

PRESIDENTIAL
ADDRESSES
AND
STATE PAPERS

WILLIAM H.
TAFT

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DOUBLEDAY
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PRESIDENTIAL
ADDRESSES AND
STATE PAPERS

OF
WILLIAM HOWARD TAFT

FROM MARCH 4, 1909, TO MARCH 4, 1910



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Presidential Addresses and State Papers

has to do, we must be conscious that the measures I have proposed will consume all the time there is.

All this is in the line of performing the promises of the Republican platform, and we can certainly be discharging no higher or more sacred duty. If by the legislation we shall have defined with exactness the proper course for railroads to pursue and also the proper course for great industrial corporations to pursue and make clear the path of lawfulness, we shall have vindicated the good sense of the people in placing the Republican party in power.

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ADDRESS AT AUDITORIUM, DENVER, COLORADO

(SEPTEMBER 21, 1909)

Fellow Citizens of Colorado:

IT GIVES me great pleasure again to visit the Centennial State, and to find here, as elsewhere, the signs of a coming period of prosperity which promises to be exceptional in the history of the country.

I have undertaken a trip of 13,000 miles, with a view to getting a somewhat more accurate and reliable impression of the needs of the country, and with the view to coming into personal touch with the people of the country, and especially in those States so far distant from the seat of government that their people are apt to suppose that their interests are forgotten in the conduct of the Government. It certainly serves to bring the Chief Magistrate into closer union with the eighty millions of people of this country, for he can at reasonably short intervals come into contact with those to whom he is responsible for the proper discharge of his duties during the temporary delegation of power with which they have honored him. The great difficulty and burden of such a trip upon the one making it is the indispensable accompaniment of speeches along the way. It may also be hard on the people to have to hear the speeches, but in a country where the people rule, discussion is necessary, and if the Chief Executive in going about among the people does not discuss something, he will seem to be in the position of wishing to avoid consideration of the interests of the public, or to be afraid of bringing to their attention and rendering account to them of what the Government has done or intends to do. For that reason I have

attempted on this trip, at various centers of population of importance, to take up some topic of immediate interest, and explain my views upon it, and if it is a matter already acted upon, to show the wisdom of the action if I can, or if it is to be acted upon, outline what I deem to be the proper course to be taken. In the pursuit of this plan I have selected to-night for consideration and discussion the corporation tax which was embodied in the tariff bill recently passed, and the income tax proposition which at the same session of Congress, and really as a part of the tariff bill, though formally included in a joint resolution, was submitted to the States to amend the Constitution of the United States by giving to the Congress power to levy an income tax generally, without regard to the apportionment of the tax among the States according to population.

The necessity for the revision of the tariff arose not only because the rates in a number of the schedules had become excessive and were quite beyond the measure of the tariff set by the Republican platform, to wit, the difference between the cost of production of the article at home and that abroad, together with a reasonable allowance for profit to the American manufacturer, but also because within the last year or two the tariff had ceased to produce enough revenue in connection with the internal revenue law, to pay the expenses of the government.

There are two ways of meeting the difficulty which arises when your expenditures exceed your receipts; one is to reduce your expenditures, and the other is to increase your receipts. It is the proposal of the Administration and the Government to take both courses in this regard, and I have no doubt that the appropriations for that coming year will show a very considerable reduction in expenditures, perhaps reaching \$40,000,000 or \$50,000,000. But even this is not enough to make up for the probable deficit under the old tariff law, or under the tariff law as it has passed, unless accompanied by some additional method of taxation.

It was first proposed, and I recommended it in my Inaugu-

ral Address, that the central government impose a tax upon inheritances — a graduated inheritance tax; that is, a tax, the percentage of which increased as the inheritance was greater, in a certain proportion; but this was seriously objected to by many of the States, some of whose legislatures passed protests against it, on the ground that that was a field of taxation which the States had preempted, and in respect to which it would be rather unfair to impose a double burden. I have no disposition to quarrel with that conclusion, although I think a good deal might have been said in favor of the Federal inheritance tax because the truth is that even although the State and Federal Governments imposed the inheritance tax at the rate proposed, it would not have been particularly heavy. Still with the inheritance tax foreclosed, the question then arose as to what tax should be imposed in order to make up the deficit. This question arose in the Senate, for the inheritance tax had passed the House, and had been stricken out by the Finance Committee of the Senate. A part of the Republicans and all of the Democrats of the Senate united in pressing for consideration a general income tax on individuals throughout the United States. It left an exemption of those whose income did not exceed \$5,000, but upon the rest it imposed a general income tax of 2 per cent. It also imposed a tax under the former income tax upon inheritances, and it was as inquisitorial as possible in subjecting the business of every individual in the community to investigation, and permitted the examination of his books and all private evidences of what his business consisted of, and what his income was; this investigation to be carried on by the collectors and deputy collectors of internal revenue. The law was as near as it could be made that income tax law which had once been considered by the Supreme Court some ten years ago, and which was held to be unconstitutional by a vote of five to four. It was conceded that the tax would probably raise \$150,000,000 to \$200,000,000, which was far in excess of the needs of the Government

if the tariff bill was to retain its general form, as proposed, and so to produce revenues which should be reasonably expected from it. Our friends the Democrats favored the income tax with a view to substituting it for the tariff as an income-producing measure, thus minimizing the office of the tariff in protecting the industries of this country. In other words, the passage of the income tax bill would have lent support probably to the proposition to have a tariff for revenue only, and would have interfered with the protective policy to which the Republican party is pledged.

