The United States Is NOT A Foreign Corporation
Or Foreign Sovereignty

A popular belief promoted in the freedom movement is the concept or idea that the United States is a foreign corporation or other foreign entity as regards the States of this American Union. The U.S. Supreme Court and other courts have concluded otherwise; see *Claflin v. Houseman*, 93 U.S. 130, 136 (1876)("The United States is not a foreign sovereignty as regards the several States"); *Severson v. Home Owners Loan Corp*., 88 P.2d 344, 347 (Ok. 1939)(quoting *Claflin*); *Bowles v. Heckman*, 64 N.E.2d 660, 662 (Ind. 1946)(quoting *Claflin*); *Kersting v. Hardgrove*, 48 A.2d 309, 310 (N.J. 946)(summarizes *Claflin*); *Harrison v. Herzig Bldg. & Supply Co.*, 290 Ky. 445, 161 S.W.2d 908, 910 (1942)(quoting *Claflin*); and *Robinson v. Norato*, 71 R.I. 256, 43 A.2d 467, 471 (1945)(quoting *Claflin* and further stating "the several States of the Union are neither foreign to the United States nor are they foreign to each other").

Here is the *Claflin* case:

Claflin v. Houseman, 93 U. S. 130 (1876):

MR. JUSTICE BRADLEY delivered the opinion of the Court.

The point principally relied on by the plaintiff in error is that an assignee in bankruptcy cannot sue in the state courts.

It is argued that the cause of action arises purely and solely out of the provisions of an act of Congress, and can only be prosecuted in the courts of the United States, the state courts having no jurisdiction over the subject. It is but recently settled that the several district and circuit courts of the United States have jurisdiction, under the bankrupt law, of causes arising out of proceedings in bankruptcy pending in other districts. There had been much doubt on the subject, but it was finally settled at the last term of this Court in favor of the jurisdiction. Lathrop v. Drake, 91 U. S. 516. Had the decision been otherwise, as for a long period was generally supposed to be the law, assignees in bankruptcy, if the position of the plaintiff in error is correct, would have been utterly without remedy to collect the assets of the bankrupt in districts other than that in which the bankruptcy proceedings were pending. Neither the state courts nor the federal courts could have entertained jurisdiction. The Revised Statutes, whether inadvertently or not, have made the jurisdiction of the United States courts exclusive in "all matters and proceedings in bankruptcy." Sec. 711. Whether this regulation will or will not affect the cognizance of plenary actions and suits it is not necessary now to determine. At all events, the question of such cognizance must be met in this case, and, being important in the principles involved, would

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require much deliberate consideration had it not been already in effect decided by the Court.

In the opinion of the Court in Lathrop v. Drake, it was taken for granted, and stated, that the state courts had jurisdiction, p. 91 U. S. 518; but as the question was not directly involved in that case, it was more fully considered in Eyster v. Gaff, 91 U. S. 521, and it was there decided that a state court is not deprived of jurisdiction of a case by the bankruptcy of the defendant, but may proceed to judgment without noticing the bankruptcy proceedings if the assignee does not cause his appearance to be entered or proceed against him if he does appear. If there were anything in the Constitution to incapacitate the state courts from taking cognizance of causes after the bankruptcy of the parties, as the constitutional argument of the plaintiff in error supposes, the proceedings in bankruptcy would ipso facto determine them. But on this subject, in Eyster v. Gaff the Court said:

"It is a mistake to suppose that the bankrupt law avoids, of its own force, all judicial proceedings in the state or other courts the instant one of the parties is adjudged a bankrupt. There is nothing in the act which sanctions such a proposition."

Again:

"The debtor of a bankrupt, or the man who contests the right to real or personal property with him, loses none of those rights by the bankruptcy of his adversary. The same courts remain open to him in such contests, and the statute has not divested those courts of jurisdiction in such actions. If it has, for certain classes of actions, conferred a jurisdiction for the benefit of the assignee in the circuit and district courts of the United States, it is concurrent with, and does not divest that of, the state courts."

Pp. 91 U. S. 525-526.

