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# STATE TAXATION.

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AN ADDRESS BY  
W. P. HUBBARD, OF WHEELING,  
BEFORE THE  
WEST VIRGINIA EDITORIAL ASSOCIATION,

At Charleston, W. Va., September 10, 1903.

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[After the invitation to deliver an address upon the above subject, had been extended by the President of the Editorial Association, "An Address to the People of West Virginia," signed by twenty-eight of its citizens, appeared in the public press of the State. As a matter of fairness and because that address is occasionally referred to by Mr. Hubbard, it is printed herewith as an appendix.

After the conclusion of Mr. Hubbard's address, Mr. O. S. McKinney addressed the Association in opposition to Mr. Hubbard's views. No report was made of Mr. McKinney's remarks, and it is therefore impossible that they should be printed herewith, which is a matter of sincere regret.]

Mr. Hubbard said:

In 1901 the Legislature of West Virginia by a vote almost unanimous declared that the tax system of the State is not adapted to the changed conditions due to the development of the State and its resources. It also provided for a Commission to report what changes are required to equalize taxation and reach those not now bearing their just proportions of the burdens of taxation, and further to submit measures to remedy defects, remove irregularities and give the State a more efficient system of laws relating to assessments, taxation and revenues.

That vote condemning the present tax system of the State merely registered the settled conviction of its officers and people upon that question.

#### THE TAX COMMISSION.

Such a Commission was appointed and the result of its efforts is before you. Its opinion about these matters is set forth in its report, and the changes it proposes are expressed in the bills which it has sub-

mitted. These must speak for it, and I am not here as its spokesman. Nothing whatever need be claimed for the members of that Commission. One thing only is somewhat significant. Their training had been varied; their political leanings were diverse; their modes of thinking were different; and yet after they had considered the complex and serious matters submitted to them they were unanimous about what ought to be done and about the way to do it.

As for the measures the Commission recommends, nothing need be claimed for them, except that they are better than the present system.

If those measures contained anything of value the only danger to it lay in the possible failure to attract public attention. If the seed sown by that report is good it still must have the field of public thought in which to grow. It may well take its chances among the thorns of selfish interests that fain would choke it, if only it do not fall upon the stony places of public indifference.

THE ORGANIZED DEFENSE OF THE PRESENT  
SYSTEM.

From that danger we have been saved. The manifestations of public interest, somewhat slight and slow, have been strengthened and hastened by the recent publication in all the newspapers of the State of the views of twenty-eight of its distinguished citizens, opposing the suggestions of the Tax Commission, roof and branch, and what is far worse, favoring the continuance of the present system.

These gentlemen ought to be heard. They are more numerous than the members of the Tax Commission, more able and more experienced. They are fairly representative of the money-making faculties of our people,—of its great industries. They are men of brains and experience in business, in politics, in the law, and, more important still, in the practical work of legislation. Of two or three of these gentlemen the ability and standing is so great that now no Legislature is suffered to sit except under their supervision, and from the beginning to the end of every session they attend to see that no harm shall come to the State.

Now, when such citizens give temperate and clear expression to their mature and deliberate convictions on these questions they are rendering a public service. What they have published is warmly to be welcomed. If it had a little the look of what I think you call in your business "syndicate stuff", that goes for little when we think of the many ways in which that publication has done good. I sincerely hope there may be more of the same sort from the same men, and, gentlemen of the Association, so do you.

In the first place, the fact that their publication is made testifies to their opinion, their expert opinion, that the general purpose and plan of the Tax Commission has slowly but surely been making its way into the judgment and confidence of the people. Otherwise no manifestation on the part of these gentlemen would have been needed.

In the second place, this publication is an inspiring demonstration that public spirit is not dead in West Virginia. Our

ideas of human nature are elevated when we see that some of those who are objecting to being relieved of thirty-five cents annual tax on the hundred dollars and are insisting that a license tax upon the iron interests, the electric railroads, the tanneries and the lumber interests is as appropriate as one upon coal, oil and gas operation, are the very men to whom we are accustomed to look in West Virginia as the representatives of the iron mills, the electric railroads, the tanneries and the lumber interests. Surely no one else will object if these gentlemen in their zeal for the public interest shall succeed in having their own enterprises associated in the payment of license taxes with the coal, oil and gas interests.

In the next place, they present the issue sharply and clearly, and their statement may be taken as the best and strongest possible presentation of the arguments against change in the tax laws and in favor of the present system. If that statement, to which these gentlemen have contributed their thought and zeal, fails to carry conviction, it can be only because the positions taken in the statement are in themselves at fault, are inherently, radically and eternally wrong. These champions of the present system, giant defenders of a giant wrong, are not unworthy of your attention and mine, and I may be pardoned, Mr. President, if under your kind invitation I have chosen me a few smooth stones out of the brook, and am trying to sling them this afternoon.

THE OCCASION FOR THIS DISCUSSION.

The members of the Tax Commission having fully presented their views in their report and the accompanying bills, have not felt that duty or propriety called on them to volunteer in advocacy of those measures. They have no personal interests to serve, and no pride of opinion to gratify. They will be content with the judgment of their fellow-citizens provided it be pronounced after discussion, and thought and understanding.

But when the request comes from a representative body of West Virginians, representatives of every part of the State,

of every phase of its politics and of every interest of its people, any member of the commission must feel it his duty to accept an invitation to discuss with you these matters in which you have the same concern as have we.

What I shall say will not be in the effort to impress my own judgment upon you, but rather to invite from you the exercise of your own judgment, the free conclusions of your own minds, upon this point of taxes on which as Edmund Burke says: "The ablest pens and most eloquent tongues have been exercised; the greatest spirits have acted and suffered."

I deem it a high privilege to speak here, before those to whom the public is accustomed to look for the facts upon which it is to act, and to a very large extent for its opinions, to speak in an arena like this, a free parliament, where like the council of the ancient Germans of which Tacitus tells us, every one may think what he pleases, and may say what he really thinks.

