
Stephen Siegel
The Future of Classified Real Property Taxation in Illinois: The Wake of Hoffmann v. Clark

by

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One of the most controversial issues at the 1970 Illinois Constitutional Convention was whether, or to what extent, to allow classified real property taxation (CRPT) in Illinois.1 Since 1848 the state’s constitutions had demanded a uniform levy.2 Nevertheless, since the 1920’s the Cook County Assessor’s Office had ignored this constitutional mandate and imposed de facto CRPT within the county.3 However, due to the increasing possibility of successful court challenges, that county’s powerful political establishment was demanding that the new constitution legitimize its tax system.⁴ This demand produced a confusion of opposition and political crosscurrents.⁵ After months of committee work and six hours of floor debate there was so little agreement on whether, or how, to meet Cook County’s demand that thirty-two percent of the delegates abstained from voting.⁶

Subsequently, Delegate Karns, Chairman of the Convention’s Committee on Revenue and Finance, moved the following compromise:

Taxes upon real property shall be levied uniformly by valuation which shall be ascertained as the General Assembly shall prescribe by law - provided that, subject to such limitations as the General

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1. CRPT is described in notes 19-60 infra and accompanying text. In general, it is a real property taxation system which categorizes property by some criteria (such as location or use) and taxes the categories at different percentages of their value. A typical example is the assessment and taxation of farm and open space land according to its use value while other real estate is taxed at its fair market value.

2. The Illinois rule of uniformity is considered in notes 74-80 infra and accompanying text. Uniformity had been a statutory rule for the nine years prior to 1848. 3 SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, RECORD OF PROCEEDINGS 1998 (1972) [hereinafter cited as Rec. of Proc.].

3. See notes 81-85 infra and accompanying text.

4. See notes 83-85 infra.

5. The controversy surrounding the CRPT issue is analyzed in J. Fishbane & G. Fisher, Politics of the Purse: Revenue and Finance in the Sixth Illinois Constitutional Convention 71-80, 118-27 (1974) [hereinafter cited as Fishbane & Fisher]. They find factors as diverse as misinformation, opposition to the concept and “hostage-holding” (voting against CRPT so that Cook County would trade something for it later).

Assembly may hereinafter prescribe by law, counties may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. Real property used in agriculture shall be assessed at the same level of assessment as single-family residential real property.7

Karns explained that the proposal8 “state[d] the traditional rule of uniformity,” but also allowed counties to classify subject to state regulation or prohibition.9 However, the state could not “mandate” classification.10 In sum, the compromise was structured such that, subject to the state’s regulation or veto, it was the county’s option to opt out of the traditional uniformity rule.

The Convention quickly accepted Karns’ compromise, making but one major change. The option to depart from uniformity was confined to counties with populations over 200,000.11 Thus, the constitutional parameters of CRPT in Illinois were thought to be reasonably clear; subject to state regulation or veto — but not command — counties with populations over 200,000 could classify.13

7. Id. at 2021.
8. Id. at 2022. Karns used the word “sentence” rather than “clause,” but the context makes his actual meaning unmistakable.
9. Id.
10. Karns’ amendment allowed the General Assembly to establish “limitations” on county classifications. In explaining this text Karns said the General Assembly could “prescribe” or “proscribe” CRPT. This led Delegate Hend/en to ask “[C]ould the General Assembly . . . mandate classification?” Karns answered, “No.” Id. at 2025-26. See also Karns’ discussion with Delegate Leahy. Id. at 2026; note 99 infra and accompanying text.
11. 3 Rec. of Proc., supra note 2, 3896. In 1970, eight counties had populations over 200,000 (Cook, Dupage, Kane, Lake, Madison, St. Clair, Will and Winnebago.) One county (Peoria) was expected to join this group by 1971 (but it has yet to do so). 7 id. at 2108.
12. The logic of this additional compromise was based on the fact that most of the populous counties border on Cook. While CRPT was undesirable, Cook County demanded it as its price to support ratification. If Cook could classify, then the surrounding, urbanizing counties should be allowed to compete in offering tax advantages.
13. The adopted text reads:

REAL PROPERTY TAXATION

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two
However, in *Hoffmann v. Clark*, the Illinois Supreme Court upheld legislation in which the state mandated a departure from uniform real property taxation. This result shattered the expected limitations on CRPT in Illinois and raised an obvious question: after *Hoffmann*, what are the parameters of CRPT under the Illinois constitution? This article essays an answer. Part I describes and evaluates CRPT, focusing on the controversial aspects of this popular tax policy. Part II critiques the *Hoffmann v. Clark* opinion, arguing that the case was incorrectly decided. Part III, drawing on these preliminary discussions, explores the future of CRPT in Illinois.

**Classified Real Property Taxation: Definition and Evaluation**

A uniform real property tax system taxes all real property at the same effective rate. On the other hand, a CRPT system purposefully assesses one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

Section 4 has an additional subsection, §4(c), not reproduced here because it is unconnected with the CRPT issue.


15. At this point, it is sufficient to say that although real property in Illinois is generally assessed according to its fair market value, see Ill. Rev. Stat. ch. 120, §501 (1977), the statute at bar in *Hoffmann* compelled counties with populations over 200,000 — including those which had not initiated CRPT — to assess farmland according to its use-value. *Hoffmann v. Clark*, 69 Ill. 2d 402, 408-09, 372 N.E.2d 74, 76-77 (1977). Farm use-value assessment legislation is a popular technique for preserving agricultural land in urbanizing areas. See id. at 426-27, 372 N.E.2d at 85-86. The General Assembly has amended the statute involved in *Hoffman* to apply state-wide, and has also enacted other classifications. See Ill. Rev. Stat. ch. 120, §501(a)-1—(h)-1 (1977). The validity of these statutes has not been litigated. See note 204 infra.


17. This is a particularly important question given the increasing popularity of CRPT as a form of taxation. See note 27 infra and accompanying text.

18. See, e.g., J. Jensen, *Property Taxation in the United States* 174 (1931); S. Leland, *The Classified Property Tax in the United States* 40-42 (1928). Leland's work is the classic on the subject. See also Leland, *Some Observations Concerning the Classified Property Tax, Property Taxes* 83 (Tax Policy League ed. 1940) where he writes, "The essence of classification is the differentiation in the effective rates of taxation applied to various classes of property. It stands in sharp contrast to the general property tax which attempted to tax all property at a uniform effective rate."

19. This article is not concerned with the classification of the general property or personal
sively divides the real property in the taxing jurisdiction into groups and imposes differing effective rates of taxation among them.

The differentiation in effective rates may be accomplished by a variety of techniques, the most common of which are: (a) assessment at a uniform percentage of capital value and extension of differing rates; (b) assessment at varying percentages of capital value and extension of uniform rates; (c) assessment by varying definitions of value; and (d) exemptions.

property tax. Although there are a number of rationales, the propriety of their classification is assured by the administrative infeasibility of uniformity. See, e.g., 7 Rec. of Proc., supra note 2, at 2133-37; J. Hellerstein & W. Hellerstein, State and Local Taxation: Cases and Materials 209-10 (4th ed. 1978) (and material cited therein); S. Leland, The Classified Property Tax in the United States 27-30, 115-34, 401-04 (1928); E. Seligman, Essays in Taxation 642-50 (10th ed. 1925). The concerns which counsel classification of these taxes, however, do not apply with equal force to real property. Other issues, therefore, emerge for consideration. For an example of a proponent of classified general and personal property taxes opposing the same for real property, see S. Leland, The Classified Property Tax in the United States 152-78 (1928). Administrative infeasibility in the context of real property taxation is discussed in notes 30-37 infra and accompanying text.

20. The inevitable differences which result from imperfections in assessing technique, administrative structure or personnel are not within the definition of classification so long as they are neither recurrent nor significant. But whenever assessment differences are recurrent and significant, there is classification whether their origin is de jure or de facto, substantive or structural. See Leland, Some Observations Concerning the Classified Property Tax, Property Taxes 84-86, 94 (Tax Policy League ed. 1940). Cook County’s property tax system, prior to its legitimation by the 1970 Constitution, was an example of de facto classification. The Illinois system of state assessment of railroad property and county assessment of all other property was an example of structurally based classification. See Wattling, Taxation of Real Property in Cook County—The “Railroad Cases” and the Future of DeFacto Classification, 1 J. Mar. J. Prac. & Proc. 212, 227-30 (1968) [hereinafter cited as Wattling].

21. The “effective rate” of taxation is the ratio of the tax paid to the true capital value of the asset. For example, when a $100,000 property is assessed at fair market value, a tax levied at six mills results in a liability of $6,000 which is a 6% effective rate. When the same asset is assessed at 33-1/3% of its true value, a six-mill levy results in a $2,000 liability which is a 2% effective rate.


24. The statute at bar in Hoffmann v. Clark, 69 Ill. 2d 402, 372 N.E.2d 74 (1977) is an example of this: use valuation of agricultural land and fair market valuation of other land. Some effects of this technique are dissimilar to the first two techniques mentioned. See note 53 infra and material cited therein. Accordingly, most writers refer to this technique as “differential assessment,” reserving the term “classified tax” for the other two. In this article, the effects and applicable law are similar enough to warrant single consideration. When the differences are important, it will be noted.

25. Non-taxation of church lands is an example of this. See generally Tax Exemptions (Tax Policy League ed. 1939). Because of some disparate impact, most writers do not consider
CRPT is increasingly popular. At present, nine states allow comprehensive classification, a 300% increase since 1968. Furthermore, at least forty-five states have enacted partial classification in the form of use-valuation of farmland; thirty-six of them since 1967. Yet, despite its growing acceptance, CRPT is a controversial tax policy. On the one hand, legislatures enact CRPT to reform endemic problems with the uniform levy. On the other hand, economists and tax scholars, almost unanimously, condemn it as unsound. Although the latter recognize defects in the uniform levy, their position is that CRPT resolves none of them. Rather, CRPT creates significant new problems with the tax’s administration, effect on public policy goals, equity and revenue productivity. This controversy is explored below.

Exemptions are not considered as CRPT for the additional reason that classifications and exemptions are frequently established by different constitutional texts. E.g., compare ILL. Const. art. IX, §§4-5 with id. at §6. But once again, there is substantial interplay. See Helman & Whalen, Constitutional Commentary, ILL. ANN. STAT., Const. of 1970 art. IX, §6 at 205-06 (Smith-Hurd 1971); Hilbert, Illinois Property Tax Exemptions: A Call for Reform, 25 DEPAUL L. REV. 585, 597 n.70 (1976).

In this article, the dissimilarity in applicable constitutional text is sufficient to warrant exclusion of exemptions from consideration. Their interplay is noted pp. 39-40 infra.

These techniques are among those discussed in S. Leland, The Classified Property Tax in the United States 44-64 (1928). Three methods, not considered by Leland, merit attention: varying the definition of taxable real property, e.g., ILL. REV. STAT. ch. 120, §507 (1977)(unlike other leases, leases of tax exempt real estate are taxed separately from the reversion); varying the subject of the tax, e.g., id. at §1203 (tax on privilege on owning inhabited mobile home, rather than its value); varying the measure of the tax, e.g., id. (tax determined by area, not value, of mobile home).

27. Classified Tax Systems, supra note 23, at 1-6; Research and Technical Serv. Dep’t., Int’l. Assoc. of Assessing Officers, Research and Information Serv., State Property Tax Incentives for Construction, Renovation and Location (May 1978); Regional Science Research Institute, Untaxing Open Space—Executive Summary 2, 4 (Prepared for the Council on Environmental Quality, 1976) [hereinafter cited as Untaxing Open Space] (two states have enacted use-valuation since this report was issued). The material cited in this note shows solar energy systems and real property renovation are also frequently accorded preference by partial CRPT systems.

28. See note 29 infra.

Tax Administration

Assessments in the uniform system frequently diverge from the legally required standard. The role of the local property assessor administratively creates a *de facto* classification system. This engenders problems, aside from illegality, which are inherent in most *de facto* systems: complexity, erratic administration, and ineffectiveness in defining policy objectives.\(^{30}\) Legislatures, then, enact CRPT to legitimize, rationalize and control the uniform system as administered.\(^{31}\)

Commentator, however, reject this reasoning. They point out that once CRPT is enacted it is easier, indeed legitimate, for every special interest group to press its case for preferential treatment. The result is that the number, type and extent of preferences increase. The system thus becomes more complex and less intelligible.\(^{32}\) Moreover, legitimation of current differentials does not prevent new *de facto* classes from arising. In states with comprehensive classification systems, assessor practice still diverges from legal requirements.\(^{33}\)

Commentators further argue that, beyond not resolving existing problems, classification introduces its own administrative defect: increased cost. When the classification technique involves differential assessment,\(^{34}\) specialized valuation skills are necessary. For example, use-valuation of farmland should be based upon potential productivity of the soil — something few assessors are skilled at evaluating — rather than the usual market, cost or income valuation approaches.\(^{35}\) But even classification techniques which involve

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\(^{31}\) *CLASSIFIED PROPERTY TAX SYSTEMS*, supra note 23, at 2; *ADVISORY COMM. ON INTER-GOVERNMENTAL RELATIONS, THE PROPERTY TAX IN A CHANGING ENVIRONMENT* 3, 7, 10-13 (1974) [hereinafter cited as ACIR].


For example, Minnesota's original four classes enacted in 1913 have grown to 30, and have been modified at least 32 times since 1933. Hatfield, *supra* note 28, at II-28; *CLASSIFIED PROPERTY TAX SYSTEMS, supra* note 23, at 7.


\(^{34}\) Assessment by varying the definition of value. *See* note 24 *supra*.

no new valuation problems substantially increase administrative burdens. Proper categorization involves additional training, investigation, application processing, record keeping, taxpayer disputes and litigation. These problems increase over time as, inevitably, the preferential categories multiply. Although no firm data exist, experienced officials regard classification as “extremely costly.”