The same conclusion has been reached in other courts, both federal and state, which hold that the state courts have concurrent jurisdiction with the United States courts of actions and suits in which a bankrupt or his assignee is a party. See Samson v. Burton, 4 Bank.Reg. 1; Payson v. Dietz, 8 id. 193; Gilbert v. Priest, 8 id. 159; Stevens v. Mechanics' Savings Bank, 101 Mass. 109; Cook v. Whipple, 55 N.Y. 150; Brown v. Hall, 7 Bush, 66; Mays v. Man. Nat. Bank, 64 Penn. 74. There are contrary cases, it is true, as Brigham v. Claflin, 31 Wis. 607,
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Voorhees v. Frisbie, 25 Mich. 476, and others, but we think that the former cases are founded on the better reason.

The assignee, by the fourteenth section of the Bankrupt Act, Rev.Stat. sec. 5046, becomes invested with all the bankrupt's rights of action for property and actions arising from contract or the unlawful taking or detention of or injury to property and a right to sue for the same. The actions which lie in such cases are common law actions, ejectment, trespass, trover, assumpsit, debt, &c., or suits in equity. Of these actions and suits the state courts have cognizance. Why should not an assignee have power to bring them in those courts as well as other persons? Aliens and foreign corporations may bring them. The assignee simply derives his title through a law of the United States. Should not that title be respected by the state courts?

The case is exactly the same as that of the Bank of the United States. The first bank, chartered in 1791, had capacity given it "to sue and be sued . . . in courts of record, or any other place whatsoever." It was held, in Bank v. Deveaux, 5 Cranch, 61, that this did not authorize the bank to sue in the courts of the United States without showing proper citizenship of the parties in different states. The bank was obliged to sue in the state courts. And yet here was a right arising under a law of the United States, as much so as can be affirmed of a case of an assignee in bankruptcy. The second bank of the United States had express capacity "to sue and be sued in all state courts having competent jurisdiction, and in any circuit court of the United States." In the case of Osborn v. Bank, 9 Wheat. 738, 815 [argument of counsel -- omitted], it was objected that Congress had not authority to enable the bank to sue in the federal courts merely because of its being created by an act of Congress. But the Court held otherwise, and sustained its right to sue therein. No question was made of its right to sue in the state courts.

Under the bankrupt law of 1841, with substantially the same provisions on this subject as the present law, it was held that the assignee could sue in the state courts. 44 U. S. 319; Nugent v. Boyd, 3 How. 426; Wood v. Jenkins,@ 10 Met. 583.

Other analogous cases have occurred, and the same result has
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been reached, the general principle being that where jurisdiction may be conferred on the United States courts, it may be made exclusive where not so by the Constitution itself, but if exclusive jurisdiction be neither express nor implied, the state courts have concurrent jurisdiction whenever, by their own constitution, they are competent to take it. Thus the United States itself may sue in the state courts, and often does so. If this may be done, surely, on the principle that the greater includes the less, an officer or corporation created by United States authority may be enabled to sue in such courts. Nothing in the Constitution, fairly considered, forbids it.

The general question whether state courts can exercise concurrent jurisdiction with the

federal courts in cases arising under the Constitution, laws, and treaties of the United States has been elaborately discussed both on the bench and in published treatises – sometimes with a leaning in one direction and sometimes in the other – but the result of these discussions has, in our judgment, been, as seen in the above cases, to affirm the jurisdiction, where it is not excluded by express provision or by incompatibility in its exercise arising from the nature of the particular case.

When we consider the structure and true relations of the federal and state governments, there is really no just foundation for excluding the state courts from all such jurisdiction.