One further objection to the income tax amendment was that it had been declared to be unconstitutional by the Supreme Court, and to invoke a second decision upon that issue was to question the uniformity of the decisions of the Supreme Court and to drag the Court into a political discussion which, whatever its decision, could not make for its standing as an impartial tribunal before the people. It indicated a diversity of view between the Congress and the Court — two coördinate branches — with reference to the constitutionality of the law which it seemed unwise to perpetuate in a formal statute. But the income tax amendment seemed quite likely to pass by the vote of all the Democrats and a sufficient number of Republicans. Therefore those who were opposed to the income tax amendment looked about to see if a compromise could not be proposed less objectionable than the income tax amendment, which would satisfy enough Republicans who were advised to favor the income tax amendment to prevent the passage of that amendment, and such a compromise was found in a proposal to pass the present corporation tax, and also the joint resolution already referred to, proposing to the States an amendment authorizing the General Government to impose an income tax without apportioning it as a direct tax according to the population of the States. When Congress assembled, the Ways and Means Committee of the House had adopted a bill in which they made up the proper deficit by an inheritance tax and also by a tax upon tea and

coffee. There were serious objections to the tax on tea and coffee on the ground that it increased the expenses of living, especially among those least able to bear such expense, and therefore the Ways and Means Committee was induced to omit the coffee and tea tax. And then the question arose, what should be substituted for that tax in the bill?

In my Letter of Acceptance of the Republican nomination for the Presidency, I said I thought that an income tax could be devised which could conform to the Constitution of the United States, and therefore that the income tax amendment was not necessary, and when this situation arose which I have described, I directed the Attorney-General to prepare a law which should impose what in effect would be an income tax and still conform to the Constitution. The Attorney-General did so, and I recommended the imposition of that tax to the Committee on Ways and Means. After some deliberation, the committee concluded that even without the coffee and tea tax the income produced would be sufficient, by means of the inheritance tax, to make an additional form of taxation unnecessary. So the matter went to the Senate, where the situation became changed, as I have described it, and the question arose whether we could find some substitute for a general income tax that would satisfy the majority of that body and prevent the passage of a general income tax held by the Supreme Court to be unconstitutional. Accordingly a compromise was reached by which the present corporation tax was passed, and the amendment to the Constitution proposed.

For the sake of clearness, I may say that the Constitution does not forbid the levying of an income tax by the Central Government. The section of the Constitution involved in general terms forbids the levy of a direct tax by the Central Government unless such direct tax is apportioned among the States according to their population. The Supreme Court, in the last decision referred to, held that the income tax was a direct tax, and if levied at all by the Central Government must be apportioned according to the population

of the States. This made the imposition of such a tax utterly impracticable, and so construed in effect forbade a general income tax at all. But there are decisions of the Supreme Court authorizing an excise tax to be levied on business corporations and to be measured by the gross income or the net income of the business; and therefore it seemed to the Attorney-General, as it has to a great many excellent lawyers, entirely within the decision of the Supreme Court as constitutional to provide that all corporations engaged in a business for profit should pay to the Central Government an excise tax equal to one per cent. of their net earnings. At first it was thought that two per cent. would produce about \$25,000,000. Subsequent investigation seemed to show that this was a very decided underestimate, and that one per cent. would produce that amount, and that that amount would be sufficient to meet the probable difference between the net receipts from the internal revenue and tariff bill and the expenditures of the Government. The provisions for the corporation tax in the bill exempt all corporations whose net income does not exceed \$5,000. It is, therefore, in effect an income tax; that is it taxes earnings actually made. It is a tax upon success and not failure.

Complaint is made that it is a discriminating tax in that it taxes business conducted under a corporate form, whereas when the business is conducted by a partnership the business escapes taxation altogether. The justification for the distinction arises from the advantages which the business enjoys under a corporate form, first in that the individuals who really own the business by being the share owners of the corporation have only a limited liability and are not bound to meet the debts of the corporation beyond their stock investment, or in some States more than 100 per cent. beyond their stock investment; and, on the other hand, the advantage of a permanent establishment in the business, because no matter whether the present owners and managers die or not, the business continues in its corporate

form without a settlement thereof in the administration of the estate of the deceased owners.

Again, objection is made that the tax is really a tax upon the dividends of the corporation, and that in the stock of the corporation may be interested a great many people having but little property — widows, orphans and others. I am not disposed to deny that theoretically it would be better to impose a higher rate of taxation upon those having large fortunes than upon those having only a competence. As I shall elaborate farther on, I am very much opposed to exempting incomes above the actual living wage, because I think every one in the Government ought to pay something toward its sustenance, because every one derives benefit from it, and while an increase in the percentage of the tax, as the fortune of the individual taxed increases, is fair, it is fair because the burden of the taxation at the same rate is heavier upon a man with a small income than upon a man with a large income or fortune. Still it is not practical with such a tax as the corporation tax, where you tax the sources of the income before it reaches the individual who is to pay the tax, to impose a graduated tax, and the tax upon the net earnings of the corporation of one per cent. or two per cent. is so small that small holders of the shares will feel the burden to be very light. In all probability it will hardly affect their dividends at all, because most corporations do not declare all their earnings in dividends, and will simply take the tax out of the surplus.

We have had very little experience with income taxes in this country, but those we have had have shown the inquisitorial feature of the tax to be most harassing; that is, the power given to collectors of internal revenue and deputy collectors to look into a man's private affairs and to compel him to produce his private papers in order that his actual income may be ascertained. Moreover, the most objectionable feature of the tax is the premium upon perjury which it offers to those who were willing to conceal their income — a matter not at all difficult to do — and who thus subject

to a much heavier proportionate burden, those who are conscientious in making their returns and who pay the tax as the law intended. So great was this evil in the levy of an income tax in England that when that tax was imposed directly upon individuals, as was proposed here in the so-called income tax amendment bill, it was found that the proceeds of the tax at 10 per cent. were less than the proceeds of an income tax of 5 per cent. imposed as our corporation tax is, not upon the individuals directly but upon the income before it came into their hands. This is a practical argument in favor of the corporation income tax as against an individual income tax that is altogether unanswerable.