#### UNPAID POLL TAXES.

In 1900 there were in West Virginia 247,970 males of voting age. Two hundred and twenty thousand six hundred and seventy-two of them voted; 209,082 were assessed with capitation taxes, and only 157,055 paid those taxes; 51,977 men who had not paid their poll taxes voted. Everybody knows that almost all of these could pay if they would, and that their poll taxes would be paid if otherwise they could not vote. More than \$50,000 which belongs to the distributable school fund of the State is lost to it every year, and the little children of the State are defrauded to that extent.

To prevent this the Tax Commission proposed first to permit the man who assesses these poll taxes also to collect them; to collect them promptly and if necessary by means of a notice served on the employer or other debtor of the person assessed; and second, to amend the constitution so as to make the payment of taxes a prerequisite to voting.

What remedy is proposed by the gentlemen who have published their objections

to this plan? or is no remedy needed in their judgment?

#### UNDERVALUATIONS AND UNFAIR VALUATIONS.

Real estate and tangible personal property are always and everywhere undervalued. Much that is called intangible property escapes assessment altogether. The plain commands of the law, the solemn sanctions of the oath, are alike ineffectual to produce proper assessments. The public conscience is demoralized. False swearing in tax matters is so common that it has lost its infamy. Assessments are unequal and unjust as between different counties in the State, as between different assessment districts in the county, as between individuals in the same district. Only widows and orphans, whose possessions are inventoried on the public records, pay full taxes, and the default of others makes them pay double; only the banks, whose assets are scheduled for other purposes, pay something like what they ought to pay. For the rest it is a mere game, commonly of chance, but some times of skill, which determines the value at which property is to be assessed. Without the slightest authority of law, moved by the habits of the past, the practices in other counties, the interests of neighbors, the apprehensions of elections to come, the assessor fixes for himself some fraction from one-third to three-fourths of the real value of real estate at which he will proceed to assess it.

All who are to contribute to a common fund in proportion to their means ought to have their means assessed by one and the same authority. To permit eighty-eight different men of all shades of ability and integrity, subject to varying local and personal influences, each to value the means of his own neighbors for contribution to such a fund is a direct invitation to inequality and injustice. The unit for assessment purposes ought to be co-extensive and identical with the unit for collection and expenditure.

It is manifest that if taxes for State purposes are to be assessed upon the property in the State it is not enough that the same rate of taxes shall be paid by everybody. It is necessary further that the

valuation of the property to which that rate is applied should be upon the same scale throughout the State. But this never has been and perhaps never can be. The successive valuations of real estate at intervals approximating ten years tell always the same story of inequality and injustice, and boards of equalization, always summoned to relieve against it, have always left matters at least as bad as they found them.

Is not this a necessity of the case? Where for each county a commissioner resident therein is selected to value its real estate he knows that his valuation is in reality not absolute, but for State purposes is merely comparative with the valuations made for other counties. Even if he and his people desire what is right they suspect that other counties will not be as scrupulous, but will return valuations unduly small. The only means of protection is to see that the valuation in his own county is made low, and that means is always resorted to. If only one county of this State were truly assessed it would pay three times its proper share of the State revenues.

The needs of the public are the same whether the assessment is high or low. The amount of taxes to be raised is the same. If the assessment is high the rate is correspondingly low, and if the assessment is low the rate must be correspondingly increased. Throughout West Virginia the valuations are always lower than they ought to be, and the rate of taxes levied is too high.

One result of this is largely to defeat the assessment of intangible personal property, of notes and bonds and claims.

#### FAILURE TO ASSESS INTANGIBLE PROPERTY.

It is not unfair to say that in this State, at least in the towns, (and there the most of the intangible property is held), the aggregate of annual taxes of all kinds is at least two and one-half per cent. of the valuation. The rate of income to be derived from first-class bonds or safe loans in the same places does not exceed five or at the most six per cent. Roughly speaking, then, if the holder of bonds and notes returns them for taxation he must pay one-

half his income to the tax gatherer. Because as to property of this sort there is no opportunity for undervaluation. The note of a solvent man for \$100 is worth \$100, and there is no excuse for valuing it at less. This tends to strengthen the temptation, already strong enough, to conceal property of this sort from the tax gatherer. Under that temptation no law, no imposition, no penalty has ever availed to get this sort of property on the tax books. From the early days of Rome, under whose laws tax dodging was made both sacrilege and treason, to the present moment, property of this sort has never been brought to the surface wherever the tax rate was high. This is the story in all nations at all times. There are illustrations of it near home. In Pennsylvania and in Connecticut years ago a high rate of taxes was imposed upon bonds and mortgages, the amounts of them put upon the tax lists were small, and the revenue from them was nearly nothing. Each of those States reduced the tax on property of this sort to four-tenths of a cent on one hundred dollars. The result has been that practically all property of this kind owned in those States is now upon the tax roll and the taxes derived from it are very large. Under our constitution it may be impracticable to tax this class of property at any other rate than other classes, but it is not impossible to increase the assessment of all kinds of property to its true and just valuation so that the aggregate of the tax rate will be so far decreased as no longer to amount to practical confiscation of the income from intangible property.

Taxes upon licenses and privileges would for the most part be paid by those who pay but little taxes upon property, who under present methods escape the assessment of their property, the intangible altogether, the tangible in large part.

Ought anything to be done? Can anything be done to remedy present conditions? Our twenty-eight friends tell us that in the first place nothing can be done, and in the second place, nothing ought to be done. They tell us that the present system is good enough for them and for us, and that the true rule of taxation is that laid down in our constitution that

taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its real value, to be ascertained as directed by law. These be fine words. But is taxation in fact equal and uniform throughout the State and is all property in fact taxed in proportion to its value? Of what avail is it to extol the rule if the rule is violated everywhere and always? We all know, none better than our twenty-eight friends, that taxation in West Virginia is unequal, and is not uniform.

