NATIONAL MEDIATION BOARD

WASHINGTON

November 18, 1939.

Honorable Marriner S. Eccles, Chairman,
Board of Governors, Federal Reserve System,
Washington, D. C.

Dear Mr. Eccles:

I am glad to note that you are calling public attention to the grave duty that the Congress is under to provide adequate revenue to balance the budget.

As a Democratic Member of the Ways and Means Committee during eight years, I, myself, recognized that the situation was perilous as you will note by a glance at the enclosed address some of the marked paragraphs of which may interest you.

May I request the privilege of reading a copy of your statement on the subject.

Very sincerely yours,

David J. Lewis

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David J. Lewis

See pp 4-5, 7-8

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SEVENTY-FIFTH CONGRESS, FIRST SESSION

WHAT IS WRONG WITH THE REVENUE?

SPEECH

OF

HON. DAVID J. LEWIS

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

July 6, 1937

Mr. LEWIS of Maryland. Mr. Speaker, in presenting this rather complicated subject today, I am going to take advantage of a suggestion once made by a well-known professor. He said that if you have a public subject to discuss, its elucidation would be aided by presenting it as in answer to four questions: First. What is it? Second. Why is it? Third. What of it? Fourth. What are you going to do about it?

I. WHAT IS IT?

Well, sir, the subject concerns our lack of public revenues to meet what we conceive to be imperative expenditures. Why this lack in the most richly endowed country in the world? "Oh, it is the depression and its extraordinary expenditures." I do not consider this the right answer. Other countries, not so richly endowed, like England, have paid their way through this same depression. But the United States expended $6,605,000,000 during the years 1933, 1934, 1935 to relieve social distress. Well, Great Britain expended $10,815,000,000 during the same years, in terms of our population, for social relief. And the treasury of England is not in the "red." The British budget rides as securely above the waves of the depression as its men of war ride over the seas.

What, then, is the occasion for our continued deficits? I answer, it is the delinquent taxpayers of the United States. Here is a list:

Delinquent taxpayers' list

Repudiation income tax, 1894, 18 years	$1,500,000,000
Exemption public securities	2,000,000,000
Exemption employees, officers of counties, cities, States	1,000,000,000
Tax exemptions, community property, 8 years	200,000,000
Exemption income of companies from State-leased oil lands	3,000,000,000
Exemption income from stock dividends, 16 years	1,060,000,000
Evasion of surtaxes, 16 years	7,000,000,000
Total	15,760,000,000

Sir, the above list of delinquent tax payments represents a sum of about $16,000,000,000, or one-half the net national debt. Consider please, the implications of some of the items. Consider, first, the exemption of non-Federal public employees in the United States who number 2,500,000, who receive aggregate salaries reaching the tremendous total of $3,250,000,000 yearly, who are not now taxable on their salary income. Second, consider the forty-five billions of Federal and State bonds, the income from a large part of which is not taxed by the Federal Government, and a larger part exempt as against 28 States which have income-tax laws. The bonds exempt represent a sum more than twice enough to build the railways. And third, consider the income of stockholders, distributed to them in the form of stock, nine billions in the last 12 years, income not fully taxed under Federal or State income-tax laws. Sir, the income of public employees and public bonds which goes untaxed, represents the steadiest income throughout the years of the depression. These public bonds more than equal one-third of the outstanding bonds of the country, including public and private bonds.

Mr. Speaker, it is apparent that an immense proportion of the income resources of the United States is not now taxed and is escaping taxation.

II. WHY IS IT?

Mr. Speaker, why, indeed, this delinquent list of income resources not exempted in any other income-tax system of the world? How does it come? Is the Congress to blame? No, sir; not ours the guilt. These egregious delinquencies have their origin not here but in the courthouse.

I wish to begin with that most revolutionary decision holding the income-tax provisions of 1894 unconstitutional, the Pollock case (1). The income-tax principle represents the fairest form of taxation. This truth there is none to dispute. Unlike the sales tax, which taxes people according to their needs, the income-tax standard assesses them according to their ability to pay; that is, according as Providence and civilization shall have blessed them. We levied such a tax in our Civil War days, and it was upheld by the Supreme Court as constitutional in a series of cases (2). These Civil War acts, like the income tax of 1894, taxed all types of income—rental from real estate, products of personal property, and the very question of whether the income tax was a direct tax was then considered by the Court and was disposed of favorably to the Government. The Court then thought that the direct taxes contemplated by the framers of the Constitution were capitation taxes and taxes on lands and followed its early decision in the Hylton Carriage case (3), upholding a tax levied on carriages, without apportionment according to population. This also had been the view taken of the Hylton case by such writers and historians as Kent, Story, Cooley, Miller, Bancroft, Pomeroy, Hare, Burroughs, Ordoneaux, Black, Farrar, Flanders, Bateman, Patterson, and Von Holst.

Although, Mr. Speaker, the income tax of 1894 was identical with the Civil War acts, upheld formerly by the Court, yet the Court held the tax of 1894 invalid as a direct tax insofar as it taxed the income from real property. The Court also held that the Federal Government could not tax the salaries of county, city, or State employees, or income from public securities held by persons or corporations when issued by any city, county, or State and also announced the doctrine that the salaries of Federal judges could not be made subject to the income tax. On a rehearing of the Pollock case the Court by a 5-to-4 decision not only adhered to its former opinion but also held that the tax was invalid as a direct tax insofar as it taxed the income of personal property.

Sir, because of this nullifying decision, the United States alone among the great countries of the world was condemned to go without an income tax for 18 years. As a result the Government during this period, even under the small income tax levied by the act of 1894, lost in revenue at least $1,500,000,000. This loss of revenue cannot be laid to the door of Congress in passing the statute. Congress was legislating within its constitutional power to levy and collect taxes and following the Court in enacting the Income Tax Act of 1894. In pointing out the disastrous effect of outlawing the act, Mr. Justice White, dissenting, said:

> Thus, from the change of view by this Court, it happens that an act of Congress, passed for the purpose of raising revenue, in strict conformity with the practice of the Government from the earliest time and in accordance with the oft-repeated decisions of this Court, furnishes the occasion for creating a claim against the Government for hundreds of millions of dollars.

And in a dissenting opinion upon reargument he added:

> It is, I submit, greatly to be deplored that, after more than 100 years of our national existence, after the Government has withstood

the strain of foreign wars and the dread ordeal of civil strife, and its people have become united and powerful, this Court should consider itself compelled to go back to a long-repudiated and rejected theory of the Constitution, by which the Government is deprived of an inherent attribute of its being, a necessary power of taxation.

Mr. Speaker, Members of the House, I ask you: Was this conservative judicial action? Was it liberal judicial action? It was not judicial action at all. It was an act of bald usurpation only, through which a bare majority of the judges, repudiating the Court's former unanimous decisions, added the following prohibitions to the Constitution. To Congress they said:

(1) Thou shalt not oblige Federal judges to include their salaries as a part of their income in computing their income tax.

(2) Thou shalt not oblige the owner of any bonds issued by a county, municipality, or State to include in his income the interest he receives from any such security.

