AN INHERITANCE TAX IS PROPER, BUT SHOULD BE LEFT TO THE STATES

SPEECH

OF

HON. WILLIAM P. HUBBARD

OF WEST VIRGINIA

IN THE

HOUSE OF REPRESENTATIVES

WEDNESDAY, MARCH 31, 1909

WASHINGTON
1909

79935—8216

SPEECH

OF

HON. WILLIAM P. HUBBARD,

OF WEST VIRGINIA.

The House being in Committee of the Whole House on the state of the Union and having under consideration the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes—

Mr. HUBBARD of West Virginia said:

Mr. CHAIRMAN: The purposes of the bill under consideration, as they are specified in its title, are, first, to provide revenue; second, to equalize duties; and, third, to encourage the industries of the United States.

The tariff legislation of this country began almost as soon as the Nation began. On the 4th day of July, 1776, the political independence of this country was declared. As soon as the "more perfect union" was formed, the first Congress of that Union enacted as its first statute one which prescribed the form of oath to be taken by the Members of Congress and others.

After the Congress had prescribed that oath, and after its Members had taken that oath upon themselves to support the Constitution, that Congress, in fulfillment of the obligation it had just taken upon itself, enacted as the second act of that Congress, on the 4th of July, 1789, an act which declared the commercial and economic independence of this country; for the preamble to that act declared the necessity of levying duties on imports; first, for the support of the Government; second, for the discharge of the debts of the United States; and third, for the encouragement and protection of manufactures.

After the lapse of more than a century we are true to that faith of the fathers.

The bill now under consideration has been framed by the ability, industry, judgment, and patriotism of the great Committee on Ways and Means of this House. Especially is that committee to be commended for its sincere and, I believe, largely successful efforts to devise methods of preventing such frauds and undervaluations as in the past have somewhat sapped the strength of the existing law.

I am talking now of the whole membership of the committee, because, differ as they might as to what the law ought to provide, there has been every indication that on both sides of the committee table there was an earnest purpose that whatever the law might provide its provisions should be honestly and thoroughly administered and executed.

Perhaps every Member here desires some change in the bill. For one, I hope to see it made more protective in several features. When it shall be so amended by a Republican Con-

gress, an American Congress, and certified by the signatures of Mr. SHERMAN and Mr. CANNON and vivified by the approval of William H. Taft, it will complete a cycle of one hundred and twenty years within which has ripened the fruit of that devotion to the rights and interests of our country which blossomed in that first tariff bill, a bill verified by the names of Adams and Muhlenberg, and into which the breath of life was breathed by the word of George Washington. Infolded in the close embrace of that bill of long ago was our material greatness of to-day.

> Of earth's first clay they did the last man knead,
> And there of the last harvest sowed the seed,
> And the first morning of creation wrote
> What the last dawn of reckoning shall read.

That instant declaration by the First Congress of the powers and purposes of this country was made in its behalf by men a large number of whom had aided in framing the Constitution and all of whom were filled with the spirit that brought it into being.

No wonder that the idea of protection thus born has at last prevailed over all the opposition that at times has beaten it back, until now it has become the settled policy of this country, sustained by its Presidents, its courts, its Congresses, and by the great body of the people, until now some who enter this discussion from the other side take occasion for themselves and their fellows to disavow free trade; and occasionally comes one who boldly declares for protection, not merely for protection of the industries of his own district, but, as was done to-day by a Member on the other side, for protection of the industries of all this great country.

No wonder, Mr. Chairman, that when question is made of the unity and solidity of the Democratic party, and it was deemed necessary on the other side to call a witness to prove that fact, the only gentleman whom it was safe to put on the stand was the gentleman from Pennsylvania who has just preceded me [Mr. A. MITCHELL PALMER], a witness whose knowledge of the history of the Democratic party in this House, according to his own statement, extends back for two weeks. He wants "a concrete Democratic bill" introduced, for which the other side may vote, on a motion to recommit with instructions, and gives assurance of Democratic unity and solidity of front in support of such a bill. If he had remembered for two years back, instead of two weeks, he would hardly have had occasion to felicitate himself on the unity and solidity of that party, as manifested, for instance, with respect to the Vreeland currency bill.