#### ABOLITION OF STATE TAXES ON PROPERTY.

Now the Tax Commission says that something ought to be done and something can be done. The principal feature of their plan is that revenues for State purposes may be raised otherwise than by direct taxation on property, so that no county and no section of the State will have any concern with the basis upon which the property of any other county or section is assessed, so that there shall be no temptation to those who value the lands and the personalty to make that valuation anything less than the law and their oath of office require.

If a system contains temptations to injustice it is worth while to cut them out, for there are officers in West Virginia, even assessors, who can resist everything except temptation.

The idea of the Tax Commission is that the State revenues can and ought to be raised from license and other taxes of that sort so that gradually, if need be, but surely and soon, the State tax on property will be a thing of the past. If there must be litigation as threatened by the syndicate, if the delays of the law are to be interposed against progress toward a more desirable system, let enough of the State tax be retained from year to year to make sure of the necessary income for State and State school purposes, until the courts have time to adjudge that what is right is also lawful. That will not take long.

#### COMMISSION'S PLAN NOT UNTRIED.

Through that recent publication runs a

note of complaint that the proposed system is new and untried. There was a time when the same could be said of the doctrine of the equal political rights of men; there was a time when the same could have been said of the Christian religion. Perhaps the proposed system is new and untried in West Virginia, but in some of the most prosperous States of the Union, it has been tried and gives the highest satisfaction.

#### CONSTITUTIONAL QUESTIONS.

We are told too that the measures proposed by the Tax Commission are unconstitutional. As soon as the first written constitution appeared in human history there appeared also people who were sure that everything they did not like was unconstitutional. In the first decade of the constitution of the United States, Alexander Hamilton wrote: "It is too much a fashion with some politicians when hard pressed on the expediency of a measure to entrench themselves behind objections to its constitutionality".

That fashion has reached its height in West Virginia. Occasionally when we have had a new tax or a new way of collecting an old tax, somebody has gone into the newspapers, has even gone to the courts, with the plea that it wasn't constitutional—wasn't equal and uniform. So it was with the law forfeiting small tracts for non-assessment; with laws creating independent school districts having power to tax; with the law for the separate assessment of mineral interests; with the law requiring abutting owners to pay for street improvements; with the law providing a particular way for assessing bridges; with the Dawson corporation act; but the Court of Appeals always told the man who didn't want to pay his taxes that he had to pay them. An aggravated case of this disease has occurred where the constitution itself was said to be unconstitutional, but the Supreme Court of the United States said that the provision of the West Virginia constitution forfeiting large tracts because of non-assessment was not in violation of the United States Constitution.

It is claimed that it is unconstitutional to abolish the State tax, first, because of the constitutional provision already quoted, which requires all property to be taxed alike. But the taxes which it is proposed to inaugurate are not taxes on property at all. They are taxes on the privileges and franchises of persons and corporations, and in the words of the constitution the Legislature is given power to tax by uniform and equal laws all privileges and franchises of persons and corporations.

Second, they say that the Tax Commission proposes to exempt from taxation for State purposes property not authorized by the constitution to be exempted. In abolishing State taxes no exemption is created because so far as State taxes are concerned there would be nothing from which to make exemptions. There are no exceptions to a rule which does not exist, and there can be no exemption from a tax which is not imposed.

They say again that the exemption of real estate from State taxation is expressly prohibited by the constitution. That express prohibition is not cited, and it cannot be found. That argument is built upon the provision that it is the duty of every land owner to have his land entered on the land books, and to cause himself to be charged with the taxes thereon, and that when for any five successive years the owner of any tract of land of a thousand acres or more shall not have been charged upon such books with State tax on said land then the land shall be forfeited to the State.

Now there will continue to be land books under the Tax Commission's plan, and the land owners must continue to have their lands charged with the taxes thereon. There will be taxes to be charged, but there will not be any State taxes.

This argument is idle except upon the assumption that a State tax must by virtue of the constitution be levied. There is no express direction for any such levy. The only taxation which is made imperative upon the Legislature is the annual capitation tax of one dollar which is to go to the support of free schools. An express direction to levy a State tax on

property would be futile unless it also prescribed the minimum of such tax. Without that such a direction would be complied with as well by the levy of one mill on the hundred dollars as of twenty-five cents on the hundred dollars.

Suppose the Dawson corporation bill, an instrument of practical statesmanship in which this Association may take pride as the work of one of its members, should produce revenue enough for the needs of the State. Must there still be a State tax? If so, how much must it be? It would seem that anything would satisfy the constitutional argument provided only it is a State tax. If nothing else will maintain peace of mind levy a mill or a cent annually on the hundred dollars, at least once every five years.

So far as this constitutional provision is concerned, the title of this forfeited land is to be vested in the State. By other provisions this title may be transferred to other claimants, but always upon condition that they have paid the State taxes for five years. Suppose there is no State tax for five years, and therefore the title to this land is forfeited to the State. The title of all other claimants will be forfeited for the same reason and the title will remain in the State. Let provision be made by law for re-vesting the title of such forfeited land in the former owner just as the law now vests that title under certain circumstances in the other people who have paid State taxes on the land.

Even that would not be necessary. The present statute provides that the owner of this land, which is to be forfeited because not charged with taxes that were not levied, may redeem the State's title to the land upon payment of all taxes chargeable on the land, with interest. The land owner, it may be supposed, has paid all his taxes except these non-existing State taxes, these State taxes the amount of which is nothing, and would therefore be entitled to redeem his forfeited land upon payment of nothing, with interest. If a man's land may be forfeited because he owes nothing, surely it may be redeemed on the payment of nothing.

Is it not plain that the purpose of this section of the constitution is to enforce

the payment of any State taxes that may be levied, and that if there are no State taxes the section is without significance?