In England, after a hundred years of experience, the income tax is levied in only exceptional instances on the individual directly. It is first levied on the declared dividends of corporations; secondly, on rents before they leave the hands of the tenants, and, finally, on the individual with respect to matters that are not covered by rents and corporate investments.

Another distinction which is made in the English law, and which commends itself to every one with a sense of justice, is that the income tax on passive and permanent investments like the stocks and bonds in a corporation, should be higher than on earned incomes, that is, incomes earned by the services of the individual as salary, or as a professional income. Earned incomes thus described are really the proceeds of an application of the capital of the individual which is being consumed and will be entirely used up at the end of his professional life of twenty or thirty years, whereas the income from corporate and business investments will continue permanently without regard to whether the owner lives or dies, and will pass on by succession of law undiminished and without reducing the capital. This distinction justifies making a difference between a tax upon the income of corporations and that of individuals where they earn their income by services, either by making the rate less or by

not taxing the earned incomes at all. The latter is the effect of the corporation tax.

Another criticism of the corporation tax in the present bill is that only shares of stock in corporate enterprises are thus taxed, and that those who own bonds secured by mortgage upon the entire property or plant of the corporation, do not pay any tax at all. This is true, and the defect was fully recognized by those who drafted the corporation tax. They would have been glad if possible to impose a tax upon the bondholders who are only less interested in the earnings and success of the corporations than are stockholders; but the difficulty of including them and of collecting from the corporation before the payment of interest on the bonds, an income tax proportioned to a percentage of the interest to be paid on the bonds, was that Congress could not authorize a corporation to recoup itself in the payment of such a tax from the interest to be paid, because thus to impose a tax on the bondholder proportioned to the interest he received would be in violation of the Constitution as interpreted by the Supreme Court, as an income tax not apportioned among the States. Now, if the proposed amendment to the Constitution authorizing the imposition of an income tax without apportioning it among the States according to population passes, it will be possible to add to our corporation tax the feature of imposing a tax on the bonded interest in that corporation by a percentage tax upon the interest to be paid, thus reducing the amount of interest which the corporation would pay to the bondholder to the extent of the tax collected. This would make the corporation tax a more beneficial measure, and one reaching interests that ought to be reached, because under modern systems of financing corporations, the bondholders and the stockholders are all of them in a sense joint investors and a corporation income tax ought to include them all. Under the conditions that existed with reference to the Constitution it seems to me clear that the corporation tax is an equitable burden — one reaching active business not too heavy to retard it, but enough

to collect a substantial revenue from those who are successful in business. It is a tax easily collected — one that no corporation can escape—one in which perjury can not play any important part at all in an effort to escape it.

Another feature of it is that incidentally it will give the Federal Government an opportunity to secure most valuable information in respect to the conduct of corporations, and their actual financial condition which they are required to show in general terms in a public return. In addition, the law provides the means under proper limitations of investigating fully and in detail their course of business. This is to be done only after the Commissioner of Internal Revenue shall have ascertained from evidence that their returns required by law are not correct. Then the evidence which he secures by his investigations of books and papers and examination of witnesses is not to be made public but is to be held in the secret archives of the Government until the President shall deem it of public interest and according to justice to make the facts known. Up to this time we have no adequate statistics concerning our corporations. Even the stockholders, whatever their right may be to know the course of business of corporations, are generally in a state of complete ignorance, and any instrumentality by which the corporation shall be compelled to disclose with accuracy a general statement of their condition certainly makes for the public good. Indirectly it would help very much in another revision of the tariff, whenever that shall come, because corporations engaged in business said to be affected by the tariff will have upon record in Washington their exact financial condition from year to year in the matter of their income, their expenditures and their debts.

Having said this much with respect to the corporation tax as it is, I want to say a few words in favor of the passage of the income tax amendment as proposed by Congress to the States. Assuming the constitutional authority to have been given, I am opposed to a general individual income tax law except in times of great national stress. I am

opposed to it because of the difficulty already alluded to, that it puts such a premium on perjury as to have led other governments to abandon that method of levying an income tax and of imposing the tax wherever possible on the sources of income in the hands of those who are not ultimately to pay it. The instance I have already given of an increase of 100 per cent. in the proceeds of the tax when changed from a personal tax to one upon the sources of the income, like our corporation tax, is a most forceful argument in favor of the proposition — that the inquisitorial feature of an income tax levied directly upon the person, together with the inevitable opportunities for escape from the tax by use of perjury, make it desirable if possible to avoid such a direct method of levying an income tax.

But I am most strongly in favor of the adoption by the States of the amendment authorizing Congress to impose an income tax without apportioning it among the States according to population; and I am strongly in favor of this because in times of great stress, if war or some other calamity were to visit this country and we should need to strain our resources, the income tax would be one of the essential instruments by which we could collect a large amount of money to enable us to meet the exigency. It has been so in the past, for during the Civil War it was understood that the levy of an income tax without apportionment was constitutional, and such a tax was levied and was collected. And I consider it in the Constitution, as at present construed, an elemental weakness on the part of the Central Government not to be able in times of emergency to levy such a tax.

