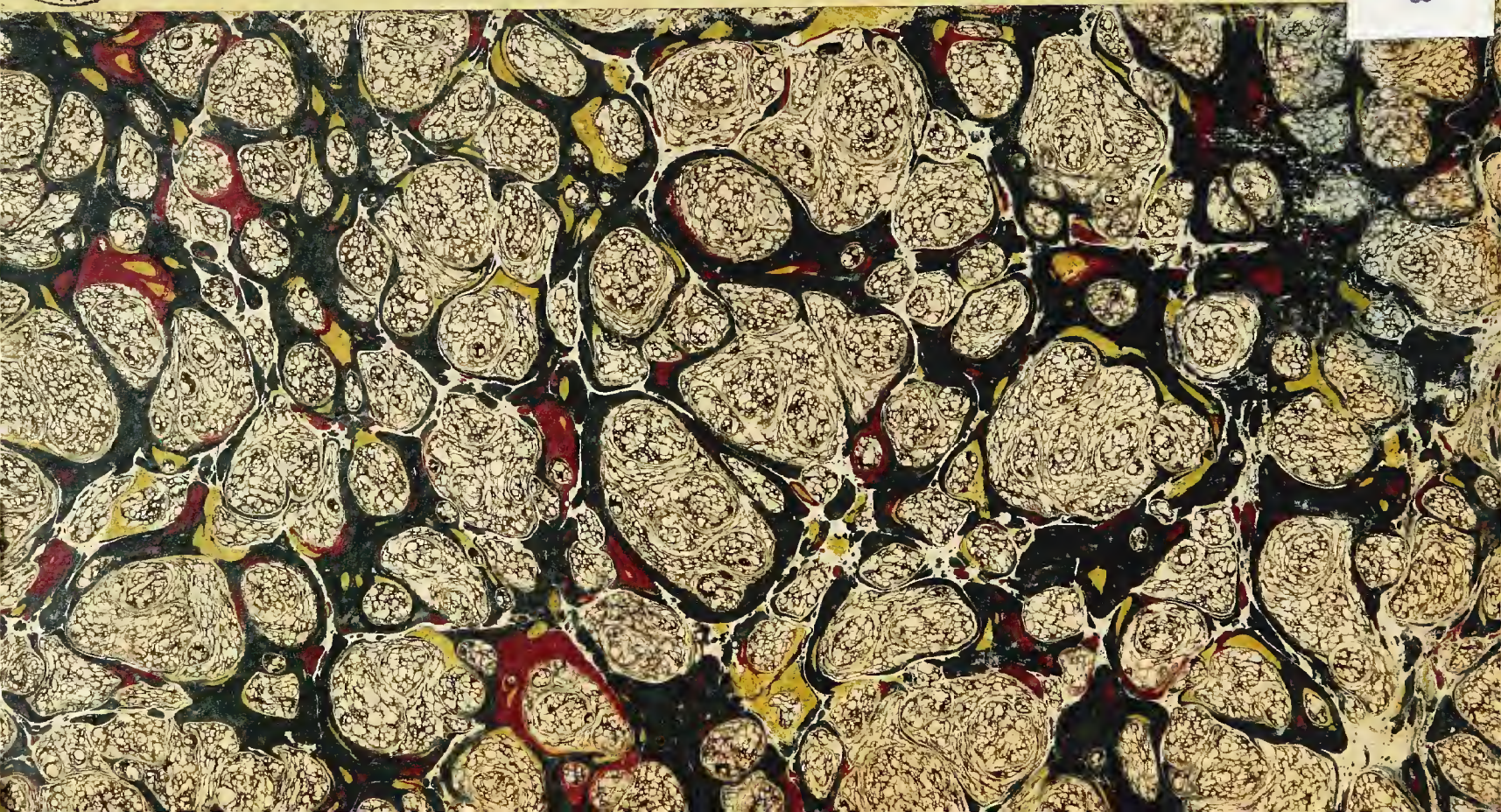
1909. BULLOCH. Proposed Constitutional Amendment Permitting Classification of Property for Purposes of Taxation.



Argument in Favor of the Proposed Constitutional Amendment Permitting the General Court to Classify Property for the Purpose of Taxation

By

Charles J. Bullock

For the

Taxation Committee, Boston Chamber of Commerce

October 26, 1909

BOSTON CHAMBER OF COMMERCE

Ack. 3/VII/11.

June 29, 1911.

Mr. G. W. Harris, Librarian,

Cornell University Library,

Ithaca, N. Y.

Dear Sir:

Replying to your request of June 27th, I am sending you under separate cover a copy of the report of our committee on taxation in regard to classifica-

tion of property for purposes of taxation, written by Professor Charles J. Bullock, of Harvard University.

Very truly yours,

D. F. Edwards

Secretary, Committee on Taxation.

DFE:LES

BRIEF OF CONTENTS.

I.

THE EXISTING SYSTEM OF TAXATION IN MASSACHUSETTS IS UNSATISFACTORY, AND IS CONDEMNED BY EXPERIENCE.

Section 1. The general property tax is a form of taxation long since discarded by most countries.

In all the States and territories of the Union substantially the same system of taxation prevails. In 1902 the United States Census ascertained that approximately $153,900,000 of the State and local revenue was derived from taxes on corporations, inheritances, and licenses; while approximately $706,700,000 was raised by direct levy upon the property of the people. Not less, therefore, than 82 per cent. of the State and local revenue was derived from the general property tax, which is sometimes considered a peculiarly American and democratic form of taxation. In point of fact it is a fiscal device once common in Europe, with which the early colonists had been familiar in the country from which they came.*

In England, where it was known as the "subsidy," it had all the faults that followed its introduction into the New World. In 1592 one writer stated that not more than five men in London were assessed upon goods in excess of 200 pounds, and in 1601 Walter Raleigh complained that the "poor man pays as much as the rich." In 1776, according to Adam Smith, land was probably assessed at one-half its actual value, and personal estates at not more than one-fiftieth part; while in some towns the whole tax was assessed upon real property, "as in Westminster, where stock and trade are free." So complete was the escape of personal property that the tax had then become known as the land tax, and in 1798 it was made a fixed charge

* Seligman, Essays in Taxation; Dowell, History of Taxation and Taxes in England.

upon land. This marked the disappearance of the property tax from the British statutes.

In other countries of Europe the outcome was generally the same. The property tax was tried and found wanting, and to-day it is employed as a main source of revenue only in some of the Swiss cantons. Far from being an American invention, therefore, the general property tax is a discarded European device, which has been fastened upon us rather by historical accident than by reason of its peculiarly American and democratic qualities. The tax systems of modern Europe are based upon the principle that it is necessary to discriminate between the various classes of property or business, and to employ different methods and rates of taxation in dealing with them.* Our American States and some of the Swiss cantons stand practically alone in their attempt to tax all kinds of property at a uniform rate.

Section 2. The general property tax has proved as unsatisfactory in the United States as in Europe.

In the American colonies during the seventeenth and eighteenth centuries the faults of the general property tax were far less glaring than they are to-day. Land, houses, cattle, and small stocks of merchandise constituted the wealth of the people, and these things could be found by assessors and valued with some certainty and fairness. The nineteenth century brought a rapid growth of moneyed capital and a great increase in the amount of intangible property. Yet until 1860 tax rates were low, and the prevailing methods of taxation did not lead to the intolerable conditions that have existed for the last fifty years.

In Massachusetts the average rate of taxation could hardly have exceeded $4 or $5 per $1,000 in the year 1820. In Boston it was $3.65 per $1,000 in 1822. As late as 1860 the general levy was from $6 to $10 throughout the State, and in 1861 the average was $8.29. In 1860, in all the States of the Union, the average tax rate was, according to the United States Census,

* See Bastable, Public Finance, Book IV.

$7.80, and the per capita taxes levied upon property throughout the Union amounted approximately to $3. It is to be remembered that the rate of interest on good investments was considerably higher at that time than it is at the present day, so that a tax of $5 or $6 per $1,000 represented less rather than more than ten per cent. of the tax-payer's income. Under such conditions, although complaints were sometimes heard, the general property tax gave reasonable satisfaction, or at least did not lead to intolerable abuses. But after 1860 conditions radically changed.

In the first place, public expenditures increased to an unprecedented degree. In New York the total taxes levied for all purposes, State and local, increased from $6,312,000 in 1850 to $50,328,000 in 1870. In Ohio they increased from $4,227,000 in the former year to $23,463,000 in 1870. In Massachusetts, between 1861 and 1874, they rose from $8,284,000 to $33,674,000, the per capita charge advancing from $6.69 to $20.87. For the country at large the Census shows that the aggregate taxes on property amounted to $94,186,000 in 1860, approximately $3 per capita; while in 1870 they were not less than $280,591,000, or $7.28 per capita.

A small part of the revenue needed to meet the greater cost of government came from new taxes levied chiefly upon corporations, but probably nine-tenths of it was obtained by increasing the taxes on property. The $94,186,000 raised by ad-valorem levies on property in 1860 represented an average tax rate of $7.80 per $1,000 of the assessed valuation throughout the United States, while the $280,591,000 collected in 1870 meant a rate of $19.80 per $1,000. In Massachusetts the average tax rate in the State increased from $8.29 per $1,000 in 1861 to $15.18 in 1874; and in Boston it advanced from $6.80 per $1,000 in the year 1850 to $15.60 in the year 1874. The result of this great increase in rates was wide-spread evasion of taxes upon personal property, which brought it about that personalty formed a smaller proportion of the total assessment, leaving the burden to fall chiefly upon real estate. In 1850 personal property throughout the country was assessed at

$2,125,000,000, and realty at $3,899,000,000; while in 1902 personalty was assessed at $8,923,000,000, and realty at $26,415,000,000. In 1861 real property in Massachusetts was assessed for the purpose of taxation at $552,100,000, and personal property at $309,400,000, personalty constituting 35.9 per cent. of the total. In 1906 real property was assessed at $2,668,100,000, and personal property at $736,800,000, personalty forming about 21.6 per cent. of the total. Similar figures could be given for other States, but it is not necessary to do so, since the conditions prevailing throughout the country are accurately shown by the data gathered for the Census. The evidence points to the conclusion, therefore, that the increase in expenditures and the progressive increase in tax rates after 1860 caused the disintegration of the general property tax, and produced the unsatisfactory conditions which have prevailed for more than a generation.

Evidence concerning the unsatisfactory working of the general property tax is overwhelming, and can be drawn from authoritative official sources. By the close of the Civil War complaint had become so general that various States began to appoint commissions to investigate the working of their tax laws and recommend plans for their improvement. Between 1867 and 1893 no less than twenty-five such commissions were appointed, and their reports have been fully analyzed by Mr. Chapman in a carefully prepared monograph devoted to the subject.* Between 1894 and 1907 several other States appointed similar commissions, the work of which is described in a pamphlet published by the Civic Federation of Chicago.† Since 1907 other commissions have been appointed in Maine, New Hampshire, Vermont, Massachusetts, New York, Ohio, Missouri, Virginia, and Louisiana; while commissions are now at work in Rhode Island, Delaware, and Kentucky.

Examination of the reports of these commissions discloses that the general property tax is operating, and has long operated, unsatisfactorily in all the States. The faults disclosed

* Chapman, State Tax Commissions in the United States (1897).

† Summary of the Reports of Special Tax Commissions, printed by Civic Federation of Chicago (1907). Also Political Science Quarterly, vol. 22, pp. 297–314.

are everywhere the same, and the later reports give evidence that they are increasing rather than decreasing. Some of the commissions have been of the opinion that, although existing laws are not operating satisfactorily, they might be made to do so if stricter provision should be made for enforcing them; but many of the commissions, including almost all recent ones, find that the faults inhere in the system itself, and condemn the property tax in severest terms. And, finally, where constitutional provisions requiring the uniform taxation of all property exist, many of the recent reports have urged that State constitutions be amended in such a manner as to permit classification of property.