Effect on Public Policy Goals

Another area in which the uniform and classified taxes differ is their effect on public policy goals. The uniform real property tax is thought to disregard or, at least, not promote, desirable goals, such as farmland and open space preservation, urban rehabilitation, industrial location, pollution control and conversion to solar energy. Classifications are continually proposed to “untax” these desirable activities; to use the property tax as an effective, rather than counter-productive, instrument promoting public policy.

However, economists and tax scholars respond that there is no evidence that CRPT has the ability to promote these goals. Studies of farmland and open space preservation, industrial location and urban rehabilitation decisions show non-tax considerations more often dominate. Property tax reduction has been an ineffective means to influence such decisions.

Even if classifications were effective, commentators point out its use raises another issue. When used to promote public policy goals, the tax reduction created by CRPT is a subsidy to the benefited
36. HATFIELD, supra note 29, at II-29-30; CLASSIFIED PROPERTY TAX SYSTEMS, supra note 23, at 7.
37. HATFIELD, supra note 29, at II-29. Hatfield estimates Minnesota’s additional expense as “hundreds of thousands of dollars each year.” Id. at II-30.
38. See, e.g., Denne, supra note 29.

The material cited in this note shows that rather than property tax reduction, farmland conversion is influenced by such factors as capital gains and estate planning; industrial location by such factors as access to raw materials, labor and markets; and urban rehabilitation by such factors as neighborhood status and the possibility of rent increases.
Without impugning the legislature’s wisdom or right to subsidize any group, the question remains whether the appropriate technique is tax expenditure rather than direct grant. In general, commentators disfavor the tax expenditure method because it involves greater difficulty in setting priorities, structuring incentives, maintaining budgetary control, preventing windfalls and preserving the tax structure itself. CRPT raises many of these concerns. Farmland use-valuation, the most popular and studied classification, is illustrative. Its goals remain confused and conflicting: is it the preservation of farmland and open space; the control of urbanization; or the more equitable taxation of farmers? Furthermore, it has not been well-structured: the best land is not focused on, and negative impacts on other policies, such as containment of urban sprawl, occur. Finally,

40. The concept of tax expenditures, as contrasted with direct grants, may be explained as follows:

Any tax system can be viewed as consisting of two parts. The first establishes the normal structure of the tax by defining the tax base, whether it be taxable income, property or some transaction such as sale, and establishing the rate of, and procedures for collecting the tax. The second consists of a set of tax benefits which are conferred by the government by means of tax reductions for certain classes of taxpayers, with the objectives of providing incentives for certain kinds of socially desirable activities, easing hardships, or simply favoring politically powerful interest groups. The second part is not necessary to the proper working of the tax structure.

Tax expenditures take a variety of forms such as exclusions from the tax base, exemptions, deductions, tax credits, preferential tax rates, and tax deferral. For instance, homeowners’ exemptions remove up to a certain maximum amount of assessed value from the tax base. While there are borderline cases in which opinions may differ as to whether a particular item is part of the normal structure of [sic] a tax expenditure, there is little question that differential assessment is a classic example of the latter.

The effect of a tax expenditure is precisely the same as if the taxpayer who receives the benefit were to pay taxes at the same rate as other, non-preferred taxpayers, and then were to receive a simultaneous grant from the government in the amount of the tax benefit. Thus, there are two ways in which a government can make financial assistance available to a particular class of taxpayers. The first is to all taxpayers on the same tax base at the same rate and then make grants in the desired amounts to preferred classes. The second is to structure the tax expenditure system so as to reduce the tax bills of the preferred classes by the same amount. In the first instance the governmental budget would be increased by the amount of the direct grants to beneficiaries, and the appropriations would be made for this purpose each year. In the second, the payments to them would be made through the tax expenditure structure, where they largely escape annual legislative review. Where tax expenditures exist, they have the effect of shifting the tax burden away from the preferred class to all other taxpayers in an amount equal to the benefits conferred on the preferred class.

UNTAXING OPEN SPACE, supra note 27. See also S. Surrey, PATHWAYS TO TAX REFORM vii, 1-6 (1973).

it is difficult to determine the cost of the program, and, generally, it is not even attempted. Most commentators, therefore, conclude that tax expenditures through CRPT are an inappropriate means to promote public policy objectives.

Equity

The uniform levy is said to be inequitable. Some groups, such as the poor, senior citizens, disabled veterans and farmers have an undesirably high percentage of their incomes taken by the uniform levy. Consequently, classifications are continually proposed to "untax" these groups.

But while economists and tax scholars once again admit the problem, they find CRPT an inept remedy. The objections to the use of CRPT in promoting public policy apply here as well. The classifications are a subsidy through tax expenditures; their goal of equity is a type of public policy.

However, because the purpose of these particular classifications is to promote equity, one issue raised by using this technique deserves separate discussion. This issue is: who pays? Although the community at large has decided on the subsidy, the community at large does not provide it. The subsidy does not derive from general revenues. Rather, the subsidy which flows from CRPT is funded


44. E.g., Ill. Rev. Stat. ch. 120, §500.23, §500.23(1) (1977); ACIR, supra note 31, at 20-21, 252-58.

45. Some aspects of the uniform levy's inequity are disputed. See Denne, supra note 29, at 14-15; Ladd, supra note 35, at 14-19.

46. Accordingly, commentators commonly discuss them together. E.g., S. Surrey, Pathways to Tax Reform 8-11 (1973); Hatfield, supra note 29, at II-27.

The general point may be illustrated with the problem of structure. Assuming disabled veterans generally need relief, real property tax classifications usually are drafted to benefit only those who own their residences and do so regardless of the particular recipient's need. E.g., Ill. Rev. Stat. ch. 120, §500.23 (1977). See ACIR, supra note 31, at 252-58, for an example of better structured, but more administratively complex, legislation.

47. This observation is based on the property tax being the revenue source of last resort. Therefore, absent a compensating budget cut, real property taxpayers will have to provide the same total revenues despite the fact that some individuals are paying less. See Hatfield, supra note 29, at II-13-18, II-29.
exclusively by the other ratepayers who are not taxed at the specially lowered effective rate. In addition, tax shifting may then redistribute the burden in ways that are neither well perceived nor desirable. Thus, providing relief through this technique resolves one equity problem by raising another.

Revenue Productivity

One facet of the uniform levy which receives much favorable comment is its ability to efficiently raise the ever increasing sums required by local government. Moreover, the revenue produced by the uniform levy tends to increase at the same pace as government’s needs, and does so without increases in the tax rate. In other words, the uniform levy is an “elastic” revenue source. Indeed, one noted scholar has concluded that this feature of the real property tax has enabled it to survive despite all its perceived defects.

Hence, economists and tax scholars fault CRPT for its comparatively decreased revenue productivity and elasticity. Decreased revenue productivity results from erosion of the tax base. Such erosion is inevitable primarily because classified systems are adopted to benefit specific groups by reducing their real property’s tax rate or taxable value. Part of the wealth of the jurisdiction is thereby immunized (by exemption or differential assessment) or sheltered (by preferential rates or percentage valuations) from taxation. Decreased elasticity results from the slower growth rate of the remaining tax base. Slower tax base growth means slower yield growth.


49. The issue of who pays is, of course, equally involved in using CRPT to promote public policies. Why should the expense of preserving open space or encouraging rehabilitation be borne solely by real property taxpayers rather than society at large? Thus it may be said, the attempt to resolve one public policy problem raises an equity issue.


51. Netzer, supra note 50, at 184-90. See also L. Ecker-Racz, supra note 50, at 39; O. Eckstein, Public Finance 4-7 (2d ed. 1967).

52. Hatfield, supra note 29, at II-21; Classified Property Tax Systems, supra note 23, at 6; G loudermans, supra note 35, at 24, 28-37, 55. For example, the statute at bar in Hoffmann v. Clark, 69 Ill. 2d 402, 372 N.E.2d 74 (1977), by mandating use-valuation rather than fair-market valuation of farmland, decreased taxable value by as much as $9,200 per acre on one parcel and $5,539 per acre on another. Brief and Argument for Amicus Curiae, Illinois Agricultural Association 23. A second example is that in Cook County most residential property’s taxable value is less than one-half what it would be without classification. Compare Ill. Rev. Stat. ch. 120, §501 (1977) with Bd. of Comm. of Cook County J. of Proc., 629-30 (Feb. 6, 1978).
A variety of consequences follow from this. To generate the same revenue as a uniform system, a classified system requires higher absolute tax rate. Given taxpayer resistance, the higher levy is less likely to be adopted. Consequently, more frequent and larger rate increases, which are similarly unpopular, are necessary to meet increasing revenue needs. Finally, the revenues which are raised are further depleted on higher debt service; for in light of the eroded tax base, bondholders demand a higher return.

How then do commentators account for the acclaim CRPT is receiving from the nation's legislatures? Their answer is: political feasibility. The commentators argue the public is unaware that these taxes are ineffectual and deleterious. As with all tax expenditures, the subsidy granted is shielded from view, difficult to estimate, and not subject to review through re-appropriation. To the politicians' advantage, the group benefiting is far more aware than the group paying.

Moreover, homeowners are among the most frequent beneficiaries of favorable treatment through CRPT. It is a political fact of life that this populous group is demanding reduction of its property tax burden. Classification is a way of shifting taxes away from these voters. Also, because CRPT does not involve reduction in the aggre-

53. Hatfield, supra note 29, at II-19. Hatfield demonstrates the fact but does not explain the cause of slower tax base growth. Perhaps the explanation is that once a CRPT system is established, increases in the number and extent of preferences continually reduce the tax base as market values grow. In addition, it should be noted that when the preference technique is exemption or differential assessment, separation of tax base and market value growth is especially acute since the resulting taxable values are not subject to market influences. Gloodemans, supra note 35, at 23-24.

54. Hatfield, supra note 29, at II-21. Property tax rates are calculated by dividing revenue needs by the taxable value of property subject to the tax. Any decrease in the divisor (taxable values) increases the quotient (tax rate). For example, if a tax jurisdiction with one billion dollars worth of real property assesses at 33-1/3% of fair market value and has revenue requirements of two million dollars, it will impose a 6-mill tax rate. [Revenue needs/Taxable values = tax rate: 2,000,000/333,333,333 = .0060]. If the same jurisdiction classifies one quarter of the property for preferential treatment and assesses it at 20% of fair market value, the taxable value of property decreases to $306,666,666. To raise the same revenue, a 6.52 mill rate must be levied.

55. See L. Ecker-Racz, supra note 50, at 81-82.

56. See Hatfield, supra note 29, at II-21, where he writes "Minnesota's classification system . . . costs taxpayers between $15,000,000 and $20,000,000 a year in extra interest on state and local obligations."

57. E.g., Classified Property Tax Systems, supra note 23, at 9; Denne, supra note 29, at 44-45; Untaxing Open Space, supra note 27, at 12; ACIR, supra note 31, at 10.

58. Thus, ironically, invisibility—a ground of scholarly criticism—is transformed into one of political feasibility.

59. Gloodemans, supra note 35, at 24. In Cook County, for example, residential real estate, other than large rental apartment buildings, is the most lightly taxed classification. See Bd. of Comm. of Cook County, J. of Proc., 629-30 (Feb. 6, 1978).
gate amount raised by the property tax, other politically controversial issues, such as budget reduction or increases in other taxes, need not be faced.

To conclude, a remark made by a proponent of CRPT during the 1970 Illinois Constitutional Convention’s debates sums up what is frequently said: “Economically you cannot give any sound reason for the classification . . . of real property for taxation purposes, but the things that cause trouble are the facts of life.”

**Hoffmann v. Clark: The Opinion and a Critique**

**The Opinion**

In *Hoffmann v. Clark*, the state had enacted legislation compelling all counties with populations over 200,000 to assess farmland at its use value and, further, to levy a special “rollback” tax should farm-use be discontinued. Plaintiffs, who had discontinued farm-use of lands located in such a county, sought to enjoin assessment of the rollback tax. The court denied relief.

To understand the disposition of *Hoffmann v. Clark*, and any critique of it, it is essential to bear in mind that, in Illinois, the state has all powers of taxation except those the constitution clearly prohibits. The sovereign power of taxation is, as the *Hoffmann* court noted: “[S]ubject to only such limitations as are expressly stated in the constitution and . . . the express limitations are to be exclusive.”

Similarly important is the court’s further observation:

> We are at this period of time early in the life of this constitution. We should not now through narrow construction make it difficult or impossible for the legislative body at some future time to resolve revenue problems which are not now known or foreseeable.

Accordingly, most of the *Hoffmann* opinion analyzed whether article IX, sections 4(a)-(b) is, as plaintiffs argued, the required express limitation. The court concluded that this provision does not prohibit state imposed non-uniform real property taxes because “[t]here is no clear indication that the Constitutional Convention viewed it as such.”

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60. 3 Rec. of Proc., supra note 2, at 2013.
62. Id. at 424, 372 N.E.2d at 84.
63. See the text of this provision at note 13 supra.
The court supported this position with five arguments drawn from the Convention debates. It observed that:

1. during the proceedings the Convention was informed that the 1870 Constitution's uniformity provision "meant only that taxes must be equal and uniform among the members of the same class;" and
2. in introducing the text which the Convention adopted nearly verbatim as section 4(a)-(b), Delegate Karns, Chairman of the Committee on Revenue and Finance, said "the General Assembly retains the right to prescribe or proscribe a classification;" and
3. in answering a question as to whether the state could classify real property for taxation purposes, Delegate Parkhurst, Chairman of the Committee on Local Government, declared "[the proposed text] does not preclude it." Moreover,
4. in adopting section 4, the Convention rejected "proposals [which] would have prohibited classification by the General Assembly, as well as by counties;" and
5. in debating CRPT, the Convention's attention was primarily focused on "the wisdom of authorizing classification by individual counties, and not [on] classification by the General Assembly."

In light of these considerations, the court reviewed various remarks indicating some delegates interpreted section 4(a)-(b) as restricting state classification powers, but found they failed to establish "a clear expression of an intent on the part of the Convention to limit or preclude" state-legislated CRPT. In like manner, the court considered an important committee report describing section 4(a) as an "opening limitation of uniformity to which exceptions for classification are necessary [if there are to be any]," but found it insufficient to establish that proposition. In sum, the court weighed conflicting evidence and concluded that the Convention's intent to prohibit state-imposed CRPT was "not clear."