Then it is questionable in these twenty-eight minds whether the payment of county taxes could be enforced by forfeiture in the absence of a State tax. It seems to be forgotten that the Legislature of West Virginia may do anything not prohibited by its constitution or by that of the United States. By the State constitution the legislative power, which is assumed to belong to the State, is vested in the Senate and House of Delegates. Legislative power is inherent in the government of the State. There were States for centuries before there were any written constitutions, and the governments of those States exercised all power. Of course, the people of the State have the right to legislate in their constitution, if they choose, and they have legislated to the extent that lands shall be forfeited if not charged with State taxes when there are State taxes, but there is no expression or implication to prevent the Legislature providing for a like forfeiture if land be not charged with county taxes. This may be illustrated by a decision of our Court of Appeals made under this very section of the constitution. It provided this forfeiture for tracts *over* a thousand acres. The Legislature supplemented the constitutional provision by providing for a forfeiture under like circumstances of tracts *under* a thousand acres. Then as now there were people who did not like that, and who, therefore, supposed it was unconstitutional, but the court held that the power of the Legislature as to land not mentioned in the constitution was unlimited. For a like reason the power of the Legislature to provide a forfeiture for the non-payment of any kind of taxes where such forfeiture is not provided in the constitution is likewise unlimited.

#### PROPOSED PRIVILEGE TAXES.

In the next place, it is said the right to extract coal, oil or gas from the earth is not the kind of privilege or franchise authorized to be taxed by the constitution. The constitution says that the Leg-

islature has power to tax by uniform and equal laws all privileges and franchises of persons and corporations. What kind of privilege is it that does not come within the comprehensive phrase, *all* privileges and franchises? Again, it is said that this privilege or franchise tax on the extraction of these minerals is not made to apply to all such privileges and franchises alike as required by the constitution. It is a little doubtful what this statement is intended to mean. If it means that a like tax is not proposed for all persons engaged in the business of extracting these minerals, it is a mistake of fact. If it is meant to suggest that the Legislature may not impose such a tax upon the privilege or franchise of doing one sort of thing unless it imposes a tax upon the privilege or franchise of doing every other sort of thing, then those who advanced this constitutional objection did well not to express themselves any more clearly. From time immemorial the State has exercised the right of selecting those occupations for which it would require a license and from which it would require a license tax. As the Supreme Court of the United States says: "License laws and all specific taxes are universally imposed and their legality has never been questioned."

Some lawyers seem to have persuaded themselves that the proposed taxes are taxes on property, and that they are unconstitutional because like taxes are not levied on other property. Other lawyers once said that to the Supreme Court of the United States, claiming that such taxes were really not on the privilege to do business, because the final incidence of the tax was on the owner of the property and it was paid by him. But the court said every tax had its final incidence on somebody, and that could not affect the well-recognized distinction between a tax on property and a tax on a privilege, and that the tax under consideration was a tax on the privilege of doing business, regulated by the amount of sales, and was not a tax on property.

But this does not reach the merits of the question. Suppose all these constitutional objections were well taken, that the

arguments in favor of them were just as strong as in fact they are weak, something that would make them invincible. But still suppose that in the minds of the people of West Virginia it is right and just and expedient to make changes such as are proposed. How long would the constitutional barriers which these gentlemen insist on stand against that sense of justice and right? No longer than it would take by constitutional methods to get rid of them. But it is needless to repeal them, needless to evade them; there is nothing in them to make us pause, if the ends we seek are in fact just and right.

#### THE RIGHT OF THE MATTER.

So we come to the question whether right and justice lie with those who would maintain the present system, or with those who would get rid of the State tax on property and look to other sources for funds to carry on the operation of State government. That change is not right, say the twenty-eight, because it is at variance with what they believe to be the true principle of taxation, namely that all property shall be taxed and that it shall be taxed by equal and uniform laws and in proportion to its value without class or discrimination or favors. In West Virginia to-day is that principle of taxation carried out in practice? We are told that any system is unsound which will abolish the State tax on property "and place the burden of maintaining the State government upon a few special industries or classes of individuals." Do these gentlemen know what they are saying? Do they realize what their words mean? Do they know that of the total revenues for State and State school purposes more than half are derived from sources other than State taxes upon property? That forty-five per cent. of those revenues are raised by license, privilege or franchise taxes upon a few special industries or classes of individuals? To be consistent these gentlemen must not only resist the extension of taxes to other privileges and businesses, they must do away with the taxes now imposed upon such industries

and classes. Eighteen per cent. of those revenues now comes from taxes on business licenses, mainly taxes on saloons. More than twenty-two per cent. comes from the taxes imposed upon corporations under the Dawson corporation law. Roughly speaking, five per cent. comes from fines and the interest on State funds and ten per cent. from capitations, in all fifty-five per cent., leaving but forty-five per cent. which is derived from the State and State school tax upon property. Eighteen per cent. is imposed upon that class which is known as saloon keepers; twenty-two per cent. upon those special industries which are carried on by corporations. Taxes of this sort are unsound, we are told, and the amount they produce, say six hundred thousand dollars, ought to be lifted from those classes and industries and obtained by increasing the State tax on property, making the percentage of the whole revenue to be obtained by that sort of a tax eighty-five instead of forty-five, and requiring the increase of the present State tax of twenty-five cents on the hundred dollars to nearly fifty cents.

When this logical deduction from the extravagant proposition of the twenty-eight is reached they will be even more impressed than they now are with the weight of their argument that taxes should be so levied that the people will feel the burden of extravagance and at once rebuke it.

Their other argument that the Tax Commission methods will bring about wasteful expenditures of the public's money would be more impressive but for the statement of the same gentlemen that the same Tax Commission methods will not produce enough revenues to carry on the ordinary business of the State.