The laws of the United States are laws in the several states, and just as much binding on the citizens and courts thereof as the state laws are. **The United States is not a foreign sovereignty as regards the several states**, but is a concurrent, and, within its jurisdiction, paramount sovereignty. Every citizen of a state is a subject of two distinct sovereignties, having concurrent jurisdiction in the state – concurrent as to place and persons, though distinct as to subject matter. Legal or equitable rights, acquired under either system of laws, may be enforced in any court of either sovereignty competent to hear and determine such kind of rights and not restrained by its constitution in the exercise of such jurisdiction. Thus, a legal or equitable right acquired under state laws may be prosecuted in the state courts and also, if the parties reside in different states, in the federal courts. So rights, whether legal or equitable, acquired
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under the laws of the United States, may be prosecuted in the United States courts or in the state courts competent to decide rights of the like character and class, subject, however, to this qualification -- that where a right arises under a law of the United States, Congress may, if it see fit, give to the federal courts exclusive jurisdiction. See remarks of MR. JUSTICE FIELD in The Moses Taylor, 4 Wall. 429, and Story, J., in Martin v. Hunter's Lessee, 1 Wheat. 334, and of MR. JUSTICE SWAYNE in Ex Parte McNeil, 13 Wall. 236. This jurisdiction is sometimes exclusive by express enactment and sometimes by implication. If an act of Congress gives a penalty to a party aggrieved without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a state court. The fact that a state court derives its existence and functions from the state laws is no reason why it should not afford relief, because it is subject also to the laws of the United States, and is just as much bound to recognize these as operative within the state as it is to recognize the state laws. The two together form one system of jurisprudence which constitutes the law of the land for the state, and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent. The disposition to regard the laws of the United States as emanating from a foreign jurisdiction is founded on erroneous views of

the nature and relations of the state and federal governments. It is often the cause or the consequence of an unjustifiable jealousy of the United States government which has been the occasion of disastrous evils to the country.

It is true, the sovereignties are distinct, and neither can interfere with the proper jurisdiction of the other, as was so clearly shown by Chief Justice Taney in the case of Ableman v. Booth, 21 How. 506, and hence the state courts have no power to revise the action of the federal courts, nor the federal the state, except where the federal Constitution or laws are involved. But this is no reason why the state courts should not be open for the prosecution of rights growing out of the laws of the United States, to which their jurisdiction is competent, and not denied.

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A reference to some of the discussions, to which the subject under consideration has given rise, may not be out of place on this occasion.

It was fully examined in the eighty-second number of "The Federalist," by Alexander Hamilton, with his usual analytical power and far-seeing genius, and hardly an argument or a suggestion has been made since which he did not anticipate. After showing that exclusive delegation of authority to the federal government can arise only in one of three ways -- either by express grant of exclusive authority over a particular subject or by a simple grant of authority, with a subsequent prohibition thereof to the states, or lastly where an authority granted to the Union would be utterly incompatible with a similar authority in the states -- he says that these principles may also apply to the judiciary as well as the legislative power. Hence he infers that the state courts will retain the jurisdiction they then had unless taken away in one of the enumerated modes. But as their previous jurisdiction could not be possibility extend to cases which might grow out of and be peculiar to the new constitution, he considered that, as to such cases, Congress might give the federal courts sole jurisdiction. "I hold," says he,

"that the state courts will be divested of no part of their primitive jurisdiction further than may relate to an appeal, and I am even of opinion that in every case in which they were not expressly excluded by the future acts of the national legislature, they will, of course, take cognizance of the causes to which those acts may give birth. This I infer from the nature of judiciary power and from the general genius of the system. The judiciary power of every government looks beyond its own local or municipal laws and, in civil cases, lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe. . . . When, in addition to this, we consider the state governments and the national government, as they truly are, in the

light of kindred systems, and as parts of ONE WHOLE, the inference seems to be conclusive that the state courts would have concurrent jurisdiction in all cases arising under the laws of the Union where it was not expressly prohibited. "

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These views seem to have been shared by the first Congress in drawing up the Judiciary Act of Sept. 24, 1789, for, in distributing jurisdiction among the various courts created by that act, there is a constant exercise of the authority to include or exclude the state courts therefrom, and where no direction is given on the subject, it was assumed in our early judicial history that the state courts retained their usual jurisdiction concurrently with the federal courts invested with jurisdiction in like cases.

Thus, by the Judiciary Act, exclusive cognizance was given to the circuit and district courts of the United States of all crimes and offenses cognizable under the authority of the United States, and the same to the district courts, of all civil causes of admiralty and maritime jurisdiction, of all seizures on water under the laws of impost, navigation, or trade of the United States, and of all seizures on land for penalties and forfeitures incurred under said laws. Concurrent jurisdiction with the state courts was given to the district and circuit courts of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States, and of all writs at common law where the United States are plaintiffs; the same to the circuit courts, where the suit is between a citizen of the state where the suit is brought and a citizen of another state, where an alien is a party, &c. Here, no distinction is made between those branches of jurisdiction in respect to which the Constitution uses the expression "all cases," and those in respect to which the term "all" is omitted. Some have supposed that wherever the Constitution declares that the judicial power shall extend to "all cases" -- as all cases in law and equity arising under the Constitution, laws, and treaties of the United States; all cases affecting ambassadors, &c. -- the jurisdiction of the federal courts is necessarily exclusive; but that where the power is simply extended "to controversies" of a certain class -- as, "controversies to which the United States is a party," &c. -- the jurisdiction of the federal courts is not necessarily exclusive. But no such distinction seems to have been recognized by Congress, as already seen in the Judiciary Act, and subsequent acts show the same thing. Thus, the first patent law for securing to inventors

