treasury,[143] it also held that a suit would lie against a revenue officer to recover tax moneys illegally collected and still in his possession.[144] Beginning, however, with *Great Northern Life Ins. Co. v. Read*,[145] the Court has held that this kind of suit cannot be maintained unless the state expressly consents to suits in the federal courts. In this case, the state statute provided for the payment of taxes under protest and for suits afterward against state tax collection officials for the recovery of taxes illegally collected, which revenues were required to be kept segregated.[146]

In *Edelman v. Jordan*,[147] the Court appeared to begin to lay down new restrictive interpretations of what the Eleventh Amendment proscribed. The Court announced that a suit "seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment."[148] What the Court actually held, however, was that it was permissible for federal courts to require state officials to comply in the future with claims payment provisions of the welfare assistance sections of the Social Security Act, but that they were not permitted to hear claims seeking, or issue orders directing, payment of funds found to be wrongfully withheld.[149] Conceding that some of the characteristics of prospective and retroactive relief would be the same in their effects upon the state treasury, the Court nonetheless believed that retroactive payments were equivalent to the imposition of liabilities which must be paid from public funds in the treasury, and that this was barred by the Eleventh Amendment. The spending of money from the state treasury by state officials shaping their conduct in accordance with a prospective-only injunction is "an ancillary effect" which "is a permissible and often an inevitable consequence" of *Ex parte Young*, whereas "payment of state funds . . . as a form of compensation" to

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[143] Smith v. Reeves, 178 U.S. 436 (1900).

[144] Atchison, T. & S. F. Ry. v. O'Connor, 223 U.S. 280 (1912).

[145] 322 U.S. 47 (1944).

[146] *See also* Ford Motor Co. v. Department of Treasury, 323 U.S. 459 (1945); Kennecott Copper Corp. v. Tax Comm'n, 327 U.S. 573 (1946). States may confine to their own courts suits to recover taxes. Smith v. Reeves, 178 U.S. 436 (1900); Murray v. Wilson Distilling Co., 213 U.S. 151 (1909); Chandler v. Dix, 194 U.S. 590 (1904).

[147] 415 U.S. 651 (1974).

[148] 415 U.S. at 663.

[149] 415 U.S. at 667–68. Where the money at issue is not a state's, but a private party's, then the distinction between retroactive and prospective obligations is not important. In Verizon Md. Inc. v. Public Serv. Comm'n of Md., 535 U.S. 635 (2002), the Court held that a challenge to a state agency decision regarding a private party's past and future contractual liabilities does not violate the Eleventh Amendment. Id. at 648. In fact, three judges questioned whether the Eleventh Amendment is even implicated where there is a challenge to a state's determination of liability between private parties. Id. at 649 (Souter, J., concurring).