#### LICENSE TAX ON COAL, OIL AND GAS OPERATION.

The license tax on the production of coal, oil and gas is objected to because it is said to be a tax on production. In one sense taxation on all improvements to real estate and on all personalty is a tax on production, because all such capital is

simply the stored-up lazor of the past. Yet I agree that no unnecessary taxes should be imposed which are calculated to retard development and industrial growth. The trouble with coal, oil and gas is that their production is not production in the sense in which these maxims about taxation are applicable. The so-called production of these things is in fact a destruction of so much of the natural wealth of the State. The very expression used by these gentlemen emphasizes the distinction. They say a tax on production "is in effect a tax upon the same capital over and over again as often as it appears in the shape of the product taxed." How often, pray, does the coal mined in West Virginia, the oil and gas produced in West Virginia, re-appear in West Virginia in the shape of a product taxed, or in any other shape? Remember that almost all of these great natural products are conveyed beyond the limits of the State for consumption elsewhere, and for the upbuilding of the interests of other communities. Under the United States constitution it is beyond our power to discriminate between these products consumed in this State and those which are shipped abroad. We cannot tax on account of what goes into other States unless we tax on account of what is consumed here. In my judgment we ought not to do so if we could. If we descend from the broad view of the interests of the whole country to the narrower scene of the interests of West Virginia, still it is true that commerce between this and other States ought to be free and unrestricted. But it is pushing this idea entirely too far to object to West Virginia taxes on coal on the ground that that is "to strike at the basis of all industrial development, cheap fuel." Fuel cheap to whom? Why shall we withhold the taxing power in order to permit the coal operators to take away forever some share, no matter how small, of that which alone gives value to some of our mountains, something that can never be restored?

It is true that our coal operators market their coal in competition with the coal of operators in other States. Those other

operators, however, have not the advantage of producing coal which is practically free of taxation. I have no doubt that a comparison of the taxes paid by operators in West Virginia, adding in the proposed license tax, would still be less than taxes paid by those in other States. The same suggestions apply to oil and gas.

Again, the coal business occasions peculiar and considerable expenses to the State. It involves the maintenance of hospitals for the miners, of a system of inspection for the mines, all at the cost of the State. The direct annual outlay on account of these incidents to coal operation has not been less than forty thousand dollars, fully one-half of the amount that would be produced by the proposed tax of one-third of a cent a ton on the present coal production of the State. Add the immense criminal charges which are regularly incurred and the occasional expense of sending militia to the regions of coal operation, and it is safe to say that eighty thousand dollars will not make good the average annual expenditure by the State which is necessitated by coal operations.

As to oil and gas there is no such expense on account of inspection, but there ought to be. The waste, especially in the production of gas, which has occurred in this State is so enormous as to be criminal. The wasteful methods which have attended the production of oil and gas ought to be prevented. A system of inspection by the State ought to be provided; the cost of it ought to be assessed to the operators and it would many times make good the amount it would cost them.

Why should a license tax be imposed on coal operators and not on manufacturers? One reason has already been suggested, that the coal operator is slowly but surely annihilating the value of the land, wasting what the lawyers call the substance of our inheritance. In the place of what they take they leave nothing to be taxed. Not so with manufacturers. Their operations by their direct and indirect influences steadily increase the value of the land on and near which they operate. They are building up the permanent taxable values of the State of all kinds.

Coal operations do not tend to increase much the tax paying population of the State. Most of the laborers not being highly skilled, but little is saved from their wages to be placed on the tax list. These operations are carried on very largely by non-residents of the State and their profits do not remain or re-appear in the State to increase its property. The contrary is true of manufactories. For the most part their owners live here and here re-invest their profits. The higher wages paid skilled workmen enable them to acquire homes and property, thus enlarging the tax lists.

#### MINERAL WEALTH ESCAPING TAXATION.

Another thing: the mineral wealth of the State more than any other kind of property is escaping taxation. No valuations or re-valuations, no laws and no penalties have ever sufficed to get wealth of this kind upon the books. From 1890 to 1900 we all know there was an immense increase in the selling value of lands in which coal, oil or gas was to be found. Compare the valuations of the land in 1890 with those in 1900 after the re-valuation. Look at the great coal counties of the State. In Fayette, the valuation per acre increased in those ten years from \$8.48 to \$9.29; in Kanawha, from \$6.97 to \$7.43; in Mercer, from \$5.57 to \$5.67, and in McDowell, it decreased from \$5.95 to \$5.09. In the oil county of Tyler it increased from \$8.68 to \$10.92, and in Wetzel it decreased from \$10.38 to \$9.51. Harrison and Marion counties have both coal and oil, and the development of their mineral wealth in that decade actually decreased the acreage value in Harrison from \$17.89 to \$17.85, and in Marion from \$16.26 to \$15.16.

I have it on the very best authority, that of the newspapers of the State, that the United States Coal and Oil Company has thirty thousand acres in Logan county, for which it paid six hundred thousand dollars, and which is worth more than that. In Logan county the total value of lands, lots and buildings on the assessment books is but \$955,000. All its lands,

including the buildings thereon, are assessed at an average of \$2.77 a acre.

Ought such valuations as these to continue for ten years more, during which other tax payers in these counties and especially in other parts of the State are paying taxes on valuations which, if not full, are much nearer justice than this? No, say these twenty-eight gentlemen, that valuation ought to stand until there is another valuation by State authority, perhaps at the end of ten years, and they protest most earnestly against the plan proposed by the Tax Commission of annual assessments of real estate which, they say, must result in constant litigation and delay in collecting the levies. Why this should be so does not appear except from the determination of these gentlemen that it shall be so. They must find some better reason why the crying injustice of an assessment like this shall in the first place exist and in the next place be multiplied by ten in the lapse of that many years.

