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The Present System
of Taxation,
in West Virginia

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ADDRESS

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BEFORE

State Bar Association

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Some weeks ago your president invited me to address this meeting on the subject "The Present System of Taxation in West Virginia." I accepted the invitation with the idea that the preparation of a paper on the subject suggested would only involve a general resume of recent changes in tax laws, constitutional and otherwise; but "the best laid schemes o' mice and men gang aft agley." Instead of the simple, easy task thought to be before me, I find myself called upon to discuss a situation, which, in its importance and far-reaching consequences is without parallel in the history of this state. The questions of taxation confronting us call for the mature consideration of men and women of all walks of life, and I shall count any efforts of mine well rewarded if I am able to challenge the intellects of the men who make up this association, and enlist their interest in the solution of the grave problems at hand.

A brief history of the development of taxation in West Virginia may not be amiss at this time. The present constitution was adopted in 1872, and the assessed value of all of the property in the state for that year was \$143,270,414.00, made up of real estate assessed at \$95,873,359.00, personal property, \$39,773,663.00, and public utility property, \$7,623,392.00. From the year 1872 to 1905 there was a gradual but slow increase in the assessed value of property, explained by the increase of population and the industrial development of the state. For the year 1905, the

assessed value of property was \$331,361,175.00, made up of real estate assessments of \$169,026,710.00, personal property, \$126,281,620.00, and public utility property, \$36,052,845.00.

The year 1906 brought about the application of the so-called Dawson Tax Laws, involving a large increase in the assessed values of the property. For this year the assessments leaped to the total of \$877,841,759.00, made up of real estate assessments of \$475,174,841.00, personal property, \$193,513,192.00, and public utility property, \$209,093,726.00. Assessments continued to increase slowly from 1906 to 1921, when the total was \$1,696,068,361.00. In 1922 there was another substantial increase in assessments to a total of \$2,092,568,969.00, involving an increase of \$328,569,959.00 in real estate assessments, an increase of \$77,216,264.00 in public utility assessments, and a decrease of \$9,297,615.00 in the assessment of personal property. The assessment of all property reached its peak in 1925 when the total was \$2,133,491,140.00 and this figure was slowly reduced to \$2,010,263,902.00 in 1930; in 1931 it was \$1,877,968,467.00; in 1932, \$1,671,276,370.00. In 1933, it was increased to \$1,781,431,209.00, involving an increase of \$106,595,450.00 in the assessment of personal property, an increase of \$39,390,700.00 on public utility property, and a decrease in the assessment of real estate of \$35,830,311.00, the assessment of real estate being \$840,954,179.00, personal property \$338,462,730.00, and public utility property \$602,014,300.00. The figures for 1933 are advanced figures and subject to change. The figures for 1933 require this further explanation: The increase in the assessment of personal property is made up almost entirely of intangibles, and this also applies to the increase of public utility property. It is estimated that the amount of intangibles on the tax books has increased approximately \$155,000,000.00 in one year.

I have given you a picture of the assessments. What about the levies? In 1905, the year before the application of the Dawson Tax Laws, the average of the levies for the entire state was \$1.84 on each \$100.00 of valuation; for 1906, it was 77 cents; for 1913, it was 97 cents; for 1923, it was \$2.15; and for 1932, it was \$2.62. The amount of taxes levied increased from \$6,008,763.00 in 1905 to \$12,028,751.00 in 1913; \$45,299,761.00 in 1923; \$53,184,184.00 in 1930; and was reduced to \$43,846,400.00 in 1932. The latter figure

was brought about by decrease in assessments and a small decrease in average levies.

