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## A LEGISLATIVE FRANKENSTEIN

By

A. J. WHITE HUTTON\*

With the passing into the second half of the twentieth century it may be said that to those of us who witnessed the ushering in of the century, it seems but as yesterday and yet what a flood of events has rolled on through the past fifty years. It would have been a bold prophet, had any such attempted to forecast the startling events as have occurred worldwide during these years. The historian at the end of this century, in all probability, will record for the next fifty years events even more astounding than the ones now of record for the first half of the same period.

The story now to be related and suggesting the topic of this paper began forty years ago and concerns some political events of that time, the eventual outcome of which was not discernible, although sensed by a rare few who vainly attempted to stem the tide of overwhelming opinion.

The year 1912, like the present year of 1952, was filled with conflicting political opinions and theories hurled to and fro by the advocates of rival factions avid for success at the nominating conventions and later the elections of that momentous year. However, among those who strove for political power of whatever party or faction, there was hardly a man or woman of that period, who had the remotest concept of the dread holocaust of war at that very time skulking in the dark closets of European Chancelleries, to break forth two years later and not only destined to involve this country but infinitely more dreadful to so entwine us in its horrid tentacles that after forty long years our country is so enmeshed by stupid diplomacy and crass incompetency that a proverb has been coined:

"We have never lost a war, nor won a peace."

Back in 1912 the politicians were solely concerned in domestic questions, notably the initiative, the referendum, an income tax law, election of United States senators by direct vote of the people, together with a general primary system for the nomination of candidates and lastly the abolition of the liquor traffic. There were other reform measures advocated but the foregoing recital gives the high lights. In course of time by amendment of the federal Constitution there were adopted the 16th concerning the income tax, the 17th relating to election of senators, and the 18th on the matter of alcoholic products used for beverages. The 16th and 17th amendments remain as fundamental law but the 18th was repealed by the 21st.

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As to the initiative, the referendum and recall of the judges, these slogans have long since been retired to the limbo of discarded political theories remembered but dimly by the many and noted by but a few interested in ancient political lore.

Briefly, attention is directed to the 16th amendment as the most momentous and most tragic in its effect upon the liberties of the people since the adoption of the 13th, 14th and 15th known as the Civil War amendments. It came to pass, of course, that the 18th amendment as a vain attempt to impose basic sumptuary legislation upon the people met with such marked resistance as resulted in its abolition. But the gravity of reaching down into the pockets of the citizens and taking their monies for the private benefit of individuals and communities on the other side of the globe identified under a nebulous Point 4, is surely far greater than the noble experiment of endeavoring to prevent fellow citizens from committing hara-kiri by the alcohol route.

The 16th Amendment reads thus:

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

It was on the 25th of February, 1913 that the Secretary of State by proclamation declared the required number of states through their legislatures had ratified the amendment and Congress promptly enacted a law making effective the basic change.

It is at least noteworthy that Pennsylvania was not among the states joining in the ratification.

Thus income tax legislation has been a potential source of federal revenue continuously from 1913 to the present. One recalls the agitation and public clamor aroused by the orators on the hustings and in the press of that early day in advocacy of this measure. Its passage by Congress and adoption by the states were heralded as ushering in the dawn of the millenium. Everything was to be sweet reasonableness and in the great democratic experiment everyone was but to bear his fair share of a not too burdensome federal load. Furthermore this tax device was to accomplish a desirable social service, viz. the reduction of predatory wealth or expressed in the language of the day "to soak the rich." For a generation the law worked fairly well and with a minimum of criticism as to its philosophy and administration. Chief Justice John Marshall had pointed out years before that the power to tax involved the power to destroy. He did not explain the corollary of this principle in combination with political power or the remaining axiom concerning the corrupting and corroding effect of power. Well was it summed up by the outstanding cynic of our time in the slogan, "tax, tax, tax, spend, spend, spend, elect, elect, elect," followed by the doctor's prescription, "repeat according to directions."

This is the frankenstein the people of the United States created in the year 1913 and they did it wittingly and despite the warnings of the founding fathers

who knew by profound study that liberty of the individual could only be preserved by the restraint and regulation of political power.

In the story related dramatically by Mrs. Shelly, Professor Frankenstein lost his life at the hands of the monster he had created. Is the analogy to be found in our political morass of today? Is there an imbalance of power in the executive branch of the federal government whereby the legislative is reduced to a state of impotency by a tacit alliance of the executive and the judicial? In foreign relations by the accomplished fact, does not the executive commit the legislative?