There has been an effort to create the impression that taxes such as are proposed, of one-third of a cent per ton on coal, one-half a cent per barrel on oil and one and one-third cent on every hundred thousand cubic feet of gas would constitute serious burdens upon those engaged in the production of these articles. Yet we should be very much surprised at any one who would expressly say that such would be the case. Such taxes would not be felt by the operators. There is further suggested the possibility that taxation to this extent would simply be an entering wedge, to be followed later by increases as the real or imaginary needs of the State might dictate. At the time these amounts were suggested, it was thought that they were sufficient and that such guarantees as were possible should be given by legislation and otherwise that the rate of this license tax was not to be increased, the State, however, expecting a growth in revenue from this source as the operations licensed might increase. It was thought, too, that those engaged in the coal industry, realizing the amount of expense caused to the State by their operations, would cheerfully make the contribution that was suggested. This, how-

ever, turns out not to be the case, and further examination of the question makes it doubtful whether the rate proposed is really as much as justice would require. Be that as it may, the amount which the Legislature may now fix as a just tax upon licenses granted for these operations ought to be understood as the final exercise of the States power in that direction. It is true that this could not be done by legislation so as to constitute a guaranty absolutely binding on the State, yet if those affected by this tax had realized its propriety and cheerfully accepted its imposition they would have received a moral guaranty against any increase in the rate, which would have been practically as efficient as if imbedded in the constitution itself. It would have been backed by the sense of justice of the whole State, and at all times might be re-enforced by the published views of any gentlemen who may continue to favor methods of taxation which they claim possess the essentials of permanency and stability.

#### RAILROAD INTERESTS.

It is said that eighty thousand dollars of State tax now paid by the railroads would be released and a like amount imposed upon the coal operators, and it has been asked why this should be. You will all remember the eagerness with which those who are supposed to stand for the railroads rushed to the support of the Tax Commission's plan before the Legislature last winter, and it may be that the explanation of this zeal is to be found in the prospect of relief thus held out to the railroads. The coal operators who signed this protest, or such of them as read what they were signing, must have smiled when they came to this clause. Do they imagine that the public have not heard the loud complaint of the independent coal operators, the few of them that are left, that the railroads discriminate against them in favor of the operations of the railroad mines? Nowadays the distinction between those engaged in producing and those engaged in transporting coal has nearly disappeared. The very great ma-

ajority of those interested in the production of coal in this State are likewise interested in the railroads which transport that coal.

These gentlemen seem to forget that all other tax payers as well as the railroads will upon this plan be excused from State taxes. The steel works and the coal works, the manufacturers, as well as the railroads and the farms and the dwellings will be relieved from the present State tax.

#### TRANSFER OF BURDENS TO COUNTIES.

You may hear some of these gentlemen saying:

"Yes, but while you are cancelling the State tax you are imposing upon the counties the burdens now borne by the State, so that what you are taking off with one hand you are replacing with the other." That is only partially true. The State taxes repealed will be replaced in part by the taxes upon these new licenses, but, of course, will not be wholly saved to the property owner. The county revenues will have to be increased enough to take care of say one-half the expenses of prosecuting felonies in the several counties, and one-half the expense of maintaining in the State institutions those who are sent from the several counties. The criminal charges now borne by the State, but incurred by the counties, are increasing at an enormous rate. The greatest proportion of these charges upon the State treasury is made by the counties in which coal is mined largely, and in the same counties has occurred a very large proportion of the increase. This is an evil to which attention has been called by successive auditors, and which is known to all the State. What do these twenty-eight gentlemen propose to do about it? Why, their remedy is the same conservative, thoughtful and statesmanlike treatment which they propose for the other ills from which we suffer,—nothing.

Now, it would not be wise to put the burden of prosecuting felonies wholly on the counties, for that might result in the failure of a poor county to prosecute a criminal vigorously. If some substantial

share of the expense of a criminal prosecution, however, were to be borne by the people of the county it would seem probable that much more care would be exercised by the county officers in incurring expenses of this nature, and that the total amount expended for criminal charges would, therefore, be reduced. To the extent of such reduction the tax payers would have absolute relief.

#### NON-RESIDENT LAND HOLDERS.

Support for the present methods of taxation is sought upon the suggestion that to abolish the State tax is to relieve non-residents who own large bodies of land in this State. From what will they be relieved? Is the assessment of \$3.05 an acre in Wyoming, or \$3.35 an acre in Webster, or \$3.41 an acre in Pocahontas, or \$2.77 an acre in Logan, (which are examples of the counties in which these large bodies of land are owned by non-residents) much of a burden upon those owners? Why are these assessments so small? Simply because the non-resident land owners get the benefit of a determination on the part of those assessing the land in these counties to keep those assessments as low comparatively as the valuations in other counties. Remove the temptation to do that, abolish the State tax, let the people of Logan and Wyoming no longer be concerned with the comparison between their assessment and that in other counties, let the only revenues with which the tax payers of a county are concerned be those which they themselves levy and they themselves pay, and tell me whether the non-resident owners of lands will continue longer to profit by the absurdly trifling valuations of those lands, or whether those lands are likely to be assessed at their full value, at least in comparison with the lands in the same county owned by its residents. These lands would be taxed at prices which would tend to persuade the owners to sell them and put them in the hands of smaller holders, resident in the State, active and efficient in developing its lands and building up its institutions, and would tend to put an end to the tying up of

large bodies of land for long periods of time in the hands of the wealthy for speculation.

If the members of the Tax Commission learned anything it was the impossibility of devising any tax system which would not be open to some fair criticism and reasonable objection. It does not follow that the man who may be able to make a criticism, even a valid criticism, will also be able to suggest some plan better than that which he criticises. This has recently received a brilliant illustration. I am not now talking about mere captious objections, but such as have merit. This question of taxation cannot be dealt with theoretically. There are controlling conditions to be reckoned with. Reasonable objections may be made to some features of the plan proposed by the Tax Commission, but when that is conceded we have not made any progress. The Tax Commission objects to the present system and proposes something which it says is better. Some object to the Tax Commission's proposition, and what do they propose?

There is no time to-day even to hint at the economies which have been suggested by the Commission in the collection and disbursements of taxes, or the reforms which have been proposed in methods of accounting.