In addition to those sums collected by direct taxation on property, the state, in 1921, inaugurated a system of indirect taxes through the gross sales tax. Before this tax there was collected the ordinary license fees, charter tax, insurance tax and other fees, which went in the State General Fund and the General School Fund. In 1921, there was enacted the Gross Sales Tax Law, and from this source large revenues have accrued to the state. For the fiscal year ending June 30, 1928, the receipts from this source were \$4,404,619.87, and since that year these revenues have dwindled to \$2,324,691.70 in 1932 and \$1,602,981.95 for the year ending June 30, 1933. The totals of indirect taxes going into the State General Fund in recent years are as follows: For the fiscal year ending June 30, 1928, \$7,001,115.91; 1929, \$6,975,524.30; 1930, \$6,672,114.08; 1931, \$5,961,702.44; 1932, \$4,871,054.36; and 1933, \$3,916,437.94. We have also collected large sums of money from sales of gasoline and motor vehicle licenses, all of which has been used in payment of interest on and in retirement of state road bonds, and for the maintenance and extension of state roads. For the fiscal year ending June 30, 1930, we collected from tax on gasoline the sum of \$5,408,984.17, and from motor vehicle licenses \$4,778,161.40, a total of \$10,187,145.57. For the year ending June 30, 1933, we collected from this source the sum of \$8,509,227.18, made up of gasoline tax, \$4,860,646.60, and motor vehicle licenses, \$3,648,580.58.

These figures, wearisome as they may be, have been given that you may better understand the difficulties of the present situation. They remind us how unstable are taxes derived from indirect sources, depending as they do upon the business done in any one year. It will be observed that for the year ending June 30, 1930, indirect taxes going into the State Fund and into the State Road Fund aggregate \$16,859,259.65, and that for the year ending June 30, 1933, taxes from the same source aggregated \$12,425,665.12, or a reduction of \$4,433,594.53 in three years. This is not stated as an argument against indirect taxation, because it is fully realized that the state will have to depend upon this method of taxation in the future to a greater degree possibly than it has depended in the past; but merely to sug-

gest that ample allowances be made for fluctuations in indirect revenues. The accumulated deficit in the state treasury, while, of course, due in part to extravagant expenditures, is more directly traceable to the falling off of indirect revenues.

For the last fifteen years the state and its local units have accumulated bonded indebtedness, aggregating about \$145,000,000.00, of which approximately \$80,000,000.00 is represented by state road bonds, provision for which is made from the revenues derived from gasoline tax and motor vehicle tax; and approximately \$65,000,000.00 of local indebtedness which must be provided for by direct taxation. Of this last figure, approximately one-half is represented by county and district road bonds and the remainder is fairly equally divided between school bonds and bonds of municipal corporations. The carrying charge, including maturities and interest on the these bonds, which require direct taxation for their redemption, is estimated to call for an expenditure of approximately \$7,000,000.00 annually. In addition to this, a large floating indebtedness has accumulated in several counties and municipalities of the state, and, in some instances, in school districts; and it is estimated that for the next few years an additional sum of \$1,000,000.00 annually will be required to provide for this floating indebtedness. In this connection, I may say that no development in the tax situation has in the least impaired the security of any bond issued by the state or any of its sub-divisions; on the contrary, the status of the bond-holder has, in a sense, been made more secure in that the paramount obligation of these bonds has been reaffirmed by both the legislature and the courts.

What brought about this situation? Simply a mania for spending money. I know that it is quite popular to charge this situation to the legislature, county courts, boards of education and the councils of the several municipalities of the state; but I can not escape the conclusion that the people themselves have some share in the responsibility for this condition. They demanded better roads, better schools, better streets and sewerage systems, better health service, and the hundred different activities in which governments have been called upon to engage since the end of the great war. Debts were incurred and money expended without any

thought of pay day, and we would probably still be going on at the same rate had it not been for the devastating effects of the great depression through which we are passing, which brought every government and every individual face to face with the stern task of meeting their obligations.

