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Commerce Clause v. Coal Severance Taxation

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STUDENT NOTES

COMMERCE CLAUSE v. COAL SEVERANCE TAXATION

In *Commonwealth Edison Co. v. Montana,*[1] the United States Supreme Court held[2] that although a state's coal severance tax[3] is subject to commerce clause[4] scrutiny, the Montana tax[5] meets commerce clause requirements for state taxes affecting interstate commerce. In addition the Court ruled that Montana's coal severance tax does not contravene the supremacy clause,[6] as it is neither inconsistent with, nor preempted by, any federal statutes.

Like most states, Montana raises revenue by levying a severance tax on minerals produced within its borders. Under Montana's coal severance tax statute as amended in 1977, the rate of taxation on the coal "produced"[8] is determined by the coal's

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[1] Commonwealth Edison Co. v. Montana, 101 S. Ct. 2946 (1981).

[2] Mr. Justice Marshall delivered the opinion of the Court in which Chief Justice Burger and Justices Brennan, Stewart, White and Rehnquist joined. A dissenting opinion was filed by Justice Blackmun and joined by Justices Powell and Stevens. Justice White filed a separate opinion in which he concurred with the result of the majority. *Id.*

[3] A severance tax is "a levy assessed at a flat or graduated rate by a government on the privilege, process or act of commercially severing or extracting natural resources . . . and measured by the physical amount or the gross net value of the natural resource produced or sold." *Lockner, The Economic Effect of the Severance Tax on Decisions of the Mining Firm,* 4 NAT. RESOURCES J. 468, 469 (1965).

[4] "Congress shall have the power . . . to regulate Commerce with foreign Nations and among the several states, and with the Indian Tribes. . . ." U.S. CONST. art. I, § 8, cl. 3.

[5] MONT. CODE ANN. §§ 15-35-101 to -111 (1981).

[6] The "Constitution and the Laws of the United States . . . shall be the supreme Law of the Land. . . ." U.S. CONST. art. VI, cl. 2.

[7] The first such tax was imposed by Michigan in 1846, *see* U.S. DEP'T OF AGRICULTURE, STATE TAXATION OF MINERAL DEPOSITS AND PRODUCTION (1978), and by 1979, 33 states had adopted some form of severance taxation. *See* BUREAU OF CENSUS, STATE GOV'T. TAX COLLECTION IN 1979, Table 3 (1980).

[8] "Produced" is defined as "severed from the earth." MONT. CODE ANN. § 15-35-102(4) (1981).

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value, energy content, and method of extraction.[9] On high quality surface mined coal the tax may reach a maximum of 30 percent of the "contract sales price."[10]

This coal severance tax was initially challenged by four Montana coal producers and eleven out-of-state utility company customers in a consolidated action brought in the Montana District Court of Lewis and Clark County. The plaintiffs sought a declaration that the coal severance tax unconstitutionally burdened interstate commerce and frustrated federal policies. The plaintiffs also requested a refund of over 5.4 million dollars, the amount of tax paid under protest and an injunction against continued collection of such taxes. The District Court upheld the validity of the tax and the plaintiffs appealed to the Supreme Court of Montana.

In regard to the commerce clause issue, the Montana Supreme Court ruled "without hesitation" that Montana's coal severance tax did not violate the principles protected by the commerce clause, because "the severance of coal was a taxable event that preceeds [sic] entry to interstate commerce."[11] The court went

[9] MONT. CODE ANN. § 15-35-103 (1981). Severance tax—rates imposed—exemptions.

(1) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 20% of value	5 cents or 3% of value
7,000-8,000	22 cents or 30% of value	8 cents or 4% of value
8,000-9,000	34 cents or 30% of value	10 cents or 4% of value
Over 9,000	40 cents or 30% of value	12 cents or 4% of value

'Value' means the contract sales price.

(2) The formula which yields the greater amount of tax in a particular case shall be used at each point on this schedule.

(3) A person is not liable for any severance tax upon 20,000 tons of the coal he produces in a calendar year.

[10] "Contract sales price" is defined as "the price of coal extracted and prepared for shipment F.O.B. mine, excluding that amount charged by the seller to pay taxes paid on production. . . ." MONT. CODE ANN. § 15-35-102(1) (1981).

