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II

THE INHERITANCE TAX

PREFACE.

The growing importance of the inheritance tax in America is shown by its adoption within a few years by a number of commonwealths, and by the consideration of the question in some form during the past winter by fully a dozen legislatures. As yet there has been no American work on the subject, treating it from other than a legal standpoint. Such being the case, an historical and economic examination of the subject may not be inappropriate at this time.

The theoretical interest attaching to this mode of taxation is no less marked than its practical importance. The theory of the inheritance tax is many-sided and complex. From one point of view, it opens up the whole question of inheritance and bequest, a question which in the limits of this monograph can only be touched upon in the briefest manner possible.

I have used the term inheritance tax to mean any tax on the devolution of property, real or personal, either by will or intestacy. Such taxes have been known at different times and places by a great variety of names, and it seems desirable to adopt a general term which shall be applicable to them all. The English term "death duties" is not inapt, but it has not come into general use in this country, and it might be objected to it that these taxes are not really taxes on death. The American taxes have been known in some cases as legacy and succession taxes, but more generally as collateral inheritance taxes; hence the term inheritance tax corresponds with American usage, as well as with the German word *Erbschaftssteuer*.

I have used a number of other expressions in the popular

rather than the strictly legal sense. Thus, in using the words inheritance and succession as applying to the property received, and the corresponding words heir and successor, I have disregarded the legal distinction between testacy and intestacy, and between realty and personalty. At times I have distinguished between the rights of inheritance and bequest; but I have applied these terms also to both real and personal property.

I desire to acknowledge my indebtedness to the many American and Australasian officials who have given me valuable information and provided me with materials which would otherwise have been inaccessible.

M. W.

Columbia College, May, 1893.

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CHAPTER I.

CONTINENTAL EUROPE.

§ 1. *Rome.* The origin of the inheritance tax has usually been attributed to the Emperor Augustus, who is known to have established such a tax in Rome in the year 6 A. D. Some writers have expressed the belief that a similar tax was imposed by the Voconian law nearly two centuries earlier, but of this there is no conclusive evidence. If such a tax was introduced at that time it was of short duration. Octavius and Antony, at the time of the war against Pompey, attempted to impose a tax on testamentary dispositions of property, but the proposal was indignantly rejected by the Roman people.

It seems probable that the Romans borrowed the idea of the inheritance tax from the Egyptians, with whose financial and administrative systems they were well acquainted by the close of the Republic. There are evidences that Egypt had an inheritance tax at this time, of which the rate was probably not less than a tenth, and from which not even direct heirs were exempt. A papyrus has been found which relates that a certain Hermias was sentenced to pay a heavy penalty for failing to pay the tax on succeeding to his father's house. Another inscription records a sale of property by an old man to his sons at a nominal price, apparently for the purpose of evading the inheritance tax.[1]

Concerning the Roman tax our knowledge is much more positive.[2] Having fixed a definite term for military service,

[1] Lumbroso, *Recherches sur l'économie politique de l'Égypte*, pp. 307 *et seq.*

[2] Dio Cassius, Ῥωμαϊκὴ Ἱστορία, lib. lv, chap. 25; lib. lvi, chap. 28; lib. lxxvii, chap. 9; Plinius, *Panegyricus*, xxxvii–xl; Perez, *Praelectiones in Duodecim*

Augustus determined to create the *ærarium militare*, a special fund the object of which was probably not the support of the standing army, as has been supposed, but the pensioning of veterans.[1] The Emperor contributed large sums to this fund from his own fortune, and then requested the Senators to submit plans for raising the remainder of the revenue required. He doubtless wished them to realize the difficulty of the problem of taxation before making known his own project; at any rate, he rejected their proposals and introduced a tax of one-twentieth upon inheritances and bequests. Augustus claimed to have found this tax proposed in the papers of Cæsar; but notwithstanding this high authority he was for some time unable to obtain the approval of the Senate. Again he called upon the Senators to devise a better tax, and when they were unable to do so he threatened a general land tax, and even sent out agents to take a census of landed property. This stratagem proved effective; the Roman people, long exempt from direct taxation, had no desire to see the land tax reimposed, and the Senate at length approved the step which the Emperor had taken.

The *vicesima hereditatium*[2] applied only to Roman citizens. Small amounts were exempt, and allowance was made for funeral expenses, but bequests for public statues and temples were subject to the tax. Among the old citizens of Rome, Augustus exempted the nearest relatives; no such immunity was granted those newly admitted to citizenship, unless they had also obtained rights of cognation. This discrimination

Libros Codicis Justiniani, lib. vi, tit. 33; Cagnat, *Les impôts indirects chez les Romains*, IIIe partie; Clamageran, *Histoire de l'impôt en France*, i, 78; Pauly, *Real-Encyclopädie der classischen Alterthumswissenschaft*, vi, 2579; Gibbon, *Decline and Fall of the Roman Empire*, chap. vi; *etc.*

[1] Cagnat, *op. cit.*, p. 181.

[2] More often spelled *hereditatum*; but the form of the genitive given in the text is that found in the inscriptions wherever the word is not abbreviated.—Cagnat, p. 175, note.

was maintained for nearly a century. Nerva recognized that the closest of natural ties were superior to the artificial distinctions of the Roman law; he exempted successions between mother and child, even when no rights of cognation had been granted, and the patrimony of sons over whom the father had acquired *patria potestas*. Trajan completed the reforms of his predecessor by extending the exemption to all sons, whether they had been in the *patria potestas* or not, and to fathers, grandparents and grandchildren, and brothers and sisters. These exemptions were probably no more than the old citizens had already enjoyed; they were intended to put all citizens on an equal footing. To hasten this result, Trajan cancelled all debts to the treasury which were due to the discriminations of the old law. These generous acts of the Emperor were immortalized in a symbolical bas-relief which was discovered at Rome some twenty years ago.

At the time of Hadrian it was found necessary to limit the deduction to be made for funeral expenses, and it was decided that the exemption should not apply to extravagant sums spent for monuments. Marcus Aurelius also introduced some change in the law, but the nature of his amendment is not known.

Very radical changes were wrought by Caracalla. The *vicesima* was a fruitful source of revenue, but Caracalla doubled the rate and abolished the exemptions in favor of near relatives. To increase the revenue still further he extended Roman citizenship, and with it liability to the inheritance tax, to the inhabitants of the whole Empire. This extension of citizenship was permanent, but the old rate and exemptions were restored by Macrinus.

It is impossible to say just when the Roman inheritance tax was repealed. It existed as late as the reign of Gordian III, but it had disappeared before the time of the Code of Justinian.[1] It was probably repealed either by Justinian himself or by Diocletian.

[1] *Codex Justin.*, vi, 33, 3.

The *vicesima hereditatium*, like the other Roman taxes, was at first farmed out to the publicans, but from the time of Hadrian it was collected directly by the *procuratores XX hereditatium* under the supervision of a central bureau at Rome. Care was taken to collect the tax without loss of time; only a few days were allowed to elapse between a death and the opening of the will. Even when the will was contested, Hadrian decreed that the heir named in the will should be put in temporary possession and pay the tax, after which the contest might proceed. The Romans used a simple mortality table or formula in establishing the value of life estates.

§ 2. *The Middle Ages.* In the middle ages the inheritance tax is represented by the *relief* and *heriot* of feudal tenure, together with some other feudal charges of a similar nature. The relief[1] was a payment made to the lord by the heir of a deceased tenant on being admitted to the succession. The theory was that at the tenant's death the fief escheated to the lord, who exacted a contribution in return for permittting the heir to take possession. The payment was either in money or in equipments, and was often arbitrary in amount; but in England it came in time to be fixed at one hundred shillings for a knight's fee, or one-fourth of the supposed value of the land. A socage relief was one year's rent. In knight service the relief was payable only if the heir was of full age, as otherwise the lord was entitled to wardship, but in socage this rule did not apply. In France the *relief* or *rachat* was usually one year's net produce; in many provinces successions in the direct line were exempt. In the case of lands held by base tenure (*la terre roturière*) the corresponding exactions were generally known as *lods et ventes*.[2] *Primer seisin*, in England, was a

[1] Blackstone, *Commentaries*, ii, 56, 65, 87.

[2] Vuitry, *Le régime financier de la France*, i, 277, 279; Clamageran, *Histoire de l'impôt en France*, p. 208.

burden somewhat similar to relief, but was due only to the king from his immediate vassals.[1]

The heriot,[2] established in England by the Danes, was an exaction by the lord of the best beast or other chattel of which the tenant died possessed. It probably had its origin in villein tenure, under which all the tenant's chattels belonged lawfully to the lord, and it seems finally to have been absorbed in the relief. *Mortuaries* were a sort of ecclesiastical heriot demanded in many parts of England; the second best chattel was claimed by the clergy, and was usually carried to church when the corpse was taken to be buried. Henry VIII fixed these exactions at from three shillings fourpence to ten shillings, according to the amount of the property. The *farleu*, in Scotland, was a payment of money or goods in lieu of heriot.

Unlike the relief, the heriot was a charge upon the chattels only, and not upon the land. Another distinction sometimes made is that the heriot was considered as being paid by the dead tenant, the relief by his successor.[3] This difference between them has been compared to that between the modern English probate duty, paid before the settlement of the estate, and the legacy and succession duties, paid by the heirs after the estate has been distributed.[4]

Just what relation these feudal incidents bear to the *vicesima hereditatium* is not easy to determine. Vuitry believes that the relief was derived from the Roman tax,[5] but this supposition appears to be unwarranted. The *vicesima* was abolished perhaps as early as the third century, and certainly before the middle of the sixth; there is no evidence that anything corresponding to it existed through the Dark Ages,[6] and the re-

[1] Blackstone, *Commentaries*, ii, 66.

[2] *Ibid.*, ii, 97, 422.

[3] Kemble, *The Saxons in England*, i, 179.

[4] Dowell, *History of Taxation and Taxes in England*, iii, 138.

[5] *Le régime financier de la France*, i, 281.

[6] Clamageran, *Histoire de l'impôt en France*, i, 168.

lief was a very different kind of exaction, both in theory and in practice. Its connection with the *vicesima* cannot have been very direct, and it seems more probable that it was feudal in its origin as in its nature.

Between the feudal dues and the modern inheritance taxes, on the other hand, a direct connection can be traced. It is true that in England there is no direct historical connection between them, but it seems quite certain that in some parts of the Continent, at least in France and Switzerland, the inheritance tax grew out of the relief.

§ 3. *France.* The feudal exactions on transfers of property, including transfers from the dead to the living, seem to have become established as national taxes in France in the sixteenth century. In 1553 the formality of *insinuation*,[1] first introduced in a limited way in 1539, was extended by Henry II to include testamentary dispositions, sales, and certain other transactions, which were thus made subject to the tax demanded for the registry. In 1703 Louis XIV made all transfers of immovables, either among the living or at death, except those in the direct line, subject to *insinuation* and the accompanying one per cent. tax known as the *centième-denier*. Until the Revolution, testamentary dispositions were subject both to *insinuation* and to the *droit de contrôle*.

The French inheritance tax of to-day forms a part of the system of *enregistrement*,[2] resting on the law of *22 frimaire an VII* and its amendments. The original rates, which were less for movables than for immovables, have been modified by placing the two kinds of property on an equal footing, and by levying additional *décimes* analogous to the *sous pour livre* which were formely added to the *droit de contrôle* and the *centième-denier*. The first *décime* was added to the *droits d'enregistrement* a few months after the passage of the original act, as a war measure; but it has continued in force ever since, and fur-

[1] *Dictionnaire des finances*, ii, 392. [2] *Ibid.*, ii, 88.

ther additions have been made from time to time.[1] For many years there have been two and a half *décimes*, or an increase of one-fourth, making the tax actually payable at the following rates:

	Per cent.
The direct line	1.25
Husband and wife	3.75
Brothers and sisters, uncles and aunts, nephews and nieces	8.125
Great-uncles and great-aunts, grandnephews and grand-nieces, and cousins german	8.75
Relatives between the fourth and thirteenth degrees	10.
All other persons	11.25

Besides this proportional tax, there is a uniform registration tax of seven and one-half francs on testaments (historically the successor of the *insinuation* and *contrôle* to which wills were formerly subject),[2] as well as stamp taxes which bear some proportion to the necessary judicial proceedings, and which are especially heavy on small amounts; so that altogether the government often takes as much as fifteen or twenty per cent. of the value of a succession.[3]

France is an exception to the almost universal rule in that no deduction is allowed for debts.[4] This has given rise to much hardship and much dissatisfaction. Says Leroy Beaulieu, "Il est impossible de voir un plus monstrueux abus de la force publique." Forced sales are often necessary in order to pay the tax; and the hardship is increased by the taxation of all successions, however small. Still another source of complaint is the mode of levying the tax on usufructuary and owner. The former pays the tax on one-half the value of the property, without regard to his probability of life; and the latter pays at once on the whole value of the property, just as if he acquired immediate possession.

[1] *Annales de l'Assemblée Nationale*, 1871, tome iv, annexe 407.

[2] *Dictionnaire des finances*, i, 1509.

[3] Leroy-Beaulieu, *Science des finances*, i, 515–517.

[4] *Dictionnaire des finances*, i, 1389; ii, 102, 103.

Repeated attempts have been made to remedy these evils. Commissions have been appointed to consider the deduction of debts, and the matter has frequently been before the legislature; but the reform has been prevented thus far by the fear of loss of revenue, estimated at forty million francs a year. The existing rule has been defended also on the ground that movables sometimes escape the tax by concealment or undervaluation.

In 1880, and again in 1888, unsuccessful attempts were made to divide the tax between usufructuary and owner according to the age of the former. It has also been proposed to limit intestate inheritance to six or eight degrees of relationship, instead of extending it to twelve degrees as at present. This change would not only increase the number of escheats, but would increase the tax for many distant relatives from ten to eleven and one-fourth per cent., the rate which applies where no right of intestate inheritance exists. The subject of progressive rates has also been debated in the Chamber of Deputies.[1]

For making declaration of a succession and paying the tax six months are allowed if the decedent died in France, eight months if he died elsewhere in Europe, a year if in America, and two years if in Asia or Africa. The tax is increased one-half if not paid within the prescribed time. If the registration officials suspect fraud in a declaration they may have the valuation determined by the courts; and fraud is punishable by a penalty of one-fourth the value of the property concealed.

The taxes on the transfer of property at death are supplemented by taxes on gifts[2] and on lands held by corporations.[3] The tax on gifts varies not only according to relationship, but according to the occasion of the gift, and in some cases it is less for movables than for immovables. With the *aécimes* included, the schedule is as follows:

[1] Eschenbach, *Erbrechtsreform und Erbschaftssteuer*, p. 77.

[2] *Dictionnaire des finances*, i, 1508; ii, 116. [3] *Ibid.*, ii, 500.

	Movables.	*Immovables.*
	Per cent.	Per cent.
The direct line—		
By marriage contract	1.5625	3.4375
Partitions	1.25	1.875
Other gifts	3.125	5.
Husband or wife—		
By marriage contract	1.875	3.75
Otherwise	3.75	5.625
Brothers and sisters, uncles and aunts, nephews and nieces—	Per cent.	
By marriage contract	5.625	
Otherwise	8.125	
Great-uncles, great-aunts, grandnephews, grand-nieces, cousins german—		
By marriage contract	6.25	
Otherwise	8.75	
Relatives from the fifth to the twelfth degree, inclusive—		
By marriage contract	6.875	
Otherwise	10.	
Other persons—		
By marriage contract	7.50	
Otherwise	11.25	

The tax on the immovable property of corporations was introduced in 1849, to complete the system of taxes on the transfer of property. It was argued that corporations rarely alienated their lands, and never died; they should therefore pay a tax equivalent to a year's rental as often as other lands were transferred, or once in twenty years. So the law provided for an annual tax of about one-twentieth of the rental value. For convenience, the amount of the tax was to be found by multiplying the land tax (*contribution foncière*) by .625, which gave a product slightly in excess of five per cent. of the annual rental. The muliplier was afterwards raised to .7, and two and a half *décimes* were added, making it .875. This tax is payable in addition to the land tax on the lands belonging to all legally authorized organizations, including charitable and religious institutions and even the departments and communes. But companies organized for the exclusive

purpose of buying and selling land are not required to pay this tax on lands which are intended to be sold.

In 1890 the *droits d'enregistrement* on successions amounted to 191,171,820 francs, showing an increase of more than 20,000,000 francs over the previous year. The successions were valued at 5,811,191,134 francs, successions in the direct line forming more than two-thirds of the amount. At the time, the increase was ascribed in part to the epidemic of influenza which prevailed during a part of the year; but the receipts for the two succeeding years show a continued increase, being 191,509,500 francs in 1891 and 209,859,500 francs in 1892. The product of the tax on gifts varies but little from year to year; it was 22,308,500 francs in 1891, and 22,551,500 francs in 1892.[1]

§ 4. *Holland.* The origin of many of the existing inheritance taxes can be traced to Holland, where a tax on succession to landed property was introduced in 1598. In 1653 this was extended to movables, and in the time of Adam Smith Holland had a highly developed succession tax, graduated according to relationship. We are told[2] that the rates for collateral relatives were from five to thirty per cent.; direct descendants were exempt, direct ancestors paid five per cent., and successions between husband and wife were subject to a moderate tax of two per cent. There was also a stamp tax upon wills, varying from three stivers to three hundred florins, according to the value of the property transferred. Since that time the Dutch law has been repeatedly amended, and the tax is now much more moderate than when Adam Smith wrote. The rates are as follows:[3]

	Per cent.
Direct descendants, and husband or wife with living issue . .	1
Direct ancestors	3
Brothers and sisters, and husband or wife without offspring .	4

[1] *Bulletin de statistique et de législation comparée*, November, 1889, pp. 443, 451; February, 1893, p. 132.

[2] *Wealth of Nations*. bk. v, chap. ii, pt. ii, appendix to articles 1 and 2.

[3] *Finanz-Archiv*, v, 1087.

	Per cent.
Uncles and aunts, nephews and nieces, great uncles and great-aunts, grandnephews and grandnieces.	6
More distant relatives and strangers, and all collateral relatives on the excess above their intestate portions	10

All successions of 300 florins or less are exempt. In the case of direct descendants, or a husband or wife with living offspring, successions of 1,000 florins are exempt, and 500 florins are deducted from amounts between 1,000 and 1,500 florins. The tax described above is that which applies in general when the decedent was a resident of Holland; there is an additional tax for certain forms of intangible personalty, and for lands of a foreign decedent situated in Holland the rates are one per cent. for direct heirs and five per cent. in other cases.

§ 5. *Switzerland.*[1] In Switzerland are found the only progressive inheritance taxes on the Continent, as well as the highest proportional taxes in the world. Nearly all the cantons tax inheritances to some extent, and in Bern, Solothurn, Thurgau, Zürich, Uri, and Schaffhausen the rates are progressive. Direct descendants are nearly everywhere exempt, but are taxed in Geneva and one or two of the smaller cantons. The maximum rate varies from the one-half of one per cent. of Zug to the twenty per cent. of Aargau and Schaffhausen; and the little canton of Uri discriminates against intestacy with even higher rates. In several cantons the proceeds are set aside in whole or in part for educational and charitable purposes. Deduction for debts, at least within certain limits, is allowed everywhere except in Zürich. In most cases the inheritance tax is accompanied by a tax on gifts *inter vivos*; and some cantons improve the opportunity afforded by the settlement of estates to collect back taxes in cases where fraud is discovered.

The Helvetic Republic, by a law of 1798, established a national tax on collateral inheritances and gifts as a part of its system of transfer taxes. The tax was graduated from one-

[1] Schanz, *Die Steuern der Schweiz;* Krüger, *Die Erbschaftssteuer*, p. 16.

half of one per cent. for brothers and sisters to five per cent. for distant relatives and strangers. A law of 1800 increased the maximum to six per cent. When Switzerland was again divided into separate states, a number of them retained this tax in a modified form, while others abandoned it altogether. The present century has seen many changes in the laws of the various cantons, tending for the most part to the further development of the tax. The annual product of the inheritance and gift taxes for the whole of Switzerland increased in the thirty years from 1856 to 1886 from 521,000 to 3,055,000 francs, an increase due largely to the enactment of new tax laws and the more extended application of old ones. The inheritance tax seems to be increasing in favor with the Swiss, and Schanz predicts that it will soon be found in all the cantons.

Bern. The law of Bern, the most important canton, may be taken as typical of Swiss inheritance tax legislation. Bern discarded the inheritance tax at the close of the Helvetic Republic, but adopted it again in 1852, and increased the rates in 1864 to one, three, four, five, six, and ten per cent. for collateral relatives. In 1879 the application of the tax was further extended by a popular vote of 22,914 to 19,551, and the following rates were established:

	Per cent.
Husband or wife without issue	1
Parents	1
More distant ancestors	2
Brothers and sisters	2
Uncles and nephews	4
Cousins	6
Children of cousins	8
More distant relatives and strangers	10

Direct descendants, public institutions, and certain private institutions are exempt; so also is the surviving husband or wife in case there are children. The inheritance of a childless husband or wife is taxed only when it exceeds 5,000 francs;

that of any other taxable person, when it exceeds 1,000 francs. One-tenth of the produce of the tax goes to the commune in which the decedent lived, for school purposes.

Bern has adopted the principle of progression only to a slight extent; on any excess above 50,000 francs the rate is increased one-half. The value of the property is stated in a declaration made by the tax-payer; if it appears too small, a judicial determination may be had.

The law of 1852 taxed all inheritances received in the canton, but both the more recent laws proceed on a different principle, taxing all landed property situated in the canton, and movables left by a decedent who resided in the canton at the time of his death. In the case of gifts *inter vivos* also, movables are taxed when the donor is a resident of the canton. The enactment of the new law in 1879 nearly doubled the amount of the tax, the annual receipts rising from 215,000 to 413,000 francs. The amount is subject to very pronounced fluctuations from year to year; the receipts in 1883, for example, were more than twice as great as in the following year.

Geneva. As long ago as 1680 Geneva imposed an inheritance tax on persons not heirs by the intestate law. In 1789 this was changed to a universal tax of ten per cent. In 1794 the tax was graduated according to the degree of relationship, and progression according to the amount of the inheritance was also introduced; but a progressive tax proved distasteful to the people, and that feature was accordingly discontinued after a two years' trial. During the present century the tax has been several times increased, though it remains proportional. According to the law of 1886, together with the law of 1888 which imposed five *centimes additionels* upon direct heirs, the rates are as follows:

	Per cent.
Direct descendants and ancestors, and husband or wife with issue.	2.1
Brothers and sisters, uncles, nephews, and grandnephews.	5
Cousins german.	10
Other persons.	15

The exemptions include bequests to public and charitable institutions, and inheritances of 3,000 francs in the direct line and of 50 francs in other cases. In case of a life interest, the tax is divided between the usufructuary and the owner according to the age of the former. If the usufructuary is not more than 50 years of age, he pays one-half; if between 50 and 60, one-third; if between 60 and 70, one-fourth; and if over 70, one-eighth; the owner paying the remaining fraction in each case. The taxable property includes all land situated in the canton, by whomsoever inherited, and all property included in the inheritance of a Genevan, wherever situated; but in order to avoid double taxation, the tax paid on foreign real estate in the foreign jurisdiction is deducted from the tax required in Geneva. In proportion to population, the annual yield of the inheritance tax is greater in Geneva than in any other canton, averaging about ten francs for each inhabitant.

Freiburg. The Freiburg law of 1882 contains some curious provisions. The usual effect of the existence or non-existence of children upon the tax paid by the surviving parent is in this case reversed; the husband or wife pays eight per cent. in case the deceased leaves legitimate children, brothers, sisters, nephews, nieces, grandnephews, or grandnieces, otherwise only two per cent.; apparently on the principle that the surviving spouse takes what rightfully belongs to the children or collateral relatives. The same principle is carried out in taxing illegitimate children two per cent. if there are also legitimate children, and exempting them in other cases. If one collateral relative receives by will more than his equal share, he pays an additional one per cent. The rate for servants is four per cent., the rate paid also by cousins. Bequests to persons who are on the poor-list are exempt. Certain public institutions, which formerly paid two per cent., were relieved of the tax by an amendment of the law in 1886.

For number of years Freiburg had a progressive tax, but this was discontinued in 1862, when the tax on successions

and gifts was consolidated with the registration taxes. The average annual yield of the tax is about 78,000 francs, or two-thirds of a franc for each inhabitant.

Solothurn. In Solothurn, by the law of 1848, the intestate portion of a surviving spouse is taxed two per cent.; parents pay one per cent., brothers and sisters two per cent.; the maximum is eight per cent. Charitable and educational institutions and churches are not entirely exempt, but pay only one per cent. These percentages apply only to amounts between 100 and 5,000 francs. An inheritance of less than 100 francs is taxed at only one-half the rate which would otherwise apply. On the other hand, the rates are increased by one-fourth for each 5,000 francs, so that an inheritance of 20,000 francs pays double the regular percentage; the progression ceases at this point.

