but only six of these—Alabama, Arkansas, Louisiana, Mississippi, North Carolina, and South Carolina—impose the tax upon the entire net income of domestic corporations. All the other states require domestic and foreign corporations alike to pay taxes upon the net income derived from property or business within the state. Of the seven states which tax the entire net incomes of domestic corporations, only two—North Carolina and South Carolina—have statutory provisions to relieve their corporations from multiple taxation. These two states provide that domestic corporations, in paying income tax to their home states, may deduct the amount of tax to which they have become liable elsewhere with respect to income derived from property located in another state or business carried on within another state.

All the examples of reciprocal legislation have now been dealt with, and attention may be directed to the closely related subject of retaliatory legislation. There has been much confusion in the use of "reciprocal" and "retaliatory,"¹³⁰ which is probably due to the

¹²⁸New Hampshire exempts its residents from taxation upon the interest on deposits in savings banks, building and loan associations, or savings departments located in New Hampshire or in any state that similarly exempts its residents from taxation on deposits in New Hampshire institutions.

¹²⁹All the states levying personal net income taxes, except Delaware, New Hampshire and West Virginia, also levy taxes on the net incomes of corporations. Connecticut levies income tax upon corporations but not upon individuals.

¹³⁰See *Metropolitan Life Insurance Co. v. Boys*, (1921) 296 Ill. 166, 129 N. E. 724, and cases cited. Cf. *Bankers' Life Co. v. Richardson*, (1923) 192 Cal. 113, 218 Pac. 586, where it is said: "The so-called retaliatory laws are also reciprocal in nature." See *Metropolitan Life Insurance Co. v.*

fact that the ultimate purposes of legislation of both types are the same, namely, to secure equality of treatment of residents and corporations of the different states and to bring about the solution of some of the problems common to two or more states.¹³¹ While the objects are the same, the methods of attaining them are fundamentally different. By reciprocal legislation, the states seek to arrange for an interchange of favors; by retaliatory legislation, a state threatens to return disfavors for disfavors, or evil for evil. The courts have set up another distinction between these two types of legislation by holding that reciprocal legislation should be freely construed, while retaliatory legislation should be strictly construed.¹³² It should be assumed that a state, by enacting reciprocal legislation, has declared that it is its policy to extend favors whenever possible, and any doubtful cases should be resolved so as to extend such favors; while retaliatory legislation should not be allowed to create a disability unless the case clearly comes within its terms.

Examples of retaliatory legislation already have been referred to in connection with the licensing of trades and professions, and inheritance taxation. Maryland has a retaliatory law to prevent the appointment of a nonresident as executor or guardian, if the state in which he is resident prevents the appointment of Maryland residents to similar offices.¹³³ Vermont provides that nonresidents shall pay the same fees for hunting and fishing licenses as would be required of Vermont residents in the other states.¹³⁴ The most notable use of retaliatory legislation is, however, in connection with the taxation of foreign corporations, especially foreign insurance companies. It appears that formerly a considerable number of states had statutes which provided that all foreign corporations doing business within the state, and domiciled in a state which discriminated against corporations foreign to it, should be sub-

Commonwealth, (1908) 198 Mass. 466, 84 N. E. 863, for the observation that "all these provisions are intended to be reciprocal." See also Lindsay, *Reciprocal Legislation*, (1910) 25 Pol. Sci. Quar. 435-457.

¹³¹The best discussion of the distinctions between, and the common purposes of, reciprocal and retaliatory legislation will be found in *State ex rel. v. Insurance Co.*, (1892) 49 Ohio St. 440, 31 N. E. 658.

¹³²See the decisions cited, notes 130 and 131; *State v. Continental Insurance Co.*, (1917) 67 Ind. App. 536, 116 N. E. 929; *Pacific Mutual Life Insurance Co. v. State*, (1931) 161 Wash. 135, 296 Pac. 813.

¹³³Maryland, Code Supp. (Bagby) 1929, art. 93, secs. 41A, 210A, and Code Supp. (Flack) 1935, art. 16, sec. 117A.