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their discoveries and inventions, which was passed in 1793, gave treble damages for an infringement, to be recovered in an action on the case founded on the statute in the circuit court of the United States, "or any other court having competent jurisdiction" -- meaning, of course, the state courts. The subsequent acts on the same subject were couched in such terms with regard to the jurisdiction of the circuit courts as to imply that it was exclusive

of the state courts, and now it is expressly made so. See Patent Acts of 1800, 1819, 1836, 1870, and Rev.Stat.U.S., sec. 711; Parsons v. Barnard, 7 Johns. 144; Dudley v. Mayhew, 3 Comst. 14; Elmer v. Pennel, 40 Me. 434.

So with regard to naturalization – a subject necessarily within the exclusive regulation of Congress – the first act on the subject, passed in 1790, and all the subsequent acts, give plenary jurisdiction to the state courts. The language of the act of 1790 is "any common law court of record in any one of the states," &c. 1 Stat. 103. The act of 1802 designates

"the supreme, superior, district, or circuit court of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States."

2 Stat. 153.

So, by acts passed in 1806 and 1808, jurisdiction was given to the county courts along the northern frontier of suits for fines, penalties, and forfeitures under the revenue laws of the United States. 2 Stat. 354, 489. And by Act of March 3, 1815, cognizance was given to state and county courts generally of suits for taxes, duties, fines, penalties, and forfeitures arising under the laws imposing direct taxes and internal duties. 3 Stat. 244.

These instances show the prevalent opinion which existed that the state courts were competent to have jurisdiction in cases arising wholly under the laws of the United States, and whether they possessed it or not in a particular case was a matter of construction of the acts relating thereto. It is true that the state courts have in certain instances declined to exercise the jurisdiction conferred upon them, but this does not militate against the weight of the general argument. See United States v. Lathrop, 17 Johns. 4. See especially the able dissenting opinion of Mr. Justice Platt, id., 11.

It was indeed intimated by Mr. Justice Story, obiter dictum, in delivering the opinion of the Court in @ 14 U. S. 337, that the state courts could not take direct cognizance of cases arising under the Constitution, laws, and treaties of the United States, as no such jurisdiction existed before the Constitution was adopted. This is true as to jurisdiction depending on United States authority, but the same jurisdiction existed (at least to a certain extent) under the authority of the states. Inventors had grants of exclusive right to their inventions before the Constitution was adopted, and the state courts had jurisdiction thereof. The change of authority creating the right did not change the nature of the right itself. The assertion, therefore, that no such jurisdiction previously existed must be taken with important limitations, and did not have much influence with the court when a proper case arose for its adjudication. Houston v. Moore, decided in 1820, 5 Wheat. 1, was such a case. Congress, in 1795, had passed an act for organizing and calling forth the militia,

which prescribed the punishment to be inflicted on delinquents, making them liable to pay a certain fine, to be determined and adjudged by a court-martial, without specifying what court-martial. The Legislature of Pennsylvania also passed a militia law, providing for the organization, training, and calling out the militia, and establishing courts-martial for the trial of delinquents. The law in many respects exactly corresponded with that of the United States, and, as far as it covered the same ground, was for that reason held to be inoperative and void. Houston, a delinquent under the United States law, was tried by a state court-martial, and it was decided that the court had jurisdiction of the offense, having been constituted, in fact, to enforce the laws of the United States which the state legislature had reenacted. But the decision (which was delivered by Mr. Justice Washington) was based upon the general principle that the state court had jurisdiction of the offense irrespective of the authority, state or federal, which created it. Not that Congress could confer jurisdiction upon the state courts, but that these courts might exercise jurisdiction on cases authorized by the laws of the state and not prohibited by the exclusive jurisdiction of the federal courts. Justices Story and Johnson dissented, and perhaps the Court went further in that case than it would now. The act of Congress having
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instituted courts-martial, as well as provided a complete code for the organization and calling forth of the militia, the entire law of Pennsylvania on the same subject might well have been regarded as void. Be this as it may, it was only a question of construction, and the Court conceded that Congress had the power to make the jurisdiction of its own courts exclusive.