(3) Thou shalt not oblige the employee or officer of any county, municipality, or State to include in his income his salary, however great the salary.

And to the 48 States this 5-to-4 tribunal has issued the following enjoinder:

(4) Ye States shall not oblige any of your resident citizens to include his salary as an officer or employee of the Federal Government as a part of his income.

(5) Ye shall not oblige the owner of any bonds, issued by the Government to include as part of his income the interest he receives from any such bonds.

Sir, no king in history that I know of has ever had his revenues placed under such restrictions, however great the revolt against his rule.

REPUDIATION OF SIXTEENTH AMENDMENT

Yet, sir, the people bowed to this ruling; this 5-to-4 outlawry of a governmental power repudiating the Court's former decisions, and proceeded to secure the ratification of a constitutional amendment to overcome the ruling. It required 18 years. Their amendment read as follows:

The Congress shall have power to lay and collect taxes on income from whatever source derived, without apportionment among the several States.

The ratification of this, the sixteenth amendment, was a clear repudiation of the Pollock decision. It provided that Congress could tax income from whatever source derived without apportionment. It was to save the necessity of going back in any case and looking at the source from which such income was derived, thereby giving the Congress the power to tax all income, regardless of its source.

JUDGES EXEMPT THEIR SALARIES

Mr. Speaker, unfortunately, one of the first cases involving the amendment related to the taxation of the income of a Federal judge. In this case the judges themselves were financially interested, for a decision would also affect the taxability of the salaries of the Supreme Court judges. Yet they sat. They need not have done so, if they had followed precedent—I refer to the example of Justice Taney, who wrote a letter to the Secretary of the Treasury complaining about the income tax of the Civil War Acts, and stating that this was the only way in which the matter could be brought to the attention of the proper authorities, as the Court itself could not pass upon a question which directly affected the judges themselves. But subsequent members of the Court did not show the same delicacy, nor did five of them show any hesitancy in deciding the question in their own favor. This was in the Evans case (4). The Court held, in spite of the language of the sixteenth amendment giving the Congress the power to tax income "from whatever source derived", the amendment did not include Federal judges.

This was sheer nullification of the sixteenth amendment, and exempted them from paying, as citizens, their just tax on their income.

Mr. Justice Holmes, dissenting, disposed of their arguments. He stated:

I think that the clause protecting the compensation of judges has no reference to a case like this. The exemption of salaries from diminution is intended to secure the independence of the judges, on the ground, as it was put by Hamilton in the Federalist (No. 79) that "a power over a man's subsistence amounts to a power over his will." That is a very good reason for preventing attempts to deal with a judge's salary as such, but seems to me no reason for exonerating him from the ordinary duties of a citizen which he shares with all others. To require a man to pay the taxes that all other men have to pay cannot possibly be made an instrument to attack his independence as a judge. I see nothing in the purpose of this clause of the Constitution to indicate that the judges were to be a privileged class, free from bearing their share of the cost of the institutions upon which their well-being if not their life depends.

And, then, holding such a tax valid, he said:

I do not see how judges can claim an abatement of their income tax on the ground that an item in their gross income is salary, when the power is given expressly to tax incomes from whatever source derived.

Mr. Justice Brandeis concurred with Judge Holmes.

Sir, despite 18 years of sacrifice of just and necessary revenue and the labor the Nation and State have expended to amend the Constitution, the Court, in the Evans case, replied, in effect: "The sixteenth amendment to the Constitution in this Court henceforth shall read as follows: 'The Congress shall have power to lay and collect taxes on income from whatever source derived, except from the income of judges of the United States, which shall be exempt.'"

Ladies and gentlemen, we are held responsible, and justly so, for the acts of Congress; and that responsibility is determined by looking at the "aye and nay" votes. Who among the present members of the Court voted "aye" and who voted "nay" in the case of Evans against Gore.

McReynolds, "aye"; Brandeis, "nay."

EXEMPTION OF STATE OFFICERS AND EMPLOYEES

Mr. Speaker, again in spite of the express language of the sixteenth amendment, giving the Congress the power to tax incomes from whatever source derived, the Court has prevented the Congress from taxing the salaries of employees and officers of counties, cities, and States if such officers and employees are engaged in what the Court determines to be an essential governmental function. I cannot refrain at this point from again referring to the crushing logic of Justice Holmes in the Evans case:

To require a man to pay taxes that all other men have to pay cannot possibly be made an instrument to attack his independence as a judge.

By the same token, to require officers or employees of such counties, cities, or States to pay the same tax on their salaries applied to all other citizens cannot interfere with the functioning of a State.

The number of such employees is reported as 2,500,000, while the Federal list is given as 800,000, excluding soldiers and sailors. The loss of this immense revenue lies at the door of the Supreme Court in disregarding the express language of the sixteenth amendment. Conservative estimates place the loss at at least $1,000,000,000, computed from 1913, the date of the first income-tax act under the sixteenth amendment.

Actually, as Mr. Brabson says, the effect has been to create a favored class of people who in many cases contribute nothing to the support of the Government which directly or indirectly gives them their employment. He quotes from Mr. Pegler:

The Governor of New York, for example, heads a long list of high-salaried public officials who do not have to pay any tax on their public salary. The Governor gets $25,000 a year, a figure which would make a marked man of him if he were working for a private employer. The Lieutenant Governor at $10,000 a year enjoys the same immunity, and so do the judges of the court of appeals, the appellate division, the supreme court, the court of claims, the court of special sessions, and the surrogates.

These learned and public-spirited ornaments of the State government draw from $15,000 to $22,500 a year and keep it all, whereas a single-handed clerk or mechanic employed by a business firm at $150 a month is expected to shower down to both National and State Treasuries. The members of the New York Legislature receive $2,500 a year, or roughly twice as much for their part-time work as the taxpaying $100 a month, but they, too, are constitutional officers and therefore exempt.

Mr. Brabson continues:

Strangely enough, the widespread character of these exemptions and the extent of the loss in the Federal revenue is not generally appreciated. It is very doubtful if the average taxpayer in New York City, for example, has the least idea of how many of his fellow citizens with substantial incomes are exempted from contributing one cent directly to the support of the Federal Government.

Mr. Brabson presents a table—inserted in the appendixes—in which he calls attention to the serious fact that

the percentage of taxable returns has fallen from 26 to the 1,000 of population in 1917, to 14 in the year 1935.

Interpreting the table, Mr. Brabson says:

If we examine the above figures carefully, we find that the ratio of nontaxable incomes to taxable incomes in the United States is appalling. For example, we have upon authority of the Bureau of Labor Statistics that in 1933 there were approximately 41,000,000 persons gainfully employed in the country. Add to that 10,000,000, the number, by conservative estimate, who are not employed but received income from various sources. The total is 51,000,000 subject to tax. Out of that total of potential taxpayers in 1933 we find that less than 2,000,000 actually paid any Federal income tax; that is, only 1.39 percent of our citizens are paying a direct tax in support of the Federal Government.

