Senate Debate on the Sixteenth Amendment

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It is pretty clear after 105 years of experience that the income tax is one of the means by which Congress and the standing bureaucracy favors its allies and cronies, punishes its enemies, and above all, coerces the behavior of businesses and individuals. This essay presents the debate in the U. S. Senate prior to passing the resolution that forwarded to the States a proposal granting Congress the power to levy an income tax (which was subsequently ratified and became the 16th Amendment). The text that follows is verbatim from the official Congressional Record [1].

This debate occurred in the midst of a larger debate on the tariff, in which the Senators were discussing how to adjust the rates, what should be included in the free list; etc. You will see in what follows that there is very little debate in the U. S. Senate about the merits or risks of an income tax; that was already decided in the minds of the Senators. This debate mostly focused on the most efficient tactic to be used to get it ratified by the States. On those rare occasions in which the income tax was directly addressed, it was always in the context that it was a means for the very wealthy to pay a reasonable share to support the expense of the government. Naturally, since Congress cannot control its spending, it has become necessary for the middle class and sometimes even the poor to pay in.

It begins with the introduction of the resolution on 17 Jun 1909, and then the debate and vote on the resolution on 28 Jun 1909, 3 Jul 1909, and 5 Jul 1909, when the final vote was taken. In these comments by the Senators, reference is made to the Pollock decision; that is a reference to the Supreme Court case Pollack v. Farmer's Loan and Trust Company, 157 U. S. 429 (1895) and 158 U. S. Repts. pp. 635-637, in which was the 1894 decisions declaring the income tax law of 1894 (28 Stat. 509) unconstitutional. But it had in previously (Springer v. United States, 102 U. S. 586 (1881)) upheld the constitutionality of an income tax (13 Stat. 223 (1864) levied during the Civil War. For a more complete description of these previous laws and decisions, see reference [2]. The page numbers in **bold** below pertain to the Congressional Record volume cited above.

You will notice that the Senators all have high confidence that the public wanted an income tax; they were concerned that 12 States might not ratify it in defiance of public opinion. If the public did want it, it is only because they had been propagandized into believing that only the wealthy would have to pay it. But it is now obvious that the income tax falls on nearly everyone. Recall that an income tax levied on businesses is actually paid by the customers of that business [3].

p. 3377 (17 Jun 1909):

TAXES ON INCOMES.

Mr. BROWN. I introduce a joint resolution, which I ask may be read and referred to the Committee on Finance. The joint resolution (S. J. R. 39) to amend the Constitution relative to incomes was read the first time by its title and the second time at length, as follows:

Senate joint resolution 39.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of both Houses concurring), That the following section be submitted to the legislatures of the several States, which, when ratified by the legislatures of three fourths of the States, shall be valid and binding as a part of the Constitution of the United States:

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"The Congress shall have power to lay and collect direct taxes on incomes without apportionment among the several States according to population."

The VICE-PRESIDENT. The joint resolution will be printed and referred to the Committee on Finance.

Mr. McLAURIN. I think if the Senator from Nebraska will change his amendment to the Constitution so as to strike out the words "and direct taxes" in clause 3, section 2, of the Constitution, and also to strike out the words " or other direct" in clause 4 of section 9 of the Constitution, he will accomplish all that his amendment proposes to accomplish and not make a constitutional amendment for the enacting of a single act of legislation.

Mr. BROWN. That may be true, Mr. President; but my purpose is to confine it to income taxes alone, and to forever settle the dispute by referring the subject to the several States. I am not wedded to any particular phraseology in the amendment, but I have introduced it, it has already been referred to the committee, and I'm satisfied with that.

The Senate then returned to the debate on the tariff, which went until 28 Jun 1909, when the subject of taxing incomes came up again

p. 3900 (28 Jun 1909)

TAXES ON INCOMES.

Mr. ALDRICH. From the Committee on Finance, I report a joint resolution proposing an amendment to the Constitution of the United States, and if there is no objection I should be glad to have this disposed of without debate. I ask that it may be read.

Mr. TILLMAN. I thought we had an understanding that we would not deal with any of these constitutional or income tax or other amendments until we got through with the dutiable list.

Mr. ALDRICH. If the Senator proposes--

Mr. TILLMAN. I have an amendment which I wish to offer. I have been waiting here patiently in this oven about six hours to get a chance to present it.

Mr. ALDRICH. I ask that the joint resolution may be read and printed.

Mr. CULBERSON. I ask the Senator from Rhode Island if he has finished with the other schedules.

Mr. ALDRICH. No; I was only making this suggestion now if it can be done without debate, by unanimous consent· but if there is any objection I shall ask to have the joint resolution read and printed, and I give notice that I shall call it up at the first convenient period and ask to have it disposed of without debate.

The PRESIDING OFFICER. The Senator from Rhode Island, from the Committee on -Finance, reports a joint resolution, which will be read. .

The joint resolution (S. J. R. 40) proposing an amendment to the Constitution of the United States was read the first time by its title and the second time at length, as follows:

Senate joint resolution 40.

Resolved by the Senate and House of .Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

ARTICLE XVI. The Congress shall ha.ve power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration."

The PRESIDING OFFICER. If there be no objection, the joint resolution will be printed and lie on the table.

Mr. BORAH. Do I understand that it is the intention to take up this amendment before the income-tax amendment is disposed of?

Mr. ALDRICH. I thought perhaps the Senate might be able to dispose of it without debate. If they can, that might be done. If not, I shall not press it until after the income-tax provisions are disposed of.

Mr. BORAH. But not before the income-tax amendment if it is to be opposed?

Mr. ALDRICH. I certainly have no disposition to do that unless it can be done by unanimous consent.

The Senate then returned to the debate on the tariffs until the subject of the income tax came up on 3 Jul 1909.

p. 4067 (3 Jul 1909)

TAX ON INCOMES

Mr. BROWN. Mr. President, I ask unanimous consent that the joint resolution (S. J. R. 40) proposing an amendment to the Constitution of the United States be laid before the Senate, and that a vote be had thereon immediately.

The VICE-PRESIDENT. Is there Objection to the request of the Senator from Nebraska?

Mr. BURROWS. Mr. President, I suggest the absence of a quorum.

The VICE-PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Aldrich	Clark, Wyo.	Frazier	McLaurin
Bacon	Culbertson	Frye	Martin
Borah	Cummins	Gallinger	Nixon
Brandegee	Curtis	Gamble	Page
Briggs	Davis	Gore	Penrose
Bristow	Depew	Guggenheim	Perkins
Brown	Dick	Hughes	Scott
Burkett	Dillingham	Johnson, N. Dak.	Smoot
Burrows	Dixon	Johnston, Ala.	Stone
Burten	Dolliver	Jones	Sutherland
Carter	Elkins	Kean	Taylor
Chamberlain	Fletcher	La Follette	Warner
Clapp	Flint	McCumber	Wetmore

Mr. JONES. My colleague [Mr. PILES] has been called out of the city on important business.

The VICE-PRESIDENT. Fifty-two Senators have answered to the roll call. A quorum of the Senate is present. Is there objection to the request of the Senator from Nebraska?

Mr. ALDRICH. What is the request?

The VICE-PRESIDENT. That the Senate now vote upon the joint resolution (S. J. R. 40) proposing an amendment to the Constitution of the United States.

Mr. ALDRICH. I have no objection, with the understanding that there is to be no discussion, or the discussion must be limited. Of course that must be understood.

Mr. McLAURIN. I could not hear the Senator.

Mr. ALDRICH. If there is to be any debate, there must be a time fixed for taking the vote.

Mr. McLAURIN. I do not know about that.

Mr. ALDRICH. It is impossible, the Senator will see, to lay aside the tariff bill indefinitely for the purpose of discussing the joint resolution.

Mr. McLAURIN. That is true. I do not think it ought to be done. I do not think the tariff bill ought to be laid aside for the discussion or the consideration of this proposed amendment. I think it had better come in after the conclusion of the consideration of the tariff bill.

Mr. BROWN. I hope Senators will not object. It seems to me that the joint resolution ought to be passed now, in order that the House may have it before the tariff bill reaches that body.

In view of the objections that appear to be apparent, I change the request and ask that the joint resolution be laid before the Senate, and that it be voted upon by a roll call at 1 o'clock today.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Nebraska?

Mr. BORAH. I could not understand the request.

The VICE-PRESIDENT. It is that Senate joint resolution No. 40 be now considered by the Senate, and that it be voted upon by a roll call at 1 o'clock today. Is there objection to the request?

Mr. McLAURIN. Mr. President, I do not believe that there is any necessity for any constitutional amendment to authorize the Congress of the United States to enact an income tax. Whatever may be the intention in bringing forward the proposed amendment, I think the effect will be to defer the enactment of any law providing for an income tax. I think the effect of it will be that there will be probably more than a fourth of the States of the Union which will refuse to ratify the action of Congress when this proposed amendment to the Constitution is presented to the States for ratification, and then I think that it will be presented to the Supreme Court of the United States as an argument why an income tax should be held to be unconstitutional. I think it would be urged as a very plausible argument before the Supreme Court of the United States that the people are not in favor of an income tax and do not believe that an income tax would be constitutional.

I cannot conceive that there can be any necessity for any constitutional amendment. If I understood the vote yesterday, the proponent of this proposed constitutional amendment voted against the income tax.

Mr. BROWN. I voted for an income tax.

Mr. McLAURIN. I did not catch the vote of the Senator aright if he voted for an income tax. The Senator from Nebraska, as I heard it, voted to substitute the corporation tax for the income tax.

Mr. BROWN. I did. A corporation tax is a tax on incomes, which the court has sustained. I vote for that which the court sustained and rejected that which the court rejected.

Mr. McLAURIN. I do not see that the Congress of the United States should be called upon to zigzag around the inconsistent rulings of the Supreme Court of the United States. Without intending any reflection upon that tribunal, it is composed of men just exactly as the Congress of the United States is composed of men. I believe there are just as good lawyers in the House of Representatives and in the Senate of the United States as there are on the Supreme bench.

Mr. BROWN. That is true; but they are not on the bench.

Mr. McLAURIN. I cannot see that an income tax that would tax a portion of the incomes of the United States is constitutional when an income tax that would be uniform and tax all incomes of the United States over a certain amount would be unconstitutional.

I know that the Members of the Senate and the Members of the House are not on the Supreme Bench, but that does not necessitate nor argue for the abnegation of the right of the Senators and Representatives in Congress to pass their judgment upon a constitutional question. It is for us to

pass that which we consider to be constitutional law, and it is for the Supreme Court to undo it or not, as it sees proper.

Mr. CARTER. Mr. President ---

Mr. McLAURIN. I desire to look into this. I do not say that I shall vote against this proposed amendment, but I shall offer to amend the constitutional amendment by striking out the words "or other direct" in one place, and by striking out the words "and direct taxes" in another. The Constitution will then confer all the power which is provided for in the joint resolution and also free Congress from a great many other embarrassments.

I yield to the Senator from Montana.

Mr. CARTER. Do I understand the Senator as objecting to fixing the hour of 1 o'clock to-day for voting upon the joint resolution?

Mr. McLAURIN. I should like to have a little further time than that to consider it.

Mr. CARTER. I suggest to the Senator from Nebraska that it is quite possible a number of Senators are absent this Saturday afternoon who would be glad to be apprised of the time that the vote is to be taken on the joint resolution. I therefore suggest to the Senator from Nebraska that he modify his request for unanimous consent by fixing 1 o'clock on Monday.

Mr. McLAURIN. I do not object to that.

Mr. BROWN. I accept the modification and ask that a vote be taken without further debate at 1 o'clock on Monday.

Mr. McLAURIN. I wish to offer an amendment to the joint resolution and have t acted upon.

Mr. CARTER. The amendment may be offered and then pending.

Mr. ALDRICH. The vote to be taken at that time without further debate.

Mr. BORAH. I could not hear the request.

The VICE-PRESIDENT. The request now is that the vote be taken at 1 o'clock on Monday upon the joint resolution and all amendments thereto, without further discussion.

Mr. BORAH. Without any further discussion between now and then?

Mr. ALDRICH. Oh, no.

Mr. CARTER. It will be open for discussion at any time.

Mr. McLAURIN. It will be open for discussion between now and Monday at 1 o'clock.

Mr. ALDRICH. Certainly.

The VICE-PRESIDENT. The Chair understands that it will be laid before the Senate and discussed until 1 o'clock.

Mr. CARTER. It can be called up by any Senator between now and Monday at 1 o'clock.

Mr. ALDRICH. I do not understand that necessarily the joint resolution is before the Senate now.

The VICE-PRESIDENT. The Chair thought that that was a part of the request of the Senator from Nebraska.

Mr. BROWN. I understand that debate may be had on this or any other subject until 1 o'clock Monday, but at 1 o'clock on Monday the joint resolution is to be laid before the Senate and voted on. That is my request.

The VICE-PRESIDENT. Is there objection to the request?

Mr. BRISTOW. The other day we got mixed up, or at least I did, I do not know whether anyone else did, in regard to a unanimous consent, and we could not do anything until the income tax amendments were disposed of. Does this mean nothing else but that the joint resolution is to be considered at 1 o'clock on Monday?

The VICE-PRESIDENT. It does not. It is expressly stated that that is not the intention, but that the vote shall be taken at 1 o'clock on Monday. Is there objection? The Chair hears no objection, and that is the order of the Senate.

The Senate then returned to the debate on the tariff until 5 Jul 1909.

p. 4105 (5 Jul 1909)

TAXES ON INCOMES

The VICE-PRESIDENT. The Senator from Kansas desires to offer an amendment to the so-called "Brown joint resolution." If there be no objection, the Joint resolution will be taken up and the amendment will be now received.

The Senate, as in Committee of the Whole, proceeded to consider the Joint resolution (S. J. R. 40) proposing an amendment to the Constitution of the United States.

Mr. BRISTOW. I desire to add to the joint resolution what I send to the desk. ·

The VICE-PRESIDENT. The Secretary will read the proposed amendment.

The SECRETARY. It is proposed to add to Senate joint resolution 40 that section 3 of Article I be so amended that the same shall be as follows:

"ARTICLE I.

"SEC. 3. That the Senate of the United States shall be composed of two Senators from each State, who shall be chosen by a direct vote of the people of the several States, for six years; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the state legislatures; and each Senator shall have one vote."

p. 4106

Mr. ALDRICH. Mr. President, I shall at the proper time raise the question that that amendment is not in order. The unanimous-consent agreement relates to an amendment to the Constitution with reference to the income tax and no consent has been given for the consideration of such a proposition. If we can undertake to change the Constitution with regard to the election of Senators, we can change it in every possible respect as to the right of the people to have a regulation of the franchise in all the States and Territories. I object very strenuously to any such amendment, and at the proper time I shall raise the question of order against it.

Mr. BRISTOW. I should like to know what the question of order would be.

MR. ALDRICH. It will be that we have by unanimous consent agreed to vote at 1 o'clock upon a constitutional amendment providing for an income tax, and that nothing else is in order.