Zürich. The Zürich law of 1869 provides for progression on similar principles, but in a less marked degree. The rate is increased by one-tenth for each 10,000 francs until it becomes five-tenths higher than the schedule rate. The rates for amounts less than 10,000 francs are two per cent. for brothers and sisters and adopted children, six per cent. for cousins, nephews, and uncles, eight per cent. for grandparents, and ten per cent. for strangers. No deduction is allowed for debts.

Schaffhausen. Schaffhausen, by the law of 1884, has a collateral inheritance tax increasing from two per cent. for brothers and sisters to ten per cent. for distant relatives and strangers. For amounts between 2,000 and 10,000 francs these rates are increased one-tenth, and there is a further increase of one-tenth for every additional 10,000 francs up to 90,000, all successions above that amount paying double the schedule rate. The first 200 francs in each share are left out of the reckoning. Bequests for public purposes are exempt, as are also bequests to servants of a year's standing if not in excess of 1,000 francs. Half the receipts are set aside each year for special funds of the canton; in 1889, for example, this part went to the poor fund.

Uri. Uri discriminates against intestacy by taxing the intestate successions of distant relatives more heavily than bequests, even to strangers in blood. The intestate rates for collateral relatives increase from one per cent. for brothers and sisters, to twenty-five per cent for distant relatives; but the maximum rate for bequests is five per cent. These rates are increased one-tenth for each 10,000 francs, up to 200,000 francs. Hence in the case of a large amount acquired by intestate succession, the twenty-five per cent. rate for distant relatives would grow to seventy-five per cent. This is the highest rate to be found in any country; but practically it is of very little importance because it applies only in case of intestacy, and well-to-do men without near relatives are not likely to die intestate. The exemption of small amounts is provided for, the amount varying in different cases from 400 to 8,000 francs. Bequests for public, religious, and philanthropic purposes are also exempt; and one-third of the proceeds of the tax goes to the communes for the support of schools and the poor.

Thurgau. Thurgau also discriminates between intestate succession and bequests. A surviving spouse pays two per cent. on property acquired by the intestate law, but five per cent. on any additional amount. In case of intestacy, brothers, sisters, and grandparents pay two per cent., nephews three per cent., uncles and cousins four per cent. Bequests to strangers and distant relatives are taxed six per cent. The tax is progressive, rising by degress to double the schedule rates.

Aargau. The law of Aargau was amended in 1885 so as to increase the tax on collateral relatives to from one per cent. for brothers and sisters to twenty per cent. for all beyond second cousins. Direct heirs, the surving spouse, public institutions, and bequests to servants up to 500 francs, are exempt. One-half the product of the tax, except in certain cases, goes to the school and poor funds of the communes. Property situated outside of the canton is taxed only when both decedent and

heir live in the canton. The penalty for fraud is a fine of four times the amount of the tax.

Lucerne. Lucerne has a collateral inheritance tax of which half the proceeds are used for school purposes. The maximum rate is twelve per cent. In general, amounts of 300 francs or less are exempt; when the beneficiary has been a servant of the deceased for a year or more, there is an exemption of 600 francs. All bequests to charitable, educational, and other public institutions are exempt.

Neuchâtel. The Neuchâtel law of 1877 exempts educational, benevolent, and charitable institutions recognized by the state; the husband or wife, if there are children; bequests to servants of the deceased, up to 1,000 francs; and other amounts less than 100 francs. A childless spouse is taxed two per cent., and collateral relatives from three to ten per cent.

Ticino. In Ticino the rates vary from three per cent. for the surviving spouse and brothers and sisters to ten per cent. for strangers. Successions in the direct line are exempt. The rates for relatives by marriage are one per cent. more than for the corresponding blood relations.

Vaud. The law of Vaud, as amended in 1890, fixes the rates at three per cent. for the husband or wife and from two to ten per cent. for collateral relatives. Parents and grandparents are taxed two per cent.

Zug. Zug has a very moderate collateral inheritance tax, varying from one-fifth of one per cent. for brothers and sisters to one-half of one per cent. for distant relatives and the surviving husband or wife. The proceeds are used for school purposes.

Basel Town. Basel Town amended its law in 1887 so as to tax direct heirs, who were formerly exempt. The rates are one per cent. for children, grandchildren, husband or wife; two per cent. for more distant descendants and parents; four per cent. for more distant ancestors and brothers and sisters; six per cent. for uncles and nephews; nine per cent. for cousins,

great-uncles and grandnephews; and twelve per cent. for other persons. The exemptions are bequests for public and benevolent purposes, bequests to persons in the employ of the deceased, inheritances of direct descendants not exceeding 2,000 francs, and those of other persons not exceeding 400 francs.

Basel Land. Basel Land has only a light tax on collateral relatives. Brothers and sisters pay one-half of one per cent., uncles and nephews one per cent., cousins one and one-half per cent., and strangers six per cent.

Other Cantons. St. Gallen, Appenzell, Glarus, Schwyz, Grisons, Valais, Obwald, and Nidwald have no cantonal inheritance tax; but in Nidwald, Glarus, and Grisons there are light taxes levied by the communes. In Nidwald the rates are the same throughout the canton, increasing from one-fifth of one per cent. for direct heirs to one per cent. for strangers. In Glarus there is no graduation according to relationship, but the tax varies in the different communes from one-fifth to one-half of one per cent.

§ 6. *The German Empire.*[1] With one or two unimportant exceptions, the *Erbschaftssteuer* is found in all the states of the German Empire; but it is a much less important source of revenue here than in France and Switzerland. The rates are in no case progressive, but are graduated according to relationship; direct heirs are exempt in nearly all cases, and the maximum rates vary from three to ten per cent. It has often been proposed to replace the taxes of the separate states by a uniform tax for the Empire; and bills for the purpose have been considered in the *Bundesrath.*

Prussia. An inheritance tax was introduced in Prussia in

[1] Schanz, "Erbschaftssteuern in Deutschland und einigen anderen Staaten," *Finanz Archiv*, ii, 876; *Annalen des Deutschen Reichs*, 1877, p. 1036; 1879, p. 955; 1886, p. 745; *etc.*; Bacher, *Die deutsche Erbschafts- und Schenkungssteuern;* Krüger, *Die Erbschaftssteuer*, pp. 56–80; von Scheel, *Erbschaftssteuern und Erbrechtsreform*, p. 81; Eschenbach, *Erbrechtsreform und Erbschaftssteuer*, 2 Abschnitt; *Handwörterbuch der Staatswissenschaften*, iii, 301; Carl, "Die Reform der Erbschaftssteuer in Elsass-Lothringen," *Finanz-Archiv*, x, 241.

1822 as a part of the system of stamp taxes. The law now in force is that of May 19th, 1891,[1] which re-enacted with some technical modifications the law of May 30th, 1873.[2] The following are exempt: The surviving husband or wife, ascendants and descendants, household servants of the deceased when the bequest does not exceed 900 marks, institutions managed by the state, charitable societies, incorporated charitable institutions, public schools, universities and learned societies, incorporated churches and other religious societies, *etc.*, and all inheritances of less than 150 marks.

The rates are from one to eight per cent., as follows:

	Per cent.
Bequests of annuities to domestic servants	1
Adopted children, brothers and sisters, and their descendants	2
Other relatives up to and including the sixth degree, step-children and their descendants, step parents, children-in-law and parents in-law, natural children acknowledged by the father.	4
All other persons	8

The annual yield of the tax is about 6,000,000 marks, or about one-fifth of a mark for each inhabitant.

A part of the reform program proposed in November of 1890 by Herr Miquel, the Prussian finance minister, consisted in the extension of the inheritance tax to direct heirs.[3] On amounts of more than 1,000 marks, excluding house furniture, clothing, *etc.*, the tax was to be one per cent. for parents, and one-half of one per cent. for direct descendants and for the widow in certain cases. It was argued that this would furnish a check upon the income assessments, and would produce the effect of a higher tax on funded than on personal or professional income, at the same time increasing the revenue by

[1] Gesetz-Sammlung, 1891, no. 11; *Finanz-Archiv*, viii, 948.

[2] Gesetz-Sammlung, 1873, no. 8144.

[3] Entwurf vom 3. November 1890, *Finanz-Archiv*, vii, 709.

3,500,000 or 4,000,000 marks. But this proposal excited more opposition than any other of the proposed tax reforms,[1] and was defeated. It was thought to be an inopportune time for the change, and the exemption was considered too small.[2]

The Other German States. In Bavaria, Württemberg, Hesse, Saxony, and several of the smaller states, the maximum rate is eight per cent. as in Prussia; in Hamburg and Lübeck the maximum is ten per cent.; Schwarzburg-Sondershausen has a uniform rate of three per cent. The surviving spouse is unconditionally exempt in most of the states, but is taxed one and two-thirds per cent. in Baden, and in a few of the smaller states the exemption is made to depend upon the existence of offspring. Legitimate children are everywhere exempt except in Alsace-Lorraine. Illegitimate children are sometimes exempt if acknowledged by the father; in all cases they are exempt on what they receive from the mother. Adopted children are exempt in a few states, but are subject to a moderate tax in the greater number. Brothers and sisters are everywhere subject to the tax. Bavaria, Württemberg, and a few other states tax parents and grandparents, the latter at a higher rate. Bequests to servants are encouraged by favorable provisions in a number of states, and bequests to religious and benevolent societies are commonly exempt. Schaumburg-Lippe at one time had a slightly progressive inheritance tax, but the maximum was only three per cent.

In most of the states gifts *inter vivos* are taxed. Bavaria has the beginning of a tax on corporations as a substitute for the inheritance tax; the real estate of juristic persons, except charitable and religious institutions, is subject to a tax of one per cent. once in twenty years.

Everywhere in Germany inheritances of landed property are taxed only in the state in which the property is situated.

[1] *The Nation*, lii, 255 (March 26th, 1891).

[2] *Handwörterbuch der Staatswissenschaften*, iii, 302.

Movables are taxed by the various states according to the location of the property and the citizenship and domicile of the decedent and the heir.[1] Double taxation is avoided by a system of reciprocity between the different states. For example, Bavaria refrains from taxing movables situated in Bavaria, left by a decedent who was neither a citizen nor a resident of Bavaria to a resident of another state which grants the same favor in return.

§ 7. *Austria.*[2] A ten per cent. collateral inheritance tax was introduced in Austria in 1759, for the purpose of paying the public debt. The tax was repeatedly modified during the first century of its existence. The present law, which has been in force since 1850, taxes all successions and gifts; the rate for landed property is in every case one and one-half per cent. more than for movables, as shown below:

	Movables. Per cent.	*Immovables.* Per cent.
Direct line, husband or wife.	1	2½
Servants, on bequests not exceeding 500 guilders.	1	2½
Collateral relatives not more distant than cousins .	4	5½
All other persons	8	9½

Sons-in-law, daughters-in-law, and step-children are regarded as direct heirs. All debts are deducted as far as possible from the value of the movables, which pay the lower rates.

Austria has a well-developed system of mortmain taxes in lieu of the inheritance tax, levied once in ten years on all corporate property. For joint-stock companies the rate is one and one-half per cent.; for corporations in which the members hold no shares, such as churches, charitable institutions, and

[1] *Finanz-Archiv*, vii, 316; ix, 420.

[2] Krüger, *Die Erbschaftssteuer*, p. 25; Bergius, *Finanzwissenschaft*, p. 419; von Scheel, *Erbschaftssteuern*, p. 84.

communes, the rate is three per cent. Associations which are to continue not longer than fifteen years, or only during the lives of the incorporators, are not subject to the tax. When there is doubt as to the value of the property, the average income of the corporation for the ten years is taken as the basis of capitalization and multiplied by twenty; so that the tax of one and one-half per cent. of the property paid once in ten years is equal to an annual income tax of three per cent.

§ 8. *Italy*.[1] During the past few decades the Italian inheritance tax has been several times increased. Since 1888 it has been levied at the following rates:

	Per cent.
Lineal descendants and ancestors	1.36
Husband or wife	3.9
Brothers and sisters	6.5
Uncles and nephews, great-uncles and grandnephews	7.8
Cousins german	10.4
Other relatives up to the tenth degree	11.7
All other persons	13.

There is no exemption in favor of bequests to charitable institutions, but they are taxed at the rate which applies to brothers and sisters. Amounts left to adopted children are taxed at one-half the rate which would apply if the adoption had not taken place. Where property changes hands through death twice within four months the tax on the succession which pays the lower rate is remitted. The tax yields about 37,000,000 lire annually.[2] It is supplemented by an annual tax on corporations, amounting to six-tenths of one per cent. in the case of charitable institutions under state inspection, and four and eight-tenths per cent. in all other cases.

[1] *Journal of the Royal Statistical Society*, lii, 135; Krüger, *Die Erbschaftssteuer*, p. 29.

[2] *Statesman's Year-Book*, 1892, 1893, p. 695.

§ 9. *Spain, and Spanish America.*[1] In Spain any discrimination in favor of the eldest son is subject to a tax of twelve per cent. In other cases the rates are as follows:

	Per cent.
Legitimate ancestors and descendants, and movables assigned by law to husband or wife	1
Natural ancestors and descendants	2
Husband or wife	3
Collateral relatives of the second degree	4
" " " third "	5
" " " fourth "	6
" " " fifth "	7
" " from the sixth to the tenth degree	8
" " beyond the tenth degree, on movables	9
Strangers acquiring landed property	10

Careful provision is made for the deduction of clearly proven debts. Charges which actually diminish the property, such as quit-rents, annuities chargeable on the property, *etc.*, are deducted; but mortgages given as security for loans are excluded from this category.

Chile. In order to avoid repeated payments of the inheritance tax resulting from frequent transfers of the same property, the Chilean law of 1878 provides that the tax shall be remitted in the case of property which during a period of ten years has changed hands twice through death, and on which the tax has been once paid. Amounts not exceeding 2,000 pesos in value are always exempt; and exemptions are also made in favor of the municipalities, free educational institutions, religious organizations, and institutions maintained or subsidized by the government. The rates vary from one per cent. for direct descendants to eight per cent. for strangers in blood. Portions reserved in favor of the surviving husband or wife are subject to a tax of one per cent.; other successions between husband and wife are taxed three per cent.

[1] *Journal of the Royal Statistical Society*, lii, 124, 135, 141.

Guatemala. The Fiscal Code of 1881 provides for a tax on successions and gifts to be levied at the following rates:

	Per cent.
Legitimate descendants	1
Lineal ancestors, and acknowledged natural children	2
Husband or wife, brothers and sisters, and adopted children	3
Other collateral relatives, and the adopted father	5
Relations by marriage	8
Strangers	10

Exemptions are made in favor of successions not exceeding 1,000 pesos, and bequests to municipalities and to institutions subsidized by the state.

§ 10. *Russia.*[1] The Russian government followed the example of the other European countries by introducing a tax on inheritances and gifts in 1882. The rates are as follows:

	Per cent.
Husband or wife, direct descendants and ancestors, adopted children, sons-in-law and daughters in-law	1
Step-children, and brothers and sisters and their orphan children	4
Other relatives of the third and fourth degrees	6
Other persons	8

No tax is required on amounts of 1,000 rubles or less, on bequests to benevolent, religious, or educational institutions, on the peasant allotments, or on peasants' movables from which no income is derived. A usufructuary pays the tax on one-half the value of the property. Declarations stating the value of the property transferred are required to be made by the heirs or executors, and may be reviewed by the courts. Deductions are made for debts and funeral expenses. If the tax is not paid within one month after the amount due is ascertained, a penalty of one per cent. per month is added; but by applying for an extension of time and paying six per cent.

[1] *Finanz-Archiv*, v, 1096; Krüger, *Die Erbschaftssteuer*, p. 30.

interest, the heir may postpone the payment of the tax on movables for one year, and pay the tax on landed property in three annual installments. The tax applies to all property situated in Russia, except when the decedent is a subject of a foreign state which does not tax the property of Russian subjects in like cases. Although the tax is made applicable to all gratuitous transfers of which there is documentary evidence, it has been extensively evaded by death-bed gifts.[1] The proceeds are about 4,000,000 rubles a year.[2]

§ 11. *Other European Countries.* Belgium[3] has a rather complicated system of inheritance taxes. There is one scale for property of a Belgian decedent, and another for landed property in Belgium inherited from a foreigner. The maximum rate is 13.8 per cent. A usufruct is taxed at one-half the value of the property. Deduction for debts is allowed within certain well-defined limits. The annual proceeds are about 20,000,000 francs.[4]

In Monaco[5] the rates for succession to landed property range from one to six per cent.; for movables the rates are only one-half as high. Successions in the direct line are exempt only when not determined by will or deed. No provision is made for the deduction of debts.

Roumania,[6] by the law of 1886, exempts the husband or wife and direct heirs, as well as legacies and gifts to certain public institutions. The rates for collateral relatives are from three to nine per cent.

[1] Mr. Maurice Jacobson, formerly a student in Russia, and at present a fellow-student in the Columbia School of Political Science, tells me of a case in which a Russian millionaire evaded the tax by giving away his property to his sons a few hours before his death.

[2] *Almanach de Gotha*, 1892, p. 1106.

[3] Krüger, *Die Erbschaftssteuer*, p. 13; *Journal of the Royal Statistical Society*, lii, 122, 134.

[4] *Statesman's Year-Book*, 1891, 377; 1892, 1893, p. 383.

[5] *Journal of the Royal Statistical Society*, lii, 137. [6] *Ibia.*, 136.

In Luxemburg[1] the tax rises to ten per cent., and in the case of bequests to collateral relatives any excess over the intestate portion is taxed at the maximum rate. Usufructuaries pay one-half the regular rates.

Denmark[2] has an inheritance tax of one per cent. for the husband or wife, parents, and children of the decedent, four per cent. for the brothers and sisters and their children, and seven per cent. for all other persons.

Inheritance taxes are levied also in Sweden,[3] Norway,[3] Portugal,[4] and Greece.[4]

[1] *Journal of the Royal Statistical Society*, lii, 136.

[2] *Finanz-Archiv*, ii, 883. [3] *Ibid.*, vii, 329. [4] *Ibid.*, vii, 328.

CHAPTER II.

THE BRITISH EMPIRE.

§ 1. *The United Kingdom.*[1] "There is no art which one government sooner learns of another," said Adam Smith, "than that of draining money from the pockets of the people." England having borrowed from Holland the idea of stamp taxes, the original Stamp Act of 1694[2] contained a provision for a tax of five shillings on probates and letters of administration in the case of estates of more than £20. Four years later[3] this tax was doubled; and in 1779[4] it was graduated from ten to fifty shillings, according to the value of the estate. The publication of *The Wealth of Nations* had by this time made the Dutch inheritance taxes better known, and the result was an extension of that mode of taxation in England. In 1780[5] Lord North introduced a tax on receipts for legacies and distributive shares, graduated from 2s. 6d. for amounts not exceeding £20 to 20s. for amounts of £100 or more. A few years later[6] the rates were increased, and something approximating an *ad valorem* scale introduced; and discriminations were made in favor of the widow, children, and grandchildren. But this tax, naturally enough, was evaded by omitting to make use of

[1] The literature treating of the British death duties is so voluminous and so accessible to American readers that anything more than a brief sketch of the system would be superfluous here. See Buxton and Barnes, *Handbook to the Death Duties*; Trevor, *Taxes on Succession*; Griffith, *Digest of the Stamp Duties*; Elliott, "Death Duties," in Palgrave's *Dictionary of Political Economy*; Dowell, *History of Taxation and Taxes in England; etc.*

[2] 5 and 6 Will. and Mary, chap. 21. [3] 9 and 10 Will. III, chap. 25.

[4] 19 Geo. III, chap. 66. [5] 20 Geo. III, chap. 28.

[6] 23 Geo. III, chap. 58; 29 Geo. III, chap. 5.

receipts, until in 1796[1] it was made a tax on the transfer itself, and executors and administrators were made liable for its payment. The receipts were still stamped to show the payment of the duty, but the giving and taking of receipts was now made compulsory. At the same time the tax was graduated according to relationship from two per cent. for brothers and sisters to six per cent. for distant relatives.

The English tax on probates and letters of administration was extended to Scotland in 1804, but with administrative modifications made necessary by the law of that country. A similar tax had been imposed by the Irish parliament in 1774, but until 1842 it was lower in Ireland than in Great Britain. The taxes described below are now the same in all parts of the United Kingdom.

The British legislation of two centuries has resulted in a complicated system of five distinct but allied taxes, known collectively as the "death duties," a name said to have been given them by Mr. Gladstone,[2] and separately as the *probate*, *account*, *legacy*, *succession*, and *estate* duties. The first three apply to personal property alone; the succession duty applies to realty and certain kinds of personal property, such as leaseholds and settled personalty, which are not subject to the legacy duty; and the estate duty applies to both real and personal property.

The *probate duty*[3] is the name commonly applied to the stamp tax paid in England and Ireland on the affidavit required to be delivered before the issue of probate or letters of administration, and in Scotland on the inventory exhibited at the same stage of the proceedings. It is slightly progressive, varying from one and one-half per cent. in some cases to rather more than three per cent. That is, the duty on personal estates the net value of which is above £100 but not above £500 is £1 for every £50 or fraction thereof; on es-

[1] 36 Geo. III, chap. 52. [2] Wilson, *The National Budget*, p. 117.
[3] 44 Vict., chap. 12.

tates between £500 and £1,000, £1 5s. for every £50 or fraction thereof; and on estates above £1,000, £3 for every £100 or fraction thereof; but when the gross value of the estate does not exceed £300, the duty is only 30s.

The *account duty*[1] is merely supplementary to the probate duty, and is now included in the official definition of the latter.[2] It is levied at the same rates, and its purpose is to prevent evasion of the probate duty by gifts *causâ mortis*, joint investments, *etc.* It applies to all gifts of personal property unless made in good faith twelve months before the death of the donor.

The *legacy duty*[3] is payable out of the individual shares of personal property when they come into the possession of the heir. It is graduated as follows:

	Per cent.
Lineal issue and ancestors	1
Brothers and sisters and their descendants	3
Uncles and aunts " "	5
Great-uncles and great-aunts " "	6
Other persons	10

When the entire personal estate does not exceed £300, no legacy duty is payable. Widows are exempt, and direct descendants and ancestors are practically exempted by a provision[4] which relieves them from liability to legacy or succession duty on property which has already paid the probate duty. There are also exemptions in favor of learned societies, Irish charities, and the Royal Family.

The *succession duty*, introduced by Mr. Gladstone in 1853,[5] is to realty, leaseholds, and settled personalty what the legacy duty is to other property. In the case of property which is subject also to the probate duty, such as leaseholds, the percentages correspond exactly with those of the legacy duty; for other property they have been increased[6] to 1½, 4½, 6½,

[1] 44 Vict, chap. 12. [2] 51 and 52 Vict., chap. 41, § 21; chap. 60, § 5.
[3] 55 Geo. III, chap. 184; 44 Vict., chap. 12. [4] 44 Vict., chap. 12, § 41.
[5] 16 and 17 Vict., chap. 51. [6] 51 Vict., chap. 8, pt. iv.

7½ and 11½ per cent. But the heir to real estate pays the tax not on the actual value of the property, but on the capitalized value of an annuity equal to the net annual value of the property. The tax may be paid either in eight semi-annual installments, beginning a year after the succession occurs, or in four annual installments, one-eighth in each of the first three, and five-eighths in the fourth. The exemptions are somewhat less generous than in the case of the legacy duty.

The *estate duty* was introduced by Mr. Goschen in 1889,[1] and expires by limitation in 1896. It is an additional tax on personal estates exceeding £10,000, and on individual successions of realty exceeding £10,000 in value; so that its effect is to increase the progressive character of the death duties as a whole. It is levied at the rate of £1 for every £100 or fraction thereof. In the case of real estate it is paid in installments like the succession duty; the taxable value of the realty is nominally the capital value, but in reality is ascertained by reference to the annual value.

It will be observed that the death duties fall very unequally on realty and personalty. The probate duty applies to personal property alone; and the duties on personalty are always paid in a lump sum and on the full capital value, while those on realty are paid in installments extending over several years, and on fictitious valuations calculated from the annual value. In the case of land held for speculative purposes, which produces no revenue, there is absolutely no tax. The landowners have always resisted any extension of the death duties to real estate, claiming that they pay more than their share of other taxes.[2]

The probate duty is the most important of the death duties, yielding about one-half of the total product. One-half the product of the probate and account duties is now transferred

[1] 52 Vict., chap. 7.