The question of what is an essential governmental function, according to the Court, cannot be stated in terms of universal application. For this reason the Law Reports are filled with decisions resulting in confusion and enormous administrative expense to the Treasury. The decisions of the Court itself are not consistent. In the Flint case (5) the Court held that the supplying of water by a city was not a governmental function. In the Brush case (6) the Court held that the supplying of water was a governmental function.

ORIGIN OF SOVEREIGNTY FICTION

Mr. Speaker, why this courthouse exemption of public salaries, despite the specific declaration of the sixteenth amendment; well, the courts still hark back to a century-old decision to exempt such officeholders and the income from public bonds. They unjustly attribute their conclusion to the authority of Judge Marshall.

"The power to tax is the power to destroy", said Judge Marshall. But when did he say it, and what was the subject before the Court? The judge said this in 1819, nearly a century before the adoption of the sixteenth amendment. And what kind of a tax was he considering? Was it a necessary tax laid impartially on all? Certainly not. It was a discriminating tax designed to obstruct the Treasury operations of the Government, and not to secure revenue.

Mr. Speaker, we are all familiar with the bitter struggle which attended the establishment of the first United States Bank, judged necessary to the functioning of the Government. In 1816 its charter was renewed. It was authorized to issue bank notes which should be legal tender in payment of Government debts, and to establish branches. It established such a branch in Baltimore. Now, sir, the old privilege enjoyed by private banks of issuing notes which functioned as a paper currency was a highly profitable privilege. Private bankers within the States opposed these Federal bank branches with their crowning advantage of issuing such legal-tender currency. To the State legislature these disappointed bankers went and secured the passage in 1818 of the following act:

Be it enacted by the General Assembly of Maryland, That if any bank has established, or shall without authority from the State first had and obtained, establish any branch, office of discount and deposit, or office of pay and receipt, in any part of this State, it shall not be lawful for the said branch office of discount and deposit, or office of pay and receipt, to issue notes in any manner, of any other denomination than $5, $10, $20, $50, $100, $500, and $1,000, and no note shall be issued except upon stamped paper of the following denominations; that is to say, every $5 note shall be upon a stamp of 10 cents; every $10 note upon a stamp of 20 cents; every $20 note upon a stamp of 30 cents; every $50 note upon a stamp of 50 cents; every $100 note upon a stamp of $1; every $500 note upon a stamp of $10; and every $1,000 note upon a stamp of $20, which paper shall be furnished by the treasurer of the western shore, under the direction of the Governor and council, to be paid for upon delivery: *Provided always,* That any institution of the above description may relieve itself from the operation of the provisions aforesaid by paying annually, in advance, to the treasurer of the western shore, for the use of the State, the sum of $15,000.

Sir, it is obvious that the act was intended to drive the United States branch bank out of Baltimore, and that the act was not intended to raise revenue for the State.

Said Daniel Webster, in discussing the act:

The sum called for is not assessed on property nor deducted from profits or income. It is a direct imposition on the power, privilege, or franchise of the corporation.

The act was not applied to banks generally, but only to banks not chartered by the State of Maryland. Its application to the United States bank and its branches in that day was just what its application would be today to the Federal Reserve banks, a direct assault on the operation of a Government function. What else could Marshall have done? The State banks were endeavoring, in 1818, to do to the United States banks just what the Government found it necessary to do later to issues of bank-note currency by the private State banks, with its 10-percent tax, namely, tax such currency to death.

EXEMPTION OF INCOMES—PUBLIC BONDS

I shall now discuss the losses of revenue resulting from the Court's exemption of income-tax payers from the inclusion in their taxable income of income they secure from interest on county, city, or State bonds. It is estimated that the loss of revenue from this source (1913–37) amounts to at least $2,000,000,000.

How comes this exemption? Well, sir, despite the sixteenth amendment the Court has held that the Federal Government has no authority "to lay and collect taxes upon income from whatever source derived", if the source was a county, city, or State.

Mr. Speaker, may I say that the present Chief Justice, whose great ability inspires the respect of his countrymen of all classes, had himself pronounced judgment on that subject. He was Governor of the State of New York when the income-tax amendment was submitted for ratification to the States. What did he say? Speaking specifically of the income from county, municipal, and State securities, Governor Hughes in his message of January 5, 1910, declared:

It is certainly significant that the words "from whatever source derived", have been introduced into the proposed amendment as if it were the intention to make it impossible for the claim to be urged that the income from any property, even though it consist of the bonds of the State or of a municipality organized by it, will be removed from the reach of the taxing power of the Federal Government.

The Court's latest pronouncement on this question was in the Ashton case May 25, 1936, in which the Court said (7):

Notwithstanding the broad grant of power "to levy and collect taxes, our opinions here plainly show that Congress could not levy a tax on the bonds issued by respondent or upon income derived therefrom."

This decision created a class of tax-exempt citizens and securities which runs into the billions. Here again, sir, the sixteenth amendment has been "altered" to read:

Congress shall have power to lay and collect taxes on income from whatever source derived: *Provided, however,* That the salaries of employees or officers of city, county, or State shall not be included as a part of their income, nor shall the interest derived by any citizen or corporation from any bond of any county, city, or State be included in his income for the purpose of taxation.

Mr. Speaker, it is a favorite maxim of the courts that men must be held to intend the natural consequences of their acts. If this be so as to judges, as it is to us, who are the judges who pronounced this judgment vetoing in effect the higher brackets in the income-tax law as applied to the swollen incomes of the country. Let us read the yeas and nays of this Ashton case.

YEAS	NAYS
McReynolds	Cardozo
Sutherland	Brandeis
Hughes	Stone
Butler	
Roberts	
Van Devanter	

The facts force the statement that a majority behave as if they had entered the lists for the vendetta against the income-tax principle declared by Justice Field. Hear him in the Pollock case:

The income-tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of $4,000 and those who do not. * * * Where is the course of usurpation to end? The present assault upon capital is but the beginning. It will be but the stepping stone to others, larger and more sweeping, until our political contests will become a war of the poor against the rich; a war constantly growing in intensity and bitterness.

This defiance of the sixteenth amendment provides large incomes with an election to veto the higher tax rates when applicable to them. Would the public budget maker of any other country submit to such vetoes of his tax measures after approval by the legislative authority? How about the British Premier? Can the resident of England slip his investments into colonial bonds to escape the payment of

income taxes? Will any British judge assume to stay the arm of the British collector for such a purpose? What should happen to the British budget if he did? Nay, rather, you ask, What would happen to the British judge? He knows too well that he would find himself the scorn of Democrats and Tories throughout the Empire, his office vacant, too, and his judicial robes torn from his back.