Massachusetts has had five commissions prior to that appointed by the last legislature. The Commission of 1874 was of the opinion that the present system of taxation might be made to work well, but its report gives much evidence to show wide-spread evasion of taxes on personal property (pages 99–101, 116–122). The Joint-Special Committee appointed in 1893 also approves of the system, but states (pages 42–44) that the laws relating to the taxation of property are not enforced. The Commission appointed in 1896, in a report recognized throughout the country as one of the ablest ever made by such a body, shows conclusively the utter folly and impracticability of existing taxes on personal property, and recommends radical changes (pages 41–66 and 78–82); and I desire particularly to call your attention to the fact that the principal proposal of this able Commission—a habitation tax—would be unconstitutional under the present Constitution of the Commonwealth. The Joint-Special Committee of 1906 presented a divided report. A minority favored total exemption of intangible property from taxation (pages 71–77). The majority opposed this proposition, but stated (page 13), "It is true that our present taxation system has failed and will continue to fail to reach the bulk of such property for the purpose of taxation." And, finally, the Commission appointed in 1907 devoted a large part of its report to the taxation of intangible property, and recommended unanimously a radical change in the system, pro-

posing, further, that the Constitution of the Commonwealth be amended, if necessary, in order to permit this change to be made.

It is submitted that the proof of the unsatisfactory working of the general property tax is overwhelming. You will not find a report of a single commission that denies the intolerable abuses that exist, and you will find that the prevailing opinion, particularly of the abler and more recent reports, is that the trouble is with the system itself and that radical changes are necessary.

Section 3. The general property tax is condemned by expert opinion both in this country and in Europe.

I have thus far dealt with what may be called official opinions concerning the general property tax, and desire next to point out that expert scientific opinion, apparently without exception, condemns the general property tax.

In the United States seven well-known treatises on taxation and public finance have appeared during the past twenty-one years, and all of them condemn the property tax absolutely and without reservation. Difference of opinion exists as to the best remedies for existing evils, but all writers agree that the present system of State and local taxation is about the worst possible, and certainly the worst that can be found in any civilized country of the world. I desire further to emphasize the fact that most of the remedies these writers propose would be impossible under the constitutional restraints existing in Massachusetts.*

* These treatises are:—

Ely, Taxation in American States and Cities (1888), pages 146 to 234. The author was a member of the Maryland Tax Commission of 1886.

Wells, Theory and Practice of Taxation (1900), pages 392 to 437. The author was a member of the New York Tax Commission of 1870.

Seligman, Essays in Taxation (third edition, 1900), pages 23–63. The author was a member of the New York Tax Commission of 1907.

Means, Methods of Taxation (1909), pages 89 to 137.

Adams, Science of Finance (1898), pages 361 to 377, 434 to 449. The author is the statistician of the Interstate Commerce Commission.

Daniels, Public Finance (1899), pages 111–124.

Plehn, Public Finance (second edition, 1900), pages 208–219. The author was secretary of the California Tax Commission of 1906.

And in Europe the opinion of scientific men and practical financiers is the same. The author of the leading French treatise on public finance, after reviewing the experience of the American States with the general property tax, says: "Rarely in modern fiscal systems has a cruder instrument been devised." Von Reitzenstein, an eminent German financier, after reviewing the report of an American tax commission in 1886, said: "The nature of these proposals discloses a condition of things which in comparison with what exists in most European States must be called primitive; they are nearly all concerned with questions of policies and administrative methods which, among us, long ago found their solution." And Bastable, the foremost English authority on public finance, says: "The defects of the American property tax are, it would appear, beyond remedy, and, therefore, it may be anticipated that it will in the future be transformed into a land tax with additional charges on other selected receipts, and perhaps finally into an income tax. . . . But, whatever be the new forms adopted, the property tax is decisively condemned." *

Section 4. The opinions of the Industrial Commission and the International Tax Association.

The subject of State and local taxation was exhaustively studied by the Industrial Commission appointed in accordance with an act of Congress in 1898. The Commission employed several experts in this investigation, and in its final report (vol. 19, page 1036) says, "The existing system has been severely condemned, not only by economists and students of taxation, but also by the officials charged with the administration of the laws, and by commissions created by State legislatures to investigate the subject." Among other things the Commission recommended a graduated income tax (page 1068) and a low uniform rate of taxation on intangible property (page 1068). And in this connection the Commission remarked that constitutional provisions prescribing the taxation

* See Leroy-Beaulieu, Traité de la Science des Finances (fifth edition, vol. 1, page 498); Ely, Taxation in American States and Cities (page 231); Bastable, Public Finance (3rd edition, page 475).

of all property at a uniform rate would need to be changed before "equitable taxation" would be possible (page 1067).

In 1907 the International Tax Association was organized at Columbus, Ohio, for the purpose of investigating the subject of taxation and giving expression to the best thought of the United States and Canada upon the topic. In 1908 and 1909 other successful conferences were held by the Association at Toronto and Louisville, in which a very large number of the American States were represented by delegates appointed by the governors. For the most part, the personnel of the Conferences has been made up of tax officials concerned with the enforcement of the existing laws, although others have participated in the deliberations of the Association. The following resolution, which forms a part of the permanent platform of the Tax Association, has been adopted at successive conferences by a unanimous vote, and may be taken as the expression of the best contemporaneous thought of the United States on the subject of the general property tax:—

> "WHEREAS, The greatest inequalities have arisen from laws designed to tax all the widely differing classes of property in the same way, and such laws have been ineffective in the production of revenue; and WHEREAS, the appropriate taxation of various forms of property is rendered impossible by restrictions upon the taxing power contained in the constitutions of many of the States: RESOLVED, That all State constitutions requiring the same taxation of all property, or otherwise imposing restraints upon the reasonable classification of property, should be amended by the repeal of such restrictive provisions."

Section 5. The evils arising from the general property tax are intolerable, and fundamental changes in the system are necessary.

With my argument I shall submit letters received from tax officials, members of special tax commissions, and other recognized experts in various States of the Union; and I have already presented to your Commission Mr. Lawson Purdy, of New York,

and Judge Leser, of Maryland. These letters and the testimony of Messrs. Purdy and Leser fully confirm the statement that among persons best qualified to judge there is substantial agreement that the general property tax has led to intolerable abuses, and that fundamental changes in methods of State and local taxation are absolutely necessary. There is not yet complete agreement concerning all the changes required, and perhaps no single solution will suit the conditions existing in every State. But there is unanimous agreement that it is impossible under modern conditions to tax all property at a uniform rate, and that reform is to be sought in the direction of diversifying the methods and rates of taxation, that is, in the classification of property for taxation. And, so far as classification is now prohibited by the provisions of State constitutions, there is unanimity of opinion that constitutions should be amended in such a manner as to make classification possible.

II.

THE REASONS FOR THE FAILURE OF THE GENERAL PROPERTY TAX.

Section 6. The general property tax has failed because it is based upon an unsound principle.

In all legislation it is necessary to discriminate with care between the different classes of things to which any law applies, and any statute that does not discriminate, but applies a uniform, inflexible rule to classes of things widely different in their nature, is certain to fail. Our laws relating to property do not prescribe uniform rules for all classes of property, real and personal, without regard to their economic characteristics; and, if they did so, would be absolutely unenforcible. They prescribe certain rules for the transfer of real property, and prescribe other and very different rules for the transfer of personal property; and, if they attempted to assimilate the rules governing the transfer of personal property to those governing the transfer of real property, the business of the Commonwealth would be brought to an immediate standstill. Our statutes providing for the punishment of crimes carefully classify the various offences with which they deal; and, if they did not do so, would be incapable of enforcement. When the law of England prescribed the death penalty for scores of offences, ranging in magnitude from murder down to petty larceny, the result was that in petty crimes the jury refused to convict offenders whose guilt was clearly proved because they did not believe that a man should be executed for theft of a few shillings. Illustrations of this principle might be multiplied indefinitely, but it cannot be necessary to do so, for in practically all matters except the law of taxation our legislation is based upon the

principle that it is necessary to discriminate between varying classes of things to which laws apply.

Failure to discriminate between the various classes of property is the reason for the failure of the general property tax, and this has been recognized by the Supreme Court of the United States in cases arising under the tax laws of several States. This is most clearly laid down in *Pacific Express Company* v. *Seibert* (142 U. S. 351):—

> "This court has repeatedly laid down the doctrine that diversity of taxation, both with respect to the amount imposed and the various species of property selected either for bearing its burdens or for being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms; and that a system which imposes the same tax upon every species of property, irrespective of its nature or condition or class, will be destructive of the principle of uniformity and equality in taxation, and of a just adaptation of property to its burdens."

The case of the Chamber of Commerce in favor of the proposed constitutional amendment is based upon the principle thus recognized by the Supreme Court of the United States, and the Chamber believes that the time has come when the General Court of Massachusetts should have the power, in the taxation of property, to depart from an iron-clad rule of uniformity and exercise the same reasonable discrimination that it has power to exercise in other departments of legislation.

Section 7. The reasons why it is necessary to classify property for the purpose of taxation.

The various forms of property fall into certain general and well-recognized classes which differ very widely from one another in their nature and economic characteristics. All kinds of property are not equally productive; all kinds of property do not benefit equally from public expenditures; all kinds of

property are not similarly situated with respect to interstate or foreign competition, and therefore are not equally able to bear public charges; all kinds of property are not equally tangible or visible, and therefore equally capable of assessment without the coöperation of the taxpayer; and, finally, all kinds of property are not equally liable to removal from a given taxing district if property owners feel that the burden of taxation is excessive. For these reasons it is necessary to classify property in a reasonable manner for taxation and to prescribe for each class such methods and rates as its economic character and condition demand.

Section 8. Further consideration of these reasons.

That all kinds of property are not equally productive is most strikingly illustrated by the case of forests. Land devoted to agriculture yields an annual return, and the same is true of land devoted to ordinary business purposes. But land devoted to timber culture remains unproductive for many years, until the crop reaches such maturity as to establish a regular annual yield or make it profitable to cut and remove all the timber. Experience shows, and the opinion of all experts confirms the statement, that, if you impose the ordinary local tax upon timber lands during each year that the crop is growing, you compel the owners to strip the land of timber as soon as the crop becomes available for any use, prevent scientific forest culture, absolutely discourage reforestation, and make it impossible properly to conserve forest resources.

The same thing is true of intangible personal property as compared with capital invested in active manufacturing or commercial operations. Intangible property yields, on an average, not more than five per cent. interest upon conservative investments; whereas stock employed in commerce or manufactures yields an ordinary trade profit, which, to compensate for the greater risk involved and the labor and responsibility of management, must average at least twice the rate of interest upon ordinary investments of intangible wealth. Considered then with reference to the element of productivity, it is neces-

sary to divide real property into the two great classes of forest lands and ordinary real estate, while it is just and reasonable to divide personal property into the two great classes of intangible wealth and tangible property employed in active business operations. And I wish to point out that such classification of personal property as I have described actually results from the operation of a general income tax. Under such a tax $1,000 invested in intangible wealth and yielding the average income of five per cent. will actually pay, if the rate of the tax is six per cent., a tax of $3 per $1,000; whereas $1,000 invested in active business operations and yielding an average trade profit of ten per cent. will pay, at the same rate of taxation, a tax of $6. I maintain, therefore, that the distinctions for which I contend are not theoretical purely, but are such as actually result from the operation of a general income tax, which, I suppose, most of us will concede to be at least theoretically the fairest of all taxes.