Of course, it will be said by those who are opposed to the income tax that there will be a disposition to impose a direct income tax merely as a means of collecting ordinary income taxes in normal times and that no distinction can be made in the Constitution by which the power to levy such a tax can be limited to times of emergency, because it is impossible to describe what the emergency should be. I agree with

that, and I agree that there is a probability that at times the desire to tax accumulated wealth will lead to the movement in favor of a direct income tax, but I am also confident that its inquisitorial character, and the fact that in time the opportunity for perjury will show it to be so ineffective in reaching the persons whom it is sought to reach by a proportionate burden, that it will be wise to adopt the course taken in England and other countries having great experience with such a tax, and to follow the course of our corporation tax rather than by direct personal imposition, except in great emergencies.

If the income tax amendment passes, as I hope it may, we can then enlarge the corporation tax so as to include a proper burden on the bondholders in corporations as well as upon the shareholders; and this will make this instrument of taxation even more equitable than it now is.

Those who favor a directly personal income tax to use it for the purpose of permanently restraining great wealth will probably find it ineffective for the reasons given. I have already considered in a speech which I made at Columbus in 1907 how our great fortunes could be divided without drastic confiscatory methods. It seems to me now, as it did then, that the proper authority to reduce the size of fortune is the State rather than the Central Government. Let the State pass laws of inheritance which shall require the division of great fortunes between the children of the decedants, and shall not permit a multi-millionaire to leave his fortune in trust so as to keep it in a mass; make much more drastic the rule against perpetuities which obtains at common law; and then impose a heavy and graduated inheritance tax, which shall enable the State to share largely in the proceeds of such large accumulations of wealth that could hardly have been brought about save through its protection and its aid. In this way, gradually but effectively, the concentration of wealth in one hand or a few hands will be neutralized and the danger to the Republic that has been anticipated by a continuation through generations of

such accumulating fortunes, will be obviated. The use of the income tax itself for this purpose will, I think, never be very successful because of the defect already indicated — the difficulty of finding the income upon which to impose the tax and the opportunity that perjury will offer to escape it. An inheritance tax can not be thus escaped because when a man dies his property must come before some court for consideration and adjudication with a view to its legal transmission, and therefore those who are to succeed, however reluctant, must always make a showing of just what the deceased left in order that they may acquire valid title to the succession.

It seems, therefore, that the present Congress has taken the wisest course in adopting as much of the feature of an income tax as conforms to the Constitution, and by recommending an amendment to the Constitution which shall enable us to round out and perfect this corporation tax so as to make it more equitable, and so as to make it an instrument of supervision of corporate wealth by Federal authority. I doubt not that the information thus obtained may be made a basis for further legislation of a regulative character, applicable only to those corporations whose business is so largely of an interstate character as to justify greater restrictions and more direct supervision.

ADDRESS AT THE ARMORY, PORTLAND, ORE.

(OCTOBER 2, 1909)

Mr. Mayor; Ladies and Gentlemen; Citizens of Portland:

I WISH to extend to your distinguished Mayor and your people of this beautiful city my heartfelt acknowledgment of the cordial reception which I have had at your hands since reaching your city this morning. I wish to thank the veterans of the Grand Army for the honor which they have done me to-night in escorting me to this hall. I appreciate the motive of these men who helped preserve the Union, who recognize in me the Commander-in-chief, under the Constitution, of that country which they did so much to preserve and save.

I am going to-night, my friends, if my voice holds out, and your patience holds out, to take a little review of the present administration, of what it has done, and of what it has agreed to do. In the first place the party of the administration agreed to revise the tariff, and in my judgment, that agreement involved a revision downward, because, under the theory of the protective tariff after a ten years' trial, the effect of competition ought to have made rates of tariff less necessary generally than they were ten years ago. Now the tariff bill which was passed was, in my judgment, a substantial revision downward, but it was not, in certain important respects, a compliance with the terms in respect to the woolen schedule, and perhaps there might be some other things mentioned of that character, but the truth was, that the States that were interested in the manufacture of woollens and the states that were interested in the preservation of the woolen industry united and prevented a change of that tariff,

which had been reached by agreement after very difficult negotiation.

Now, the question was whether, because that bill did not, in all respects, comply with the terms of the party, members of the House and of the Senate should decline to vote for it, and the President should decline to sign it. After thinking the matter over, I became convinced that it was my highest duty to sign it, for the reason that while, in certain respects, it was defective, it was nevertheless the best tariff bill which the Republican party had ever offered to the people, and it was necessary that a tariff bill should be passed, in order that the prosperity which we were awaiting should come. As long as there remained unsettled the important question of the tariff, business would not resume with the prosperity and the energy and the enterprise which it would have when business conditions became settled.

Again, we are engaged in running a government by party, and because some of us are disappointed with respect to some things that the party does not do, if we think that party considerations are of higher importance, if we think that in order to accomplish anything, we must have solidarity of party, then we may well weigh our personal predilections with reference to some issues, in order that we may maintain a strong party front and accomplish affirmatively the steps that we believe we ought to accomplish. It is easy enough to break up a party; it is easy enough to prevent legislation, but when you are charged with the responsibility before the country of carrying legislation, then you must have a party behind you.

Now, that tariff bill not only affected the tariff of the United States, but it also provided an additional means of taxation in order to meet the deficit which was promised, unless some other method of taxation was added to that of the customs and the then existing internal revenue. At first it was proposed to have an inheritance tax, and I recommended that, but the Senate found protests from all the States that they had occupied that field of taxation, and that they

desired the United States to keep off that reservation. Accordingly, the question arose, What should we do?

It was proposed in the Senate to pass an income tax law, to pass a law that had been declared by the Supreme Court of the United States to be unconstitutional. That court had held that an income tax was a direct tax, and that a direct tax, under the Constitution must be levied in accordance with the population of states. Nevertheless there was a majority in the Senate of Democrats and Republicans in favor of passing that bill unless some substitute could be devised which would satisfy the Republicans who were in favor of an income tax, and not involve the passage of a bill which had been declared to be unconstitutional. Accordingly it was proposed to have what is now known as the corporation tax, and also to pass an income tax amendment to the Constitution; that is, to propose to the States to amend the Constitution by providing that an income tax might be levied without apportionment as to population between the States. And, accordingly, by almost the unanimous vote of both Houses that amendment has been proposed to the people of the United States, and the corporation tax was passed in the tariff bill.