Mr. BRISTOW. But this is an amendment to the joint resolution proposing that amendment.

Mr. ALDRICH. It must be an amendment which is germane to the proposition and not an amendment to change the whole Constitution of the United States.

Mr. BRISTOW. This is not an amendment to change the whole Constitution of the United States. It is simply an addition to the present amendment which seeks to change the Constitution, and it adds another paragraph only.

I desire to say that the election of Senators by the people has been largely discussed, and, in my judgment, there is a very wide sentiment throughout the country in favor of it. Originally, it is known to everyone, it was the purpose of the framers of the Constitution that the President should be elected by an electoral college selected by the people. The membership of such college, it was supposed, would be superior in wisdom and judgment to the average citizen, so that we would have a wiser selection of the President than if it depended upon popular elections. But the evolution of our political affairs has completely changed this system of the election of President. The President is to-day nominated and selected by a direct vote in fact, although in theory the electoral college elects, but only in theory.

The Senate was to be chosen by the legislatures of the various States in joint session, because it was believed that the members of the legislature would be better equipped to select men to fill the office of Senator than would the average citizenship. But in many of the States this part of the Constitution is being done away with by the direct primary, and in some of them by requiring under state laws the Senators to be nominated and voted for at the general election.

There is no reason why in this age of the world, in this period of our progress, the people should not have an opportunity to select the men who will represent them in this body. If there ever was any occasion for the legislature to elect Senators, that occasion has long since passed, because of the wide dissemination of popular knowledge. The American people in the various States are as well qualified to select their Senators as the members of their legislatures representing them in their legislative bodied.

Then the legislatures are elected now to transact state business, and the election of Senators is sometimes an incidental matter. There is not any reason why the people of every State should not have the right and the opportunity to vote directly for the men who are to represent them in this body. I cannot understand why any Senator should object to giving the people of his State the right to select the men who will represent them here. My judgment is that any man who is not willing for the people whom he represents a direct choice as to whether he shall, or shall not, continue to represent them here, is either afraid that he is not the choice of the people whom he represents, or it is a confession that he does not represent them as they want him to represent them.

So I shall insist, first, that this amendment is in order and second, that it ought to be passed.

Mr. ALDRICH. Mr. President, I shall raise another question on the amendment, and I give notice of it now, in order that there may be no misapprehension about it. It is in violation of the unanimous-consent agreement than no business shall be done other than tariff business.

Mr. STONE. Mr. President, I desire to consume about ten minutes or so of the valuable time of the Senate to say a few words respecting the resolution proposing an amendment to the Constitution, authorizing the imposition of an income tax. I wish to read a declaration contained in the Democratic national platform which was promulgated at Denver in 1908. It is as follows:

We favor an income tax as part of our revenue system, and we urge the submission of a constitutional amendment specifically authorizing Congress to levy and collect a tax upon individual and corporate incomes, to the end that wealth may bear it proportionate share of the burdens of the Federal Government.

That declaration, clear and explicit, is alone sufficient to determine my attitude with regard to the resolution to be voted upon to-day. I am gratified to note this one more example, in addition to those I have heretofore pointed out, of Republicans following in the wake of Democratic leadership and along lines blazed by our Democratic pioneers. The President has taken his stand on the Denver platform, and a Republican Senator has culled one of its declarations and formulated it into the legislative proposition now before the Senate. I am happy to note repeated evidences of enlightened progressiveness on the part of our Republican brethren. I hope, however, that when the Senator from Nebraska [Mr. BROWN], whose resolution has been selected by the Finance Committee as the basis of this proposition, thereby giving that Senator the distinction of authorship, goes before the people and the legislature of his State to urge the ratification of the proposed amendment, he will not fail to inform them that he got the idea from a Democratic platform and from the utterances of Mr. Bryan, the leading Democrat and the most distinguished citizen of his State. I am entirely willing to have our friends on the other side appropriate the good things of Democracy, but I think they ought to have candor and fairness enough to accord proper credit to the sources of their inspiration, otherwise it would be an act of political piracy.

Mr. BROWN. Mr. President --

The VICE-PRESIDENT. Does the Senator from Missouri yield to the Senator from Nebraska?

Mr. STONE. For a question or an explanation.

Mr. BROWN. Does the Senator from Missouri mean to be understood as being of the opinion that the source, as he calls it -- the Democratic source -- of this joint resolution is anything against it?

Mr. STONE. Oh, no; I was congratulating the Senator and his party colleagues that they had at last become so favorably impressed by these Democratic influences.

Mr. BROWN. Is the Senator complaining because of what he calls "an appropriation of this idea?"

Mr. STONE. I am not complaining; I am complimenting and congratulating.

Mr. BROWN. Does not the Senator understand that if there is ever anything good found in the Democratic platform and the people are to get the benefit of it, somebody has to appropriate it?

Mr. STONE. I am perfectly willing that you should appropriate it, only I have been urging, as a matter of fairness, that when you go before the people of Nebraska you should not neglect to inform them that you had caught this idea from the Democratic platform. No doubt that would help you carry it through.

Mr. President, fear has been expressed that more than one-fourth of the States will withhold their consent to the amendment and reject it, and then it is apprehended that an argument will be based on that circumstance to induce the Supreme Court to adhere to the doctrine announced in the Pollock case if ever the constitutionality of an income tax is again before that tribunal. That an effort will be made -- a powerful and well-organized effort -- to defeat the amendment can be accepted from the start as certain. What the result of that struggle will be I am not wise enough to forecast. I believe there is an overwhelming popular sentiment in favor of the Government, operating through its appointed agencies, being clothed with the power to impose a general income tax. There being many thousands who do not believe that that power should be exercised, or that such a tax should be authorized, except in times of stress and emergency; but thousands who thus believe, being patriotic citizens, will support the proposition to clothe the Government with the power. Mr. President, I believe in the policy of an income tax, but I wish here and now to say that I have never regarded with great favor the proposition to exempt incomes below a given sum from the operation of the law. That notion of exempting the smaller incomes from the tax does not appeal to me. Although I have been ready at all times to support what is known as the "Bailey-Cummins amendment,", I would prefer a graduated income tax, levying the smaller per cent upon the smallest class of incomes, and then increasing the rate along some well-considered scale of progression. I would prefer, when incomes are being taxed, that every man who has an income, and certainly a net income, should contribute something to the support of the Government; however, it is hardly worthwhile to enter upon a discussion of that question now, and I will not.

p. 4107

Mr. President, I cannot persuade myself that more than one-fourth of our American States will reject this proposed amendment to the Constitution. But if that should happen it still could not be said that the people, speaking in the larger sense, were opposed to the proposition. If 12 States should by bare majorities in each reject the proposition, and 33 States should agree to it, as they would by large majorities, it would still be manifest that the great body of the people favored the amendment. And then, again, if it be true that the Constitution in its present form is broad enough to authorize the imposition of a general income tax, the failure to secure an adoption of the proposed amendment would not change the constitutional status as it exists to-day. If the Supreme Court should be called upon to review the Pollock case, and should be inclined to return to its earlier and, I think, sounder rulings, namely, that an income tax was within the Constitution, I can see no good reason

why the court would hesitate to adopt that course even if this amendment should fail of ratification. If the court should go outside the record to consider extraneous matter, to should listen to an argument predicated on the alleged fact that the people had rejected the amendment, every justice would know that on the contrary the great mass of the people favored the proposition, and every man would know what influences operated, and how they operated, to defeat the proposition. If the President is sincere, and I have no doubt that he is, and if such men as the junior Senator from New York [Mr. ROOT] are sincere, and I have no doubt that they are -- with all these powerful Republican influences favoring the amendment, and with the Democratic party solidly behind it, it seems to me that our united efforts to write this amendment into the fundamental law ought to succeed. At all events, speaking for myself, I am more than willing to put the issue to the test.

Mr. President, before closing I wish to sat a few words upon another subject not wholly dissociated from the question immediately before us. In 1896, the Democratic national convention declared that the deficit in our revenues at that time was due to the decision of the Supreme Court setting aside the income-tax law of 1894; and the convention further declared that that decision overruled previous decisions of the court, and thus announced a new judicial doctrine in the subject of income taxation; and then the convention declared that it was the duty of Congress to use all the constitutional power which remained after that decision, or which might come from its reversal by the court as it might in the future be constituted, to the end that the burden of taxation might be equally and impartially laid, and so forth. During the campaign of that year the Democratic party and the Democratic candidates were furiously and wantonly assailed for attacking the Supreme Court, and for threatening to "pack" the court with subservient judges so as to secure a reversal of the decision referred to. I have recently read some of the wild ravings of Republican orators and editors during that memorable campaign. The Republican candidate, Mr. McKinley, and ex-President Harrison, and Senators and Representatives, and great metropolitan journal joined in this hue and cry. There was never a falser or more vicious charge made against a party declaration or party purpose. The convention did protest, and on a basis of absolute truth had a right to protest, that the decision of the court was in contravention of repeated utterances of that tribunal; and the convention did insist, as with most perfect propriety it had a right to insist, that Congress should continue to exercise all the power it had remaining after that decision so long as it stood as the judgment of the court, and until it should be reversed, if ever it should be reversed, when the personal composition of the court had changed. There was no threat or desire or thought upon the part of any Democrat to "pack" the court, but we had sense enough to know that the decision would not in all human probability be changed as long as the personnel of the court remained as it then was; and we had sense enough to know that in the natural course of things the elderly men who sat upon the bench would pass away and that new men would succeed them --

Mr. BEVERIDGE. Will the Senator permit a question?

Mr. STONE. I would rather the Senator would wait.

Mr. BEVERIDGE. All right.

Mr. STONE. And we had sense enough to know that the decision complained of not only did not have the popular approval, but did not have the general approval of the great majority of the lawyers constituting the American bar. In view of these things, the convention had a right to declare, without being accused of discourtesy to the court or of making an assault upon it, that the questions involved and passed upon should be again submitted for judicial determination. Mr. President, we have passed far beyond that period, I know, and perhaps it does no good to speak of it now. Still, I cannot let this opportune occasion go by without impressing as far as I can upon public attention the malevolent and mendacious character of the politics practiced at that time by our overvirtuous Republican friends. Since then Mr. Roosevelt, a Republican President, has spoken with blunt and almost vulgar harshness of decisions rendered by some of our high federal courts, and yet he re-

mained for years the very idol of the great mass of republicans. Since then we have been told by the present Chief Magistrate, in substance at least, that with the changed personnel of the court the income-tax decision against which the people have been protesting ever since it was made might not be adhered to if the question should be again submitted. Why, Mr. President, that was the very thing, said in 1896, that roused Republican cohorts from far and near into assaulting the Democratic party as a dangerous, if not treasonable, organization. And, sir, during this very debate I have heard great Republican Senators, standing here on this floor, urging the necessity of resubmitting this question to the court, and urging it for the very reasons assigned in the Democratic platform of 1896. I have heard them say that all talk about the proposition to resubmit the question through legislative action as being indelicate was a "morbid, ill-founded sentiment." Ah, Mr. President, our Republican friends, at least, all of them, are not now what they were. A wonderful change has come over the spirit of their dreams, or the dreams of some of them, since the sound and fury of that mighty struggle of near thirteen years ago have died away. What they denounced as almost treasonable then they now applaud as virtuous and patriotic. And this is another instance demonstrating the ultimate wisdom and justice of the Democratic policy; and to impress that fact, now so well illustrated, is about the only excuse I have for adverting to a subject which can not be wholly pleasant to everybody.

Mr. President, that is all I care to say regarding the joint resolution proposed by the Senator from Nebraska.

Just a word now relating to the amendment, so called, offered this morning by the Senator from Kansas [Mr. BRISTOW]. I would cheerfully vote for both propositions, for both are well-known Democratic propositions, but it seems to me that it would not be wise policy to couple the two, even if permissible under the rules of the Senate. Both are substantive, distinct, and wholly different propositions relating to wholly different subjects. If they were combined into one single proposition and we should be called to vote upon them in that form, and without division, I fear, while trying to accomplish two things, we would endanger both. I have no doubt there are Senators and Members of the House who might and would vote against the double proposition, being favorable to one proposition and against the other; and for the same reason it might subject the whole scheme to failure if it should be submitted in that form to the legislatures of the States. I think it is in every way far better to deal with the two things separately. If the Senator from Kansas desires to submit a separate amendment for the popular election of Senators, I will join him in supporting it. I would be glad to have the amendment suggested by the Senator from Kansas added to the pending bill, if it can be done under the rules of the Senate, although I doubt if it can be done. The proposition now before the Senate is not offered as an amendment to the tariff bill, but as a distinct and separate proposition. I would be glad to have the amendment proposed by the Senator from Kansas brought to a vote in the Senate and House, but I do not think it would be wise to combine the two and thus add to the danger and difficulty of passing wither. Trying to do too many things, even good things, at one time often results in doing nothing.

The Senate then returned to the debate on the Tariff Bill, but resumed the income tax later the same day.

p. 4108:

TAXES ON INCOMES.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (S. J. R. 40), proposing an amendment to the Constitution of the United States.

Mr. BAILEY. I want to offer an amendment; and I will occupy only two or three minutes. I move to strike out the word "legislatures," in line 5, and to substitute the word "conventions;" and in line 9, after the word" incomes," I move to add the words "and may grade the same."

Mr. President, of course the Senate will at once understand that the purpose of the first amendment is to submit the ratification of this proposed amendment to conventions called in each State for that purpose, rather than to the legislatures. I perfectly understand that this would involve some additional cost; but I do not think the question of cost should weigh seriously in a matter of this kind. Legislatures are elected with reference to many questions. Legislatures may be chosen upon local issues. -- The members may change their opinions, as Members of the Senate have done upon this very question, between the time they are chosen to the legislature and the time when they are required to vote.

A very grave situation now presents itself to the Senate and to the country. If this amendment is submitted and defeated, all hope and all possibility of an income tax disappears forever from the consumers of this Republic. With the Pollock case standing unreversed, with the President of the United States sending a message to Congress, in which he asserts that the court can not be reasonably expected to recede from that decision; with both Houses of Congress responding to the President's suggestion, and submitting a constitutional amendment to the various States, if that amendment is rejected, we shall never live long enough to see a Supreme Court reverse the Pollock case. They will say, and they will have reason to say, that with the Pollock case the unchallenged law-and so far as the court is concerned it stands unchallenged-with the executive department recognizing it as the law, and recommending that the effect of it shall be obviated by a constitutional amendment; with the two Houses of Congress acting upon that theory, if the amendment to the Constitution, submitted under those circumstances, fails to receive the approval of 12 States ln this Union, that is the end of an income tax.

Believing that to be true, I vote for this amendment, under any circumstances, with reluctance because I do not think it necessary, and I know the submission of it is fraught with extreme danger; but I think the danger of its rejection will be greatly diminished if its ratification is submitted to conventions chosen for the sole and only purpose of passing on it. For that reason I offer this amendment, committing its consideration to conventions, instead of to the legislatures.