In Cohens v. Virginia, 6 Wheat. 415, Chief Justice Marshall demonstrates the necessity of an appellate power in the federal judiciary to revise the decisions of state courts in cases arising under the Constitution and laws of the United States in order that the constitutional grant of judicial power, extending it to all such cases, may have full effect. He said,

"The propriety of entrusting the construction of the Constitution and laws made in pursuance thereof to the judiciary of the Union has not, we believe, as yet been drawn in question. It seems to be a corollary from this political axiom that the federal courts should either possess exclusive jurisdiction in such cases or a power to revise the judgment rendered in them by the state tribunals. If the federal and state courts have concurrent jurisdiction in all cases arising under the Constitution, laws, and treaties of the United States, and if a case of this description brought in a state court cannot be removed before judgment nor revised after judgment, then the construction of the Constitution, laws, and treaties of the United States is not confided particularly to their judicial department, but is confided equally to that department and to the state courts, however they may be constituted."

See the subject further discussed in 1 Kent's Com. 395, &c., Sergeant on the Const. 268; 2 Story on the Const., sec. 1748, &c.; 1 Curtis's Com., secs. 119, 134, &c.

The case of Teal v. Felton was a suit brought in the state court of New York against a postmaster for neglect of duty to deliver a newspaper under the postal laws of the United States. The action was sustained by both the supreme court and Court of Appeals of New York, and their decision was affirmed by this Court. 1 Comst. 537; 12 How. 292. We do not see why this case is not decisive of the very question under consideration.

Without discussing the subject further, it is sufficient to say,
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that we hold that the assignee in bankruptcy, under the Bankrupt Act of 1867 as it stood before the revision, had authority to bring a suit in the state courts wherever those courts were invested with appropriate jurisdiction suited to the nature of the case.

Judgment affirmed.

* * * * * *

Proponents of the baseless argument that the United States is a foreign corporation or foreign sovereignty with respect to the States point to 2 cases as authority for the argument, but in reality these 2 are really one case: an appeal to the Supreme Court from the New York Court of Appeals. Neither decision supports this argument. Both cases, *In re Merriam*, 141 N.Y. 479, 36 N.E. 505 (1894), affirmed 163 U.S. 625, 16 S.Ct. 1073 (1896), are below. Neither supports the argument.

Matter of Merriam, 141 N.Y. 479, 36 N.E. 505 (1894):

In the Matter of the Appraisal for Taxation of the Estate of WILLIAM W. MERRIAM, Deceased.

Court of Appeals of the State of New York.

Argued February 26, 1894

Decided March 6, 1894

BARTLETT, J.

This is an appeal from an order of the general term of the Supreme Court in the second

department, affirming two several orders of the Surrogate's Court of
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Suffolk county. Two questions are raised by this appeal: First, whether or not a bequest of money to the United States is liable to pay the inheritance tax imposed by the laws of this state; second, can such a tax be levied on stock of a foreign corporation, which was the property of the decedent at the time of his death, the proceeds of which pass to the United States. The courts below have answered both of these questions in the affirmative. The testator died January 30th, 1889, and the tax was assessed February 16th, 1893, on the personal estate bequeathed to the United States. At that time chapter 399, Laws of 1892, entitled "An act in relation to taxable transfers of property," was in force and had repealed all previous acts, subject to a saving clause contained in section twenty-four of said act, providing, in substance, that the repeal should not affect or impair any act done, or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the passage of said act. Section twenty-five of said act also provides that "the provisions of this act, so far as they are substantially the same as those of laws existing April 30th, 1892, shall be construed as a continuation of such laws, modified or amended according to the language employed in this act, and not as new enactments." So that when this tax was assessed it was under the said law of 1892 construed as amending the previous statutes.

Section one of said act reads in part as follows: "A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, * * * to persons or corporations not exempt by law from taxation on real or personal property," etc.