[2] For example, see Baxter, *Taxation of the United Kingdom*, p. 100.

to the local taxation account for the relief of local rates. The annual revenue from the death duties has increased to more than £10,000,000. The net receipts for the last three years are shown below:[1]

	1889–90.	1890–91.	1891–92.
Probate and account duties[2]	£4,528,802	£4,827,337	£5,622,374
Legacy duty	2,723,886	2,626,016	2,828,162
Succession duty	1,065,170	1,209,227	1,200,347
Estate duty on personalty	780,242	1,125,620	1,304,080
Estate duty on realty	9,776	68,758	98,640
Total	£9,107,876	£9,856,958	£11,053,603

Besides these five duties payable at the death of natural persons, there is an annual tax of five per cent. on the income of corporations, except churches and charities. But incomes from the donations and contributions of living persons, and from property acquired by the corporation within the previous thirty years, or used for trading purposes, are exempt. The product for 1890–91 was £41,354.[3]

A municipal death duty for London may be regarded as a possibility of the future. The program of the London Liberal and Radical Union, which was emphatically indorsed at the municipal election of 1892, contained a proposition for such a local tax, among other projects for the relief of the rate-payers. The death in the same year of Mr. W. H. Smith, a rich Englishman who bequeathed none of his wealth for public purposes, increased the project in popular favor,[4] in much the same way that the death of Jay Gould has brought the inheritance tax to the public notice in America.

§ 2. *Australasia.* The financial and social importance of the inheritance tax is nowhere greater than in Australasia. It is

[1] *Finance Accounts*, 1889–90, p. 17; 1890–91, p. 19; *Report of the Commissioners of Inland Revenue*, 1891, p. 19; *Statesman's Year-Book*, 1893, p. 43.

[2] Including the part transferred to the local taxation account.

[3] *Finance Accounts*, 1890–91, p. 19.

[4] *The Review of Reviews* (American editon), v, 305, 397 (April and May, 1892.)

among the chief sources of revenue; and in some cases heavy taxes have been imposed not from financial considerations alone, but also for the purpose of breaking up large estates. The rates are progressive in nearly all the colonies, rising to ten per cent. in Victoria, thirteen per cent. in New Zealand, and twenty per cent. in Queensland. Sir Charles Dilke tells us[1] that the institution of private property has not been weakened, nor capital driven from the colonies, by these progressive taxes. They have given very general satisfaction, and in several instances the rates have been increased after the tax has been in operation for a time.

The graduation according to relationship is much less elaborate than in the European countries; usually not more than two or three classes of relatives are distinguished. None of the laws exempt direct heirs; they are usually taxed at one-half the rates which apply to more distant relatives.

Victoria. The Victorian parliament first imposed "duties on the estates of deceased persons" in 1870,[2] in order to meet the financial needs of the time. The rates varied from one per cent. for estates of £1,000 and less to five per cent. for estates of more than £20,000. In 1876[3] the large estates were made subject to further progression, with a maximum of ten per cent. for estates of more than £100,000; and in October, 1892,[4] a new and very elaborate schedule was adopted, leaving the percentages approximately the same as before, but dividing estates according to size into thirty-seven classes instead of nine. For estates exceeding £1,000 and not exceeding £5,000 the rate is two per cent., and those between £5,000 and £6,000 are taxed three per cent; from this point the rate is increased by increments of one-fifth of one per cent. until it reaches ten per cent. in the case of estates of more than £100,000.

[1] *Problems of Greater Britain*, pt. vi, chap. i.

[2] 34 Vict., no. 388.

[3] 39 Vict., no. 523.

[4] 56 Vict., no. 1261.

But the decedent's widow, children, and grandchildren pay only one-half these rates when the estate does not exceed £50,000; the new law removes the discrimination in their favor in the case of the larger estates, and it is estimated that this change will increase the revenue by £60,000. There is no exemption in favor of bequests for charitable or educational purposes.

An amendment of 1889[1] exempts estates of £1,000 and less, and also provides that £1,000 shall be deducted from the value of all estates of less than £5,000; but in all other cases duty is payable on the full amount. This provision, together with the application of the percentage for each class to the whole amount, instead of only to the excess above the next lower class, results in a strange irregularity in the progression —an irregularity which is to be found in many other progressive tax schedules, but which is none the less anomalous on that account. For example, an estate valued at £4,990 pays two per cent. on £3,990, or £79 16s.; while an estate valued at £5,010 pays three per cent. on £5,010, or £150 6s. In other words, a difference of twenty pounds in the valuation of the estate makes a difference of more than seventy pounds in the amount of the duty, leaving the heir fifty pounds poorer than he would be if the estate had been twenty pounds less. In theory, the rate does not jump at once from the slightly less than one and three-fifths per cent. of the first case to the three per cent. of the second, for by the words of the act an estate valued at just £5,000 would pay two per cent. on the full amount; yet there is at this point a temptation to undervaluation which in the case of ordinary mortals must be quite irresistible. Attention was called to the anomaly when the bill was before the Legislative Council.[2] The object of the amendment was to give relief to small estates, which had formerly

[1] 53 Vict., no. 1053; 54 Vict., no. 1060, § 100.
[2] *Parliamentary Debates*, 1889, p. 2059.

paid duties amounting in some cases to such sums as one shilling, and even one penny;[1] and in the form in which it was finally passed it was the result of a compromise. The Government had proposed an exemption of £500, a like amount to be deducted from all estates; but the exemption was raised to £1,000 in the Assembly, and it was largely to counterbalance the consequent loss of revenue that the deduction was made inapplicable to the larger estates.[2] This result might have been accomplished much more equitably, and with fewer words, by simply increasing the percentages for all classes in the schedule except the first, letting the deduction apply to all estates.

Every executor or administrator of a dutiable estate is required by law to file in the office of the Master-in-Equity of the Supreme Court an itemized account of the decedent's property and debts. The penalty prescribed for false statement is imprisonment for from one to three years, and a fine not to exceed £100. In case the Master is dissatisfied with the valuation, he may appoint a valuator to fix the value of the property, and may then agree with the personal representative as to the final valuation, or may compel the attendance of witnesses and take evidence under oath as to the value of the estate. If the personal representative is dissatisfied with the final valuation of the Master-in-Equity he may appeal to the Supreme Court. The duty must be paid before the issue of probate or letters of administration. It is deemed a debt of the decedent to Her Majesty, and is to be paid out of the personal estate, after the payment of testamentary and funeral expenses, in priority to all other debts. If the personal property is insufficient, the real estate is to be used to satisfy the duty. A *donatio causâ mortis*, or any conveyance made to take effect upon the death of the grantor, or with intent to evade the duty, is to be taxed as a part of the grantor's estate at his

[1] *Parliamentary Debates*, 1889, p. 1654. [2] *Ibid.*, p. 1657.

death. Settlements containing trusts or dispositions to take effect after the settlor's death are also taxable; and settlements and deeds of gift have recently been made liable in addition to a progressive stamp tax with a maximum rate of two and one-half per cent.[1]

The revenue from this tax shows some very noticeable fluctuations. It rose from £151,861 in 1887–88 and £236,449 in the following year to £400,150 in 1889–90, and fell to £184,886 in 1890–91. But on the whole there has been a marked increase during the last fifteen years.[2] Averaging the returns for the three years 1888-91, this tax yields eight per cent. of the total revenue from taxation, including customs. With the exception of the customs duties it is the largest item of taxation, amounting to about five shillings for every inhabitant of the colony.

New South Wales. The New South Wales Stamp Duties Act of 1880[3] imposed a one per cent. probate duty, which was replaced six years later[4] by a progressive tax calculated according to the following schedule:

	Per cent.
Where the value of the estate is under £5,000.	1
Where the value is £5,000 and under 12,500.	2
" " 12,500 " 25,000.	3
" " 25,000 " 50,000.	4
" " 50,000 or more	5

There is no exemption or reduced rate for direct heirs, or for charitable bequests. The duty must be paid or security given before the issue of probate or letters of administration. A penalty of £100 and ten per cent. of the duty payable is prescribed for the administration of an estate without obtaining probate or letters of administration; but no penalty is incurred if the estate does not exceed £200.

Gifts *causâ mortis*, conveyances made to take effect upon the death of the grantor or to evade the duty, and settlements

[1] 56 Vict., no. 1274.

[2] *Victorian Year-Book*, 1890–91, p. 84.

[3] 44 Vict., no. 3.

[4] 50 Vict., no. 10.

taking effect after the death of the settlor, are liable to the duty.

In 1890 the duty amounted to £240,986, of which estates of more than £50,000 paid £183,480. The amount for that year was considerably greater than usual, owing to the death of a number of wealthy colonists, one of whom left property valued at more than one and a quarter million pounds. For 1888 and 1889 the tax yielded £135,488 and £136,886 respectively, and rather more than half of the whole amount came from the estates which paid five per cent.[1]

Queensland. As long ago as 1866[2] Queensland had a stamp duty on probates of wills and letters of administration, approximating one per cent. where there was a will, and one and one-half per cent. in case of intestacy. This duty was replaced in 1886[3] by a progressive succession tax ranging from two per cent. on estates between £100 and £1,000 in value to five per cent. on estates of more than £20,000, with half rates for the widow and children.

By the new law of October 4th, 1892,[4] the succession duty varies from one per cent. on small estates passing to direct heirs to twenty per cent. on such portions of large estates as are bequeathed to others than relatives of the deceased. The rates are shown in the following table:

Where the estate amounts to—	Per cent.
£ 200 and less than £ 1,000	2
1,000 " " " 2,500	3
2,500 " " " 5,000	4
5,000 " " " 10,000	6
10,000 " " " 20,000	8
20,000 or more	10

For the wife, husband, or lineal issue, one-half the above rates; for strangers in blood, double the above rates.

[1] *Wealth and Progress of New South Wales*, 1890–91, pp. 636, 637.

[2] 30 Vict., no. 14. [3] 50 Vict., no. 12. [4] 56 Vict., no. 13.

Where the husband or wife of the successor would be chargeable with a lower rate than the successor, the lower rate applies. Estates of less than £200 and single successions of less than £20 are exempt. It is expressly provided that trusts for charitable or public purposes are chargeable at the rates which apply to strangers in blood.

Besides the succession duty there is a probate duty varying in amount from ten shillings on estates between £50 and £100 to five pounds on estates of more than £500, with double rates in case of intestacy. This duty must be paid before the issue of probate or letters of administration.

The succession duty on personalty is payable when the heir comes into possession of the property; but in the case of real estate the duty is payable in four equal semi annual instalments. The duty on an annuity or life estate is estimated according to the present value of the annuity, and paid in four annual installments; but that on a legacy directed to be used for the purchase of an annuity is to be paid at once. Remaindermen are not liable to duty until they come into possession of the property; but if they desire, the duty may be commuted and paid in advance. In the case of plate, furniture, and other property not yielding income, there is no duty on any interest which does not carry with it the power to sell the property. The duty remains a first charge on real estate for six years, or for twelve years if no notice of the succession is given or first instalment paid, and on personalty as long as the property remains in the hands of the successor. When a successor applies to be registered as the owner of land, unless he produces a certificate showing that the duty has been paid, the Registrar of Titles makes an entry "Succession duty not paid," which remains on the register until the duty is paid or ceases to become a charge on the land.

The regulations[1] made under the new act prescribe that

[1] *Supplement to the Queensland Government Gazette*, Dec. 3rd, 1892.

every application made to the courts for probate or letters of administration must be accompanied by an affidavit setting forth the value of the estate. The successors or their representatives are also required to give notice to the Commissioners of Stamps, and to render accounts of the property to which they are entitled, accompanied by all necessary vouchers and other documents affecting the property. The succession duty is then assessed by the Commissioners, who have power either to revalue the property themselves or to appoint disinterested valuators to do so. The tax-payer, if dissatisfied with the assessment, has an appeal to the courts. The act prescribes a penalty of five per cent. a month for neglecting to give notice of a succession when the tax becomes payable, or neglecting to pay the duty within twenty-one days after it has been finally ascertained. Any person guilty of false declaration is liable to fine and imprisonment.

New Zealand. The New Zealand Deceased Persons' Estates Duties Act of 1881[1] imposed a progressive tax according to the following schedule:

On estates not exceeding £100, no duty.
On estates exceeding £100 and not exceeding £1,000, 2 per cent.
On any estate not exceeding £5,000:
2 per cent. on the first £1,000,
3 per cent. on the remainder.
On every additional £5,000 or any part thereof up to £20,000:
4 per cent. on the first additional £5,000 or part thereof,
5 per cent. on the second additional £5,000 or part thereof,
6 per cent. on the third additional £5,000 or part thereof.
On every additional £10,000 or any part thereof up to £50,000:
7 per cent. on the first additional £10,000 or part thereof,
8 per cent. on the second additional £10,000 or part thereof,
9 per cent. on the third additional £10,000 or part thereof.
On any excess over £50,000, 10 per cent.

Although it looks complicated, this schedule was really quite simple; and in the uniformity of the progression it might

[1] 1881, no. 41.

well serve as a model for other scales of progressive taxation. It might be more simply written as follows:

On estates exceeding £100:
- 2 per cent. on the first £1,000.
- 3 per cent. on the next £4,000.
- 4 per cent. on the second £5,000.
- 5 per cent. on the third £5,000.
- 6 per cent. on the fourth £5,000.
- 7 per cent. on the third £10,000.
- 8 per cent. on the fourth £10,000.
- 9 per cent. on the fifth £10,000.
- 10 per cent. on the excess over £50,000.

In 1885[1] this schedule was replaced by the one given below, making the tax heavier in most cases, with an additional rate for strangers in blood:

On amounts not exceeding £100, no duty.
On amounts exceeding £100 and not exceeding £1,000:
- On the first £100, no duty,
- On the remainder, 2½ per cent.

On amounts exceeding £1,000 and not exceeding £5,000, 3½ per cent.
On amounts exceeding £5,000, up to £20,000, 7 per cent.
On £20,000 and any greater amount, 10 per cent.

Strangers in blood, except adopted children, pay three per cent. in addition to the above rates, making the maximum thirteen per cent. The children, step-children, and grandchildren of the deceased are taxed at one-half the regular rates, and the surviving wife or husband is entirely exempt.

The taxable property includes all personal property in New Zealand which passes through the hands of the administrators, even though the decedent had a foreign domicile. Debts, funeral expenses, and testamentary expenses are deducted. It is the duty of the administrator to file with the Commissioner of Stamps within six months from the grant of administration a statement showing the amount of the property and charges, and to pay the duty on the final balance of the estate.

[1] 1885, no. 21.

In order that no property in the colony might escape, the amendment of 1885 provided that no property in New Zealand belonging to any person dying abroad should vest in any person until the probate or letters of administration had been granted or resealed in New Zealand. Settlements and deeds of gift[1] are subject to the tax.

South Australia. South Australia has a scheme of probate and succession duties[2] very similar in some respects to the English system of death duties, but lacking many of its intricacies. The succession duty is not progressive as in the other Australasian colonies, but is graduated according to relationship as in the mother country. The percentages of the Engligh legacy duty apply in South Australia to both real and personal property, as follows:

	Per cent.
Lineal descendant or ancestor	1
Brother or sister, or descendant thereof	3
Brother or sister of a father or mother, or descendant thereof	5
Brother or sister of a grandfather or grandmother	6
More distant relatives and strangers	10

If the husband or wife of the successor is of nearer consanguinity to the decedent than is the successor himself, the rate for the nearer degree of relationship applies.

The exemptions are: (1) The surviving husband or wife; (2) single successions of less than £20, and estates not exceeding £50; also estates of £1,000 and less when the property goes to the children of the deceased; (3) money in trust for the payment of the succession duty; (4) books, works of art, gems, coins, medals, specimens of natural history, *etc.*, bequeathed to any corporation, university, endowed school or museum, to be kept and not sold.

As in England, the interest of a successor in realty is considered to be of the value of an annuity equal to the annual

[1] 1891, no. 30, § 8.

[2] No. 35 of 1876, amended by no. 225 of 1881 and no. 361 of 1885.

value of the property; and the duty is paid in eight equal semi-annual instalments, beginning one year after the successor acquires possession. The duty on personalty is payable upon coming into possession; but if the personalty is given by way of an annuity, the duty is payable in four equal annual instalments. No duty is payable on plate, furniture or other articles not yielding revenue, unless the possessor has the power to sell them. Allowances are made for incumbrances except in certain special cases.

Gifts made within one year of the donor's death are presumed to be made with intent to evade the payment of the duty unless the contrary is proven, and are therefore subject to the duty, as well as donations *causâ mortis* and other gifts to take effect on death.

The accountable persons are required to give notice of their successions to the Commissioner of Inland Revenue. This officer has certain discretionary powers as to the compounding and commuting of duties and receiving advance payments at a discount.

The probate duty of one per cent. where there is a will and one and one-half per cent. in case of intestacy now applies only to estates of more than £1,000. But in all cases there is a regressive probate fee[1] also discriminating against intestacy. It is graduated from 5s. on estates not exceeding £50 to £5 on all estates of more than £5,000, where there is a will; where there is no will, the fee is about one-half more.

In 1890 the colonial parliament rejected a bill[2] which proposed to substitute for the succession and probate duties a single progressive tax, varying from one-half of one per cent. for small amounts remaining in the decedent's family to fifteen per cent. for large amounts going to strangers. In the fiscal year 1891–92, the probate and succession duties amounted to

[1] No. 537 of 1891.

[2] Legislative Council no. 23.

£25,699, or a little more than three per cent. of the revenue from taxation.[1]

Tasmania.[2] Tasmania has for many years had a slightly progressive succession tax on personalty alone, the rates being two per cent. for amounts less than £500, and three per cent. for greater amounts. A few years ago the government made an unsuccessful attempt to extend the tax to land.

§ 3. *The Cape of Good Hope.*[3] Cape Colony has had a succession duty since 1864. The rates are one per cent. for lineal descendants and ancestors, two per cent. for brothers and sisters, three per cent. for descendants of a brother or sister, and five per cent. for more distant relatives and strangers. The surviving husband or wife is exempt. No duty is payable on any succession of less than £20, on any child's portion of less than £100, or in any case where the value of the whole estate is less than £100. Bequests to certain charitable institutions, such as hospitals and asylums, are exempt; but trustees for other public purposes pay the maximum duty of five per cent.

The duty becomes payable when the heir acquires possession. Donations *mortis causâ* are taxed at the same rates as successions.

§ 4. *Canada.* The inheritance tax was of very little importance in Canada until 1892, when it was adopted by the three principal provinces almost simultaneously. In two of these provinces the principle of progression is applied in a limited degree, and in all three the tax rises as high as ten per cent. in the case of bequests to strangers in blood. There are also graduated probate fees in some of the provinces, amounting practically to light inheritance taxes.

Ontario. One of the most interesting of inheritance taxes

[1] *Financial Statement of the Treasurer*, 1892, p. 29.

[2] Dilke, *Problems of Greater Britain*, pt. ii, chap. iv.

[3] *Sources of Revenue of the Colony of the Cape of Good Hope*, 1890, p. 69.

is that introduced in Ontario by the act of April 14th, 1892.[1] It is worthy of note in many ways; it is especially remarkable for its generous exemptions, for its high progressive rates for direct heirs, and for its purpose, the support of asylums and charitable institutions. In short, it is not so much a universal tax as a demand upon the wealthy residents of the province to leave part of their wealth for benevolent purposes. The act begins as follows:

WHEREAS this province expends very large sums annually for asylums for the insane and idiots, and for institutions for the blind and for deaf mutes, and towards the support of hospitals and other charities, and it is expedient to provide a fund for defraying part of the said expenditure by a succession duty on certain estates of persons dying as hereinafter mentioned;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

All estates not exceding $10,000, and individual shares not exceeding $200, are exempt; and the direct heirs are taxable only when the whole estate exceeds $100,000. The decedent's father, mother, husband, wife, children, grandchildren, daughters-in-law and sons-in-law pay two and one-half per cent. when the estate is between $100,000 and $200,000, and five per cent. when it exceeds $200,000; the grandparents and more remote ancestors, brothers and sisters and their descendants, and uncles and aunts and their descendants pay five per cent., and all other persons ten per cent., whenever the estate exceeds $10,000 in value. Bequests for religious, charitable, or educational purposes are exempt.

The tax applies only to property situated in Ontario, of decedents domiciled in Ontario at the time of their death or within five years previous. The sheriff is to act as appraiser, reporting to the Surrogate Registrar, and receiving five dol-

[1] 55 Vict., chap. 6.

lars a day for his services. The tax is payable to the Provincial Treasurer within eighteen months of the decedent's death; if it is not paid within that time, interest at six per cent. from the time of the death is added.

Besides this tax there are approximately proportional probate fees,[1] both for the government and for the judges of the surrogate courts. Together these fees amount in most cases to $1.50 for each $1,000 of the estate; the government fee is fifty cents for each $1,000, and the judge's fee is just double the government fee except in the case of estates of less than $3,000, when it is somewhat more.

Nova Scotia. Before the Ontario law had been finally adopted, the Nova Scotia House of Assembly unanimously resolved to establish a very similar tax for a similar purpose.[2] The act[3] was finally passed on the 30th of April. It is less radical than the Ontario law in the matter of exemptions, but it compensates in part for this difference by taxing in some cases only the excess over the exempted amount. The exemptions are estates not exceeding $25,000 inherited by the immediate relatives and estates not exceeding $5,000 in other cases, and individual shares of $200 or less. There are three classes of heirs, as in Ontario; the nearest relatives pay two and one-half per cent. on the excess over $25,000, but five per cent. on any excess above $100,000; the second class pays five per cent. and the third class ten per cent. on the whole amount. By a curious error in the law, brothers and sisters are included in both the first and the second class. The proceeds of the tax are to be applied to the care of the sick and insane, and the support of other charities. Property bequeathed for religious, charitable, or educational purposes is exempt.

The tax applies to property situated within the province,

[1] *Revised Statutes*, 1887, chap. 50.

[2] *Journal and Proceedings of the House of Assembly*, 1892, p. 101.

[3] 55 Vict., chap. 6.

without regard to the domicile of the decedent, and to property which comes into the possession or control of Nova Scotia executors and administrators.

The probate fees in Nova Scotia vary slightly with the value of the estate, but are uniform for all estates above $4,000.

Quebec. The passage of these laws in Ontario and Nova Scotia was followed two months later by the adoption in Quebec of an inheritance tax levied according to somewhat different principles, and for a purely fiscal purpose. The preamble of the act[1] contains a statement of the provincial debt, and explains the insufficiency of the revenue to meet the increased expenditures of the province. To meet the deficiency the act imposes an inheritance tax and a tax on transfers of real estate. Direct heirs are exempt from the former unless the net value of the estate exceeds $10,000; the rate is then one per cent. Brothers and sisters and their descendants pay three per cent.; other collateral relatives are divided into two classes, which pay six and eight per cent. respectively; and the rate for strangers in blood is ten per cent.

Heirs and personal representatives are required to make declaration under oath, setting forth the amount of the property and debts; in case of false statement or failure to make the required returns the tax is doubled, and a penalty of $100 is imposed in addition. The tax must be paid before the title to the property can vest in any person. When property is transferred in usufruct the whole tax is payable by the usufructuary, and no tax is required of any other beneficiary under the same will.

British Columbia. Proportional probate fees or duties have been collected in British Columbia for many years. The rates were fixed originally by the Chief Justice of the Supreme Court, but more recently by a commission appointed by the Lieutenant-Governor in Council.[2] There was formerly a uni-

[1] 55 and 56 Vict., chap. 17.

[2] 35 Vict., no. 34; *Consolidated Acts*, 1888, chap. 31, § 72.

form rate of three per cent. on personal estates alone; but since 1890 the rates have been one per cent. for the decedent's father, mother, husband, brothers and sisters, and five per cent. for all other persons except the widow and children, who are exempt.[1]

Manitoba. In Manitoba there is a probate fee of fifty cents for every $1,000 of the estate, the proceeds of which go to a special fund for the maintenance of the administration of justice by the courts of the province. In addition to this, the judge is entitled to a slightly regressive fee which amounts in most cases to one dollar for every $1,000, but is never less than two dollars.[2]

[1] Rules of Court, 1890, Appendix M, p. cxiii.

[2] *Revised Statutes*, 1891, chap. 37.

CHAPTER III.

THE UNITED STATES.

§ 1. *The Federal Inheritance Taxes.* Very early in the history of the American Union suggestions were made looking to the establishment of inheritance taxes of various kinds. On April 17th, 1794, a special revenue committee of the national House of Representatives recommended a system of stamp duties, to include the following:[1]

On inventories of the effects of deceased persons, ten cents.

On receipts for legacies or shares of personal estate, where the sum is above $50 and not exceeding $100, twenty-five cents; more than $100 and not exceeding $500, fifty cents; for every further sum above $500, one dollar. Not to extend to wives, children, or grandchildren.

On probates of wills and letters of administration, fifty cents.