That all classes of property are not equally benefited by public expenditures is shown by comparing real estate with personal property. Some classes of public expenditures, such as outlays for schools, public health, poor-relief, and the like, are of benefit primarily to persons, and do not, except very indirectly, affect the value of property of any description. But other forms of expenditure, particularly those for the construction, maintenance, and care of streets, and other permanent improvements, tend directly to enhance and maintain the value of land. On the other hand, the value of tangible personal property depends upon the cost of production, or rather the cost of reproduction, and is quite independent of the outlay of the town or city upon public works and undertakings of the character above described. It is clearly just, therefore, that for the purpose of local taxation real estate should contribute more than tangible personal property. This is actually the result of our existing system of taxation, although it is brought about through the evasion of taxes by personal property and not by the process of classification. In saying, therefore, that real property should contribute for the

purpose of local taxation more than personal property contributes, I am not arguing for a different actual distribution of the burden of taxation from that which now prevails, but rather for a different method of bringing about the result. I am, indeed, of the opinion that our present laws, by permitting and even necessitating evasion of taxation by personal property, throw an undue burden upon real estate in some localities; and I believe, and shall presently show, that under a reasonable system of classifying personal property for taxation, the revenue derived from this source will be somewhat increased and will tend to reduce somewhat the undue burdens now falling upon real estate in certain localities, particularly in Boston and certain other industrial centres in the Commonwealth.

That all forms of property are not similarly situated with respect to interstate or international competition is too clear to admit of question. The laws of the Commonwealth have for many years provided that capital invested in the foreign carrying trade shall be classified for the purpose of taxation in such a manner as to make it subject to taxation at a reduced rate. So far as such property is owned by corporations, classification is made possible by the excise clause of the Constitution; but the law now provides that persons and partnerships engaged in the foreign carrying trade shall have the advantage of a reduced rate of taxation which is about one-fifth of the average rate levied upon property generally in the Commonwealth. The constitutionality of thus classifying the property of persons and partnerships engaged in the foreign carrying trade is very doubtful; and, while it has never been contested, because obviously reasonable and advantageous, the Supreme Court of the Commonwealth in alluding to the subject in a recent opinion has expressly said that the constitutionality of the law "is not clear" (Opinion of the Justices, 195 Mass. 607). What the Commonwealth has done for capital invested in the foreign carrying trade it may some time be desirable and necessary to do for capital invested in manufacturing enterprises, subject to severe competition from other States of the Union in which machinery is wholly or largely exempt

from taxation and the tax laws at other points impose much smaller burdens upon manufacturing industries than are now imposed in Massachusetts, or would be imposed if our laws were strictly enforced. It is manifestly unwise, and of no possible advantage to other interests or industries, to impose upon any business burdens which discourage capital from coming to the State and sometimes even lead to its removal. It is to the interest of all that taxation should never repress the development of any industry.

That all forms of property are not equally tangible or visible is another patent fact which must be considered in any rational system of taxation. The purpose of a tax law is to raise revenue, not to drive property into concealment or harass property owners, and there is no justification for taxing any class of property at a rate exceeding a figure that will produce the maximum revenue. On the other hand, there is every reason for not imposing a rate that exceeds such a figure, since the attempt to do so results in loss of revenue and such demoralization as accompanies successful evasion of the law. The experience of other countries, and of two American States which have adopted a rational method of taxing intangible property, shows that it is impossible to collect from this class of property, in ordinary times, with reasonable certainty and the best results from the point of view of the revenue derived, a tax exceeding six or eight per cent. of the income the property yields. And experience shows that the attempt to collect a tax amounting to fifteen, twenty, and in some cases thirty or forty per cent. of the income results in loss of revenue and general evasion of the law. Judged in the light of these principles, which are founded upon both reason and experience, the existing methods of taxing intangible property in Massachusetts must be condemned as impracticable, ineffective, unequal, and demoralizing.

And, finally, some forms of property are more easily removed than others from any district where the tax laws are considered to impose an excessive burden. In this Commonwealth for fifty years we have been driving intangible property out of

the industrial centres where tax rates are usually high into a small number of residential towns where tax rates are low and the assessors ready to extend a cordial welcome to prospective residents. One gentleman who has already addressed you in opposition to the proposed constitutional amendment commenced his remarks by telling you that our present laws practically oblige assessors to make trades with taxpayers in order to induce them to settle or to remain in their respective towns or cities. Besides concentrating personal property in a number of wealthy towns the attempt to enforce existing laws has had the effect, and is at this moment having the effect, of causing the removal of large estates from the Commonwealth; and in other States, notably Ohio, the same result has followed every effort to enforce in a drastic manner the taxation of personal property at the same rate that is levied upon real estate. Here, again, reason and experience show that it is necessary to adjust methods and rates of taxation in such a manner as not to drive from the Commonwealth property that can readily be moved to other States.

Section 9. The experience of other countries.

In all civilized countries except the United States and some of the Swiss cantons the necessity of classifying property for taxation long ago gained recognition, and in no country of Europe, with the unimportant exceptions already mentioned, is the effort made to confine direct taxation to a uniform system on all classes of property without regard to their nature or condition. The principle of classification is everywhere the principle upon which tax systems are constructed, and the result is that, while no country has, or perhaps ever will have, a perfect system of taxation, the results are in every way better than those attained in the United States. Tax laws are enforced with reasonable certainty and equality because they are based upon a principle the recognition of which makes them enforcible; and respect for law is not insidiously undermined, as in this country, by the universal prevalence of the habit of dodging taxes. I would not convey the impression that

European tax systems leave nothing to be desired, because that is not the fact. In England, France, and Germany the need of additional revenue and the desire to secure a distribution of the tax burden that is considered fairer, are at the present moment leading to the liveliest discussion of proposed reforms in taxation. But such discussion does not arise because existing systems of taxation are considered unenforcible or destructive to industry: it has for its object the improvement of systems already far in advance of anything known in any of the American States. We are bound not to disregard the experience of other countries, and in considering proposed changes should give great weight to the fact that experience demonstrates conclusively the necessity of classifying the objects of taxation.

Section 10. The proposal to classify property accords with the true principle of taxation.

The charge has been made that the purpose and necessary result of classification is the establishment of a system of arbitrary tax rates and exemptions that will ultimately lead to chaos. On the contrary, I believe I have shown you that classification accords with the only correct principle of taxation, which may be stated as follows: The methods and rates of taxation must be adjusted to the requirements of the various classes of taxable objects; no rate upon any class should be higher than can be collected with reasonable certainty; no rate should be so high as to drive out of a community persons or capital or industries; and any rate that exceeds what a class of taxable objects will bear must result in loss of revenue, injury to industry, and such general demoralization as accompanies wide-spread evasion of law.

Nor does the application of this principle involve any serious difficulties or lead to a condition of chaos, as a few persons seem to believe. Property falls into certain large classes of which the economic characteristics are tolerably plain, and our legislatures are, and will be, decidedly averse to making separate classifications except for sufficient cause. Ordinary real

estate, forests, tangible personalty, intangible property,—these classes are well established and recognized by all. A few others may ultimately need recognition: I cannot undertake at this time to offer a final classification. But experience shows that legislatures are slow to diversify methods and rates of taxation, and that there is more danger that they will not go far enough than that they may go too far. In no State in our Union where classification prevails has it led, or threatened to lead, to any such results as the imaginations of a few persons have conjured up; and in the proposed amendment to the Constitution of Massachusetts it is expressly provided that the method of classification shall be reasonable, so that a constitutional guarantee is given against arbitrary and unreasonable legislation. If we judge from experience, and rely upon fact rather than imagination, we shall find no reason to dread in Massachusetts the outcome of the proposed amendment. It is sound in principle; indeed, it rests upon the only correct principle of taxation; and in practice it has been approved by the experience of every important country in Europe as well as nearly one-third of the American States.

III.

EXAMINATION OF THE PRESENT CONSTITUTIONAL PROVISIONS CONCERNING TAXES ON PROPERTY.

Section 11. The requirement that "assessments, rates, and taxes" must be "proportional" operates as a restraint upon the power of taxing property; and this restraint cannot be evaded by unlimited resort to the power of levying duties and excises.

The Constitution of Massachusetts (Part II., Chapter 1, Section 1, Article 4) empowers the General Court to levy "proportional and reasonable assessments, rates, and taxes," upon persons and property within the Commonwealth, and also permits the imposition of "duties and excises" upon goods, merchandise, and commodities, which duties and excises must be "reasonable" but need not be "proportional." In its construction of the clauses authorizing these two forms of taxation the Supreme Court is bound to construe each clause in such a manner as to give a reasonable interpretation to the other; and in its decisions has uniformly manifested a determination to do so. Of the power to levy "assessments, rates, and taxes," it has said that the word "proportional" must be construed as imposing a limitation on the power of the legislature, and that the intention of the Constitution evidently is that "public charges of government" should be defrayed, or a portion of them should be defrayed, by taxation (*Oliver* v. *Washington Mills*, 11 Allen, 275). In another case the Court has said; "It certainly cannot be intended that the legislature can legitimately impose a tax on property in the name and under the guise of imposing an excise. Such legislation would be a palpable evasion of a distinct and clearly defined consti-

tutional restriction" (*Commonwealth* v. *Hamilton Manufacturing Company*, 12 Allen, 301).

It is indeed in the power of the legislature in any case where it may lawfully levy an excise on the property or business of a corporation to exempt the property of the corporation or the shares in the capital stock from double taxation under the property tax (Opinion of the Justices, 195 Mass. 607). But the power to levy excises is clearly confined to the cases prescribed in the excise clause of the Constitution; and the legislature has no power to evade the requirement that taxes on property must be "proportional" by withdrawing all the property, or most of the property, within the Commonwealth from direct taxation, and subjecting it to a general system of excise taxes. So long as the Constitution retains the existing provision concerning "assessments, rates, and taxes," we must assume that part of the "public charges of government" must be defrayed by taxes on property, and that the legislature is restricted to such taxes as are "proportional."

Section 12. The requirement that "assessments, rates, and taxes" must be "proportional" confines the legislature to the taxation of substantially all property at a uniform rate and by uniform methods of valuation.

In an unbroken line of decisions beginning in 1815 and coming down to the year 1908, the Supreme Court has defined the meaning of the word "proportional" so clearly as to admit of no doubt concerning the restrictions it imposes upon the power of the legislature to levy taxes on property. The interpretation which the Court has given to that word was laid down in the case of *Portland Bank* v. *Apthorp* (12 Mass. 252, 255), and has never been modified in any later decision. In that case the Court said: "The exercise of this power requires an estimate or valuation of all the property in the Commonwealth; and then an assessment upon each individual, according to his proportion of that property. To select any individual or company, or any specific article of property, and assess them by themselves, would be a violation of this pro-

vision of the Constitution." If these words mean anything, they mean that all property must be assessed; that each individual must pay according to his proportion of that property; and that no property can be taxed except by this rule of proportionality.

In a later decision, which is perhaps the strongest and clearest of all, the Court said (*Oliver* v. *Washington Mills*, 11 Allen, 275) that taxes on property were required to be so laid that "taking 'all the estates lying within the Commonwealth' as one of the elements of proportion, each taxpayer should be obliged to bear only such part of the general burden as the property owned by him bore to the whole sum to be raised." To quote from other decisions would be merely to repeat the statements laid down in the cases already cited. (See 5 Allen, 431; 12 Allen, 298, 312; 133 Mass. 161; 134 Mass. 424.)

In the case of *Cheshire* v. *County Commissioners* (118 Mass. 386) the Court made very clear and definite a point which earlier decisions had covered only by inference. In that case it set aside as unconstitutional an act of the legislature which prescribed an arbitrary method of valuing a certain class of property, on the ground that the constitutional requirement that taxes must be "proportional" forbids their imposition "upon one class of persons or property at a different rate from that which is applied to other classes, whether that discrimination is effected directly in the assessment or indirectly through arbitrary and unequal methods of valuation." We are therefore bound to conclude that the Constitution now prohibits any departure from the rule of proportionality by laws authorizing the employment of "arbitrary and unequal methods of valuation."