In the view we take of this case the legacy to the United States is subject to this tax whether we consider the assessment as made under the language of the law of 1892, or of the various statutes it amends and repeals. Whether the transfer is "to persons or corporations," in the language of the law of 1892, or "to any person or persons, or to a body politic or corporate," in the words of the earlier statutes, we are of opinion the language includes the government of the
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United States. For the purpose of receiving legacies and for many other purposes, the United States is to be regarded as a body politic and corporate. In the United States v. Maurice et al. (2 Brockenbrough's Reports, 96), Chief Justice MARSHALL says at page 109: "The United States is a government, and, consequently, a body politic and corporate, capable of attaining the objects for which it was created by the means which are necessary for their attainment. This great corporation was ordained and established by the American people, and endowed by them with great powers for important purposes."

The United States being capable of taking this legacy, it remains to consider whether there is any reason why this tax should not be collected. This court has recently decided that this tax is not imposed on property, but on the right of succession under a will, or devolution in case of intestacy. (In the Matter of the Estate of James T. Swift, 137 N.Y. 77.)

This tax, in effect, limits the power of testamentary disposition, and legatees and devisees take their bequests and devises subject to this tax imposed upon the succession of property. This view eliminates from the case the point urged by the appellant that to collect this tax would be in violation of the well-established rule that the state cannot tax the property of the United States. Assuming this legacy vested in the United States at the moment of testator's death, yet in contemplation of law the tax was fixed on the succession at the same instant of time. This is not a tax imposed by the state on the property of the United States. The property that vests in the United States under this will is the net amount of its legacy after the succession tax is paid. The appellant urges that the United States, if regarded as a corporation, is, under the act in relation to the taxable transfers of property, a corporation exempt from taxation.

This court has held that the provisions exempting the religious, charitable and other corporations named in the Inheritance Tax Acts apply only to domestic corporations. (Matter of Estate of Prime, 136 N.Y. 347.) It is suggested that the United States is to be regarded as a domestic corporation,
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so far as the State of New York is concerned. We think this contention has no support in reason or authority. A domestic corporation is the creature of this state created by its legislature, or located here and created by or under the laws of the United States. (Code of Civil Pro., § 3343, sub. 18.) The United States is a government and body politic and corporate, ordained and established by the American people acting through the sovereignty of all the states.

There remains one other question in this case as presented by the briefs of appellant — whether the stocks of foreign corporations held by the executor are to be regarded as part of the estate, subject to the tax now under consideration. The tax being imposed on the right of succession, and not on the property, as before remarked, this question must be answered in the affirmative. To compute the succession tax on the total personal estate is not imposing a tax on the stocks of foreign corporations constituting a part of that estate.

The orders appealed from are affirmed, with costs.

All concur.

Orders affirmed.

* * * * * *

United States v. Perkins, 163 U.S. 625, 16 S.Ct. 1073 (1896):

ERROR TO THE SUPREME COURT

OF THE STATE OF NEW YORK

Syllabus

Personal property, bequeathed by will to the United States, is subject to an inheritance tax under state law.

Under the statutes of New York, the United States are not a corporation, exempted from such inheritance tax.

This was a writ of error to an order of the general term of the supreme court affirming an order of the Surrogate's Court of Suffolk County assessing an inheritance tax of $3,964.23 upon the personal property of William W. Merriam, bequeathed by him to the United States.

It appeared that Merriam, who was a resident of Suffolk County, died on January 30, 1889, leaving a last will and testament by which he devised and bequeathed all his estate, both real and personal, to the United States government. Upon the petition of the executor, an appraiser was appointed, and upon his report, the surrogate fixed the tax at the above amount. On appeal to the general term of the supreme court, the order of the surrogate's court was affirmed, and upon a further appeal to the Court of Appeals, the order of the supreme court was affirmed and the case remanded to that court for final judgment, which was entered against the United States March 31, 1894, whereupon the United States and the executor joined in suing out this writ of error. Defendant in error is the County Treasurer of Suffolk County.

MR. JUSTICE BROWN, after stating the facts in the foregoing language, delivered the opinion of the Court.

This case raises the single question whether personal
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property bequeathed by will to the United States is subject to an inheritance tax under the

laws of New York.