Two years later the Committee on Ways and Means reported to the House

that a duty of two per centum ad valorem ought to be imposed on all testamentary dispositions, descents, and successions to the estates of intestates, excepting those to parents, husbands, wives, or lineal descendants.[2]

By the Stamp Act of July 6th, 1797,[3] a tax somewhat similar to the original English legacy duty was levied on receipts for legacies and shares of personal estate, where the amount was more than fifty dollars. The tax was twenty-five cents when the amount was not more than $100, fifty cents when the amount was above $100 and not more than $500, and a dollar additional for every further sum of $500; but the widow, chil-

[1] *American State Papers in Finance*, i, 277. [2] *Ibid.*, 409.

[3] *United States Statutes at Large*, i, 527.

dren, and grandchildren were exempt. The act provided that every receipt for a legacy or share of personal estate should express the true sum paid, in default of which every person concerned either in giving or taking the receipt was made liable to a penalty of $20; but no penalty was prescribed for not giving any receipt at all. The act also imposed a tax of fifty cents on inventories.

This act was to take effect January 1st, 1798, and continue in operation five years; but a later act[1] postponed its commencement six months, and it was repealed,[2] together with the other acts imposing internal taxes, before the time set for its expiration. The repeal took effect July 1st, 1802, just four years after the act went into operation.

There was no inheritance tax during the War of 1812, but there probably would have been if the war had continued a few weeks longer. Secretary Dallas, in his report of January 21st, 1815, recommended a system of ten different taxes,[3] of which the first three were inheritance taxes proposed in the following language:

1. A tax upon inheritances and devises, to be paid by the heirs or devisees, may be made to produce $900,000
2. A tax upon bequests, legacies, and statutory distribution, to be paid by the legatees, or legal representatives, may be made to produce 500,000
3. An auxiliary tax upon all testamentary instruments and letters of administration, to be paid by the executors and administrators, may be made to produce 200,000

But the treaty of peace had already been signed, and the levying of inheritance taxes was postponed until after the outbreak of the Civil War.

The great revenue act of July 1st, 1862, imposed what was known as the "legacy tax" on the devolution of personal property, and stamp taxes on probates of wills and letters of administration.[4] The legacy tax was graduated as follows:

[1] *United States Statutes at Large*, i, 536. [2] *Ibid.*, ii, 148.
[3] *American State Papers in Finance*, ii, 887.
[4] *United States Statutes at Large*, xii, 483, 485.

	Per cent.
Lineal issue, lineal ancestors, brothers and sisters	·75
Descendants of a brother or sister	1.5
Brothers and sisters of a father or mother, and descendants thereof	3.
Brothers and sisters of a grandfather or grandmother, and descendants thereof	4.
Other collateral relatives, strangers in blood, and bodies politic or corporate	5.

The tax was payable only when the entire personal estate of the deceased exceeded $1,000 in value; and the surviving husband or wife was exempt. Gifts and sales intended to take effect after the death of the grantor were subject to the tax. Every executor and administrator was required to furnish a statement of the personal property, verified by oath, to the assistant assessor of his district, and to pay the tax before distributing the property. Only the clear value was taxable.

The tax on probates of wills and letters of administration was levied according to the following scale:

On estates not exceeding $2,500				$0.50
Exceeding	2,500	not exceeding	$5,000	1.00
"	5,000	"	20,000	2.00
"	20,000	"	50,000	5.00
"	50,000	"	100,000	10.00
"	100,000	"	150,000	20.00

For every additional $50,000 or fraction thereof, $10.

The act of June 30th, 1864, increased these taxes, and supplemented the "legacy tax" by a "succession tax" on real estate.[1] The exemptions remaining the same as before, the rates of the legacy tax were fixed as follows:

	Per cent.
Lineal issue, lineal ancestors, brothers and sisters	1
Descendants of a brother or sister	2
Brothers and sisters of a father or mother, and descendents thereof	4
Brothers and sisters of a grandfather or grandmother, and descendants thereof	5
Other collateral relatives, strangers in blood, and bodies politic or corporate	6

[1] *United States Statutes at Large*, xiii, 285, 287.

These same rates were made applicable to the succession tax on real estate, except that in that case brothers and sisters were taxed two per cent. instead of one per cent. But there was no exemption of small estates from the succession tax, nor any exemption at first in favor of husband or wife. A retroactive clause in the amendatory act of the next year exempted wives, but not husbands.[1]

It was expressly provided that real estate subject to a trust for charitable purposes should be taxed at the maximum rate of six per cent. Persons liable to the succession tax were required to give notice to the internal revenue officials, with accounts showing the value of the property and other particulars. A penalty equal to ten per cent. of the amount of the tax was prescribed for failure to furnish returns within ten days after being notified, or for failure to pay the tax within ten days of the notification of assessment.

Deeds of gift without adequate consideration, even when immediately conferring possession, were made liable to the succession tax; and the treasury officials so construed this provision as to tax transfers with manifestly inadequate consideration on the full amount of the transfer, and not merely on the excess of the value over the consideration.[2] Marriage was regarded as a valuable consideration, and hence conveyances made in consideration of marriage were not taxable.[3]

The same act which imposed the succession tax increased the tax on probates and letters of administration to one dollar for estates not exceeding $2,000, plus fifty cents for every additional $1,000 or fraction thereof.[4] The bonds of administrators and executors were subjected to a uniform tax of one dollar.[5] Estates of $1,000 and less were exempted from these stamp taxes by the amendatory act of March 2nd, 1867.[6]

[1] *United States Statutes at Large*, xiii, 481.
[2] *Internal Revenue Record*, iii, 197. [3] *Ibid.*, v, 115.
[4] *United States Statutes at Large*, xiii, 300.
[5] *Ibid.*, xiii, 299; *Internal Revenue Record*, v, 60.
[6] *United States Statutes at Large*, xiv, 475.

In January, 1866, the special Revenue Commission of which David A. Wells was chairman reported that up to that time the legacy and succession taxes had been practically a dead letter, having yielded only $546,703 during the previous fiscal year. The Commission recommended certain administrative changes to make the execution of the law more effectual, and predicted that the annual product of these taxes would be thereby increased to at least $3,000,000. It was estimated that, allowing thirty-two years as the life-time of a generation, these taxes, even at the minimum rate of one per cent., ought to amount each year to $\frac{1}{3200}$ of the wealth of the country, or $5,000,000; but the commission evidently realized that such calculations as this could not be relied upon as accurate, and modified its prediction accordingly.[1]

Up to this time no penalty had been prescribed for the failure of executors and administrators to furnish the statements required of them. The act of July 13th, 1866, provided for a penalty not to exceed $1,000 for wilful neglect, refusal, or false statement. Persons liable to the succession tax were now required to give notice of their liability within thirty days after acquiring possession of the property. This act also provided that any shares of personal property going to a minor child of the decedent should be taxable only on the excess above $1,000.[2]

David A. Wells, in his second annual report as Special Commissioner of the Revenue, submitted to Congress in January, 1868, complained that the government did not yet collect in legacy and succession taxes more than half the amount to which it was rightly entitled, although there had been a large increase the preceding year. He recommended the appointment of special officers to have charge of this portion of the internal revenue.[3]

[1] *Reports of the United States Revenue Commission*, p. 31.
[2] *United States Statutes at Large*, xiv, 140.
[3] *Report of the Special Commissioner of the Revenue*, 1868, p. 40.

But the reduction of the internal revenue was now the order of the day. The legacy and succession taxes were repealed by section 3 of the act of July 14th, 1870,[1] the repeal going into effect October 1st of the same year. Section 27 of this act provided that taxes already levied but not paid on bequests for literary, educational, and charitable purposes should not be collected. The probate and administration tax remained in force two years longer, but was repealed, together with the other stamp taxes, by the act of June 6th, 1872,[2] the repeal going into effect October 1st of that year.

During the six years in which the legacy and succession duties were both in force, their annual product increased from half a million to three million dollars, and from one-fourth of one per cent. to one and two-thirds per cent. of the total internal revenue. The receipts for each year are shown below.[3]

Fiscal Year.	*Legacy Tax.*	*Succession Tax.*	*Total.*	*Percentage of Internal Revenue.*
1863	$56,592.61	. . . . .	. . . . .	0.138
1864	311,161.02	. . . . .	. . . . .	0.266
1865	506,751.85	$39,951.32	$546,703.17	0.259
1866	924,823.97	246,154.88	1,170,978.85	0.376
1867	1,228,744.96	636,570.19	1,865.315.15	0.701
1868	1,518,387.64	1,305,023.60	2,823,411.24	1.477
1869	1,244,837.01	1,189,756.22	2,434,593.23	1.521
1870	1,672,582.93	1,419,242.57	3,091,825.50	1.669

Fully two-thirds of the proceeds came from the heirs who paid at the minimum rate. About sixty-five per cent. of the legacy tax was paid by direct heirs and brothers and sisters, and about seventy-five per cent. of the succession tax was paid by direct heirs alone.

§ 2. *Pennsylvania.* Pennsylvania was the first state in the Union to levy an inheritance tax, and with one exception the inheritance tax was the first state tax of any kind in Pennsyl-

[1] *United States Statutes at Large*, xvi, 256. [2] *Ibid.*, xvii, 256.

[3] *Report of the Commissioner of Internal Revenue*, 1870, pp. 302, 316.

vania, being antedated only by a duty on the recording of certain legal papers.[1] The collateral inheritance tax was introduced in 1826 for the benefit of the internal improvement fund, and has remained in force, with occasional amendments, to the present day. As the Pennsylvania act of April 7th, 1826,[2] has directly or indirectly served as the model for much of the subsequent American legislation on the same subject, the first section is worth quoting:

SECT. 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same*, That from and after the first day of May next all estates, real, personal, and mixed, of every kind whatsoever, passing from any person who may die seized and possessed of such estate, being within this commonwealth, either by will or under the intestate laws thereof, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain or sale, made or intended to take effect, in possession or enjoyment, after the death of the grantor or bargainor, to any person or persons, or to bodies politic or corporate, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children and lineal descendants born in lawful wedlock, shall be and they are hereby made subject to a tax or duty of two dollars and fifty cents on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount, to be paid to the use of the commonwealth; and all executors, and administrators, and their sureties, shall only be discharged from liability for the amount of any and all such duties on estates, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as hereinafter directed: *Provided*, That no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax.

The tax was increased to the present rate of five per cent. in

[1] Worthington, *Historical Sketch of the Finances of Pennsylvania*, p. 87.

[2] Acts of 1825–26, chap. 72.

1846,[1] at a time of great financial embarrassment. Three years later the proceeds were applied to the sinking fund,[2] where they remained until transferred to the general fund in 1874.[3] In 1849 also the exemptions were extended to include daughters-in-law.[4] The next year an act[5] was passed declaring that the words "being within this commonwealth" in the original act should be construed to relate to persons as well as to estates. Other amendments have been passed from time to time,[6] in most cases merely making administrative changes, or providing for special cases not covered by the original act. The whole subject was codified in 1887 by "An Act to provide for the better collection of collateral inheritance taxes."[7] At the session of 1893 a number of amendatory bills were introduced. The most important change proposed was the addition of a progressive tax of from one to five per cent. on direct inheritances; a bill for that purpose passed its second reading in the House on April 20th.

Remainders were formerly taxable at the death of the testator; but under the present law the tax becomes payable when the remainder-man acquires possession, and is assessed on the value of the property at that time.[8] But a remainder-man may pay the tax at any previous time, on the value of the property after deducting the value of the life estate. An appraiser is appointed by the register of wills whenever occasion requires, from whose appraisement an appeal lies to the orphans' court. Executors and administrators are directed to deduct the tax from pecuniary legacies passing through their hands, and to collect the tax on specific legacies. It is made the duty both of the personal representatives and of the heirs to give notice

[1] Laws of 1846, no. 390, § 14. [2] Laws of 1849, no. 369.

[3] Laws of 1874, no. 60. [4] Laws of 1849, no. 369. [5] Laws of 1850, no. 147.

[6] Laws of 1829–30, no. 98; 1833–34, no. 52, §§ 62, 69; 1841, no. 49; 1846, no. 300; May 4th, 1855; 1878, no. 236. [7] Laws of 1887, no. 37.

[8] Laws of 1849, no. 369, § 13; 1850, no. 147, § 1; 1887, no. 37, § 3.

to the register of wills of any real estate which is liable to the tax.

The tax was at first payable to the county treasurers, but in 1841[1] the duty of collection was transferred to the registers of wills for greater efficiency. For many years the registers retained a commission of five per cent., but in 1891[2] their compensation was fixed at five per cent. if the receipts amount to less than $200,000 a year, four per cent. if they amount to $200,000 and less than $300,000, and three per cent. if they are $300,000 or more. The registers are required to make quarterly returns and payments to the State Treasurer. When the tax is paid within three months of the decedent's death there is a discount of five per cent.; when not paid within a year it bears interest at twelve per cent., unless the non-payment is caused by unavoidable delay in the settlement of the estate, in which case the interest is only six per cent., or whatever less amount is realized from the estate in the meantime.

The exemptions remain as they were fixed by the original act of 1826 and the amendment of 1849 exempting daughters-in-law. The courts have held that the exemptions do not include a grandmother, an adopted child, or a son's widow who has remarried.[3] Attempts to evade the tax by the creation of trusts and by deeds intended to take effect after the death of the grantor have repeatedly been defeated by the courts.[4] The net product of the tax has grown in the last forty years from $143,000 to about a million dollars annually.[5] The yield for each of the past fifteen years is shown on the next page:

[1] Laws of 1841, no. 49, § 3.

[2] Laws of 1891, no. 50.

[3] McDowell *vs.* Adams, 45 Pa. 430; Commonwealth *vs.* Nancrede, 32 Pa. 389; Commonwealth *vs.* Powell, 51 Pa. 438.

[4] Tritt *vs.* Crotzer, 13 Pa. 451; Wright's Appeal, 38 Pa. 507; Appeal of Dubois, 121 Pa. 368.

[5] *Reports of the Auditor General*, 1852, 1878–1892.

Fiscal Year.	*Received at State Treasury.*	*Refunded.*[1]	*Net Product.*
1878	$283,886.54	$299.41	$283,587.13
1879	393,949.12	1,828.02	392,121.10
1880	605,441.29	291.18	605,150.11
1881	747,128.48	194.95	746,933.53
1882	476,852.02	2,280.62	474,571.40
1883	604,764.65	1,359.16	603,405.49
1884	461,465.48	699.56	460,765.92
1885	797,369.33	416.62	796,952.71
1886	662,976.61	891.19	662,085.42
1887	763,871.47	1,151.96	762,719.51
1888	713,434.11	239.69	713,194.42
1889	1,378,453.71	939.53	1,377,514.18
1890	670,371.12	282.96	670,088.16
1891	1,232,766.80	2,041.61	1,230,725.19
1892	1,111,120.65	517.43	1,110,603.22

Besides the collateral inheritance tax, Pennsylvania levies a uniform tax of fifty cents on every probate of a will or grant of administration,[2] as part of the system of taxes known as taxes on offices and process, or more commonly as taxes on writs, wills, and deeds. This is in addition to the fees of the registers, a part of which also goes into the state treasury.[3]

§ 3. *Louisiana.* For many years Louisiana had a ten per cent. tax on foreign heirs. In 1828[4] the legislature enacted that any person who is not a citizen of the United States, or is not domiciliated in any part of said states, shall be subject to pay to this state ten per cent. on all sums which may be due to him as an heir, legatee or donee, by any succession which may be opened in this state.

Personal representatives were instructed to retain the amount

[1] In 1878 the State Treasurer was authorized to refund amounts erroneously paid.—Laws of 1878, no. 236.

[2] Laws of 1829–30, no. 157, § 5; 1831–32, no. 80, § 36; 1878, no. 227, § 8; Brightly's *Purdon's Digest*, pp. 1476, 1625.

[3] Laws of 1831–32, no. 80, § 37; 1878, no. 227, §§ 8, 13; Brightly's *Purdon's Digest*, p. 786.

[4] Acts of 1828, no. 95, §§ 1, 2.

of the tax and pay it to the Louisiana officials. The wording of the law was changed in later years[1] so that it read as follows:

Each and every person, not being domiciliated in this state, and not being a citizen of any state or territory in the Union, who shall be entitled, whether as heir, legatee, or donee, to the whole or any part of the succession of a person deceased, whether such person shall have died in this state or elsewhere, shall pay a tax of ten per cent. on all sums or on the value of all property which he may actually receive from said succession, or so much thereof as is situated in this state, after deducting all debts due by said succession.

The tax was assailed as unconstitutional by a foreign heir, who maintained that it was a regulation of foreign commerce and a tax upon exports. The United States Supreme Court in 1850 denied that it was either.[2] It was also claimed to be in conflict with the following article of a treaty concluded between the United States and the King of Württemberg in 1844:[3]

The citizens or subjects of each of the contracting parties shall have power to dispose of their personal property within the States of the other, by testament, donation, or otherwise, and their heirs, legatees, and donees, being citizens or subjects of the other contracting party, shall succeed to their said personal property, and may take possession thereof, either by themselves, or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the inhabitants of the country where the said property lies, shall be liable to pay in like cases.

The United States Supreme Court decided that this did not apply to the case of a citizen or subject of either country residing at home and disposing of property there in favor of a citizen or subject of the other, and therefore did not invalidate

[1] Acts of 1842, no. 154, § 4; 1855, no. 315, §§ 7, 8; *Revised Civil Code*, 1870, arts. 1221–1223; *Revised Statutes*, 1870, §§ 13, 1113, 1470, 13,683, 13,684; Voorhies' *Revised Statutes*, 1876, §§ 3345, 3346.

[2] Mager *vs.* Grima, 8 How. 490.

[3] *United States Statutes at Large*, viii, 588.

the Louisiana tax.[1] But strangely enough, the Louisiana courts held that the. tax was rendered inoperative, so far as French heirs were concerned, by a treaty of 1853 which provided that in all the states of the Union whose laws permitted it, so long as those laws should remain in force, Frenchmen should enjoy the rights of holding property in the same manner as citizens of the United States, and should not be subjected to taxes on transfers or inheritance different from those paid by American citizens.[2]

The tax was abolished in 1877.[3] The product for that year was $7,004; for 1875 it was $3,803.[4]

§ 4. *Virginia.* As early as 1687 the settlement of estates in Virginia was made the occasion of collecting an "enormous fee" of two hundred pounds of tobacco and cask.[5] But this exaction, though it was doubtless considered enormous by the colonists, was properly a fee rather than a tax; it was a uniform charge by the Governor for impressing probates and letters of administration with the public seal, without which they were invalid. Yet a much smaller probate fee was imposed in the present century under the name of a tax. This was the tax of fifty cents on every "probat" of a will or grant of letters of administration, introduced in 1843.[6] It was at first charged to the persons liable to pay it by the commissioners of the revenue in the various counties, on information furnished by the clerks of courts; but after the first year it was collected by the clerks themselves, and no will could be admitted to "probat," nor letters of administration granted, until the tax had been paid.[7]

[1] Frederickson *vs.* Louisiana, 23 How. 445.

[2] Succession of Dufour, 10 La. An. 391. See also Prevost *vs.* Greneaux, 19 How. 1.

[3] Acts of 1877, no. 86.

[4] *Reports of the Auditor of Public Accounts*, 1875, p. 3; 1877, p. 4.

[5] Burk, *History of Virginia*, ii, 300; Ripley, *Financial History of Virginia*, p. 97.

[6] Acts of 1842–43, chap. 1, § 6; chap. 2, § 9.

[7] Acts of 1843–44, chap. 2, § 2.

The collateral inheritance tax was first introduced in Virginia by the acts of January 26th and February 6th, 1844.[1] Estates valued at $250 or more, passing to persons other than the decedent's father, mother, husband, wife, brothers, sisters, or lineal descendants, were subjected to the tax, at rates to be fixed by the legislature in the annual revenue laws. For a number of years the rate was two per cent. Executors and administrators were required to pay the tax on property passing through their hands, "to the sheriff or collector of the public revenue of the proper county or corporation," before distributing the property. In the case of property other than money or real estate, and not converted into cash by the executor or administrator, the tax was to be paid on the appraised value according to the inventory and appraisement required by law. Clerks of courts were instructed "diligently to enquire after and take an account of" all devolutions of real estate, and to report annually to the commissioners of the revenue in each county, who were then to charge the tax to the owners of the property, in addition to the annual land tax.

The collateral inheritance tax appeared in the Code of 1849[2] in a slightly changed form. It was now made applicable to estates within the commonwealth, without regard to the decedent's domicile. The language of the original act had been ambiguous on this point. Estates of $250 were now exempted, as well as estates of less than that amount. If the personal representative failed to pay the tax on any estate before paying over the estate, the law prescribed a penalty of ten per cent. per annum from the time the estate was paid over; and it was deemed to have been paid over at the end of one year unless it appeared otherwise. It was made obligatory upon the personal representative to take a copy of a receipt for the taxes paid, and for this a fee of fifty cents was charged.

[1] Acts of 1843–44, chap. 1, § 6; chap. 3.

[2] Chap. 35, §§ 10, 42; chap. 39, §§ 6–12; chap. 40, § 3.

The rates of two per cent. for the collateral inheritance tax and fifty cents for the probate and administration duty were continued in force down to 1852.[1] In that year the probate and administration tax was raised to seventy-five cents.[2] In 1856 it was again increased, this time to one dollar.[3] In that year the legislature omitted to fix the rate of the collateral inheritance tax, and this omission was held to operate as a repeal. The sections of the Code imposing the tax had not been repealed, but the chapter fixing the rates of taxation had been repealed annually; and the court held that there could be no tax unless its amount or the means of ascertaining it were prescribed by law.[4]

The collateral inheritance tax was not again enacted until 1860, when a tax of two per cent. was imposed upon the collateral devolution of real estate of greater value than $250.[5] In 1861, a few weeks before the breaking out of the war, the tax was again applied to all forms of property, and nephews and nieces were added to the list of exempt successors.[6] The next year the probate and administration tax, which had remained at one dollar since 1856, was increased to $1.50.[7] In 1863 the collateral inheritance tax was increased from two to three per cent., and the probate and administration tax to $2.50.[8] There was a general increase of the rates of taxation at this time, and the result was that at the beginning of 1864 there was a large surplus in the treasury. The operation of

[1] Acts of 1843–44 to 1847–48, chap. 1, §§ 6, 7; 1848–49, chap. 1, §§ 1, 3; Code of 1849, chap. 40, § 3. [2] Acts of 1852, chap. 17, § 16.

[3] Acts of 1855–56, chap. 9, § 30.

[4] Fox's Administrators *vs.* Commonwealth, 16 Grat. 1; Acts of 1852, chap. 17, § 20; 1852–53, chap. 8, § 16; 1853–54, chap. 2, § 19.

[5] Acts of 1859–60, chap. 1, §§ 9, 38; Code of 1860, chap. 35, §§ 9, 38; chap. 39, §§ 5–11. [6] Acts of 1861, chap. 1, § 12.

[7] Acts of 1859–60, chap. 3, § 44; 1861, 1861–62, chap. 1, § 18.

[8] Acts of 1863, chap. 1, §§ 15, 23.

the existing tax law was accordingly suspended for that year.[1] In 1865 the probate and administration tax appeared at its old rate of one dollar.[2] The collateral inheritance tax was omitted from the tax law, and this time it was expressly provided in the enacting clause "that no taxes be imposed on any persons or subjects except those hereinafter mentioned." In 1866 the collateral inheritance tax reappeared at two per cent., the probate and administration tax remaining at the same figure as before.[3] The collateral inheritance tax was increased in 1867 to four per cent., and in 1870 to six per cent.[4] In the latter year also a graduated scale was introduced for the probate and administration tax. The rate was made one dollar on estates not exceeding $1,000, and ten cents additional for every $100 or fraction thereof above $1,000; or approximately one-tenth of one per cent.[5] This scale of rates remains in force to-day.[6] The collateral inheritance tax remained at six per cent. until 1884, when it was repealed.[7] In 1874, however, brothers, nephews and nieces were dropped from the list of favored relatives.

§ 5. *Maryland.* The General Assembly of Maryland established a collateral inheritance tax in 1845[8] "to aid in paying the debts of the state." The only exemptions were those in favor of the decedent's father, mother, wife, children, and lineal descendants, and all estates of less than $500; in all other cases the rate was two and one-half per cent. Executors and

[1] Acts of 1863–64, chap. 1. [2] Acts of 1864–65, chap. 39, § 33.

[3] Acts of 1865–66, chap. 1, § 20; chap. 3, §§ 3, 18.

[4] Acts of 1866–67, chap. 64, § 3; 1869–70, chap. 45, § 18; chap. 226, § 3.

[5] Acts of 1869–70, chap. 226, § 13.

[6] Code of 1887, §§ 579, 590; Acts of 1883–84, chap. 450, § 12.