[11] Commonwealth Edison Co. v. State, 615 P.2d 847, 854 (Mont. 1980).

on to state that "even if the commerce clause had obtained, plaintiffs could not have prevailed. . . ."[12]

The appellants' contention that the supremacy clause proscribed the tax was similarly unconvincing to the Montana court. The court found that "there has been no preemption by the federal government in the field of coal severance taxation, nor any national policy derived from Congressional enactments pursuant to the constitution with which the Montana coal severance tax is in conflict."[13]

DISCUSSION

With regard to the commerce clause, the Montana court characterized the severance of coal as an instrastate activity preceeding entry into the stream of interstate commerce. This reasoning, based upon many early United States Supreme Court decisions, is representative of a pattern of thought which served well during a time when the distinction between interstate and intrastate activities was believed to be crucial to the protection of a states' power to tax because the prevailing doctrine accorded interstate commerce an absolute immunity from state taxation.[14]

Two guideposts in constitutional adjudication of state taxation of natural resources were first articulated in *Heisler v. Thomas Colliery Co.*[15] The first principal holds that states possess wide latitude in their classification of resources for tax purposes. Thus, coal tax schemes which treated one type of coal differently from another were held to survive fourteenth amendment challenges.[16] Under the second principle, facially nondiscriminatory state taxes on energy resources which have not entered the stream of interstate commerce are held to be beyond the purview of commerce clause protection.[17] The fact that virtually all of the taxed resource is

[12] *Id.* at 854.

[13] *Id.* at 861-62.

[14] *See* J. HELLERSTEIN & W. HELLERSTEIN, STATE AND LOCAL TAXATION, CASES AND MATERIALS 304 (4th ed. 1978).

[15] Heisler v. Thomas Colliery Co., 260 U.S. 245 (1922). *See also* Hope Natural Gas Co. v. Hall, 274 U.S. 284 (1928); Oliver Iron Mining Co. v. Lord, 262 U.S. 172 (1923).

[16] *Id.* at 254.

[17] Taxes which explicitly discriminate against interstate commerce are, however, held to be invalid. Welton v. Missouri, 91 U.S. 275 (1876).

destined to be shipped out-of-state is deemed but an "adventitious consideration."[18] Thus, if any energy resource tax was found to fall on interstate rather than local activity, then that tax would yield to the commerce clause.[19] Severance taxes, however, consistently survived commerce clause challenges because the act of production was held to be remote from interstate commerce.[20]

This analysis is illustrated in *Oliver Iron Mining Co. v. Lord*,[21] where a taxpayer whose iron ore was affected by a severance tax alleged that a substantial portion of such ore would travel out-of-state. Consequently, he contended the tax unconstitutionally burdened interstate commerce. The Court met his contention with an unequivocal statement:

> Plainly the facts do not support the contention. Mining is not interstate commerce, but, like manufacturing is a local business subject to local regulation and taxation . . . . Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by the contractual engagements, and persists even though the business be conducted in close connection with interstate commerce . . . .[22]

The underlying principles announced in these early cases have been refined to some extent, but for the most part have remained intact.[23] During the 60 years since *Heisler*, the Supreme Court has expanded the scope of the commerce clause.[24] The *Heisler* distinction between coal severance taxation and other forms of taxation having the same economic effect, has been criticized as "mechanical"[25] and "unsatisfactory."[26]

The United States Supreme Court recognized this criticism

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[18] *Heisler*, 260 U.S. at 343.

[19] *See, e.g.*, Michigan-Wisconsin Pipeline Co. v. Calvert, 347 U.S. 157 (1954).

[20] Interstate Oil Pipeline Co. v. Stone, 337 U.S. 662 (1949); Utah Power and Light Co. v. Pfost, 286 U.S. 165 (1932); Oliver Iron Mining Co. v. Lord, 262 U.S. 172 (1923).

[21] 262 U.S. at 178.

[22] *Id.* at 178-79.

[23] *See* Alaska v. Arctic Maid, 366 U.S. 199 (1961); Utah Power and Light Co. v. Pfost, 286 U.S. 165 (1932); Ohio Oil Co. v. Conway, 281 U.S. 146 (1930).