By chapter 483, Laws 1885, as amended by chapter 215, Laws 1891, it was enacted as follows:

"SEC. 1. After the passage of this act, all property which shall pass by will or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, . . . to any person or persons, or to any body politic or corporate, in trust or otherwise, . . . other than to or for societies, corporations and institutions now exempted by law from taxation, or from collateral inheritance tax, shall be and is subject to a tax at the rate hereinafter specified,"

etc.

By chapter 399 of the Laws of 1892, entitled "An act in relation to taxable transfers of property" (sec. 1),

"a tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, . . . to persons or corporations not exempt by law from taxation on real or personal property."

By sec. 23 of this law, certain previous acts were repealed, subject to a saving clause contained in sec. 24 to the effect that the repeal should not affect or impair any act done, or right accruing, accrued, or acquired, or liability, penalty, forfeiture, or punishment incurred, prior to the passage of this act. The twenty-fifth section also provided that the provisions of this act, so far as they were substantially the same as those of the laws existing April 30, 1892, should be construed as a continuation of such laws, modified or amended according to the language employed in this act, and not as new enactments.

The testator, Merriam, died January 30, 1889; but the tax was not assessed until February 16, 1893, after the act of 1892 had taken effect. Upon this state of facts, the Court of Appeals of New York was of opinion that the case was covered by the act of 1892, although it was though that the legacy was subject to taxation, whether it was taxed under that or the previous acts. This ruling as to the applicability of the act of 1892 seems to conflict with the case of In re Seaman's Estate, 147 N.Y. 69, but the difference is not material in this case.

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The case really presents two questions:

1. Whether it is within the power of the state to tax bequests to the United States.

2. Whether, under these statutes, the United States are a corporation exempted by law from taxation.

1. While the laws of all civilized states recognize in every citizen the absolute right to his own earnings and to the enjoyment of his own property and the increase thereof during his life, except so far as the state may require him to contribute his share for public expenses, the right to dispose of his property by will has always been considered purely a creature of statute, and within legislative control

"By the common law as it stood in the reign of Henry the Second, a man's goods were to be divided into three equal parts, of which one went to his heirs or lineal descendants, another to his wife, and a third was at his own disposal, or, if he died without a wife, he might then dispose of one moiety, and the other went to his children, and so, e converso, if he had no children, the wife was entitled to one moiety, and he might bequeath the other; but if he died without either wife or issue, the whole was at his own disposal."

2 Bl.Com. 492. Prior to the "Statute of Wills," enacted in the reign of Henry VIII., the right to a testamentary disposition of property did not extend to real estate at all, and as to personal estate was limited as above stated. Although these restrictions have long since been abolished in England, and never existed in this country except in Louisiana, the right of a widow to her dower and to a share in the personal estate is ordinarily secured to her by statute.

By the Code Napoleon, gifts of property, whether by acts inter vivos or by will, must not exceed one-half the estate if the testator leave but one child, one-third if he leaves two children, one-fourth if he leaves three or more. If he have no children, but leaves ancestors both in the paternal and maternal line, he may give away but one-half of his property, and but three-fourths if he have ancestors in but one line. By the law of Italy, one-half a testator's property must be distributed equally among all his children. The other half he may
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leave to his eldest son, or to whomsoever he pleases. Similar restrictions upon the power of disposition by will are found in the codes of other continental countries, as well as in the State of Louisiana. Though the general consent of the most enlightened nations has, from the earliest historical period, recognized as natural right in children to inherit the property of their parents, we know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition, or imposing such conditions upon its exercise as it may deem conducive to public good.

In this view, the so-called "inheritance tax" of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases -- a declaration that, in the exercise of that power, he shall contribute a certain percentage to the public use; in other words, that the right to dispose of his property by will shall remain, but subject to a condition that the state has a right to impose. Certainly, if it be true that the right of testamentary disposition is purely statutory, the state has a right to require a contribution to the public treasury before the bequest shall take effect. Thus, the tax is not upon the "property," in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the state that it becomes the property of the legatee. This was the view taken of a similar tax by the Court of Appeals of Maryland in State v. Dalrymple, 70 Md. 294, 299, in which the court observed:

"Possessing, then, the plenary power indicated, it necessarily follows that the state, in allowing property . . . to be disposed of by will and in designating who shall take such property when there is no will, may prescribe such conditions, not in conflict with or forbidden by the organic law, as the legislature may deem expedient. These conditions, subject to the limitation named, are consequently wholly within the discretion of the General Assembly. The act we are now considering plainly intended to require that a person taking the benefit of a civil right secured to him under our laws should pay a certain premium for its enjoyment. In other words, one of the conditions upon which strangers and
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collateral kindred may acquire a decedent's property, which is subject to the dominion of our laws, is that there shall be paid out of such property a tax of two and a half percent into the treasury of the state. This therefore is not a tax upon the property itself, but is merely the price exacted by the state for the privilege accorded in permitting property so situated to be transferred by will or by descent or distribution."