[7] Acts of 1870–71, chap. 193, § 3; 1871–72, chap. 385, § 3; Code of 1873, chap. 33, § 19; chap. 35, § 3; chap. 36, § 1; Acts of 1874, chap. 240, §§ 21, 22; 1874–75, chap. 206, § 20; chap. 239, § 12; 1875–76, chap. 161; chap. 162, § 12; 1881–82, chap. 61; chap. 119, § 12; 1883–84, chaps. 389, 513.

[8] Laws of 1844–45, chap. 237.

administrators were directed to pay the tax on devolutions of personal property to the register of wills. In the case of real estate the tax was at first paid with the general property tax, according to valuations by the levy courts; but after the first year the value was determined by the orphans' courts, and the tax was paid to the registers of wills.[1]

The collateral inheritance tax was accompanied by a tax of ten per cent. on the commissions allowed by the orphans' courts to executors and administrators; and it was expressly provided that in fixing the commission no allowance was to be made for the tax, as it was intended to be paid out of the commission, and not out of the estate.[2] As this tax is incidental to the devolution of property, it may properly be considered here. It might be called a death duty, though it can scarcely be termed an inheritance tax.

The laws relating to these two taxes were strengthened by numerous administrative amendments during the first five years after their adoption,[3] and thus amended were embodied in the Code of 1860.[4] In 1864 there was a general reduction of taxes. The tax on executors' and administrators' commissions was reduced to five per cent., but was restored to the original figure the next year;[5] the collateral inheritance tax was reduced to one and one-half per cent., and its original rate was not restored until 1874.[6] In 1880 surviving husbands were added to the list of exempt relatives, and the time for the payment of the tax on a remainder was postponed until after the determination of the preceding estate.[7]

[1] Laws of 1845–46, chap. 202. [2] Laws of 1844–45, chap. 184.

[3] Laws of 1845–46, chap. 71, § 3; chap. 391; 1846–47, chap. 344; 1847–48, chaps. 222, 230; 1849–50, chap. 447, § 4.

[4] P. G. L., art. 81, §§ 106–114, 124–147. See also Laws of 1861-62, chaps. 18, 157. [5] Laws of 1864, chap. 372; 1865, chap. 127.

[6] Laws of 1864, chap. 200; 1874, chap. 483, § 113.

[7] Laws of 1880, chaps. 444, 455.

Both of these taxes are now levied at the original rates.[1] Executors and administrators are directed to pay the inheritance tax on personal property before paying any legacies or distributing the shares of an estate; if the payment is not made within thirteen months from the date of their administration, they forfeit their commissions. In the case of real estate, the tax is made a lien on the property until paid. The estates subject to the tax are valued by appraisers; when a life estate or limited interest is created, the proportion of the tax to be paid by each of the beneficiaries is determined by the orphans' court as they become successively entitled. The law contains no exemption in favor of bequests to charitable institutions, but one such bequest was exempted a few years ago by special act of the legislature, on the ground that the institution was destitute of ready money and unable to pay.[2] No discount is allowed for prompt payment. Payments are made in all cases to the registers of wills, who are allowed to retain five per cent. of both the inheritance tax and the tax on commissions, as long as their entire compensation from all sources does not exceed certain amounts fixed by the state constitution.[3]

Executors and administrators pay the tax on their commissions at the time of the passage of their accounts. Any legacy left to an executor by way of compensation is reckoned in the commission; and the tax is payable whether the commission allowed by the orphans' court is claimed by the personal representative or not. Being payable whenever an estate is settled, it forms a considerable source of revenue, and in some years the receipts from this source have exceeded those from the collateral inheritance tax itself. Together these two taxes pay about five per cent. of the state expenses. The amounts received from the registers of wills in each of the last ten fiscal years are shown in the following table:

[1] Code of 1888, P. G. L., art. 81, §§ 97–125; Laws of 1892, chap. 473.

[2] Laws of 1890, chap. 249.

[3] Banks *vs.* State, 60 Md. 305.

Fiscal Year.	*Tax on Commissions.*	*Inheritance Tax.*	*Totals.*[1]
1883	$93,781.20	$103,311.23	$204,301.07
1884	110,050.32	86,218.46	202,696.02
1885	39,344.93	146,966.75	192,916.04
1886	77,905.66	52,164.26	135,081.34
1887	50,854.97	45,597.14	98,296.04
1888	39,359.83	57,767.49	98,408.15
1889	41,075.00	56,392.08	98,451.70
1890	57,817.18	83,656.03	144,221.61
1891	45,682.10	67,738.93	116,487.03
1892	58,452.40	114,009.21	173,384.38

§ 6. *North Carolina.* The General Assembly of North Carolina, by "An Act to increase the public revenue" ratified January 18th, 1847,[2] imposed an inheritance tax of one per cent. on all real estate of the value of $300 or more, and personal property of the value of $200 and upwards, passing to any person other than the decedent's widow and lineal descendants. Deeds of gift and other conveyances made with intent to defeat the purpose of the act were declared void. At the next session it was made the duty of personal representatives having in their hands personal property liable to the tax to apply to the courts for the appointment of appraisers.[3]

The tax was graduated according to relationship in 1855.[4] On real estate of the value of $300 or personal property of the value of $200 going to any one person the rates were made one per cent. for brothers and sisters, two per cent. for uncles and aunts and their descendants, and three per cent for more remote relatives and strangers. The exemptions were ex-

[1] The totals include interest paid by the registers of wills in case of failure to make the quarterly payments to the State Treasurer promptly, and also the excess of their fees over the maximum compensation allowed them by the state constitution, except in a few instances in which such excess for the register of Baltimore County or City was greater than his five per cent. commission on the inheritance and commission taxes; in such cases the difference has been deducted. See *Annual Reports of the Comptrolier*, 1883–1892, Table no. 2.

[2] Laws of 1846–47, chap. 72. [3] Laws of 1848–49, chap. 81.

[4] Public Laws of 1855, chap. 37; *Revised Code*, 1855, chap. 99, § 7.

tended to include the decedent's husband or wife, lineal descendants and ancestors, sons-in-law and daughters-in-law. There was no exemption in favor of churches or educational institutions.[1] A penalty of $500 was prescribed for attempting to divide or settle any estate liable to the tax without lawful administration.

This law remained unchanged for four years.[2] In 1859[3] the tax was made applicable to all real and personal estate above the value of $100, situated within the state, the list of exempt relatives remaining substantially the same. The rates of one, two, and three per cent. were continued[4] in force until 1865, when they were doubled.[5] The next year[6] the $100 exemption was dropped. From this time on[7] there were only two rates, one for uncles and aunts and their descendants, and another for more remote relatives and strangers; the former was diminished at first to two and then to one per cent., and the latter varied in different years from one to two and one-half per cent. The inheritance tax was discontinued altogether by being omitted from the revenue act of 1874,[8] and it has never been re-established.

§ 7. *Alabama.* The Alabama revenue act of 1848[9] imposed a tax of two per cent. on every bequest of personal property and devise of real estate made in favor of any person or corporation other than the testator's wife, children, grandchildren, brothers and sisters. The tax was made payable by the executor to the clerk of the county court in which the will was ex-

[1] Barringer *vs.* Cowan, 2 Jones Eq. 436.

[2] Public Laws of 1856–57, chap. 34. [3] Public Laws of 1858–59, chap. 25.

[4] Public Laws of 1860–61, chap. 32; 2d extra session, 1861, chap. 31; adjourned session, 1862–63, chap. 70.

[5] Public Laws of 1864–65, chap. 27. [6] Public Laws of 1866, chap. 21.

[7] Public Laws of 1866–67, chap. 72; 1868–69, chap. 108; 1869–70, chap. 229; 1870–71, chap. 227; 1871–72, chap. 58; 1872–73, chap. 144; *Battle's Revisal*, 1873, chap. 102. [8] Laws of 1873–74, chap. 134.

[9] Acts of 1847–48, no. 1, § 86.

hibited for probate. At the next session of the legislature the list of exempt relatives was increased by the addition of the husband, parents, and adopted children, and the tax was made applicable to deeds of gift.[1]

Later enactments restricted the tax to legacies, apparently leaving real estate untaxed. The rate was increased during the Civil War, rising at one time as high as ten per cent.[2] It was afterward reduced to one-half of one per cent. in cases where letters testamentary were taken out in Alabama, and three per cent. in other cases.[3] The tax was abolished in 1868 by being omitted from the annual revenue law.[4]

§ 8. *Delaware.* The inheritance tax was introduced in Delaware in 1869.[5] The rate was at first three per cent. for all collateral relatives, but in 1871[6] this uniform rate was replaced by a relationship scale somewhat similar to that of the federal tax which had been repealed the year before, except that direct heirs were not included. The rates were as follows:

	Per cent.
Brothers and sisters and their descendants	1
Uncles and aunts and their descendants	2
Great-uncles and great aunts and their descendants	3
Other collateral relatives and strangers	5

Estates of $500 or less were exempted, and no tax was required of the decedent's widow. The registers of wills were allowed a commission of only one-half of one per cent. for receiving the payments. The tax was repealed in 1883,[7] except as to strangers in blood, so that it is now of very little importance. The receipts at the state treasury in 1891 were $936.06; in

[1] Acts of 1849–50, no. 1, § 1. [2] Acts of 1862, no. 1, §§ 2, 24; 1864, nos. 63, 64.

[3] Acts of 1865–66, no. 1, §§ 2, 3; 1866–67, no. 260, §§ 2, 4; Code of 1867, §§ 434, 436. [4] Acts of 1868, no. 1.

[5] *Laws of Delaware*, vol. xiii, chap. 390, §§ 12–22. [6] *Ibid.*, vol. xiv, chap. 21.

[7] *Ibid.*, vol. xvii, chap. 11.

1892 they were $1,231.95.[1] One portion of the Delaware Tax Commission recently recommended that this source of revenue be turned over to the counties.[2] The tax was repealed at the session of 1893, but the repealing act was in turn repealed, leaving the tax as before.

§ 9. *Wisconsin.* A Wisconsin law of 1868, "relative to the compensation of county judges," besides providing for the payment of the salaries of such judges out of the county treasuries, made it the duty of executors, administrators, and guardians to pay to the county treasurers for the use and benefit of the counties in which the estates administered by them were situated, sums varying from twenty dollars for estates between $1,000 and $2,000 to seventy-five dollars for estates of more than $10,000. Milwaukee county and a few other counties in which the county courts had civil jurisdiction were excepted from the operation of the act.[3] The law was repealed in 1872,[4] but in 1877 the same charges were established in Milwaukee county, by "An Act regulating the salary of the county judge of Milwaukee county."[5] In 1889 estates not exceeding $3,000 were exempted, and the rates were fixed at one-half of one per cent. on the first $500,000, and one-tenth of one per cent. on the remainder;[6] so that while the charge was proportional in most cases, estates of more than half a million dollars were treated more tenderly than those of less value. The title of the new act declared that the charge it imposed was to be "in lieu of fees," but the Wisconsin Supreme Court held that such an exaction could not be a fee, nor in

[1] *Biennial Report of the State Treasurer*, 1891–1892, pp. 22, 34.

[2] *Report of the Undersigned Members* [J. B. Pennington, E. H. Bancroft, D. J. Layton] *of the Delaware Tax Commission*, p. 15.

[3] General Laws of 1868, chap. 121; *Revised Statutes*, 1871, chap. 117, §§ 59–62, 69.

[4] General Laws of 1872, chap. 40.

[5] Laws of 1877, chap. 98; *Revised Statutes*, 1878, § 2483. See also Laws of 1880, chap. 262.

[6] Laws of 1889, chap. 176.

lieu of, nor equivalent to, a fee, but was a tax imposed as a condition precedent to the administration of the estate; and as a tax it was declared unconstitutional because it applied only to one county.[1]

A bill for an inheritance tax was introduced in the Legislature in 1893, but failed to pass.

§ 10. *Minnesota.* "An Act to fix the compensation of judges of probate and provide a fund for the payment of the same," passed by the Minnesota Legislature in 1875,[2] contained the following provision:

For the purpose of reimbursing the county treasury for the salaries provided to be paid in this act to the judge of probate, it shall be the duty of each executor, administrator or guardian to pay or cause to be paid to the county treasurer for the use and benefit of the county in whose probate court proceedings are to be instituted to settle the estate of any deceased person, the following sums, acaccording to the value of the estate and property of such deceased person, as shown by the inventory and appraisal, that is to say:

$10	when such value shall exceed			$1,000,	and shall not exceed		$5,000;
20	"	"	"	5,000,	"	"	10,000;
30	"	"	"	10,000,	"	"	15,000;
50	"	"	"	15,000,	"	"	20,000;

and $75 in all cases where the value of the estate shall exceed the sum of $20,000; and in addition all sums necessarily expended in serving or publishing notices required by law.

It was provided that no proceedings should be had in any cause for the settlement of an estate, subsequent to the return of the inventory, until after the payment of the prescribed charges.

In 1885[3] the exemption was increased to $2,000 and the following scale of charges established:

[1] State *vs.* Mann, 76 Wis. 469; 45 N. W. Rep. 526.

[2] General Laws of 1875, chap. 37; *General Statutes*, 1878, chap. 7, §§ 8, 9.

[3] General Laws of 1885, chap. 103; *General Statutes, Supplement*, 1888, chap. 7, § 8.

$10	when the value shall exceed			$2,000	and shall not exceed		$5,000;
25	"	"	"	5,000	"	"	10,000;
35	"	"	"	10,000	"	"	15,000;
50	"	"	"	15,000	"	"	20,000;
75	"	"	"	20,000	"	"	35,000;
100	"	"	"	35,000	"	"	50,000;
200	"	"	"	50,000	"	"	75,000;
300	"	"	"	75,000	"	"	100,000;
500	"	"	"	100,000	"	"	150,000;
800	"	"	"	150,000	"	"	200,000;
1,000	"	"	"	200,000	"	"	500,000;
5,000	"	"	"	500,000.			

It will be noticed at a glance that the scale was clumsily contrived. A classified scale with a uniform charge for each class is unequal enough at best; but in this case the figures appear to have been thrown together at random, without regard to whether the scale was to be in its general effect proportional, progressive, or regressive. Taking either the maxium or minimum column, or the mean between them, the percentages change from progressive to regressive and back again a surprising number of times; and when the half-million mark is reached there is a sudden jump from one-fifth of one per cent. to one per cent.

It is not surprising, therefore, that the Supreme Court of Minnesota decided that the act violated the constitutional requirement that all taxes must be "as nearly equal as may be." The charges it imposed were held to be taxes, and not fees; and the rule of equality was held to be violated both by the $2,000 exemption and by the arbitrary schedule.[1] But it is not likely that the taxation of inheritances in Minnesota will be permanently prevented by this decision. A number of inheritance tax bills were introduced at the legislative session of 1893; they were strenuously opposed by the Minneapolis Board of Trade, but one of them became law by the act of April 18th, which proposes a constitutional amendment au-

[1] State *vs.* Gorman, 40 Minn. 232; 41 N. W. Rep. 948. See p. 95, *infra.*

thorizing a tax not to exceed five per cent. on inheritances and gifts. The question will therefore be decided by means of the referendum at the next general election.

§ 11. *New Hampshire.* In 1878 the New Hampshire legislature, on the recommendation of the State Tax Commission, imposed a collateral inheritance tax of one per cent., "to defray the cost of probate courts," as the title of the act[1] declared. It was provided that

> All estates settled in the probate courts of this State, and all transfers of property from the dead to the living, by gift, bequest, or devise, and every succession made under the laws of this State, regulating the distribution of intestate estates, exclusive of the just indebtedness of each and all of said estates, shall pay one per cent. on the value of said estates, to be deducted from each gift, bequest, or distributive share, by the administrator or executor, so that each gift, bequest, or distributive share shall pay its proportional rate.

Exemptions were made in favor of husband, wife, children, and grandchildren. The law was similar in many respects to the federal legacy and succession tax statutes. The tax was made payable to the registers of probate, who were required to make quarterly returns and payments to the State Treasurer.

This form of taxation was declared unconstitutional by the Supreme Court of New Hampshire in 1882.[2] The next year the legislature provided that the amounts which had been paid in should be refunded on presentation of the receipts;[3] and the State Treasurer accordingly returned to taxpayers a little more than $10,000 of the $15,000 which had been paid in.[4]

§ 12. *Illinois.* An act passed by the Illinois legislature in 1887,[5] for the purpose of making the Cook County probate

[1] Laws of 1878, chap. 74; *General Laws*, 1878, chap. 64.

[2] Curry *vs.* Spencer, 61 N. H. 624. See p. 96, *infra*.

[3] Laws of 1883, chap. 75.

[4] *Reports of the State Treasurer*, 1878–1891.

[5] Laws of 1887, p. 183.

court self-sustaining, provided for a considerable increase in the usual fees, and in addition prescribed that every applicant for a grant of letters testamentary, of administration, guardianship, or conservatorship by that court should state in the petition the value of the estate, real and personal, and that on the grant of the letters a docket fee should be paid according to the following schedule:

When the estate does not exceed $5,000							$5
"	"	exceeds	$5,000	and	does not exceed	$20,000 . .	10
"	"	"	20,000	"	"	50,000 . .	20
"	"	"	50,000	"	"	100,000 . .	50
"	"	"	100,000	"	"	300,000 . .	100
"	"	"	300,000	"	"	1,000,000 . .	250
"	"	amounts to 1,000,000 and upwards					1,000

In 1891[1] the scale was at once equalized and simplified by making the charge for estates of more than $5,000 one dollar for every $1,000 of the estate, or about one-tenth of one per cent.; the charge for estates of $5,000 and less remaining as before. When the deceased leaves a widow or children residing in Illinois, and the entire estate does not exceed $2,000, the probate judge is instructed to remit the fee; and he may in his discretion suspend, modify, or remit the fee in any case where the estate does not exceed $500.

§ 13. *New York.* The New York inheritance tax is of recent adoption, but it has come to be of more importance than that of any other American commonwealth. It was first introduced in 1885, and amendments of greater or less importance have been made at nearly every subsequent session of the Legislature.[2] The original act imposed a tax of five per cent. on collateral inheritances, classing brothers and sisters with

[1] Laws of 1891, p. 137.

[2] Laws of 1885, chap. 483; 1887, chap. 713; 1889, chaps. 307, 479; 1890, chap. 553; 1891, chap. 215; 1892, chaps. 167, 168, 169, 399, 443. Chap. 399, Laws of 1892, "An Act in relation to taxable transfers of property," is a complete revision of the previous statutes.

the exempt relatives; this was supplemented in 1891 by a tax of one per cent. on direct inheritances of personal property of the value of $10,000 or more. In 1892 a bill to extend the direct inheritance tax to real estate was favorably reported to the Assembly, but failed to become law. At the session of 1893 the application of progressive rates to the direct inheritance tax was advocated both by the State Comptroller and by the joint committee on taxation;[1] and while their recommendations were not adopted by the Legislature, it is not improbable that New York may at some future time lead the way in the adoption of progressive taxation, as it has in the extension of the tax to direct heirs.

The relatives who were formerly exempt, and who now pay one per cent. on personal estates of the value of $10,000 or more, are the decedent's father, mother, husband or wife, children and lineal descendants, brothers and sisters, daughters-in-law, sons-in-law, and adopted children, and any person to whom the decedent for not less than ten years prior to the transfer stood in the mutually acknowledged relation of parent. All other persons pay five per cent. if the estate amounts to $500 or more. Bishops and all religious, charitable, educational, and scientific corporations are exempt;[2] but the exemption has been held not to apply to foreign corporations.[3] Thus a bequest to the American Board of Commissioners for Foreign Missions was held to be taxable, although the corporation had been granted a limited privilege of holding property in New York.

When the tax is paid within six months of the decedent's death a discount of five per cent. is allowed. When it is not paid within eighteen months, interest is charged at the rate of ten per cent. from the time of the decedent's death, except

[1] *Report of the Comptroller*, p. 28; *Report of Joint Committee Relative to Taxation*, pp. 15, 17.

[2] Laws of 1890, chap. 553; 1892, chap. 399, § 2.

[3] Matter of Prime, 49 N. Y. St. Rep. 658.

when there is an unavoidable delay in the determination of the tax, in which case the interest is six per cent. until the cause of delay is removed. The tax is to be paid to the county treasurer (or to the comptroller of New York City), who is allowed a commission for receiving and accounting for it. This commission was originally five per cent. in all cases, but this was found to be more than the labor involved was worth, and since 1887 it has been five per cent. on the first $50,000 received each year, three per cent. on the next $50,000, and one per cent. on all additional sums. By this change the commissions have been reduced about three-fifths. The commissions of the comptroller of New York City amounted to more than $10,000 a year, even before the extension of the tax to direct heirs; in the fiscal year 1892 they were $11,390.78, and in 1893 they will doubtless be much more than that amount. In New York City the comptroller partially earns his fees, for it is his custom to represent the state in every appraisal, either in person or by deputy; and some office expenses have to be paid out of the amounts retained by him. Yet the commissions on large amounts could probably be still further reduced without interfering seriously with the diligence of the comptroller and treasurers; and as bills are frequently introduced for the purpose, it is likely that this may soon be accomplished.

The law directs the surrogates to appoint appraisers whenever occasion may require. As a rule, an appraiser is appointed for every taxable estate which is not in the form of cash; and in New York City the appraising of estates has become a regular business for two or three individuals selected by the surrogates. The appraiser's fees are three dollars a day for each estate. The appraiser is required to give notice of the time and place of the appraisal to the interested persons, including the county treasurer or comptroller, and is authorized to subpœna witnesses and take sworn evidence concerning the value of the property. He is directed to appraise the

property at its fair market value at the time of the owner's death, and to report to the surrogate, who determines the amount of the tax and gives notice to the interested persons. Any person dissatisfied with the the appraisement and determination of the tax may appeal to the surrogate. Upon the application of any surrogate, the Superintendent of Insurance is required to determine the value of life estates and remainders, according to the method employed by him in ascertaining the value of life insurance policies, but reckoning interest at five per cent. A remainder-man may defer the payment of the tax charged to him until he comes into the actual possession of the property, but in the case of personalty he is required to give bond for the payment of the tax with interest at six per cent.

The tax applies to gifts made in contemplation of death, or intended to take effect at or after the donor's death, as well as to inheritances. It is made a lien on the property transferred, and personal representatives are made liable for its payment. In case of failure to pay the tax, the county treasurer or comptroller notifies the district attorney, who proceeds against the delinquents in the surrogate's court. On the payment of the tax duplicate receipts are given, one of which the personal representative sends to the State Comptroller, who charges the county treasurer or comptroller with the amount of the tax, and returns the receipt, sealed and countersigned, to the personal representative. Such a receipt must be produced by the personal representative before he is entitled to a final accounting of the estate, unless a bond has been given for deferred payment. The county treasurers and the comptroller of New York City make quarterly reports to the State Comptroller and quarterly settlements with the State Treasurer. Surrogates are required to make quarterly reports both to the State Comptroller and to the county treasurer or comptroller, showing what estates are liable to the tax, and county clerks are required to make similar reports of deeds and other

conveyances which appear to have been made or intended to take effect after the death of the grantor.

The apparently simple provision for the exemption of estates of less than $500 has given rise to no less than three distinct questions of interpretation. The exemption was formerly so construed as to apply to all individual shares of less than $500,[1] although the word "estate" was plainly used in the statutes. This construction was contrary to the practice in Pennsylvania,[2] where the same language was employed in the statute; and the Legislature has recently defeated it by defining the words "estate" and "property" to mean the whole taxable property, and not the individual shares.[3] Another question was whether the exempt amount was to be deducted from all inheritances of greater amounts. A Kings County surrogate held that it was to be, and showed the inequality of not deducting it; but as there was nothing in the statute to warrant such an interpretation his decision was reversed.[4] A third question arose as to the liability of legacies of just $500. The statutes have exempted only amounts of less than $500, but as a legacy is not payable until a year after the grant of letters testamentary, it was held by the surrogate of Westchester County that a legacy of $500 was not worth $500 at the time of the testator's death.[5] But in New York City a legacy of $500 is held to be of the fair market value of its face,[6] and it is not exempt because the payment of the tax would reduce it to less than $500.[7]

Proceeds and Cost of Collection.[8] The inheritance tax has

[1] Matter of Cager, 111 N. Y. 343; Matter of Howe, 112 *id.* 100.

[2] Howell's Estate, 147 Pa. 164. [3] Laws of 1892, chap. 399, § 22.

[4] Matter of Sherwell, 35 N. Y. St. Rep. 403, affirming 34 *id.* 315, overruling 32 *id.* 1020.

[5] Matter of Peck, 30 N. Y. St. Rep. 209; Matter of Underhill, 2 Connoly 262.

[6] Matter of Bird, 32 N. Y. St. Rep. 899.

[7] Estate of Pond, 35 Daily Register 1056.