There is nothing new in that part of the rules we adopted the other day under which a bill may be moved by the minority, as a substitute for this bill, by means of a motion to recommit with instructions, when this side shall bring the bill to a vote.

In the last Congress, when the Vreeland currency bill was under consideration, a rule was brought in permitting the minority to offer as a substitute and have a record vote on a bill which long before had been introduced by the then leader of the minority; but that bill was not offered as a substitute by its patron or by any gentleman on that side of the House.

In order that an opportunity might not be lost to our friends on the other side to display their unity and their solidity, a

Member on this side moved as a substitute for that Vreeland bill, the bill which had been prepared and introduced in this House by the then leader of the minority, and which had been understood to express the solid and united thought of the minority on the important questions involved, and which William Jennings Bryan had extolled as the best bill before the House. Those who were here at that time, and indeed I had suppose everybody in this country, remember the way in which that unity and solidity was then displayed. When the roll was called, at the instance of the Republican who had presented that bill as an amendment, 4 or 5 gentlemen on the other side of the House voted aye, and 50 or 60 on the other side of the House voted no, the great body of the gentleman over there voting on the measure prepared by their own leader, voting "present," and the laughter by that time was so great that I never did hear how the author of that bill himself voted upon it. [Applause on the Republican side.]

Gentlemen on the other side do not fully answer the questions presented by the bill now under consideration when they say that they are for a tariff for revenue. If in power they might pass a bill for a revenue tariff. Still that would not answer the question now presented. The question would remain for them, how much revenue, what part of the total revenue to be raised, should be raised by such a bill.

Of the sources of revenue now drawn upon, the two principal ones, of course, are internal revenue and customs revenue. Any substantial addition to the revenue must come from one of these sources or from some new source not yet drawn upon. This bill seeks a new source in an inheritance tax.

For myself I believe that the ordinary sources of revenue upon which the United States has been accustomed to draw are sufficient for its needs, and that recourse should not be had to new sources until the old have proven insufficient. Almost all the questions presented by this bill are those of schedules and rates and amounts and degrees and methods, but there is one new proposition in this bill, to establish an inheritance tax seemingly as part of a permanent scheme of finance, and so presented it raises a question of principle.

Unless that part of the bill is merely formal, unless it is made merely to serve the turn of a moment, the lack of discussion of it upon the part of the committee which reported it is somewhat remarkable. The gentleman from New York, the chairman of the committee, made a statement with respect to it, claiming that it was needed in order to provide $20,000,000 of revenue, and saying that it was modeled after the New York inheritance-tax law, which he regarded as the best in existence. The leader of the minority said that in the time at his disposal he had not reached any conclusion with respect to that part of the bill. As far as I know, no other member of the committee has alluded to it.

It is my design to discuss the nature of this tax, the reasons which may be assigned for its establishment, the arguments for and against it, and the question whether, if it be a desirable tax, it should be imposed by the United States or by the States, or by the federal and also by the state governments.

79935—8216

This tax was employed by the Romans, is now in use in substantially all European countries and in three-fourths of the States of the Union. It is in force in its progressive form in England, the home of conservatism, and in Australia and New Zealand, the homes of experiment. It has come into the legislation of our country by way of the English death duties, which consisted, first, of a legacy tax and later of a probate tax on the mass of the estate, and last of a tax on the succession of real estate.

In times of war or great emergency the United States Government has resorted temporarily to this tax, but until a very recent date no one has ever seriously contended that it ought to be looked to as a permanent source of federal revenue. A legacy tax was enacted in 1797 and repealed in 1802; another in 1862 and repealed part in 1870 and the remainder in 1872. A like tax was a feature of the Wilson bill of 1894, for the income thereby made taxable was expressed to include money which might come by way of legacy or distributive share. A legacy tax was imposed during the Spanish-American war and shortly thereafter was repealed.