65. Id. at 419, 372 N.E.2d at 82.
66. Id. at 416-17, 372 N.E.2d at 80-81.
67. Id. at 418-19, 372 N.E.2d at 82.
68. Id. at 416, 372 N.E.2d at 80.
69. Id.
70. Id. at 419, 372 N.E.2d at 82. The "various remarks" are discussed id. at 417-18, 372 N.E.2d at 81-82.
71. Id. at 419-20, 372 N.E.2d at 82-83. The report was from the Committee on Style, Drafting and Submission. The role and significance of this Committee's views are discussed in Lousin, Constitutional Intent: The Illinois Supreme Court's Use of the Record in Interpreting the 1970 Constitution, 8 J. MAR. J. OF PRAC. & PROC. 189, 193-94, 203-05 (1975) [hereinafter cited as Lousin].
The Critique

Given the text and history of section 1 of the Revenue Article, the court's view that a clear prohibition is necessary to deny the state a taxation power is indisputably the appropriate view. Nevertheless, in this commentator's view, section 4(a)-(b) is a clear prohibition of state-mandated CRPT. That the court did not read section 4(a)-(b) this way is due to both misinterpreting the debates and giving them undue significance as a factor in constitutional construction. This two-fold criticism will be presented at length; for how the Hoffmann court interpreted the constitution and how the constitution should be interpreted influence the future of CRPT in Illinois.

An Analysis of the Debates

The court's support for the state-mandated CRPT consisted of five arguments, all drawn from the debates. All these arguments, however, were based upon misinterpretations of the debates. The court's arguments for state-mandated CRPT are discussed below. Upon analysis, they are either completely drained of probative force or turned into arguments against state-imposed CRPT.

The meaning of "uniformly" in section 4(a)

In determining the meaning of "uniformly" in section 4(a) of the 1970 Constitution, the court noted that:

Delegate Lyons informed the convention that [certain] cases held that the requirement of uniformity of the 1870 Constitution did not preclude the General Assembly from classifying real property. Instead, he stated that the uniformity limitation meant only that taxes must be equal and uniform among the members of the same class . . .

72. See material cited note 61 supra.
73. See notes 29-35 supra.
74. Hoffmann v. Clark, 69 Ill. 2d 402, 419, 372 N.E.2d 74, 82 (1977). The cases Lyons referred to, and quoted from, were People ex rel. Miller v. Doe, 22 Ill. 2d 211, 174 N.E.2d 830 (1961) (incorrectly cited as 24 Ill.2d) and People ex rel. Toman v. Olympia Fields Country Club, 374 Ill. 101, 28 N.E.2d 109 (1941). 3 Rec. of Proc., supra note 2, at 1991-92. The quote from Toman, for example, was:
Section 1 of [our] Article IX of the [1870] Illinois Constitution requires that taxation shall be by general law uniform as to the class upon which it shall operate. This court adheres to the doctrines that this provision of the constitution means uniformity as applied to a class. No prohibition against classification of property and taxpayers into different classes can be read into the constitution.

Id. at 1992.
This quote when read in context refers to classifications for efficient and proper administration. See discussion note 79 infra.
It should be noted that Lyons was not the only person to refer to these cases. See 3 id. at
Although the court did not articulate exactly what it inferred from this, the obvious implication is that the Convention could have intended “uniformly,” as used in section 4(a), to mean “equal and uniform among members of the same class.” Indeed, given the standard which must be met before the state is barred from exercising a revenue power, the court had a valid argument if a significant number of delegates thought “uniformly” might have meant that. Nevertheless, there is no direct evidence that Lyons’ remark influenced anyone. The court’s argument rested solely on the assumption that people generally give credence to what they are told. In this instance, however, this assumption should not be indulged. Upon analysis, it is evident Lyons misdescribed the 1870 Constitution, and the vast majority of delegates knew it.

The 1870 Constitution’s uniformity requirement did not mean that real property taxes had to be equal and uniform only “among members of the same class.” On the contrary, it totally forbade tax classification, i.e., non-uniform treatment, of property (personal as well as real). All commentators agree this was the position of the Illinois Supreme Court, a position the court adhered to with re-

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1893; 7 id. at 2122, 2128. The fact of these additional references, however, does not affect the rebuttal presented here.

75. The court offers no evidence that Lyons’ remark had any influence; and this commentator, in reading the debates on §4, has seen none.

76. The Revenue Article of the 1870 Constitution read, in pertinent part, “The General Assembly shall provide such revenue as may be needful, by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property.” ILL. CONST. of 1870 art. IX, §1.


The only printed opinion contra is Lyons, The Classification Issue in Illinois, The Property Tax: Problems and Potentials 216 (Tax Inst. of America ed. 1967). Mr. Lyons is a former employee of the Cook County Assessor’s Office and a Cook County political figure. While this may detract from his credentials as an impartial observer, his view cannot be ignored since as a delegate to the Convention he made the remarks we are discussing.

Some commentators have noted that under another clause of §1, art. IX of the 1870 Constitution, the state was “questionably” allowed a limited form of property tax classifica-
markable steadfastness\textsuperscript{78} to the end of that constitution.

This is not to say that property tax classification did not exist in Illinois under the 1870 Constitution. Property classifications were permissible for certain administrative purposes.\textsuperscript{79} Also, purposeful failure to effectively enforce personal property assessment requirements meant that personal property was not actually taxed equally with real property.\textsuperscript{80}

Of greater import is the fact that since the 1920's the Cook County Assessor had openly and purposively assessed various types of real property at varying percentages of market value, thus creating \textit{de facto} CRPT.\textsuperscript{81} Although this practice was without constitutional or statutory authorization, it persisted because of legal barriers to

\begin{thebibliography}{99}
\item \textsuperscript{78} W. Newhouse, \textit{Constitutional Uniformity and Equality in State Taxation} 153-65; Wattling, \textit{supra} note 20, at 218-21. The arguable existence of this power, however, is nowhere mentioned in or considered relevant to the events and issues with which this article is concerned.
\item \textsuperscript{79} Lucas, \textit{Legal Aspects of Revenue, CON-CON: Issues for the Illinois Constitutional Convention} 253 (V. Raney ed. 1970); Wattling, \textit{supra} note 20, at 216-18. This, of course, is not what is meant by a \textit{classified property tax.} See notes 19-21 \textit{supra} and accompanying text. However, it is the cases upholding administrative classifications which contain the language that, when quoted out of context, seems to permit property classification for all purposes. See material cited note 78 \textit{supra.} These were the cases cited to the Convention by Lyons. See material cited note 78 \textit{supra} and accompanying text. However, it is the cases upholding administrative classifications which contain the language that, when quoted out of context, seems to permit property classification for all purposes. See material cited note 78 \textit{supra.} These were the cases cited to the Convention by Lyons. In People \textit{ex rel. Toman v. Olympia Fields Country Club}, 374 Ill. 101, 28 N.E.2d 109 (1941), for example, the quote read by Lyons, see note 74 \textit{supra}, referred to distinguishing surrounding farmland from land used as a country club and golf course for the purpose of assigning different value per acre to each type.
\item \textsuperscript{80} See, e.g., Cushman, \textit{The Proposed Revision of Article IX of the Illinois Constitution}, 1952 U. Ill. L.F. 226, 235 where it is said:
\begin{quote}
At the present time the general property tax in Illinois as applied to personal property is a farce. In many counties the general property tax is substantially a real estate tax, and personal property bears little or no part of the tax burden. A few types of taxpayers whose personal property cannot be hidden, such as estates of decedents, minors and incompetents, public utilities, banks, and railroads, pay a very heavy tax on their personal property, whereas the great mass of taxpayers pay virtually nothing. With few exceptions, the small number of personal property tax returns which are actually filed are nearly always false. True, the persons filing such returns may not be guilty of perjury, but in practically all returns, the fair cash market value of the personal property is grossly understated. The completed breakdown of the personal property tax has corrupted the entire Illinois property tax system and makes the collection of all property taxes difficult.
\end{quote}
\end{thebibliography}
brining it under judicial review.\(^{82}\) However, during the 1960's, the Illinois Supreme Court begun dismantling these barriers.\(^{83}\) Indeed, in a 1968 case, the court had written:

While we may defer to legislative action for a time, we cannot abdicate our responsibilities even though our approach must necessarily be a negative one and chaos may ensue.\(^{84}\)

Consequently, Cook County's de facto system was threatened. As a return to uniformity would result in tax increases of thirty to forty percent for homeowners, "a shift which might well mean political disaster for incumbent officials," the county's democratic organization sought legitimation of its tax system in the new constitution.\(^{85}\) Without a doubt, Cook County (representing about one-half the voters in the state) would not support any proposed constitution without it.

These facts were well known to the delegates — both from their prior involvement in Illinois public life and, now, in the Convention. The 1870 Constitution's uniformity requirement's prohibition of CRPT was one of that constitution's most notorious features. It constitutionally compelled such visible features of the Illinois fiscal structure as the taxing of personal property,\(^{86}\) but not income.\(^{87}\) It

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82. These barriers are excellently reviewed in Wattling, supra note 20, at 221-27. See also Braden & Cohn, supra note 77, at 418-20. Although rather complex, it suffices to say the court limited review of assessment complaints, especially when the grounds were favorable treatment of other ratepayers. A successful case necessitated proof that complainant's property was assessed at 300-400% above the average level of assessment in the district. Thus, where complainant's property was assessed at 90% of market value he could not successfully sue if property in the district was generally assessed at 50% of market value; and this would remain so even if some properties were assessed at 20% of their value. He could sue if the average level of assessments fell to 30%.

83. Wattling, supra note 20, passim; 7 Rec. of Proc., supra note 2, at 2112-13; Fisher, supra note 81, at 138-40. These materials show that in the 1960's the court began to accept as sufficient for relief (1) lower personal — average assessment differentials, and (2) more easily available types of evidence as to those differences.

It should be noted that the problem of assessor noncompliance with assessing law was not confined to Illinois, and in the 1960's other states also began granting previously denied relief. See Bettigole v. Assessors of Springfield, Mass., 343 Mass. 223, 178 N.E.2d 10 (1961); 7 Rec. of Proc., supra note 2, at 2113; J. Hellerstein & W. Hellerstein, State and Local Taxation: Cases and Materials 133-36 (4th ed. 1978).


85. Fishbane & Fisher, supra note 5, at 73-75, 118-27.

86. To tax real but not personal property would have been a classification and nonuniform treatment of property. This constitutional requirement was well noted and scathingly criticized. See, e.g., note 80 supra; Comment, The Illinois Constitutional Requirement of Uniformity in Taxation, 33 Ill. L. Rev. 57, 59-60 (1938).

87. In Bachrach v. Nelson, 349 Ill. 579, 182 N.E.909 (1932) the Illinois Supreme Court held a state income tax unconstitutional. One of the grounds was that income was property and, therefore, a tax on income classified and taxed that property nonuniformly. The Bachrach
had led to eight futile public amendment campaigns to authorize at least limited classification, most recently in 1966.\textsuperscript{88} Even as the Convention sat, a ninth, eventually successful, attempt was in progress aimed at allowing the legislature new power to differentially tax only two classes of property: personal and real.\textsuperscript{89} This view of the Constitution's uniformity requirement was unmistakably recited in the two leading texts commissioned and prepared especially for the delegates' use,\textsuperscript{90} was repeated in the Report of the Revenue and Finance Committee,\textsuperscript{91} and was discussed in the course of convention debate.\textsuperscript{92} Similarly, Cook County's departure from constitutional requirements, the increasing judicial threat to it, and the consequent demands of its politicians were open facts of Illinois public life,\textsuperscript{93} facts well known by the delegates.\textsuperscript{94}

Thus, for a delegate not to assess Lyons' comments as the incor-

\begin{itemize}
  \item decision generated an unusually large amount of scholarly criticism. \textit{E.g.}, Cohn, \textit{Constitutional Limitations on Income Taxation in Illinois}, 1961 U. ILL. L.F. 685; Lucas, \textit{Nonproperty Taxes under the Illinois Constitution}, 25 U. CHI. L. REV. 63 (1957). The court took cognizance of this criticism when, in \textit{Thorpe v. Mahin}, 43 Ill.2d 36, 250 N.E.2d 633 (1969), it overruled \textit{Bachrach}. The latter opinion held that the income tax was not a property tax and, hence, did not classify property.\textsuperscript{88}
  \item \textit{Fish}, supra note 81, at 198.
  \item See \textit{Lake Shore Auto Parts Co. v. Korzen}, 49 Ill. 2d 137, 273 N.E.2d 592 (1971), \textit{rev'd sub nom.} \textit{Lenhansen v. Lake Shore Auto Parts Co.}, 410 U.S. 356 (1973).\textsuperscript{89}
  \item \textit{Braden} & \textit{Cohn}, supra note 77, at 415-20, 434-35; \textit{Lucas, Legal Aspects of Revenue in Con-Con: Issues for the Illinois Constitutional Convention} 353-57 (V. Ranney ed. 1970). The material by Braden and Cohn is particularly important. The Convention record reflects the volume's general use. The Convention's president, upon presenting Mr. Braden to the delegates, said, "His name has become almost a byword in the Convention, because there is certainly no source of information to which the delegates have turned with greater frequency and with greater profit than to the book by Braden and Cohn." 3 \textit{Rec. of Proc.}, supra note 2, at 1635. \textit{See also}, \textit{e.g.}, 6 id. at 1327, 1389. Page 419 was quoted from during the debate on CRPT. 3 id. at 2003.\textsuperscript{90}
  \item \textit{Rec. of Proc.}, supra note 2, at 2109-13.
  \item \textit{E.g.}, 3 id. 1892-94, 1991, 1994.\textsuperscript{92}
  \item For example, because the threat of judicial review began to increase in the early 1960's, Cook County persuaded the Legislature to try to legitimize its "system" in the 1966 attempt to amend the Constitution. \textit{Fish}, supra note 81, at 198-207. That amendment, which failed at the polls, read in part: "Any classification of real property . . . in effect in the County of Cook on January 1, 1965 shall continue." H.J. Res. 71 §13, 74th Illinois General Assembly (1965). The \textit{de facto} classification system in Cook County was publicly discussed during the ratification campaign. \textit{See, e.g.}, \textit{Beatty & Young Symposium}, 54 ILL. B.J. 1038, 1046-47, 1049-50 (1966).\textsuperscript{93}
  \item See the material cited in notes 85, 90-93 supra.\textsuperscript{94}
\end{itemize}
rect, facesaving remark of a representative from the county demanding legitimation of its legally vulnerable *de facto* CRPT system, he or she would have to have been naive. The Revenue Article debates, however, show a high level of delegate involvement and perception. The proper conclusion, therefore, is that the delegates understood Lyons' remark for what it was, and were not influenced by it.

