TAX DEPOSITION QUESTIONS: 5. FIRST AMENDMENT AND SOCIALISM

5. FIRST AMENDMENT AND SOCIALISM

Introduction

The 1st Amendment to the U.S. Constitution reiterates the bedrock principle that People are Sovereign and have the unalienable right to petition the government for redress of grievances and to be properly answered.

The entire Citizen's Truth-in-Taxation Hearing is the direct result of a petition from the People to the government regarding the income tax system of this nation. As of this writing, the Government has refused to respond to the petition.

There is no right, or liberty which the government will not sacrifice on the alter of the "general welfare." Property, labor, wealth, freedom, liberty, speech, petition, due process are all eliminated in the name of enhancing the efficiency and effectiveness of the taxing machine so that the Government can solve the nation's ills.

This is not the destiny of a free, spiritual and Sovereign People.

Findings and Conclusions

With the following series of questions, we intend to show that personal income taxes polarize and divide an otherwise United nation and promote class warfare and mistrust of our government. We will also show that:

- **Direct taxes are communistic and socialistic in their origins and application.**
- **Graduated income taxes on persons based on income discriminate against the rich and violate the uniformity clauses of the Constitution found in Article 1, Section 8, Clause 1.**
- **In order to be uniform, the percentage of taxes deducted for every person must be the same, because the article being taxed, which is dollars, is the same for every person.**
- **The Constitutional purpose of our tax system is to support government, and it was never intended to be used for welfare or social programs.**
- **Use of our tax system to redistribute wealth from the richer to the poorer amounts to socialism and organized extortion.**
- **Compelled charity instituted using our tax system amounts to slavery.**
- **Slavery is a more egregious evil than than the absence of charity.**
- **The filing of a tax return with zeros amounts to the exercise of a First Amendment right to petition the government for redress of Grievances, which cannot be penalized, fined, or sanctioned by the government. The government routinely ignores this fact and tries to override the First Amendment by penalizing persons who submit such returns.**
- **Even though Social Security has always been intended as a voluntary program, it has, for all practical purposes, become a mandatory program for most Americans.**
- **The making of Social Security into a mandatory program creates slavery to the government and mandatory idolatry.**
- **Socialism is incompatible with Christianity and the judeo-Christian values of this country.**
- **Congress delegating authority for collection of taxes from the Legislative branch to the Executive Branch and the IRS violates the Constitution, as Congress cannot delegate its powers.**

Section Summary

Witnesses:

- Larry Becraft (Constitutional Attorney)
- Sherry Jackson (Ex. IRS Examiner)

Transcript

Acrobat version of this section including questions and evidence (large: 11.53 MBytes)

Further Study On Our Website:

- A "Republican Form of Government"-Antishyster News Magazine, Vol. 11, No. 3
- Socialism: The New American Civil Religion, Form #05.016 (OFFSITE LINK) -SEDM
- Is the Income Taxes a Form of Slavery?
- Great IRS Hoax book:
    - Chapter 2: U.S. Government Background
    - Section 1.9: What Attitude are Christians Expected to Have About This Document?
    - Section 2.8: Sources of Government Tyranny and Oppression
    - Section 3.10.8.1: First Amendment: Right to Petition the Government for Redress of Grievances
    - Section 4.7: Two Political Models: "United States" and "United States of America"
- Rendering Unto Caesar That Which is Caesar's
- Socialism v. Capitalism: Which is the Moral System?
- Social Security: Idolatry and Slavery
- The Ghost of Valley Forge
- Two Political Jurisdictions: "National government" v. "Federal/General government"
- Why Civil Disobedience to Corrupt Governments is a Biblical Mandate

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5.1. Admit that the second plank in the Communist Manifesto calls for a heavy, progressive (graduated) income tax not unlike what we have now with the IRS form 1040, which punishes the rich so that wealthy may be redistributed to the poor. (WTP #458)

- Click here for Communist Manifesto #1 (WTP Exhibit 458)
- Click here for Communist Manifesto #2 (WTP Exhibit 458bb)
- Click here for IRS form 1040 evidence

5.2. Admit that the U.S. Constitution requires that all income taxes must be uniform as follows, from in Article 1, Section 8, clause 1 of the U.S. Constitution, which says: (WTP #459)

> *"The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;"*

- Click here for Article 1 of the U.S. Constitution (WTP Exhibit 459)
- Click here for IRS Publication 2105: Why Do I Have to Pay Taxes (note that the uniformity portion of 1:8:1 is conveniently omitted by the IRS)

5.3. Admit that to be uniform, a tax must apply equally to all persons similarly situated and all property of the same type or class being taxed must be taxed at the same percentage rate, no matter where people live, where the property is, or how much taxable income the person makes. Otherwise, the tax discriminates against the rich. (WTP #460)