[8] *Annual Reports of the Comptroller*, 1886–1892.

become one of the state's most important sources of revenue; and together with the corporation taxes it has brought about a marked diminution in the state property tax. Referring to the new tax in his report of January, 1887, Comptroller Chapin ventured to predict that "in our great and rich state it may easily, in some years, produce a million of dollars of revenue." The prediction was fulfilled in 1889. In the fiscal year 1892, with the direct inheritance tax only partially in operation, the product was $1,786,218.47, or about one-third of all taxes for general state purposes. It was a little more than all taxes on corporations, including the organization tax, and nearly as much as the state property tax for general purposes. It was between three and four times as much as the state tax on personal property for all purposes, including schools and canals. The following table shows the amounts received at the state treasury in each year since the introduction of the tax:

1886	$84,128.92
1887	561,716.23
1888	736,062.31
1889	1,075,692.25
1890	1,117,637.70
1891	890,267.54
1892	1,786,218.47
Total to October 1st, 1892	$6,251,723.42

The one per cent. tax on the personal estate of Jay Gould will probably amount to about $700,000, and the five per cent. tax on the estate of William G. Hunt will yield some $250,000 more. Up to the end of the fiscal year 1892, the largest amounts received were paid by the following estates:

Cornelia M. Stewart	$300,410.32
Henrietta A. Lenox	234,126.90
Samuel J. Tilden	147,283.00
Daniel Fayerweather	114,788.50
William H. Vanderbilt	81,011.55

The expenses of collection in 1892 were $84,819, or 4.55

per cent. of the entire amount collected. The fees of the county treasurers, the comptroller of New York City, the appraisers, and the district attorneys, the salaries of surrogates' clerks, and the surrogates' office expenses, which were deducted before the payment of the taxes into the state treasury, amounted to $80,098.25. The State Comptroller employs an inheritance tax clerk at a salary of $1,600, and during the year 1892 he expended $3,120.75 in examinations of the surrogates' records in twelve counties in which, during the first few years after the introduction of the tax, the law was not strictly enforced by the surrogates and county treasurers. The amount of delinquent taxes received as a result of these examinations was greater than the entire expense of collection during the same year, and the amount received in interest and penalties alone was greater than the expense of the examinations. Deducting the State Comptroller's expenses, the net produce for the year was $1,781,497.72. Erroneous payments amounting to $72,140 were refunded on the order of the Comptroller, but these were chiefly payments made in former years, before the Comptroller was given authority to refund such payments.

§ 14. *West Virginia.* The collateral inheritance tax was adopted by West Virginia in 1887.[1] The rate was made two and one-half per cent., as in Maryland, and the Maryland law was closely followed throughout; but the exemption was extended to all estates of less than $1,000, and the clerks of the county courts, to whom the tax was made payable, were allowed only two per cent. commission instead of five. The tax on a remainder was made payable at the same time as that on the life estate. The only persons exempted by the original act were the decedent's father, mother, wife, children, and lineal descendants; but in 1891[2] the surviving husband was added to the list.

[1] Acts of 1887, chap. 31; Codes of 1887, 1891, chap. 32, § 51a.

[2] Acts of 1891, chap. 116.

The receipts thus far have been quite insignificant, probably owing to the failure of the law to prescribe a definite time within which the tax must be paid, or adequate penalties for delay. The amounts received at the state treasury are shown below:[1]

1888	$36.24
1889	69.44
1890	245.00
1891	314.08
1892	1,004.48
Total to October 1st, 1892	$1,669.24

§ 15. *Connecticut.* The Connecticut Tax Commission of 1887 reported in favor of an inheritance tax,[2] and the proposal was adopted with some changes in 1889.[3] All property within the jurisdiction of the state, whether tangible or intangible, which passes to persons other than the decedent's father, mother, husband or wife, lineal descendants, adopted children and their descendants, sons-in-law and daughters-in-law, except bequests for charitable, benevolent, educational, religious, or strictly public purposes, is subject to a tax of five per cent. of its value above the sum of $1,000. The tax is to be paid directly to the State Treasurer, within one year from the decedent's death; if it is not paid within that time, interest is charged at the rate of nine per cent. The tax is payable on the market value of the property as found by the court of probate; but the State Treasurer or any person interested in the estate may demand an appraisal by three disinterested persons to be appointed by the court. The value of annuities and life estates is determined by the actuaries' combined experience tables, reckoning compound interest at five per cent. Within ten days after the filing of an inventory of a taxable

[1] *Biennial Reports of the Auditor*, 1887–1892.

[2] *Report of the Special Commission*, pp. 33, 46.

[3] Public Acts of 1889, chap. 180.

estate in the court of probate, a copy of the inventory must be sent to the State Treasurer, with the appraisal by the court; and once in six months every judge of probate is required to report to the State Treasurer all the property within the jurisdiction of his court which is liable to the tax. The fees of the court of probate are deducted from the amount of the tax to be paid to the State Treasurer. The tax must be paid before the final settlement of the personal representative's account.

The tax yielded $14,600.42 in the fiscal year 1890, $74,758.93 in the following year, and $177,662.97 in the fifteen months ending September 30th, 1892.[1] During the legislative session of 1893 there was some agitation for the repeal of the tax, and various modifications were also proposed, among them being exemptions of real estate, of the nearer collateral relatives, and of the second devolution of property within a year.

§ 16. *Massachusetts.* In October, 1889, the Boston Executive Business Association's special committee on taxation, of which Mr. Jonathan A. Lane was chairman, recommended in its report a collateral inheritance tax like that in New York, and also a tax of two and one-half per cent or more on direct inheritances of personal property, to replace the personal property tax. It was estimated by the committee that these two taxes would yield at least $4,000,000 a year. An inheritance tax had not long before this been proposed and defeated in the committees of the legislature; but a bill which was introduced at the session of 1891 met with a different fate, becoming law on June 11th.[2] The five per cent. tax imposed by this law applies only to estates of more than $10,000. The exempt successors are the decedent's father, mother, husband or wife, lineal descendants, brothers and sisters, adopted children and their descendants, sons-in-law and daughters-in-law, and charitable, educational, and religious societies or institutions which are exempt from the property tax.

[1] *Reports of the Treasurer*, 1890–1892, p. 4. [2] Acts of 1891, chap. 425.

The tax may be paid either to the county treasurer or directly to the Treasurer of the Commonwealth. In the former case the county treasurer is required to account with the Treasurer of the Commonwealth; but there is no provision in the act for his remuneration. The tax is payable by the personal representatives at the expiration of two years from the date of their bond, unless the payment is suspended by the probate court to await the disposition of the claim of a creditor; but if any legacies or distributive shares are paid within the two years, the tax upon them becomes payable as soon as they are paid. Interest at six per cent. is charged from the time the tax becomes due. The other administrative provisions of the act are similar to those of the Connecticut law; but there is no provision for semi-annual reports from the probate courts, and the result of this omission is that whenever the personal representatives neglect to file an inventory, the Treasurer of the Commonwealth is not informed of the liability of the estate to the tax.[1]

Up to January 1st, 1893, the receipts from the tax were only $13,854.54;[2] but as the tax often does not become payable until more than two years after the decedent's death, it is still too early to pass final judgment upon the efficacy of the law. A petition for the repeal of the law was presented to the legislature of 1893.

§ 17. *Tennessee.* A five per cent. collateral inheritance tax was introduced in Tennessee in 1891,[3] and continued by the revenue act of 1893.[4] The relatives originally exempted were the decedent's father and mother, husband or wife, children, brothers and sisters, sons-in-law and daughters-in-law; in 1893 grandchildren were added to the list. There is no exemption of small amounts, or of bequests for charitable purposes. The

[1] *Reports of the Treasurer and Receiver-General*, 1891, 1892, p. 12.

[2] *Ibid.*, 1892, pp. 12, 18.

[3] Acts of the Extraordinary Session, 1891, chap. 25, § 6. [4] § 7.

payments are made to the clerks of the county courts, and reported by them to the State Comptroller.

§ 18. *New Jersey.* New Jersey has a five per cent. collateral inheritance tax dating from March 23d, 1892.[1] The exempt relatives are the decedent's father, mother, husband or wife, brothers and sisters, children and lineal descendants, sons-in-law and daughters-in-law. No favor is shown to benevolent institutions, but all estates of less than $500 are exempt. If the tax is paid within six months of the decedent's death there is a discount of five per cent.; otherwise interest is charged at ten per cent. when the payment is not made within a year, and at six per cent. when it is made within the first year, or when there is an unavoidable delay in the settlement of the estate. When the tax is not paid within the first year the personal representatives are required to give bond for the payment of the principal and interest. The administrative provisions are similar to those of the New York law, except that the payments are made directly to the State Treasurer, who reports semi-annually to the Comptroller.

The provision for discount in case of prompt payment resulted in the payment of the tax on three estates during September and October, 1892. The amount paid was $21,598.80, of which all but $182.21 came from one estate.[2]

§ 19. *Ohio.* The General Assembly of Ohio imposed a collateral inheritance tax by the act of January 27th, 1893.[3] The tax applies only to estates of more than $10,000, and the rate is three and one-half per cent. on the excess above that amount. The list of exempt relatives includes nephews and nieces, in addition to those who are exempt in Massachusetts; but the law gives no encouragement to bequests for charitable or benevolent purposes. The tax is to be paid into the county

[1] Acts of 1892, chap. 122.

[2] *Report of the Joint Committee on the Treasurer's Accounts*, 1892, p. 70.

[3] House Bill no. 219.

treasury by the personal representatives within one year, in default of which interest is to be charged at six per cent. No commission is allowed to the county treasurers, but the necessary expenses of collection are to be deducted before the proceeds are paid into the state treasury. The provisions for determining the amount of the tax are copied from the Connecticut law; and probate judges are required to deliver copies of inventories and make semi-annual reports to the county auditors.

§ 20. *Maine.* The inheritance tax was recommended by the Maine Tax Commission in 1890, and the Legislature adopted the proposal by the act of February 9th, 1893.[1] This act imposes a collateral inheritance tax of two and one-half per cent; inheritances of $500 and less are exempt, and the tax is calculated only on the excess above the amount exempted. The exempt relatives are the decedent's father and mother, husband or wife, lineal descendants, adopted children and their descendants, sons-in-law and daughters-in-law, as in the Connecticut law of 1889; there is no exemption of bequests for benevolent purposes, but in other respects the provisions of the Connecticut law are closely followed. The probate judges are to make reports to the State Assessors, and the payments are to be made directly to the Treasurer of State.

§ 21. *California.* In California the inheritance tax dates from March 23rd, 1893.[2] The proceeds are to be applied to the state school fund. The model for the California statute was the New York law as it stood before the extension of the tax to direct heirs. The rate is five per cent.; estates of less than $500 are exempt; and the exempt successors are the decedent's father, mother, husband or wife, brothers and sisters, lineal descendants, adopted children, sons-in-law and daughters-in-law, and the corporations and institutions exempt by law from taxation. The provisions for the appraisal of estates,

[1] Acts of 1893, chap. 146. [2] Statutes of 1893, chap. 168.

payment of the tax, discount, interest, and commissions of county treasurers are taken from the New York law; but appraisers are to be paid five dollars a day, and the interest in the case of unavoidable delay in the settlement of the estate is fixed at seven per cent., beginning eighteen months after the decedent's death.

§ 22. *Summary.* Collateral inheritance taxes are now levied in Maine, Massachusetts, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, Tennessee, Ohio, and California; and in New York there is also a one per cent. direct inheritance tax which applies only to personal property. The usual rate for collateral relatives and strangers is five per cent., but in Ohio it is three and one-half, and in Maine, Maryland, and West Virginia two and one-half per cent., and in Delaware the tax applies only to strangers in blood. The exempt estates range from $250 in Maryland to $10,000 in Massachusetts and Ohio; Tennessee is the only state which allows no such exemption. There are many variations in the lists of exempt relatives. Besides these proportional taxes, there are light probate taxes in Virginia and Pennsylvania, and approximately proportional fees are charged in the Chicago probate court.

In Vermont a bill for a five per cent. collateral inheritance tax was defeated in November, 1892, being reported adversely by the Senate finance committee after passing the House. But Vermont has a system of probate fees varying with the value of the estate, and amounting in most cases to two dollars for each $5,000 or fraction thereof.[1]

At the legislative sessions of 1893 the inheritance tax was established in Maine, Ohio, and California, bills for the purpose were rejected in Wisconsin and Nebraska, and in Minnesota a constitutional amendment permitting this form of taxation was proposed by the Legislature. A bill intro-

[1] *Revised Laws*, 1880, § 4524.

duced in Nebraska proposed a progressive tax ranging from one per cent. on estates between $50,000 and $100,000 to twenty per cent. on estates of more than $1,000,000. Less radical progressive scales were proposed in New York and Pennsylvania, and the proposed amendment to the constitution of Minnesota provides that the tax may be either "uniform" or "graded or progressive." As these pages go to press bills are pending to establish the inheritance tax in Michigan, to extend it to direct heirs and introduce progressive rates in Pennsylvania, to discontinue it altogether in Massachusetts, and to make some minor changes in the Connecticut law. The bill pending in Michigan is a faithful copy of the New York law, except that the exemption proposed for direct inheritances of personal property is only half as large as in New York. The Pennsylvania bill, which passed the lower house on May 10th, provides for a direct inheritance tax of from one to five per cent., to apply only to estates of $50,000 or more. The bill has been vigorously denounced by some of the Philadelphia newspapers as unconstitutional and socialistic.

CHAPTER IV.

LEGAL THEORY.

§ 1. *Constitutionality, Nature, and Subject of the Tax.* The constitutionality of the inheritance tax has been repeatedly tested in the courts, and has nearly always been sustained; but inheritance tax laws have been declared unconstitutional in New Hampshire, Minnesota, and Wisconsin. In the two latter states, however, the laws contained some rather unusual provisions; the taxes were probate duties rather than succession duties, and payment was made a condition precedent to the settlement of the estate. In both cases the state claimed that the exaction was a fee, but the courts held it to be a tax. The Minnesota Supreme Court held that the act violated a clause in the bill of rights to the effect that every person "ought to obtain justice freely, and without purchase; completely, and without denial; promptly and without delay, conformably to the laws." Said the court:

> Suitors in this (probate) court of exclusive jurisdiction should not be required to pay, as a condition to their suits being entertained, a tax measured by the value of the property, and without regard to the nature or extent of the judicial proceedings which may be invoked or become necessary.

Moreover, it was held that the act violated the rule of equality of taxation by the exemption of small estates and by an arbitrary and unequal schedule.[1]

In the Wisconsin case the tax was declared unconstitutional primarily because it applied only to one county; yet the court intimated that it might have been nullified either as a tax on

[1] State *vs.* Gorman, 40 Minn. 232; 41 N. W. Rep. 948. See p. 79, *supra.*

judicial procedure, as double taxation, or as unequal because of the exemption of small estates. The court distinguished between this tax, which it regarded as a tax upon the property constituting the estate, and a succession tax upon the transmission of the property.[1]

New Hampshire is the only state in which the inheritance tax has been declared unconstitutional for reasons which would apply to inheritance taxes in general.[2] Justice Blodgett, in delivering the opinion of the court, conceded that in the absence of constitutional prohibition the legislature would have had power to impose the tax, but held that it violated two constitutional provisions: that which limited the power of levying taxes to "proportional and reasonable assessments, rates, and taxes upon all the inhabitants and residents within the said state, and upon the estates within the same," and the clause of the bill of rights declaring every inhabitant to be bound to contribute his share. He considered it immaterial whether the tax was on property or on a civil right or privilege, for the same principle of equality and due proportion applied to every species of tax. In this respect he distinguished between the New Hampshire constitution and those of Virginia and Maryland, under which the inheritance tax had been sustained, saying that the latter required only taxes on property to be uniform. The decision continues:

If it is to be regarded as a tax on property, it is open to the objection of unequal and double taxation, and if it is to be regarded as a tax on a civil right or privilege, it is discriminating and disproportional. Nor is the argument that its object is "to defray the cost of probate courts" entitled to any weight, because the constitutional rule of equality cannot be limited or qualified by any consideration of expediency or convenience. The purpose of the act cannot change its character in this respect. Good purposes in taxation are of no

[1] State *vs.* Mann, 76 Wis. 469; 45 N. W. Rep. 526. See p. 77, *supra.*

[2] Curry *vs.* Spencer, 61 N. H. 624.

consequence if the effect is to subject the taxpayer to exceptional and invidious exactions. . . . Under the reservations of the bill of rights and the limitations of the constitution, it is plainly founded upon pure inequality, and is simply extortion in the name of taxation; and it can therefore never be sustained in this jurisdiction so long as equality and justice continue to be the basis of constitutional taxation.

The distinction made in this decision between the constitution of New Hampshire and those of Virginia and Maryland was one which existed only in the imagination of the New Hampshire judge; the rule of uniformity had been limited to the property tax in Maryland and Virginia only by the interpretation of the courts. The language of the constitutions was rather more explicit than in New Hampshire. The Maryland constitution declared

that paupers ought not to be assessed for the support of the government, but every other person in the state, or person holding property therein, ought to contribute his proportion of public taxes for the support of government, according to his actual worth in real or personal property; yet fines, duties or taxes may properly and justly be imposed or laid, with a political view, for the good government and benefit of the community.[1]

The Virginia constitution prescribed as follows:

Taxation shall be equal and uniform throughout the Commonwealth, and all property other than slaves shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law.[2]

The Virginia court stated in so many words that the language used was broad enough to cover everything; yet it was held not to invalidate a tax on a civil right or privilege, like the inheritance tax.[3] Judge Lee, in delivering the opinion of the court, said:

[1] Constitutions of 1864 and 1867, Declaration of Rights, art. 15.

[2] Constitution of 1851, art. iv, § 22. [3] Eyre *vs.* Jacob, 1858, 14 Grat. 422.

I do not perceive wherein the inequality and want of uniformity complained of can be said to exist. . . The tax is equal and uniform throughout the state as far as it is susceptible of the application of the rule. It is the same everywhere upon the succession to estates of equal value of whatever subjects they may consist.

Nor was the exemption of small estates considered a violation of the rule of uniformity:

The legislature may define the class to which this tax shall be restricted as they in their discretion may think just and proper, taking care to render it uniform with all those who constitute the class; or as they are authorized to exempt any particular subject from taxation, it may be regarded as an exemption in favor of those entitled to inconsiderable estates of less value than the sum named.

In like manner the Maryland Court of Appeals decided that while providing for a uniform mode of taxation on property, it was not the purpose of the framers of the constitution to prohibit any other species of taxation.[1]

In North Carolina, also, the Supreme Court denied that the inheritance tax violated the constitutional provision requiring all property to be taxed uniformly, and limiting the rate of state taxation.[2] Said the court:

Undoubtedly if the tax in question must necessarily be regarded as a tax on property, the objection would be irresistible, since this property is not only taxed uniformly with other property, but is subjected to taxation as a legacy in addition. But we do not regard the tax in question as a tax on property, but rather as a tax imposed on the succession, on the right of the legatee to take under the will, or of a collateral distribution in the case of intestacy. . . . Is there any reason why the State shall be denied the power to tax a succession whether it be by gift *inter vivos*, or by will or intestacy? Property itself as well as the succession to it is the creature of positive law. The legislative power declares what objects in nature may be held as property; it provides by what forms and on what conditions

[1] Tyson *vs.* State, 1868, 28 Md. 577.

[2] Pullen *vs.* Commissioners, 66 N. C. 361.

it may be transmitted from one person to another; it confines the right of inheriting to certain persons whom it defines heirs, and on the failure of such it takes the property to the State as an escheat.

The right to give or take property is not one of those natural and inalienable rights which are supposed to precede all government, and which no government can rightfully impair. There was a time, at least as to gift by will, it did not exist; and there may be a time again when it will seem wise and expedient to deny it. These are the uncontested powers of the Legislature upon which no article of the Constitution has laid its hands to impair them. If the Legislature may destroy this right, may it not regulate it? May it not impose conditions upon its exercise? And the condition it has imposed in this case is a tax.

The constitutionality of the New York tax was upheld by the Court of Appeals in 1887.[1] The objections made against it were that bequest and inheritance were purely natural and absolute rights, and not specially taxable; that the tax was not equal and uniform, but arbitrary, unjustly discriminating between citizens; that the law did not distinctly state the object to which the tax was to be applied; that it did not provide for a legal apportionment of the tax; that it conferred upon the surrogates powers and duties not authorized by the constitution; that due process of law was wanting in that the tax-payers were not given sufficient notice or opportunity to be heard; and that the provision for the taxation of future and contingent estates was oppressive and unconstitutional.

In this case it was not determined whether the tax in question was a tax on property or on the devolution of property:

In either case it is a special tax. In the one case it is a tax upon the particular class of property, and in the other case a tax upon the succession or devolution of property, or the right to receive property in the cases mentioned in the statute. Whether it be one or the other it is free from constitutional objection. It has never been questioned that the legislature can impose a tax upon all sales of

[1] Matter of McPherson, 104 N. Y. 306.

property, upon all incomes, upon all acquisitions of property, upon all business and upon all transfers. Taxes of a similar character were quite extensively imposed by the acts of congress passed during the late civil war. If this be regarded as a tax upon property, then it is free from constitutional objection if it be equally imposed and properly apportioned upon all the property of the class to which it belongs.

The Louisiana tax upon foreign heirs was sustained by the United States Supreme Court as a regulation of inheritance.[1] The opinion of the court was delivered by Chief Justice Taney, who said:

The law in question is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and term upon which property real or personal within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every state or nation may unquestionably refuse to allow an alien to take either real or personal property, situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state. . . . And if a state may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy.

The levying of a succession tax by the general government manifestly could not be explained as a regulation of inheritance; the Supreme Court sustained it as an exercise of the taxing power:[2]

It is plainly an excise tax or duty, authorized by section eight of article one, which vests the power in Congress to lay and collect taxes, duties, imposts, and excises.

It was held to be not a direct tax within the meaning of the Constitution, nor a tax on the land itself:

[1] Mager *vs.* Grima, 8 How. 490.

[2] Scholey *vs.* Rew, 23 Wall. 331.

The succession or devolution of the real estate is the subject matter of the tax or duty, or, in other words, it is the right to become the successor of real estate upon the death of the predecessor; . . . nor is the question affected in the least by the fact that the tax or duty is made a lien upon the land, as the lien is merely an appropriate regulation to secure the collection of the exaction.

Yet in a recent Pennsylvania case the fact that the tax was a lien on the real estate was made the basis for the opinion that it was a tax upon the property itself, a direct tax upon the thing devised.[1] But although the point was argued by counsel, this opinion was not essential to the decision of the case, and it is therefore to be regarded as dictum. Certainly the better view is that which regards the tax as a condition of inheritance, or a tax on a civil privilege and not on the property transferred.

An important consequence of the prevailing view on this point is that the tax is payable upon the devolution of government bonds. The Pennsylvania Supreme Court arrived at this conclusion by the following argument:[2]

This five per cent. tax is one of the conditions of administration, and to deny the right of the state to impose it, is to deny the right of the state to regulate the administration of decedents' goods. . . The act operates on the *residue* of the estate after paying debts and charges, and, theoretically, that residue is always a balance in money. The administration-account always exhibits a balance in cash, not in specific goods, whether bonds or horses; and though an heir may take bonds or horses as cash, the account must show, and always does show, a cash balance. That is the fund taxed by this law, and not the bond or other chattels which may have produced the fund. Therefore, neither the prohibitory clause of the Act of Congress of 1862, nor any of the principles of decision against state authority to tax that which Federal authority has exempted from taxation, have any application here. The Federal government has not prohibited the states from prescribing rules of inheritance and succession to estates of decedents.

[1] Bittinger's Estate, 129 Pa. 338. [2] Strode *vs.* Commonwealth, 52 Pa. 181.

In New York a United States circuit court came to the same conclusion with respect to government bonds, declaring that "the tax is not imposed upon the bonds, but is one upon the privilege of acquiring property by inheritance. . . . . The bonds are the subject of the appraisal, but the privilege is the subject of the tax."[1]

The question of the nature and subject of the inheritance tax may soon be brought before the courts in a slightly different connection. The late General George W. Cullom, of New York, made a bequest to the United States for a building at the Military Academy at West Point. The state will maintain that the inheritance tax is not a tax on property, but a regulation of inheritance and bequest, and hence that this bequest is taxable. On the other hand, the executors maintain that the United States is not a body politic or corporate within the meaning of the New York statute, and that the exemption of educational institutions applies in this case. The case is so complicated by the purpose of the gift that the general question of whether a bequest to the United States is taxable may not be decided.

With regard to the general nature of the inheritance tax three legal questions may be said to be fairly well settled: (1) Such a tax is not prohibited by constitutional requirements of equality and uniformity of taxation; (2) it may be imposed as an exercise either of the taxing power or of the power to regulate inheritance; and (3) it is not a tax on the property itself, but on the transfer, or on the privilege of acquiring property by inheritance, or bequest.