**Karns' use of the word "prescribe"**

The second argument the court gave for not holding section 4(a) an express limitation is that Chairman Karns, in explaining what his proposal meant when it subjected county classification to "such limitations as the General Assembly may hereafter prescribe by law," said:

I suggest that this provision meets the objection voiced today in that the General Assembly retains the right to prescribe or prescribe a classification and also the right to provide the mechanics by which classification may be done.\(^9\)

The court seized on Karns' word "prescribe," and other words he later uses\(^7\) to indicate state power to mandate CRPT.

However, the Convention, like the court, was sensitive to this possible connotation of the word "prescribe," and quickly questioned Karns on it. Delegate Hendren asked "[C]ould the General Assembly mandate classification . . .?" Karns answered in one word: "No."\(^8\) Delegate Leahy probed further:

The only time the State moves into the picture, in terms of classification, is after the county has decided to classify. Right?

MR. KARNS: Wrong. I think they could — I would assume they could move into the picture of classification at any time, if they chose.

MRS. LEAHY: But you answered Mr. Hendren and said they could not mandate classification.

MR. KARNS: No, that's right.

MRS. LEAHY: Could they decide—

MR. KARNS: That's a different proposition, I submit — mandating it and enacting legislation in that subject.

MRS. LEAHY: Well, I thought one included the other. Let me

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95. For an example of questions addressed to subtle problems, *see* notes 103-111 *infra* and accompanying text.


ask, could the General Assembly pass a statute saying that any county over 200,000 population must classify — must do it in the following manner?

MR. KARNS: No, they cannot require classification, but they may prescribe guidelines, whether or not any county is classified.

MRS. LEAHY: Okay. Now — so in a sense, though, they really only have effect after the county has decided to classify. Then they can prescribe how.

MR. KARNS: No, no. They could set up standards prior to any classification in any given county.

MRS. LEAHY: Yes, but they would have no effect if no county decided to classify.

MR. KARNS: That's right.99

The convention thus cleared up for itself any possible implication that subjecting county classifications to state-enacted “limitations” allowed the state to impose, by itself, CRPT. Upon questioning, Karns’ proposal was clear: to allow state regulation of the county’s option — to the extent of preemptively prescribing what and how a county could classify if the county were to choose to depart from uniformity.100

Even if some individual delegates remained confused by Karns’ use of “prescribe,” the confusion related to the state’s oversight powers in those counties which might classify, i.e., only in the eight counties with populations over 200,000. Karns said the state could “prescribe” classifications in explaining what he envisioned as the “limitations” by which the General Assembly could regulate county classification. True, under Karns’ original proposal, all counties were permitted to classify.101 But the Convention later reduced this

99. Id. at 2026.

100. With the meaning of “prescribe” cleared up, the true thrust of Karns’ explanatory remarks emerges. This thrust supports the conclusion that the State lacks power to impose CRPT.

Karns claimed that his proposal’s provision subjecting county classifications to State limitations “meets the objection voiced today.” See text accompanying note 96 supra. What was that objection? Earlier in the day, the Convention had before it the Revenue and Finance Committee’s original proposal on real property taxes. It read, in relevant part, “any county over 200,000 population is authorized to classify real property for taxation purposes.” 7 Rec. of Proc., supra note 2, at 2108. Delegate Netsch moved an amendment motivated in part by her concern that this text established a self-executing grant which the General Assembly “could not take away . . . or otherwise interfere with . . .” 3 id. at 1992. See also id. at 1996-97. Her amendment passed. Id. at 1997. Thus, the objection that Karns’ proposal met was that the State lacked any supervisory power. Karns gave the State that power, and when Netsch removed her amendment (it had been tacked on to the Committee’s proposal and would disappear along with that proposal if Karns’ substitute should pass), it was objected to as no longer necessary and defeated. Id. at 2023-24.

101. See text accompanying note 7 supra.
authorization. The reduction was made and understood to totally eliminate the possibility of CRPT in the less populous counties.\textsuperscript{102} Therefore, the area in which the state could “prescribe” classifications was similarly reduced.

Delegate Parkhurst’s statement

The third reason the court gave for finding the Convention debates unclear on the question of state powers of classification was that during the second reading of Karns’ proposal, (twenty-five days after the first reading) Delegate Leahy re-asked her question “Does [section 4] mean that the state may not classify real property?” In reply, Parkhurst, Chairman of the Committee on Local Government, said:

[\text{If there’s no prohibition in the constitution which prohibits the state from classifying — and I see none — it looks to me like the authority is permissive for counties: and therefore, it does not preclude the state from doing it.]}\textsuperscript{103}

This is, no doubt, a direct declaration of state power. Nonetheless, a consideration on the circumstances in which the remark was made goes far to reduce its significance.

Before re-asking her question, Leahy indicated it was one of a number she had on revenue and local government that had been provoked by a recently distributed memorandum comparing the proposed articles on those subjects. As her questions dealt with areas under the purview of two Convention committees, the Chairman of each, Parkhurst and Karns, had the floor to respond. First Karns, the text’s author, reiterated the interpretation denying state power to mandate CRPT. Then Parkhurst interjected his above quoted answer. However, in portions omitted from the court’s quotation, Parkhurst indicated that his answer was not one he had thought out; subsequently, he accepted a hint to “caucus” before continuing.\textsuperscript{104} Thus, there was little reason for other delegates to accept Parkhurst’s remarks as accurate.

In sum, Parkhurst’s comments are those of an individual delegate having trouble interpreting the Revenue Article. Given their context, the court should have drawn little support from the remarks it accurately characterized as “the most definite statement that was

\textsuperscript{102} 5 Rec. of Proc., supra note 2, at 3895, 3907-10.
\textsuperscript{103}  Hoffmann v. Clark, 69 Ill. 2d 402, 418-19, 372 N.E.2d 74, 82 (1977).
\textsuperscript{104} Karns’ and Parkhurst’s remarks appear at 5 Rec. of Proc., supra note 2, at 3822. Neither Leahy’s questions nor Karns’ and Parkhurst’s colloquy were continued on the floor of the convention.
made . . . concerning the power of the state to classify real property."

The Convention's refusal to completely prohibit CRPT

The court's fourth argument was that:

[O]n two occasions . . . attempts were made to prohibit classification of real property. These proposals would have prohibited classification by the General Assembly, as well as by counties. In both instances the proposals were defeated.

The innuendo here is that the Convention, by spurning amendments which included clear prohibitions of state power to classify real property taxes, indicated a desire to allow such power. But this is not actually the case.

To begin with, there was only one proposal aimed at eliminating all county and state classification schemes. That proposal, introduced by Delegate Friendrich, did fail. The primary reason for its failure, however, was that it denied legal status to Cook County's de facto system. Thus, the Friendrich proposal was fatally flawed regardless of its application to the state.

As for the second "attempt" the court referred to, it differed from the first in that it allowed Cook County to classify. Discussion of the proposal was short because its concept had been debated earlier that day. From that debate it is clear that the primary problem with this amendment was it allowed no county other than Cook to have CRPT power. There was much sentiment for the proposition that if Cook County was allowed to classify, then other populous counties — especially those bordering on Cook — should be allowed the same

105. Hoffmann v. Clark, 69 Ill. 2d 402, 418, 372 N.E.2d 74, 82 (1977). One might argue that Parkhurst's remarks were indicative of delegate confusion as to the meaning of §4 and therefore, the convention did not clearly intend §4 as an express limitation on state-mandated CRPT. However, there is a total absence of corroboratory evidence that there were other "confused" delegates.


107. The proposal read "All real property subject to ad valorem property taxations shall be assessed uniformly at full and fair cash value." 3 Rec. of Proc. supra note 2, at 1997. The other proposal the court refers to allowed Cook County to classify. See note 120 infra and accompanying text.

108. Id. at 1997-2016; Fishbane & Fisher, supra note 5, at 119-22. As the leading monograph on the drafting of the Revenue Article concludes concerning the fate of this proposal: Though some delegates considered classification inequitable, unfair, and difficult to administer, many of them apparently accepted the premise that Cook County's support was essential to passage of the [constitution], and considered classification for Cook County a necessary condition to that support.

Again, the motion did not carry for reasons other than its application to the state.

In fact, if any inference is to be drawn from the defeat of these proposals, it is quite the opposite of what the court inferred. For during lengthy debate, the successful opponents of these proposals voiced a variety of objections to them. Yet no one objected to the effect the amendments clearly (as the court concedes) had on the State. The inference, therefore, is that no one found the prohibition of State classification powers objectionable.  

The Convention's focus was on county-authorized classification schemes.

The final argument for the court's judgment was that the Convention was primarily concerned with the issue of authorizing county CRPT. This accurate observation was made to suggest that due to inattention the Convention had no clear position on the question of state classification power. In this instance, however, near silence indicated an absence of controversy, not an absence of agreement.

Karns' proposal may be divided into three parts: (1) counties were authorized to classify real property taxes; (2) the state had the power to "limit" county classification schemes so that a "hodgepodge" of classification did not result; (3) but the state was not authorized to unilaterally impose such taxes. Part 1 was controversial. It was debated at length, and was modified somewhat. Parts 2 and 3 were not the subjects of lengthy debates. Once assured, through questioning Karns, that 2 and 3 were what his proposal contemplated, the Convention did not discuss them further. Surely, its subsequent silence can be taken as knowing consent.

That this is the proper inference is evidenced by the fact that after Karns' assurances one can see agreement on his concept of the state's role functioning as an assumption in other debates. For example, it makes sense of the following curious episode. On third reading, Delegate Hendren moved an amendment to reduce the counties with classification powers from all counties (as Karns proposed) to only counties with populations over 200,000. The amend-

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110. The earlier debate is at 3 Rec. of Proc., supra note 2, at 2017-20.
111. More argument that this is the proper inference is contained in note 120 infra.
113. See 3 Rec. of Proc., supra note 2, at 2021-32.
114. Karns' proposal allowed all counties the option of classifying. On Third Reading, the Convention limited this option to counties with populations over 200,000. 5 id. at 3896.
115. See 3 id. at 2021-26 discussed in notes 103-11 supra and accompanying text.
Because of this action, Chairman Karns rose to urge deletion of his own proposal's proviso that agricultural property "shall not be assessed at a higher level" than single family residences. Karns' deletion passed but was itself later deleted. However, that is not why the episode is mentioned here. Its relevance is in understanding the motivation behind Karns' motion and the other side's successful opposition.

Karns' reasons included the belief that with classification power limited to counties with populations over 200,000, the proviso was unnecessary to protect farmers from oppression. To this idea, Delegate Lewis, chief speaker in opposition, responded:

[T]he feeling among the farm community is . . . that they wanted protection in having no classification downstate with any respect to farm communities. We have taken action that still leaves classification in seven [sic] counties. Therefore . . . the protection is still needed in those counties, certainly, in order to make it somewhat uniform with the status downstate where there is no classification.

But how, after the Hendren amendment, could Karns believe the proviso on farmland was "unnecessary"? How could Lewis believe there would be "no classification" downstate? Either they both (1) were unaware, due to preoccupation with the issue of county power, that under Karns' text the state could classify (as the court argues); or (2) believed that farm communities feared their own county's enactments, but not the state's, and therefore desired protection only from their county; or (3) assumed Karns' text already prescribed state classification, and that when similar county power was banned "downstate" there was no further possibility of classification there. Inferences (1) and (2) make the debaters seem rather foolish. Indeed, under inference (1), the inference the court drew, Karns looks particularly foolish since it is his own text he does not

116. 5 id. at 3896.
117. Id. at 3907-10, 4232-33.
118. More completely, Karns believed the Illinois Agricultural Associations' legal staff thought the sentence might be an arbitrary classification in violation of the Equal Protection clause of the U.S. Const. amend. XIV, and now that the Hendren amendment made the sentence unnecessary, it should be removed for the "sake of constitutional purity." See remarks of Karns, id. at 3907-10.
119. Id. at 3907. See also the remarks of Delegate Mathias who, though seeing the need to protect farmers in the populous counties, said "I think Karns is entirely right — in the counties of less than 200,000 population there is no need for this sentence." Id. at 3908. The irony of the farm community being the first to benefit from the exercise of a power they sought to restrict, if not eliminate, should not be missed.
understand. Accordingly, only under inference (3) does the debate make sense.\textsuperscript{120}

As has been said, the Hoffmann court's holding is supported exclusively by an analysis of the debates. The question at bar, however, is not whether the debates are an express and clear limitation of the state's otherwise plenary taxation power, but whether section 4 of the constitution is. Any supposed lack of clarity in the debates is at most but one factor in the derivation of constitutional meaning.

Another obvious source of constitutional interpretation is the adopted text.\textsuperscript{121} Indeed, it is the preferred source.\textsuperscript{122} Yet at no point does the Hoffmann court consider the import of the constitutional text itself. The court never determines whether the adopted text expressly and clearly forbids state-imposed CRPT.