[24] Katzenbach v. McClung, 379 U.S. 274 (1964); Wickard v. Filburn, 317 U.S. 111 (1942).

[25] *Developments in the Law-Federal Limitations on State Taxation of Interstate Business*, 75 HARV. L. REV. 953, 970 (1962).

[26] R. POSNER, ECONOMIC ANALYSIS OF LAW 510 (2d ed. 1977).

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in *Commonwealth Edison.* The opinion clearly asserts that a state tax does not escape commerce clause scrutiny simply because it is thought to fall on a purely intrastate activity.[27] The Court went on to note the corresponding proposition that a state tax is not rendered invalid *per se* merely because it is levied on interstate commerce.[28]

In reviewing challenges to state taxes under the commerce clause, the Supreme Court has expressed the need for establishing "a consistent and rational method of inquiry focusing on the practical effect of the challenged tax."[29] Such an inquiry was held in *Commonwealth Edison* to be appropriate in the case of state severance taxation challenges, notwithstanding the claim that the imposition of the tax was on goods prior to their entry into interstate commerce. Hence, *Heisler's* formalistic determination of the point of entry into interstate commerce is no longer of paramount concern.[30] The *Commonwealth Edison* Court concluded that the more sophisticated analysis expounded in *Complete Auto Transit v. Brady*[31] is the proper mode of commerce clause evaluation of coal severance taxation.

[27] 101 S. Ct. at 2952; *see also* Hunt v. Washington Advertising Comm'n, 432 U.S. 333, 350 (1977); Pike v. Bruce Church, Inc., 397 U.S. 137, 141-42 (1970); Nippert v. City of Richmond, 327 U.S. 416, 423-24 (1946).

[28] 101 S. Ct. at 2952; *see also* Washington Revenue Dep't v. Association of Wash. Stevedoring Cos., 435 U.S. 735 (1978); Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1976).

[29] 101 S. Ct. at 2953, *quoting* Mobil Oil Corp. v. Commissioner of Taxes, 445 U.S. 425, 443 (1980); *see also* Moorman Mfg. Co. v. Blair, 437 U.S. 267, 276-81 (1978); Washington Revenue Dep't v. Association of Wash. Stevedoring Cos., 435 U.S. 734, 743-51 (1978); Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 277-79 (1976).

[30] The *Commonwealth Edison* Court stated quite plainly that it disapproved of any contrary statements in *Heisler* and its progeny. 101 S. Ct. at 2953.

[31] In Complete Auto Transit, Inc. v. Brady, 430 U.S. 278 (1976), the Court considered the constitutionality of a Mississippi tax on the privilege of doing business in that state. The tax was applied to Complete Auto Transit, Inc., a Michigan Corporation engaged in the business of transporting motor vehicles by motor carrier. The vehicles so transported were shipped from Michigan to Jackson, Mississippi where they were loaded onto trucks belonging to Complete Auto Transit, Inc. who then delivered the vehicles to Mississippi Auto dealers.

Under the test articulated in Spector Motor Service v. O'Connor, 340 U.S. 602 (1961), taxes on the privilege of doing interstate business were deemed violative of the commerce clause. The *Complete Auto Transit* Court, however, overruled *Spector* and announced that the practical economic effects of the challenged tax must be examined by using a four part test which looks to:

1) whether the tax is applied to an activity with a substantial nexus

Under the four part *Complete Auto Transit* test, a state tax does not offend the commerce clause so long as it:

1) is applied to an activity with a substantial nexus with the taxing state;
2) is fairly apportioned;
3) does not discriminate against interstate commerce; and
4) is fairly related to the services provided by the state.[32]

The recent cases upholding this four part test[33] have reinforced the principle that a state has a significant interest in "exacting from interstate commerce its fair share of the cost of state government."[34]

The Montana coal severance tax can easily withstand attack under the first two prongs of the test.[35] The nexus between the extraction of a state's coal and the state itself is undeniable for "[t]he entire value of the coal before transportation originates in the State; and the mining of coal depletes the resource base, and wealth of the State, thereby diminishing a future source of taxes and economic activity."[36] The second inquiry, the fairness of the apportionment of the severance tax, does not apply because "[t]here is no danger of multiple taxation, for no other state can tax the severance."[37]

Under the third and forth parts of the test, however, the Montana tax is subject to challenge. The third prong of the *Complete Auto Transit* test is clearly not satisfied by taxes which expressly distinguish between intrastate and interstate commerce so as to discriminate against the latter. Such facially discriminatory

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with the taxing state;
2) whether the tax is fairly apportioned;
3) whether the tax discriminates against interstate commerce; and
4) whether the tax is fairly related to the services provided by the taxing state.