That the tax is not a tax upon the property itself, but upon its transmission by will or by descent, is also held both in New York and in several other states: In re Swift, 137 N.Y. 77, in which it is said, p. 85, that

"the effect of this special tax is to take from the property a portion or a percentage of it for the use of the state, and I think it quite immaterial whether the tax can be precisely classified with a taxation of property or not. It is not a tax upon persons."

In re Hoffman's Estate, 143 N.Y. 327; Schoolfeld's Executor v. Lynchburg, 78 Va. 366; Strode v. Commonwealth, 52 Penn.St. 181; In re Collum's Will, 145 N.Y. 593. In this last case, as well as in Wallace v. Myers, 38 F.1d 4, it was held that although the property of the decedent included United States bonds, the tax might be assessed upon the basis of their value, because the tax was not imposed upon the bonds themselves, but upon the

estate of the decedent or the privilege of acquiring property by inheritance. Eyre v. Jacob, 14 Grattan 427; Dos Passos on Inheritance Tax Law, c. 2, sec. 8, and cases cited. Such a tax was also held by this Court to be free from any constitutional objection in @ 49 U. S. 493, Mr. Chief Justice Taney remarking that

"the law in question is nothing more than an exercise of the power which every state and sovereignty possesses of regulating the manner and terms within which property, real and personal, within its dominion may be transferred by last will and testament or by inheritance, and of prescribing who shall and who shall not be capable of taking it. . . . If a state may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or
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policy."

To the same effect is United States v. Fox, 94 U. S. 315.

We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it.

2. Whether the United States are a corporation "exempt by law from taxation" within the meaning of the New York statutes is the remaining question in the case. The Court of Appeals has held that this exemption was applicable only to domestic corporations declared by the laws of New York to be exempt from taxation. Thus, in Matter of Estate of Prime, 136 N.Y. 347, it was held that foreign religious and charitable corporations were not exempt from the payment of a legacy tax, Chief Judge Andrews observing (p. 360):

"We are of opinion that a statute of a state granting powers and privileges to corporations must, in the absence of plain indications to the contrary, be held to apply only to corporations created by the state, and over which it has power of visitation and control. . . . The legislature in such cases is dealing with its own creations, whose rights and obligations it may limit, define, and control."

To the same effect are Catlin v. Trustees of Trinity College, 113 N.Y. 133; White v. Howard, 46 N.Y. 144; In re Balleis' Estate, 144 N.Y. 132; Minot v. Winthrop, 162 Mass. 113; Dos Passos, c. 3, sec. 34. If the ruling of the Court of Appeals of New York in this particular case be not absolutely binding upon us, we think that, having regard to the purpose of the law to impose a tax generally upon inheritances, the legislature intended to

allow an exemption only in favor of such corporations as it had itself created, and which might reasonably be supposed to be the special objects of its solicitude and bounty.

In addition to this, however, the United States are not one of the class of corporations intended by law to be exempt

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from taxation. What the corporations are to which the exemption was intended to apply are indicated by the tax laws of New York, and are confined to those of a religious, educational, charitable, or reformatory purpose. We think it was not intended to apply it to a purely political or governmental corporation, like the United States. Catlin v. Trustees of Trinity College, 113 N.Y. 133; In re Van Kleeck, 121 N.Y. 701; Dos Passos, c. 3, sec. 34. In the Matter of Hamilton, 148 N.Y. 310, it was held that the execution did not apply to a municipality, even though created by the state itself.

Upon the whole, we think the construction put upon the statute by the Court of Appeals was correct, and the judgment of the supreme court is therefore

Affirmed.

MR. JUSTICE HARLAN dissents.