§ 2. *Domicile and Situs.*[2] Some of the most difficult legal problems in connection with the inheritance tax are those which arise from interstate complications. Such problems are

[1] Wallace *vs.* Myers, 38 Fed. Rep. 184.

[2] See also Dos Passos, *Law of Collateral Inheritance, Legacy and Succession Taxes*, chap. v.

by no means peculiar to the inheritance tax, yet in theory there is probably no other form of taxation which leaves room for so many difficulties of this kind. In determining where an inheritance is to be taxed the law-makers may consider, besides the location of the property, the domicile, not of one person alone, but of either the decedent or the heir, or both; and even the residence of the executors or administrators may be taken into consideration. Of course citizenship may be substituted for domicile as the determining factor, or both may be considered together. But in the United States, as a matter of fact, the only conditions taken into consideration are the location of the property and the domicile of the decedent; thus the problem is practically the same as in the case of the property tax. Louisiana formerly had a tax on foreign heirs alone; but no state attempts to tax inheritances received by its citizens when the location of the property and the domicile of the decedent are both foreign. Not in all points do the various statutes agree so well. Some apply only to property within the taxing state, disregarding domicile altogether; but Pennsylvania, New York, New Jersey, and California attempt to tax the devolution both of all property within the taxing state and of all property left by residents of the state. The attempt has been partially defeated by decisions of the courts which hold that devolutions of real estate situated beyond the limits of the taxing state cannot be taxed.[1] In the latest case of this kind decided by the New York Court of Appeals[2] Judge Gray, who delivered the opinion of the court, argued as follows:

What has the state done, in effect, by the enactment of this tax law? It reaches out and appropriates for its use a portion of the property at the moment of its owner's decease; allowing only the balance to pass in the way desired by the testator, or permitted by its intestate law, and while in so doing it is exercising an inherent

[1] Commonwealth *vs.* Coleman's Administrator, 52 Pa. 468; Bittinger's Estate, 129 Pa. 338; Matter of Swift, 50 N. Y. St. Rep. 81.

[2] Matter of Swift, *op. cit.*

and sovereign right, it seems very clear to my mind that it affects only property which lies within it, and, consequently, is subject to its right of eminent domain. The theory of sovereignty, which invests the state with the right and power to permit and to regulate the succession to property upon its owner's decease, rests upon a fact of actual dominion over that property. In exercising such a power of taxation as is here in question, the principle, obviously, is that all property in the state is tributary for such a purpose, and the sovereign power takes a portion, or percentage, of the property, not because the legatee is subject to its laws and to the tax, but because the state has a superior right or ownership, by force of which it can intercept the property, upon its owner's death, in its passage into an ownership regulated by the enabling legislation of the state.

And in a recent case in the Pennsylvania Supreme Court,[1] Mr. Chief Justice Paxson said:

It has not been made to appear how the state of Pennsylvania can impose a tax upon real estate situate in Maryland; and not only impose a tax upon it, but also charge it with a lien for such unpaid tax. While it is conceded that the powers of the state for taxing purposes are very great, they are necessarily limited to either property or persons within her borders. All property of the citizen within the state may be taxed, and all such property outside the state as is drawn to or follows in law the person or domicile of the owner, such as bonds and mortgages, moneys at interest, etc., no matter where situate. But real estate is not drawn to the person or domicile of the owner, for taxation or any other purpose, and hence cannot be taxed outside of the jurisdiction where it is situate. The taxation of property involves the reciprocal duty of protection on the part of the state levying such tax.

But the tax may be made to apply to personal property, wherever situated, if the decedent was domiciled in the taxing state, on the theory that the *situs* of personal property follows the person of the owner;[2] and on the other hand, personal

[1] Bittinger's Estate, *op. cit.*

[2] Matter of Swift, *op. cit.*; Short's Estate, 16 Pa. 63.

property within the state may be taxed, although the decedent resided elsewhere. Thus in an early Pennsylvania case[1] it was held that the tax applied to securities in Pennsylvania, although both testator and legatee were domiciled in France. In like manner the North Carolina tax was held to apply to property in that state, though the decedent was domiciled in Canada.[2] More recently it has been decided that the Maryland tax applies to property in Maryland belonging to a resident of California, and consisting of national bank stock, Baltimore city stock, Missouri state bonds, and cash;[3] and that the New York law taxes a non-resident's estate in New York, consisting of a mortgage on New York real estate, savings' bank deposits, and corporate stock and bonds.[4] In the New York case it did not appear whether the stock and bonds were issued by domestic or foreign corporations; and hence it is still regarded as a matter of some doubt whether the law would apply to certificates of foreign corporations in such a case. The Pennsylvania tax has recently been held to apply to the interest of a non-resident decedent in a Pennsylvania limited partnership association.[5] The same theories of dominion and protection which were applied in the case of real estate have been used also to show that personal property may be taxed where it is situated; and thus the fiction *mobilia sequuntur personam* has been much less completely recognized in America than in England, where the decedent's domicile is the sole test of liability to the legacy duty.[6] But the English statutes are not explicit upon this point, as the American statutes are; and the judicial construction of the legacy duty act is just the reverse of the rule as to probate duty.[7]

[1] Commonwealth *vs.* Smith, 5 Pa. 142. [2] Alvany *vs.* Powell, 2 Jones Eq. 51.

[3] State *vs.* Dalrymple, 70 Md. 294. [4] Matter of Romaine, 127 N. Y. 80.

[5] Small's Estate, 151 Pa. 1.

[6] Thomson *vs.* Advocate General, 12 Clark & Finn. 1; Lenaghan, *The Legacy Duty Considered with Reference to the Law of Domicile.*

[7] Attorney-General *vs.* Hope, 1 Cromp., Mees. & Ros. 529.

The case of real estate directed by will to be sold gives rise to a complication peculiar to the inheritance tax. It has been held that such a direction works a conversion of the real estate into personalty at the testator's death, and that the tax may therefore be exacted in respect of foreign realty by the state of the testator's domicile.[1] But when the executors have merely the power to sell, without a positive direction to do so, the property is still regarded as real estate, and can be taxed only where it is situated.[2]

There is a Pennsylvania decision which distinguishes between tangible and intangible personal property, holding that the latter has no *situs* other than the owner's domicile, and hence that a non-resident decedent's United States bonds deposited with a Pennsylvania company for safe-keeping cannot be taxed in Pennsylvania.[3] But this is an exceptional case. The general rule is that while real estate is taxable only where it is situated, personal property of all kinds may be taxed either where it is situated or at the domicile of the decedent, according to the apparent intention of the legislature. This rule leaves room for much confusion and a possibility of double taxation, very much as in the case of property, income, and corporation taxes. The law on this point is therefore in an unsatisfactory state, and it will probably remain so until changed by some form of interstate agreement. So long as the various legislatures act independently, conflicts may best be avoided by making the tax applicable only to property within the taxing state; and in a majority of the American statutes now in force this principle has been adopted.

[1] Miller *vs.* Commonwealth, 111 Pa. 321.

[2] Drayton's Appeal, 61 Pa. 172; Matter of Swift, *op. cit.*

[3] Orcutt's Appeal, 97 Pa. 179.

CHAPTER V.

ECONOMIC THEORY.

§ 1. *Historical Survey.* The earliest theoretical discussion of the inheritance tax which has come down to us in that of Pliny the Younger in his Panegyric on the Emperor Trajan. Pliny expressed unqualified approval of Trajan's reforms, especially the exemption of the nearest relatives in all cases. Without such an exemption, he considered the *vicesima hereditatium* oppressive; he called it "*tributum tolerabile et facile heredibus dumtaxat extraneis, domesticis grave.*"[1] He argued that so heavy a tax as the *vicesima* would be borne with great reluctance by those who were entitled to their inheritance by birth, kinship, and community of family worship; who had always regarded the property as their own possession, to be passed on from them in turn to their heirs.[2] And a father who had just lost his son should not be called upon in his bereavement to take an inventory of what had been left him;[3] to tax him at such a time would be to add to his burden of sorrow,[4] to treat father and son as strangers.[5] For a father to become

[1] *Panegyricus*, xxxvii.

[2] *Ibid.*, xxxvii: "Videlicit, quod manifestum erat, quanto cum dolore laturi, seu potius non laturi homines essent, destringi aliquid et abradi bonis, quæ sanguine, gentilitate, sacrorum denique societate, meruissent, quæque nunquam ut aliena et speranda, sed ut sua semperque possessa, ac dienceps proximo cuique transmittenda cepissent."

[3] *Ibid.*, xxxviii: "Nemo recentem et attonitam orbitatem ad computationem vocet, cogatque patrem, quid reliquerit filius, scire."

[4] *Ibid.*, xxxviii: "Filio amisso, insuper affici alio dolore."

[5] *Ibid.*, xxxvii: "Quod liberos ac parentes faceret extraneos."

the sole heir of his own son was a great enough sorrow, without making the state an unwelcome co-heir.[1]

Adam Smith gave a reason of a less sentimental and more economic nature for exempting direct heirs in some cases:[2]

The death of a father, to such of his children as live in the same house with him, is seldom attended with any increase, and frequently with a considerable diminution of revenue; by the loss of his industry, of his office, or of some life-rent estate, of which he may have been in possession. That tax would be cruel and oppressive which aggravated their loss by taking from them any part of his succession. It may, however, sometimes be otherwise with those children who, in the language of the Roman law, are said to be emancipated; in that of the Scotch law, to be foris-familiated; that is, who have received their portion, have got families of their own, and are supported by funds separate and independent of those of their father. Whatever part of his succession might come to such children, would be a real addition to their fortune, and might, therefore, perhaps, without more inconveniency than what attends all duties of this kind, be liable to some tax.

But he charged inheritance taxes in general, in common with all other taxes on the transfer of property, with violating his first canon of taxation; "the frequency of transference not being always equal in property of equal value." He opposed them also on the ground that they "tend to diminish the funds destined for the maintenance of productive labor." For "the revenue of the sovereign," he added, "seldom maintains any but unproductive labourers."

Ricardo elaborated this objection, but avoided the dangerous ground of distinguishing between productive and unproductive labor:

It should be the policy of governments . . . never to lay such taxes as will inevitably fall on capital; since by so doing, they impair the

[1] *Panegyricus*, xxxviii: "Sic quoque abunde misera res est, pater filio solus heres: quid si coheredem non a filio accipiat?"

[2] *Wealth of Nations*, bk. v, chap. ii, pt. ii, appendix to articles 1 and 2.

funds for the maintenance of labor, and thereby diminish the future production of the country. . . If a legacy of £1000 be subject to a tax of £100, the legatee considers his legacy as only £900 and feels no particular motive to save the £100 duty from his expenditure, and thus the capital of the country is diminished; but if he had really received £1000, and had been required to pay £100 as a tax on income, on wine, on horses, or on servants, he would probably have diminished, or rather not increased his expenditure by that sum, and the capital of the country would have been unimpaired.[1]

J. B. Say also believed that the national capital would be diminished by the amount of the inheritance tax,[2] but on the other hand he argued that this was one of the least difficult of all taxes to pay, and so decided that it would be injurious only when carried to excess.[3]

McCulloch was little influenced by the tax-on-capital argument, and looked at the effect of the tax from another point of view. He criticised Ricardo's objection as follows:[4]

It might, however, be exceedingly inexpedient to impose or increase any one of the taxes suggested by Mr. Ricardo; and, provided the tax on successions be kept within due limits, we doubt whether the considerations he has stated be entitled to much weight. The slender influence of the tax over the legatee is, perhaps, correctly stated by Mr. Ricardo; but then it is to be borne in mind that the individual who leaves property is aware that it will be subjected to the tax, and he, consequently, has an additional motive to save and amass in order that his heirs may not be prejudiced by its payment. And this circumstance, and the fact of the tax being imposed when the contributors are receiving money or other property, and, consequently, when it is most convenient for them to pay it, appears to be a sufficient answer to the objections against it.

The objection to the inheritance tax as an encroachment

[1] *Principles of Political Economy and Taxation*, chap. viii.

[2] *Traité d'economie politique* (huitième édition), livre iii, chap. ix.

[3] *Cours complet d'economie politique*, pt. viii, chap. iv.

[4] *Taxation and the Funding System*, p. 290.

upon national capital was demolished by J. S. Mill, who showed that the diminution, if it occurred, would be not so much the result of the mode of taxation as of its excessive amount. Again,

> The argument cannot apply to any country which has a national debt, and devotes any portion of revenue to paying it off; since the produce of the tax, thus applied, still remains capital, and is merely transferred from the tax-payer to the fundholder. But the objection is never applicable in a country which increases rapidly in wealth. The amount which would be derived, even from a very high legacy duty, in each year, is but a small fraction of the annual increase of capital in such a country; and its abstraction would but make room for saving to an equivalent amount: while the effect of not taking it, is to prevent that amount of saving, or cause the savings, when made, to be sent abroad for investment.[1]

Mill advocated not only progressive inheritance taxes,[2] but the abolition of collateral inheritance, and a limitation of the amount which any one should be allowed to take either by inheritance or bequest.[3] He was more radical than Bentham; he adopted the substance of Bentham's proposal as to collateral inheritance, but he went further and wished to limit inheritance in the direct line also.

Bentham,[4] writing in the last decade of last century, had propounded the following conundrum:

> *What is that mode of supply, of which the twentieth part is a tax, and that a heavy one, while the whole would be no tax, and would not be felt by anybody?*

He proposed to solve the riddle by abolishing intestate inheritance except in the case of immediate relatives, and limiting the power of bequest of testators having no direct heirs, leaving

[1] *Principles of Political Economy*, bk. v, chap. ii, § 7.

[2] *Ibid.*, bk. v, chap. ii, § 3.

[3] *Ibid.*, bk. ii, chap. ii, §§ 3, 4; bk. v, chap. ix, § 1.

[4] *Supply without Burden.*

fathers free to dispose of their property as they pleased. He furthermore suggested that the state should have an equal share in the inheritance of such relatives as grandparents, uncles and aunts, and perhaps nephews and nieces, and a reversionary interest in the successions of childless heirs without prospect of children. In defending his proposal he said:

The advantageous properties of the proposed resource may be stated under the following heads, viz.—1. Its unburthensomeness. 2. Its tendency to cut off a great source of litigation. 3. Its favorableness to marriage. 4. Its probable popularity on that score.

But Bentham wished it distinctly understood that the extension of escheat which he proposed was entirely different from a tax on successions. Ricardo afterward objected to the inheritance tax on the ground that it was not sufficiently recognizable as a tax to be an incentive to economy; but Bentham objected to it because it was too plainly a tax:

Suffer a mass of property in which a man has an interest to *get into his hands*, his expectation, his imagination, his attention at least, fastens upon the whole. Take from him afterward a part; . . . the parting with it cannot but excite something of the sensation of a loss.

But in the extension of escheat,

The larger the share of the public the better, even with reference to his feelings; for the larger it is, the more plainly it will show as a *civil* regulation in matters of succession: the smaller, the more palpably it will have the air of a *fiscal* imposition—the more it will feel, in short, like a *tax*. . . Pass, instead of the tax, a law of inheritance, giving the public *fifty per cent.* upon certain successions, the burthen may be next to nothing; pass a law of inheritance, giving the public the whole, the burthen vanishes altogether.

The proposal to abolish inheritance between distant relatives has been approved by writers of the most diverse views. The demand of the earlier St. Simonians, who wished to abolish all inheritance, was greatly modified by Enfantin, who was willing to permit inheritance between near relatives, to be lim-

ited by heavy inheritance taxes. In like manner Bluntschli[1] proposed inheritances taxes of from five to thirty per cent. for relatives descended from common great-grandparents, and the abolition of inheritance and bequest between all other persons. He based his proposals on what he called a right of inheritance in the state and commune. This conception of *staatliches Erbrecht* has been adopted by many of the later German writers; and either from this point of view or owing to more purely fiscal considerations, the inheritance tax has been approved by most of the German, French, and English writers on finance and economics.[2] Even Bastable, who finds a number of theoretical objections to it, concedes "that it has come to be almost universally regarded as an essential constituent of any well-arranged scheme of finance."[3]

In America the inheritance tax has found an earnest advocate in Professor Ely.[4] But the discussion of the subject in this country has been chiefly popular rather than scientific. Progressive inheritance taxes are advocated alike in the platform of the Knights of Labor, in the organ of the Nationalists,

[1] "Das Erbrecht und die Reform des Erbrechtes." *Gesammelte kleine Schriften*, i, 233.

[2] Rau, *Finanzwissenschaft*, §§ 237, 405; Wagner, *Finanzwissenschaft*, §§ 482, 483; Roscher, *Finanzwissenschaft*, § 76; Schäffle, *Steuerpolitik*, p. 508; von Stein, *Finanzwissenschaft*, ii, 209; Umpfenbach, *Finanzwissenschaft*, §§ 203–206; von Scheel, *Erbschaftssteuern und Erbrechtsreform*; Bacher, *Die deutschen Erbschafts- und Schenkungssteuern*; Krüger, *Die Erbschaftssteuer*; Eschenbach, *Erbrechtsreform und Erbschaftssteuer*; Schall, "Verkehrs- und Erbschaftssteuern," in Schönberg's *Handbuch der politischen Oekonomie*, iii, 470; Frantz, *Die sociale Steuer reform*, pp. 85–110; von Kaufmann, *Die Finanzen Frankreichs*, p. 292; de Parieu, *Traité des impôts*, livre vi, chap. iii; Leroy-Beaulieu, *Science des finances*, chap. xi; Sidgwick, *Principles of Political Economy*, bk. iii, chap. viii; *Idem*, *Elements of Politics*, chap. xi, § 5; Graham, *Socialism New and Old*, p. 299; Minton, "The Impediment to Production," *Economic Review*, i, 530.

[3] *Public Finance*, bk. iv, chap. viii, § 7.

[4] *Taxation in American States and Cities*, chap. viii; "The Inheritance of Property," *North American Review*, cliii, 54.

and in the writings of one of America's most famous millionaires. Mr. Andrew Carnegie has more than once declared himself in favor of an inheritance tax rising as high as fifty per cent. in the case of the largest fortunes. In a lecture delivered in New York City in February, 1892,[1] he even went so far as to say that "Every dollar of taxes required might be obtained in this manner, without interfering in the least with the forces which tend to the development of the country through the production of wealth." But he assumed that one-fifth of the property of deceased persons would go to the state; altogether too large a proportion unless all successions, large and small, were to be very heavily taxed. In 1889 he wrote as follows:[2]

> By taxing estates heavily at death the state marks its condemnation of the selfish millionaire's unworthy life. It is desirable that nations should go much further in this direction. Indeed, it is difficult to set bounds to the share of a rich man's estate which should go at his death to the public through the agency of the state.

And in his New York lecture he declared:

> There are exceptions to all rules, but not more exceptions, we think, to this rule than to rules generally, that the "almighty dollar" bequeathed to children is an "almighty curse." . . . No man has a right to handicap his son with such a burden as great wealth.

The trend of public opinion, as shown by recent newspaper discussions, seems on the whole to be quite decidedly favorable to the inheritance tax. Objections are sometimes raised in the press as elsewhere; but the practicability of the tax and the comparative ease with which it is collected have a marked effect upon its popularity. As one writer has argued,

> It is much more merciful to avaricious human nature to deprive it of something it has never had than to lop off anything—however superfluous—which has been actually enjoyed. . . . On the whole, I can see no better way to diminish the natural pangs attendant

[1] "The Gospel of Wealth," *Lectures to Young Men*, p. 15.

[2] *North American Review*, cxlviii, 659.

upon paying taxes than to collect as much income as possible in the fleeting moments when the property belongs to nobody in particular.[1]

§ 2. *The Arguments Classified.* If we examine the principal arguments which have been adduced to establish the justice of the inheritance tax, we shall find that they are no less than eight in number, and rest upon three quite different conceptions of the nature of the tax. The tax is regarded (1) as a limitation of inheritance; (2) as a fee, or payment for special benefits received; and (3) as a tax according to the ability of the tax-payer. Economic theory thus agrees with legal theory in distinguishing between taxation and the regulation of inheritance; but it goes farther and distinguishes also between fees and taxes, or between the benefit theory and the faculty theory of taxation.

AS A LIMITATION OF INHERITANCE.

1. *The Extension of Escheat Argument* is that represented by Bentham and by all who would abolish or limit collateral inheritance. Briefly stated, the argument is that no good reason exists for intestate inheritance between distant relatives, for in modern times the family consciousness extends only to the nearest degrees of relationship; hence the property of those dying without near relatives should escheat to the state. The same thing may be accomplished in part by an inheritance tax; and even applying the principle in its entirety, since it is difficult to say just where inheritance should cease, there are some relatives from whom the state might better take not the whole, but a part. This argument applies primarily to cases of intestacy; yet such a limitation of inheritance, especially if its purpose were at all fiscal, would naturally be accompanied by a corresponding limitation of the power of bequest.

2. *The Diffusion of Wealth Argument.* Inheritance may be limited not only as to the persons who may inherit, but also as to the amount which any person may take. This form of limi-

[1] *Kate Field's Washington*, February 8th, 1893.

tation was proposed by Mill, and has frequently been advocated in recent years as a check upon the perpetuation of dangerously large fortunes. Such a limitation of inheritance and bequest would have a double effect upon the distribution of wealth; it would affect the size of large inheritances directly, and it would encourage the division of large estates by bequest. In like manner, a progressive inheritance tax will diminish large fortunes more than small ones, and if the progression is according to the size of the separate shares rather than of the whole estate it will also encourage a multiplicity of bequests. The inheritance tax may affect the distribution of wealth in still another way, by discriminating in favor of bequests to servants or for charitable purposes.

Of all the arguments for the inheritance tax, the diffusion of wealth argument shows the nearest approach to socialistic tendencies. It is the argument advanced alike by Mr. Andrew Carnegie and by the Nationalists. *The New Nation* expresses the belief "that the drastic application of the inheritance tax is eventually to be one of the most efficacious instruments in preparing the way for economic equality."[1]

AS A FEE.

3. *The Partnership Argument* is simply the benefit theory of taxation in general applied to the inheritance tax. The state is represented by Eschenbach[2] as a silent partner in the business of each citizen, without whose aid and protection it would be impossible to transact business or amass wealth; when the partnership is dissolved by death, the silent partner is entitled to a share of the capital. Stated in this form the argument may seem rather fanciful; but in its essence it is simply a statement of the intimate relations which exist between the individual and the state, and which may be conceived to give

[1] *The New Nation*, March 4th, 1893.

[2] *Erbrechtsreform und Erbschaftssteuer*, pp. 54, 55.

the state a better claim to the property of a dead man than any individual has who was of no assistance to the owner in obtaining it.

4. *The Value of Service Argument.* It has often been argued that as inheritance and bequest are not natural rights, but privileges conferred by positive law, those who benefit by them owe something to the state in return for the legal regulations and proceedings which gave them the title to a decedent's property, as well as for the protection of the property from unlawful depredations while the transfer was being effected. The tax has sometimes been compared to an insurance premium,[1] but the comparison is not exact, for it is not the function of the state to make good losses, but to prevent them.

5. *The Cost of Service Argument.* It would be difficult to determine the amount which ought to be paid in accordance with the value of service theory, but it certainly seems no more than just that the cost of probate courts should be defrayed, in part at least, by those who receive the most direct and palpable benefits from them. This argument has been neglected by theoretical writers, but its influence may be plainly seen in the legislation of several of the American commonwealths, where moderate inheritance taxes have been imposed for the express purpose of defraying the cost of probate courts. This argument would logically result in a light tax, not proportional to the estate, but regressive, or even uniform; and as a matter of fact the taxes levied expressly for this purpose have never exceeded one per cent., and the Wisconsin tax was regressive.

AS A TAX.

6. *The Back Taxes Argument.* It is a well-known fact that vast amounts of personal property escape taxation altogether during the lives of the owners. Inheritance taxes have therefore been proposed as a means of collecting taxes which have

[1] Leroy Beaulieu, *Science des finances*, chap. xi.

been evaded during the decedent's lifetime. It was this consideration which led the New York Legislature to impose the direct inheritance tax upon personal property alone. From the standpoint of justice between individuals the argument is not altogether sound, for the inheritance tax bears no necessary relation to the amount of taxes evaded. A collection of the back taxes actually evaded has been proposed in connection with the estate of Jay Gould, and similar exactions are regularly made in Prussia and in some of the cantons of Switzerland, when evasion can be proven; but this is quite distinct from the inheritance tax.

7. *The Lump Sum Argument.* The inheritance tax may better be regarded as in lieu not of taxes which have been evaded, but of taxes which have not been imposed; that is, as a property or capitalized income tax paid once in a life-time instead of once a year.[1] It is paid after the death of the tax-payer, and hence at the time most convenient for him; or it may be regarded as paid by the heir in advance. The burden of annual taxes may be expected to be lightened when an inheritance tax is introduced, and hence the latter is not an additional burden, but only a method of levying a part of the property or income tax. Where there is no personal property tax, an inheritance tax on personal property may be considered as taking its place; and even where a personal property tax nominally exists, but is so universally and uniformly evaded as to be practically a dead letter, the same argument applies. In such a case the back taxes argument and the lump sum argument shade into one another.