I propose, first, to allude to the income tax amendment, which may come up at any time in the legislature of any of the States. I sincerely hope that when it does come up it will pass in each State, and the reason why I hope so is that I think that such a power in times of need and disaster is necessary for the central government to maintain itself, and I would not take from the central government a power which in war is necessary to save the government.

We had an experience in the Civil War in respect to that matter. An income tax was levied, and it was supposed, by reason of judicial decision at that time, that the income tax was constitutional, but since that time, as you know, by a late decision — I say late; in 1896 or 1897 — it was held to be unconstitutional. I am not in favor of levying an income tax such as that which was provided in the bill, in

times of peace. I am not in favor of it because I think it will prove to be too inquisitorial as to individuals, and I think it will be found also that it puts a premium on perjury, so that the gentlemen whom you are especially after, when you levy an income tax, will escape, and only those who are too conscientious will pay more than their share. In times of dire need it is necessary that we should use such a tax, objectionable as it is in certain of its features, and, therefore, I hope it will pass the States.

Now, what is the corporation tax? That is a species of income tax which the Supreme Court has said was constitutional. It proposes to levy one per cent. on the dividends of all corporations as an excise tax, upon the business which they do as corporations. If I understand the decisions of the Supreme Court, that is held not to be a violation of the Constitution, because it is not a direct tax, but it is only a tax on business; it is an excise tax. That brings under Federal control in a sense and under Federal supervision in a sense all corporations. The tax is not levied on incomes of corporations less than \$5,000, but all corporations for gain are required to file returns which show their gross receipts, their expenses, their debts, bonded or otherwise, and certain other general facts which will show their condition and enable the tax-gatherer to assess the proper taxation.

If the Commissioner of Internal Revenue shall have reason to believe by evidence that those returns are inaccurate in any case, then he may send an agent who shall examine the corporate officers and the corporate books and such other witnesses as may be necessary to determine what the actual condition of the corporation in question is.

Now, that is a qualified publicity provision with respect to all corporations of the country, and I think it is an excellent incidental benefit of the corporation tax. It is said it is not fair, because on one side of the street is a partnership that is not a corporation, doing exactly the same business that the corporation is doing on the other side of the street.

But the corporation on the other side of the street has certain advantages in doing its business which are not enjoyed by the partnership. One advantage, and a very decided one, is that the partners are liable in all their estate for the debts of the partnership, whereas the share-holders in the corporation are liable only to the amount of their stock, or, under some State constitutions, to double that. Again, the corporation lives forever; a partnership dies with the death of one of the partners. Other advantages may occur to you, but these two are sufficient to make a distinction. If the corporation does not choose to continue, and they can divide back again into a partnership, they can do so, and nobody will charge them a tax, but as long as they enjoy the privilege of doing business as a corporation, and carry on their business with that advantage, then the Federal Government has a right to levy, and it seems to me it is a wise tax for the Government to levy.

It is not a heavy tax; one per cent. — that is one per cent. on a year's income. If you own ten shares of \$100 each, that is \$1,000, and you receive six per cent.; that would be \$60, and one per cent. on that would be sixty cents. It is not a very heavy tax, and I doubt if it will reduce the dividend in the case of any corporation, because a well regulated corporation ordinarily does not declare all of its earnings into the dividends. But whether it does or not, I do not mean to say that it is not a tax, but it is not heavy. It will raise about \$26,000,000 or \$30,000,000, and that will make up the deficit as it is calculated between the expenditures of the Government and the amount raised from the customs and the internal revenue.

Another provision of the tariff law is the section which declared free trade between the Philippines and the United States, and that, my friends, you are decidedly more interested in from the standpoint of your pocket than I am, because, unless I am no prophet at all, unless I know nothing of the Philippine Islands, and am no judge of the business that is to grow out of our association in free trade with them, you

are going to find a trade with the Philippines that will grow each year, that will become more and more valuable to you, that will become more and more valuable to the Philippine Islands; so that when the time comes that we can say to the Filipinos: "Here, we have educated you all up to self-government, and you are at liberty to go and become a separate nation, and cut off our business associations and have a tariff between us," you will find, in my judgment, that neither the Filipinos on the one side, nor we on the other will desire that severance.

The corporation tax, I have said, gives some Federal supervision over corporations. If you were to look into the statistics of the corporations and try to find out how many there are in this country and what business they are doing and what earnings they are having and what their expenses are, I venture to think you would be in a mass of statistics in which you would lose yourselves. The fact is, there are at present no means of telling what our corporations are doing. In some States they are required to make reports, and in others not. All the difficulties that we have had in respect to the standards of business, in respect to monopolies, in respect to those things that Theodore Roosevelt denounced, and intended to bring about legislation which should stop — all those things have arisen out of corporations and the privileges which corporations have been given. Now, I am not here to denounce corporations. We could not get along without corporations — they are a necessary instrument in the business of this country, and in its prosperity; but as we give them privileges, as we give them power, so they must recognize the responsibility with which they exercise that power, and we must have the means of compelling them to recognize that responsibility and to keep within the law.