OKLAHOMA STATE LEASE CASES

Sir, a most important example of the misuse of the State sovereignty fiction is shown in the Coronado Oil and Gas Company case (8). In that case lands granted by the United States to the State of Oklahoma for the support of common schools and dedicated to that purpose by the State constitution were leased by the State to a private company for extraction of oil and gas, the State reserving a part of the gross production, the proceeds of which were paid into public-school fund, and the lessee taking the remainder. The Supreme Court held that under this lease the Coronado Oil & Gas Co. was an instrumentality of the State exercising a governmental function and that the Government had no right to tax the income derived through the lease. This was true, the Court concluded, although the income received by the private corporation did not inure to the benefit of the State but inured entirely to the benefit of the private corporation. It booted not that the corporation entered into this lease for its own profit in a purely private business undertaking. Mr. Justice Brandeis pointed out that vast private incomes were being given immunity from State and Federal taxation by this decision. Many of the large corporations of the country have been leasing State lands which contain minerals and have made enormous profits. It is certainly unnecessary and unjust to exempt, Justice Brandeis points out, this vast private income from taxation. The decision resulted in discrimination against competing corporations and it has been estimated has already cost the Government almost $3,000,000,000 in revenues. (C.)

COMMUNITY PROPERTY EVASIONS

Mr. Speaker, we are all familiar with a clause in our Constitution most fundamental to the existence of the Union. It is the clause granting supremacy to the Federal statute in case of a conflict with a State act or even a State constitution. It reads as follows:

The Constitution and the laws of the United States * * * shall be the supreme law of the land; * * * anything in the constitution or laws of any State to the contrary notwithstanding.

The Constitution also provides that all—

Excises (income tax) shall be uniform throughout the United States.

Mr. Speaker, the Congress, in its income-tax law of 1926, provided a schedule of rates which was impartially uniform as to the incomes of its citizens. This statute came into conflict with contentions set up under State laws, and the Court in disregard of both the supremacy and uniformity requirement of the Constitution gave supremacy to the tax-evading contentions under the State law. I refer to decisions relating to "community-property" income.

A married Member of Congress with no dependents, from any one of 40 of the States, whose total net income consists of his salary, $10,000, would deduct an exemption of $2,500, and under the present law pay an income tax of $415. But in disregard of both the rule of supremacy and the rule of uniformity, the Court majority has held that if he comes from any one of eight States in the Union that have an inherited peculiar Spanish or French law applicable to married persons, he can split his return and attribute one-half of his salary to his wife, so that each will have an income of $5,000. When they both deduct their exemptions, each of them will pay $130, that is a total of $260, or $155 less than his colleague from Virginia. The eight States are as follows: Washington, New Mexico, California, Arizona, Texas, Idaho, Louisiana, and Nevada. What the Congressman may do with his salary in those eight States, may be done, because of these Court interferences, by any salaried married man in such States not merely as to his salary but to all his income, though it runs into the millions. And here, sir, are some further examples of the discrimination:

Business	Net income	Tax in the 40 States	Split tax return in the 8 States	Saving by splitting tax return
Physicians, lawyers, editors, authors	$10,500	$458	$278	$180
Railway presidents	52,500	9,664	6,028	3,616
Presidents, large corporations	102,000	33,944	19,288	14,656
Movie actors	202,500	96,944	67,888	29,056

Commenting generally on the abuse of splitting of income-tax returns by husband and wife in all the States the Secretary also stated:

It is evident that this situation is the direct cause of numerous transfers, sales, assignments, and other arrangements between husbands and wives which have no real basis and are made because of a desire to avoid income taxes otherwise due. For example, property which has appreciated in value is transferred to the spouse who can sell it with the least tax liability. Again, property which has depreciated in value is transferred to the spouse with the larger income, in order that he may realize the greatest benefit from sale at a loss. Moreover, the present law encourages sales by one spouse directly to the other, and the courts are presented with the difficult and even impossible problem of determining whether such sales were bona fide or fraudulent. In the most notorious recent case, the jury acquitted the husband from a criminal charge in such a situation. The income taxes which the husband sought to avoid in this manner amounted to over $1,000,000.

Well, Mr. Speaker, the Government attempted in a series of cases to apply its tax uniformly as required by the Constitution and force the spouse earning the income or having the beneficial control of it to report it for tax purposes, and the matter was carried to the Supreme Court. In the Poe case and others (9) the Court ruled against the Government and gave supremacy to the State law for these tax evaders of the Federal Constitution and income-tax statute. The Court said that the Federal statute, which taxed the "net income of every person" taxed the income as determined by State law though the compensation was earned by the spouse the Government was trying to tax; though the Court admitted that under the State law he could deal with it practically as his own. In the Hopkins case the Court said in referring to the Texas laws:

They provide, as is usual in States having the community system, that the husband shall have power of management and control such that he may deal with community property very much as if it were his own.

The income-tax law justly requires the spouse earning such income to return it as his own. In no other way could the income-tax liability of earners of income be made uniform throughout the United States. I feel that the Court's decisions violate both the statute and the Constitution. The Court rulings have already resulted in a loss of revenue of over $200,000,000.

EXEMPTION OF STOCK DIVIDENDS

Speaking of loopholes, Mr. Speaker, the loophole opened by the Eisner decision is a loophole big enough to swallow the Bank of England. It is, besides, the monstrous mother of all the great loopholes which your committees are now investigating, in an effort—and I hope not a vain effort—to save the just and essential revenues of the United States.

Ladies and gentlemen, suppose yourselves as members of the Ways and Means Committee and a case like this were presented: A lawyer has been working for a realty company for a year, which owes him, say, $2,500 for his services. At the end of the year the company's president persuades the lawyer to take payment of his fee by way of a deed for one of its lots for which it paid $2,500. Would you say that the value of the lot should not be counted as part of the attorney's income for that year?

Or suppose a case of another corporation which owed its attorney $5,000 for services and elected, with his consent, to make payment by assigning him 50 shares of its stock having the market value of $5,000. Would you not feel that the market value of this stock should be counted in the income of the attorney? There can be but one answer to this question. The Ways and Means Committee gave that answer when it provided that such payments of income by way of property transfer should be considered as part of the taxable income.

Now, let us suppose, as members of the committee, you found that sometimes in corporate financing the stockholders

preferred to take their dividends in the form of paid-up stock leaving the cash itself in the company treasury for extension of the plant. What would be your disposition? You probably would not wish to deny the stockholders and the corporation this method of securing additional capital; but certainly you would not feel disposed to say that this method of paying the dividend should excuse the profiting stockholder from including this actual earned income as part of his income for taxation. You would say that the shareholder should be treated just as you had treated the lawyer in the above examples, just as the member of a partnership, as to undistributed profits; and that the value of the property received be entered as a part of his taxable income.

Well, Mr. Speaker, preposterous as it seems to common sense, the processes of courthouse ratiocination reached a different conclusion as to stock dividends. The Court held in the case of Eisner against Macomber that stock dividends representing distributable net income retained by the company should not be accounted as income as to the stockholder; that is, should not be subject to income taxes in his hands, unless and until the stocks were sold by the stockholder (10).

Following the decision (1920), as we need not be surprised, corporations in the United States in 1922 issued $3,348,050,000 in stock dividends (about the same as in cash dividends), nearly a billion of which sum represented dividend income of the Standard Oil Companies. In the years 1922–34 such stock dividends, amounting to $9,631,207,000 have been issued, on all of which the shareholders have escaped paying their surtaxes as individual members of society.