In the early part of the year 1932 the people of this state revolted against this situation, and, as usually occurs in times of intense excitement, they did not count the cost of their action. They determined to call a halt to extravagant expenditures in public service, and they took the most effective course to bring about that result. The legislature submitted an amendment to the constitution limiting the direct levies which could be imposed upon property and providing for a classification of property with the particular aim of reducing taxes on homes and farms. This amendment, which is the subject of wide discussion as to its effect, was ratified by an overwhelming majority and is now the supreme law of the state. The application of this amendment to the tax laws of the state lies first with the legislature, subject to the control of the courts so well recognized under our system of government.

The constitution of West Virginia, and every part thereof, is a compact between the people, on one side, and that indefinable something which we call the state, on the other. Like all other compacts and contracts, it is to be construed in the light of what the parties thereto intended to be accomplished. The people of West Virginia well knew of the huge indebtedness they had themselves created, and I am persuaded that no large percentage of these people ever thought of repudiating a single dollar of that indebtedness. They fully realized, I think, that this indebtedness must be paid and that the same was a binding lien upon all of their property. What they meant to accomplish was a reduction in future expenditures to the end that they might in that way be relieved in part from a burden of taxation which had become unbearable. I do not think it ever entered their minds that any ordinary and necessary function of government should be discontinued. They have become accustomed to the form of county government provided for in the constitution; the demands of large centers of population required a form of municipal control not necessary to be applied to rural communities; and, of equal importance, was

the maintenance of schools for the education of the youths of the state. The people, while they believed too much money was being expended for these purposes, and while determined to reduce expenditures to the minimum requirements for such service, did not want to give up any of the beneficent results of county and municipal government and the free school system. These observations, I think, will not be disputed.

In passing, let me say: The bar of the state has something to answer for in not giving to the people some idea of the different constructions which might be placed on this amendment. The people as a whole, and most of the lawyers in particular, did not stop to think what it all meant. I supported the amendment, believed in it, and still believe in it; but it never occurred to me that in giving it my support I was helping to do what I now learn has been done. The lawyers of the state should have studied this tax question, and should have given to the people the benefit of their study. I may add that some of them, who are now assuming to discuss the question off-hand, would do well to give it some study, at least to the extent of reading the state and federal constitutions.

When the legislature convened at its regular session, 1933, it found itself confronted with the task of classifying the property, and this it did as required by the amendment. The effect of this classification, and the application of the constitutional rates of levy to the different classifications was to materially reduce the amount of money which could be raised by direct taxation. It is interesting to note that, under this classification, Class 1 property, composed of intangibles and certain classes of farm property, was assessed at \$238,073,961.00; Class 2, farms and homes, at \$319,600,315.00; Class 3, all other property outside of municipalities, \$748,502,238.00; and Class 4, all other property inside of municipalities, at \$475,254,695.00, making an aggregate of \$1,781,431,209.00. Applying the constitutional levies to the limit, and not taking into account anything for debt service or any special levies, the aggregate of taxes which can be levied on all classes of property is the sum of \$25,119,000.42, made up of \$1,190,369.80 on Class 1 property; \$3,196,003.15 on Class 2 property; \$11,227,533.57 on Class 3 property; and \$9,505,093.90 on Class 4 property; and, as divided between

real estate, personal property and public utility property, the amounts of these taxes are as follows: On real estate, \$12,395,555.03; on personal property, \$3,406,173.64; and on public utility property, \$9,317,271.75. The amount of taxes which can be collected on the 1933 assessments is a marked reduction from the total of the direct taxes levied for the year 1932. For that year, on the valuation of \$1,671,276,270.00, the taxes levied aggregated \$43,846,400.00. The legislature, having in mind this very drastic reduction in direct taxes, found it necessary to provide for additional revenues and did so by the passage of a comprehensive revenue law from which, it is estimated, approximately \$10,000,000.00 can be collected. This revenue law takes the place of what is known as the Gross Sales Law, from which there was realized last year \$1,602,981.95, and represents an increase in indirect taxes of approximately \$8,500,000.00. Roughly speaking, it is estimated that of this total the coal industry will contribute \$1,000,000.00; the production of natural gas and oil, \$800,000.00; manufacturing, \$700,000.00; retail sales, \$1,700,000.00; wholesalers, \$200,000.00; electric light companies, \$800,000.00; retailing of natural gas, \$300,000.00; contractors, \$650,000.00; gross income, \$1,400,000.00; telephone and telegraph companies, \$165,000.00; steam railroads, \$1,900,000.00; and other smaller industries in varying amounts making up the estimated total mentioned. At the same time, the legislature, to assist the counties and school districts throughout the state, adopted the county unit school system, and appropriated \$5,500,000.00 out of the general revenues to aid schools in counties; and took over the secondary roads of the state and appropriated out of the general revenues, \$1,800,000.00 for their maintenance and extension; all this was done in carrying out the general plan of distributing the indirect levies among the people of the state to make up for the shortage in direct revenues brought about by the constitutional change.