¹³⁴Vermont, Pub. Laws 1933, sec. 5615.

jected to all the disabilities imposed by the domiciliary state.¹³⁵ Retaliatory statutes of this kind, applying to all kinds of foreign corporations, are now uncommon, the only examples being those of New Jersey and Delaware.¹³⁶ But a number of states have retaliatory laws applying to foreign building and loan associations,¹³⁷ or savings and loan associations;¹³⁸ and a majority of the states have such laws applying to foreign insurance companies.¹³⁹

The retaliatory statutes ordinarily provide that any taxes, fees, penalties, or other obligations imposed by another state shall be duplicated in the enacting state, but it is unusual to find them brought into operation with respect to any matter other than taxation or other money payment.¹⁴⁰ Most of the litigation has arisen in connection with the retaliatory insurance laws. While there is authority to the contrary in one state,¹⁴¹ retaliatory insurance laws have generally been held to be constitutional.¹⁴² Although the rul-

¹³⁵See Beale, *The Law of Foreign Corporations*, secs. 472, 597; Frost, *A Treatise on the Incorporation and Organization of Corporations*, 4th ed., p. 199; Judson, *The Extent and Evils of Double Taxation in the United States*, (1915) 58 *Annals of the Amer. Acad.* 105-111, p. 109; Fairchild, *The Principle of Equity in the Taxation of Foreign Corporations*, (1918) 3 *Bul. Nat'l Tax Ass'n* 189-193, 233-237.

¹³⁶New Jersey, *Comp. Laws Supp.* 1924, sec. 47-101; Delaware, *Code* 1915, sec. 110-73, as amended, *Laws* 1929, ch. 6. Nevada formerly had a similar provision (*Rev. Laws* 1912, sec. 1207), but it was repealed. *Laws* 1919, ch. 13, sec. 2. The New Jersey law was held not contrary to its constitution, *Texas Co. v. Dickinson*, (N.J. 1910) 75 *Atl.* 803.

¹³⁷Alabama, *Code* 1928, sec. 7111; Georgia, *Code* 1933, sec. 16-209; Iowa, *Code* 1935, sec. 9386; Montana, *Rev. Code* 1935, sec. 6355-34; New Mexico, *Comp. Stat.*, 1929, sec. 18-119; South Dakota, *Comp. Laws* 1929, sec. 9065-222; Vermont, *Pub. Laws* 1933, sec. 6910; Wisconsin, *Stat.* 1935, sec. 215.42.

¹³⁸Washington, *Laws* 1933, ch. 183, sec. 88.

¹³⁹In a list compiled for the use of insurance companies, seven states are classed as having neither a reciprocal nor a retaliatory provision, twenty-seven as reciprocal, and fourteen as retaliatory. See (1934) *Insurance Year Book (Life Insurance)*, 451-559, *passim*. Although purporting to be compiled from information furnished by insurance commissioners, this list is inaccurate, due to a failure to distinguish between these two types of legislation. A list which is probably accurate in almost every respect may be consulted in *Tax Systems of the World*, 6th Ed., pp. 188-189. In this list the classification is as follows: ten states, no provision; three states, both reciprocal and retaliatory; three states, reciprocal; thirty-two states, retaliatory; one state, not classified.

¹⁴⁰The question of what lines of business a foreign insurance company might conduct under a retaliatory provision was considered in *State ex rel. v. Insurance Co.*, (1892) 49 *Ohio St.* 440, 31 *N. E.* 658.

¹⁴¹*Clark v. Port of Mobile*, (1880) 67 *Ala.* 217; *State v. Firemen's Fund Ins. Co.*, (1931) 223 *Ala.* 134, 134 *So.* 858.