Had the court considered the constitutional text it would have found a clear prohibition. Section 4(a) commands that real property taxes be levied "uniformly." With perhaps equal frequency, the court has declared:

In determining the intention and the purpose underlying a constitutional provision the language used should be given its plain and commonly understood meaning unless it is clearly evident that a contrary meaning was intended.\textsuperscript{123} and:

When this court, prior to the adoption of the Constitution of 1970 has defined a term found therein, sound rules of construction require that it be given the same definition unless it is apparent that some other meaning was intended.\textsuperscript{124}

\textsuperscript{120} The Convention's agreement that the State could not unilaterally mandate CRPT functions as an assumption in another episode which has already been discussed in notes 219-21 infra and accompanying text. As noted there, when the opponents of county CRPT proposed amendments to ban all classifications, or to ban them except in Cook County, the "Pro-classification" delegates voiced no objection to the effect these amendments would have on the State. This silence was not due to "inattention," but rather that the proponents of general county classification power saw the role of the State resting solely on the need to "harmonize" the pattern of county legislation. Not seeing an independent role for the State, it would have been illogical for them to fault the complete ban of State power contained in amendments authorizing CRPT in no more than one county.

\textsuperscript{121} See, e.g., R. Dickerson, The Interpretation and Application of Statutes, 7-12 (1975); 2A Sutherland's Statutes and Statutory Construction §§46.01-.07 (C. Sands ed. 1968-72). Though the references are to statutory construction, the concepts are generally applicable to constitutional analysis. See, e.g., Coalition for Political Honesty v. State Bd. of Elections, 65 Ill. 2d 453, 464, 359 N.E.2d 138, 143 (1976).

\textsuperscript{122} See notes 162-68 infra and accompanying text.


As with all canons of construction, these are potentially contradictory. But in this case they do not conflict. By the "plain words" approach, "uniform" means "consistent in conduct, character, or effect; lacking in variation, deviation, or unequal or dissimilar operation." By the "precedented meaning,"

Uniformity in taxing implies equality in the burden of taxation; and this equality cannot exist without uniformity in the basis of assessment, as well as in the rate of taxation.

By either of the usual rules of interpretation, the text unambiguously forbids state-imposed CRPT.

This unambiguous text governs the purpose of section 4(a). According to the rules quoted above, the text controls unless it is "clearly evident" or "apparent" that some other meaning was intended. Since by the court's own argument the most that can be said is the debates are unclear, a case to alter the text's "plain" or "precedented" meaning has not been made.

Indeed, in *Paper Supply Co. v. City of Chicago* the court adjudicated a remarkably similar situation. That case concerned the definition of "taxes . . . upon occupations" as used in the 1970 Consti-
tution. The Convention was clearly aware of the phrase’s meaning in another state. Discussion centered upon that state’s cases, and some delegates evidently understood the term accordingly. But Illinois’ precedents contained a different definition. In fact, Illinois’ “precedented” definition was more ambiguous and certainly less well known in Paper Supply than in Hoffman. Yet, the court upheld the “precedented meaning” of the text, stating:

In prior opinions we have attached great weight to the views expressed by the delegates to the Constitutional Convention . . . ; but in those instances the proceedings indicated a consensus demonstrative of the delegates’ intent.

Again, by the court’s own analysis, the required consensus was lacking in Hoffman.

The significance of the court’s failure to assess the import of the constitutional text is best illustrated by pointing out that it goes beyond Mr. Justice Frankfurter’s jest concerning the improper use of legislative history: that the adopted text is referred to only when the record is unclear. Here, the court believes the record is unclear and still refuses to refer to the text.

133. Compare id. at 584-86, 317 N.E.2d at 19-20 (dissenting opinion) with material cited in note 127 supra.
134. Id. at 570, 317 N.E.2d at 12.
135. See, e.g., text accompanying note 64 supra.
137. Because the Hoffmann Court’s consideration of the allegedly ambiguous debates should not have affected the text’s apparent meaning, it is unnecessary to settle the issue of whether the court should have considered the Convention’s debates and proceedings at all: even if improper, it should be “harmless error.” But the issue is significant and will be noted here.

Courts and commentators are divided on whether reference to other materials is appropriate when the text is unambiguous. Those who under such circumstances oppose extrinsic references have a variety of reasons among which is that it is the text, not the unseen debates, which the executive signed or electorate ratified into law. See C. NUTTING & R. DICKERSON, CASES AND MATERIALS ON LEGISLATION 505 (1978). The other side, however, views this refusal as the sin of “literalism.” See 2A SUTHERLAND’S STATUTES AND STATUTORY CONSTRUCTION 65-68, 181-84 (C. Sands ed. 1968-72).

Illinois has always been viewed as refusing to look behind a clear text. Id. In interpreting its Constitutions, the court has frequently considered debates, but done so under the rule that:

While in construing the constitution the true inquiry concerns the understanding of the voters who adopted it, still the practice of consulting the debates of the members of the convention which framed the constitution has long been indulged in by courts in determining the meaning of provisions which are thought to be doubtful. (Emphasis added.)

Coalition for Political Honesty v. State Bd. of Elections, 65 Ill. 2d 453, 467, 359 N.E.2d 138, 144-45 (1976); see Paper Supply Co. v. City of Chicago, 57 Ill. 2d 553, 559, 317 N.E.2d 3, 9
Paralleling the court's non-treatment of the constitutional text was its failure to consider the import of the Address to the People and Official Explanation published by the Convention to elucidate the proposed constitution to the voters. Because the Address and Official Explanation bore the imprimatur of the Convention and the state, and because it was the only guide to the proposed Constitution generally available to the electorate before its balloting, it had legal significance under the rule that "when construing a constitutional provision, an important object of inquiry is the understanding of the voters who adopted the document." Accordingly, in prior cases the court has regularly considered the Address and Official Explanation, relying on it not only for support, but by so doing, it has effectively limited the constitutional text's true meaning.

138. The Convention's Enabling Act required the preparation of an Official Explanation which was to describe, in layman's language, each section of the proposed Constitution and how it differed from its predecessor. The Enabling Act further required that the Official Explanation be mailed to every registered voter. Ill.P.A. 76-40 §13. The Address to the People, a summary of the Official Explanation, was not required; the Convention, however, prepared and sent it along with the Explanation to every voter. On the drafting of the Address and Official Explanation, see Lousin, supra note 71, at 214-15. However, as has been said, since no court allows an ambiguous debate to vary a clear text, see material cited in note 135 supra, and since at most Hoffmann's debates are ambiguous, adherence to either position in this case should not alter the result: the meaning of the text is unaffected.

139. For the imprimatur of the State, see note 138 supra. Other less generally available guides did exist. Most notably, the Chicago Bar Record devoted its November, 1970 issue to the proposed Constitution. Its review of Article IX leaves the clear impression that counties with populations over 200,000, and only such counties, could initiate CRPT. Netsch, Article IX — Revenue, 52 Chi. B. Rec. 103, 108-09 (1970).

140. People ex rel. Scott v. Briceland, 65 Ill. 2d 485, 495, 359 N.E.2d 149, 154 (1976). Justice Ryan, author of the Hoffmann opinion, on occasion has gone further and declared, "It was the vote of the People which was required to bring this Constitution into existence. I am therefore concerned only with what the voters intended when they voted for the adoption of the Constitution . . . ." Board of Ed. Sch. Dist. No. 142 v. Bakalis, 54 Ill. 2d 448, 477, 299 N.E.2d 737, 751 (1973)(concurring opinion).


142. See material cited in note 141 supra.
even for sole support. Yet in *Hoffmann* the Address and Official Explanation was never mentioned. If that document had been considered, the court would have seen that its import denied state power to mandate CRPT.

The *Hoffmann* court’s final analytic error was its handling of the remarks Chairman Karns delivered when introducing his text. As discussed, when Karns proposed section 4 he said, “it states the traditional rule of uniformity.” And in answering the question of whether the state had power under section 4(b) to unilaterally impose classification he said, “No.” The court dismissed these comments as just another statement of the view of “a particular delegate.” But the remarks of a text’s author and sponsor are not so insignificant. On the contrary, they are usually accorded “great weight.”

To summarize this two-fold criticism of the opinion in *Hoffmann v. Clark*, it is conceded the state has power to impose CRPT unless the constitution clearly denies it. Article IX, sections 4(a)-(b) is the required prohibition. The court, however, found section 4 unclear because “[t]here is no clear indication that the constitutional convention viewed it as such.” It has been argued that this holding is incorrect. First, the only ambiguity the court found is in the debates; by drawing permissible but incorrect inferences, the court, in effect, misread the debates. Second, the court improperly identified the question of constitutional meaning with the delegates’ understanding. This, by itself, was a two-part error. Not only is constitutional meaning a structured and weighted analysis of the

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144. This oversight is remarkable not only because the Official Explanation was referred to for support by the dissenting Justices, *Hoffmann v. Clark*, 69 Ill. 2d 402, 432-33, 372 N.E.2d 74, 88-89 (1977), but also because the author of the court’s opinion, Justice Ryan, has been the most frequent and vociferous proponent of the Official Explanation’s interpretive significance. See material cited in notes 140 and 141 supra.
145. 7 Rec. of Proc., supra note 2, at 2676, 2736. Although the Address and Official Explanation clearly implies the State may not impose CRPT state-wide, it is arguable that it is ambiguous on whether the State may initiate CRPT in the §4(b) counties. For the argument on this, and its significance, see note 209 infra and accompanying text.
146. See notes 8 and 9 supra and accompanying text. Karns stated this position again during Second Reading in response to Delegate Leahy’s continued questioning. See note 115 supra and accompanying text.
148. E.g., Federal Energy Adm. v. Algonquin Sngo, Inc., 426 U.S. 548, 564 (1976); Blase v. State, 55 Ill. 2d 94, 302 N.E.2d 46 (1973). In this connection, it should be noted that Parkhurst was not a sponsor of §4, and therefore his remarks, discussed in note 115 supra, even without the additional context, should be considered less significant than Karns’ statements.
adopted text and the Convention's intent; also, the Convention's intent itself is a structured and weighted analysis of the Address and Official Explanation, the remarks of draftsmen, committee reports, as well as floor debates. Thus delegate understanding is but one consideration in a determination of the Convention's intent; the Convention's intent is but one consideration in a determination of the constitution's meaning. In short, the Hoffmann court's analytic approach to constitutional interpretation was in error.

THE FUTURE OF CRPT IN ILLINOIS

All that has been said thus far was necessary background for considering the future of CRPT in Illinois. CRPT is certainly established to the extent that the section 4(b) counties, subject to state regulation or prohibition, choose to enact them. But how far does Hoffmann v. Clark expand upon this? The answer is indeterminate.

CRPT's expansion depends upon Hoffmann's elaboration and application in future litigation. No doubt Hoffmann has an expected reading: one that allows the state to impose CRPT restrained only by the general constitutional limitations that apply to all legislation. Nonetheless, the case is susceptible to other interpretations. Some are narrower; some are broader. They are surveyed in the following discussion.

No Expansion

Hoffmann v. Clark may not expand the scope of CRPT in Illinois because the case may be overruled. To suggest this seemingly violates the doctrine of stare decisis, that a court's determination of a point of law fairly arising in a case settles that matter and is binding precedent in subsequent cases where the very point is again in controversy. Stare decisis is, of course, grounded in wise social policy.

150. See R. Dickerson, The Interpretation and Application of Statutes (1975); Sutherland's Statutes and Statutory Construction (C. Sands ed. 1968-72).
151. In light of these criticisms it is unnecessary to add as another what the dissenting Justices vigorously assert: the court simply misweighed the evidence. See Hoffmann v. Clark, 69 Ill. 2d 402, 430-44, 372 N.E.2d 74, 87-95 (1977). For specific comparisons, see, e.g., the respective appraisals of the Report of the Committee on Style, Drafting and Submission, id. at 419-21, 433-34, 372 N.E.2d at 82-83, 89, and of Parkhurst's remarks, id. at 418-19, 440-41, 372 N.E.2d 82, 92-93. Note that the dissent not only weighs the evidence differently, it also presents more of it.
152. Hoffmann's expected reading and its limitations are discussed in notes 216-54 infra and accompanying text.
153. Stare Decisis et non quieta movere (to stand by decisions and disturb not what is settled) is discussed generally in Fox v. Snow, 6 N.J. 12, 21-25, 76 A.2d 877, 882-83 (1950) (dissenting opinion); B. Cardozo, The Nature of the Judicial Process 142-67 (1921); R. Cross,
Adherence to past decisions promotes stability, certainty, judicial economy, equal treatment of litigants and confidence in the impartial administration of justice. As Justice Brandeis wrote, "Stare decisis is usually the wise policy because in most matters it is more important that the applicable rule be settled than that it be settled right."\textsuperscript{154} However, as the same jurist also wrote, stare decisis "is not . . . a universal, inexorable command."\textsuperscript{155} If it were, legal growth and progress would stagnate.\textsuperscript{156} Whether precedent is to be followed is "entirely within the discretion of the court,"\textsuperscript{157} and depends upon a variety of factors. The specific factors\textsuperscript{158} most frequently articulated as influencing the application of stare decisis may be summarized as: (1) whether the prior decision is correct or not, (2) how complete was its consideration, (3) how extensively has it been relied upon, (4) what area of law is involved and (5) how injurious would continued adherence to the former determination be?\textsuperscript{159}

\textsuperscript{154} Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406 (1932) (dissenting opinion).
\textsuperscript{155} Id. at 405. Accord, e.g., Murphy v. Martin Oil Co., 56 Ill. 2d 423, 431-32, 308 N.E.2d 583, 587 (1974), quoting with approval Molitor v. Kaneland Community Unit Dist., 18 Ill. 2d 11, 26, 163 N.E.2d 89, 96 (1959). (We have repeatedly held that the doctrine of stare decisis is not an inflexible rule requiring this court to blindly follow precedents and adhere to prior decisions.)
\textsuperscript{156} Stare decisis is more rigid in England. R. Cross, \textit{Precedent in English Law} 19-20 (2d ed. 1968). Remarks made in this article are not applicable to the practice there.
\textsuperscript{158} General considerations, such as public confidence in the judiciary, judicial economy, the desire to have a stable body of law, and the need to modernize, are always present. For an attempted comprehensive statement of them, see H. Hart & A. Sacks, \textit{The Legal Process: Basic Problems in the Making and Application of Law} 587-88 (tent. ed. 1958). Because they are abstract and not easily quantifiable in a particular case, courts attempt to effectuate them through consideration of the more specific and concrete particulars discussed here.
\textsuperscript{159} Many of the factors are summarily stated in Catlett, \textit{The Development of the Doctrine of Stare Decisis and the Extent to Which it Should be Applied}, 21 Wash. L. Rev. 168, 160-65 (1946). See also Monell v. Dept' of Social Services of City of N.Y., 436 U.S. 568, 695-700 and \textit{id.} at 708-13 (concurring opinion); and the material cited in note 153 supra.
Accordingly, when the considerations governing *stare decisis* have counseled overruling precedent, the Illinois Supreme Court has done so. Recently, the court has even reversed precedents less than three years old. That *Hoffmann v. Clark* may become another such case will be demonstrated by applying the doctrine of *stare decisis* to it.