After the ratification of the tax limitation amendment in November, 1932, the legislature of this state, at its regular session early in 1933, attempted to fit the tax laws of the state into this amendment; the first step was to provide for the assessment of property and classify the same as provided for in the amendment; and the next step was to allo-

cate the permitted levies under the constitution as amended to the various governmental agencies of the state. The great problem was to provide for the existing indebtedness of the counties, school districts and municipalities. And in passing, let me say that but for this indebtedness, we would have no serious tax problem in West Virginia. Our trouble arises from the mistakes of the past and not from our current requirements. What we are now doing is paying for a "dead horse," always a disagreeable task, but none-the-less necessary. A careful examination of the fiscal affairs of the state and its subdivisions convinced the legislature that this indebtedness could not be liquidated out of the levies authorized by the amendment, and the ordinary functions of local and municipal government and the support of schools provided for therefrom. The question had to be decided whether these local functions of government should first be provided for, and, in cases where necessary, provision be made for existing indebtedness by additional levies laid beyond the constitutional limitations, but within the limitations existing at the time the indebtedness was contracted, or whether debts came first. The legislature decided that the ordinary functions of government should be maintained and that they were necessary, and that indebtedness should be provided for by special levies in cases where current expenses consumed the constitutional levies, and provision for such levies was made by what is known as House Bill 314, enacted in March, 1933.

The provisions of this law were put into effect through action of the levying bodies throughout the state. The constitutionality of this act was promptly questioned in the courts, and the highest court of the state has announced an opinion holding that the aggregate of the levies which can be laid for all purposes are the levies authorized by the limitation amendment to the constitution, except in cases where the requirements of existing indebtedness call for a greater levy, the effect of which is, under fixed principles of constitutional law, that the requirements of indebtedness must be first met and that only the remainder of the levies authorized by the constitution can be used for current expenses. This decision has placed the people of this state face to face with the gravest problem with which they have ever been confronted, and its solution calls for their best thought.

I am not one of those who feel that the people of this state are ready for a general breakdown in their government, and I can not bring myself to believe that any such consequences will result from the present situation. A way out must and will be found. On the other hand, a careful study of this situation forces me to say that up to the present time, there was no clear solution of the problem. It must be borne in mind that we are governed by certain constitutional provisions which interfere with the power of the legislature, itself, to do many of the things which would suggest themselves to us as necessary to be done to make the present constitution, as affects taxation, workable, and at the same time maintain our established institutions. I do not think I can do better than to call attention to some of the difficulties in the way of achieving this high aim.

Many suggestions have been made by well-meaning people, pointing the way out. These suggestions are made with the best of motives and are accepted in the same spirit, but they must bear the test of discussion and analysis. Many of them are made because they seem to be fair and reasonable and many times without consideration of constitutional provisions which make their application impossible.