WHAT DO THE BRITISH DO IN SUCH CASES?

Mr. Speaker, in other countries like Great Britain the income or profit need not be distributed to the stockholder or be in coin of the realm. If earned for the shareholder, it is taxed as if earned by a partner in a partnership, and why not? The amendment does not provide that the income must be in cash. Congress properly—I should add wisely—provided the real income of the citizen should be considered. This income may take many and varied forms. One of the forms it has taken is the distribution of income by a corporation to its stockholders, of their profits, in the form of paid-up stock in place of the cash.

Well, sir, the Court in the Eisner case, by a 5-to-4 decision, held that dividends received in such paid-up stock were not income. This decision has cost the Government a loss of $1,060,000,000. I leave further comment to Justices Brandeis and Holmes. Mr. Justice Brandeis in his dissenting opinion said:

> If stock dividends representing profits are held exempt from taxation under the sixteenth amendment, the owners of the most successful businesses in America will, as the facts in this case illustrate, be able to escape taxation on a large part of what is actually their income. So far as their profits are represented by stock received as dividends, they will pay these taxes, not upon their income but only the income of their income. That such a result was intended by the people of the United States when adopting the sixteenth amendment is inconceivable. In terse, comprehensive language, befitting the Constitution, they empowered Congress "to lay and collect taxes on incomes, from whatever source derived." They intended to include thereby everything which by reasonable understanding can fairly be regarded as income. That stock dividends representing profits are so regarded, not only by the plain people but by investors and financiers, and by most of the courts of the country, is shown beyond peradventure by their acts and by their utterances.

And note the terse statement of Mr. Justice Holmes:

> The known purpose of this amendment was to get rid of nice questions as to what might be direct taxes, and I cannot doubt that most people not lawyers would suppose when they voted for it that they put a question like the present to rest. I am of opinion that the amendment justifies the tax.

But mark you, in order to reach its 5-to-4 conclusions the majority had to reverse a full Court judgment in the case of *Collector* v. *Hubbard* (12 Wall. 1) where the Court upheld the right of Congress, under the Civil War Income Tax Acts, to tax a stockholder's interest in the accumulated earnings of the corporation prior to the declaration of the dividend. The Court, reversing itself, now holds in the Eisner case that its decision in Collector against Hubbard must be regarded as being overruled by its decision in the Pollock case holding the income tax of 1894 unconstitutional. But the people expressly overruled the Pollock case by the adoption of the sixteenth amendment. Because of the Eisner case many of our wealthy individuals tie up their income in corporations and thus avoid the payment of the surtaxes due, or take their dividends in paid-up stock—that is, stock dividends—and thus avoid the higher brackets. By preventing us from taxing this income to the shareholder, when earned by the corporation, the Court has diminished the revenues of the Government by at least $7,000,000,000.

EVASION OF SURTAXES

Ladies and gentlemen, one of the most vicious forms of tax evasion has been the accumulation of surplus in corporations controlled by such taxpayers under the Eisner case in order to avoid the payment of their just shares of surtaxes. All this in virtue of the Eisner case. I quote from the President's message of March 3, 1936:

> The accumulation of surplus in corporations controlled by taxpayers with large incomes is encouraged by the present freedom of undistributed corporate income from surtaxes.
>
> This method of evading existing surtaxes constitutes a problem. Thus the Treasury estimates that during the calendar year 1936 over 4½ billion dollars of corporate income will be withheld from stockholders. In 1 year alone the Government will be deprived of revenues amounting to over $1,300,000,000 * * *.

Now, Mr. Speaker, if the Court would enforce our tax on these undistributed earnings of shareholders like we tax the partners on their undistributed shares of the profits of the partnership, we would not have this problem of tax avoidance. They do not have it in Great Britain, in France, and other countries. But neither do they have meddling courts to "run amuck" with the revenues. Is there anything in the Constitution that prevents the Congress from taxing undistributed dividends as it taxes undistributed profits of members of partnerships? There is not. In fact, under the same Constitution which we have today and had before the sixteenth amendment, the Supreme Court held in the Collector Case that this could be done.

Why does a man incorporate his yacht, putting his income, property, all his shares, and the like into the control of a yacht corporation? Why does he do it? Under the Eisner case such income will all be paid to the yacht corporation. The yacht corporation, of which he is president, and the rest of his family, the stockholders, will simply distribute back in salaries to the president and subofficials as much of his income to the family, during the year, as he finds desirable. Meanwhile the undistributed income escapes taxation under the higher brackets. Here is a circular, Forty-seven Ways to Save Taxes, issued by specialists in taxation, and most of those loopholes are loopholes traceable to the Court's decision in Eisner against Macomber (10).

GIFTS IN CONTEMPLATION OF DEATH AND IN AVOIDANCE OF ESTATE TAXES

You know we have such an institution as an estate tax. It is certainly a very liberal one in the lower brackets. Not until the estate reaches $50,000 is any tax whatever imposed. In order, however, to avoid the estate tax under the higher brackets, scheming individuals were engaged in the practice of making gifts to their families. Anticipating their deaths, they made gifts to their heirs and thus escaped the estate taxes.

Very well. Congress filled that loophole with an act providing that where the gift was made within 2 years of the death of the decedent there should be a presumption that it was made in contemplation of death and that the estate tax should apply. What had been the practice of other governments? Just the same as this of ours. Our administration found that with respect to those gifts made in actual contemplation of death, without the help of this 2-year presumption, the testimony as to the decedent's purpose, his condition, his prospects of life, was all locked up with his family and family doctor; and I am told that in those contests the Government never succeeds in winning more than about 5 percent of the controversies. The British lawmaker, facing the same problem that we have to face, met that situation by passing a law creating a presumption that any such gift, made within 3 years of the actual death of the decedent, should be treated as a gift made in contemplation of death; so that the estate taxes should become applicable. Did we have the same power to pass that act and for the same purpose, that the British House of Commons enjoys? Certainly. Our acts were perfectly constitu-

tional. It is the decisions of the courts that are unconstitutional.

England requires all gifts made within 3 years prior to death to be subject to her estate duty. But the Supreme Court said our 2-year act violated the due-process clause of the fifth amendment. The argument was that to levy a tax upon an assumption of fact which the taxpayer was forbidden to controvert was arbitrary and unreasonable. Well, a man is presumed to know the law. Suppose he does not. Is he allowed to dispute the presumption? In fact, this provision was a necessary measure to prevent tax avoidance and is a reasonable exercise of the power to lay taxes. To prevent us from taking steps to overcome avoidance of our taxes is an arbitrary interference by the Court with the power granted to levy taxes. And, since tax experts have explained to their clients that this conclusive presumption has been nullified, our "contemplation of death" provision can be avoided with ease. This decision has cost us about $8,000,000 and will probably cost us considerable more in the future. The Court has thus denied the right of both Government and States to protect their estate-tax revenues by such provisions, claiming that they violate the due-process clause of the fourteenth amendment (11). Mark the entry of old "due process" again, the courthouse Sanson of nullification, whose versatile ax is always handy when privilege demands the head of an offending statute.