430 U.S. at 279. The Mississippi tax was held to meet this standard.

[32] 430 U.S. at 279.

[33] 435 U.S. at 735.

[34] *Id.* at 448.

[35] In fact the Supreme Court noted that "[a]ppellants do not dispute that the Montana tax satisfies the first two prongs . . ." 101 S. Ct. at 2954.

[36] 101 S. Ct. at 2954. The Montana Supreme Court observed that "... a substantial, in fact the only, nexus of the severance of coal is established in Montana." 615 P.2d 847, 855 (Mont. 1980).

[37] Commonwealth Edison v. State, 615 P.2d 847, 855 (Mont. 1980).

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taxes are decidedly out of step with the commerce clause.[38] In the case of facially neutral taxes, however, the question is closer.

Montana's severance tax affects "each ton of coal produced in the state"[39] regardless of the coal's destination. Thus, on its face, the tax is neutral. It is argued, however, that because 90 percent of Montana's coal is purchased and consumed by out-of-state utility companies,[40] the brunt of her severance tax ultimately falls on the residents of other states.[41] Indeed with regard to coal destined for export it has been said that a severance tax has "exactly the same operational effect . . . [as] if it had been exacted at the boundary line of the state as an express export duty."[42] In a more graphic description, a severance tax has been likened to a "tollgate lying athwart a trade route . . . condition[ing] access to natural resources."[43] Access so conditioned, however, does not demonstrate discrimination, as the "commerce clause balance tips against the tax only when it unfairly burdens commerce by exacting more than a just fair share from interstate activity."[44]

In the case of facially nondiscriminatory taxes, the discrimination argument can be reduced to the contention that "a state in a position to enact a levy on its energy resources that is passed on to out-of-state consumers violates the commerce clause when it imposes a tax greater than necessary to recoup the costs associated with the extraction of that mineral."[45] From this point of view, facially nondiscriminatory taxes become vulnerable under the third prong if it can be shown that the *practical operation*

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[38] *See, e.g.*, Boston Stock Exchange v. State Tax Comm'n 429 U.S. 318 (1977).

[39] MONT. CODE ANN. § 15-35-103(1) (1981).

[40] 101 S. Ct. at 2954.

[41] "While this is ultimately a question of fact, economic theory indicates that a number of conditions must be met before such shifting is likely to occur, including the absence of an alternative source of supply for the commodity (or its substitute) . . . . [T]his casts doubt on the presumption that such taxes are *automatically* shifted forward, and suggests that the factual predicate underlying the argument be critically examined. . . ." Hellerstein, *Constitutional Contraints on State and Local Taxation of Energy Resources*, 31 NAT. TAX J. 245, 248 (1978) [Hereinafter Hellerstein].

[42] 260 U.S. at 252.

[43] *Developments in the Law— Federal Limitations on State Taxation of Interstate Business*, 75 HARV. L. REV. 953, 970 (1962).

[44] 435 U.S. at 748.

[45] Hellerstein, *supra* note 41, at 253.

of the tax is to discriminate against interstate commerce.[46] Because it has long been recognized that interstate commerce, too, must "pay its way",[47] the gist of the discrimination argument appears to lie not in the tax *per se*, but rather in the magnitude of the tax. Observing this shift in logic, the *Commonwealth Edison* Court noted that "appellants' discrimination argument ultimately collapses into their claim that the Montana tax is invalid under the fourth prong of the *Complete Auto Transit* test: that the tax is not fairly related to the services provided by the State."[48]

Coal severance taxes fall into the larger category of general revenue taxes.[49] As such, even unreasonable or unduly burdensome taxes are not barred by the due process clause of the fourteenth amendment.[50] Moreover, general revenue taxes collected from a particular activity need not reflect the value of the services provided to that activity under the due process clause; for "[a] tax is not an assessment of benefits,"[51] but is rather a means of distributing the cost of government.[52]

The *Commonwealth Edison* Court noted the broad latitude enjoyed by the states under the due process clause, and found such latitude was not "somehow divested by the commerce clause merely because the taxed activity has some connection to interstate commerce; particularly when the tax is levied on an activity conducted within the state."[53] The Court suggested that any other

[46] "[N]ot all burdens on [interstate] commerce, but only undue or discriminatory ones are forbidden." Nippert v. City of Richmond, 327 U.S. 416, 425 (1946).