A tax of this nature was enacted in Pennsylvania in 1826. During the next seventy years such a tax seemed to meet with little favor among the several States. Some of the States that adopted it soon repealed it, until in 1892 there were but nine States of the Union in which such a tax was imposed, and in them it was imposed only upon the passing of personal property. But beginning at about that time the development in this country of a tax of that nature has been most remarkable. It began as a small rate on personal property, passing to collaterals, a rate that was uniform and proportional. Gradually that small initial rate has been increased; it has been applied to realty as well as personalty; it has been exacted from the shares of direct as well as collateral heirs; and, at least as applied to collateral heirs, it has in many cases been made progressive instead of uniform and proportional. In the different States sometimes this development has been along but one of these lines, oftener along more than one, and sometimes along all of them.

Many States have adjusted their systems of finance so as to reckon on this tax. From an insignificant item it has grown in some of them so as to furnish 10 per cent of their revenue, or even more.

That development has been of a practical sort, and not along theoretical lines; has been somewhat haphazard, and by no means logical, but has proceeded step by step at the suggestion of local needs and perhaps of individual whims.

When we face a phenomenon like this it is natural to investigate its nature, its causes, and the laws which govern it; to try to find a logical basis, a reason and theory, which will account for its existence and serve to classify its manifestations, and to reduce its future development and operation to rule.

As a matter of fact this tax has come about naturally and easily. Wherever it may be found its existence may be accounted for because the tax is needed, is not easily evaded, but is easily collected and easily paid, and on the whole seems just.

79935—8216

But now that it is definitely proposed as a permanent source of Federal revenue, the time has come perhaps when this tax must be brought to book, must be tested by constitutions and by economical considerations.

This tax on inheritances is not a tax on property, but on the transmission of property. It has sometimes been regarded as an amendment of the laws of wills and of descents.

Has a man the natural right to hold as his own the property which he has acquired? That is undoubted. But, further, has he the natural right to extend his ownership of that property after his death, to project his power over it beyond his life? Such I understand to be the claim of one gentleman who occupied the floor to-day. Some authorities have been disposed to concede this, but the better and now the ruling opinion is that there is no natural right, that the right to devise and bequeath property, the right to take it by descent or distribution, are not rights created by nature, but rights arising only out of the will of the State manifested by affirmative legislation or otherwise.

Now, this is not a mere academic question. The answer to it will be found to bear on another and a very practical question; that is, whether such a tax is in itself justifiable and desirable, and if that be so, upon the further question, what government in this country should impose and collect such taxes?

Even those who claim that the right to bequeath and the right to inherit are natural rights admit that these rights may be taken away by the State at its will, thus making these rights contingent on the failure of the State to interfere. So those who assert that these are natural rights and those who deny that proposition meet on the common ground of the States' indefeasible control.

If the State may withhold all the property of a decedent, it may withhold any part of it. He who takes under the State's legislation must take, and can only rightfully take, under the conditions the State may impose.

This sort of a tax, therefore, being a tax on the devolution of property, and one which government has a right to impose, what is to be said for and against its employment?

In the first place, the fact of the general installation of this tax in the States of the Union, the increasing revenues which come from it, the comparative absence of complaint with respect to it, demonstrate its usefulness.

In the next place, the property subject to this tax is easily ascertained and the tax is easily assessed. Real estate which is subject to it is described on the public records. Personalty which is subject to it ought to be upon the assessment books, but if not there must pass through the probate courts and be described upon their records. It was with some surprise that I heard a statement on this floor the other day that in one State of this Union personal property may pass and be distributed under certain circumstances otherwise than through a personal representative of the deceased owner. Possibly that method may have answered the purpose, but in principle it must be regarded as illogical and in practice as impolitic and unsafe.

The facts that make this tax easy of ascertainment and assessment make it easy of collection. "It is as hard to tax

and to please as to love and be wise." But when we look at this tax from the point of view of the one who must pay it we see that it is a tax which it is comparatively easy to pay. It is paid only at a time when one is receiving an accession to his fortune without any effort of his own, something which he has not earned, something to which he has no right. If his gain is somewhat lessened, it is still a gain, and if he expected more, the disappointment of a hope does not hurt like the destruction of a reality.