As indicated above, to be overruled the prior determination must, of course, be wrong: either it was decided incorrectly or it is no longer correct due to societal changes. There is no requirement that the previous decision be more than wrong, e.g., "clearly wrong." This does not mean a court will reverse precedent merely because it would determine the matter differently. There are the other factors to consider. However, the firmness of the conclusion that past authority is incorrect or is no longer the appropriate solution may in itself be an additional consideration.

Related to the above, is the question of how "solemn" or "elaborate" the prior determination was. Pronouncements on issues not raised or necessary to the case are dicta and most easily de-

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160. See, e.g., the Illinois cases cited in notes 155 and 156 *supra* and note 161 *infra*.


162. See, e.g., Hanley v. Kusper, 61 Ill. 2d 452, 463, 337 N.E.2d 1, 7 (1975); Spring v. Little, 50 Ill. 2d 351, 367, 280 N.E.2d 208, 217 (1972)(quoting Justice Cardozo). In early English and American formulations of the doctrine, the only factor seems to have been whether the case was incorrectly determined. See Catlett, *The Doctrine of Stare Decisis and the Extent to Which It Should be Applied*, 21 WASH. L. REV. 158, 161 (1946); Lewis, *The History of Judicial Precedent*, 47 L.Q. Rev. 411, 422-23 (1931). This is consonant with the then held view that judicial decisions were but "evidence of what is common law." 1 W. BLACKSTONE, *COMMENTS ON THE LAWS OF ENGLAND* 71. The modern doctrine of *stare decisis* did not emerge until the latter part of the nineteenth century, having been postponed not only until "law reporting had reached its present high standard," R. CROSS, *PRECEDENT IN ENGLISH LAW* 20 (2d ed. 1968), but also — in England — the development of the modern hierarchy of courts, id., and — in America — the end of the judiciary's creative lawmaking era. See generally M. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW: 1780-1860* (1977); R. POUND, *THE FORMATIVE ERA OF AMERICAN LAW* 81-137 (pb. ed. 1938).

163. No case required a higher standard such as "clearly wrong." E.g., National League of Cities v. Usery 426 U.S. 833, 855 (1976)(precedent is "simply wrong"); Hanley v. Kusper, 61 Ill. 2d 452, 463, 337 N.E.2d 1, 7 (1975)(Court "persuaded" new view is correct). Justice Harlan, concurring in Monroe v. Pape, 365 U.S. 167, 192 (1961) and Justice Rehnquist, dissenting in Monell v. Dep't of Social Services of City of N.Y., 436 U.S. 658, 714 (1978) would require the previous determination's error be "beyond doubt." But the Court has never adopted this standard, id. at 699, n. 65. In any event, the Harlan-Rehnquist test applies to overruling statutory interpretations. Hoffmann v. Clark involves constitutional construction where *stare decisis* applies with less force. See notes 188 and 189 *infra* and accompanying text.


parted from. But even with regard to issues properly before the previous court, their precedential strength varies with the completeness of their consideration.\textsuperscript{166} Specifically, did the court assume or discuss the point? How fully was the point argued and briefed? Did counsel raise all the arguments? Was a review, if available, sought?\textsuperscript{167} But since it is just one factor, even a complete deliberation does not immunize the precedent from overruling.\textsuperscript{168}

In \textit{Hoffmann v. Clark}, the constitutionality of state-mandated CRPT was properly before the court, was briefed and argued by all parties, and discussed at length in the opinions.\textsuperscript{169} However, no party raised the vital issue of the significance of section 4's text or its Official Explanation. All parties delved directly into the debates in an attempt to derive the delegates' intent. The court's opinion mirrors counsel's oversight. It, too, considers neither important source of constitutional meaning.\textsuperscript{170} In the recent cases of \textit{Hanley v. Kusper} and \textit{Thorp v. Mahin}, more completely considered property tax constitutionality decisions have been overruled.\textsuperscript{171}

Another concern in the decision to overrule is the extent to which the public has justifiably and detrimentally relied upon the established law and, thus, the extent to which existing arrangements would be unfairly upset. Although frequently reliance is more ap-

\begin{footnotesize}
\textsuperscript{166} "It is more important that the court should be right upon later and more elaborate consideration of the cases than consistent with previous declarations." Barden v. Northern Pacific R.R. Co., 154 U.S. 288, 322 (1894), quoted with approval, Murphy v. Martin Oil Co., 56 Ill. 2d 423, 431, 308 N.E.2d 583, 587 (1974).


\textsuperscript{170} Id. The Brief and Argument for \textit{amicus curiae}, Illinois Agricultural Association discusses the precedented meaning of "uniform." However, it derives an incorrect meaning, and also never states the import of the discussion. Id. at 5-7. The dissenting opinion mentions the Official Explanation but not its import. Hoffmann v. Clark, 69 Ill. 2d 402, 432-33, 372 N.E.2d 74, 88-89 (1977).

\end{footnotesize}
parent than real, when it does exist it can be somewhat minimized by giving the new law prospective application only.\textsuperscript{172}

At times a reliance upon precedent is less justified due to patent signals.\textsuperscript{173} The respect an opinion receives varies with such considerations as whether it is a case of first impression; is decided by a divided court over vigorous dissent; is itself a departure from prior practice; is susceptible to unacceptable extensions; is in conflict with analogous precedents or a developing body of law; or is subject to scholarly criticism.\textsuperscript{174}

In \textit{Hoffmann v. Clark}, many of these signals are evident. It is a case of first impression,\textsuperscript{175} at variance with traditional methods of analysis,\textsuperscript{176} susceptible to undesirable extensions,\textsuperscript{177} decided over vigorous dissent,\textsuperscript{178} against professional expectations,\textsuperscript{179} and has been criticized.\textsuperscript{180} Reliance on the opinion as precedent, therefore, is at least somewhat unjustified.

Moreover, detrimental reliance is almost nonexistent. As commentators point out, CRPT is an ineffectual means to achieve policy goals. The resulting tax differential is not central to investment decisions.\textsuperscript{181} Generally, then, people do not "change their positions" in reliance upon it.\textsuperscript{182}


\textsuperscript{173} The term "patent signals" is used to denote circumstances discernible from the "face" of the precedent or from generally available research tools. It contrasts with circumstances, such as the coverage of the briefs and arguments, which are not so easily discoverable, and which may be denoted "latent signals."


\textsuperscript{175} Hoffmann v. Clark, 69 Ill. 2d 402, 412, 372 N.E.2d 74, 78 (1977).

\textsuperscript{176} \textit{See} note 170 \textit{supra} and accompanying text.

\textsuperscript{177} \textit{See} notes 198-254 \textit{infra} and accompanying text.

\textsuperscript{178} Hoffmann v. Clark, 69 Ill. 2d 402, 430-44, 372 N.E.2d 74, 87-95 (1977).

\textsuperscript{179} \textit{See} note 16 \textit{supra}.


\textsuperscript{181} \textit{See} note 39 \textit{supra} and accompanying text.

\textsuperscript{182} \textit{See}, \textit{e.g.}, Fox v. Snow, 6 N.J. 12, 25-28, 76 A.2d 877, 878-85 (1950)(dissenting opinion); B. Cardozo, \textit{The Nature of the Judicial Process} 143, 146-47 (1921)(for classic examples
Specifically, state-imposed classifications in Illinois, thus far, are (1) use valuation of farm, airport or open space lands; (2) economic productivity valuation of pollution control facilities; and (3) non-assessment of values enhanced by solar energy systems or, in all counties except Cook, by $7,500 in maintenance and repair expenses every ten years. Use valuation is designed to preserve the existing use in urbanizing areas by helping its recipients resist the temptations to sell to land developers. However, use valuation is criticized as ineffective. The extent to which it eases tax pressures is minimal compared to such remaining temptations as capital gains. If the legislation cannot preserve the existing use, few people will have changed their position in reliance upon it.

Economic productivity valuation of pollution control facilities may seem designed to attract investment into this costly area. However, since these facilities are now required by law, perhaps the impact of this subsidy has been to ease the burden of their legally required installation. The only detrimental reliance upon Hoffmann is the degree to which, since the Hoffmann decision, the tax preference has been central to investment beyond the required minimum.

Investment in solar energy systems is not required by law. Neither, in the absence of housing codes, is $7,500 in maintenance every ten years. Still, these investments are motivated by considerations other than a small tax subsidy. The decision to install solar energy systems focuses on its reliability and conventional fuel savings. Decisions on maintenance expense are more influenced by the neighborhood's status or recapture through higher rents than by fear of reassessment.


184. E.g., Denne, supra note 29 at 38-40; Gloudemans, supra note 35 at 54; Keene, Differential Assessment and the Preservation of Open Space, 14 Urban L. Ann. 11, 42-43 (1977). See also the lengthy list of legal periodical writing on agricultural and open space preservation legislation in Hoffmann v. Clark, 69 Ill. 2d 402-36, 372 N.E.2d 74, 85-86 (1977). Most of it is critical of these efforts.


A $3,000 solar heating system in a 2,000 square foot thermally efficient home saves about $250 annually at current fuel costs; more is saved as thermal efficiency decreases or as fuel prices rise. Id. A generously estimated annual property tax reduction for a $3,000 system under this legislation is $70. The actual benefit is smaller because property taxes are federal income tax deductions.


To the extent that there may be reliance upon Hoffmann, it can be minimized by according perspective application to its overruling. Desist v. U.S., 394 U.S. 244 (1969); Great N. Ry. Co. v. Sunburst Oil & Refining Co., 287 U.S. 358 (1932); Renslow v. Mennonite Hosp., 67
The vitality of *stare decisis* also varies among areas of law. It is more strictly observed in property and criminal law than in torts and attorney discipline.\(^\text{187}\) This variation is usually, but not always, related to the extent of reliance generally found in the area. Constitutional construction is one area where *stare decisis* has decidedly weakened application. The reason for this is not absence of reliance, but that legislative correction is unavailable.\(^\text{188}\) Correction may be had only through the amendment process or overruling. Accordingly, it has been observed that the more difficult the amendment process the more incumbent it is upon the court to correct its “constitutional” mistakes.\(^\text{189}\)

*Hoffmann v. Clark*, of course, involves constitutional interpretation. *Stare decisis* is, therefore, less constraining. This is especially true since in Illinois the alternative to judicial correction, the amendment process, *requires* legislative approval,\(^\text{190}\) and political


Although the comparison is usually between *stare decisis* in constitutional law and statutory construction, the availability of legislative correction as a staying factor in the decision to overrule may be seen in other areas. \textit{E.g.}, Maki v. Frelk, \textit{40 I.2d} 193, 197, 239 N.E.2d 445, 447-48 (1968); O’Callaghan v. Walker & Beckwith Realty Co., \textit{15 I.2d} 436, 441, 155 N.E.2d 545, 547 (1959). Two extraordinary illustrations are Murphy v. Martin Oil Co., \textit{56 I.2d} 423, 427, 308 N.E.2d 583, 585 (1974)(an incorrect statutory construction not overruled once before due to the possibility of legislative correction is now reversed in light of continued legislative inaction) and \textit{People ex rel. Hamer v. Jones}, \textit{39 I.2d} 260, 372-73, 235 N.E.2d 589, 596 (1968) (postpones remedying unconstitutional conduct of administrative officials pending legislative action).


\textit{Ill. Const. art XIV, §2.} The electorate may, without prior legislative approval, revise only the structure and procedure of the General Assembly or call a constitutional convention once in twenty years. \textit{Id.} at §§1, 3.
bodies are unlikely to deny themselves power.\textsuperscript{191}

Finally, in applying \textit{stare decisis} a court will consider the extent to which the prior determination is a "serious detriment ... prejudicial to public interests."\textsuperscript{192} \textit{Hoffmann v. Clark}'s expansion of CRPT should be viewed as threatening such damage. CRPT erodes tax bases and shifts tax burdens in ways that are not visible, not accounted for and not necessarily equitable.\textsuperscript{193} Furthermore, since Illinois property taxes are not a source of state revenue,\textsuperscript{194} the level of government granting the preferences is not the level affected by their dislocations. Therefore, the tendency for special interest lobbying to multiply the subsidized areas may be specially exaggerated.

Moreover, all the economists who testified at the Convention's Revenue and Finance Committee hearings opposed CRPT.\textsuperscript{195} Even major proponents of Karns' proposal conceded, "Economically you cannot give any sound reasons for the classification ... of real property for taxation purposes." They advocated limited classification based upon "the facts of life," i.e., Cook County demanded it.\textsuperscript{196} One may legitimately feel the Constitutional Convention viewed the far more limited CRPT which it authorized, as "prejudicial to public interests," but politically necessary.

In sum, \textit{Hoffmann v. Clark} is one of those rare cases where there is good argument that the considerations influencing judicial discretion to apply or not apply \textit{stare decisis} counsel overruling.\textsuperscript{197}

\textit{Expected Expansion}

Even if \textit{Hoffmann v. Clark} is not overruled, the case's future impact is still unclear, since the case's construction of the relevant

\textsuperscript{191} The argument that the General Assembly may correct the court by simply not exercising this power is insufficient, because the power would still be there should a future General Assembly choose to use it.