The last word upon the question is the Opinion of the Justices on the proposed three-mill tax, which reaffirmed previous decisions and cleared up one important point (195 Mass. 607, 614). In that opinion the Court says that even in cases where the legislature has power to exempt property altogether from taxation, the Constitution "does not authorize a partial exemption conditional upon the property exempted paying an arbitrary percentage which is not proportional."

The decisions of the Court apparently place the following propositions beyond all doubt: first, all, or substantially all, property must be taxed whenever "assessments, rates, and taxes" are levied; second, all property must be valued equally and in such a manner as not to violate the rule of proportionality; third, the contribution of each tax-payer must be proportional to the amount of property that he holds, and no class of property can be taxed at a rate different from that imposed on other classes; fourth, the power to exempt property from taxation does not imply the existence of the power to tax at a reduced rate any class of property that might be totally exempted.

Section 13. The existence of the power to exempt property from taxation is not inconsistent with this interpretation of the constitutional requirement that taxes must be proportional; and it is clear that every exemption must be justified on some principle not inconsistent with the constitutional requirement.

In at least two cases, as well as in its opinion concerning the proposed three-mill tax, the Court has recognized that the legislature has power to exempt property from taxation (162 Mass. 123; 167 Mass. 371; 195 Mass. 608–612). In the two cases just mentioned the Court seemed to be influenced largely by the fact that from time immemorial the legislature had exercised the power of exemption; but in its opinion concerning the constitutionality of the proposed tax on intangible property, the Court develops pretty fully its theory of the power of exemption, and makes it very clear that the power is strictly limited by the constitutional requirement of proportionality. It considers at length the various exemptions authorized by the laws of the Commonwealth and the reasons for them, intimating plainly that some of them may not be consistent with the Constitution (*e.g.*, R. L., c. xii., Sec. 7, providing for taxation of ships engaged in the foreign carrying trade on the net yearly income). But, while saying that the constitutionality of certain exemptions may be "questionable," and directly stating that it expressed no opinion concerning others, the Court justified many of the existing

exemptions on the ground that they "are consistent with the view that all available property should be taxed according to its value, for the purpose of establishing the proportional ability and duty of individual owners to bear their burdens as citizens." Detailed examination of the exemptions considered in that opinion shows that the Court in every case where it intimated that an exemption is constitutional justified the exemption on the ground that it does not affect, or affect materially and substantially, the rule of proportionality, and does not "prevent the taxation of the people from being proportional and equal." Thus the exemption of the property of educational and benevolent institutions is justified on the ground that, since the people might be taxed for such purposes, exemption of property devoted to such uses is legitimate. The exemption of household furniture and wearing apparel to a limited amount is justified on the ground that a small amount of such property does not imply ability to contribute to the support of government; and the exemption of farming utensils and mechanics' tools is approved because the possession of such property does not "distinguish its owner from men generally, in reference to his ability to support the government." The exemption of stock in corporations lawfully taxed under the excise clause of the Constitution is justified on the ground that it prevents double taxation and does not "render the general tax on property throughout the Commonwealth unequal and disproportionate." It is needless to multiply illustrations, since every exemption considered by the Court and declared to be constitutional is expressly justified on the ground that it does not infringe the rule of proportionality.

Since it is clear that every exemption needs to be justified, and since the Court holds that the justifiable exemptions "are consistent with the view that all available property should be taxed according to its value," it is clear that the power to grant exemptions is strictly limited by the existing provision of the Constitution concerning "assessments, rates, and taxes." Just as the Court has held that the constitutional requirement

of proportionality cannot be evaded or frittered away by unlimited resort to excise taxes, so it is clear that the Court will not permit the requirement of proportionality to be rendered nugatory by unlimited exemption of property from taxation. We may regard it as settled that, as the Court has repeatedly said, all productive property must be "taxed according to its value"; and it is useless to consider proposals that contemplate the wholesale exemption of productive property from taxation. The requirements of the Constitution are clear, and have been stated by the Court in language that is unmistakable. If those requirements can be shown to be unreasonable, the straightforward and honest course is to amend the Constitution in the manner prescribed by that instrument.

Section 14. The grounds on which an amendment to the Constitution can be shown to be desirable.

Since the Constitution of the Commonwealth, by requiring that substantially all productive property must be taxed and at a uniform rate, fastens upon us the general property tax which both reason and experience show to be utterly incapable of enforcement, it is clear that no fundamental and thoroughgoing change is possible without a constitutional amendment. Even if, by way of exemption and the extension of excise taxation, some latitude is given the legislature, these powers are limited by the constitutional requirement concerning "assessments, rates, and taxes," and cannot be extended so far or be so used as to meet the needs of the case, which call for a reasonable classification of property. Even if it be admitted, as I do not admit, that the power to make wholesale exemptions exists, the answer is that the necessity for such exemptions is the best possible proof of the absolute impracticability of existing methods of taxation and the need of a radically different system. For a practicable tax system is one that can be enforced without exempting entire classes of productive property in order to avoid injury to the State and injustice to individuals. And, if it be argued that excise taxation can be largely extended and the requirement of

proportionality in the taxation of property thereby evaded, this is merely an admission that classification, which is permitted by the excise clause, is necessary; and it is in reality an argument in favor of amending the clause relating to property taxation in such a manner as to permit classification.

But in this important matter of taxation it is necessary that the constitutional power of the legislature should be clear and unmistakable. Our tax laws should not be based on strained constructions of the constitutional requirement of proportionality and palpable evasions of the limitations laid down by the Supreme Court. For the mere existence of doubt as to any constitutional power tends to defeat exercise of that power, as all know who are familiar with the manner in which possible constitutional objections are used to defeat legislation otherwise unassailable. In any case we do not want in Massachusetts, and ought not to have, a system of tax laws ingeniously contrived to circumvent plain constitutional requirements. If the legislature desires to enact laws that the citizens will respect and obey, it should not begin by disregarding the fundamental law of the Commonwealth and thereby setting the example of evasion. If we favor wholesale exemption,—the Chamber of Commerce does not,—let us proceed in a straightforward way to remove the requirement which the Supreme Court has construed to mean that substantially all productive property must be taxed. But if, on the other hand, we want classification of property,—and that is what the Chamber of Commerce seeks,—let us amend the clause relating to "assessments, rates, and taxes" in such a manner as to confer upon the legislature the power to classify the objects of taxation.

IV.

THE NECESSARY CHANGES IN OUR SYSTEM OF TAXATION ARE IMPOSSIBLE WITHOUT AMENDMENT OF THE CONSTITUTION.

Section 15. The taxation of forests.

The reasons for amending the Constitution may be summed up in the general statement that the taxation of all, or substantially all, property at a uniform rate, as prescribed by the Constitution, is impracticable. In proof of this I now invite attention to three specific cases in which radical changes in our methods of taxation are needed, and begin with the subject of forest taxation.

Forests cannot be taxed like other property under the general property tax, since investments of this character yield no return until the expiration of a long period of years, and since it is to the public interest that forests be conserved by the adoption of methods of cultivation and utilization which require that the return to capital thus invested shall be long deferred. The imposition of an annual tax levied at the full local rate on the market value of growing timber results either in nonenforcement of the law or, in cases where the law is enforced, the destruction of forests. This is the testimony of all experts, and is supported by the experience of every State in the Union. Evidence on this point has been so fully presented at a previous hearing that I shall not dwell upon this phase of the subject, and will merely refer you to the testimony and documents previously submitted.* The Chamber of Commerce rests its

* Report of the Committee to consider the Laws Relative to the Taxation of Forest Land, House Doc. 134 of 1906; U.S. Senate Doc. 676, 60th Congress, 2d Session, pp. 9, 22–23; papers by A. C. Shaw and F. R. Fairchild, in Proceedings of the Second Conference of the International Tax Association; also letters from Messrs. Shaw, Fairchild, and others. Also the Report of the Michigan Commission on Tax Lands and Forestry, pp. 31–33.

case at this point upon the able report of a Commission appointed in this State in 1905, the report of the National Conservation Commission, the testimony of our State Forester, and that of the experts of the United States Forest Service.

A further result, and perhaps the most important one, of present methods of taxing forests, is that reforestation is practically prevented. Even though existing laws are not enforced and the forests we now have are not always destroyed, capital will not enter the industry because there is no assurance that investments of this character will be protected from destructive and virtually prohibitory taxation. Some States now hold millions of acres of land once covered with valuable forests, but now stripped of timber and abandoned by non-payment of taxes; and in every State land that might become very valuable under scientific forest culture lies waste, and is of almost no value for taxation or for any other purpose.

To meet these conditions some States have offered bounties or have granted exemption from taxation for a limited period of years. The bounty laws have everywhere failed except in one State, where they have secured reforesting of considerable areas but at an absurdly excessive cost. Limited exemptions, for such periods as ten, fifteen, or twenty years, have also failed because they give relief only during the period when the crop is of little value, and then subject the forests to excessive and prohibitory taxation.

Exemption of growing timber for a longer period, even for the entire life of the growing crop, has been proposed; but this is neither a just nor a practicable remedy, even if it is constitutional under the present Constitution of Massachusetts. In the first place, it is evident that a system of taxation which, in order to avoid destruction of an important class of property, requires that exemption be granted for thirty, forty, or fifty years, is on its very face an absurdity. In the second place, such a remedy is impracticable because, if applied on any large scale, it would disorganize the finances of many towns in the Commonwealth. In the third place, it is probable that exemption of an entire class of productive property for such long

periods is unconstitutional, since in some localities it would destroy the proportionality of taxation; and we must regard it as a significant fact that the Opinion of the Justices concerning the three-mill tax, which expressly upholds many other exemptions, refers to the law exempting "plantations of timber trees," and refrains from any expression of opinion concerning its validity, leaving us to infer that this is one of the exemptions that "may be questionable" (195 Mass. 610). And, finally, even if the proposed remedy were both constitutional and practicable, it would not encourage, but would discourage, the best methods of forest culture. For at the end of the exemption period the property tax would come into full operation, and, the timber then being very valuable and the taxes correspondingly high, the owner would have very strong inducement to clear his land rather than maintain a permanent stand of timber affording a sustained yield.

If it is suggested that we can exempt growing timber from taxation, and then impose a tax upon the cut, the reply is that, even if the proposed exemption were practicable and constitutional, the rate of taxation on the annual cut could not be properly adjusted. For under our Constitution the tax on the cut would need to be proportional; and this would mean that it would have to be levied at the ordinary local rates, which average about 1.7 per cent. Such a tax would be absolutely inadequate, and would make the property contribute much less than it ought to pay; for it is the opinion of experts that, if growing timber is totally exempted, the tax levied upon the cut ought to be much higher than 1.7 per cent. It is also probable that our Constitution would not permit the value of forest land for the purpose of taxation to be determined by the amount of the annual cut. Other land is assessed at its fair market value, and to provide that the valuation of forest land should be the amount of the annual cut would be to prescribe for this class of property a mode of valuation that would not be proportional. This point seems to be fully covered by the case of *Cheshire* v. *County Commissioners* (118 Mass. 386), in which the Supreme Court held that a law providing for the

assessment of a certain kind of property at an arbitrary valuation was a clear infringement of the constitutional requirement that taxes must be "proportional."