5.4. Admit that the Supreme Court stated in the case of ***Pollack v. Farmer's Loan and Trust Company***, 157 U.S. 429, 158 U.S. 601 (1895) that: (WTP #461)

> *"Congress has the exclusive power of selecting the class. It has regulated that particular branch of commerce which concerns the bringing of alien passengers,' and that taxes shall be levied upon such property as shall be prescribed by law.* ***The object of this provision was to prevent unjust discriminations. It prevents property from being classified, and taxed as classed, by different rules.*** *All kinds of property must be taxed uniformly or be entirely exempt. The uniformity must be coextensive with the territory to which the tax applies.*
>
> *Mr. Justice Miller, in his lectures on the constitution, 1889-1890 (pages 240, 241), said of taxes levied by congress: '****The tax must be uniform on the particular article; and it is uniform, within the meaning of the constitutional requirement, if it is made to bear the same percentage over all the United States.*** *That is manifestly the meaning of this word, as used in this clause. The framers of the constitution could not have meant to say that the government, in raising its revenues, should not be allowed to discriminate between the articles which it should tax.' In discussing generally the requirement of uniformity found in state constitutions, he said: 'The difficulties in the way of this construction have, however, been very largely obviated by the meaning of the word [157 U.S. 429, 595] 'uniform,' which has been adopted, holding that the uniformity must refer to articles of the same class; that is, different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times.'*
>
> *One of the learned counsel puts it very clearly when he says that the correct meaning of the provisions requiring duties, imposts, and excises to be 'uniform throughout the United States' is that the law imposing them should 'have an equal and uniform application in every part of the Union.'*
>
> ***If there were any doubt as to the intention of the states to make the grant of the right to impose indirect taxes subject to the condition that such taxes shall be in all respects uniform and impartial, that doubt, as said by counsel, should be resolved in the interest of justice, in favor of the taxpayer.'***

- Click here Pollack v. Farmer's Loan and Trust Company, 157 U.S. 429, 158 U.S. 601 (1895) (WTP Exhibit 461)

5.5. Admit that the article being taxed in the case of Subtitle A income taxes is dollar bills, or "income" as constitutionally defined. (WTP #462)

5.6. Admit that in order to meet the uniformity requirement, every dollar bill (the article being taxed) taxed must be taxed at the *same rate* and not in a way that is based on the income of the person receiving it, because this would amount to discrimination according to the Supreme Court as listed above. (WTP #463)

5.7. Admit that because graduated income taxes violate the uniformity requirement of the Constitution, they must be voluntary, because the government cannot by legislation compel its citizens to violate the Constitution. (WTP #464)

5.8. Admit that the Supreme Court stated the following about the nature of income taxes in general, and that neither of these two cases has ever been overruled: (WTP #465)

> *"To lay with one hand the power of government on the property of the citizen, and with the other to bestow it on favored individuals.. is none the less robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms."*
> ***Loan Association v. Topeka,*** *20 Wall. 655 (1874)*

- Click here for evidence from Loan Association v. Topeka, 20 Wall. 655 (1874)

> *"A tax, in the general understanding of the term and as used in the constitution, signifies an exaction for the support of the government. The word has never thought to connote the expropriation of money from one group for the benefit of another."* ***U.S. v. Butler****, 297 U.S. 1 (1936)*

- Click here for evidence from U.S. v. Butler, 297 U.S. 1 (1936) (WTP Exhibit 465)

5.9. Admit that all entitlement programs, including Welfare, Social Security, FICA, etc, fall into the class of taxes identified in **U.S. v. Butler** that are "expropriations of money from one group for the benefit of another." (WTP #466)

- Click here for evidence from U.S. v. Butler, 297 U.S. 1 (1936)

5.10. Admit that using income taxes to redistribute income or property between social classes or persons within society makes the U.S. into a socialist country: (WTP #467)

> ***"socialism 1.*** *: any of various economic political theories advocating collective or governmental ownership and administration of the means of production and distribution of goods.* ***2. a****: a system of society or group living in which there is no private property b: a system or condition of society in which the means of production are owned and controlled [partially or wholly] by the state* ***3****:* ***a stage of society in Marxist theory transitional between capitalism and communism*** *and distinguished by unequal distribution of goods and pay according to work done."*
> *[Webster's Ninth New Collegiate Dictionary, 1983, Merriam-Webster, p. 1118]*

- Click here for definition of socialism (WTP Exhibit 467)

5.11. Admit that the Supreme Court, in ***Pollock v. Farmers Loan and Trust***, 157 U.S. 429 (1895), stated about the very first income tax instituted by Congress that: (WTP #468)

> *"The present* ***assault upon capital*** *is but the beginning.* ***It will be but the stepping stone to others larger and more sweeping****, until our political contest will become war of the poor against the rich; a war of growing intensity and bitterness.*
>
> *...*
>
> *The legislation, in the discrimination it makes, is class legislation.* ***Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by reason of their birth, or wealth, or religion, it is class legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society****."*