One of the things that enables us to keep them within the law is to know what they are doing, for one of the things that a corporation does, if you do not supervise and look closely, is to hide everything behind it, and this corporation tax is a step

and a long step toward Federal investigation and supervision—I had almost said control—of all corporations. Of course, corporations within the State are State corporations, but they generally do a large interstate business, and after we have established this only modified and qualified supervision of all corporations, we can begin to classify and make more acute and more direct and more thorough our investigation of those particular corporations that we are after. I think, therefore, that this administration has something already to point to in its accomplishment; that it has passed the tariff bill, that it has put free trade between the United States and the Philippines, and that it has taken a long step toward the proper control of the corporations in the passage of the corporation tax law.

Another thing which the tariff bill has done, which has not been commented on particularly, is the provision called the maximum and minimum clause. The European nations have not been slow in levying tariffs themselves. And they have at times discriminated against us in favor of some other country with which they had friendly relations. They have also at times imposed such restrictions, hardly in good faith, upon the importation of our food-stuffs, our lard, our hogs, our beef and other food products, which we send over there, as really to exclude us from their markets; and they have done it in such a way that it was difficult for us to retaliate or to secure an amelioration of the condition of exclusion.

Now, this maximum and minimum provision leaves to the President to say whether any country with which we have business exercises the power of unduly discriminating against American products, and if it does not, then they enjoy the benefit of the minimum or normal rate of tariff in coming into this country with their products. But if it does, then the President shall refuse, if in his judgment their provisions are unduly discriminatory against this country and in favor of some other country. If that is found to be the case, then the President shall refuse to proclaim that the

minimum tariff is in effect between us and that country, and thereby the maximum tariff of 25 per cent. of increase on everything goes into force.

They have maximum and minimum tariffs in other countries. Up to this time we have had none here, and every time we wanted to get even with some country in order to make that country come down and do justice to us, we have had to appeal to Congress to change the rates, and that was a very clumsy and generally an impossible thing to do, because Congress does not want to change one rate without changing a great many others. So this now transfers that power to the Executive, and enables the Executive to act without waiting for Congressional action. What is going to be its effect? Not that we are going into a tariff war — not at all. I sincerely hope I shall not be called upon to exercise this power in a single case with respect to a single country, because the existence of the power is enough to prevent other countries from exercising that discrimination against us when they are advised that we have weapons of our own with which to retaliate.

Another and most important provision of the tariff is that which enables the President to appoint or employ as many experts as he sees fit, consistent with the appropriation of \$75,000, made to assist him in the execution of this maximum and minimum tariff clause, and also to assist him and other officers in the execution of the tariff law itself. I construe that to give me power to appoint a board, which I have appointed, which shall go into this tariff business thoroughly, which shall assist me with respect to a knowledge of foreign tariffs, whether they are unduly discriminatory, and if so, how; also to tell me of the operation of this tariff, to tell me the cost of things here, and the cost of things abroad, and to explain to me what these mysterious technical and business expressions in the tariff law mean. You hear a great deal about the tariff, but I would like to have you take up a tariff bill and go through it and then tell me what it means.

Why, it is just like so much Choctaw to a man who is not

an expert, and you take an expert on a part of it and he will find that a good deal of the rest that he is not an expert on is Choctaw. So what I wish to use this board for, and what I think under the law I have a right to use it for, is to make a glossary, to make an encyclopedia, to make what is comparable to the United States Pharmacopœia with respect to drugs, so that when a thing is completed and you take up the tariff law and come to something you do not understand, you can turn to that particular head in the encyclopedia and find out what it means, find out what the exact rate is *ad valorem*, find out where the article is produced, how many factories in this country, how many in other countries are producing it, and in what quantity; find out how it is produced and what labor goes into it, and what the material costs here and abroad. When we have that, we shall have something upon which the Senate and the House and the people can act intelligently in respect to the revision of the tariff.

Now, my friends, that is what has been done. What is there yet to do? In the first place, this administration was elected on a platform that we proposed to carry out the policies of Theodore Roosevelt, and we propose to keep that promise. Let us see what those policies were, speaking generally. I had occasion to say the other night that one little difficulty in carrying out those policies is that there are sometimes indefinite views as to what those policies are. There are some gentlemen, to use an expression that I have heard good Catholics use when they say that a man is even more Catholic than the Pope, who are more Rooseveltian than Mr. Roosevelt; and when they get a fad that Mr. Roosevelt may have heard of or may not have heard of, but which they are very much attached to, they like to gather it in as a part of the Roosevelt policies, and then if you do not subscribe to it, they denounce you as a traitor to the Roosevelt policies.

Well, I was in Mr. Roosevelt's Cabinet four years and had some opportunity to understand what his policies were.

The fact is, it fell to my lot to take the platform and discuss them, by his direction and with his sympathy, and therefore I think I know pretty generally what the Roosevelt policies are and what the platform of the Republican party meant when it pledged the party in the administration, if elected, to the carrying out of these policies.

Mr. Roosevelt's chief policy was the determination to make the great corporations of this country obey the law, and those great corporations included two classes; the railroads and the great industrial corporations that did a large industrial business, and that had shown a tendency to try to monopolize that business and control prices and suppress competition. Mr. Roosevelt impressed upon the country, impressed upon Congress, and succeeded in inducing Congress to pass what was known as the Hepburn Rate Bill, and that was for the purpose of enabling the Interstate Commerce Commission to fix rates when complaint was made as to their unreasonableness. Up to that time the only thing that the Commission could do was to say, "We believe this rate is unreasonable, and you must fix another rate"; but that law said: "No, when you find that the rate is unreasonable, then it is your business to go on and fix a reasonable rate."