Such a tax does not tend to deter private enterprises. No tax interferes less with protective or industrial agencies.

The estate which is taxed has been created mainly under the favor of local conditions and circumstances. I do not mean merely that the fortune was gathered because it was protected by the police or safeguarded by the laws. What was done for it in that way may be considered somewhat as consideration for the ordinary taxes which it paid or ought to have paid as property. I mean now that such a fortune usually has grown by the use of the opportunities afforded by the State, by the development of communities. No matter what the shrewdness or the energy of a man, he can not gather a fortune by himself or elsewhere than under a government of law and in a prosperous society. As the fortune in large measure is due to these circumstances it is just that in some measure that fortune, when all the natural rights of its owner have been subserved, guarded, and protected, should in some measure contribute to the continued welfare of that government and that society which contributed to its existence.

Then, again, a tax of this sort has been justified as a "back tax," upon the theory that the property with reference to which it is to be assessed has not during the lifetime of the owner, especially if that property be personalty, contributed its fair share of taxes. The vice of that argument is that the same inheritance tax would be levied with respect to property of one man who had carefully paid all the just demands of the State upon it, as upon the fortune of another who had employed every device to escape his just share of taxes.

Then, again, there is the argument of which we have heard somewhat recently that such a tax may and ought to be employed to reduce swollen fortunes. In the first place, the same answer just given to the argument in favor of it as a back tax applies here, and indeed it is sometimes suggested in the very appeals for the use of the tax to regulate fortunes. That answer again is that some large fortunes were accumulated honestly, and some dishonestly; that "we must discriminate sharply between fortunes well won and fortunes ill won;" that the former ought to be protected in full and that only the latter should be controlled by the Government. Yet the imposition of the inheritance tax for such a purpose would fall alike upon the just and the unjust.

Such a tax to be available for the purpose last suggested would have to be far higher than any which has yet been made in any legislation. It would have to be at a rate so high as to lose the semblance of a tax. At best it would deal only with effects and not with causes; would touch merely the symptoms and not the root of the disease.

79935—8216

On the other hand, there is force in the suggestion that such a tax would be levied necessarily under the authority of the many, and paid by the few, and that in every case where the tax is not felt by those who impose it there would be danger of excess and injustice. That objection, however, applies in large measure to every tax that is imposed in a free country whose government rests on popular suffrage. It is true of the ordinary property tax, that the greater part of it is paid by comparatively few, while it is imposed by the will of the many. But the final answer to this argument which must be made in every free country is that which was given by the Supreme Court of the United States when it said that—

> Such an argument involves in its ultimate aspect the mere assertion that free and representative government is a failure, and that the grossest abuses of power are foreshadowed unless the courts usurp a purely legislative function. If a case should ever arise where an arbitrary and confiscatory exaction is imposed bearing the guise of a progressive or any other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual, even though there be no express authority in the Constitution to do so.

That court has decided other cases by applying just such principles, notably that in which it held invalid a municipal tax for a contribution to a private manufacturing establishment.

In the case with reference to the inheritance tax just referred to, the case of Knowlton *v.* Moore (178 U. S., 41), Mr. Justice White, in a most elaborate opinion, discussed the philosophy, history, abstract justice, and legal validity of the inheritance tax.

There is enough in the reasons which have been stated to persuade me that this tax is convenient, wise, and right.

Now, ought this tax, if imposed at all, to be imposed by the United States, or by the several States, or by both the United States and the States?

Substantially all the reasons that have been urged why the tax should be imposed at all are in their nature reasons why it should be imposed by the States.