INJUNCTIONS AGAINST COLLECTION OF TAXES

Mr. Speaker, on top of all this destructive attack on our legislative functioning with respect to taxation, comes a flagrant attack on the executive functioning by misuse of injunctions against its collection of the taxes, and in defiance of a necessary statute, as was well stated by Mr. Justice Miller in the famous Cheatham case (12).

If there existed in the courts, State or National, any general power of impeding or controlling the collection of taxes or relieving the hardship incident to taxation, the very existence of government might be placed in the power of a hostile judiciary.

But, sir, no such anticipatory interference by the courts is necessary; the internal revenue laws give the taxpayer the right to sue for a recovery of a tax after payment, if he believes it not justly due.

Yet the courts still insist, in many cases in defiance of statute, in also giving him a suit to prevent collection of the tax, thereby creating an unfair situation as to taxpayers generally and also thwarting the collection of the Government revenues.

This injunctive interference is in violation of an act enacted in 1867 still on the books. It reads as follows:

REVISED STATUTES, SECTION 3224

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

The reason for this statute is that, as courts are without authority to equalize taxes or to make assessments, such suits would enable those liable for taxes in some amount to delay payment or possibly to escape their lawful burden, and so to thwart the collection of revenues.

Nevertheless this is what the Court is doing and inspiring the lower courts to do. In the Pollock case the Court permitted Pollock, a common-share holder of the Farmers' Loan & Trust Co., to maintain an action to restrain the Farmers' Loan & Trust Co. from paying the income tax assessed against it. Mr. Justice White pointed out that the Court should not permit the Federal statute to be thus evaded in a subterfuge suit between a corporation and a stockholder. Yet the Court did, and is even extending the practice to permitting preferred shareholders to maintain such an action (13). The collection of our first income tax, under the act of 1913, was hampered by the Court permitting a stockholder to bring such an action to challenge its validity (14). And having decided to disregard this Federal statute by indirection, the Court then proceeded to disregard it directly by even permitting certain taxpayers themselves to maintain such a suit. I refer to the Miller and Hill cases (15) sustaining the lower courts in injunctions preventing the collection of taxes. It was Mr. Justice Stone, in his dissenting opinion in the Oleomargarine case, who said:

In my opinion, R. S. 3224, which says that "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court", cannot rightly be construed as permitting the present suit, whose sole purpose is to enjoin the collection of a tax. Enacted in 1867, this statute, for more than 60 years, has been consistently applied as precluding relief, whatever the equities alleged.

How much more equitable it would have been if the Court had required all the processing taxes to have been paid into the Federal Treasury. We could then have avoided the windfall tax and allowed refunds to those justly entitled. This was the procedure the Court adopted in the child-labor cases. Most of the processors would have been glad to pay this money into the Treasury because of competitive conditions, retaining the goodwill of their customers. To a large extent, the present unfortunate situation has been created because of interference by injunctions issued by the courts in defiance of the above statute.

III. WHAT OF IT?

And now you ask, my colleagues, "What of it?"

Well, ladies and gentlemen, look at the chart and its $16,000,000,000 of delinquent revenue.

Loss in Federal revenue because of Supreme Court decisions

Repudiation of the income tax	$1,500,000,000
Exemption of State securities	2,000,000,000
Exemption of State officers and employees	1,000,000,000
Community property-tax exemption	200,000,000
State lease cases	3,000,000,000
Exemption of stock dividends	1,060,000,000
Evasion of surtaxes	7,000,000,000
Statute of limitation cases	11,000,000
Foreign tax credits to foreign political subdivisions	2,000,000
Exemption of real estate from Federal estate tax	5,000,000
Invalidating conclusive presumption as to gifts in contemplation of death (estate taxes)	8,000,000
Exempting from estate tax trusts in which grantor retained interest	25,000,000
Estate-tax decisions of 1935 exempting family trusts	25,000,000
Invalidation of Agricultural Adjustment Act	1,017,000,000
Total	16,853,000,000

The tax situation created by the attitude of the Judicial Department toward the Legislative and Executive Departments cannot be fully commented on in a single address—but one comment forces utterance: "Verily, verily, the income tax is an unloved stepchild in that Court." The hate of Judge Field, father of the "due process" interpolation, the Jeffreys of Social Justice, rests like a blight upon it. The majority judges seem ready to give it a beating for any litigant. The record, I submit, justifies the statement that with regard to the public revenue the Court cannot be regarded as a conservative institution.

SUPREMACY OF A CLASS

Mr. Speaker, the most significant fact disclosed by the discussion is that a single class—the courthouse barristers, have assumed complete supremacy over the statutes of State and Nation. They alone can speak unbidden in the courthouse. Is there anybody here who would give such supremacy to a single class? Is there any class wise enough, good enough? Would you give it to the lawyers alone? Why not humanize it with some doctors, and with clergymen, who will insist on talking duties as well as rights—and the engineers, the men who construct and who will count and measure to be sure the machine will work. And would you omit men of business, farmers, and the Nation's workers? Leave it to the lawyers alone—the lawyer "often in error, but never in doubt." Daniel Webster surely was a great lawyer and this is what he thought of his profession.

Accuracy and diligence are much more necessary to a lawyer than great comprehension of mind. * * * His business is to refine, define, split hairs, look into authorities, and compare cases. If he would be a great lawyer, he must first consent to become a great drudge."

If the lawyer a century ago must have been a case drudge, what now, since the cases reported have multiplied by more than 10?

Keep in mind, ladies and gentlemen, that this supremacy in Government has been taken over by the courthouse where only a single class may speak unbidden; only lawyers at the bar or on the bench, only they, may speak unbidden in that forum.

They style themselves "constitutional lawyers", and would make a great mystery, and have made a great mess of our beloved Constitution. It is impossible for me to have confidence in the good judgment even if I do force confidence in its honest intentions. "They cannot be bought", it is said. Certainly not. I do not believe these "sea-green incorruptibles" could be bought with a mountain of gold. But as Woodrow Wilson once said of another class: "They needn't be bought—they already stand bought by their system."

LEGAL FICTIONS—REVENUE

Mr. Speaker, when you submit a subject to a courthouse, you invite a wholly different mental reaction from that required of the lawmaker's mind. Let me say there is such a thing as lawyer sense that does not make common sense. In saying that, I intend no sneer at the legal profession. I am a lawyer myself. Assistant Attorney General Jackson, the other day, gave a good illustration of this. He said he was the head of some revenue bureau that desired to know at just what time a man's marriage changed his status for taxation purposes. The question was referred to a brilliant young lawyer in the Bureau. He reported shortly. You may know, we have two legal maxims that lawyers often resort to. One is that the law does not regard a fraction of a day. So the day of the marriage would be out. The second, in giving notice, the day of service is not counted. So the young attorney reported, on that legal reasoning, that the effective marriage of John and Mary did not occur until a day and a night after the wedding. The Attorney General said that he could find no fault with the legal reasoning, but he tore up the opinion.