The second amendment, Mr. President, gives distinct and specific authority to graduate an income tax, and I think that necessary only as a matter of abundant caution. I would not, perhaps, have thought it necessary at all, except for the statement of Judge Brewer, in the case of Knowlton v. Moore, where he dissents from the opinion of the court sustaining the validity of the inheritance-tax law upon the ground that Congress had no power to grade it. Plainly, 'if Congress is without power under the Constitution as it now stands to grade an inheritance tax, it would be without power under this amendment to grade an income tax; and if we are to put the people of the United States to the trouble and expense of adopting a constitutional amendment authorizing Congress to do what, in my judgment, it now possesses ample power to do, let us make a complete work of it, and let us not find it necessary hereafter either to exercise the power circumscribed within limits which the people would not adopt or find our law held invalid.

I shall ask for a roll call on both of these amendments, unless some better reason can be advanced against their adoption than has occurred to me up to this time.

p. 4109:

Mr. McLAURIN. Mr. President, I concur in the wisdom of what was said by the Senator from Texas [Mr. BAILEY] with reference to the necessity for the amendment of this joint resolution; but I

think there is a better amendment than the one he proposes to offer, or, at least, a better amendment than the one which amends line 9. .

The mischief in reference to an income tax in every discussion of it before the court has grown out of six words, three of them in clause 3 of section 2 of Article I of the Constitution, and three of them in clause 2 of section 9 of Article I of the Constitution. In the first place it says:

Representatives and direct taxes shall be apportioned among the several States-

The words "and direct taxes" in that instance, and in the next -

No capitation or other direct tax shall be laid.

The words "or other direct" are the words that make the mischief in this clause 4 of section 9. With these six words stricken out of the Constitution in the places where they occur, as I have indicated, there could be no trouble about the levying and collecting of an income tax.

I have heretofore indicated my views in reference to the meaning of the three words "or other direct," and I am not going to elaborate them now. I think the word "direct" there must be construed with reference to the word "capitation." A capitation tax is a tax that is levied directly upon the individual without reference to property. It is what is called in the States generally a "poll tax." When you speak of a "capitation tax" as a direct tax and then speak of "other direct taxes," the word " direct" in this connection must be construed *ejusdem generis* with reference to the word "capitation "-- a capitation tax; that is, a direct tax which operates upon the individual himself, without reference to any property at all -- and the words "or other direct tax", of course, always, by all rules of construction, must be construed to mean a tax of the same kind. Other direct taxes, that operate upon the individual without reference to any property at all. Out of that confusion has grown all the trouble that has arisen in reference to the question of an income tax.

I think there has been too much learning, probably, on this matter. There has possibly been too much research into what has been said by this man or that man in the Constitutional Convention. You must construe the provision with reference to the language used, for no provision in the Constitution and no provision of a legislative enactment or congressional enactment is to be determined by what one man or another man may say in reference to it. ·

That is illustrated especially here by the action of Senators on the amendment which is going to be voted upon at 1 o'clock to-day. There are many Senators who believe that it is not necessary to have any amendment to the Constitution. The Senator from Texas made a very able, a very learned, and a very eloquent argument to show that an income tax is within the limits of the Constitution as it is now in existence. Other Senators have done the same thing. I only refer to the argument of the Senator from Texas because it was, if my memory is not at fault, the first one that was made and not to make any invidious distinctions, for I think all the arguments that have been made on this view of the Constitution have been very able and very clear. Nevertheless, the Senators who have made these elaborate arguments and who believe that it is not necessary to amend the Constitution in order to justify Congress in enacting an income-tax law are going to vote for the resolution of the Senator from Nebraska, or a substitute therefor, for an amendment to the Constitution.

I have digressed from what I was going to say. I want to say that if the amendment which I offer should be adopted and I do not much expect that a majority of the Senate are going to adopt it, but I think every Democrat ought to vote for it -- if it shall be adopted, will eliminate from the Constitution every cause of contention over the question of the authority of Congress to levy an income tax, except as to the power of Congress to grade an income tax.

This is the amendment:

Amend the joint resolution by striking out all after line 7 and inserting the following, to wit: "The words 'and direct taxes,' in clause 3, section 2, Article I, and the words 'or other direct,' in clause 4, section 9, Article I, of the Constitution of the United States are hereby stricken out."

That will prevent any mischief hereafter. But let me call your attention to some mischief that may arise over this proposal by the Senator from Nebraska; and I should like to have the attention of the Senator from Nebraska to this. The joint resolution provides that the proposed amendment to the Constitution shall read as follows:

The Congress shall have power to lay and collect direct taxes on incomes without apportionment among the several States according to population.

That is what the Senator from Nebraska proposes to insert in the Constitution as the sixteenth amendment. There is going to be some contention that will go before the Supreme Court as to the provision, because the men who are wealthy, the men who have large incomes do not intend to pay any proportionate part of the expenses of this Government if they can get out of it. They expect that the Government of the United States will protect all their property and protect all of their income, but they expect the expenses of the administration of the Government for the protection of their incomes and of their property shall be paid by the poorer classes of the country, shall be paid by the men in humble circumstances and with modest means. That has been the rule heretofore, and they expect it to continue.

Here is the question they are going to raise at once: They are going *to* say that when you read the proposed constitutional amendment according to its correct interpretation it means "without apportionment among the several States according to population;" but they are going to say that it does not say " without apportionment among the several States according to anything else." You have specified population, but it may be required; they might contend that the tax should be apportioned upon some other basis than that of population.

Mr. BROWN. Mr. President --

The PRESIDING OFFICER (Mr. KEAN in the chair). Does the Senator from Mississippi yield to the Senator from Nebraska?

Mr. McLAURIN. With great pleasure.

Mr. BROWN. There is no other apportionment known to the Constitution except that according to the census or enumeration; and of course the proposed amendment would be construed together with the other provisions of the Constitution. The language used in the joint resolution is taken from the language of other sections of the Constitution, so that there can be no confusion or misunderstanding at all about the joint resolution.

Mr. McLAURIN. I know there is no other apportionment except in the instance to which I have referred; but it may be contended by those who desire to be exempted from the payment of their proportionate share of the taxes necessary to defray the expenses of the Government that there is an apportionment here provided for. It will be contended by those people that there is an apportionment here, and that the naming of one kind is the exclusion of all other kinds. There is a rule of construction that is not only familiar to all lawyers, but it is a rule that commends itself to the judgment of any man, whether he be a lawyer or not, as soon as it is presented to his mind, and that is that the naming of one is the exclusion of all others. When you name one kind of apportionment and provide that it shall not be required to be made, you exclude, then, all other apportionments; and it may be contended of any other apportionment except that which is named here. That is my idea about the mischief that is going to arise.

Then there is another thing that they may contend for, and that is that Congress has recognized the income tax as a direct tax. That is the conclusion that they will draw from the amendment that is proposed by the Senator from Nebraska. I do not think it is a direct tax. I shall vote for the amendment; and it is my intention to vote for the amendment, even though my amendment shall not be adopted; but it does not, in my judgment, meet the requirements of the case so as to put beyond all controversy the question before the Supreme Court of the United States on the constitutionality of the income tax and as to the meaning of the amendment. I think that it ought to be made perfectly

clear. I am going to vote for it because I am in favor of anything that looks to the collection of an income tax. I think it is fair and just that there should be an income fax to compel those of wealth, who have great incomes, to pay some part of the expenses of the Government. I favor it not only because it is just, but because the immensely wealthy then will be interested in an economical administration of the Government instead of extravagance, in which they are not interested now, because they are not compelled to pay for any of the extravagance that is indulged in by the Government.

There are a great many other things, Mr. President, that I should like to say on this matter, but I am not going to take up the time of the Senate now to say them. I will ask that the amendment to which I have referred may be read at the Secretary's desk to give notice of the amendment that I intend to offer before there shall be a conclusion of the voting on the resolution offered by the Senator from Nebraska.

p. 4110:

The VICE-PRESIDENT. The Secretary will state the amendment.

The SECRETARY. Amend the joint resolution by striking out all after line 7 and inserting the following:

The words "and direct taxes," in clause 3, section 2, Article I, and the words "or other direct," in clause 4, section 9, Article I of the Constitution of the United States are hereby stricken out.

Mr. BACON. I should like to know, if the Senator has it before him, exactly how the Constitution will read with those words stricken out?

Mr. McLAURIN. Clause 3, section 2, Article I of the Constitution would read in this way:

Representatives shall be apportioned among the several States which may be included --'

And so forth; thus leaving out the words "and direct taxes."

Clause 4, section 9, Article I would read as follows:

No capitation tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken --

Thus leaving out the words "or other direct." There can be no doubt about what a capitation tax is.

Mr. BORAH. Mr. President, I desire to indorse the amendment suggested by the Senator from Texas [Mr. BAILEY] providing for the submission of this amendment to the Constitution to state conventions rather than to state legislatures. I believe it a wise policy for the reason that then it will be an issue before the people, freed entirely of what might be controlling local questions and what might be conditions which would prevent a fair and unprejudiced presentation of the matter upon its merits.

I do not think the mere fact that it may lead to some extra expense ought to be considered in a matter of this importance, for, as I said the other day, if it should transpire that the amendment should not be adopted, the matter would be settled practically for all time. I do not very well see how we could go back to the Supreme Court, after having taken the step that we are about to take here, and ask for a reconsideration of the matter before that body. If 12 States of the Union, by reason of conditions which might prevail in the legislatures which would not give an opportunity to present the matter upon its merits alone, should decide against the ratification of the amendment, the matter would be practically put at rest. It would not be likely to be submitted again within the next twenty-five years, and there would be no greater chance for its adoption when submitted.

I wish to say, therefore, that I shall vote for the amendment suggested by the Senator from Texas [Mr. BAILEY], and I should like very much to see it accepted by those who are in favor of the

amendment. It is subject to no possible objection, it seems to me, except possibly that of expense, and it certainly very greatly enhances the chance of success.

Mr. CLAPP. Will the Senator pardon me?

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Minnesota?

Mr. BORAH. I do.

Mr. CLAPP. I will say to the Senator from Idaho that it has occurred to me that if there should be any disinclination to act on the matter by the state legislatures, the fact that we had provided a means which did entail additional expense might be something behind which men might shield themselves. For that reason, while I am heartily in favor of the amendment, I am not so clear it would be well to put it where a matter of expense could be urged as a reason for not acting.

Mr. BORAH. Mr. President, there is something in the suggestion of the Senator from Minnesota. But, on the other hand, it occurs to me that a sufficient number of people will always be found in any State among the great mass of the people to compel the calling of a convention. ·

Mr. CLAPP. That gives rise to another question. While I think the Senator from Texas will hold a different view, it seems very clear to me that the convention which would be provided for in each State would have to be called by the State itself, and, naturally, by the legislature, although I think the suggestion may be argued that, if a State refused to act at all, Congress could provide for the convention.

Mr. BAILEY. Mr. President --

The VICE-PRESIDENT. Does the Senator from Idaho further yield?

Mr. BORAH. I do.

Mr. BAILEY. I think that while that is true, a State refusing to act would simply be recorded in the negative. The Constitution only requires that three-fourths of the States shall ratify the amendment; and if the remaining States did not hold conventions, the amendment would become a valid part of the Constitution whether they ever acted at all or not. I think that in any State where the legislature acted on the matter at all, it would obey the resolution and call a convention.

I wish to say to the Senator from Idaho that if there would be any question of the expense deterring any State from calling a convention, I myself should favor a federal appropriation to pay the expense of the conventions in every State. That would undoubtedly obviate that difficulty.

Mr. BORAH. Mr. President, the question of expense does not disturb my mind. I was simply suggesting that as a possible argument against it. I have no fear that the amendment will fail of adoption if we can keep it where it will receive the benefit of public opinion in such a way and in such manner as to have an open expression of the people upon the subject. Therefore it seems to me, in view of the great importance of the matter, that, regardless of the question of expense and regardless of any inconvenience, we can well afford to place it where it will be the single issue which will be up for consideration.

Mr. NELSON. Will the Senator from Idaho allow me to make a suggestion?

Mr. BORAH. Certainly.

The VICE-PRESIDENT. The Senator yields.

Mr. NELSON. I should like to suggest to the Senator from Idaho this fact: I think I am right in stating that every constitutional amendment that has been adopted up to this time has been ratified by the state legislatures and not by conventions. This, however, is the point I am coming to: In case we should adopt the amendment of the Senator from Texas providing for submitting the question to conventions in the several States, ought we not to follow it up with legislation by Congress directing how the conventions shall be called and held? I submit that question to both the Senator from Texas and the Senator from Idaho.

Mr. BORAH. That might be a very advisable thing to do; but I do not think all of our constitutional amendments have been ratified by state legislatures. My recollection is that the last amendment

was adopted by conventions which were improvised for the very purpose of seeing that it was ratified through a large number of the States where it was understood that if the course were pursued which had ordinarily been pursued, it would not be ratified.

Mr. OVERMAN. May I ask the Senator a question?

Mr. BORAH. Yes.

Mr. OVERMAN. Suppose 12 States should refuse to call conventions, what would be the result?

Mr. HEYBURN. Mr. President, I should like to call attention, with the permission of the Senator--

The VICE-PRESIDENT. Does the Senator from Idaho yield to his colleague?

Mr. BORAH. I do.

Mr. HEYBURN. I should like to call attention to the fact that the States do not have to call conventions. Congress provides for the conventions, if we have conventions instead of legislatures to do the ratifying. That is provided in Article V of the Constitution.

Mr. OVERMAN. Will the Senator kindly read that article, so that I may have the benefit of it?

Mr. HEYBURN. I will read the article, so that it may be in the RECORD:

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments.

Mr. OVERMAN. But suppose the States do not call it?

Mr. HEYBURN. This is not a state convention; it is a national convention. Just listen:

Which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions-

Now, this is a second class of conventions-

> Or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed· by the Congress.

There are two classes of conventions provided for.

Mr. OVERMAN. Does this resolution propose the calling of a convention?

Mr. HEYBURN. There is a provision here under which a national constitutional convention may be called.

Mr. OVERMAN. Is there any provision of that sort in this resolution?

Mr. HEYBURN. That is not the one that we are now dealing with. No one, I think, has proposed that.

Mr. BAILEY. The first is a convention to propose amendments, and the second a convention to ratify amendments.

p. 4111:

Mr. HEYBURN. If my colleague will permit me, I will say that no one is proposing to call a national convention to propose amendments. The conventions that are under consideration are those that Congress, not the legislatures of the States, shall provide; and if Congress shall provide them, of course it shall provide the details.

Mr. BAILEY. I hardly think the Senator is correct about that. It is a very close question. The Constitution says that amendments to the Constitutions shall be ratified by legislatures or conventions. I do not think Congress has power to call a convention any more than to convene the legislature of a State to pass on an amendment.

Mr. HEYBURN. No; I do not think it has, either.

Mr. BAILEY. And yet its powers seem to be the same with respect to the convention as with respect to the legislature. I will say to the Senator from Minnesota, who raised the question, that the failure of a State to act would simply be equivalent to a negative action.