In discussing these things there is no occasion to upbraid corporations or to excite class spirit. The cause needs no such aids. In corporations I recognize the mightiest engines for building up the material interests of the State, but none can be blind to the possibilities of the misuse of their might. The taxes proposed by the Commission are on corporations and individuals alike. The poor man is at a disadvantage under present methods of taxation, but I make no appeal to him either because he is poor or because he is numerous. Under our institutions and with the opportunities of the day he may become the rich man while one is talking to him. Rather should the appeal be made in the words of Emerson: "Let the amelioration in our laws of property proceed from the concessions of the rich, not from the grasping of the poor. Let us begin by habitual imparting. Let us understand

that the equitable rule is that no one should take more than his share, let him be ever so rich."

Do you tell me that these are the words of a transcendentalist, a dreamer? They had their echo the other day in the words of a man of affairs, the President of the United States. Said he: "The capitalist should heartily welcome every effort, legislative or otherwise, which has for its object to secure fair dealings by capital, corporate or individual. Such laws as *the franchise tax in the State of New York, which the Court of Appeals of that State recently unanimously decided con-*

*stitutional*, such laws are in the interest not merely of the people as a whole, but of the propertied classes. For in no way is the stability of property better assured than by making it patent to our people that property bears its proper share of the burdens of the State."

The new taxes proposed in West Virginia affect rich and poor alike. The real interests of all are so inseparably interwoven that the concern of one is the concern of all. This is not the field for passion or prejudice, but for calm, considerate, even-handed justice.

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## APPENDIX.

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To the People of West Virginia:

The undersigned having carefully considered the report of the Tax Commission and the legislative bills submitted by it, proposing a new system of taxation for the State of West Virginia, are of the opinion that the plan proposed is objectionable upon many grounds and for various reasons. And, feeling as we do an abiding interest in the present and future welfare of the State and its institutions, we deem ourselves warranted in briefly setting forth those objections as we see and believe them to exist.

By the proposed system of taxation it is sought to abolish the State and State school tax on all real estate and personal property, including railroads, and to supply the State revenues now afforded thereby, in part by imposing a special license tax on the business of producing coal, oil and gas, fixing the amount of such tax at one-third of a cent per ton on coal, one-half cent per barrel on oil and one and one-third cents on every 100,000 cubic feet of gas; by imposing a license tax on the business of practicing law and medicine and retailing tobacco, and increasing the tax on hotels and restaurants, on liquor, brewers' and distiller's licenses; and by providing that certain public charges now payable out of the State treasury shall be paid by the counties.

This scheme of taxation is in our judgment contrary to the provisions of our State Constitution, and would, we firmly believe, be so held by the courts:

1st. Because repugnant to section 1 of Article X of that instrument, which provides that taxation shall be equal and uniform throughout the State and that no one species of property shall be taxed higher than any other species of property of equal value.

2nd. Because it exempts from taxation for State purposes property not authorized by the Constitution to be exempted.

3rd. Because the exemption of real estate from taxation for State purposes is expressly prohibited by the Constitution, and the failure for any five years to charge real estate for State taxes is declared by that instrument to work a forfeiture of all tracts of land of one thousand acres or more.

4th. Because it would be questionable at least whether the payment of county, district and municipal levies on real estate could be enforced by forfeiture in the absence of a State tax thereon.

5th. Because the right to mine coal or produce oil or gas is not that character of "privilege" or "franchise" authorized to be taxed within the intendment of the Constitution, and because even as such privilege or franchise tax is not made to apply to all such privileges and fran-

shises alike as required by the Constitution.

But aside from its manifest conflict with the Constitution, the proposed system is directly at variance with what we believe to be the true principle of taxation, namely, that all property shall be taxed and that it shall be taxed by equal and uniform laws and in proportion to its value without class discrimination or favor.

It would seem to require no elaborate argument to convince fair-minded men that any system is unsound in policy which would exempt from State taxation the great mass of property in the State and place the burden of maintaining the State government upon a few special industries or classes of individuals. The burdens and benefits should be shared alike, lest reckless prodigality in the expenditure of revenues result from the lack of responsibility in providing them. A people are interested in a government in proportion and to the extent that they share in the responsibilities thereof and contribute to its maintenance. It is unjust that any class or classes of people or property shall share in the benefits of government without contributing fairly toward its expenses.

With numerous exemptions from any tax, the question of the amount of such tax and the expenditure thereof becomes one solely between the representatives of the exempted class in the appropriating branch of the government, necessarily tempted to extravagance, on the one side, and the representatives of the class compelled to pay the tax, on the other, helpless by reason of their inferiority in numbers and the fact that the mass of the people are unable to feel, and hence to perceive, the wrongs of such tax-paying class. To require one class to provide what another may disburse must necessarily lead to oppression and extravagance, to governmental demoralization and business disaster.

Complaint is made that under our present tax system assessments are unequal and tax burdens not fairly distributed, yet this new scheme of taxation abandons every principle of fairness and equality. Why should only the coal, oil

and gas interests be required through the pretense of a license to pay a tax to the State, and not also the iron, steel and tin plate mills, glass pottery and brick works, steam and electric railroads, pulp mills, tanneries and lumber interests? Why should the great railroad corporations be relieved of the \$80,000 per annum State and State school tax now paid by them, and the burden of their exemption be saddled on the coal operators in the form of a third of a cent tonnage tax on their 24,000,000 tons output? Why should the producers of oil and gas who have expended in the development of our producing fields money capital largely greater in amount than the aggregate value of all the State's oil and gas production, be discriminated against in favor of the non-resident land owners who hold vast areas of our domain and do nothing to increase the wealth or advance the prosperity of the State?

Our coal is sold in the world's markets at prices fixed by competition with the product of other States. Why should we place special and unusual burdens upon it? Why should West Virginia, with its future possibilities as a great manufacturing State, wield its taxing power to strike at the basis of all industrial development—cheap fuel?

Regardless, however, of the particular subject of such tax, we contend that any tax on production is wrong in principle and contrary to enlightened public policy. It is in effect a tax upon the same capital over and over again as often as it appears in the shape of the product taxed. It is a tax on energy and enterprise, tending to retard development and industrial growth and to drive away capital or force it into idleness.