[47] New Jersey Bell Telephone Co. v. State Board of Taxes, 280 U.S. 338, 351 (1929).

[48] 101 S. Ct. at 2955.

[49] Although a substantial portion of the revenue collected under the Montana severance tax is deposited into a trust fund intended to care for future generations, MONT. CODE ANN. § 15-35-108(1) (1981), the Montana Supreme Court has found the tax to be "imposed for the general support of the government." Commonwealth Edison v. State, 615 P.2d 847, 856 (Mont. 1980).

[50] *See, e.g.*, Pittsburgh v. Alco Parking Corp., 417 U.S. 369 (1974); Magnano Co. v. Hamilton, 292 U.S. 40 (1934).

[51] Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 522 (1937).

[52] "Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good." *Id.* at 522-23.

[53] 101 S. Ct. at 2957.

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position on this issue would confer upon interstate commerce an unwarranted competitive edge over those affairs conducted on a purely local level.[54]

Although the commerce clause requirement of a fair relationship between the interstate business activity and the tax does not divest a state of its broad taxing power, it would appear to invalidate unduly burdensome or unreasonable taxing practices; and at least to that degree constrain legislative prerogatives. In determining the propriety of taxing interstate activity, however, the Court declared in *Wisconsin v. J.C. Penney Co.*,[55] "[t]he simple but controlling question is whether a state has given anything for which it can ask return."[56] Thus, the Court looks not to the quantum of services provided to the taxpayer, but only to the fact that he is indeed serviced. The fourth part of the *Complete Auto Transit* test is envisioned by the *Commonwealth Edison* Court as a refinement of the first part. Part one requires "the interstate business to have a substantial nexus with the State before *any* tax may be levied on it,"[57] while part four "imposes the additional limitation that the *measure* of the taxes be reasonably related to the extent of the contact."[58]

The Court's role in determining the existence of this relationship doubtlessly sparked debate in the Supreme Court Conference Room; but, as evidenced by the *Commonwealth Edison* dissent, the Justices could not be brought to agreement. The dissenters would remand, and instruct the lower court to conduct a factual inquiry with regard to appellant's allegation that the Montana coal severance tax bears no reasonable relationship to the services provided by the state. The majority, however, believes a taxpayer becomes amenable to taxation by way of his enjoyment of the "fruits of civilization."[59] Once assured that the taxpayer has received this constitutional entitlement, the majority defers to

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[54] *Id.*
[55] 311 U.S. 435 (1940).
[56] *Id.* at 444.
[57] 101 S. Ct. at 2958.
[58] *Id.*
[59] Examples of such fruits are: the privilege of mining coal, the use of state roadways, the use of a trained work force and countless state services such as fire and police protection. The Court also noted that interstate commerce may be required to contribute to *all* governmental service," including those services from which it arguably receives no direct benefit." *Id.* at 2959 n.16.

legislative judgment regarding the *measure* of the tax. If the measure of the tax is based on a percentage of the value of the coal produced, the severance tax is "in 'proper proportion' to appellants' activities within the State and, therefore to their consequent enjoyment of the opportunities and protections which the State has afforded."[60] Hence, the majority deems severance taxes in fair relation to the services provided by the state so long as the tax is assessed in some proportion to the taxpayers' activities within that state;[61] and impliedly, any proportion is a fair proportion.