Mr. HEYBURN. Will the Senator allow me to make a suggestion? I think the second provision in regard to conventions was intended to apply in case the legislature refused to act.

Mr. OVERMAN. Suppose Congress passed an act providing for the calling of a convention, and the State did not call it, the people did not meet together, how would Congress act? Would the President go and arrest the people and bring them into a convention?

Mr. Bailey. Oh, no; but I think if Congress had the power to call a convention they could appoint officers and open the polls, and if only one man voted in the State that one man would be the majority. But that is an extreme case and one not apt to arise.

Mr. HEYBURN. Right; in that connection let me call attention to the language. First, it provides that Congress may submit the matter to the legislatures. It could not, of course, compel the legislatures to act. Then it provides an alternative "or by conventions in three-fourths thereof" -- three-fourths of the States -- "as the one or the other mode of ratification may be proposed by the Congress."

I am quite convinced, although I may be wrong, that that was intended as an alternative provision. I think it was intended that where the States should refuse or neglect to act, Congress might call these conventions in the States and provide the machinery for them rather than have defeated the purpose of submitting an article for the amendment of the Constitution. I think it was intended to provide against the possibility of the States refusing to act.

Mr. BAILEY. Mr. President, with the permission of the Senator from Idaho, I will say that I think it was intended to provide against the very contingency that now confronts us. I think it was intended to allow the direct question to be made, stripped of every other question, rather than to commit it to a legislature elected to deal with many questions.

Mr. HEYBURN. I think that would be the effect rather than the intention. That undoubtedly would be the effect.

Mr. SUTHERLAND and Mr. BACON addressed the Chair.

The VICE-PRESIDENT. To whom does the junior Senator from Idaho now yield? Several Senators are asking for recognition.

Mr. BORAH. I will yield, so long as I can gain any information in reference to constitutional law.

The VICE-PRESIDENT. But to whom does the Senator yield?

Mr. BORAH. I yield to the Senator from Georgia.

Mr. BACON. Mr. President, I merely wish to suggest that there is nothing in the Constitution that contemplates that there shall be action by the States. Whenever there is action by a sufficient number of States the action is conclusive, even if the other States never act.

An illustration of that is found in the fact that in each ratification heretofore the ratification has been made by the legislatures, and the Government has never waited until all the legislatures have acted. Whenever a sufficient number of the legislatures of States have acted, communication has been made to Congress of the fact that the amendment has been adopted.

The first action by legislatures was as to the first 10 amendments; and it so happened that there were three States not included in those enumerated when the communication was made to Congress. The first 10 amendments were ratified by New Jersey, Maryland, North Carolina, South Carolina, New Hampshire, Delaware, Pennsylvania, New York, Rhode Island, Vermont, and Virginia, which constituted a sufficient number, and communication was then made to Congress to that effect. The three States of Massachusetts, Connecticut, and Georgia were not included at all.

Mr. BAILEY. If the Senator will permit me, I will re-enforce him in his suggestion. The original Constitution provided that whenever nine States ratified it, it should become effective among those ratifying; and the Government was organized before all of the States had ratified the Constitution.

Mr. BACON. The two States of Rhode Island and North Carolina were not in the original organization at all. For two years, I think, the Federal Government had the great disadvantage of proceeding without the aid and cooperation of the State of Rhode Island.

Mr. BAILEY. Some people wish they never had ratified it.

[Laughter.]

Mr. SUTHERLAND. Mr. President --

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. I yield.

Mr. SUTHERLAND. Mr. President, I think the Senator from Texas is clearly right in reference to one proposition he states; that is, that the amendment can be ratified whenever three-fourths of the States act, although one-fourth of them may fail to act at all on the question. But with reference to another suggestion the Senator made, viz., that if a legislature should prove recalcitrant, and decline to call a constitutional convention, Congress might do so, it seems to me the language of the Constitution itself indicates that Congress has no such power.

Mr. BAILEY. Mr. President, when the Senator comes to examine his remarks, I hope he will not represent me as saying that, because I distinctly stated that I did not say it.

Mr. SUTHERLAND. Then I will alter what I said by saying that the Senator from Texas suggested that such a method might be adopted. The language of the constitutional provision is not that Congress may call a convention, any more than it may call a legislature; but only that Congress may propose that either the legislature shall act upon the matter, or that a convention shall act upon it. But the power of Congress is simply to propose it, and not to call it.

Mr. BACON. With the permission of the Senator from Idaho, I desire to add a word to what I have said.

Mr. BORAH. Very well; I yield to the Senator from Georgia.

Mr. BACON. In order that there may not be a question as to my attitude on this subject, I will state that there is no question whatever in my mind that it is clearly beyond the power of Congress, in any instance, to call one of these conventions.

Mr. DIXON and Mr. CLAPP addressed the Chair.

The VICE-PRESIDENT. To whom does the Senator yield?

Mr. BORAH. I yield first to the Senator from Montana. I will yield later to the Senator from Minnesota.

Mr. DIXON. Mr. President, while I shall vote for the second amendment of the Senator from Texas, I desire to call his attention and that of the Senator from Idaho to the fact that his first amendment may possibly complicate the constitutional amendment more than it will help it. When you convene the people of a State in a constitutional convention for the purpose of considering one matter, are not all matters affecting the constitution of that State open to discussion?

Mr. BAILEY. Not at all, Mr. President, because the call would be to pass upon this federal question. They would have absolutely no power over the organic law of the State, unless, indeed, the legislature submitted those questions to them. If such questions were submitted in the orderly and lawful way, it would be no objection that they were permitted to pass upon them. But being called for this purpose, there could not possibly be communicated to them any power to deal with their local constitutions by such a call.

Mr. BORAH. Mr. President, if the state convention were going to deal with the state constitution, it would have to be called in the manner the constitution of the State provided for calling a convention for that purpose. If we should provide here for the calling of a convention and it should be

called pursuant to that provision, it would have no jurisdiction and no power to deal with the subject of the state constitution, unless it were called pursuant to the manner in which the state constitution provides it shall be called for the purpose of dealing with amendments to the state constitution.

Mr. DIXON. But, with all due deference to what the Senator from Idaho is now saying, when the people of a State, through their representatives, assemble in a constitutional convention, do they not have primary powers to do almost anything, subject to ratification by the State?

Mr. BORAH. They have.

p. 4112:

Mr. DIXON. Then, in view of the well-known opposition to constitutional conventions on the part of a large proportion of the people of a State, I cannot help believing that the calling of constitutional conventions will complicate more than it will help the general purpose we have in view. ·

Mr. BORAH. If a convention should be called in pursuance of this suggestion from Congress, it would not have any power to deal with amendments to the state constitution unless it were called in pursuance of the manner provided by the state constitution for dealing with the subject. If a convention called under this suggestion should undertake to pass on amendments to the state constitution, it would be acting wholly beyond its jurisdiction. The various state constitutions provide by what means and method conventions shall be called for that purpose, and they must be called in pursuance of the provisions of the state constitutions.

Mr. HEYBURN. I suggest, Mr. President, that Congress has no power to call a convention for the purpose of amending or dealing with state constitutions.

Mr. BORAH. The convention would have no power to deal with it when it assembled.

Mr. BURTON. Mr. President --

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Ohio?

Mr. BORAH. I yield.

Mr. BURTON. I desire to point out another obstacle besides that named by the Senator from Montana; that is, in case the ratification is to be by convention: At least one of the States has a provision that constitutional conventions can only be called once in twenty years.

Mr. BAILEY. If the Senator will permit me, that evidently has reference to a constitutional convention called to deal with the state constitution. This is not a constitutional convention within that meaning.

Mr. BURTON. I have thought of the very point the Senator from Texas makes; but I do not think it sufficiently answers the contention I have stated. The constitution of each State specifies clearly the manner in which legislative authority may be exercised. Popular government has its expression in the ways set forth in the state constitution. Those are two: First, by the legislature; second, by constitutional conventions. There is no recognition in any state constitution, so far as I am aware, of any other method of calling a convention to express the popular will. If a convention not authorized by the constitution of a State should be called to act upon a proposed amendment to the Constitution of the United States, it would be doing something not recognized by the legislative authority. There is no means provided for determining in that way what is the will of the people· of the State. We cannot devise a new means of expressing what the people of the State of Texas or any other State desire, simply to fit an emergency. The expression of their wishes is confined to the methods set forth in the state constitution.

In case such a limitation of time exists, it might entirely prevent some of ·the States from expressing the wish of the people of that State on this constitutional amendment. It would seem, from some things that have been said here, that the opinion is entertained that this "three-fourths" means three-fourths of the States in which there is an expression on the subject.

Mr. BAILEY. Oh, no. No one contends that.

Mr. BURTON. That clearly cannot be the case. I so understood, however, from some of the statements regarding it. Certainly it would require three-fourths of 46 States. I think that may be conceded.

Mr. OVERMAN. Thirty-five States.

Mr. BURTON. Thirty-five States, in any event.

Mr. RAYNER. Mr. President --

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Maryland?

Mr. BORAH. If I may be permitted to do so, I will yield the floor.

Mr. RAYNER. Mr. President, I should like to suggest to the Senator from Ohio that there does not seem to be any question about any of the propositions stated by the Senator from Texas and the Senator from Georgia. If three-fourths of the States, by convention, ratify the amendment, that is the end of it. But there is one point which I should like to submit to the Senator, and that is this: If the States fail to call the legislatures together, and if the legislatures fail to act, there is no provision in the Constitution of the United States and no power in Congress to make them act. I do not think there is the slightest possibility of that occurring, but I deny absolutely the power of Congress to compel the States to act.

Mr. BURTON. I intended to say a word upon that subject, Mr. President. While I may have stronger views on the subject of federal authority than some Senators have, I do not believe it is possible to compel a State to act upon a proposed amendment to the Constitution. The initiative must rest with the State itself. It must be the voluntary act of each State. It is no more possible to compel a State to convene its legislature or call a convention than it is possible under existing law to compel an elector to vote at an election. That is a right incident to the freedom that belongs to an elector; and it is also the privilege of the State to act or not to act, as it may choose.

Mr. CLAPP. Mr. President, I desire to call the attention of those who are particularly back of this amendment to the fact that the amendments to the Constitution which have been adopted were in every instance, I think, referred to the legislatures. The only amendment which was referred to a convention was the amendment which was referred by Congress at the very close of President Buchanan's administration. It was, I think, the last bill he ever signed; and the only conventions which were called were in the States of Ohio and Illinois, if I remember correctly.

As far as the method of accomplishing this result is concerned, I for one am disposed to follow the wishes of those who are moving in the matter. But it does seem to me that it is a departure and may present complications, while the other is a well-understood, well-traveled road. And as a matter of my own personal advice and view, I should prefer to leave it to the States, as has been done heretofore.

Mr. DIXON. Mr. President, I desire to do whatever will aid in bringing this matter to a constitutional amendment. I want again to call the attention of the Senators who at first thought may be favorable to the scheme of calling state conventions to the fact that 'in many of the States the expense of holding elections for delegates to a constitutional convention will be so large that the question of expense will be used as an argument against it. I think in my State it will cost the State $100,000 to hold its constitutional convention and the election for the choosing of delegates.

I am convinced this will complicate matters. On the other hand, if the joint resolution passes both the Senate and House, as it will undoubtedly, the governor of each State in the Union will certify to the next general assembly of .the States the fact that the joint resolution has passed both Houses of Congress, and it will be brought directly and forcibly to the attention of the people in every State.

I for one believe that this amendment will carry in nearly every State of the Union. Suppose, as it has been intimated, that influences should be used in a State with the members of the legislature against it and that legislature returns and goes home without adopting the amendment, it makes it

the burning live issue in that State. The joint resolution of Congress does not become *functus officio* because one legislature of a State at that time has not adopted it. It will rest on the legislatures that will assemble in the future, and whenever three-fourths have finally ratified it, whether it be one, two, three, five, or ten years, it then becomes a part of the fundamental law of the United States. I am thoroughly convinced that the convention method will complicate more than it will help. That is my individual view of the matter.

Mr. HEYBURN. I should like to ask the Senator a question before he takes his seat. There is no limit placed by the Constitution upon the time within which a State may act in ratification.

Mr. DIXON. That is what I am saying.

Mr. HEYBURN. Does the Senator contend that it might be submitted to an indefinite number of subsequent legislatures, or would the action, either positive or negative, of the legislature to which it was first submitted exhaust the right?

Mr. DIXON. I presume if the legislative action were positive or negative it would be exhausted in that State.

Mr. HEYBURN. Then, if the legislature to which it was submitted fails to act that would be the equivalent of a rejection of the amendment.

Mr. DIXON. No; if the legislature failed to act, I do not think for a moment it would be.

Mr. HEYBURN. Upon the question of submission, if no action should be taken--

Mr. DIXON. Until the legislature finally acted either positively or negatively, I think unquestionably.

Mr. HEYBURN. Is not refusal to act action in itself?

Mr. DIXON. No; I do not think so for a moment.

Mr. HEYBURN. Does a man who stays away from the ballot box participate in an election? Is not his act as binding if the result is obtained by reason of his absence as though he voted?

Mr. DIXON. Yes; but the fact that a legislature fails to act --

Mr. BACON. If the Senator will permit me a moment, without presuming to pass upon the legality of the subsequent act, the fact is that the States of New Jersey, Oregon, and Ohio had ratified the fourteenth amendment, and they subsequently formally withdrew that ratification.

p. 4113:

Mr. HEYBURN. They only thought they withdrew it.

Mr. BACON. I have simply called attention to the fact, without saying whether it was a valid withdrawal or not.

Mr. HEYBURN. The Senator would not contend that a State might go on voting pro and con on a constitutional amendment indefinitely.

Mr. BACON. I have not made any suggestion to that effect, but I was just calling attention to the fact that three States did think they had that right.

Mr. HEYBURN. The Senator, I think, would not contend --

Mr. BACON. I myself would be greatly disposed to question the right.

Mr. RAYNER. If that is so, then the fourteenth amendment is invalid, because they did exactly what the Senator from Idaho says they had no right to do.

Mr. HEYBURN. Mr. President, I do not care to have it left that way. I think the facts --

Mr. RAYNER. No; they voted first against it and then for it. The contention we have always made is that the fourteenth amendment is unconstitutional.

Mr. BROWN. Mr. President, I trust that the Senate will reflect a moment before it concludes to adopt any of these amendments. The proposition to refer it to the state conventions for ratification, in my judgment, does not appeal and ought not to appeal to our favorable consideration, provided we desire to be on the safe side and are in favor or early action on the joint resolution by the States.

The fact that first confronts us with respect to referring it to conventions is this: We do not know who will call the convention, whether the government or the legislature. There might be a difference of opinion about that. If it shall be called by the legislature, then we have to wait for the legislature to convene before there is even a call for a convention. That means delay; it means postponement; and I cannot understand why we should longer postpone the opportunity of the people to pass upon this question.