The law gave greater power to the Commission in other respects in detail, which I shall not dwell upon; but it contained a provision for a court of review. There was considerable discussion as to whether it ought to do so or not. In my judgment it ought to have done so but it did not make any difference whether it did so or not; there would be a court of review of a decision of the Interstate Commerce Commission. A court of review arises from a constitutional right of a railroad company or any other corporation owning property to obtain from its use a fair compensation; and, therefore, if the rates were confiscatory, to complain that it was property taken away from them without due process of law. Hence the situation was this — if you attempted by such a law to prevent recourse to the courts it would invalidate

the law; if you gave recourse to the courts, well and good; if you did not say anything about it, then there was recourse to the courts anyhow. So that the question really was a moot one.

Now, the friends of the measure, many of them, dreaded the reference to the court because it was thought that this would delay action and prevent a rapid fixing of rates; and I am inclined to think from the reports of the Interstate Commerce Commission that this fear has proven to be well founded, and that the reference to the court, to the circuit courts and the court of appeals has delayed the remedies sought before the Interstate Commerce Commission, so that we ought to make some other provision in order to expedite those proceedings.

For myself, I think it wise, after a consultation with the Commission, and after conferring with members of the Cabinet, to recommend the establishment of one court of five members to whom all such appeals shall be referred. The fact that they have no other jurisdiction will make them experts; the fact that they sit as five men will enable them to dispose of the business rapidly, and then a case will be ended, except on an appeal to the Supreme Court.

It is possible to go into one of some forty or fifty United States Courts all over the country and file your review or petition for review of the decision of the Interstate Commerce Commission. That produces conflict of decisions between a judge in Oregon and a judge in Massachusetts, and prevents that uniformity which is wanted, necessarily, to establish the proper rights and proper conduct of railroad companies.

Then there are some other features which ought to be amended in the Hepburn Bill, which I shall not stop to call attention to, except to say in the party platform specifically was provided a promise that a law should be passed referring to some tribunal the question of how many bonds and how many shares of stock every interstate railway company may issue. In other words, a measure to prevent the watering of

stock in the way in which it has gone on heretofore. That is important in a number of respects. It is important, of course, because when you water stock you only do it to deceive people and get them to pay more than the stock is worth. That is the only object of watering stock. Again, it is wrong because when you come to determine what a railroad company ought to earn, the owners of the railroad company turn at once to their stock and bond account and say: "Here are our shares of stock, and here are our bonds, and we ought to earn 5 per cent. on our bonds and 6 per cent. on our stock." If they water the stock and treble it beyond the actual property they have, you see that requires they should pay 18 per cent. of what was the real value of the railroad, rather than six. In other words, it affects, and affects most injuriously, the rights of the people in determining what a reasonable compensation for a railroad shall be. Another thing is that if you pile up the stocks and bonds of a railroad company in such an amount that they can not even earn, no matter what they charge, their interest charge and the dividend on the stock, you are going to have that company in court in the hands of a receiver; you are going to prevent the expenditure of money needed to make it a good common carrier; you are going to interfere with its usefulness in carrying the interstate trade. And there is where the Federal Government has a right to step in and say, "We propose to supervise your method of doing business, even if you are a State corporation only; you are doing an interstate business, and we have a right to impose such a limitation on your method of doing that business as to secure efficiency and to secure the best kind of a railroad to carry goods and carry passengers."

Then there is the anti-trust law. That law provides that any corporation or any combination or conspiracy in restraint of interstate trade shall be punished. It provides also that a monopoly shall be punished in interstate trade. It is a law most difficult to enforce. It is a law that by its terms is so wide that it includes other restraints of trade than

those which are with intent to monopolize or with intent to suppress competition. And if you read some of the decisions of the court by judges who do not appear to be friendly to the law, you will find that the very fact that it seems to cover a great many innocent arrangements which have a tendency to restrain interstate trade serves to make the law ridiculous. Now, what I recommend is that the law be so amended as to narrow it and confine it to combinations and conspiracies to suppress competition and to establish monopolies, and to leave out the denunciation of general restraints of trade. At common law general restraints of trade were not crimes, but men who entered into a contract that had a tendency to restrain trade were left to their own devices to secure its execution. The courts would not enforce it, but this goes farther and denounces as a crime all restraints by contracts and combinations and conspiracies in restraint of trade.

Now, what is the effect of that? One effect has been that the Supreme Court has held that a boycott levied against interstate trade is within that statute, and the labor unions and others have complained that that is an extension of a statute intended to suppress monopolies, trade monopolies and trade suppression and competition, to something which, while the letter of the statute permits it, was not intended by Congress, and was not the evil at which Congress aimed. I am inclined to think that that complaint is not without good foundation, and that we ought not to strain the statute to meet something which in its original conception it was not intended to remedy. I do not think there is any doubt about where I stand in respect to boycotts. If there is, I will just state what I think about them. They are illegal and they ought to be suppressed.

I would never countenance a law which recognizes their legality, and I have not hesitated to say so for a good many years, but I do not think the way to suppress them is to take a Federal statute that was intended for another evil and make it apply to them, although the letter of the statute, and doubtless the judicial construction is right — I am not saying

anything against that, I am not criticising the courts, but I am saying it has just happened that the letter of the statute covers their cases. If the statute is changed as I suggest, the letter of the statute will not cover their cases. The labor unions have said they would like to have a definite exception, saying this statute should not apply to labor unions. I would not consent to that at all. Labor unions have got to obey the laws like everybody else. And to introduce a special exception into a statute is to introduce class legislation, and that we do not approve in this country at all. But if by language which narrows this statute and reaches the evil which it was intended to reach, and reaches it better than by language that is broader and gets in a lot of innocent things in addition, we can make it more effective, and in making it more effective we leave out its application to boycotts, I have not the slightest objection. I think it is a good result.