In his dissent, Justice Blackmun, joined by Justices Powell and Stevens, argues that such an interpretation "emasculates the fourth prong."[62] For, "[n]o trial will ever be necessary on the issue of fair relationship so long as the State is careful to impose a proportional rather than a flat tax rate."[63] The majority rule was further dubbed no less "mechanical" than the *Heisler* Court's approach, of which the majority ostensibly disapproved.[64]

From the dissenters' vantage point, the commerce clause is violated when a state selects "a class of out-of-state taxpayers to shoulder a tax burden grossly in excess of any costs imposed directly or indirectly by such taxpayers on the States."[65] Hence, the successful challenger to a severance tax must meet the formidable evidentiary tasks of proving both the tax is indeed passed on to out-of-state consumers,[66] and that the amount of the tax shifted forward is "manifestly disproportionate"[67] to the costs attributable to coal production. Conceding that such a trial would require "complex factual inquiries," the dissenters believe the task must be undertaken as the "case poses extremely grave issues that threaten both to 'polarize the nation,' and reawaken 'the tendencies toward economic Balkanization' that the Commerce Clause was designed to remedy."[68] In response to these issues,

[60] 101 S. Ct. at 2958.
[61] *Id.*
[62] *Id.* at 2968 (Blackmun, J., dissenting).
[63] *Id.*
[64] *Id.*
[65] Hellerstein, *supra* note 41, at 249.
[66] *Id.*
[67] 101 S. Ct. at 2969 n. 13 (Blackmum, J., dissenting).
[68] *Id.* at 2972, *citing* H.R. REP. No. 96-1527 (1980); Huges v. Oklahoma, 441 U.S. 322, 325-26 (1979).

the dissenters perceive the role of the Court as providing a mechanism for judicial disapproval of excessive, unduly burdensome or unreasonable state taxes.

The majority, however, focuses on the *measure* of the tax, and in so doing restricts the role of the Court because "the appropriate level or rate of taxation is essentially a matter for legislative, and not judicial, resolution."[69] The majority fears a more expansive view of the Court's role would inevitably lead to the prescription of a "test for the validity of State taxes that would require state and federal courts, as a matter of federal Constitutional law to calculate acceptable rates or levels of taxation of activities that are conceded to be legitimate subjects of taxation."[70] This view seems to be grounded in the Court's recognition that legislative bodies are endowed with fact finding abilities superior to those of the judiciary. As such, legislatures are uniquely positioned to synthesize disjointed economic data into the comprehensive tax plans from which a state government's life blood flows.

CONCLUSION

Commonwealth Edison represents a significant departure from the traditional approach to coal severance taxation under the commerce clause. Because the act of severing coal from the earth is no longer deemed antecedent to the commencement of interstate commerce, coal severance taxes have become amenable to commerce clause challenges. When so challenged, the four part *Complete Auto Transit* test provides the standard by which severance taxes will be appraised.

The Montana coal severance tax, when scrutinized in light of *Complete Auto Transit,* does not interfere with trade among the states so as to violate the commerce clause. The tax clearly satisfies parts one and two of the *Complete Auto Transit* test.[71] The requirement of part three is met because the tax imposed is a function of the amount of coal produced without regard to any distinction between in-state and out-of-state consumption

[69] *Id.* at 2959, *citing* Helson and Randolph v. Kentucky, 279 U.S. 245, 252 (1929); *Cf.* Pittsburgh v. Alco Parking Corp., 417 U.S. 369 (1974); Magnano Co. v. Hamilton, 292 U.S. 40 (1934).

[70] 101 S. Ct. at 2959.

[71] *See supra* notes 37 and 38 and accompanying text.

thereof. Compliance with part four of the test can only be attributed to the fact that the measure of the tax is calculated as a percentage of the value of the coal extracted, and as such, is deemed in "proper proportion"[72] to the coal producer's activities within the state.

The Court's implicit proposition that all proportions are proper proportions is troublesome to those seeking logic in the law; for the question of a fair relationship between the tax and the services provided by the state is left begging by the bare assertion that the tax is proportional. One is haunted by the query of whether a state legislature's decision to impose a 100 percent coal severance tax would pass constitutional muster.

Such decisions, however, are neither left to caprice nor made in a political vacuum. They reflect a myriad of legislative considerations ranging from present day economic conditions to the fulfillment of a government's obligation to posterity. In the final analysis, it appears to be the nature of these considerations, and the fact finding process underpinning the determination of acceptable taxation rates, which lead to the conclusion that such questions are best left to the political process.

Wray Victor Voegelin

[72] General Motors v. Washington, 377 U.S. 436, 441.