In the taxation of forests the only true course is to aim at a fair method of taxation which shall make this class of property contribute as much as its economic nature permits it to contribute, and neither more nor less than this. In support of my position, I desire to quote from a very valuable report of the Michigan Commission of Inquiry on Tax Lands and Forestry of 1908 (page 32):—

> "It is the opinion of this Commission that so far as reforestation of the State is sought through the encouragement of commercial forestry as distinguished from farm forestry, it should be treated in matters of taxation strictly as a business proposition, requiring no special favor in the way of bounties or tax exemptions. It does not need special favor, but only rational treatment. All that is necessary is to treat it fairly and justly in accordance with the facts and conditions which are inseparable from such property. The commercial forest raiser should not be placed, in the public eye, in the light of an object of charity or as entitled to a bonus, but he should be treated as one undertaking a business venture for profit. The business is as capable of paying taxes as any other kind of business if the taxes be graduated in accordance with the unchangeable facts and conditions to which the property is, and must always be, subject. All that is needed, or that should be asked for, or that is wise to grant, is taxation according to a rational system.

And, since public policy requires that forests should be cultivated for a sustained yield, it is clear that the true principle is to levy a tax of reasonable amount upon the income or the cut. This tax should not be the same as the ordinary local rate of taxation, but should be considerably higher in order to make this important industry contribute its proper share to the support of public charges.

But, in order to avoid serious disturbance of local revenues, it is necessary to depart somewhat from the requirements of strict theory, and, in addition to the tax on the income or cut, permit the various localities to levy upon forest property a light annual tax. The usual suggestion is that the localities might be permitted to tax the value of the land apart from the growing timber, and investigation may show that in Massachusetts this method would meet the needs of the situation. I am of the opinion, however, that the value of the mere land apart from the timber is so small that some other adjustment might be necessary. It is now the practice in some localities, although in violation of the law, to assess timber lands at some such figure as $5 per acre, irrespective of their true value; and, if investigation should prove that a tax on a valuation not exceeding $5 per acre has been shown by experience to be not more than the property will bear, the practicable solution for Massachusetts might well be to prescribe some such method of taxation. It is clear, however, that under the Constitution as it stands such a method of avoiding disturbance to local revenues would not be possible.

The importance to Massachusetts of the adoption of a rational method of taxing forests is so great that I feel constrained to consider the subject briefly. The total area of the Commonwealth is approximately 5,300,000 acres, and of this not less than 2,500,000 acres, or possibly 3,000,000 acres, are practically useless for any other purpose than forest culture. According to the Census of 1900 the improved farm lands of Massachusetts included no more than 1,292,000 acres. At the present moment the wild lands of the State are, with few exceptions, of little value for taxation or any other purpose. Some of them can be bought for less than $1 per acre; a large part sells at from $3 to $6 per acre; and only a comparatively small part is worth more than $10 per acre, although here and there a stand of fine timber may command a much higher price. We shall overestimate rather than underestimate the average value of our wild lands if we place it at $8 per acre, and for the 3,000,000 acres the total value at present can hardly be more

than $24,000,000. This estimate will be seen to be reasonable and reliable when you consider the fact that in 1900 the United States Census placed the value of all the farm lands of Massachusetts, improved and unimproved, including improvements thereon other than buildings, at $86,925,000. At the present time, therefore, we may safely estimate that the value of all wild lands in the Commonwealth does not exceed $24,000,000, an insignificant figure when compared with the total valuation of property in the State. Now it is a fact that not less than 2,000,000 acres of these lands are well adapted for the cultivation of white pine or other equally valuable timber, and that with adequate fire protection and a rational system of taxation they might in fifty years' time be worth from $300 to $400 per acre. Estimating them at the former figure, which is probably less then they would be worth at the expiration of fifty years, they would be worth in less than two generations the enormous sum of $600,000,000. This, then, is the true measure of the importance of an industry the development of which is now absolutely repressed, and largely as the result of antiquated and destructive methods of taxation.

I have shown you that our tax laws now repress the growth of the forest industry which might be one of the chief resources of the Commonwealth. It is needless to point out that as the forests, under a rational system of taxation, increased in value to the figure just stated, the contribution they could reasonably and properly make to the public revenues would be greatly increased. This well illustrates the nature of the issue which the Boston Chamber of Commerce now places before your Commission and the people of this Commonwealth. We are not seeking favors for particular individuals or particular industries, but are advocating a system of taxation that shall not repress the growth of the industry and wealth of Massachusetts. We seek a system of just, rational, non-repressive, and enforcible tax laws, and we ask it in the interest of every citizen and every industry in this Commonwealth.

Section 16. The taxation of intangible property.

The most vexatious problem of all is the taxation of intangible property. The reports of the five special commissions appointed in this State to investigate the working of our tax laws and the uniform experience of the other States in our Union show that in its application to this class of property the general property tax has absolutely broken down. The result in every State where the general property tax prevails has been described with absolute accuracy and fidelity to facts by the United States Circuit Court of Appeals: "There is a monotonous uniformity in the reports of the failures of every system attempted, however stringent may be the legislation, or however arbitrary or despotic may be the powers with which the assessors may be clothed. The heavy hand of the tax-gatherer always falls upon the widow and the orphan, upon trustees and guardians, whose estates are required by law to be revealed to the courts of probate, and upon those only whose consciences are unusually scrupulous, and who, having least experience in business, are least able to bear the burdens; while the most inadequate returns are invariably made by the rich, who are usually most ingenious in evasion and most fertile in expedients to escape taxation. The result is that always and everywhere no appreciable part of such intangible property is reached by laws, however ingeniously framed or severely enforced. The heavy and ever-increasing rate of taxation in our cities makes this result inevitable."*

To this statement of the case there can be no dissent. Even the opponents of the constitutional amendment will hardly venture to say that our laws relating to the taxation of intangible property are enforced with even tolerable certainty and equality in this State, and they cannot refer you to any other in which intangible wealth is taxed with any degree of success except under the plan of levying a moderate, uniform tax upon this class of property. Indeed, some of the opponents of the amendment will tell you, as one has already done, that, if

* National Bank of Baltimore *v.* City of Baltimore, 40 C. C. A. 257, 258.

all personal property in the Commonwealth were only found and taxed, the average rate levied throughout the State would be reduced to one-third of the present figure. Prior to the enactment in 1908 of a law exempting future issues of municipal bonds from taxation, we actually had in many cities of the Commonwealth the edifying spectacle of public officials entrusted with the duty of selling city bonds conspiring with purchasers to evade the laws relating to taxation. If you will pardon the reference to my personal experience, I may testify that during the last two years I have visited many parts of the State to study or discuss the question of taxation, and have found no one who maintains that under our present methods we are reaching any considerable part of our intangible wealth. That wholesale evasion is the rule, every person cognizant with the facts freely admits; that public sentiment in most communities does not sustain vigorous enforcement of the law, is not denied; and that the burden is most unequally distributed, falling most heavily on smaller estates and the property of those who are practically helpless and least able to bear it, is everywhere recognized.

In explanation of the conditions admitted to exist, it is sometimes said that all men are naturally liars, but such wholesale charges convict no one of mendacity except those who make them. The people of Massachusetts are loyal to their Commonwealth, as history proves. They are honest in ordinary business relations, and are not averse to performing their duty as citizens. It is the general testimony of assessors, and I have talked with scores of them, that the average man does not seek to evade taxation because he likes to do so, but because he feels that he is the victim of an intolerable system, one that permits such shocking inequalities as virtually to destroy, so far as this one matter goes, the citizen's sense of moral responsibility toward a government that permits such injustice. We may be certain that the explanation of the conditions that now exist is to be found in the system of taxation, and not in the shortcomings of the average citizen.

As stated by the Commission on Taxation of 1907, the chief

evils in the present method of taxing intangible property are: "First, the excessive rates now levied upon money, credits, and securities; and, second, the diversity in our local tax rates, which tends to drive this class of property into favored localities."*

That the present rate of taxation on intangible property in Massachusetts, as in the other States, is excessive, will be readily seen when we consider the fact that a tax of $17 per $1,000—the average rate now prevailing in the Commonwealth—takes from the holder of good securities more than one-third of his average income. If we were levying an income tax, no one would propose to fix the rate at such an exorbitant figure as thirty-three and one-third per cent., yet this is precisely what the tax on intangible property amounts to when it is translated from a percentage of the capital value into a percentage of the income the property yields. Outside of our American commonwealths no civilized government attempts to levy such heavy taxes upon property as mobile and readily concealed as money, credits, and securities. The Commission of 1907 asked of every person who appeared before it to advocate the existing system of taxation the question, "Would you pay a tax of $17 in the thousand upon investments yielding you four or five per cent.?" In every case the answer was in the negative, although in some instances it was maintained that other people might be willing or could be compelled to do so. There are, of course, localities in which the tax rates are far below the average of the State, but there are others in which they are very much higher. Some years ago when taxable bonds issued by the Commonwealth were selling at a price that yielded the investor an income of 2.8 per cent., there were towns in which the tax rate was as high as $30 per $1,000; and there are to-day not a few localities in which the rates range from $20 to $25 per $1,000. Such taxes cannot, and will not, be borne by any one who is able to evade them, and sooner or later the average investor finds some way of escape.

The second evil mentioned by the Commission of 1907—

* Report of Commission on Taxation, 1907, p. 52.

namely, diversity in local tax rates—has, together with lax enforcement of the law in various localities, tended to concentrate intangible property in a small number of wealthy residential towns. The Commission of 1907 gathered statistics showing the alarming extent to which this concentration has already gone,* and to it there can be no assignable limit short of the concentration of practically all money and securities in a handful of favored towns. Unless radical changes can be made, a few localities are certain to grow steadily richer, while the rest of the State is bound to grow poorer; and in this process the chief sufferers are sure to be the industrial centres where necessary expenditures are large and the tax rates generally exceed the average prevailing in the State.

For this condition of things the following remedies have been proposed: more drastic laws requiring sworn returns of personal property for taxation; a uniform tax, at the average rate computed by the tax commissioner for the taxation of corporations; State supervision of the work of assessment; the total exemption of intangible property; a habitation tax, as a substitute for the existing tax on intangible wealth; the so-called three-mill tax; a State income tax.

The proposal to enact severer laws requiring a full disclosure of personal property is, under the present system, absolutely futile. It would probably be impossible to devise more drastic statutes than have prevailed in Ohio and some other States for many years, and it is absolutely certain that these laws have in every case completely failed. Ohio offers the best field for study, since her laws have been in force for many years and their operation has been studied by two commissions. Without going into details at this point, I will merely refer you to the able report of the Commission appointed by the Governor of Ohio in 1908, a copy of which I submit herewith; and to various letters from persons fully acquainted with the situation in that State, which I also place before you. As briefly stated by that Commission, the experience of Ohio has been: "This wide-spread concealment of intangible property, increasing in

* Report of the Commission on Taxation, 1907, pp. 40 to 44.

amount year by year, is the most convincing proof of the failure of the general property tax. It shows that after more than fifty years of experience, with all conceivable methods in the way of inquisitor laws, severe penalties, and criminal statutes, designed to force the owners of moneys and credits, stocks and bonds, to put their holdings upon the tax duplicate, not only is the percentage of such property returned less than ever before, but public sentiment seems to be more and more openly approving an evasion of the law. Such a condition of affairs is so manifestly wrong and so inimical to good government that its longer continuance is a grave injury to the State."* The experience of Ohio is absolutely conclusive. The only result of the barbarous statutes enacted by that State has been to drive between $1,000,000,000 and $2,000,000,000 of capital from the Commonwealth,† decrease the amount of intangible property actually assessed, and cause general disregard of all laws relating to taxation.

A uniform tax, at the rate computed by the tax commissioner for the assessment of corporations, would indeed avoid the concentration of intangible property in a few favored towns,

* Report of the Ohio Tax Commission, p. 26. See also Report of the Massachusetts Commission on Taxation, 1907, pp. 28 to 32; and letters from Wade H. Ellis, Allen R. Foote, and James R. Garfield.