¹⁴²Most of the opinions approving retaliatory insurance laws are summarized and cited in Lindsay, *Reciprocal Legislation*, (1910) 25 *Pol. Sci. Quar.* 435-457, at p. 452, and Paterson, *The Insurance Commissioner in the United States*, 106-108.

ing in *Hanover Fire Insurance Company v. Harding*,¹⁴³ that a foreign insurance company is entitled to the equal protection of the laws, might seem to destroy the former nearly unanimous judicial opinion that retaliatory insurance laws are constitutional,¹⁴⁴ such interpretation probably is not justified.¹⁴⁵ A retaliatory insurance law does not authorize the insurance commissioner, or other officer, to collect taxes at the combined rates of the two states, but only at the greater rate.¹⁴⁶ The administration of a retaliatory insurance law is a ministerial function; the decision of an insurance commissioner in applying such a law is not judicial and final, but may be reviewed by the courts.¹⁴⁷ A retaliatory insurance law is a sleeping provision; it comes automatically into effect when the legislature of another state imposes a rate of taxation higher than that levied by the state having the retaliatory provision.¹⁴⁸ It is not necessary that a company of the state having the retaliatory provision be engaged in business in the other state, so as to suffer from the higher tax rate.¹⁴⁹ Retaliatory legislation has not brought

¹⁴³(1926) 272 U. S. 494, 71 L. Ed. 372, 47 Sup. Ct. 179.

¹⁴⁴In the *Hanover Fire Insurance Company* case, the Illinois law requiring foreign insurance companies to pay higher taxes than domestic was held to be a denial of the equal protection of the laws. Thus, a foreign insurance company once admitted to do business must be taxed at the same rate as domestic companies; but a tax imposed under a retaliatory provision will always be higher than the domestic rate, so it might very well be supposed that retaliatory provisions are a denial of the equal protection of the laws. The case was so interpreted in *State v. Firemen's Fund Insurance Co.*, (1931) 223 Ala. 134, 134 So. 858. See also *National Savings and Loan Ass'n v. Gilles*, (D.C. Idaho, 1929) 35 Fed. 2s, 386, quoting with approval the *Hanover Fire Insurance Company* case to invalidate the unequal taxation of domestic and foreign building and loan associations.

¹⁴⁵The *Hanover Fire Insurance Company* case did not involve a retaliatory law. Moreover, that case has not been interpreted to prevent all forms of differential taxation of foreign corporations, and foreign and domestic corporations are taxed on different bases by many states. See *State and Local Taxation of Business Corporations* (Pub. by the National Industrial Conference Board, New York, 1931) 61-63, 70-71. See also *Merrill, Unconstitutional Conditions*, (1929) 77 U. Pa. L. Rev. 879-895, which leaves the impression that the interpretation of the equal protection of the laws clause as applied to corporations cannot be regarded as settled.

¹⁴⁶*Metropolitan Life Insurance Co. v. Commonwealth*, (1908) 198 Mass. 466, 84 N. E. 863; *State v. Reinmund*, (1887) 45 Ohio St. 214, 13 N. E. 30.

¹⁴⁷*State ex rel. Attorney General v. Fidelity and Casualty Insurance Co.*, (1888) 39 Minn. 538, 41 N. W. 108.

¹⁴⁸*Germania Ins. Co. v. Swigert*, (1889) 128 Ill. 237, 21 N. E. 530.

¹⁴⁹*Germania Ins. Co. v. Swigert*, (1889) 128 Ill. 237, 21 N. E. 530; *State ex rel. Phillips v. Fidelity and Casualty Co.*, (1889) 77 Iowa 548, 42 N. W. 509; *State v. Reinmund*, (1887) 45 Ohio St. 214, 13 N. E. 30.

about uniformity in the laws applying to foreign corporations, especially foreign insurance companies.¹⁵⁰

¹⁵⁰On the absence of uniformity in the laws relating to foreign corporations, see Haring, *Corporations Doing Business in Other States*, 13-15. As to insurance law, see the remarks of Edmonds, (1925) 18 *Proc. Nat'l Tax Ass'n* 248; Rhodes, *Life Insurance Protection and Savings as Affected by Special Insurance Taxes*, (1924) 113 *Economic World* 669; United States Chamber of Commerce, (1926) *Insurance Bulletin*, Nos. 12, 15, 26.