should not be diminished during their continuance in office, even if the tax at issue was applied generally.[548] These cases, however, were subsequently repudiated in *O'Malley v. Woodrough*.[549] Other theories suggesting limits on the taxing power have also proven to be of only limited duration or effect.

Limits on Federal Taxation of States and Their Interests.— Federalism concerns, most often found in the regulatory arena, have also arisen in the context of the power to tax. Beginning with the seminal decision of *McCulloch v. Maryland*,[550] the Court has consistently found limits on the power of states to tax federal operations or instrumentalities. However, the converse question—whether Congress can use its power under Article 1, § 8 to tax the states and their interests—has not been so easily resolved.

Early on, the Court found that the Constitution contained significant restrictions on federal taxation of the states. For example, in an 1871 decision, *Collector v. Day*,[551] the Court held that the salary of a state officer was immune from federal income taxation. This case was decided while the country was still in the throes of Reconstruction and, as later noted by Chief Justice Stone, the Court had not yet determined how far the Civil War Amendments had broadened federal power at the expense of the states. The fact that the taxing power had recently been used with destructive effect upon notes issued by state banks,[552] however, suggested the possibility of a similar attack by the federal government upon the existence of the states themselves.[553] Two years later, the Court took the next logical step of holding that the federal income tax could not be imposed on income received by a municipal corporation from its investments.[554]

Twenty-two years after that, a far-reaching extension of this immunity to non-governmental actors was granted in *Pollock v. Farmers' Loan & Trust Co.*, where interest received by a private investor on state or municipal bonds was held to be exempt from federal taxation.[555] However, as the apprehension of the Reconstruction era subsided, the doctrine of these cases was pushed into the background. Only once since the turn of the 20th century has the national taxing power been further narrowed in the name of federalism. In 1931 the Court held that a federal excise tax was inapplicable

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[548] Art. III, § 1.
[549] 307 U.S. 277 (1939).
[550] 17 U.S. (4 Wheat.) 316 (1819).
[551] 78 U.S. (11 Wall.) 113 (1871).
[552] Veazie Bank v. Fenno, 75 U.S. (8 Wall.) 533 (1869).
[553] Helvering v. Gerhardt, 304 U.S. 405, 414 n.4 (1938).
[554] United States v. Railroad Co., 84 U.S. (17 Wall.) 322 (1873).
[555] 157 U.S. 429 (1895).