I have not yet heard in this debate one single reason why the convention method is better than the legislative method of ratification. The fact remains that of the 15 constitutional amendments which have been adopted, every one has taken the course that this joint resolution proposed this amendment shall take.

Mr. BORAH. Does the Senator contend that the fifteenth amendment was ratified entirely by state legislatures?

Mr. BROWN. I have the record of it here.

Mr. BORAH. Has the Senator Secretary Seward's certificate certifying its adoption?

Mr. BROWN. It says:

The fifteenth article was submitted to the legislatures of the several States, there then being 37 States, by a resolution of Congress passed on the 27th of February 1869, at the first session of the Forty-first Congress, and was ratified, according to a proclamation of the Secretary of State, dated March 30, 1870, by the legislatures of the following States --

Then they follow.

Mr. BORAH. The Senator has not Secretary Seward's certificate of ratification?

Mr. BROWN. This states that Secretary Seward certified that it had been ratified by the legislatures of 29 out of 37 States. So the joint resolution proposing the fifteenth amendment was ratified by 29 state legislatures and not by 29 state conventions.

Mr. BACON. Will the Senator from Nebraska permit me to recur for a moment to the question propounded by the Senator from Idaho?

Mr. BROWN. Certainly.

Mr. BACON. I did not at that time have it before me. It seems that the fifteenth amendment was ratified by the requisite number of States and was proclaimed, and that among those ratifying it were North Carolina, South Carolina, Georgia, and Virginia. They were necessary to the number required to secure the ratification. Prior to that time the legislatures of the States had rejected the amendment; and it was after they had rejected it that subsequent legislatures ratified it. It was only by means of counting those four States that the fifteenth amendment was declared as having been ratified; and they had previously rejected the amendment, each one of them.

Mr. RAYNER. North and South Carolina were two of the States.

Mr. BACON. North Carolina, South Carolina, Georgia, and Virginia.

Mr. BROWN. Unless some good controlling reason is presented why we should change our method of amending the Constitution, I do not think we can justify our vote against following the usual method. The legislature is an existing institution in every State. A convention would have to be arranged for. The legislatures, by virtue of the several state constitutions, meet every two years in most of the States. We do not have to wait for somebody to call a convention. The legislature is already called. We do not have to worry about the expense of the legislature, because the expense is already incurred.

In addition to all these objections, Mr. President, there is one other which ought to cause Senators in this body to vote against the proposed amendment for ratification by conventions. I know the fight that has been made in a large majority of the States of this country for a primary law. There has been a fight of the people in a majority of the States of the Union to get away from legislators who are nominated in conventions, and in many States they are now nominated in a primary. The

members of the several legislatures of the States have primary laws so not have conventions. They prefer the other method. They are nominated on primary-elections days.

Mr. BAILEY. Mr. President --

The VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from Texas?

Mr. BROWN. Certainly.

Mr. BAILEY. The Senator is making an argument now without knowing where it is going to lead. I think he will not consider it very valid one when he analyzes it. The same men who would be elected to this constitutional convention would be nominated in exactly the same way as the men who are elected to the legislature, and so the talk about the different methods is absolutely without foundation.

Mr. BROWN. The trouble with the argument of my friend is that it may apply to his State, where delegates to a convention are selected at a primary, but it does not apply in some of the States of the Union that I know of, because they have no law for electing delegates to any convention at a primary.

Mr. BAILEY. Then the members of the legislature are not selected in that way.

Mr. BROWN. Yes; the members of the legislature in my State are selected at the primary, but our delegates to a convention, should the party have one for any purpose, are not selected at a primary. There is no provision for the selection at a primary of delegates to this convention.

Mr. BAILEY. That is true. My own State makes precisely the same difference. Yet the Senator does not mean to say that he thinks it is safer to take the expression of a legislature elected with reference to all other questions, including this, than it would be to take the expression of a convention elected with reference to this one question alone. No matter how a man is nominated, the only question --

Mr. BROWN. That is just what does matter -- how he is nominated.

Mr. BAILEY. Let me finish and then I will show you that you are mistaken. The only issue here will be, Are you in favor of this constitutional amendment -- not of some constitutional amendment, but this one? And the candidate who is in favor will say so, the candidate who is not in favor of it will say so, and if a candidate elected declaring himself in favor of it would go to that convention and vote against it, he would never go back home.

Mr. CURTIS. Mr. President --

The VICE-PRESIDENT. Will the Senator from Nebraska yield to the Senator from Kansas?

Mr. BROWN. Certainly.

Mr. CURTIS. I should like to ask the Senator from Texas if he does not believe that the question of amending the Constitution would be the paramount issue, even though it was submitted to the legislatures?

Mr. BAILEY. That is probably true, and therefore I would dislike very much to see every legislature in the United States selected with reference to this federal question and without reference to local questions. This is exactly what I want to avoid.

Mr. BROWN. Mr. President, there can be no doubt, I think, in the mind of any candid man that should the joint resolution pass Congress, in every State in the Union every political party would be in a race to see which could get behind the joint resolution first. There could be found no one opposing the joint resolution, which only proposes that Congress shall have the power to levy incomes. You can not find a man on this floor, I believe, whether he favors an income-tax law or not, who is against giving to Congress the power to levy the tax if it wants to do so.

p. 4114:

Mr. BORAH. Mr. President--

The VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from Idaho?

Mr. BROWN. Certainly.

Mr. BORAH. If it is carried to the legislature, a multitude of local affairs or other affairs are engrossing the attention of the people. We have had year after year in our State constitutional amendments submitted which were important, and yet during the campaign they were lost sight of; no one mentioned them; and when the returns came in they were sometimes adopted by a very small vote by practically no vote being cast on the subject at all.

My idea in this matter was that if this was the only issue, the minds of the people would be settled upon the issue, and that above all things when it got into the legislature you could not logroll important issues against it in order to defeat it, because it would be the only issue there when you got into the legislature. If you go by the way of the legislature, there are a multitude of issues there which detract from the consideration of this measure. But if we have a convention it will be the only issue there. ·

So far as the expense is concerned, it may be expensive, but I want to call the attention of the Senator from Nebraska to the fact that if it should transpire that 12 States in the Union should refuse to adopt it, it would be the most unfortunate thing, in my judgment, which has happened in the political history of the United States since the civil war, if not in its entire history, because the contest would be over. We would not go back to the courts and we would not go again to the people, and this fight would be permanently closed.

Mr. BROWN. Mr. President, I do not agree at all with the views of my good friend from Idaho that the fight would be closed if 12 States should fail to ratify this amendment.

Mr. STONE. If my friend will permit me, on the subject of expense, while it would be an exceedingly unusual thing to do, it seems to me it could be obviated, and perhaps in the circumstances of this particular case it ought to be obviated, by inserting as a part of the amendment, if the convention plan is adopted, a provision that the Congress shall, by appropriation, provide for the reimbursement of the States for any expense they may be put to in holding the conventions.

Mr. BROWN. Mr. President, that illustrates the danger we are in right here. Every proposition and every suggestion involves some other legislation; some other step must be taken. Tell me why it is that we are so loath to follow the trodden path in amending the Constitution? What has happened that it is necessary to discover and adopt an untried plan?

Mr. BAILEY. Will the Senator permit me?

Mr. BROWN. Certainly.

Mr. BAILEY. I answer him without a moment's hesitation. Because the last two occasions on which we tried it we found ourselves amidst an infinite difficulty. Both the fourteenth and fifteenth amendments to-day are of doubtful validity, in consequence of the action, and varying action, of the several States. Remembering the trouble at the close of the great war that was found in adopting those amendments, I am not surprised that Senators would prefer a different course.

Mr. BROWN. Do I understand that the Senator from Texas favors the convention method of ratification because he doubts the validity of the course that was pursued relating to the fourteenth and fifteenth amendments? -

Mr. BAILEY. Oh, no; the Senator is too bright to suppose that I meant that. He did not understand that I stated that, except in reply to his demand to know why we should leave these beaten paths. I answered that those paths had not been paths of safety with reference to the last two amendments to the Constitution.

Mr. BROWN. So far as the record shows, they have been paths of safety. Those amendments are a part of the Constitution now.

Mr. BACON. Will the Senator permit me? It appears that in the case of the fourteenth amendment -- I a few moments ago misstated it to be the fifteenth -- four States which had rejected the amendment subsequently ratified the amendment.

The question was raised by the senior Senator from Idaho [Mr. HEYBURN] as to whether, when a State had once acted, it had not exhausted its power. I said to him very frankly I was inclined to think that was true. I hope the Senator from Nebraska will give me his attention, because I am calling his attention to it.

Mr. BROWN. I beg the Senator's pardon.

Mr. BACON. Four States which had rejected the fourteenth amendment afterwards ratified it. The ratification of those four States was necessary to make up the number required for that ratification. The particular point to which I wish to call the attention of the Senator from Nebraska is this: Of course the only ground upon which the validity of the fourteenth amendment could be rested would be the ground that the State did have the right to change; but unfortunately if that is true, there were other States that changed the other way. They were States which had ratified it, which, prior to the time when they were counted as having thus ratified it, withdrew their ratification. They were the States of New Jersey, Oregon, and Ohio. So, if the right to change is recognized, they were still three short if the right to change was not recognized, they were four short. As suggested to me by the Senator from North Carolina [Mr. OVERMAN], it was not adopted.

Take the case of the fifteenth amendment. The fifteenth amendment required 30 States to ratify it, and there were among those 30, which were counted as having ratified it, the States of Ohio and New Jersey, and each of those States prior to the time when they were counted as having ratified it had withdrawn their ratification.

Again the fact is presented that if they had a right to count them upon the ground that they had a right to change their minds and change their action, then it unfortunately happens that the State which was necessary to make up 30 had withdrawn its ratification, to wit, the State of New York. So in one case, if the State had the right to withdraw or to change it action, New York having withdrawn, there were only 29, and that was 1 less than necessary for ratification. On the other hand, if they did not have the right to change, 2 of the States which had previously refused to ratify were counted among those having ratified it, and that would leave only 28. In the one case there would be 29 and in the other case 28. You can take either horn of the dilemma you wish.

Mr. BROWN. I am familiar with that argument and with the point that we might not have a valid ratification of the proposed amendment. We need not waste any time, I think, in discussing that branch of this subject. If my judgment is correct, there will be no ratifications that will be withdrawn by any State on this joint resolution. I do think that it is the easy, the natural, the customary, the logical, and the safe thing for us to pass a joint resolution which refers it to the legislatures elected by the people of this country and not to .conventions.

Now, then, Mr. President, as to the other amendment offered by the Senator from Texas, where he asks that the words "and the right to grade" be put in, I think already the language of the joint resolution gives Congress the power to grade the income. It gives the power to lay and collect, and when the Supreme Court decided, as they did, that persons, associations, or corporations doing a certain line of business must pay a tax measured on their income, so much earned, they declared the power to be in Congress to grade the taxes, provided they had the right to lay them. The power to lay a tax includes the power to grade. Of that no doubt can reasonably exist, in my judgment.

The amendment proposed by the Senator from Kansas expresses a principle in which I have always believed, and I believe the principle is fair and right and ought to be in the Constitution; but the Senator from Kansas will understand that if he had the power under the parliamentary situation to offer the amendment, it means the death of both propositions when it comes to a final vote in this body. I do not base that upon any guess, because there was a roll call in the Senate last year on

the proposition to amend the Constitution so that the people would have a right to elect their Senators, and on that roll call out of 30 Democrats I think 9 voted in favor of such an amendment, and there were only 12 out of 60 Republicans who voted for it, the rest all voting, if they voted at all, to refer it to the committee.

Mr. LA FOLLETTE. Mr. President, the Senator has just made a statement that I was going to draw from him if possible, that the roll call was not upon the passage of the joint resolution, but to refer it to a committee. The direct issue was evaded in that case, as it is always sought to be evaded when that question comes up.

Mr. BROWN. The Senator from Wisconsin did not hear me finish the remark. The vote was to refer it. That meant to assassinate it, and every Senator knew that is what it meant. If I had voted to refer, I would have voted to kill it.

p. 4115:

Mr. DIXON. Mr. President --

The VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from ·Montana?

Mr. BROWN. I do.

Mr. DIXON. To keep the record straight, when reference is made to the Republican vote, I think the Senator should also add the fact that there was a larger percentage of Republican than Democratic Senators in this body who voted against sending the joint resolution to committee.

Mr. BROWN. I did not care anything about the political significance of it. I simply wanted to show that there is no possibility, with the Senate constituted as it is to-day and on record as it is, of having such an amendment get two-thirds of the majority of this body. Then tell me why load it on this joint resolution? I would be glad to support the Senator's resolution, if it can come up so that it does not kill itself and at the same time kill this one.

Mr. MONEY and Mr. NEWLANDS addressed the Chair.

Mr. BROWN. There are several Senators who want to talk, and I think I will yield the floor. I hope that all these amendments may be voted down. I believe that the joint resolution is drawn simply; it is drawn in language that is not susceptible of two or three constructions; it vests the power in Congress to lay and collect income taxes; and that is the proposition we want to adopt.

Mr. MONEY. Mr. President, I am one of those who believe that there never will be another amendment to the Constitution of the United States. Already, I understand, about 13 States have called for a convention of all the States. If that convention should be called, as it will ultimately be, I have no doubt the first resolution that will be offered will be to abolish the Constitution of the United States for the very reason that we have been for some time acting under a suspension of it, and those who are in authority are heartily tired of it.

The difficulty that presents itself to my mind is to secure the 12 States which everybody admits are quite likely to defeat any amendment of this sort to the Constitution. The method presented by the Senator from Texas is probably the best, but the same influences that will control the votes of the legislature will prevent the legislature from calling a convention. The item of expense will be considered by some of the frugal-minded legislatures in some of the States, also.

The great difficulty that we had in passing the last two amendment to the Constitution, which seemed to be so very necessary in our system of political economy as to fix the status of several million freedmen, would seem to argue the necessity of a ratification of the income-tax amendment, yet we know the difficulty. I am one of those who do not believe that either the fourteenth or fifteenth amendment was ever validly made a part of the Constitution.

It has been said that when a State has voted to ratify or reject it has exhausted its power. I do not believe there is any authority in good common sense and sound reasoning for any such suggestion.

There is no doubt that it has been acted upon; that is true, but the action was forced by the exigency of the political situation. As a matter of fact, 4 Southern States that had rejected the fourteenth amendment afterwards assented to it. But in the meanwhile 2 States that had assented to it had withdrawn their assent and rejected it.

One was the State of Ohio and the other the State of New Jersey. The paper that was then issued by the legislature of New Jersey is one of such high statesmanship that it deserves to rank next only to the Declaration of Independence. It is a paper that can be studied with great profit by any student of our Constitution and of our theory and system of government. My friend from Georgia [Mr. BACON] stated that there was a third; but he is mistaken about that. The State of Oregon, it is true, rejected the amendment, but that was in October, and the promulgation of the ratification was made by the Secretary of State, under the law of 1818, on the 28th of July, 1868. So the action of Oregon simply meant to express a change of sentiment in that State, and in no effect validated or invalidated the ratification. It had nothing to do with it. But it was held that four States had first rejected the amendment and afterwards ratified it; and they were counted, because they came in before the promulgation. .