† That the tax laws of Ohio have driven an enormous amount of capital from that State and have prevented capital from coming into it, is questioned by no one familiar with the facts. A member of the Ohio Tax Commission of 1893, after making extended investigations in Cleveland, where he had exceptional opportunities for securing information, estimated that not less than $100,000,000 had been driven out of that city by the operation of the tax laws; and he said that the exodus of both citizens and capital had been so marked as to affect very seriously real estate values, particularly in the best residential section of the city. See Angell, The Tax Inquisitor Law in Ohio, Yale Review, February, 1897. In Cincinnati Mr. R. B. Smith, in an address before the Bankers' Club in 1904, said: "Thousands of the wealthiest men in Ohio have been driven out of it by its tax laws. In Cincinnati the names of a large number will readily occur to any one familiar with its affairs. Can any one recall the name of a single individual of means and leisure who has settled here within the last twenty years?" Mr. Allen Ripley Foote, of Columbus, Ohio, President of the International Tax Association, has been making a thorough investigation of this question for some years, and has in his possession data showing that the capital driven out of the State exceeds one billion dollars. From a letter of Mr. Foote, submitted to your Commission with this argument, I quote the following: "On the 14th of October, 1909, I had a conference with the members of the Tax Committee of the Ohio Senate and Auditor of State on the subject of measures for the improvement of our tax laws that may be presented to our legislature at its next session. The question of the effect of our tax laws in expelling capital from the State and in preventing it from coming into the State was freely considered. There was no dissent from any person present from the consensus of opinion that Ohio has suffered a depletion of capital from this cause amounting to between one and two billions of dollars."

but only at the cost of driving it largely or wholly from the Commonwealth. This is, indeed, the lesson to be learned from Ohio's experience, since conditions in that State did not permit the growth of a few wealthy localities that could offer refuge to the taxpayer seeking to avoid the confiscation of half his income. Although in Massachusetts the concentration of intangible property in a few places has been an evil, it is far preferable to driving millions of property out of the Commonwealth. It is always to be remembered that our conditions are such as to make the removal of taxable property comparatively easy. Massachusetts is a small State, and it would be easy for persons of wealth to change their residences to any of the adjoining States. In New Hampshire, Vermont, Rhode Island, Connecticut, and New York, shares in the capital stock of foreign corporations are by law exempt from taxation. Moreover, in some of these States taxpayers are allowed to deduct the amount of their debts from the whole amount of their personal property subject to taxation; while Connecticut has what is in effect a tax levied at the rate of four mills in the dollar upon certain important classes of securities. It will be seen, therefore, that the tax laws of all the neighboring States would offer peculiar advantages to citizens of Massachusetts who desired to avoid a tax that would amount to one-third of their average income from money, credits, and securities; and it is further true that in all of them very little attempt is made to enforce the laws relating to the taxation of personal property. If it be said that, if personal property were fully returned for taxation, the average rate prevailing throughout our State would be greatly reduced, the answer is, to quote the words of the Ohio Commission, that "the present tax is so imminent and the prospect of a full return by all citizens is so remote that the individual taxpayer" would "not feel inclined to institute a reform which might turn out to be wholly at his own expense."* It is not believed that many of our citizens desire that Massachusetts shall undergo the experience of Ohio, and it is certain that the attempt to enforce taxation of intangible property at

* Report of the Ohio Tax Commission, p. 28.

a uniform rate that would certainly approximate $17 per $1,000 would have no result but to drive capital from our Commonwealth. Even if our Constitution permits "assessments, rates, and taxes" on any class of property to be levied at an averge rate differing widely from the rates imposed on other property in most of our cities and towns,—and this is more than doubtful,—it is clear that such a remedy would be worse than our present disease.

The proposal to extend State supervision over the assessment of property is good so far as it goes, but can only result, under our present law, in the concentration of practically all intangible property in a few localities or in driving it out of Massachusetts. Here, again, the experience of other States is most instructive. During the last twenty years a number of them have established permanent tax commissions, clothed with authority to supervise the work of local assessors, and in some instances a supervisor has been appointed in each county. It is the testimony of members of these commissions, as shown by the letters I have submitted to your Commission, that State supervision has not resulted, and cannot result, in the full and fair assessment of intangible wealth under a general property tax. In a matter where the teaching of experience is so clear, it is useless to indulge in theories of what might be done in Massachusetts through extension of State supervision. Those officials who have had most experience with its actual working are certainly the persons best qualified to judge of its efficacy and value. It is to be hoped that, if Massachusetts is ever able to enact a system of enforcible tax laws, the State will undertake, by direct supervision, to insure the enforcement of those laws to the very letter; but experience shows that supervision has failed to enforce the taxation of all property under the general property tax.

Another and very different remedy sometimes proposed is the total exemption of intangible property. But this, even if your Commission favors it, is probably unconstitutional at the present time; although it is probable that one or two kinds of intangible property might be exempted in order to avoid double

taxation. The Opinion of the Justices on the proposed three-mill tax expressly refrains from stating whether intangibles can be exempted from taxation, and, in view of the fact that the Court clearly intimated that many other exemptions are constitutional, its silence at this point is very significant. My own view—and here I speak for no one but myself, since the Chamber of Commerce is committed to no particular plan for either exempting or taxing intangible wealth—is that in Massachusetts the total exemption of intangible property is undesirable and, at least for a very long time to come, absolutely impracticable. It is undesirable because such property can and should contribute something to the support of the government under which its owners live, though I hold it unjust to tax all property of this description at the same rate that is imposed upon tangible property, whether real or personal. And I believe it to be impracticable because we are now deriving a small amount of revenue from intangible wealth, which is not likely to be surrendered without an equivalent. As I have before remarked, total exemption solves no problems of taxation. What we need is a just method of taxing intangible property, under a law that is reasonable and capable of strict enforcement.

The so-called habitation tax was proposed by the Massachusetts Tax Commission of 1896 as a substitute for the existing tax upon money and securities, and it has been proposed recently by some members of the Commission appointed in the State of New York. Its merits I shall not now consider, but that it would be in many ways superior to the present method of taxing intangible wealth is believed by many persons. If the legislature should ever favor the proposal, it would have no power to adopt the habitation tax, since it is evident that the tax could not be levied as an excise and would not be "proportional" if levied as a tax on persons or property.

The Commission of 1907 recommended a uniform tax at the rate of three mills upon intangible property, and during the last two years similar plans have been formally proposed, or recommended to the consideration of legislatures, by tax commissions of Maine and Vermont, the State Board of Equalization

of New Jersey, and the Tax Commission of the State of Washington. The plan has also the unofficial approval of members of tax commissions in a number of other States. The wisdom and practicability of a moderate, uniform tax on intangible property is fully established by the experience of the States that have tried it, and upon that point I feel certain that the earnest words of Judge Leser must have impressed your Commission. The subject was so fully treated by the Tax Commission of 1907 that I need not consider it at length. But I wish to state that the plan was not approved by that Commission until most of its members had visited both Maryland and Pennsylvania, and from personal observation had become convinced that it works remarkably well in those States. The simple facts are these: no State has ever succeeded in taxing with even tolerable certainty and success the great mass of intangible property under the general property tax, while two States have devised a method that has proved a distinct success. Here, again, if we are guided by experience rather than speculation, we must pronounce the taxation of intangible property at a moderate, uniform rate a plan distinctly worthy of the careful consideration of the legislature; but, as the Constitution now stands, the General Court has no power to adopt a plan which has worked so well elsewhere. Its reasonableness, I may add, cannot, with consistency, be denied by those who believe that the taxation of intangible wealth at the average rate computed for the corporation tax would reduce the average tax rate in the Commonwealth to $4 or $5 per $1,000. For it is evident that, if full returns of personal property can be secured under a method which makes the citizen liable to a tax at the rate of $17 per $1,000, if, by any chance, a full disclosure is not made by substantially all property owners in the Commonwealth, such returns will certainly be obtained under a plan which guarantees to every man who makes a full disclosure that he shall not be taxed at an unreasonable rate.*

* That personal property can be taxed with reasonable certainty, provided the rate is moderate and does not exceed a reasonable proportion of the taxpayer's income, is proved by the experience of Boston in the early part of the nineteenth century. In 1794, when the tax rate was approximately $3 per $1,000, personal property constituted more than

But the three-mill tax may not be the only possible solution. When proposed by the Commission on Taxation in 1907, it seemed the only thing practicable; but, if the Constitution of the Commonwealth should be amended and the legislature should undertake a general revision of our tax laws, investigation might show that a moderate income tax levied at a uniform rate throughout the State would be a better solution. That the income tax is theoretically the best of taxes is generally admitted, and the experience of other countries shows that it can be successfully enforced if the rate is moderate and uniform, and if the central government exercises direct supervision over the process of assessment. As between the three-mill tax and a tax on the income from personal property, preference should be given to the one most likely to be supported by public opinion, since, as Mr. Purdy so well said in his testimony before your Commission, the best tax is always that which is supported by public sentiment. And I will further suggest that an income tax might aid in the solution of the problems of forest taxation and the taxation of capital employed in manufactures. The whole subject is one that requires investigation, and at this time I desire merely to point out that, without an amendment to the Constitution permitting classification, the legislature would have no power to substitute for our present taxes on intangible property an income tax levied at a moderate and uniform rate throughout the Commonwealth, since such a tax would not be "proportional."

But, whatever the ultimate solution may be, it is certain that the law relating to the taxation of intangible property

half of the total assessed for local taxation. In 1822, when the tax rate was $3.65 per $1,000, personal property formed nearly forty-five per cent. of the total valuation; and in 1850, when the tax rate was $6.80 per $1,000, it formed nearly forty-two per cent. of the total. After that date, however, tax rates rapidly increased, until by 1870 the rate had risen to substantially its present figure, and the result was that thereafter the proportion of the tax falling upon personal property rapidly decreased, while even the total assessment remained stationary or tended to decline. At the present day, with a tax rate of approximately $16 per $1,000, over four-fifths of the city's taxes fall upon real estate, and the proportion contributed by personal property is bound steadily to decrease as long as the present system remains in operation. No one will contend that Boston can collect a tax of $16 per $1,000 when in towns within convenient distance of the city the rate of taxation is only half as high, and, in at least one case, is now as low as $4.30 per $1,000. If Boston is not to be stripped of all the intangible property that now has a situs there for the purpose of taxation, the existing system must be radically changed.

cannot long remain unchanged. With the diversity of local tax rates, which in some cases are less than one-third of the average in the Commonwealth and indeed less than one-sixth of the rates prevailing in certain localities, and with diversity in the methods of enforcing the law, the present system of taxation will drive almost every dollar of intangible property into a handful of wealthy towns, and leave practically none in the manufacturing and industrial centres where tax rates are now high and by the removal of intangible property will be forced to even higher figures. This is particularly true of Boston, which in the past has suffered severely as a result of honest effort to enforce the existing law, and will suffer still more if the law is not speedily changed.

Section 17. The taxation of capital employed in manufactures.

The original policy of Massachusetts was to encourage manufacturing industry by granting various exemptions from taxation.* As our manufactures became firmly established and protected by high duties upon imports, the legislature between 1826 and 1832 abolished these exemptions; and thereafter capital invested in manufacturing enterprises was subject to the general property tax, although provision was made for avoiding double taxation of capital stock and of real estate and machinery subject to local taxation. In 1864 the general corporation tax was established, which has involved in practice, though perhaps not in theory, a much heavier taxation of capital invested in domestic manufacturing corporations than had been actually imposed prior to that date. The present situation is substantially this: real estate and machinery are liable to local taxation upon a full valuation and at rates which in most industrial centres are very high; while the so-called "corporate excess" is taxable at the rate of approximately $17 per $1,000 by the State.