In the early cases in which the question of an inheritance tax came before the United States Supreme Court, it was whether such a tax was in violation of state constitutions—that is, the question was whether the State had a right to impose such a tax. In some of those cases the right was asserted on the ground that the entire right in any individual to take the property of a decedent was based upon the laws of the State, which might withhold it entirely or might grant it upon any condition it pleased. These decisions would warrant the argument not merely that the tax ought to go to the State rather than the United States, but that no power except the State would have the right to impose it; that as the inheritance or the will did not depend upon the law of the United States it could impose no condition upon the transfer of the property. That argument in the later case of Knowlton *v.* Moore was pressed upon the Supreme Court of the United States, and the earlier decisions were cited. The court gave the question most serious and thorough consideration, and in that case, which questioned the right of the United States to impose such a tax, vindicated that right.

Yielding to that view, it still remains that the right of the State is primary and superior to the United States, and indeed it has been held that the tax imposed by a State is collectible from a legacy to the United States.

The earlier legislation which imposed a legacy tax on the occasion of the Spanish-American war seemed to recognize that superior claim on the part of the State by calculating the federal tax only on the residue of the legacy after the State tax thereon had been collected. The bill now under consideration by the House does not do this. It asserts the right to impose the tax on the full legacy, although it may have been decreased by the payment of a State tax. For example, under the law of West Virginia a tax of 15 per cent can be imposed upon a legacy or distribution of one-half million dollars to one who is a distant collateral relative or a stranger to the decedent. In a similar case this Payne bill, as I understand it, would impose a tax of 5 per cent. That 5 per cent would be calculated upon the full amount of that legacy, although only 85 per cent of it would be due the legatee after the deduction of the State tax.

Theoretical students of taxation and practical administrators have for years past concurred in the conclusion that the sources of revenue of distinct governments ought to be separate; that as far as possible the United States, the States, and the local subdivisions of the States should look to different subjects of taxation for their revenues. In recent years much progress has been made in that direction. It has been the aim of enlightened States to assign different subjects to different taxing powers, as, for instance, by leaving real property wholly for the benefit of the counties and municipalities, leaving corporations to the States and local public-service monopolies to the municipalities. The imposition of a property tax by the State has been the cause of great inequality and dissatisfaction. Some of the greatest States in the Union no longer impose a property tax for state purposes. This is true of New York and, I believe, of Ohio. My own State of West Virginia has made marked and considerable progress in the same direction.

The giving up of the property tax for state purposes is only possible, however, by resorting to other and different sources of revenue. Among these sources, as I have already said, is that of the inheritance tax. In West Virginia the proceeds of that tax five years ago were trifling, but it now constitutes nearly 5 per cent of the total state revenue, and in the next fiscal year will be nearly 6 per cent of that revenue. The state systems of taxation have, though slowly and with difficulty, been readjusted to meet this changed state of affairs.

With respect to the subject-matter of this tax, it is true, as has been said, that the State keeps a record of this property, places a value on it, governs and controls it during the lifetime of its possessor, and at his death distributes that property through its laws to those who under those laws are entitled to take it. Whether the inheritance tax be considered in the light of compensation for this service rendered by the State, or whatever theory may be assigned in its justification, we see that the State may fairly claim the benefit of that tax.

The State is already in the possession and active employment of the machinery necessary for its imposition.

79935—8216

If it is left to the several States, they may take into consideration the differing local conditions and interests which may affect those States differently as to the propriety of the tax, its amount, and the method of its collection.

There is only one state of affairs in which with any propriety this tax might be assigned to the United States, and that is in case it should be employed for the purpose which has already been alluded to, of confiscating what may be supposed to be the excess of all fortunes honestly or dishonestly acquired beyond a certain amount to be specified by law.

A tax of that sort, if indeed it can be called a tax, would require the exercise of all the inquisitorial powers which have ever been employed for the collection of taxes, and hold out the greatest inducements for the evasion of taxes so imposed. In the exercise of powers such as these, for purposes such as these, no State could hope to supply machinery to compete with that which the United States might provide and employ.