I am not one of those who believe that a promulgation by the Secretary of State of the ratification of three-fourths of the states of an amendment to the Constitution is at all necessary to its validity. It is just exactly as he is required to print the laws of Congress. Nobody will assume that he has got anything to do with passing the laws of Congress or giving them effect. He simply gives notice to the public that they have been passed, and superintends the printing. So, in the same way, the act of ratification consists of the action of the two Houses, then of three-fourths of the States; and the Secretary of State has nothing to do with it, except to announce that to the public; and the event is closed.

However, the State of New Jersey and the State of Ohio had changed; but they were not permitted to make that change. John Sherman, then a Member of the Senate from the State of Ohio, introduced a resolution declaring that three-fourths of the States of the Union had ratified the fourteenth amendment. As a matter of fact, that was *ultra vires*. The Senate had no business to concern itself any further. That clause of the Constitution which provides for its own amendment particularly points out the way in which it shall be done.

It says that such joint resolutions shall receive the consent of two-thirds of the Members of both Houses. There has been some contention about whether that meant two-thirds of those present or two-thirds of the Members constituting each House. According to my view of it, proper reason and common sense would say it required two-thirds of the membership of both Houses; but it has been uniformly held by both Houses that it only required two-thirds of those present and voting; that all the intermediate steps leading up to a final vote upon the amendment required only a majority of those present and voting, a quorum being always presumed to be present, as a matter of course. I do not accede to that; but there is no way to change it, of which I am aware. That has been the uniform practice of both Houses, and they have declared it over and over again. The last ruling on that subject was by Mr. Reed, of the State of Maine, as able a man as has ever been Speaker of the House of Representatives. I recollect that he said in his ruling that it seemed unnecessary for him to rule, primarily, because the decisions of preceding Speakers had been so uniform upon that point.

But we have had also other decisions, even coming down to the decision of the Supreme Court, that the President of the United States had to sign such amendments. The first 12 amendments proposed by Madison were signed. Ten were adopted afterwards. The eleventh amendment was signed by John Adams, which was adopted. Then the twelfth amendment of Mr. Madison was signed, and that was adopted. The thirteenth amendment was signed by Abraham Lincoln, not because it was believed that it was at all necessary, because the President is not included in the amending of the Constitution as one of those who have anything on earth to do with it, but it was

said that it was extremely fitting that the man who had emancipated the slaves by proclamation should have the privilege of signing a legislative amendment to the Constitution, ratified by the States, which did the same high office. Consequently he was permitted to do so. Then it was that Trumbull, of Illinois, offered a resolution that the approval of the President was totally unnecessary, and it passed the Senate without a single dissenting vote. So that, though we have precedents which seem to have no foundation in good reason and that are cut short whenever the opportune moment comes, it seems the President has nothing whatever to do with the amendment of the Constitution.

Mr. President, I do not believe that this amendment to the Constitution will ever be a part of it. I am willing to vote for it, and I should like to see it adopted, if possible; but I am quite sure that those influences which have prevented a vote on the income-tax amendment in this Senate will also prevent a vote in at least twelve of the legislatures of this Union. We can feel quite sure that an act of such far-reaching importance, that touches the pockets of very many rich people, is not very likely to become a part of the organic law of our Republic or of our confederation.

I should be very glad, Mr. President, to proceed upon the lines laid down by the Senator from Texas [Mr. BAILEY], the Senator from Iowa [Mr. CUMMINS], and the Senator from Idaho [Mr. BORAH], which, I believe, is the shortest and the simplest way. I am not one of those who regard the judgment of the Supreme Court as an African regards his particular deity. I respect such a decision just exactly to the extent that it is founded in common sense and argued out on reasonable logic, but when it violates the law of common sense, then I cease to so regard it except that as a citizen I am bound by it. As a legislator I have no more regard for it than I should have for a decision of a magistrate in one of the counties of the State of Mississippi, especially when I know it runs counter to the decision of a hundred years and was decided by a vote of five to four and that one judge who voted in the affirmative changed his mind somehow in the shadows between two different hearings.

p. 4116:

I do not say that by way of disparagement of anybody, because it is only the fool who never changes his own mind; but there were no new facts brought out; there were no new arguments adduced; and the member of the court, whoever he was, changed his mind. He seems likely to go down to the grave or to posterity in obscurity so far as that act is concerned. We have, then, a doubly doubtful decision of the Supreme Court. I do not think there is a good lawyer in this country who believes to-day that the decision of that court is a correct decision. It is so open to question that the best lawyers in this Senate have not hesitated *to* bring forward here, as an amendment to this tariff bill, a provision for an income tax to be a part of the proposed law; and we are met with the proposition to change the Constitution.

I am sorry that our great and good President has changed his mind upon this question. He once thought, and very lately, during the height of the canvass, a proposition made by the convention of Democrats at Denver, and containing a proposition such as is being discussed this morning, absolutely useless, because the court, with a little change of personnel, and probably without it, would not reaffirm its decision, but would reverse it. We find, however, that things change. Now, Mr. President, I want to say that I for one hope that something can be done to fix in the Constitution or the law -- either one being satisfactory to me -- this amendment. There is not a civilized country in the world which does not have an income tax; there is not a civilized country in the world that would surrender it at any cost. We have the example, at least of one country, from which we have taken our laws and our general administrative system, where the tax is imposed by the people who pay the tax. It is to the eternal honor of both the British Houses of Parliament that the tax which they in

great part have to pay is assessed by themselves. It is not only a tremendous source of revenue, but it is the governing source of revenue. There is no continual tinkering with the tariff, for it is unnecessary. If there is a great deficiency, then immediately there is a slight raise in the income tax, and the want is provided for. If there is a surplus, there is a small reduction in the income tax, and that is remedied also. So it acts, as I have said, not only as a producer, but as a governor of revenue.

While I have the view that this is an unnecessary amendment, and that the proposition made by the Senator from Iowa [Mr. CUMMINS], the Senator from Texas [:Mr. BAILEY], and the Senator from Idaho [Mr. BORAH] to levy this tax would be quite sufficient, and I believe the court would now support it, yet I am not willing to lose any opportunity to give my assent to a proposition so eminently just. If the people of this country cannot pay, out of their surplus, out of the superabundance of their revenue, then why should any tax whatever be levied on anybody else? Is there any justice in levying a tax upon articles of general consumption, that must be paid by the great body of citizens everywhere, who toil for a living, and at the same time the superabundance or unspendable income of the billionaire should be spared when we know that our legislation is mostly in relation to property, concerning things, and not concerning persons?

Why, Mr. President, the laws that govern persons are so evidently obvious, they lie so completely on the surface, that, in order to preserve the organization of human society, we have left them practically unchanged. It has been the same under every code of religion and every code of laws in every art of the world, among all races of man from the beginning of time until to-day. They are unchangeable, you might say, because otherwise it would make society impossible and civilization impossible.

Mr. BAILEY. Mr. President, the Senate is entitled to know precisely the reasons which influenced me to propose these amendments; and, although I have once stated them, they will bear repetition.

Those who imagine it is easy to amend the Constitution of the United States, even to meet an almost universal public opinion, have studied the history of this country to little advantage. Outside of the first ten amendments, which may be regarded as in the nature of a bill of rights, and were a part almost of the adoption of the Constitution itself, there have been but five amendments; and not one of them adopted to meet an economic or a financial condition.

The eleventh amendment was adopted when the State of Georgia was on the point of resisting the decree of the Supreme Court of the United States; and to prevent the collision, if not then, at some future time, between state and federal authorities, the eleventh amendment, which forbids the federal courts to entertain jurisdiction over a State, was adopted.

The twelfth amendment grew out of the famous presidential election when Aaron Burr and Thomas Jefferson received the same number of votes in the electoral college, thus throwing the election into Congress and prolonging it through a period of dangerous anxiety. The Constitution, as it stood at that time, provided that the candidate receiving the highest number of electoral votes should be the President and the candidate receiving the next highest number should be the Vice-President. In the election of 1800 the Federalists took the precaution of giving a different vote to their candidates for President and Vice-President, because in the public mind the candidates were distinct, though not in the law -- there were no candidates for President and Vice-President then as now -- but the Democratic electors, then called Republicans, omitted that precaution, and when the electoral votes were counted Jefferson and Burr had precisely the same number. Thus two candidates having received a majority, but having exactly the same number of votes, the election was thrown into the House of Representatives, where it was pending for several weeks. Immediately the country perceived the necessity of an amendment to the Constitution, and the twelfth amendment was adopted, providing against such contingencies as had arisen in that case. Nobody in the United States ever thought of Aaron Burr being elected President over Thomas Jefferson in 1800. Every

elector who cast his vote for both of them intended that Jefferson should be · the President and Burr should be the Vice-President, but the result of the .election disclosed such a vulnerable point in the Constitution that they promptly amended it.

From 1804 -- that was the date when the twelfth amendment was proclaimed as adopted by three-fourths of the States -- until the civil war there was no other amendment adopted, and then three amendments grew out of that unhappy conflict. The thirteenth amendment abolished slavery; the fourteenth amendment undertook to secure to the lately enfranchised race the protection of the Federal Government and yet that amendment and its adoption has become a scandal in the constitutional history of the United States, some States adopting it and then rejecting it, and others rejecting it and afterwards adopting it. The same thing happened in the case of the fifteenth amendment.

Now, Mr. President, if, under the stress and passions of that warlike time, constitutional amendments designed to secure what the majority considered the fruits of a great victory were subjected to such perilous passage, it cannot be doubted that this proposed amendment may encounter a similar experience.

Mr. CRAWFORD. Mr. President --

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from South Dakota?

Mr. BAILEY. I do.

Mr. CRAWFORD. Does the Senator recall an instance where a resolution proposing an amendment passed both houses of the Congress of the United States and was submitted to the States for approval that failed to receive a ratification from the necessary number?

Mr. BAILEY. Oh, yes; there were 2 out of the first 12 submitted that were rejected. But, Mr. President, whether they were rejected or not, I have been reciting to the Senate the almost insuperable difficulty of adopting the last two constitutional amendments growing out of the war.

Whether those amendments are valid or not -- and I myself do not believe that either of them ever constitutionally became a part of the Constitution of the United States, but after the acceptance of them for all these years, after general acquiescence in them, that is a closed question, and I do not want to see it opened -- I would put this to the judgment and to the experience of Senators: Suppose that an amendment authorizing the levy of a tax on incomes had been adopted in the same way as the amendments securing and making permanent the results of the war; does anybody doubt what would have happened? I do not. I do not doubt that we would long ago have had a judgment upon the legality of their adoption; nor do I doubt that it would have been adverse to the legality of their adoption.

Mr. President, if, instead of submitting this amendment to the legislatures, that may act and react, and go forward and recede, we submit it to a convention in every State, then every member of that convention will be selected solely with reference to this single question; he will be compelled to stand in the presence of the people whose suffrage he seeks and declare upon his honor as a man and as a citizen, whether or not he favors this amendment. No man will be permitted to offer himself as a candidate for the convention in any State without he is compelled to declare his position; and, having declared it, no man will dare to go to that convention and cast a vote as a delegate to it differing from what he professed his intention to do when he was a candidate for it. It will be as nearly as possible a submission of the question to a direct -rote of the people.

Not only, Mr. President, do we thus insure an approach to a direct vote of the people on the amendment, but we likewise relieve the States themselves from the mistake of choosing legislators in the coming election with reference to federal rather than with reference to local questions. I can not myself conceive a much more unfortunate circumstance than to find it necessary to elect every legislator in this republic with reference to what he will or will not do in this single case, ignoring the multitude of things which he must do in his capacity as a representative of the people.

p. 4117:

Mr. JONES. Mr. President --

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Washington?

Mr. BAILEY. I do.

Mr. JONES. I should like to ask the Senator to indicate what authority would call the convention -- the legislature of the State or the government?

Mr. BAILEY. The legislature of the State would be compelled to call the convention. They would be compelled to provide for the election of delegates, and each legislature may provide for the election of delegates in precisely the same way and under precisely the same form as they now choose members of the legislature. A State that has a primary system of nominating men for the legislature could, and doubtless would, adopt a primary system of nominating delegates to the convention, and thus the legislative authority of the State would determine in the State's own way -- and they have a right to so determine it -- the manner of choosing their delegates. If the State of Nebraska sees fit to nominate its delegates under a direct primary, they have the right to do that; but if the State of Rhode Island does not choose to pursue that policy, she has the right to pursue her own way without reference to Nebraska's policy.

Mr. JONES. I did not ask the question in a controversial way.

Mr. BAILEY. I understand that.

Mr. JONES. I wanted information of the Senator.

Mr. BAILEY. I feel sure that the conventions can only be called by the legislatures of the States.

Mr. JONES. Mr. President --

The VICE-PRESIDENT. Does the Senator from Texas further yield to the Senator from Washington?

Mr. BAILEY. Certainly.

Mr. JONES. Would not the opposition to an income tax, to which the Senator has referred, also act in the legislatures and cause them to endeavor to prevent the calling of conventions by the legislatures?

Mr. BAILEY. Undoubtedly, Mr. President, you can not escape the influence of the opposition to an income tax; and I do not seek to escape it. I only seek to challenge it to a fair combat in an open field. If a man is opposed to an income tax, I would not deprive him of the right to vote against it, and I would despise him if in his heart he was opposed to it and for any consideration, personal or political, voted for it. This is a country where every freeman's ballot ought to express a freeman's will. I am not trying to escape the influences that are hostile to this kind of legislation. I only want those influences to have the manliness and courage to stand out in the open and fight it out. I want to see that it is impossible for men seeking an election to a legislative body under one pretense or under many pretenses to reach a legislative chamber and then say they have changed their minds. I do not want some governor to send some special message to change the minds of members of the legislature as the President has changed the minds of some Senators. I do not say that in any offensive way. I can understand how a Republican wants to cooperate with a Republican administration. That is not strange to me. I have no criticism to offer on it; but on this question, which affects the fundamental law of the land, I want the adoption or rejection of it free from every influence except the consideration of its own merit, and the only way to absolutely insure that result, in my judgment, is to have it passed upon by a body selected only with reference to it.

Mr. NEWLANDs. Mr. President --

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Nevada?

Mr. BAILEY. I do.

Mr. NEWLANDS. I wish to ask the Senator whether there is not an additional objection to ratification by the legislatures in the fact that in many States of the Union the higher body, usually called the "senate", I believe, serves for two sessions and the lower body serves only for one? The Senator will recall that the Senator from Nebraska stated that the question of the income tax would be an issue before the people at the coming election, and that the legislators would receive their instructions; but such instructions would not apply, or might not, at all events, be accepted by the holdover members of the higher body of the legislature.