There are other features of the proposed system which in our judgment condemn it as a practical and rational scheme of taxation.

It strikes down above \$800,000 of the State's revenues, and by its own best showing, with all its discriminations and inequalities, fails by at least \$200,000 to supply the deficit, and even then it requires the counties to pay at least seventy-five per cent of the cost of maintaining the humane institutions and

seventy-five per cent of the criminal charges, now paid by the State.

We submit that if the State can dispense with \$200,000, or one-fourth of the present State and State school tax, without crippling its finances, it were better to cut down the present tax rate, and to continue under the old system and by constitutional methods to support its charitable and humane institutions and meet its criminal charges. Certainly nothing is gained by pretending to lift the burden of State taxation for these purposes, only to re-impose it again for the same purposes by way of added county taxes through cumbersome and expensive methods of collection and settlement between the State and the counties.

Moreover, we believe it to be a chief function of State government to properly safeguard the peace, order and security of society by the punishment of its felons and the care for its insane, and this duty to society at large should not be shifted in whole or in part upon the counties, any more than the latter should in turn place the burden upon the individual citizen. The temptation to let criminals go unmolested to save the costs of prosecution, and to abandon the insane and other unfortunates to save the expense of their proper care and protection, would be difficult to resist under conditions prevailing in many counties in West Virginia.

The new plan provides for annual assessments of real estate, which must needs result in constant litigation, the overcrowding of court dockets with suits growing out of inequalities therein, real or imaginary, and consequent confusion and delay in enforcing the collection of the levies.

It requires the assessment of all real and personal property of the citizen for county, district and municipal purposes to be at its actual value with the apparent purpose of enabling the counties to thus raise the additional revenues necessary for the support of the State institutions without increasing the tax rate for county purposes. In fact, as an offset to such increased valuations, it pretends to limit the levy for county purposes to 60 cents

on the \$100 valuation, yet really leaves it open for the county court to levy an additional 35 cents for district road purposes, making a possible total tax rate of 95 cents, which is the present constitutional limit. It also makes the officer assessing the property the collector of the taxes, and his compensation in both capacities is made to a certain extent dependent upon his own assessment, thereby tempting him to excessive valuations.

It might be a sufficient answer to any criticism of the above mentioned provisions, to say that it can make no difference how high the assessment valuations are placed, as the rate of levy will be low in proportion as the valuations are high, if it were not notoriously true everywhere that the great majority of levy-laying tribunals almost every year go to the full constitutional limit of their taxing power. In making our laws we must so devise them as to safe-guard all contingencies.

A more serious criticism of these assessment provisions lies in the fact that while the property of the great mass of tax-payers in the counties will by reason of the necessity for increased county revenues and the possible cupidity of the assessing officers, be probably placed at high if not excessive valuations, the assessment of railroad and various other corporate properties for county, district and municipal purposes, is left or newly placed in the hands of the State Board of Public Works, which by reason of the abolition of State taxes thereon is relieved from any interest in requiring such corporations to pay their full and equal share of these taxes.

The proposed system as a whole is at best merely experimental, and on its face lacks the essentials of permanency and stability.

It recognizes doctrines of taxation pernicious in principle, inequitable in present application and dangerous in their future possibilities.

Every business interest presently affected would be held in constant fear of being more seriously burdened, and every active industry not affected in the first instance, would be kept in a state of un-

wholesome uneasiness as to what the future holds in store for it.

Each recurring session of the Legislature would be besieged by the various property interests and developing factors of the State, asking relief or immunity from taxation, the one at the expense of the other, and all would suffer from the menace of an extravagant or corrupt exercise of the taxing power of the Government.

It is a most radical departure from our present constitutional methods of taxation, is of more than doubtful expediency, of most doubtful efficiency and undoubtedly vicious in policy.

It relieves the owners of large tracts of undeveloped lands from payment of State and State school taxes, and places the increased burden on the production arising from the development of other lands.

It discriminates in favor of the non-resident land holder and against the resident producer.

It taxes production, energy and enterprise to the exemption of idle, dormant and unproductive property and capital.

It makes the business of developing the great resources of the State as unlawful business, only to be engaged in by Governmental permit.

Its tendency will inevitably be to retard development, drive active capital out of the State and deter other active capital from coming in.

It will unsettle and disturb our land titles after forty years of effort on the part of our courts to determine and settle the same; it will involve the State in costly suits to test the validity of the new law; and should it be sustained in whole or in part, it will further involve the people in almost endless litigation to construe its provisions and requirements.

We believe that an extraordinary session of the Legislature for the purpose of passing upon or considering the tax system submitted by the Commission

would be useless and wholly unwarranted by existing conditions; and that it would entail a needless expenditure of from \$40,000 to \$50,000 of the public moneys.

We further believe that our present system of taxation, defective though it may be in some matters of detail, is founded upon the true principle and correct theory of taxation, and that it will be far wiser to seek to correct the defects existing therein than to supercede the same with a system so radically different therefrom and of such doubtful value either from the standpoint of principle or utility.

(Signed.) N. E. Whitaker,  
J. N. Vance,  
Alfred Caldwell,  
J. G. Hoffman, Sr.  
John A. Howard,  
A. B. Fleming,  
O. S. McKinney,  
E. M. Showalter,  
W. N. Chancellor,  
C. H. Shattuck,  
Alston G. Dayton,  
C. F. Teter,  
W. E. Haymond,  
G. W. Curtin,  
John Bassel,  
R. T. Lowndes,  
Gen'l John McCausland,  
V. L. Highland,  
John W. English,  
J. L. Caldwell,  
Isaac T. Mann,  
E. P. Rucker,  
J. F. Brown,  
J. H. Huling,  
George E. Price,  
Romeo H. Freer,  
Alex F. Mathews,  
David E. Johnston.

Copies of Tax Commission's Report and Bills may be had of J. O. Thompson, Secretary State Board of Agriculture, Charleston, W. Va.