One hundred years ago Judge Marshall, in Maryland against McCulloch, dropped the following gem: "The power to tax is the power to destroy." That sentence has since become one of our fictions of the law. Now, there is another fiction that each State is a sovereign; the swami of the courthouse accept both fictions literally.

Let me illustrate. The State of Maryland is a sovereign State, it is argued. There you have a beautiful legal fiction built on a half-truth. We all know, however, that no State now a member of the American Union is a sovereign. None of them except Texas has ever been a sovereign, has ever exercised the first attribute of sovereign power, the making of treaties, or the conducting of wars. What is the virtue of these fictions in a courthouse? A tax litigant comes in, the owner of a lot of municipal, county, or State bonds: "You must not count in my income any income I get from these bonds, Mr. Federal Government. If you start taxing my income from these Maryland bonds, maybe you will destroy the sovereign State of Maryland." Now, there is a good example of courthouse sense that is not common sense. To yield supremacy in the Nation to a tribunal made up exclusively of lawyers fills me with a feeling of dismay.

But I would not be misunderstood about lawyers. The lawyer acting as a pilot to steer his clients through the pitfalls of a greatly complicated system of jurisprudence I warmly respect. He is a worthy servant of society, but a lawyer hired to distort and defeat the social will, to plan escapes for marauding clients, I despise.

Are there such clients? Listen to our leading financier, J. P. Morgan, who is quoted as saying: "Taxation is a legal question pure and simple, and not a moral one." Apparently the right of society is to be nothing better than a struggle between the United States and the superlawyers of the wealthy.

MIDDLE CLASS VIRTUALLY EXEMPT FROM TAXATION

Mr. Speaker, if we may regard the married couple without dependents as entering the middle class when the net income reaches $4,000 a year and as emerging into opulency when the net income reaches $25,000, then so trivial are the income-tax rates imposed that it is fair to say that the middle class is virtually exempt from these taxes.

I am not one of those who is carried away by the illusion that we can rely on skyscraping rates on the skyscraping incomes or fortunes as a sufficient source of revenue. I have no patience with these Robin Hoods in taxation. Look, if you will, at the skyline of New York. See its skyscrapers jut out like dragons' teeth, 100 stories, 75 stories, 50 stories. That is the visual image you retain of New York; but New York is not a 100-story town, it is not a 50-story town, it is not a 20, not a 10-story town, and if its budget makers had to rely on even skyscraper rates on its skyscrapers for revenue, the schools would close, its firemen would drop their hose, and the police resign. A skyscraper budget will not suffice. We cannot rely on it alone. And why should we? The very rich are not the only debtors to society, even though they are its chief debtors, judged by their often unearned or disproportionate gains from social aid and protection. The middle classes are also debtors and grossly delinquent debtors, too. I know how the $5,000, the $10,000 man feels about it. I know he says to himself, unless he is a very thoughtful man, "I earned this $5,000, this $10,000 myself, earned it all by my foresight and persistency. It is mine—all mine." The trouble with him is he forgets his big, silent partner—civilization, to whose prodigious aid he truly owes it nearly all—without whose cooperation, if indeed he had survived at all in the forest struggle, instead of a $5,000 or a $10,000 income, he would go hungry for his breakfast until he had caught an unwilling fish or trapped a fearsome rabbit. It is not easy, indeed, to fully picture our dependence on civilization in nearly every minute of our lives. Only the rare man, an Edison, a Lincoln, a Woodrow Wilson can render service to pay the debt. A husband and wife without children realizing today an income of $5,000 a year are getting more out of life than George and Martha Washington did.

I do not say it for approval, but when I measure all the debts I pay, in no instance is the quid pro quo as great as the services I receive through Government and its great gift, civilization. If all my other payments were rewarded as largely as my payment of taxes, in these benefits of civilization, the millionaire would seem insignificant in comparison. [Applause.]

Not self-pity but a little sane counsel is what we need. Perhaps we will take it from Benjamin Franklin—

> The taxes are, indeed, very heavy, and if those laid by the Government were the only ones we had to pay, we might more easily discharge them; but we have many others, and much more grievous to some of us. We are taxed twice as much by our idleness, three times as much by our pride, and four times as much by our folly; and from these taxes the commissioners cannot ease or deliver us by allowing an abatement.

To what, sir, do we owe all this, we, ourselves, the $10,000, the $5,000, the $3,000 man? I answer, to social order. And whence, to what do we owe social order? To government which supplies it and sustains civilization as the sun supplies heat and light to its planets.

What is the explanation of the trivial middle-class brackets, when we face an insolvent Treasury? There is such a thing as unconscious class discrimination, and I fear that the human material which composes our Congress has not shown itself fully proof against its subtle temptations. I, myself, belong to the middle class, and wish only to belong to it. If I understand the class, I wish to say that it will not thank its representatives in the Government for favors in taxation secured by putting the Government in peril. Rather would they not repel us with disgust. They know that this is a world of duties as well as of rights, and that their first duty is to maintain the great Government in which we are partners. They know that skyscraper taxation will not suffice. A demagogue may cry "Rights! Rights!" but they know that it is duties valiantly accepted which insure them the benefits of government with the civilization it alone can advance and sustain.

Sir, the middle class must do its part with others. We have big board bills to pay to nature for the drafts we have been making on our natural gifts—a denuded soil; a timberland destroyed; a flooded country to reclaim; exhausted gas and oil domains largely due to the excessive incomes which these decisions of the Court excuse from proper and necessary taxation. How great this bill of debt is to nature which is now demanding payment under penalty of flood and perhaps famine one can hardly guess, but it is not likely to be less than the cost of our highways.

Nor do our obligations cease with such restorative work. There is the great program of social security—a program, I predict, not likely to fall below a half billion dollars annually. Can any payment be longer stayed? Our board bill to Nature has long been overdue. Our duties with reference to social security are pressing ever harder upon us because of

industrial vicissitudes; nor is the Federal Government alone concerned. Some 28 States have found it necessary to enter the income-tax field, creating severe problems in double taxation. The slightest contact with this subject of double taxation discloses enormities of injustice against taxpayers in some instances, which no worthy government can permit to continue. In my own view, it has become necessary that taxpayers who do pay their taxes without evasion, should receive remedial consideration, and it is my purpose on a later occasion to bring to the attention of the House a proposal under which the income taxes of the Nation and the States and perhaps some other excise taxes shall be levied as one tax, the proceeds to be shared between the respective States and the Federal Government on some equitable principle.

Mr. Speaker, I challenge the authorities versed in public finance to say how a just and adequate budget can be formed in the United States under the destructive limitations of these decisions. Where is the private financier who would tolerate such interference with his business budget? I appeal to the private financiers of the United States, who have important budgets to form and balance, whether they should undertake their responsibilities if their work after its completion was to be made the subject of such ex post facto veto. Suppose that having formed their budgets based upon the necessary predicated prices of their various products, after the expense of production had been incurred and the products delivered to their beneficiaries, it should still lie in the hands of outside parties to determine whether such and such of their debtors should be exempted. What would become of United States Steel Corporation or the Bell Telephone Co. if at any time a junto of legalists had the power, on reasoning which wholly ignored the factors governing the making of their budgets, to thus nullify all duty of payment for large parts of the expenditures involved? Sir, what would become of institutions so irresponsible in other lands, even though they called themselves courts, which should thus destroy the sustenance indispensable to government and social order?