Senator Byrd of Virginia, who has been fighting federal extravagance for years almost singlehanded, has issued these startling figures. Since 1789 when Washington took office until April 30, 1945, the U. S. Government collected from its citizens in taxes a total of 248 billion dollars. Between April 30, 1945 and June 30, 1951, the amount collected totalled 260 billion dollars. From the same authority these figures have been collated. For the past three fiscal years Congress has appropriated as follows:

\$50.222 billion for 1950  
 \$87.445 billion for 1951  
 \$94.429 billion for 1952.

The budget presented for 1953 calls for a total of \$85.444 billion.

The estimated revenue is 71 billion leaving a deficit of 14 billion.

Such figures have been called astronomical and fantastic but there they are with the solemn assurance that the government is being run as economically as possible under the circumstances. One economic expert has characterized the situation as squandermania. Recently, it was announced by a member of Congress that Sweden had returned 11 million dollars donated to her under the Marshall Plan with the explanation that she did not need the money. Recurring to the billion figures, some may remember years ago when the billion dollar congress was hailed as the last word in extravagance, and as school boys we were told by the teacher in history that the bloody, protracted War between the States, 1861-1865, cost the appalling sum of 5½ billion dollars. However, the other day in addition to the 85 odd billion, there was thrown in an additional request for 5 billion with about the same nonchalance as one asking for a new bicycle.

It has been proposed that the 16th amendment be modified so as to place a ceiling on the annual amount of tax which may be exacted.<sup>1</sup> A resolution to this effect addressed to Congress has been adopted by 24 states, among them, Pennsylvania. Powerful and vocal groups maintain that such a course is imperative, otherwise the middle class in this country will be crushed between the twin juggernauts of increase of the tax rate and the rising cost of the necessities of life.

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<sup>1</sup> Editor's Note—See the article "A Study of the Legal Facets Stemming from the Movement to Amend the Constitution Limiting Income Tax Rates to 25 per cent" by Frank E. Packard appearing in 56 Dick. Law Rev. 158.

Here is an interesting contrasting statement by a writer:

"The period of 1818-1861 was a golden era in the history of the American Republic. There were no internal revenue taxes of any kind. The Federal Government lived on customs, duties and revenue from the sales of the public domain."

To these facts may be added another, that on one occasion, at least, during this period, the government returned to the states by apportionment millions of dollars of unexpended tax funds.

The original constitution provides that the taxing powers of the federal government shall be unlimited but the methods shall be limited. This was stipulated because the colonies "in forming a more perfect union" feared the enlargement of federal power. Pennsylvanians were particularly expressive on this point and Alexander Hamilton had to use all of his great powers of argument to allay this fear. Therefore direct taxes were to be apportioned among the states according to population, leaving the federal government a free hand in levying all indirect taxes which were grouped as "duties, imposts and excises." It was not until 1861 that Congress as a war measure resorted to income tax legislation and the question soon arose whether this was a direct or indirect tax. If the former it was invalid as no provision was made for its apportionment. *Springer v. United States* held it was indirect and valid. Later when the Congress enacted the income tax provision in 1894, the Supreme Court reversed its former position in *Pollack v. Farmers Trust Company*, striking the provision down as invalid. It was this decision which brought about the 16th amendment. The federal debt limit of 275 billion dollars will probably be reached this year unless immediate and drastic action is taken by Congress to cut out the appalling waste in civil and military administration of affairs. Are you interested? If so, write your congressman and senators and request others so to do. Otherwise, you are a party to the mortgaging beyond human calculation of the heritage of millions and millions of children, born and unborn. In Orwell's "It Happened in 1984" there is depicted the gobbeldegook language of the Big Brothers, "War is peace," "freedom is slavery" and other reversed verities. In government today similar distortions are being mouthed, i.e. it makes no difference about the public debt for we owe it to ourselves; a balanced budget in these times is false economy and that by keeping up the whirligig of increasing debt and expanding income and production, all is well. In Disraeli's *Popanilla*, years ago the national debt was explained. After stating the debt was so huge that there was not enough gold in the universe to satisfy it, the question followed how the debtor could be the richest nation in the world. Answer as made, "It is very simple. The annual interest upon our debt exceeds the whole wealth of the rest of the world; therefore we must be the richest nation in the world."

*Whither are we bound?*