Most of the States need the contribution to their revenues which is afforded by this inheritance tax. If it were taken from them most of them would find nowhere to turn to replace it, except by imposing the general taxes upon property, especially upon land, which, or at least part of it, is holden by the great body of the people, and has always been paying more than its fair share of taxes. On the other hand the United States does not need these taxes. It is true that this strong and distinguished Committee on Ways and Means of the House has practically declared that $20,000,000 will be needed in addition to the customs revenues under the proposed bill, but that apprehended need is in part due to the action of the committee itself. It has drawn this bill with the purpose of surrendering a large amount of duties which ought to be retained or be replaced by an equal amount raised in the same way. Whether the membership of this House believe that this bill ought to be drawn for the purpose of raising revenue, or for the purpose of affording protection to American industries, or for both, it seems to me that we ought to agree that now, in the absence of war, in the absence of any exigent emergency, there is no occasion either for abating the customs revenue or abating protection to any industry, or for the United States to go foraging in a field of taxation for which it has done nothing, but which has been brought into cultivation and fruitfulness by the labor and the pains of the several States.

The unwisdom of depriving the States of revenues which have been thus developed by them has impressed some of those who were earliest in the field in favor of the adoption of this tax by the United States. The gentleman from New York [Mr. PERKINS], who has introduced several bills providing for such a tax, and after thorough investigation has discussed the general subject with great ability and clearness, in the bill introduced by him during the present Congress provides that anyone subject to the United States inheritance tax who has paid a like tax to his State may have credit on his tax due the United States for the amount paid by him to the State, provided it be not more than one-half the amount of his federal tax. This provision would increase rather than lessen the objection to the

taxation of the same subject by two different authorities. It might also raise a question of some importance, in view of the provision of the United States Constitution which would be applicable.

An inheritance tax is not a direct tax, but is a duty or excise. Therefore, if levied by the United States, it must be levied in accordance with the United States Constitution, Article I, section 8, which requires that—

> all duties, imposts, and excises shall be uniform throughout the United States.

The word "uniform" in this section is not to be given the interpretation usually given under state constitutions, which would make the tax operate upon every person alike, but simply means that the tax shall operate uniformly throughout the United States. It seems doubtful whether a tax would operate uniformly throughout the United States, some of which States have inheritance taxes and some of which have not. Among the States which have inheritance taxes the rates, exemptions, and subjects of taxation differ very widely. The operation and results of the United States tax would be modified in each State by its peculiar requirements as to the inheritance tax, and would be only left to operate to their full extent in those States which might have no such tax.

The subject of taxation is one with respect to which the Government of the United States and the governments of the several States ought to cooperate. Each, while having for its principal object the raising of its own revenue, should so far as possible respect the interests and methods of the other. If there ought to be comity among the States with respect to this important subject, much more important is it that there should be comity between the United States and the several States.

I do not mean that the federal and state governments should cooperate in the extent of sharing the proceeds of a particular kind of taxation, but rather that they should cooperate in assigning to each those subjects of taxation which seem particularly needful or appropriate to it and with which it is particularly qualified to deal by reason of the nature of the property to be taxed, the familiarity of its officers and people with particular subjects and methods of taxation, and the comparative ease with which such taxes might be assessed and collected.

It has been suggested by some, and among them the distinguished chairman of the Ways and Means Committee, that inheritance taxes might well be imposed both by the federal and the state governments; that such taxes are not onerous; and that the two systems might continue side by side. It seems clear to me that if this tax were definitely established by the Federal Government as part of its permanent system of revenue the inheritance taxes imposed by the different States would gradually and of necessity disappear. Every one may determine for himself the probability of this if he will consider whether in case the United States now had an inheritance tax and the States had none the latter would be at all inclined to adopt that system of taxation. No one, I think, could imagine that being done. The same reasons that would operate instantly to prevent the adoption of such a system by a State if the United

79935—8216

States already had it will operate gradually to weaken and destroy those taxes in the different States if the United States should now adopt the system.

It is clear to me that a fair regard for accepted canons of taxation, comity toward the several States, and the needs of the States on the one hand, a fair consideration of the additional revenues which may be provided for the United States by imports, and especially a consistent adherence to the doctrine of protection, call on this House to eliminate from this bill these provisions which would in effect nullify the existing legislation of the States relating to inheritance taxes by imposing like taxes under the laws of the United States. [Applause.]

79935—8216

O