IV. WHAT ARE YOU GOING TO DO ABOUT IT?

I confess, sir, as one member of the Committee on Ways and Means, charged with the duty of initiating revenue measures, a feeling of complete discouragement. The Court's revenue decisions make it impossible for me to draft a revenue bill which does not grossly and unjustly discriminate in favor of large classes able to pay, at the expense of other citizens whom I must make pay taxes for both. The recent corporation income tax is an example, for it illustrates to what devices the public financier has been driven by the outlawry of our power to tax earned dividends to the shareholder.

Again, what are we going to do about it? The constitutional amendment cannot be made clearer by constitutional amendment; still it is suggested that we proceed by such a course. If we can get two-thirds here, two-thirds in the Senate, and then get three-quarters of the States, then, according to the suggested amendment, we should be authorized to reverse a decision of the Court declaring an act of Congress unconstitutional provided we could get a two-thirds vote in the House and Senate in favor of such reversal as well. Why not require that the vote be unanimous all around? Does anybody think that under party government, which seems now to be the rule for democracy, two-thirds government is possible in a legislative body? The curse of the country is not government by majorities, but by such one-third minorities—generally mere recalcitrants.

The next suggestion is one that Hamilton and Marshall both made—namely, that the Congress, like the British Parliament, might reverse a legislative pronouncement of the Court which rendered nugatory one of its statutes.

Sir, a third suggestion is one I now make. It is that the Congress establish courts of the exchequer to pass on all questions of law or fact relating to the internal revenue, with original, exclusive, and final jurisdiction under article III. This is a court well known to the common law, still functioning in England. Our legislative powers to tax are couched in general but in indeterminate phrases whose construction calls for legislative discretion. It is the American court alone that assumes to substitute its views on such general phrases for that of the Parliament. It thinks it is wiser than Congress. It is not wiser. But suppose you act under article III and the court sets your statute aside. Would it be acting with more violence than it has shown in expunging the welfare clause, adulterating the due-process clause, or in exempting themselves and others from payment of income taxes? Suppose it should set it aside; what then? You have at last been brought up exactly to the point which the President had to face—a sure constitutional solution of the problem which courts could not nullify, and that is by a revision of the number of judges. It is by that very method, history shows us, that the House of Lords has been controlled through the centuries, and parliamentary democracy saved in the United Kingdom.

Mr. Speaker, it is apparent that the life of the Government cannot be longer left subject to these destructive decisions. There is no escape from their reconsideration and reversal by the Court. It is the only reasonable course open. The Constitution cannot be made clearer by amendment than it has already been made by amendment. Then we must amend the Court statute. It will be better to amend the Court statute than to allow it to drive us to printing-press money, wreck the public credit, and perhaps wreck the Republic.

Ladies and gentlemen, we must face the issue:

If we would have public employees pay taxes on their income like others, we must reform the Court and reverse Brush Co. against ~~Michigan~~. Commissioner (1)

If we would have income from public securities taxed like income from private securities, we must reform the Court and reverse National Life Insurance Co. against United States.

If we would have those exploiting our gas, oil, and mineral resources under State leases pay their taxes like others, we must reform the Court and reverse the Coronado Gas Co. case. (2)

If we would put an end to the unjust discrimination between the income taxes payable by married couples, we must reform the Court and reverse Poe against Seaborn.

If the judges are to pay their taxes like others, we must reform the Court and reverse Evans against Gore. (3)

If we would have the earned income of stockholders taxed like the earned income of partners and other individuals, we must reform the Court and reverse the 5-to-4 decision in Eisner against Macomber, that monstrous mother of loopholes whose depredations have already cost the Treasury more than all its expenditures to meet the depression.

Let that eminent Court reverse these 5-to-4 decisions. It need not be taken as humiliation on its part. Indeed, a spirit of humility is the surest sign of wisdom, as has been displayed often in the history of our own fortunate country. If, Mr. Speaker, they will cooperate with us, if they will reverse these death-dealing decisions on the public revenues, then a future of hope and splendor opens out for the judges, for ourselves, and our country. If they refuse, Mr. Speaker, if they deny to this Congress the powers it needs to exercise, if at a time when, like a half dozen industrialized nations, we are facing the most difficult problems the human family has ever had to face, if still they shall obstruct us in the necessary program now, as a preceding decision obstructed our fathers on the subject of slavery, then the outlook is dread indeed.

Spirit of Washington, save us from such a fate. [Applause.]

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(1) *Pollock* v. *Farmers Loan* (157 U. S. 429; 158 U. S. 601).
(2) *Pacific Ins. Co.* v. *Soule* (7 Wall. 433).
Springs v. *U. S.* (102 U. S. 586, 602).
(3) *Hylton Carriage case* (3 Dallas, 171).
(4) *Evans* v. *Gore* (253 U. S. 245).
(5) *Flint* v. *Stone Tracy* (220 U. S. 107).
(6) *Brush* v. *Commissioner Int. Rev.*, March 15, 1937.
(7) *Ashton* v. *Cameron Co. Water Imp.*, May 25, 1936.
(8) *Coronado Oil & Gas Co. case* (285 U. S. 393).
(9) *Poe* v. *Seaborn* (282 U. S. 122).
Goodell v. *Roch* (282 U. S. 118).
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(10) *Eisner* v. *Macumber* (252 U. S. 189).
(11) *Schlesinger* v. *Wis.* (270 U. S. 230).
(12) *Cheatham case* (92 U. S. 85).
(13) *Ashwonder* v. *Tenn.* (207 U. S. 288).
(14) *Brushaber* v. *Union Pac. Ry.* (240 U. S. 1).
(15) *Miller* v. *Standard Nut, etc.* (284 U. S. 509).
Hill v. *Wallace* (259 U. S. 386).

2498—14083

(1) Since reversed

U. S. GOVERNMENT PRINTING OFFICE: 1937

November 21, 1939.

Honorable David J. Lewis,
National Mediation Board,
Washington, D. C.

My dear Mr. Lewis:

As Mr. Eccles is temporarily in the West on a belated vacation, I wish to acknowledge receipt of your letter of November 18 and to thank you for calling attention to your speech in the House in regard to the budget. In accordance with your request, I am enclosing a copy of the text of Mr. Eccles' recent address in St. Louis.

This was delivered before a large group of bankers and thus was addressed primarily to their concern about interest rates and hence bank earnings rather than directly to the matter of the budget. However, the Chairman again expressed his general view of what the alternatives are and his frequently stated conclusion that the budget should be balanced as recovery proceeds.

Sincerely yours,

Elliott Thurston,
Special Assistant
to the Chairman.

enclosure

ET:b