Mr. BAILEY. Mr. President, that is a very pertinent and very important suggestion, and I would attempt to elaborate it, but the clock admonishes me that the hour has almost arrived for the vote to be taken, and of course I recognize the right of the Senator from Nebraska [Mr. BROWN] to conclude what is to be said on the subject.

Mr. BROWN. Mr. President, I do not care to occupy any of the time of the Senate in further discussion, except to call attention to this one situation. The convention method of ratification is supported now by Senators because it would be easier, they think, I take it, to get the ratification through a state convention than through the legislature. I suppose that is the reason, because they are all, as I understand, in favor of amending the Constitution along this proposed line.

Mr. BAILEY. While I think it would be easier, that does not exactly or precisely state my view. If the people of the United States are opposed to this amendment, it ought not to be adopted; but I think the convention method will insure a more absolutely accurate expression of the public will, because of the fact that it will be selected with reference to that question, and that question alone.

Now, Mr. President, with the permission of the Senator, I want to add that a number of Senators have suggested to me that the question of expense might be an important one, and therefore I desire to say that if the amendment I propose should be adopted and we should refer this joint resolution to conventions, instead of to the legislatures, I shall follow with a resolution providing, out of the General Treasury, for the expense of holding the conventions in every State.

Mr. McCUMBER. Mr. President, with the permission of the Senator in charge of the matter, I should like to ask the Senator from Texas a question.

Mr. BAILEY. Certainly.

Mr. McCUMBER. If I correctly understand the Senator from Texas, he admits that the legislature of the State would have to call the convention.

Mr. BAILEY. I think that is true, Mr. President.

Mr. McCUMBER. And there is no power to compel the legislature to call the convention if the legislature refuses to do so.

Mr. BAILEY. Nor would there be any power to compel the legislature to vote on the question if it did not choose to do so.

Mr. McCUMBER. Right there is where we can probably meet. One member of a legislature can compel the legislature to vote for or against an amendment.

Mr. BAILEY. Oh, no; it would have to be done by a quorum.

Mr. McCUMBER. Well, he can get it before the legislature; but one member of a legislature, or less than a majority of each house, could not compel the calling of a convention.

Mr. BAILEY. He would have precisely the same power in one as in the other. He could so just as much toward forcing the call for a convention as he could toward forcing a vote in the legislature.

Mr. McCUMBER. Admitting that, again, if the legislature were composed of men who would naturally be against the amendment, would it not be more convenient and more easy for them to avoid the calling of a convention than it would to meet the matter directly?

Mr. BAILEY. It would not be any more easy to do so than it would be to reject the resolution if a majority were opposed to it. I know there are a lot of cowards in politics, but I am not assuming that

they are in a majority anywhere. I am proceeding upon the theory that if a majority of the members of any legislature in the Union are opposed to this amendment, they will vote against it.

Mr. McCUMBER. The point I want to make to the Senator is that, in either event, we will have to depend upon the legislature.

Mr. BAILEY. Undoubtedly.

Mr. McCUMBER. We will have to depend upon the same legislature to call the convention that we will have to depend upon to vote directly upon the amendment.

Mr. BAILEY. But the difference is --

Mr. McCUMBER. Just a moment. If there is power enough on the part of the friends of the amendment to call the convention, undoubtedly there would be power enough to get it to pass the amendment.

Mr. BAILEY. Let me put the matter in this way. Suppose the Senator were a member of a state legislature, and this constitutional amendment is duly submitted to be passed upon by a constitutional convention, would the Senator refuse to vote for a law calling that constitutional convention? I think not.

Mr. McCUMBER. Neither would I refuse to vote for a law ratifying the amendment.

p. 4118:

Mr. BAILEY. But suppose the Senator were opposed to it? I will not state the Senator's case, but will state my own. If I were a member of the Texas legislature, and this amendment were submitted for ratification by the legislature, and I were opposed to it, I should vote against it; and they might bring Gatling guns and train them on the capitol, but I would still vote against it if I were honestly opposed to it. But, sir, if the amendment were submitted to the ratification or disposition of a convention, I should feel in honor bound, both as a member of the legislature and as a citizen, to afford to the people of Texas an opportunity to pass in a lawful and an orderly way upon the question. I should therefore vote without the slightest hesitation in favor of calling a convention to pass upon the question, notwithstanding the fact that I intended to offer myself as a candidate for that convention for the purpose of voting against the ratification of the amendment.

So I do not hesitate to say that there is a vast difference between a legislator who might vote against the ratification of the amendment if submitted to the legislature and one who would vote against submitting it to a convention in pursuance of the resolution of Congress.

Mr. HEYBURN. May I make a suggestion to the Senator from Texas?

The VICE-PRESIDENT. Does the Senator from Nebraska yield?

Mr. BROWN. I do.

Mr. HEYBURN. As I read Article V of the Constitution, which is the article providing for amendments, a state legislature has nothing to do with the question whether or not an amendment shall be submitted to a convention. Congress is to say whether it shall be passed upon by the legislature or by a convention, and the legislature can not refer it to a convention. Congress is clothed with the authority to adopt that course if it sees fit.

Mr. BAILEY. I do not understand the Senator from North Dakota to suggest that the legislature might refer it to a convention. I understood his question to be whether the legislature might not refuse to call a convention. ·

Mr. McCUMBER. That is correct.

Mr. HEYBURN. Mr. President, I think that hardly covers it.

Mr. BEVERIDGE. How could the convention be called if the legislature did not call it?

Mr. HEYBURN. Congress provides the manner of calling it.

Mr. McCUMBER. Congress does not call the convention.

Mr. BAILEY. Unless the Senator from Nebraska is entirely willing, I feel that I must--

Mr. HEYBURN. I am not going to occupy a quarter of a minute; but this is an important point. Article V does not vest power in the legislature of a State to call a convention. It says that Congress may determine whether a convention shall decide this question or whether the legislature shall decide it. But it is just as probable that the governor would call the convention if the act of Congress authorized him to do it.

Mr. BAILEY. The trouble with that is that it would be necessary to provide for the manner in which members should be elected, and the governor could hardly do that.

Mr. BROWN. That would require a session of the legislature.

Mr. HEYBURN. I did not desire to consume this time, as other Senators may desire to make suggestions. I merely gave out the suggestion because it seemed naturally to grow out of the language of Article V.

Mr. BROWN. Now, Mr. President, just a word.

Mr. BAILEY. Will the Senator permit me?

Mr. BROWN. Just a word, and I will yield the floor. This discussion has resulted in an agreement by all parties that the legislature must act, whether we follow the plan suggested by the resolution or whether we provide for ratification by a convention. With the proposed plan, which is the usual and customary plan, the legislature is the only obstacle in the way. ·

Under the proposal of the Senator from Texas to refer the matter to a convention, we not only have the legislature still in the way, but we have the convention in the way. In other words, you have to have a legislature that is friendly enough to the proposition to pass a law that will be fair enough to allow the people to select delegates to a convention; and then you have to wait until the adjournment of the legislature, and until a convention is called, before you get any action either for or against the amendment. Will some Senator tell me the need of that postponement? In the West we can trust to the legislatures of the States. This is the usual and customary way. Let us follow it if we are in favor of the amendment. If we are not, let us present all the difficulties and offer all the complications that an untried experiment may suggest.

Mr. BORAH. Mr. President -

Mr. CL.APP. Mr. President --

The VICE-PRESIDENT. Does the Senator yield to the Senator from Idaho or to the Senator from Minnesota?

Mr. CL.APP. Just one question.

The VICE-PRESIDENT. Does the Senator yield; and if so, to whom?

Mr. BROWN. I yield to the Senator from Minnesota.

Mr. CLAPP. I hardly think it is just the proper thing for a Senator to say that those who favor this amendment will vote according to his view and those who are opposed to it will vote another way.

Mr. BROWN. Mr. President, I did not say that, or intend to say that, at all.

Mr. CLAPP. I thought the Senator did not intend to say it.

Mr. BEVERIDGE. Mr. President --

The VICE-PRESIDENT. Does the Senator from Nebraska now yield to the Senator from Idaho?

Mr. BROWN. I yield.

Mr. BORAH. Mr. President, I do not know upon what principle the Senator from Nebraska suggests that in case the legislature refuses to call a convention the people cannot of themselves come together and ratify the amendment.

Mr. BROWN. I have not said that; but how are they going to select each other as delegates except as the state legislature may provide? How are they going to name their delegates? Who is going to pass on their credentials? Why go out in a field of that kind, that no mortal man has ever sug-

gested before, when we have the plain method proposed in the Constitution and followed in the joint resolution now pending?

Mr. BACON. I will suggest that the State of California came into the Union under a constitution framed by a convention called exactly that way.

Mr. BROWN. That is a very different proposition.

Mr. BORAH. That is the basic principle of a republican form of government, and there is no authority in law or elsewhere for saying that the people cannot come together unless the legislature says they may do so.

Mr. BROWN. Is there anything unrepublican about following the method the Constitution says we can follow and referring to the legislatures of the country the question whether or not the Federal Constitution shall be amended? This is the first time I have heard it suggested that it is unrepublican to submit an amendment to a state legislature for ratification, when the fact remains that every amendment we have was adopted in that very way.

Mr. BEVERIDGE and Mr. GORE addressed the Chair.

The VICE-PRESIDENT. To whom does the Senator from Nebraska yield?

Mr. BROWN. I yield to the Senator from Indiana.

Mr. BEVERIDGE. Referring to the remark of the Senator from Minnesota, I understood, and wish to now ask the Senator from Nebraska if that is a correct understanding, that under the amendment of the Senator from Texas, proposing to submit this matter to conventions, two processes are involved instead of one, as is the case with the proposition of the Senator from Nebraska, and that of those two processes one is precisely the same that is now objected to?

It is said that certain influences may prevent the legislature from acting favorably. But, as the Senator from Mississippi pointed out a moment ago, those same influences would certainly be equally potent in preventing the legislature from calling a convention, in addition to which they would have the other arguments about economy, and so forth, that are used with such effect. Therefore, if I understand the position of the Senator from Nebraska, which seems to me to be essentially sound, and particularly and uncommonly clear, it is this: In submitting this amendment, which we all hope to have adopted -- and I think I can, without any improper assumption, predict that at least in one State that I know of the legislature will adopt it -- under the proposition of the Senator from Nebraska [Mr. BROWN] we only have one process to go through with one danger to face, one difficulty to overcome, whereas, under the convention proposition of the Senator from Texas [Mr. BAILEY] we have two dangers to overcome and two difficulties to surmount--

Mr. BORAH. Mr. President--

Mr. BEVERIDGE. Wait a minute -- and that both propositions involve precisely the same matter -- that is, the legislature -- of which complaint is made. In other words, to boil it down to a sentence, the amendment of the Senator from Texas [Mr. BAILEY] makes it doubly difficult to get this amendment ratified, because two processes instead of one process must be gone through; and of these two processes one process is untried.

p. 4119:

The VICE-PRESIDENT. Will the Senator from Nebraska yield in order to permit the Senator from Idaho to make an inquiry of the Senator from Indiana?

Mr. BROWN. Yes.

Mr. BORAH. The two processes the Senator refers to are the legislature and the convention?

Mr. BEVERIDGE. Yes.

Mr. BORAH. Upon what theory does the Senator from Indiana insist that we must necessarily have the legislature?

Mr. BEVERIDGE. Until the Senator arose a moment ago, I had not heard any person suggest that the machinery for the calling of a convention would simply create itself out of air -- that the people would simply get together somehow or other, without order, authority, or law. And this, too, in so solemn a proceeding as the amending of the Constitution of the Nation. If the people got together, certainly all the people would not get together. Under what authority of law would they get together? You cannot assume --

Mr. BORAH. But--

Mr. BEVERIDGE. Pardon me; the Senator asked me a question. You can not assume that all of the people of the State are going to be for this action. If not all, then by what method will you get them together? If all, still by what method? Are they to have a general meeting? If so, who will call it? Who will be delegates? Who would determine the credentials? Where would it meet? Would we have a town meeting in every town, resolving that on such and such a day the people would select certain delegates? How would they be selected?

Mr. BORAH. Mr. President --

Mr. BEVERIDGE. And that, too, in so grave a thing as an amendment to the Constitution of the United States! I have never in my life been more heartily for a thing than I am for this amendment to the Constitution, giving to the Congress of the United States the power that it ought to have of levying this tax in case of an emergency. This whole business involves a much deeper question than any of those taxes -- it involves the question of orderly liberty; and, to my mind, orderly liberty is the largest .question in this whole extraordinary tax matter.

Why should we adopt the convention method that has been suggested here, with the result of crossing two streams when, under the method of the Senator from Nebraska, which is the usual one, the historic one, and the one laid down in the Constitution itself as a preference, only one stream must be crossed? If you take the former course, you multiply by 100 per cent the difficulties in the way of getting this amendment to the Constitution of the United States giving the Government the power it ought to have.

Mr. GORE. Mr. President --

The VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from Oklahoma?

Mr. BROWN. I yield to the Senator from Oklahoma.

Mr. GORE. Mr. President, I wish to propound a question to the Senator from Idaho and the Senator from Texas. My vote may possibly depend upon their answer.

In a general way I prefer the convention plan, because in the selection of delegates to a convention this would be the only issue, dissociated from a hundred legislative questions -- the selection of United States Senators, and other extraneous matters. But, as I understand, this amendment will pend indefinitely, and can be made the issue in the selection of a dozen legislatures until one is finally chosen that will ratify the amendment. If one convention should be called and should act adversely upon the amendment, is it the opinion of the Senators I have named that the legislature could properly summon another convention to pass on the same issue?

The VICE-PRESIDENT. The hour of 1 o'clock has arrived. The question is on agreeing to the resolution offered by the Senator from Nebraska [Mr. BROWN].

Mr. BAILEY. I should like to have --

The VICE-PRESIDENT. No further debate is in order under the order of the Senate. To the joint resolution the Senator from Kansas [Mr. BRISTOW] first suggested an amendment, upon which the Senator from Rhode Island [Mr. ALDRICH] raised the question that the amendment was not in order under the special rule adopted by the Senate. The Chair sustains the point of order, and holds that the amendment is not in order under the agreement. The question now is on the first amendment offered by the Senator from Texas [Mr. BAILEY].

Mr. LA FOLLETTE. Will the Chair indulge the Senate by having reported the order under which we are now proceeding?

The VICE-PRESIDENT. Without objection, the Secretary will report the order.

Mr. BEVERIDGE. Mr. President, I should have asked to have it reported myself, but, as a matter of fact, under the agreement --

The VICE-PRESIDENT. Is there objection?

Mr. BEVERIDGE. I have no objection myself; but we must have some rules of procedure.

The VICE-PRESIDENT. The Secretary will report the order.

The Secretary read as follows:

It is agreed by unanimous consent that at 1 o'clock p. m., Monday, July 5, 1909, the Senate shall proceed to vote, without debate, upon Senate joint resolution No. 40, "Proposing an amendment to the Constitution of the United States," and upon all amendments pending or to be proposed thereto.

The VICE-PRESIDENT. The Secretary will report the first amendment offered by the Senator from Texas [Mr. BAILEY].