As compared with other States with which our manufacturers are in constant competition, there can be no doubt that

* The subject is fully discussed by J. M. Hallowell in his Report to the Massachusetts Manufacturers' Association on the Taxation of Domestic Manufacturing Corporations in Massachusetts. (1908.)

our present laws, if fully enforced, impose much heavier burdens than are imposed in any other part of the Union. It appears that very few States impose a corporation tax upon capital employed in manufacturing industry within their borders, since States like New York, Pennsylvania, and New Jersey expressly exempt manufacturing companies from the operation of their general corporation taxes. Maryland has a general corporation tax that applies to manufacturing companies, but, as explained to you by Judge Leser, it is in practice confined to the tangible assets. In most of the States manufacturing corporations are subject merely to local taxation under the general property tax, which, so far as their personal property is concerned, is enforced with great leniency, and even in respect of their real estate is sometimes levied upon only a fraction of the true value. Pennsylvania by law exempts most machinery, and in practice exempts almost all of it. In New Jersey, in many parts of New York, and probably in most other States, the practice is to deal very leniently with machinery. Our manufacturers are constantly invited to remove their capital to other States, and, as an inducement, assurance is offered that their machinery and stock in trade will be practically exempted, and their real estate assessed at a small proportion of its value. Some States, finally, have laws expressly authorizing municipalities or counties to exempt the property of newly established manufacturing enterprises for a period of years.

That our laws relating to the taxation of manufacturing capital are in their actual operation not as disastrous as a reading of the statutes might lead one to suppose, is due solely to the fact that in various localities these laws are not fully enforced. Yet such non-enforcement is no solution of the problem, since there is no assurance as to the future; and such uncertainty tends to discourage capital from investment in this State. Moreover, it is evident that we do not want a system of taxation which in its actual operation is prevented from repressing the development of any industry simply by non-enforcement of our laws. What the Chamber of Com-

merce seeks is a system of enforcible tax laws, capable of the strictest enforcement without repressing the development of the industries of our Commonwealth.

But, while the methods of taxing capital invested in manufactures are not, in all cases, or possibly in a majority of cases, oppressive in their actual operation, there are many instances in which they are oppressive and operate to the detriment of the State. The tax levied on the corporate excess imposes in some cases an inordinate burden upon successful concerns, even though the arbitrary limitation imposed by the Act of 1903 has afforded relief to some classes of corporations; and the local taxes upon machinery in towns and cities where assessors endeavor strictly to enforce the existing law sometimes operate with extreme hardship. In industries employing a large amount of machinery this burden is severely felt, and it cannot be disputed that it severely handicaps manufacturers in competition with other States. Upon this subject, as upon other aspects of the taxation of capital employed in manufacturing industries, I understand that manufacturers in various parts of the Commonwealth intend to ask a hearing before your Commission, and therefore I will not enlarge upon the question.

When we turn to the consideration of remedies, it is not possible to propose a definite solution in advance of a full investigation of the subject by the legislature or some special commission. But it is clear that there is great need for such investigation, and that, if it should show that there is need of a general readjustment of the taxes imposed upon manufacturing industry, the legislature ought to have constitutional power to effect such changes as may be considered advisable. It is clear also that a remedy must be sought in one of two directions, either in the direction of reducing or abolishing the tax on the corporate excess, or in a readjustment of the taxes on property subject to local taxation.

There is no constitutional difficulty in the way of further limitation, or even abolition, of the tax on the corporate excess; but I believe that, until a general readjustment of our entire system of taxation can be secured, it would be a mistake

to tinker with the Act of 1903. Nothing has yet been proposed which would not introduce further complications and arbitrary discriminations into the very arbitrary and complicated results that have followed the Act of 1903. Moreover, to begin at this end would probably be unfortunate, since, with all its imperfections, the tax on the corporate excess of manufacturing companies tends upon the whole to place the burden upon the more successful concerns and to relieve those which are least able to contribute.* Upon the other hand, the local taxes upon real estate, and particularly machinery, fall indiscriminately upon the more and the less successful; and, in so far as the laws are actually enforced, do not and cannot discriminate. If I were to advance any definite proposal at this time, I should suggest that the expedient thing to do would be to limit the rate of taxation upon machinery to some such figure as $6, $8, or $10 per $1,000. The Commission on Taxation in 1896 proposed the total exemption of machinery, and this recommendation was supported by a very strong petition submitted by manufacturers to the legislature at that time.† But such exemption might seriously disorganize the finances of various towns and cities unless it were a part of a general plan for readjusting our tax laws, and I believe that it is absolutely impracticable until such a readjustment can be had.

Unquestionably, the taxation of manufacturing industries presents great difficulties, and the Chamber of Commerce believes that any further change in the laws should be preceded by a thorough investigation. Such investigation should be had as soon as practicable. If we are now handicapping the chief industry of the Commonwealth in competition with manufactures in other States, and the evidence now available points to such a conclusion, that fact should be ascertained as speedily as possible, and an appropriate remedy devised. Some concerns have undoubtedly left the State on account of our tax laws, and it cannot be disputed that these laws offer little inducement

* This position is supported by the Report of the Special Committee of 1903, and accords with the Argument of Grosvenor Calkins before the Committee on Taxation, March 19, 1907.

† Report of the Commission on Taxation (1897), p. 57.

for outside capital to come to Massachusetts. After thorough investigation is had, the legislature should have constitutional authority to apply the proper remedy, and should not be confined to the single expedient of tinkering with the tax upon the corporate excess of manufacturing companies. An amendment to the Constitution permitting classification will leave the legislature free to adopt the best remedy that can be devised, whereas, as the Constitution now stands, it is practically impossible to grant relief at the right place and in the right way. Here, again, as in the case of the taxation of forests or of intangible property, the Chamber of Commerce is advocating a practicable and enforcible system,—one that will oppress no industry, and under the strictest methods of enforcement will not operate to the detriment any interests in the Commonwealth.

Section 18. The necessity for classification.

It is neither possible nor necessary at this time for the Chamber of Commerce to propose a new system of taxation complete in all details. This must be the work of some special commission or committee of the legislature after the Constitution of the Commonwealth has been amended in such a manner as to permit a modern system of taxation to be established. All that it is necessary for the Chamber of Commerce to do is to show that fundamental changes are necessary; and that most and perhaps all of the changes approved by the best opinion in the United States, and even recommended to the legislature of Massachusetts by special commissions appointed to consider the subject, are impossible until the Constitution is amended. Whether we consider the problem of forest taxation, the taxation of intangible property, or the taxation of capital invested in the leading industries of Massachusetts, we find that the desirable and practicable remedies for admitted evils presuppose the power on the part of the legislature to classify the objects of taxation.

In a general and systematic revision of our laws relating to "assessments, rates, and taxes," a reasonable and practicable

scheme of classification may be worked out in either one of two ways. The first would be to continue to tax property, but under a classified, and not a uniform system of taxation. In such a plan the general mass of property could be divided into a few large classes, based upon well-recognized differences in economic characteristics and ability to contribute to public charges. Intangible property should, undoubtedly, form one class. Tangible personal property might well form another; and, in any event, machinery should be separately classified, and not included in the general mass of tangible property subject to taxation at the full local rate. Ordinary real estate would form another class, and forests still another. How much further the classification should go, it is unnecessary now to consider, since the case in favor of the amendment will be fully established if it can be shown that it is necessary to classify the objects of taxation. In general, the aim should be to adjust taxation to the nature or condition of each class of property, in order that our tax laws may be reasonable, and therefore enforcible without injury to industry or oppression to individual taxpayers. Under such a system there can be no question that in the long run the revenue actually derived from each class of property would be far greater than that which could possibly be obtained under a system that oppresses industrial development, forces property into concealment, drives capital from the Commonwealth, or prevents it from coming here.

The second method of procedure would be to levy an income tax at a uniform rate throughout the State upon the income derived from personal property, and perhaps from salaries and professions. This tax would be in lieu of other taxation, and should be uniform in order to avoid migration from one locality to another. It should be levied at a moderate rate that will make it absolutely enforcible. There can be no question that such a tax, if proper provision were made for enforcing it, would yield more revenue than we now obtain from personal property, and would therefore tend to lighten somewhat the burden falling on real estate. The rest of the revenue needed

to meet town and city expenditures would then be obtained by a local tax on real estate, in which, however, land devoted to forest culture should be taxed by methods suited to its conditions and needs. That this scheme is reasonable, practicable, and in no way fanciful, will be apparent when you consider the fact that it would give substantially the same distribution of the burden of State and local taxation that obtains in Great Britain under the operation of a general income tax, levied for national purposes, and the local taxes, or "rates," which fall exclusively upon real estate.

There is no occasion to fear that under a system permitting classification we should fall into a bewildering chaos of innumerable and arbitrary classifications. That has never happened in any of the States that permit classification, nor does it prevail in Europe where no constitutional restraints whatever are imposed upon the power to classify the objects of taxation. The danger is purely imaginary, and is not entitled to serious consideration. Quite apart from the proposed constitutional guaranty that the classification must be reasonable, which I shall consider hereafter,—there is no experience to justify the belief that the General Court will make unreasonable and undesirable classifications. I need only remind you that for one hundred and twenty-nine years, under the excise clause of the Constitution, the General Court has had full power to classify the objects upon which it levies excises, and you will not find upon our statute book a single law that can fairly be said to establish arbitrary or unreasonable methods of classification. All that the proposed amendment does is to give the General Court, when it levies "assessments, rates, and taxes," the same power it has always possessed when imposing "duties and excises." I maintain, therefore, that the experience of our own State establishes the desirability and perfect safety of empowering the legislature to classify the objects of taxation, and that the amendment before your Commission proposes nothing that is new in principle or unsupported by experience.

Before passing from this subject, I desire to remind you that

the issue presented by the amendment is not merely that of securing a better distribution of the present burden of taxation. Such a readjustment is very necessary, and cannot come too soon; but beyond it, and even more important than it, lies the further problem of devising a revenue system adequate to meet the demands of the twentieth century. For public needs have steadily increased for a hundred years past, and, so far as we can see, are certain to increase in the future. Doubtless, there is some waste in our present expenditures, due sometimes to inefficiency and occasionally to actual corruption in governmental affairs. Unquestionably, too, it is possible to reduce such wasteful outlays to a minimum, and thereby reduce somewhat the present burden of taxation in certain localities. But it is a great mistake, and an assumption unwarranted by experience, to suppose that good government means a smaller aggregate expenditure. What honest and efficient government means is, rather, that for each dollar expended taxpayers, as a class, receive a dollar's worth of benefit, and not that the total expenditure is permanently reduced. Legitimate public needs are increasing; and, when public revenues are wisely and honestly spent, the people are certain to approve and even demand larger expenditures in many desirable directions. If we look forward, then, to a general improvement in the conduct of public business, we must expect that the scope and extent of such business will steadily increase, and that public expenditure in the future, as in the past, will tend to increase in response to public sentiment.

Every country in the civilized world faces the same conditions. In Europe, between 1830 and 1890, the expenditures of the leading nations increased from $4 to $11 per capita. The same thing is true of local outlays, which in Great Britain advanced from £37,000,000 in 1868 to £158,000,000 in 1903, and in France increased from 84,000,000 francs in 1836 to 795,000,000 francs in 1904. Our own country is no exception to the rule. The per capita expenditure of the Federal government was $1.97 in 1792 and $6.81 in 1905. The expenditure

of the State of Massachusetts was 88 cents per capita in 1786 and $3.20 in 1905. In all the States of the Union the local taxes on property amounted to $3 per capita in 1860 and $9.22 in 1902; while in Massachusetts the aggregate local taxes advanced from $7,600,000 in 1861 to $62,273,000 in 1908. The suggestion that, in the face of the conditions of twentieth-century life, public expenditures are likely to decrease or even to remain stationary is worse than folly, for it obscures and misrepresents the conditions to which our system of taxation must be adjusted. The general property tax in Massachusetts as in other States has absolutely broken down with respect to important classes of property; and it cannot, without fearful pressure upon real estate, provide for the needs of even the immediate future. We need, and ere long must have, a system of taxation that reaches in a just and practicable manner all available sources of social income, since only in that way can we hope to meet the financial problems of the future.