There is a universal rule of law that taxation must be equal and uniform throughout a given territory. For example, any state tax must be equal and uniform throughout the state; any county tax must be equal and uniform throughout the county; and, of course, any tax must be equal and uniform in a municipality. Under our old system, and prior to the enactment of the county unit bill and the law taking over the control of secondary roads, levies for school purposes and for district road purposes were laid in the magisterial districts of the state, and indebtedness, such as bonded indebtedness, was created by these magisterial districts for road and school purposes. The amount of this indebtedness, of course, was not equally distributed over the counties. In some counties all of the districts became indebted in varying amounts, and in other counties, some districts became indebted, and others did not. The effect of the levy limitation amendment, and its interpretation by the court, has been to require these magisterial districts to levy on the property of that district for this indebtedness, and any amount so levied for indebtedness merely served to re-

duce the amount of levies which could be used for current expenses. In many instances, the requirements for debt service in a given district more than equal the monies which can be raised by levies for all purposes under the constitution, and in many other districts, a very large percentage of such levies is required; the result being that in some districts there is nothing whatever left for current expenses, and in a large percentage of the magisterial districts and municipalities of the state, more than one-half of the permitted levies is required for debt service. It follows that if all these monies are required for debt service, then levies for current expenses are correspondingly limited, and, if limited in other districts, then the uniformity required by the constitution limits that levy throughout the county, all of which results in a loss of available revenues, and, in most counties of the state, making it impossible to raise sufficient funds to carry on the constitutional functions of government. There would seem to be no escape from this situation.

It has been suggested that the State of West Virginia should take over the bonded indebtedness of the road districts, as well as any county indebtedness created for road purposes, because of the fact that the control of state roads has been taken over by the state; and it is suggested that the counties should assume the school indebtedness of magisterial and independent school districts, inasmuch as the counties have taken over all school property. There has been, so far as I know, no suggestion that anyone assume the indebtedness of towns and cities. These suggestions have in them a measure of justification from the standpoint of equity, except for this fact: The constitution, in safeguarding the people against bonded indebtedness, has made provision for one, and only one, method of creating a bonded indebtedness, and that is by a vote of the people. Any assumption of any bonded indebtedness by the county or by the state would, in effect, transfer a part of the burden of such a bonded indebtedness to people who never voted such indebtedness upon themselves, and the practical question arises as to whether or not they would ever be willing to consent to the assumption of such indebtedness. But, assuming that the people would agree to the assumption of this indebtedness by the state and counties, we are con-

fronted by another provision of the constitution, Section 6, Article 10, which provides that:

“The credit of the state shall not be granted to, or in aid of any county, city, township, corporation or person; nor shall the State ever assume, or become responsible for the debts or liabilities of any county, city, township, corporation or person.”

The people may, through their sovereign will, expressed by constitutional methods, do anything they choose to do, but so long as the provision above quoted remains in the constitution, it seems impossible to find a way for the assumption of any indebtedness of any county, district or municipality by the state. The assumption of school indebtedness by counties may be possible if a way can be found to escape the constitutional requirement that bonded indebtedness can only be created by vote of the people. Undoubtedly, the people of any given county could, by a vote, assume any character of indebtedness created within its borders, but without such a vote, the assumption of any indebtedness by county can not, in my opinion, be carried through by legislative action.

Then we have the suggestion that the whole matter can be handled through the imposition of indirect taxation to be imposed by the state and distributed among the counties and municipalities. There can be no question of the right of the state to distribute indirect taxes in aid of schools, for the reason that the maintenance of the free school system is under the constitution the duty of the state; but the constitution, Section 5, Article 10, limits the power of the legislature with respect to taxation and provides that:

“The power of taxation of the legislature shall extend to the provision for the payment of state debt and interest thereon, the support of free schools and the payment of the annual estimated expenses of the state;”

which would seem to preclude the idea that the state could by any system of indirect taxation collect a fund to be distributed throughout the counties and municipalities other than in aid of schools. The legislature no doubt has the power to authorize the county courts and the governing bodies of municipalities to impose indirect taxes, but those taxes will have to be collected by the local authorities, and

the grave problem arises as to whether or not, as a practical proposition, such a tax can be imposed and collected by these local boards. It is well known that the great bulk of indirect taxes are collected in the large centers of industry and wealth, and that a comparatively small amount of these taxes are collected in the rural communities of the state. An indirect tax that would produce large revenues in a wealthy and populous county would scarcely produce sufficient revenues to pay the expenses of collection in one of the smaller rural counties. As a matter of fact, every consideration of sound policy calls for the support of local government by local taxes of such a character as will produce needed revenues, under such a system as will also make such taxation fairly equal and uniform. Revenues received from without a county are, quite generally, considered as so much free money and only tend to create a spirit of extravagance which can, in a measure, be kept under control if local taxpayers bear the expenses of local government.

A leading newspaper of the state calls attention to the success of the French people in raising revenue by lotteries, and suggests, if it does not advocate, this method for this state. I can scarcely think the proposal a serious one, as it would run counter to the moral sense of our people. We gamble enough as it is, without giving to this vice the sanction of law. However, if the suggestion is meant to be taken seriously, the answer to it is found in Section 36, Article 6, of the Constitution, which provides:

“The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state.’

The legislature followed the mandate of the constitution, and we have rigid laws against lotteries, which I am quite certain will remain in our statutes.

After all, what the people are trying to do is to retain the essentials of government at a less cost. Any and all sources of taxes, by whatever name called, finally rest their burden upon the mass of people. No system has yet been devised by which any government can reach out its hands and take from the public any sum of money by taxation, in whatever form, without imposing a burden upon the people. It serves no good purpose to reduce taxes on farms and

homes and other classes of property, by one law, and, by another law, impose a like or greater burden of indirect taxation. The people always pay. Whether the tax is direct or indirect, in the end the people pay. The only way by which the burden of government can be lessened is by reducing the expenses of government. These observations would seem to be easy to understand, but it seems that there is in the minds of a great many people the fixed idea that indirect taxation is not a burden, and that, so long as you can collect money in this way, it matters little how it is spent because it costs no one anything. Indirect taxation is here to stay, and it will probably be expanded as the necessities of government arise, but it should always be borne in mind by the people that no tax burden can be escaped in whatever form it may be imposed.

These suggestions are not made in any spirit of controversy; nor is it sought to raise technical points to prevent freedom of action on the part of the legislature. The points raised are believed to arise from a fair construction of the fundamental law of the state. What we are all trying to do is to find a way out of our present difficulties. The present situation is not one that can be cleared up within the next year or two, but will affect the life of the state for this generation, and until all bonded indebtedness is paid. Under present conditions, county governments in many counties can not be maintained, and without county governments the state can not smoothly function, because we depend largely upon counties and county organizations for the enforcement of the laws of the state. Our system of government is so framed as to require cooperation on the part of each agency thereof. While the present difficulties would not ordinarily seem to affect the state government, as such, yet it does and will affect the state government in a very serious way, and for that reason we join in the hope that this very serious crisis in the history of our state may be passed without a loss of anything we prize in government.

Our forefathers have builded here in these mountains a great commonwealth, rich in natural resources, and richer still in the strength and integrity of its people. It is un-

thinkable that we in this day of stress and storm will permit ourselves to weaken and fail in carrying on the high ideals which our fathers have transmitted to us. The present situation is, in a peculiar way, a challenge to the men who compose the bar of this state; for in all of our history the lawyers have been in the forefront in fighting the battles of government, and in every struggle to maintain our free institutions. Without meaning to reflect on the public at large, it is but the truth to say that as to some of these complex problems men trained in the legal profession can render a better type of service than any other class. I am persuaded that in this crisis, they will not fail the state. The present situation is the result of a revolution in the tax system of the state, and revolutions have a way of not being considerate of vested rights and interests. The Bar of West Virginia can be highly useful in assisting in directing this revolution along channels which will bring about results which the people intended should be brought about, and, at the same time, not unduly encroach upon the rights and privileges of any class of our people.