Mr. BRISTOW. May I ask the ruling upon my amendment?

Mr. ALDRICH and others. Let us have the regular order.

The VICE-PRESIDENT. The Chair has ruled that the amendment is not in order under the rule the Senate has provided for this procedure, to wit: The Senate has determined by its action that it will consider the amendment offered by the Senator from Nebraska [Mr. BROWN] relating to amending the Constitution and referring to the income tax. The amendment of the Senator from Kansas relates to an entirely different matter.

Mr. STONE. No; the question is --

Several SENATORS. Regular order!

The VICE-PRESIDENT. The Chair has ruled, and unless there is --

Mr. STONE. I rise to a question of order.

The VICE-PRESIDENT. The Senator will state it.

Mr. STONE. The Chair stated that the question was upon the resolution offered by the Senator from Nebraska, under the order just read.

The VICE-PRESIDENT. And the amendments thereto which are in order.

Mr. STONE. But the order just read says that we shall vote upon resolution No. 40, which is the resolution proposed by the Finance Committee.

Mr. ALDRICH. That is a technical matter.

The VICE-PRESIDENT. If the Chair made a misstatement in that regard everyone understands what is meant. Senate joint resolution No. 40 is the one the Senate is now considering. The Secretary will report the first amendment offered by the Senator from Texas.

The SECREARY: In line 5, strike out the word "legislatures" and insert the word "conventions." In line 9, after the word "incomes" and the comma, insert "and may grade the same" and a comma.

Mr. McCUMBER. I should like to have those matters divided so that we can vote on them separately.

The VICE-PRESIDENT. Without objection, that will be done. The Senator from Texas, as the Chair understands, asks for the yeas and nays upon each amendment.

Mr. BAILEY. Yes.

The yeas and nays were ordered.

The VICE-PRESIDENT. The question is on the first amendment of the Senator from Texas.

Mr. CULBERSON. Mr. President, I have been absent from the Senate, and I ask that the first amendment be reported.

The VICE-PRESIDENT. Without objection, the Secretary will report the amendment.

The SECRETARY. In Senate joint resolution No. 40, line 5, strike out the word "legislatures" and insert the word "conventions."

The VICE-PRESIDENT. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. DILLINGHAM (when his name was called). I have a general pair with the senior Senator from South Carolina [Mr. TILLMAN], who is absent. I transfer that to the senior Senator from Maine [Mr. HALE], and vote "nay."

Mr. GUGGENHEIM (when his name was called). I have a general pair with the senior Senator from Kentucky [Mr. PAYNTER], who is detained by illness. I transfer that to the senior Senator from Washington [Mr. PILES], and vote "nay."

Mr. McLAURIN (when his name was called). I run paired with the junior Senator from Michigan [Mr. SMITH]. If he were present, I should vote "yea."

Mr. JONES (when Mr. PILES'S name was called). My colleague is absent from the city on important business. If he were present, I am not prepared to say how he would vote on this amendment.

p. 4120:

Mr. TAYLOR (when his name was called). I am paired with the junior Senator from Connecticut [Mr. BRANDEGEE] on all questions except this one. I vote "yea."

The roll call was concluded.

Mr. BACON. I desire to announce that my colleague [Mr. CLAY] is necessarily absent. If he were present, he would vote "yea." He is paired with the senior Senator from Massachusetts [Mr. LODGE], who, I presume, if present, would vote "nay." ·

Mr. BANKKHEAD. I am paired with the junior Senator from Illinois [Mr. LORIMER]. I transfer that pair to the junior Senator from Maryland [Mr. SMITH], and vote "yea."

Mr. SCOTT. My colleague [Mr. ELKINS] is unavoidably detained from the city to-day. I am not prepared to say how he would vote if he were here.

Mr. BAILEY. I am paired with the Senator from West Virginia [Mr. ELKINS], and if it would make any difference in the result of this vote I should of course feel compelled to withdraw my vote. But as it does not make any difference in the result, I shall let my vote stand.

Mr. HEYBURN. I should like to make a parliamentary inquiry.

The VICE-PRESIDENT. The Senator will state it.

Mr. HEYBURN. Should pairs count on a vote of this kind, which requires a majority of two-thirds? It seems to me this is an exception to the rule.

The VICE-PRESIDENT. The question of pairs is not for the Chair to determine. ·

Mr. BACON. A majority of two-thirds is not required in the case of an amendment.

Mr. MONEY. I believe it has been ruled repeatedly that in the intermediate stages of an amendment to the Constitution only a majority is requisite.

The VICE-PRESIDENT. The Chair thinks that is so, but that was not the question that was asked of the Chair.

Mr. GALLINGER. Let us have the regular order.

The VICE-PRESIDENT. The question asked of the Chair was whether pairs should count. The Chair understands it is not for the Chair to determine whether a pair shall or shall not stand.

Mr. MONEY. The Chair is right about that. It is a matter of agreement between two Senators whether the pair stands or not; and that agreement is not liable to be reviewed by any other party.

The result was announced -- yeas 30, nays 46 -- as follows:

YEAS - 30

Bacon	Cummins	Jones	Shively
Bailey	Davis	La Follette	Simmons
Bankhead	Fletcher	McEnery	Smith, S. C.
Borah	Foster	Money	Stone
Bristow	Frazier	Newlands	Taliaferro
Chamberlain	Gore	Overman	Taylor
Clapp	Hughes	Owen	
Culberson	Johnston, Ala.	Rayner	

NAYS - 46

Aldlrich	Crane	Gallinger	Penrose
Beveridge	Crawford	Gamble	Perkins
Bourne	Cullom	Guggenheim	Root
Bradley	Curtis	Heyburn	Scott
Briggs	Daniel	Johnson, N. Dak.	Smoot
Brown	Depew	Kean	Stephenson
Burkett	Dick	McCumber	Sutherland
Burnham	Dillingham	Martin	Warner
Burrows	Dixon	Nelson	Warren
Burton	du Pont	Nixon	Wetmore
Carter	Flint	Oliver	
Clark, Wyo.	Frye	Page	

NOT VOTING - 16

Brandegee	Dolliver	Lorimer	Richardson
Bulkeley	Ellkins	McLaurin	Sm!th, Md.
Clarke, Ark.	Hale	Paynter	Smith, Mich.
Clay	Lodge	Piles	Tillman

So Mr. BAILEY'S first amendment was rejected.

The VICE-PRESIDENT. The Secretary will report the next amendment offered by the Senator from Texas.

The SECRETARY. In line 9, after the word "incomes" and the comma, insert the words "and may grade the same" and a comma.

The VICE-PRESIDENT. The question is on agreeing to that amendment.

Mr. BAILEY. Mr. President, I am satisfied that this amendment will be voted down; and voting it down would warrant the Supreme Court in hereafter saying that a proposition to authorize Congress to levy a graduated income tax was rejected. And although I do not believe it would be rejected upon any except a rather blind political reason --

Mr. HEYBURN. I call for the regular order.

Mr. BAILEY. I do not intend to allow that to occur, and I withdraw the amendment.

The VICE-PRESIDENT. The Senator cannot withdraw his amendment except by unanimous consent after the yeas and nays have been ordered.

Mr. BAILEY. I did not know the yeas and nays had been ordered on that amendment.

The VICE-PRESIDENT. They have.

Mr. BAILEY. I think not.

Mr. ALDRICH. I think there will be no objection to that course, Mr. President.

The VICE-PRESIDENT. The Chair so understood. However, it is very easy to solve the difficulty. Is there objection to the Senator from Texas withdrawing his amendment? The Chair hears none. The Senator from Texas withdraws his amendment.

The question now is upon the amendment offered by the Senator from Mississippi [Mr. McLAURIN], which the Secretary will again report.

The SECRETARY. Amend the joint resolution by striking out all after line 7 and inserting the following:

The words "and direct taxes," in clause 3, section 2, Article I, and the words "or other direct," in clause 4, section 9, Article I, of the Constitution of the United States are hereby stricken out.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

The amendment was rejected.

Mr. BRISTOW. I desire to offer as a substitute for the joint resolution the matter which I send to the desk.

The VICE-PRESIDENT. The Senator from Kansas offers the following substitute for the joint resolution.

The SECRETARY. Joint resolution offered by Mr. BRISTOW as a substitute for Senate joint resolution No. 39, Sixty-first Congress, first session.

Mr. ALDRICH. I ask that the substitute be read, subject to objection.

The Secretary read as follows:

Joint resolution offered by Mr. BRISTOW as a substitute for Senate joint resolution No. 39, Sixty-first Congress, first session.

Joint resolution to amend the Constitution.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following section be submitted to the legislatures of the several States, which, when ratified by the legislatures of three-fourths of the States, shall be valid and binding as a part of the Constitution of the United States:

"The Congress shall have power to lay and collect direct taxes on incomes without apportionment among the several States according to population."

That section 3 of Article I be so amended that the same shall be as follows:

"ARTICLE I.

"SEC. 3. That the Senate of the United States shall be composed of two Senators from each State, who shall be chosen by a direct vote of the people of the several States, for six years; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the state legislatures; and each Senator shall have one vote."

Mr. ALDRICH. I make the same point of order in relation to that amendment.

The VICE-PRESIDENT. The joint resolution is not offered as an amendment to anything that is pending.

Mr. ALDRICH. It is not offered?

The VICE-PRESIDENT. It is not offered as an amendment to the pending joint resolution.

Mr. ALDRICH. Then, I object to its presentation.

The VICE-PRESIDENT. It is not in order.

Mr. BRISTOW. I offer it as a substitute for the pending joint resolution.

The VICE-PRESIDENT. But the joint resolution expressly says that it is offered as a substitute for joint resolution No.39.

Mr. BRISTOW. This is No. 39?

The VICE-PRESIDENT. It is not.

Mr. ALDRICH and Mr. GALLINGER. Regular order!

Mr. BEVERIDGE. Let us have the regular order.

Mr. BRISTOW. May I ask what is the number of the pending joint resolution?

The VICE-PRESIDENT. No. 40.

Mr. BRISTOW. I ask to change the substitute to No. 40 instead of No. 39.

The VICE-PRESIDENT. The change will be made.

Mr. ALDRICH. I make the point of order against it.

Mr. BRISTOW. What is the point of order?

Mr. ALDRICH. I make the point of order that it covers matters not included in the agreement, and that under that agreement --

The VICE-PRESIDENT. The Chair sustains the point of order.

p. 4121:

The VICE-PRESIDENT. The Senator from Kansas appeals from the decision of the Chair. The question is, Shall the decision of the Chair stand as the judgment of the Senate? [Putting the question.] The ayes appear to have it. The ayes have it. The decision of the Chair is sustained.

If there be no further amendment to be offered to the joint resolution, it will be reported to the Senate.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, and was read the third time.

The VICE-PRESIDENT. The question is, Shall the joint resolution pass? The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. BANKHEAD (when his name was called). I am paired with the junior Senator from Illinois [Mr. LORIMER]. I transfer that pair to the junior Senator from Maryland [Mr. SMITH], and vote "yea."

Mr. BACON (when Mr. CLAY'S name was called). I again announce that my colleague [Mr. CLAY] is necessarily absent. If he were present, he would vote" yea." He is paired with the senior Senator from Massachusetts [Mr. LODGE], who I presume would also vote "yea," if present.

Mr. DILLINGHAM (when his name was called). I have a general pair with the senior Senator from South Carolina [Mr. TILLMAN]. .

Mr. BAILEY. If the Senator from South Carolina [Mr. TILLMAN] were present, he would vote "yea." If the Senator from Vermont votes the same way, he is at liberty to vote.

Mr. DILLINGHAM. Being thus released, I vote "yea."

Mr. SCOTT (when Mr. ELKINS'S name was called). I repeat the statement I made a few moments ago. My colleague [Mr. ELKINS] is absent from the city.

Mr. GUGGENHEIM (when his name was called). I make the same announcement I did on the previous vote, and vote "yea."

Mr. JONES (when Mr. PILES'S name was called). My colleague [Mr. PILES] is necessarily absent. If he were present, he would vote "yea."

Mr. DU PONT (when Mr. RICHARDSON'S name was called). My colleague [Mr. RICHARDSON] is absent from the city. If he were present, he would vote "yea."

The roll call was concluded.

Mr. BAILEY. The Senator from Kentucky [Mr. PAYNTER] is sick and detained from the Senate. If he were present, he would vote "yea." The Senator from Colorado [Mr. GUGGENHEIM] need not therefore transfer his pair unless it suits him.

Mr. DAVIS. I desire to announce that my colleague [Mr. CLARKE of Arkansas] is necessarily detained on account of the critical illness of his son. If he were present, he would vote "yea."

Mr. BURROWS. A dispatch just received from my colleague [Mr. SMITH of Michigan] states that he is unavoidably absent, and if present he would vote for the joint resolution.

The result was announced -- yeas 77, nays 0, as follows:

YEAS -77

Aldrich	Crawford	Guggenheim	Penrose
Bacon	Culberson	Heyburn	Perkins
Bailey	Cullom	Hughes	Rayner
Bankhead	Cummins	Johnson, N. Dak.	Root
Beveridge	Curtis	Johnston, Ala.	Scott
Borah	Daniel	Jones	Shively
Bourne	Davis	Kean	Simmons
Bradley	Depew	La Follette	Smith. S. C.
Briggs	Dick	McCumber	Smoot
Bristow	Dillingham	McEnery	Stephenson
Brown	Dixon	McLaurin	Stone
Burkett	du Pont	Martin	Sutherland
Burnham	Fletcher	Money	Taliaferro
Burrows	Flint	Nelson	Taylor
Burton	Fowler	Newlands	Warner
Carter	Frazier	Nixon	Warren
Chamberlain	Frye	Oliver	Wetmore
Clapp	Gallinger	Overman	
Clark, Wyo.	Gamble	Owen	
Crane	Gore	Page	

NOT VOTING - 15.

Brandegee	Dolliver	Lorimer	Smith, Md.
Bulkeley	Elkins	Paynter	Smith, Mich.
Clarke, Ark.	Hale	Piles	Tillman
Clay	Lodge	Richardson	

So the joint resolution was passed, two-thirds of the Senators present having voted in favor thereof.

So there stands the Senate debate on the resolution that ultimately became the Sixteenth Amendment to the U. S. Constitution (ratified 3 Feb 1913). I will show in a future essay the debate in the House of Representatives.

References

[1] The Congressional Record, Volume 44, part 4, (61st Congress, first session), 1909; available at: https://www.govinfo.gov/app/collection/crecb/_crecb/Volume%20044%20(1909)
[2] United States Senate, 82nd Congress, 2nd session, Document No. 170, *The Constitution of the United States of America*, Edward S. Corwin, editor, Washington DC: United States Government Printing Office, 1953, pp. 319-321, 1191-1193
[3] Edward D. Duvall, *The Control and Manipulation of Money*, Queen Creek, AZ: Fremont Valley Books, 2022, pp. 27-29. It is available for free download at: https://fremontvalleybooks.com.

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