\textsuperscript{192} Mogged v. Mogged, 55 Ill. 2d 221, 227, 302 N.E.2d 293, 296 (1973)(and material cited therein); \textit{See also} Neff v. George, 364 Ill. 306, 308-09, 4 N.E.2d 388, 390 (1936).

\textsuperscript{193} \textit{See} notes 30-36 \textit{supra} and accompanying text.

\textsuperscript{194} \textit{Fisher}, \textit{supra} note 81, at 69-73, 123, 140.

\textsuperscript{195} 3 \textit{Rec. of Proc.}, \textit{supra} note 2, at 1998. Economists generally oppose CRPT. \textit{See} notes 28 and 29 \textit{supra} and accompanying text.

\textsuperscript{196} 3 \textit{Rec. of Proc.}, \textit{supra} note 2, at 2013; 7 \textit{id.} at 2127.

\textsuperscript{197} At this point it may be added that in addition to the question of whether it is appropriate to overturn precedent, is the question of when courts will permit the issue to be raised. At least in Illinois, courts may re-examine previously settled questions of "continuing importance," Hanley v. Kusper, 61 Ill. 2d 452, 456-57, 337 N.E.2d 1, 4 (1975), and have a "duty" to do so "when doubts are raised ... as to the correctness of the [prior] decision." Nudd v. Matsoukas, 7 Ill. 2d 608, 615, 131 N.E.2d 525, 529 (1956); Doggett v. North American Life Ins. Co., 396 Ill. 354, 360-61, 71 N.E.2d 686, 689 (1947). \textit{Hoffmann} meets both these criteria.
constitutional provisions is decidedly ambiguous. The impact of the case varies with how this ambiguity is resolved.

To see Hoffman’s ambiguity and its various resolutions, it must be recalled that although section 4(a) commands uniformity in real property taxation, section 4(b) allows an exception for counties with populations over 200,000. These counties are permitted to classify “subject to such limitations as the General Assembly may . . . prescribe by law.”198 Under these provisions, the state-enacted legislation that compelled all section 4(b) counties, whether or not they otherwise classified, to assess farmland at its use-value and to levy a “rollback” tax should farm-use be discontinued.199 Plaintiffs protested against the assessment of the rollback tax against lands located in a section 4(b) county which had not itself initiated any classification schemes.200 The statute at bar, then, could be struck down only if state-initiated classification (1) offended section 4(a)’s uniformity requirement and (2) was not a section 4(b) “limitation” of the classification powers held by the populous counties.

After exploring the issue and adducing pro and con evidence in both sections, the court concluded that section 4(a)’s uniformity requirement does not prohibit state power to classify.201 In the con-

199. The relevant parts of the statute are set forth in the opinion, Hoffmann v. Clark, 69 Ill. 2d 402, 408-09, 372 N.E.2d 74, 76-77 (1977). As stated there, the statute was amended, effective October 1, 1973, to apply “in all counties.” The amended statute, however, was not at bar. The tax liabilities litigated in Hoffmann were for the years 1972 and 1973. Id. at 410, 372 N.E.2d at 77; Brief and Argument for Plaintiffs-Appellees at 5-7. Since the legislation has always stated that farm use-valuation is available only when application is made for it “by January 1 of the year for which that valuation is desired,” e.g., id. at 408, 372 N.E.2d at 77, it is clear the amendment cannot be involved with liabilities incurred before 1974. This point is critically important. It means that the court has not yet ruled on the constitutionality of State CRPT imposed state-wide. Hoffmann v. Clark, while not dispositive is, of course, closely related to this broader issue; indeed, this section is an exploration of that relationship.
200. The county is DuPage; its population is 554,000. That DuPage County has not itself enacted CRPT is from a telephone interview with Frank Marack, Supervisor of Assessments and Clerk of the Board of Review of DuPage County (Dec. 14, 1978). The absence of county enacted CRPT forestalls any attempt to argue that Hoffman v. Clark upholds no more than pre-emptive state regulation of CRPT which a county must obey should it choose to depart from uniformity.
201. The court states:
Absent an express and specific constitutional limitation upon the General Assembly’s power to classify real property, which we do not find, we must conclude that body possesses the power to classify. (The presence of the uniformity requirement in section 4(a) of article IX cannot be said to constitute any express limitation. There is no clear indication that the constitutional convention viewed it as such.) Also, as noted earlier, the convention was informed of the construction of the 1870 Constitution’s command of uniformity which required only that taxation must be uniform as to the class upon which it operated . . . . Plaintiffs also contend that the rollback provision . . . constitutes an invalid classification under our constitu-
text of this case's facts, then, the state may initiate CRPT in counties with populations over 200,000. But is the rationale that section 4(a) requires uniformity only within a class? The holding hinted at this; nevertheless, it was not quite said. Or is the rationale that section 4(a) cannot prohibit what section 4(b) allows; and section 4(b) allows state-initiated CRPT in populous counties? Although this was not articulated, it was neither denied nor entirely absent. Or is the rationale one that is at present even less visible, yet still capable of being divined on some future occasion? The problem, of course, is the court's enigmatic draftsmanship. The result is that the case's rationale is ambiguous.

As the case's rationale varies, so does its import. This is true even when limited to the two most apparent readings. The most obvious rationale, that section 4(a)'s uniformity requirement refers to uniformity within a class, allows the General Assembly to initiate classification throughout the state. The only clear bounds to the state's exercise of this power are the due process and equal protection clauses of the state and federal constitutions and the special legislation clause of the state constitution. In the area of taxation, these clauses are not now, and show no prospect of becoming, more than de minimus restraints. In other words, the state may legislate any scheme of classification, anywhere in the state, and may even delegate its authority in any manner — confined only by the concept of "minimal rationality."

In contrast, the alternate rationale, that section 4(a) cannot preclude what section 4(b) allows, confines state-initiated CRPT to the eight populous counties. Further, the freedom with which the power may be exercised is curtailed by section 4(b)'s proviso that no class in a county shall be assessed or taxed at more than two and one-tenth. What has been said concerning the authority of the General Assembly under section 4(b) of article IX to classify real property for assessment purposes also applies to its authority to classify real property for the application of the rollback provision of the statute.


202. For example, another arguable rationale is that §4(a) forbids CRPT, but the Convention did not clearly intend §4(a) to apply to the state. Whether §4(a) applies to home rule units is another matter. See notes 222-254 infra and accompanying text.

203. Arguably there are other limits. For example, §4(b)'s proviso against taxing farmland less favorably than single-family residences may be intended to apply to state as well as county initiated CRPT. See Kars' proposal before and after the Hendren amendment, the debate on the proviso the amendment provoked, and the Official Explanation, 3 Rec. of Proc., supra note 2, at 2021; 5 id. at 3896, 3907-10, 4232-33; 7 id. at 2676, 2736.

half times any other class and that farmland not be assessed at a higher level than single family residences.\textsuperscript{205}

It is difficult to firmly predict which of these \textit{ratio decidendi} will be preferred by the court. Although it is fair to say the court has all but adopted the construction of “uniformly” as applying solely to members of the same class, this construction rests on less secure constitutional underpinnings. As has been argued, the constitutional text unequivocally prohibits such a reading. It is countenanced by neither the plain nor preceded meaning of “uniformly.”\textsuperscript{206} On the other hand, the constitutional text arguably permits the section 4(b) rationale. If the text prohibits state-initiated CRPT in the populous counties, it is because in ordinary, plain usage the word “limitations” connotes restrictions, prohibitions, i.e., statements of what “cannot be.”\textsuperscript{207} Clearly, the state cannot initiate when it may only restrain. But legal, preceded usage is not so narrow. Court precedents, in Illinois and elsewhere, show “limitations” used in a mandatory, directive sense, i.e., statements of what “must be.”\textsuperscript{208} If section 4(b) may be read as subjecting the populous counties’ CRPT power to “such mandatory directions as the General Assembly may prescribe,” then whether the text \textit{clearly} prohibits a directive to initiate CRPT is a tough question indeed.\textsuperscript{209}

The debates are more problematic. Yet a cursory review of the court’s analysis of them is sufficient to sustain the thesis that the section 4(a) rationale is predicated on a less secure foundation. In searching the record to see if it clearly prohibited state power to initiate CRPT, most of the ambiguity the court found related to section 4(b), not section 4(a). The only evidence clouding section 4(a)’s prohibition was Lyons’ remark incorrectly describing the pre-

\textsuperscript{205} ILL. CONST. art. IX.
\textsuperscript{206} See notes 126-128 supra and accompanying text.
\textsuperscript{207} WEBSTER’S Third New International Dictionary 1312 (1976).
\textsuperscript{208} Thus, ILL. CONST. art. X, §1 “[T]he General Assembly shall provide for an efficient system of high quality public educational institutions and services” is a limitation. See Sloan v. School Directors of School Dist. No. 23, 373 Ill. 511, 515, 26 N.E.2d 846, 848 (1940). See also T. COOLEY, A TREATISE ON CONSTITUTIONAL LIMITATIONS 109-19 (7th ed. 1903). Also, it is elementary property law that in a conveyance “to A so long as he uses the property for residential purposes,” the emphasized words are words of limitation.
\textsuperscript{209} The Address to the People and Official Explanation are also vague about whether the state may initiate CRPT in the §4(b) counties. Although the Address implies the state may do so, the Official Explanation says, ambiguously, that §4(b) counties may classify “subject to regulation by the General Assembly.” See 7 Rec. of Proc. supra note 2, at 2676, 2736. For the interpretation significance of the Address and Official Explanation, see notes 139-143 supra and accompanying text.
The evidence clouding section 4(b)’s prohibition was that after Chairman Karns indicated the state’s section 4(b) “limitations” could be mandatory and directive, he had trouble communicating the notion that the directives could not initiate CRPT; and that at least one notable delegate, Chairman Parkhurst, seemed to have not understood.211 Therefore, the court’s current view of the debates supports both rationales. If however, the court were to ascribe less influence to Lyons’ remark, then the section 4(a) rationale’s foundation evaporates. On the other hand, even if the court were to ascribe less influence to Karns’ difficulty and Parkhurst’s apparent confusion, the section 4(b) rationale might still be supported by the constitutional text.212

The point, here, is not that the court will recant any or all of its analysis of the debates; nor that the court will recant any or all of its de-emphasis of the constitutional text. Nor is the point that one of these rationales is the “correct” one. Rather, it is that Hoffmann v. Clark has at least two rationales for which respectable arguments may now be made. Given that two Justices vigorously dissented from Hoffmann’s entire judgment, it is impossible to be certain that the extremely broad, “all but adopted” section 4(a) rationale will ultimately predominate.

**Extensive Expansion**

Even if it were certain that Hoffmann v. Clark would be elaborated according to its most apparent rationale, the case’s future impact is still unclear. For two other constitutional provisions interrelate with section 4. Reading section 4(a) to require uniformity only within a class raises questions concerning these two provisions.

One of these provisions is article IX, section 6 on “Exemptions from Property Taxation.”213 Except for its clause on homesteads and

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210. See note 74 supra and accompanying text.
211. See notes 105 and 106 supra and accompanying text.
212. See the argument for doing so in notes 75-95 supra and accompanying text.
213. See the argument for doing so in notes 96-111 supra and accompanying text.
214. If the court continues to focus solely upon the debates, there is no linkage between Lyons’ statement dealing with § 4(a) and Karns’ and Parkhurst’s remarks on § 4(b). Thus, the court may alter its assessment of the former, while maintaining its position on the latter.
215. ILL. CONST. art. IX, §6 provides:
The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetary and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits.

rent credits, section 6 carries forward the constitutional law of exemptions exactly as it stood under the 1870 Constitution. With reference to that law, then, it is certain that section 6 severely limits state power to enact exemptions. The state may exempt only the few categories of property expressly enumerated in section 6; and those categories are restrictively defined by judicial decisions. Under section 6, Illinois remains "perhaps the most restrictive state in the union as far as granting exemptions from the real property tax."

Section 6's severe limitations on state power to enact exemptions conflict with Hoffmann's "all but adopted" rationale which allows the state broad power to enact CRPT. As previously discussed, the essence of CRPT is differentiation in the effective rate of taxation among the various properties subject to the tax. Broad power to classify allows the effective rate of tax on a particular class of property to approach zero. As it does, it becomes, in substance, an exemption. Indeed, since the power to grant exemptions includes the power to grant partial exemptions, form as well as substance is at times difficult to distinguish. It is, for example, difficult to tell whether the Illinois statute mandating nonassessment of values enhanced by solar energy systems is a permitted classification or an unpermitted exemption.

Thus, Hoffmann v. Clark's apparent rationale threatens to undercut section 6's restrictions on allowable exemptions. The court, however, must not allow one constitutional provision "to defeat another if by any reasonable construction the two can be made to

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216. Section 6 allows exemptions for these items. Its predecessor clause, ILL. CONST. of 1870 art. IX, §3, did not.

217. See, e.g., 3 Rec. of Proc., supra note 2, at 1917-18, 2079; 5 id. 3845; 7 id. 2156-57; Small v. Pangle, 60 Ill. 2d 510, 514, 328 N.E.2d 285, 287 (1975)(§6 is "nothing more than a rephrasing" of the 1870 Constitution's provision; prior decisions are "equally relevant").

218. E.g., Braden & Cohn, supra note 77, at 437-46.

219. 5 Rec. Of Proc., supra note 2, at 3845.

220. See notes 19-21 supra and accompanying text.

221. ILL. REV. STAT. ch. 120, §501(d)(3) (1977).

222. The Convention was aware of the interrelation of §4 and §6. Braden & Cohn, supra note 77, at 446 provides:

What action is taken on [§6] depends in large part upon the Convention's decision on general taxing powers of the legislature. If it is decided to grant the legislature wide discretion in matters of taxing policy, then the need for a special section on exemption is minimal and it could well be dispensed with. On the other hand, if substantial restrictions are placed on the taxing power, and particularly if a uniformity requirement is imposed on property taxation, then it will be necessary to make some provision for exemptions if they are to be allowed . . .