V.

THE PROPOSED CONSTITUTIONAL AMENDMENT CONFERS NEEDED POWERS, IS APPROVED BY EXPERIENCE, AND AFFORDS ADEQUATE SAFEGUARDS AGAINST ABUSE.

Section 19. The proposed amendment confers needed powers in terms that are clear and adequate.

The amendment before your Commission, by striking out the word "proportional," frees the General Court from the limitations which now confine it to the taxation of substantially all property at a uniform rate, and gives it the same power that it has always possessed in the levy of "duties and excises." In its construction of the excise clause of the Constitution the Supreme Court has repeatedly said that, while excises must be reasonable, they need not be proportional; and it would have been sufficient, considering the matter from the purely legal point of view, to confine the amendment to a simple provision striking out the word "proportional." But, in order that the purpose of the proposed change might be evident to all, it was considered best to add the express provision that for the purpose of taxation the "General Court may classify property in a reasonable manner." The term "classify," which it is hereby proposed to introduce into the Constitution, has received a definite legal meaning in the decisions of both State and Federal Courts which have had to pass upon tax laws actually classifying the objects of taxation. I need only refer to such a standard legal treatise as "Judson on Taxation" (chap. XV.). If the amendment is adopted in its present form, there can be

no doubt that it will confer upon the legislature the power to make such changes in our laws relating to taxation as are demanded by the conditions of the age, approved by experience, and supported by the overwhelming weight of authority.

Section 20. The proposed amendment is approved by experience and by the weight of authority.

The present constitutional requirement that "assessments, rates, and taxes" must be proportional originated in a limitation imposed by the British Crown in the charter granted by William and Mary in 1691. It was transferred, without material change, to the Constitution adopted by the Commonwealth in 1780, at a time when economic conditions generally made the taxation of all property at a uniform rate, if not entirely practicable, at least something less than an absolute impossibility. Under the changed conditions of the nineteenth century, particularly under the pressure of increasing public expenditures, the system of taxation established in 1780 utterly broke down, and for the last forty years has led to nothing but general dissatisfaction and incessant complaint. The time has certainly come when the general property tax must be replaced in Massachusetts by a system of taxation suited to the conditions of modern life. Other States have already recognized this fact, and have amended their constitutions in such a manner as to permit classification; others, more fortunate, have never been subject to the iron-clad requirement of uniformity in taxation. In Rhode Island, Connecticut, Vermont, New York, and Maryland no constitutional restriction upon classification has ever existed; and in New Jersey the clause requiring uniformity has been so interpreted as to permit the legislature to classify property.* In Pennsylvania, Delaware, Virginia, and Minnesota classification is now permitted by constitutional amendments introduced since 1873, the last one dating from 1906. In Colorado, Idaho, Montana, and Oklohoma the provision permitting classification was contained in the first constitutions adopted.

* See Chancellor *v.* Elizabeth, 36 Vroom, 479; State Board *v.* Central Railroad Company, 19 Vroom, 146; also Cooley on Taxation (3rd Ed.), pp. 317–318.

There are a few other States, viz., Missouri, Iowa, and possibly Michigan and Wisconsin, where it has been claimed that classification may not be prohibited; but opinions differ upon this subject, and I shall therefore confine my list to the fourteen States about which there seems to be no dispute. It appears, therefore, that nearly one-third of the States of the Union now permit classification; and I may state that in New Hampshire, Ohio, Kentucky, Missouri, Kansas, and Washington the subject is now under consideration, and that in Oregon an amendment is actually pending at the next election. It is, then, but a simple statement of fact to say that the proposed amendment to the Constitution of Massachusetts is supported by the experience of nearly one-third of the States, and approved by the progressive thought of a number of others in which amendments are either proposed or now pending.

In none of the States where classification is now permitted has it ever appeared, or is it now claimed, that the provision is either undesirable or dangerous. Upon the contrary, it has permitted in Pennsylvania and Maryland the adoption of the most successful method of taxing intangible property that has ever been tried in the United States; while in Connecticut, New York, New Jersey, and Minnesota it has made possible other desirable departures from the impracticable method of taxing all property at a uniform rate. And in Vermont, Rhode Island, and Virginia the absence of obsolete constitutional restraints now makes possible the consideration, by the legislatures and people, of practicable plans for improving the methods of State and local taxation. Why should not Massachusetts align herself with the progressive States of our Union, and even become the leader in the reform of abuses which have long justified the reproach that in the United States we have about the worst system of local taxation that can be found in any country of the civilized world?

That the amendment is supported by the overwhelming weight of authority I have already demonstrated, but in further support of this contention I may be permitted to introduce a few extracts from letters received from tax commissioners

of various States. The Chairman of the Wisconsin Tax Commission writes as follows: "Experience demonstrates that constitutional provisions for the taxation of all classes of property at an equal and uniform rate have been one of the principal causes for the breaking down of the general property tax and the escape of intangible property from the tax roll. The amendment of the constitutions in those States where such provisions exist, to give the legislatures power and authority to make reasonable classifications of personal property for taxation, will remove some of the worst abuses in the present system of local taxation, and among other benefits will secure far more revenue from intangible wealth than is obtained under present methods." The Chairman of the Kansas Tax Commission writes: "The Constitution of the State of Kansas provides for a 'uniform and equal rate of assessment and taxation.' . . . After years of experience connected with matters of taxation, I unhesitatingly say that no such provision can be enforced, and because of this constitutional mandate our legislature is absolutely barred from providing a reasonable scheme of assessment and taxation." A member of the Oregon Tax Commission writes concerning the proposed amendment to the Massachusetts Constitution: "This Commission is decidedly favorable to such action. Constitutional amendments, through which this end may be accomplished, have been proposed in this State and are now pending the approval of the people in the next election." The Tax Commissioner of West Virginia writes: "I have devoted the last five years of my life to a study of the tax question. If from my experience as an executive officer, whose duty it is to enforce the tax laws, I have learned one thing, it is that no State can ever devise an equitable system of taxation, which is bound hand and foot to the iron-clad rule of uniformity in the taxation of all property. Any constitution that provides for equality and uniformity in taxation, and prevents the classification of property, defeats the very end the Constitution was designed and framed to obtain. No tax system can be properly revised unless the legislature has a free hand to classify property in a reasonable

manner." The Tax Commissioner of Connecticut writes: "As you are aware, Connecticut is particularly fortunate in being absolutely free from constitutional limitations relative to taxation. In fact, the word 'taxation' is not mentioned in the Constitution. . . . The result has been that Connecticut is one of the most liberal States in the Union in matters of taxation." The Secretary of the State Board of Equalization of Utah writes: "It may be said that experience teaches that the assessment of all classes of property at the same rate, or on the same basis, is unjust. If your State has a movement looking to the betterment of your tax laws, it has started out on a wise course." And the Secretary of State of Wyoming, who is also a member of the State Board of Equalization, writes: "Absolute uniformity in matters of taxation is an ideal. It is under present laws and constitutions a practical impossibility. Any law or constitution that provides that each and every class of property shall be taxed uniformly and proportionally is impossible of administration with any certain degree of justice and equality. . . . An amendment to your State Constitution that will permit the legislature of your State to enact a law classifying property for the purposes of assessment and taxation . . . is certainly commendable." I shall submit to your Commission with my argument these letters and many others received from persons familiar with the operation of tax laws in the various States of our Union; and as you examine them, in connection with the other evidence I have offered, and the testimony of Messrs. Purdy and Leser, you will be convinced that the amendment now before you is approved by the overwhelming weight of authority.

Section 21. The proposed amendment provides adequate constitutional safeguards.

And, in conclusion, I desire to emphasize the fact that the proposed amendment to our Constitution, while conferring upon the General Court adequate and necessary powers, provides all needful protection against the abuse of the powers thus conferred. For in addition to leaving the existing requirement

that "assessments, rates, and taxes" must be "reasonable," it provides that classifications must be made "in a reasonable manner." It gives to property and business subject to direct taxation identically the same protection that is afforded by the clause authorizing the legislature to impose "reasonable duties and excises." The excise clause has stood for one hundred and twenty-nine years without a suggestion that it does not afford adequate protection against unjust or unreasonable discriminations in taxation. All corporate property in the Commonwealth is now subject to the same discretionary power on the part of the legislature that the proposed amendment would confer in the levy of direct taxes upon persons and property. Our Supreme Court has repeatedly said that excises, while they need not be proportional, must be reasonable; and it cannot be claimed that the reasonableness of any excise tax is left wholly to the determination of the legislature. The reasonableness of any tax is a matter to be determined ultimately by our Court of last resort; and although that Court has uniformly conceded to the legislature large discretionary powers, and will not lightly set aside a tax law as invalid, there can be no doubt that under the requirement that "assessments, rates, and taxes" must be reasonable, rights of property or persons may be safely left to the protection of the Supreme Court of the Commonwealth.

But, even if it were true that, under the proposed amendment, the Constitution of the Commonwealth would not offer adequate protection against abuse of the power to classify property for taxation, the reply is that in any event sufficient guarantees exist under the Fourteenth Amendment of the Constitution of the United States. For that Amendment guarantees to all "the equal protection of the laws"; and the Supreme Court of the United States has held that this requires that, when legislatures establish classifications, "the same means and methods" must be "applied impartially to all the constituents of a class so that the law shall operate equally and uniformly upon all persons in similar circumstances" (Kentucky Railroad Tax Cases, 115 U. S. 321, 337). In another case the Court said

that, while the Fourteenth Amendment does not prescribe uniformity in taxation, it prevents "clear and hostile discriminations against particular persons and classes" (Bell's Gap Railroad Company *v.* Pennsylvania, 134 U. S. 232, 237). In another case, which did not involve a tax law but applies nevertheless to all statutes in which legislatures undertake to discriminate between classes, the Court said that, in order to conform with the requirement of "equal protection of the laws," any classification must be "based upon some reasonable ground, some difference which bears a just and proper relation to the attempted classification" (Gulf, Colorado & Santa Fe Railway *v.* Ellis, 165 U.S. 150, 165). And, finally, in the case of Magoun *v.* Illinois, Trust and Savings Bank (170 U. S. 283, 293–294), the Supreme Court, after citing with approval the doctrines just stated, remarks that under the Fourteenth Amendment any law must "operate on all alike under the same circumstances."*

In behalf of the taxation committee of the Boston Chamber of Commerce I submit that fundamental changes in our tax laws are absolutely imperative, and that the legislature must be empowered to depart from the present iron-clad rule of uniformity and classify the objects of taxation in a reasonable manner. Our proposal is based upon reason and experience, and is approved by the overwhelming weight of authority both in this country and Europe. The amendment before you confers upon the General Court a power vital to the welfare of our Commonwealth, and one possessed by the legislatures of nearly one-third of the States of our Union. Of the States adjoining Massachusetts, only New Hampshire is now restricted by the obsolete requirement of uniformity. From New York to Virginia there is not a State that does not permit classification. And in the West a number of the younger and rapidly growing States have granted their legislatures power necessary to institute modern systems of taxation. Even in Massachusetts our proposal is not new; we advocate nothing but what has existed from the beginning in the excise clause of our State Constitution. The amendment is so drawn as to

* For a summary of these cases see Judson on Taxation, particularly Section 462.

make its purpose and effect unmistakable, and at the same time provides adequate safeguards against abuse of legislative authority. Shall an antiquated restriction which grew out of limitations imposed by the British crown in 1691 any longer fasten upon the Commonwealth a system of taxation that originated in Mediæval Europe and has proved unsatisfactory both in Europe and the United States? Let Massachusetts rather take her appropriate place in the forefront of the great movement, now of national scope and importance, which aims to free our States from an obsolete system of taxation that is a disgrace to a civilized nation.