When the inheritance tax is regarded as a property tax, an argument which applies to property taxes in general may be applied to it: namely, that levied as an adjunct to the income tax its effect will be to increase the burden on funded income as compared with income from labor.

[1] *Cf.* Bastable, *Public Finance*, p. 526.

8. *The Accidental Income Argument.* From the standpoint of the heir, an inheritance is a sudden acquisition of property, without effort on his part; an accidental and perhaps unexpected increase of wealth, which manifestly increases his tax-paying ability. It is conceivable that where there is an income tax, inheritances might be taxed as income; but even if this were done, the accidental or gratuitous nature of such acquisitions would justify an additional tax, and since it is not done, there is a double reason for the inheritance tax. It is not true in every case, however, that the inheritance of property indicates an increase of tax-paying ability. The death of the head of a family may be a positive economic loss to the wife and minor children who enjoyed the use of his property while he was alive, and who were dependent upon his personal exertions for their support. But if his income was from property rather than from personal exertions, his death will make little difference in the economic condition of the family. If the income was wholly from interest, the economic condition of the family will be somewhat improved, for the income will remain the same, and there will be one less person to be supported by it; if it was from profits, the condition of the family may be improved or otherwise, according to the changes in the employment of the capital which may result from the owner's death. But in any case where property goes to collateral relatives, or even to self-supporting adult sons, there is a distinct increase of tax-paying ability.

The Co-heirship of the State. It remains to consider what is known as the theory of state co-heirship. Bluntschli conceived the state and the local political units as co-heirs with individuals, and the expression has been adopted not only by many German writers, but by Professor Ely in America.[1] It seems to me that the conception of state co-heirship results from a confusion of inheritance and escheat, and that it is

[1] *North American Review*, cliii, 61.

really either a complex idea which may be resolved into what I have called the extension of escheat and the partnership arguments, or else simply a figurative expression for the limitation of collateral inheritance. Bentham is sometimes cited as the chief representative of the theory of state co-heirship; but Bentham himself made no use of that expression. He called the system which he proposed an extension of escheat, and based it simply on the absence of any reason for the operation of inheritance between distant relatives. But later writers have combined with his argument the thought which forms the basis of the partnership argument, thus: There is no reason for inheritance between distant relatives; the state does more for the individual than his distant relatives do, and therefore has a better claim to his property. The state is sometimes represented as a larger family; it is said that the bond of kinship between distant relatives loses itself in the whole nation,[1] which therefore inherits the property of individuals as the family inherits the property of its members. But such expressions must be regarded as metaphorical rather than scientific; the state takes property not by inheritance, but by escheat. The distinction is practically little more than a matter of terminology. The important question is how far inheritance should extend; where inheritance ends escheat will begin.

§ 3. *Objections.* The inheritance tax has been objected to chiefly on the ground that it is a tax upon capital. This objection has been raised by Adam Smith, Ricardo, and a host of lesser writers. Even so recent an author as Bastable[2] has objected to the inheritance tax as a tax on property rather than on income, and as tending therefore to retard the growth of wealth. But whether a tax is paid out of capital or income depends not upon the form of the tax, but upon its amount and the time allowed for payment. And even if capital should be the source

[1] Umpfenbach, *Finanzwissenschaft*, § 203. [2] *Public Finance*, p. 525.

as well as the subject of the tax in a given case, it does not follow that the national capital will be diminished. Indeed, one of the arguments in favor of the inheritance tax is that by diminishing large fortunes it will tend to bring about a better distribution of wealth. Hence if we accept the principle that a tax may be used for such a purpose, the tax-on-capital objection is transformed into an argument in favor of the tax; and even if we do not, the objection has no weight in the case of a tax sufficiently light to be paid out of income.

Adam Smith considered the inheritance tax unequal, on account of the varying frequency of transfer; and the same objection has been often brought forward since his time. But this objection holds good only as against the lump sum argument, and has no force as against the other arguments for the tax. It looks only at the property, and confuses the subject of the tax with the tax-payer. The tax may be paid at unequal intervals in respect of the same property, but it is paid each time by a different person, and hence from the standpoint of individual faculty it cannot be said to be unequal. Chile attempts to avoid the supposed inequality by exempting the second devolution within a period of ten years; and the English method of assessing the succession duty according to the successor's expectation of life has been commended by Leroy-Beaulieu[1] as another way out of the difficulty, but this leads to the undesirable result of taxing minors more heavily than adults. In the case of direct succession, where the property may be regarded as belonging to the family in common, there is perhaps some reason for such a concession as that of the Chilean law, if it could be made less arbitrary; but in the case of collateral inheritance it certainly makes no difference in the tax-paying ability of the heir whether the property has changed owners during the previous year or remained in the same hands for half a century. Hence where moderate amounts going to

[1] *Science des finances*, p. 515.

direct heirs are exempt, any provision of this sort is unnecessary.

It has been said that to levy a property tax and an inheritance tax on the same property in the same year constitutes double taxation. This objection is little more than a play upon words. Double taxation, in the proper sense of the term, implies inequality of taxation. The taxing of all property and all income from property, or of all property and all inheritance of property, is not, properly speaking, double taxation; that is, it is not unequal taxation, unless one or the other of the two taxes is unequal of itself.[1]

When the provisions of the existing laws are considered, the cry that the inheritance tax is "a tax upon widows and orphans" will be seen to be utterly absurd. In America it is the exception to tax widows and orphans at all; and where the tax does apply to direct heirs, the possibility of oppression is precluded by generous exemptions. Even if all direct inheritances were taxed, the objection would be less real than it at first appears, and would apply in a comparatively small number of cases; for in the natural order of things death comes at an advanced age, after the children are grown up and able to take care of themselves.[2]

The objections that the tax is a discouragement to industry and thrift, and that it will drive away capital, really apply to the inheritance tax less than to almost any other form of taxation. Death is usually looked upon as a remote event, and occupies no very prominent place in the minds of men; and if a man has the inclination to save property to leave to his heirs, his efforts will not be diminished, but perhaps rather increased, by the thought that one or two per cent. of his savings must go to the state. The inheritance tax is a less dis-

[1] For a discussion of double taxation in general, see Seligman, "The Taxation of Corporations," *Political Science Quarterly*, v, 638.

[2] *Cf.* Leroy Beaulieu, *Science des finances*, p. 514.

courage ment to industry than an income tax; it is a less discouragement to thrift than a property tax; and no tax which can be levied on movable wealth will have a less effect in driving away capital. The deterrent effect of a tax to be paid after death is not to be compared with that of a tax which must be paid every year.

It is sometimes objected that the tax will be evaded by gifts *inter vivos*. On the other hand, one argument in its favor is that by encouraging the distribution of large fortunes during the lives of the owners it will tend to bring about a better distribution of wealth. As a matter of fact, men do not give away large amounts of property during life for the purpose of escaping taxation. Most men would rather let the state take a small portion of their property after they are dead than give away the whole while they are alive, even to their nearest relatives.

The inheritance tax has been denounced as confiscation, extortion, and a dangerous step toward communism. This is declamation rather than argument; and it is a sufficient answer to point to the numerous theories by which the tax may be explained from the standpoint of pure finance. It is no more confiscation, or extortion, than any other tax; if it appears so it is because it is less familiar, just as the introduction of a property tax where it is a novelty has sometimes been considered a step toward confiscation.[1]

§ 4. *Administrative Advantages.* Whatever may be thought as to the equality of the inheritance tax, it will scarcely be doubted that it complies with Adam Smith's other three canons. It is certain, the cost of collection is usually light, and as to the time of payment it is the most convenient of all direct taxes. Mr. Bolton Hall, secretary of the New York Tax Reform League, has denied that it is convenient, on the

[1] "Plan of Tax Reform in Prussia," *Journal of Political Economy*, i, 324; translated from the *Bulletin de statistique et de législation comparée*, December, 1892.

ground that almost all estates are pressed for ready money.[1] It must be admitted that the settlement of estates is often attended with considerable expense; but income-yielding property does not cease to be productive when the owner dies, and when sufficient time is allowed the inheritance tax is in most cases paid with much greater ease and willingness than taxes in general.

This mode of taxation leaves little opportunity for fraud. During the settlement of an estate its value can be ascertained more definitely than at any other time; thus the personal property of Jay Gould, which was assessed at half a million dollars for the property tax, is valued at one hundred and forty times that amount since the owner's death. The appraisal for the inheritance tax may be used as a check on the property or income tax returns, and may thus serve to prevent fraud in those forms of taxation.

The inheritance tax cannot be shifted. There are no perplexing questions of incidence to be considered in connection with it. Its effect is known with certainty; the inheritance is diminished by the amount of the tax.

The receipts from this source do not come in all at the same time, but are distributed through the entire year, and there are comparatively few payments in proportion to the amount of revenue received. It might be thought that the receipts would vary greatly from year to year, but this is true only in small tax districts. The inheritance tax is not suitable for a local tax, except in the case of very large cities; as a state tax, especially in the larger commonwealths, the returns are remarkably constant from year to year. The larger the taxing district, the greater will be the tendency to regularity in the product. For this reason the inheritance tax would be peculiarly suitable for federal purposes if the general government should ever again resort to direct taxation. So long as the state

[1] *Equitable Taxation*, p. 54.

taxes are no heavier than at present, a federal tax might easily be superimposed upon them. The inheritance tax has the advantage of elasticity, for an increase in the rate of the tax cannot diminish the death-rate; and in case of a great war the receipts might be expected to increase automatically to some extent.

§ 5. *Specific Problems.* While some of the special problems which arise in connection with the inheritance tax are peculiar to it, others are similar to the problems of taxation in general. Even the latter, however, may require a different solution in the case of the inheritance tax, because of its double nature as a fiscal exaction and as a regulation of inheritance, and the peculiar position which it occupies in the science of finance on this account.

Progression. The question of progression in the inheritance tax is in some sense a part of the question of progressive taxation in general; yet many writers have considered inheritances a peculiarly fit subject for progressive taxation. On this point Mill wrote as follows:

> It is not the fortunes which are earned, but those which are unearned, that it is for the public good to put under limitation. . . . I conceive that inheritances and legacies, exceeding a certain amount, are highly proper subjects for taxation: and that the revenue from them should be as great as it can be made without giving rise to evasions, by donation *inter vivos* or concealment of property, such as it would be impossible adequately to check. The principle of graduation (as it is called,) that is, of levying a larger percentage on a larger sum, though its application to general taxation would be in my opinion objectionable, seems to me both just and expedient as applied to legacy and inheritance duties.[1]

An inheritance tax imposed for the purpose of diffusing

[1] *Principles of Political Economy*, bk. v, chap. ii, § 3. In the first edition Mill's opposition to progressive taxation in general is more pronounced, and his advocacy of progressive inheritance taxes less emphatic: "The principle of graduation (as it is called,) that is, of levying a larger percentage on a larger sum, though its application to general taxation would be a violation of first principles, is quite unobjectionable as applied to legacy and inheritance duties."

wealth will necessarily be progressive, for otherwise it will diminish small successions in the same proportion as large ones; and it might be so contrived as to limit inheritance and bequest absolutely. For example, if it were desired to fix the limit in the neighborhood of half a million dollars, the end could be accomplished by means of a progressive inheritance tax levied according to some such schedule of rates as the following:

		Per cent.			Per cent.
On the first	$10,000	0	On the sixth	$20,000	12
" second	10,000	1	" fifth	30,000	15
" third	10,000	2	" fourth	50,000	20
" fourth	10,000	3	" fifth	50,000	25
" fifth	10,000	4	" sixth	50,000	30
" sixth	10,000	5	" fourth	100,000	40
" seventh	10,000	6	" fifth	100,000	50
" eighth	10,000	7	" sixth	100,000	60
" ninth	10,000	8	" fifth	150,000	75
" tenth	10,000	10	" fourth	250,000	90
			" excess above	$1,000,000	100

This scale would make the largest amount possible to inherit somewhat less than half a million dollars; namely, $463,500. Of course the limit could be fixed at any desirable point.

One objection which has been raised against progressive taxation in general is that it has no logical limit. This objection will not apply to a scale which is carried to one hundred per cent. The scale is still arbitrary, it is true; the point at which the inheritance is to be limited must be fixed by considerations of general policy. But one hundred per cent. is not an arbitrary point at which to discontinue the progression, for to go beyond that point would be to make a larger inheritance less than a smaller one. Such high rates will hardly be applied to property or income taxes, but their application to inheritance taxes would be a much less socialistic measure, for it would act as a restriction only on the inheritance of property, leaving the rights of independent acquisition and posses-

sion untouched. While any limitation of the right of property itself would be a step toward equality of wealth, a limitation of inheritance would be only a step toward equality of opportunity. The limitation of direct inheritances to half a million dollars and of collateral inheritances to a still smaller amount was recommended a few years ago by a special committee of the Illinois Bar Association, and a bill for the purpose was introduced in the legislature.[1] Similar measures have frequently been proposed of late;[2] there seems to be a growing feeling in their favor, and such a limitation of inheritance must be regarded as at least a possibility of the future. If it is to be realized it would better be in the form of a progressive inheritance tax, for it is more arbitrary and unequal to fix a point up to which the privilege of inheritance may be enjoyed without restriction, and beyond which it ceases entirely, than it is to increase the restriction gradually with the size of the inheritance.

Whether it would be the part of wisdom to limit inheritance in any such way as this is a fairly debatable question, and much might be said on both sides. On the one hand, it is urged that the accummulation of vast wealth is a source of danger to the public welfare, and that the reasons which justify the institution of inheritance do not apply to very large amounts, for in such cases inheritance is not an incentive to useful industry, but may become an encouragement to idleness. On the other hand, the growth of large fortunes may be said to have some advantages; and if property is to be considered as belonging to the family as a whole rather than to individuals, inheritance in the direct line must be regarded as a necessary part of the right of property. It must be admitted, however,

[1] Jacobson, *Higher Ground*, pp. 194–202; Ely, *Taxation in American States and Cities*, pp. 515–523.

[2] *The Weekly Review*, iii, 163; Charles Bellamy, *The Way Out*, chap. xiv; Stead, "Jay Gould: a Character Sketch," *Review of Reviews* (American edition), vii, 25.

that inheritance is already greatly limited by an unlimited power of bequest; a system of law which recognizes no *Pflichttheilsrecht* or *portion légitime* cannot be said to rest upon the family idea of property.

But a moderately progressive inheritance tax need not be considered a limitation of inheritance. Progression is sometimes defended on what has been termed the "compensatory" theory as a compensation for state interference, on the ground that inequalities of fortune are due in part to positive law and state action. The back taxes argument requires progression, because large fortunes more easily escape taxation during the owners' lives than small ones. This is only another way of saying that taxation in general is actually regressive; and while the back taxes argument is of little weight as far as justice between individuals is concerned, as applied in this way to whole classes of tax-payers it would doubtless result in a rough sort of justice. This would then be the so-called "special compensatory" theory of progression. Finally, progressive inheritance taxes, like other progressive taxes, may be explained on the theory of marginal utility.[1] All the arguments for progressive taxation in general apply with full force to the inheritance tax, and seem to thoroughly justify progression. It is to be considered, too, that in the case of the inheritance tax progression is eminently practicable.

Graduation according to Relationship. The graduation according to relationship is nearly universal in practice, and has a sound basis in theory. It may be explained by the extension of escheat argument, since the reasons for the institution of inheritance increase with the nearness of the relationship; by the value of service argument, for property might often be transmitted in the direct line even without laws of inheritance; and by the accidental income argument, because whether the devolution of property indicates an in-

[1] For these various theories see Seligman, "The Theory of Progressive Taxation," *Political Science Quarterly*, June, 1893.

crease of tax-paying ability depends largely on the relationship of the heir to the decedent. It cannot be explained by any of the other arguments unless combined with one of these three. Hence from the Nationalist point of view, from which the inheritance tax is regarded solely as a means to diffuse wealth, the only desirable graduation will be according to amount; and so Mr. Bellamy is quite consistent when he says that "the idea of taxing collateral inheritances more heavily than direct inheritances is absurd and vicious."[1]

As a matter of expediency, the graduation according to relationship serves a useful purpose. The practical financier will take into consideration the fact that it is much easier to collect a high tax from collateral than from direct heirs. Where the graduation according to relationship exists it is found that the highest taxes are paid with the least reluctance.

On the whole, the graduation according to relationship seems both equitable and necessary, if direct heirs are to be taxed at all. To what extent the graduation should be carried is a more difficult question. As a matter of fact, in case of intestacy the rate always rises at some point to one hundred per cent., either where the knowledge of kinship ends or at some point fixed by law beyond which intestate inheritance does not extend; and this point might well be fixed so as to limit inheritance to those degrees of relationship between which there is a conscious bond of kinship. For the degrees between which inheritance operates, two or three different rates ought to be sufficient; one rate for the widow and direct heirs, one for brothers and sisters and other near collateral relatives, and one for more distant relatives and strangers. The relative claims of remote heirs can scarcely be fixed with so much nicety as to make a dozen different rates more equitable than three.

Exemptions. Whether direct heirs are to be taxed at all

[1] *The New Nation*, March 5th, 1892.

must depend very largely upon financial considerations. The reasons which justify graduation according to relationship lead also to the conclusion that the entire exemption of direct heirs is no injustice; but as the great majority of successions are between immediate relatives, their exemption will have a very decided effect upon the revenue. The exemption is sometimes extended to brothers and sisters, and even to nephews and nieces; but when it is carried so far as this there is little left to tax.

When direct heirs are taxed, there should be an exemption of a sufficient amount to prevent hardship. The amount of the exemption must of course be fixed more or less arbitrarily. A distinction has sometimes been made in the statutes between minor and adult children, and with much reason. It would seem that for the widow and minor children the exempt amount should be such as to yield a revenue sufficient for support. Very small amounts going to collateral relatives may also well be exempted, if only as a matter of convenience. In any case the exemption may be according to the size either of the entire estate or of the separate shares, or both facts may be taken into consideration. If the inheritance tax is considered as a payment of back taxes, the estate will of course be taxed as a whole; but the principle of ability indicates that the determining factor should be the size of the separate shares. The size of the whole estate obviously makes little difference to the individual heirs except as it affects the size of their several portions. By the application of this principle to direct inheritances, the effect of the size of the family upon faculty can be practically recognized, as it probably can be in no other form of taxation.

An amount equal to the exemption should be deducted from the value of all inheritances which are taxed; for otherwise a difference of a few dollars in an inheritance may require the payment of a tax even greater than the difference. This is a rule which holds true of taxation in general, but it applies

with especial force to the inheritance tax because of the greater size of the exemptions. The neglect of this principle in framing particular inheritance tax laws has called forth some of the strongest arguments which have been advanced against them.[1]

Bequests for public, benevolent, and educational purposes may well be exempted, for in such cases, if the gift is wise, the whole amount accrues to the benefit of the community. It is not good public policy to tax a bequest for a public purpose more than a bequest to an individual, even a direct heir; and it is rather inconsistent to demand an inheritance tax from an institution whose beneficent offices have led it to be exempted from other taxation.

Some Supplementary Taxes. In some European countries there are taxes on the property of corporations, in lieu of the inheritance taxes paid by individuals. It may perhaps be considered that the immortality conferred upon corporations is analogus to the privilege of inheritance, and justifies a similar tax; but such taxes probably result rather from regarding the inheritance tax as a tax on property. Justice does not require a special tax on corporations in lieu of the inheritance tax, because the stock and bonds of stock companies become subject to the inheritance tax at the death of their owners, and the exemption of societies other than business corporations may be explained as a matter of public policy.

It is more common to find the inheritance tax supplemented by a tax on gifts *inter vivos*. Where the inheritance tax is a part of a system of taxes on transfers of property, there will naturally be a tax on all gifts; but for the purpose of preventing evasion of the inheritance tax it seems to be sufficient to make the tax applicable to gifts *causa mortis*, as is usually done. A tax on all gifts would be impossible to enforce, even if it were otherwise desirable.

[1] *The Boston Herald*, March 4th, 1893; resolutions of the Minneapolis Board of Trade, in *The Minneapolis Tribune*, February 14th, 1893.

What to regard as inheritances for purposes of taxation is sometimes a difficult question. A bequest of freedom to a slave has been held to be taxable.[1] A succession is sometimes defined as any beneficial interest in property accruing in possession or expectancy on the death of any person. The English law, which is very complete in this respect, expressly includes interests accruing by survivorship in the case of joint ownership, by general powers of appointment, and by the extinction of determinable charges; but life insurance is expressly excluded. The question of the taxability of life insurance has thus far been of no importance in this country, because it is usually paid to those relatives who have been altogether exempt. Even where direct inheritances are taxed, life insurance may properly be exempt for the most part; but in the exceptional cases in which it is payable to persons outside of the immediate family, or is very large in amount, it might well be made subject to the inheritance tax.

Application of the Proceeds. That the inheritance tax is usually regarded as something more than a purely fiscal measure is shown by frequent proposals to use the proceeds for benevolent or educational purposes. Such proposals have sometimes borne fruit in legislation. It is interesting to note that the earliest inheritance tax of which we have any definite knowledge was for the purpose of pensioning old soldiers, and that some of the latest enactments on the subject in the United States and Canada have been for charitable and educational purposes. In a small state, it would be unwise to make these special funds wholly dependent on the inheritance tax, because the receipts would be apt to be irregular in amount; but there can be no objection to making the proceeds of this tax a part of a fund which is supplied from other sources also.

§ 6. *Conclusion.* The inheritance tax seems to be pre-eminently an institution of democracy. It is found in nearly every

[1] State *vs.* Dorsey, 6 Gill (Md.) 388.

civilized country on the globe, but it is only in the most democratic countries—Great Britain, France, Switzerland, Canada, the Australasian colonies—that it reaches its fullest development, with high and usually progressive rates, and becomes an important source of revenue. The United States seems thus far to be an exception to this rule, but the increasing popularity of this mode of taxation and its rapid extension from state to state indicate that at no very distant day it may be well-nigh universal in America.

It is not altogether easy to decide which of the arguments for the inheritance tax is most conclusive. Some weight is to be attached to each of them, and certainly no one of them alone will be able to explain all the provisions of actual legislation. The inheritance tax in general may be regarded as a limitation of inheritance, especially between collateral relatives; but it may also be sufficiently well justified from the standpoint of pure finance. It accords as well as any other one tax with the principle of ability, and it serves as a useful adjunct to other taxes in bringing about justice in the fiscal system as a whole. It should be added that it is thoroughly practicable; it is difficult to evade, and large amounts of revenue are obtained from it without any perceptible disturbance of industry. No tax is less oppressive, or paid with less unwillingness. No tax is better adapted to replace the antiquated personal property tax. The experience of New York with the inheritance tax and the experience of a number of states with corporation taxes show that by these two methods of taxation alone most if not all of the state governments could pay all their expenses, leaving all taxes on property to the local political divisions. Such a separation of state and local finance would be most beneficial; it would do away with the necessity of state equalization, and it would make it possible to grant to the localities some degree of self-government in matters of taxation.

APPENDIX.

TABLE SHOWING THE COMPARATIVE FISCAL IMPORTANCE OF THE INHERITANCE TAX IN VARIOUS COUNTRIES.[1]

	Product (in Dollars.)	*Product per Capita.*	*Percentage of all State Taxes.*	*Percentage of State Expenditure.*
Great Britain and Ireland.	$53,609,975	$1.43	16.	12.3
France[2]	39,873,305	1.04	10.3	6.4
Belgium	3,800,000	.63	11.7	5.4
Italy	7,030,000	.23	3.8	2.2
Prussia	1,440,000	.05	2.5	.4
Norway	121,500	.06	1.5	.9
Russia	2,000,000	.02	.7	.5
Switzerland:—				
Geneva	203,800	1.93		
Bern	78,470	.15		
Australia:—				
Victoria	1,328,068	1.17	8.	3.
New South Wales	829,932	.73	6.2	1.8
South Australia	124,635	.38	3.6	1.1
America:—				
New York	1,786,218	.30	20.6	9.2
Pennsylvania	1,111,121	.21	12.3	6.5
Connecticut	94,130[3]	.13	8.9	8.
Maryland	114,009	.11		3.7
Delaware	1,232	.01		.3
West Virginia	1,004	.001		.1

[1] The figures given for Great Britain and Ireland, France, and the American commonwealths are for the fiscal years ending in 1892; most of the others are found by averaging the receipts or budget estimates for two or more years.

[2] The figures for France include only the proportional *droits d'enregistrement* on successions; they do not include the uniform tax on testaments or the *droits de timbre*.

[3] Four-fifths of the receipts for fifteen months.

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III

HISTORY OF TAXATION IN VERMONT