Braden & Cohn's work was much used by the Convention and the court has recognized this, even citing it to establish what the delegates knew. See note 90 supra. The Convention's adoption of §6 is, therefore, more textual evidence that Hoffmann v. Clark's broad rationale is incorrect.
stand together." But what that construction could be is not readily perceptible.

The other provision whose meaning is affected by Hoffmann v. Clark's broad rationale is article VII, section 6(a) on "Powers of Home Rule Units." Section 6(a) grants home rule units the power "to tax." This is a "broad grant of power," one that is to be "construed liberally." Under it, home rule units may enact CRPT unless prohibited by another constitutional provision. As long as section 4(a)'s uniformity requirement was thought to prohibit all disparity in real property taxation, that provision barred home rule, as well as state, CRPT. But the uniformity requirement ceases to be a bar when interpreted — as Hoffmann's broad rationale requires — to prohibit only intra-class inequality. That Hoffmann has this effect would be unimportant if the constitution contained another provision prohibiting home rule CRPT. But, as will be shown by the following discussion, whether such a provision exists is debatable. Hoffmann v. Clark has, therefore, at least unsettled — and perhaps changed — constitutional home rule power to classify real property taxes.


224. Arguable reconciling constructions do exist. One, for example, is that §4(b)'s proviso applies to the state even when legislating under §4(a). See note 203 supra. If this were so, the tax differential between the least and most favored classes would be limited to 2.5 to 1. The effective tax rate imposed on the most favored class would then be unlikely to approach zero because of the consequent lowering of the highest permissible rate.

225. ILL. CONST. art. VII, §6(a). Both counties and municipalities may be home rule units. In 1976 there were 44 home rule cities and one home rule county. The author wishes to acknowledge his colleague, Professor Vitullo, for his many helpful insights into Illinois home-rule.


228. Even though §6 says home rule units have power "except as limited by" §6, limitations may follow from other constitutional provisions. See People ex rel. Lignoul v. City of Chicago, 67 Ill. 2d 480, 368 N.E.2d 100 (1977); Jacobs v. City of Chicago, 53 Ill. 2d 421, 428, 292 N.E.2d 401, 405 (1973).

229. Art. VII, §6(g) allows a statutory bar to be erected in the future. That provision permits the state "by a law approved by a vote of three-fifths of the members elected to each [legislative] house [to] deny or limit" home rule taxation powers. ILL. CONST. art. VII, §6(g). The state's reserve power to regulate or prohibit this home rule power has immediate import. The acceptability of home rule CRPT is affected by recognition of state power, by extraordinary majority, to oversee its exercise. Nonetheless, though the state has reserve power to regulate or prohibit home rule tax classifications, it has not done so. Consequently, the present issue is whether in its absence there is any constitutional bar to this particular home-rule power.
Resolution of this issue centers on article VII, section 6(a)’s self-contained limitation that home rule legislation must “pertain” to the enacting unit’s government and affairs. The problem, however, is the Convention was deliberately vague concerning exactly what falls within this rubric. Although the debates, court decisions and scholarly commentaries provide some guidance, this guidance is as yet inconclusive.

In determining what “pertains,” the initial focus of inquiry is settled: the immediate subject of the legislation must be a function—a proper activity—of the legislating unit. But the obvious next focus is not nearly as resolved. What the functions of the various levels of government are, or even the appropriate analytic approach, is an issue without a consensus.

In spite of this, it may be thought that whatever the difficulties with regard to other legislative subjects, since real property taxation is undeniably a proper activity of any home rule unit, so, too, is its classification. This analysis, however, is simplistic. Whether CRPT, as distinct from uniform real property taxation, is a local government function presents a complex and unsettled issue.

Arguably, the Convention did not intend CRPT to be a permitted activity of home-rule governments. The debates evidence a belief by the delegate that absent a special authorizing provision, home rule units could not tax real property “differentially.” Accordingly, section 6(1)(2) was adopted to grant home rule units power to enact

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230. Id. at §6(a).
233. Thus the court filing fee enacted by Cook County to fund its county law library was struck down because establishment of judicial filing fees — the immediate subject — is not a function of local government. Ampersand, Inc. v. Finley, 61 Ill. 2d 537, 338 N.E.2d 15 (1975). Similarly the noise pollution control ordinance enacted by Des Plaines to preserve its public health and welfare was invalidated because “the regional nature of the environmental problem” removes noise control — the immediate subject — from the sphere of municipal government. City of Des Plaines v. Chicago and N.W. Ry., 65 Ill. 2d 1, 357 N.E.2d 433, 436 (1976).
such taxes, but only when justified by provision of special services.\textsuperscript{235}
Actually, section 6(1)(2) had a dual purpose: to grant home rule units this power and to exempt its exercise from state control.\textsuperscript{236}

Nevertheless, section 6(1)(2) does not read this way.\textsuperscript{237} As drafted, it is solely a prohibition of state power over these taxes.\textsuperscript{238} As drafted, it presumes, indeed recognizes, that home rule units have power to enact such taxes without any special authorization. As drafted, it implies that section 6(a) grants home rule units complete power to classify, and that geographical classification based upon provision of special services is singled out for special immunity from state control.\textsuperscript{239} Hence, especially given section 6(m)'s command to construe home rule powers liberally, it is an open question whether the court will find the debates sufficiently clear to overcome the plain inference of section 6(1)(2)'s text.\textsuperscript{240} Indeed, the court has already, in dicta, split on this issue.\textsuperscript{241}


Section 6(1)(2) has a confusing legislative history. It is best to read the clear and succinct review of it in Anderson & Lousin, supra, at 777-80, before turning to the debates themselves.

\textsuperscript{236} See material cited note 235 supra; Baum, A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems and Intergovernmental Conflict, 1972 U. ILL. L.F. 559, 564-66 [hereinafter cited as Baum - Pt. 2].

\textsuperscript{237} Ill. Const. art. VII, §6(1) provides:

The General Assembly may not deny or limit the power of home rule units . . . (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

\textsuperscript{238} It is a confused prohibition at that. See, e.g., Oak Park Fed. S. & L. v. Village of Oak Park, 54 Ill. 2d 200, 296 N.E.2d 344 (1973); Baum — Pt. 2, supra note 236, at 564-66; Vitullo, supra note 235, at 89.

\textsuperscript{239} The state may control all other home-rule taxation power by passing laws with the extraordinary majority required by art. VII, §6(g). See note 227 supra and accompanying text.

\textsuperscript{240} The debates on what finally emerged as §6(1)(2) are unusually confused. For example, they combine discussion of powers of home rule with powers of non-home-rule units; the proposal was actually lost for a while, and then when rediscovered, was tacked on to the wrong provision. For a succinct and clear exposition of the events, see Anderson & Lousin, supra note 235, at 777-80.

\textsuperscript{241} Compare Oak Park Fed. S. & L. v. Village of Oak Park, 54 Ill. 2d 200, 204, 296 N.E.2d 344, 347 (1973)(§6(1)(2)'s "purpose was to authorize local-government to tax different areas . . . at different rates as the services furnished to these areas required") with id. at 207, 296 N.E.2d at 349 (dissenting opinion)("The prohibition in §6(1)(2) against legislative interference . . . shows the drafters' consciousness that elsewhere, viz., in section 6(a), the power was conferred on home-rule units."). See also a comparison of the majority and dissent in Gilligan v. Korzen, 56 Ill. 2d 387, 308 N.E.2d 613 (1974).
CRPT may also be an improper home rule activity not because classification *per se* is, but because the implementing techniques are. As has been discussed, CRPT is instituted through a variety of means.242 The immediate subject of classification legislation is the selected technique. Analysis focuses, therefore, not only on whether CRPT is a proper activity of the particular home rule unit, but also on whether the selected technique is. Thus, the validity of home rule legislated CRPT depends on the means employed.

Even limited to the four most popular classification techniques, the validity of such home rule legislation varies. Classification through differential assessment243 is certainly not permissible. One of the Revenue Article’s general limitations is that real property taxation must be based on “valuation ascertained as the General Assembly shall provide.”244 By this provision, the entire subject of assessment methods and procedures is removed from the functions of home-rule governments and centralized with the state.

Home-rule CRPT legislated through the technique of assessment at varying percentages of capital value may be barred by the same provision as above.245 With this technique, final taxable values are not those “ascertained” by the state-legislated system; they are a simple arithmetic manipulation of those values. Perhaps the Revenue Article’s general limitation is satisfied if property value, as opposed to taxable property value, is “ascertained” by the state’s system. After all, what the state needs is a uniform system of determining the wealth of its various subdivisions, not the part of that wealth subject to home rule taxation.246 But it is an open question whether or not the court will accept this distinction between the determination of value and the determination of that percentage of value which is taxable.

Supposing this classification technique is not barred by the Revenue Article, its validity, and the validity of the two remaining CRPT techniques, may be affected by another consideration.247 The consideration is that home-rule CRPT legislation — which does not also

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242. See notes 22-26 *supra* and accompanying text.
243. This is technique (c) at note 24 *supra*. A home-rule unit legislates its own farm use, or historic district use, valuation scheme to protect its farmland or historic architecture from developers.
244. Ill. Const. art. IX, §4(a).
245. This is technique (b) note 23 *supra*.
246. For example, state aid programs are tied into the local wealth base, not just the taxable part. See, e.g., 3 Rec. of Proc., *supra* note 2, at 1992-94.
247. The two remaining techniques are extension of differing rates and exemptions, techniques (a) and (d) at notes 22, 25 and 26 *supra*. 
provide for collection of the tax by the legislating unit — inevitably imposes costs upon another unit of government. As has been discussed, CRPT inevitably creates new administrative costs. Some are major, such as litigating disputes over which class a discrete parcel belongs to; and some are relatively minor, such as keeping a more complex set of records. Since, in Illinois, county government is involved in the extension and collection of local property taxes, some of these costs fall on the county. The classifying home rule unit may absorb none of these costs, by simply enacting its classification technique; or the legislating unit may absorb most of them by simultaneously creating its own administrative structure, making the appropriate determinations and certifying them to the county. Still, unless the classifying unit legislates an entire collection mechanism, it will impose at least new record keeping costs on the county.

This consideration, though, does not necessarily mean these classification techniques do not “pertain” to the legislating unit’s government and affairs. On the one hand, the precise issue — whether consequential effects on other units of government invalidate otherwise acceptable home rule legislation — has never been addressed in Illinois. The court has never more than noted a concern over it in cases decided on other grounds. It would be a case of first impression; one whose analytic approach is unsettled.

On the other hand, the problem can be circumvented: the classifying unit can create its own collection mechanism. It is difficult to conceive that such legislation would be invalid. Collection of other home rule taxes is a proper activity of home-rule government. That the state has legislated a real property tax collection mechanism is irrelevant. The state’s mechanism operates only when a unit of local government requests that it do so. Moreover, home-rule units may legislate concurrently with the state (on matters of local concern) unless specifically pre-empted.

248. See notes 34-37 supra and accompanying text.
249. See note 30 supra and accompanying text.
250. E.g., ILL. REV. STAT. ch. 120, §638 (1977).
252. Michael & Norton, supra note 235, at 569-75. Other law review commentaries on “consequential effects” are of little help, focused as they are on conflicts between regulatory ordinances. See, e.g., Mintz, Recent Illinois Supreme Court Decisions Concerning the Authority of Home Rule Units to Control Local Environmental Problems, 26 DePaul L. Rev. 306, 318-24 (1977); Baum — (Pt. 2) supra note 236, at 586-88.
253. ILL. CONST. art. VII, §6(i); Rozner v. Korshak, 55 Ill. 2d 430, 435, 303 N.E.2d 389,
As a final observation, if home-rule units can enact and collect CRPT, they are entitled to the economies of scale available through contracting with, instead of imposing on, the county to administer any or all of it. Indeed, under the constitution's Intergovernmental Cooperation provision, they may contract with any other unit and even band together to achieve economies of scale.\textsuperscript{254}

\section*{Conclusion}

\textit{Hoffmann v. Clark} raises many questions concerning the future of CRPT in Illinois. Among them are how far, if at all, the constitutional restraints on CRPT have been expanded; may the state impose CRPT state-wide or only in section 4(b) counties; may home rule units legislate CRPT, and if so, by which techniques? Although this article has outlined the most likely lines of development, answers to such questions will require subsequent litigation.

\textit{Hoffmann v. Clark} also raises many questions concerning the Illinois Supreme Court's approach to constitutional interpretation. Although the court has relied extensively on the debates before, its reliance has never been so exclusive as in \textit{Hoffmann}. This departure from past practice is important for the future of statutory, as well as constitutional, interpretation; for the 1970 Constitution compels the Illinois General Assembly to keep a verbatim "transcript of its debates . . . which shall be available to the public."\textsuperscript{255} Thus in future cases, the court will doubtlessly be presented with the interpretive significance of debates in a variety of contexts; but in none will the issue be more apparent than in the litigation spawned by the need to clarify \textit{Hoffmann v. Clark}.

\textsuperscript{392} (1973). Quere: is tax collection part of a home-rule unit's taxing power? If so, its preemption requires an extraordinary majority. See ILL. CONST. art. VII, §6(g)-(i).

\textsuperscript{254}. ILL. CONST. art. VII; §10 ILL. REV. STAT. ch. 127, §§741-748. The largest share of real property taxes are levied by school districts. School districts cannot be home-rule units. Yet, if home-rule units may classify, it appears they may also levy sums sufficient for school purposes and "donate" them to the districts which serve them. See Krughoff \textit{v.} City of Naperville, 68 Ill. 2d 352, 369 N.E.2d 892 (1977); People \textit{ex rel.} City of Urbana \textit{v.} Paley, 68 Ill. 2d 62, 368 N.E.2d 915 (1977); ILL. CONST. art. VII, §10; ILL. REV. STAT. ch. 127, §745 (1977). The school district, especially if it was contiguous with the home-rule unit, would then, in effect, have a classified tax. More directly, may the legislature delegate CRPT power to the school districts themselves? See note 239 \textit{supra} and accompanying text.

\textsuperscript{255}. ILL. CONST. art. IV, §7(b).