The anti-trust law is a hard law to enforce. It is a hard law to enforce because it is directed against something which the natural tendency in the spirit — the intense spirit of competition—leads business men to. They wanted to avoid competition. They wanted to get ahead of their competitors, and soon they would proceed to unite with their competitors to drive everybody else out of the business, and they would control prices. Twenty or thirty years ago that seemed all right. But when we began to realize what the logical result of that was, and that if it went on we would soon have every business in the hands of a few men, and we would all be subject to the tyranny and the greed of those few men, we saw something had to be done — and this statute was passed.

Now the statute has been most useful and I believe to-day that due to Theodore Roosevelt's efforts, and due to the crusade which he, like Peter the Hermit of old preached, there has been a new standard introduced into the business of the country; and that men consult statutes now, and consult lawyers to know what the lines of the law are. And it is our business to say to these gentlemen: "Thus far shalt

thou go, and no farther" — to point out what that line is. It takes some time for a series of courts to make a decision which shall be plain to the business world. But we are going on with this trust law, and if we amend it as I suggest, we shall draw the lines closer and closer and enable men to know what is legitimate business on the one hand, and what is not on the other.

Now, I have a great many friends in business, and have talked with them on this subject; and I am convinced a good many of them have a good deal to learn.

A gentleman said to me, "We ought to have a trust law that shall permit us reasonably to regulate competition, so that we shall unite to prevent too much competition." Well, he didn't tell me just what kind of a law that was going to be; and he did not tell me, because he could not tell me.

Again, you will hear a gentleman say that we ought not to have a provision for these restraints of trade to suppress competition which shall be unreasonable; and if they only reasonably restrain trade, and reasonably suppress competition, and you get a reasonable monopoly, then it is all right. Well, I don't know what a reasonable monopoly is. I do know what, at common law, a reasonable restraint of trade is; and I will explain that to you, if you have the patience to listen. I didn't expect to speak this long, but this is a subject most important, and if you will only bear with me I will get through.

The term "restraint of trade," in English law — common law — our law — referred to contracts by which a man agreed that he would not go into business — a certain kind of business — within a certain territory. Now, that contract was enforceable at common law if it was reasonable. If it was unreasonable it was not enforceable. Now, let us see how the courts arrived at the question whether a contract was reasonable or not.

The exception as to reasonableness was introduced for the purpose of enabling a man who had made a good business, and acquired a good will in that business to dispose of that

good will for a price, and to give it to some one else so that some one else might enjoy it. As, for instance, there is a merchant doing business in a certain line in the town of Portland, who wants to sell the good will which by twenty years' business he has built up and made valuable, and he goes to John Smith and says, "I want to go out of business; I will sell you all my plant, and I will sell you my good will." "Well," John Smith says, "what is the good will worth if you can sell it to me and then can go into business on the next corner? You will get back all your old customers." "Ah," says the man who is about to sell, "but, I will make a contract with you that I will not go into business in the city of Portland."

Now, that is in restraint of trade. It is in restraint of the man's own trade. But the common law said that was reasonable; because the restraint is limited to that which the man is selling, and which the man is buying. It is what is necessary to protect the good will and make it property on the one hand and enable the man with a business to offer it as something worth having on the other.

Now that is as far as the common law went in saying what was a reasonable restraint of trade. I need not say to you that is a narrow phase which in the great industrial business we are talking about plays no part whatever. But when we talk about reasonable suppression of competition and of a reasonably good trust, assuming that a trust intends to monopolize something, I don't see how you can make any distinction at all, or how a judge can sit on the bench and say, "This monopoly is all right, and that is not." I say all monopoly is wrong, and all combinations to suppress competition — legitimate competition — are wrong. The statute ought to say so, and ought to be enforced in that way. But restraints of trade which are intended to suppress competition are monopolies, and ought not to be regarded at all.

We are going ahead to enforce that statute. As I say, it is a difficult statute to enforce; but I think the country is

prepared now to accept that rule of law. I think the business community generally is looking with great care to see whether it is coming within the inhibition of the law; and I hope by urgent prosecution, and by a change in departments, so we can get more rapid action, the law may be more promptly enforced.

There is another Roosevelt policy that we are pledged to, and that is the conservation of resources. I have not time to-night, and I will not detain you with a discussion in detail in respect to that, except to say it covers the treatment of our forests in such a way as to leave something of those forests to posterity; to leave them so that they shall restrain and equalize the water supply. That means also such retention of control over the water powers of this country by the Government, over those water powers which in order to be used men must use the Government land, to retain such control over those that the Government may be able to supervise or regulate the rates charged for the power furnished — the electrical power furnished through those water powers.

Then with reference to the reclamation of arid lands, it means the Government shall go on and by the use of money which the public lands bring to it, increase the productive area of land throughout this arid or semi-arid territory all over this western country.

Again, it means with respect to coal lands, with respect to oil lands, and with respect to land which produces fertilizers, that there should be some provision by which the Government shall prevent the use of those lands by monopolies or syndicates which shall monopolize the use of the coal, the use of the fertilizer, or the use of the oil.

Now, I do not mean to say those problems have all been worked out; but I do say we have gone so far in the matter of the waste of our resources as that men have seen it, and have been able to call a halt and impress the public mind with the necessity for action. And when Congress meets, I purpose to bring the matter before them and to ask Congress

to amend the statutes so as to put more power in the hands of the Executive in respect to the disposition of this domain, with respect to imposing conditions on the use of the lands which the public gives to its citizens for settlement, in order that there may be a retention of power in respect to these resources, and that they may not be turned over to men who will not observe proper rules, so that on the whole we may not look back upon a field of disaster and waste of which we should not be proud in our history.

Now, my friends, I have talked to you a great deal too long; but these are subjects I am interested in and you came in here and deliberately sat here and didn't move out, and you have had to pay the penalty. I thank you.

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