- Click here for Pollack v. Farmers Loan and Trust, 157 U.S. 429 (1895) (WTP Exhibit 468)

5.12. Admit that the payment of social benefits to persons not associated with the government under entitlement programs such as Social Security and Welfare invites and encourages the kind of class warfare described above in ***Pollock v. Farmers Loan and Trust***, 157 U.S. 429 (1895). (WTP #469)

- Click here for Pollack v. Farmers Loan and Trust, 157 U.S. 429 (1895) (WTP Exhibit 468)

5.13. Admit that compelled charity is not charity at all, but slavery disguised as charity. (WTP #470)

> *"slavery: 1. DRUDGERY, TOIL; 2: submission to a dominating influence; 3 a: the state of a person who is a chattel of another b: the practice of slaveholding." [Webster's Ninth New Collegiate Dictionary, 1983, Merriam-Webster, p. 1107]*

- Click here for Webster's Ninth New Collegiate Dictionary, 1983, Merriam-Webster, p. 1107

5.14. Admit that Social Security is not insurance and is not a contract as ruled by the Supreme Court in ***Helvering v. Davis***, 301 U.S. 619 (1937) and ***Flemming v. Nestor***, 363 U.S. 603 (1960). (WTP #471)

- Click here for Helvering v. Davis, 301 U.S. 619 (WTP Exhibit 471)
- Click here for Fleming v. Nestor, 363 U.S. 603 (WTP Exhibit 471b)

5.15. Admit that Social Security is socialism, and that socialism *must be* voluntary *at all times* in a free country if liberty and freedom are to be preserved. (WTP #472)

> *"**liberty**: **1:** the quality or state of being free; **a:** the power to do as one pleases **b:** freedom from physical restraint **c:** freedom from arbitrary or despotic control **d:** the positive enjoyment of various social, political, or economic rights as privileges **e:** the power of choice **2 a:** a right or immunity enjoyed by prescription or by grant: PRIVILEGE **b:** permission esp. to go freely within specified limits 3: an action going beyond normal limits: as a: a breach of etiquette or propriety: FAMILIARITY b: RISK, CHANCE <took foolish liberties with his health> **c:** a violation of rules or a deviation from standard practice **d:** a distortion of fact **4:** a short authorized absence from navy duty usu. for less than 48 hours syn see FREEDOM--at liberty **1:** FREE **2:** at leisure: UNOCCUPIED." [Webster's Ninth New Collegiate Dictionary, 1983, Merriam-Webster, p. 688]*

- Webster's Ninth New Collegiate Dictionary, 1983, Merriam-Webster, p. 688)

5.16. Admit that for the Social Security program to be called voluntary, a participant should be able or at least know how to quit a program at all times and that the agency should not constrain or restrict those who quit or refuse to provide information to anyone who desires it about how to quit. (WTP #473)

5.17. Admit that the Social Security Administration has no documented means to quit the Social Security program on their website or in any of their publications, and that they will not tell you how to do so if you call their 800 number. (WTP #474)

5.18. Admit that absent an ability to leave the Social Security program at any time, the program constructively becomes a *compulsory/involuntary* program for those joined because they are not allowed to quit. (WTP #475)

5.19. Admit that the application for joining Social Security does not indicate that the choice to join is *irrevocable*. (WTP #476)

- Click here for Social Security Administration Form SS-5, Application for a Social Security Card

5.20. Admit that most persons who allegedly joined the Social Security program did so when they were not competent adults, and joining was done by the parents and without the consent or assent of the child joining. (WTP #477)

5.21. Admit that persons whose parents applied for Social Security on their behalf are not offered a choice, upon reaching adulthood, to rescind the application so that their participation is entirely voluntary. (WTP #478)

5.22. Admit that the Enumeration at Birth Program of the Social Security Administration creates the impression at hospitals where babies are born that the obtaining of Social Security numbers for children is mandatory, and that they make it inconvenient and awkward to refuse receiving a number for their child. (WTP #479)

- Click here for procedure to object to the SSA Enumeration at Birth Program (WTP Exhibit 479)

5.23. Admit that even though income tax returns require listing social security numbers for children who are dependents in order to claim them as deductions, parents may provide other proof such as a birth certificate in lieu of a social(ist) security number to claim the deduction. (WTP #480)

5.24. Admit that a majority of employers will insist that their employees obtain a Social Security Number as a precondition of employment, and that this makes joining the program compulsory and not mandatory for all practical purposes. (WTP #481)

5.25. Admit that using the government to plunder the assets of the rich to support the poor using the force of the law is no less extortion or theft because it is called "taxation". (WTP #482)

QUESTIONS ADDED BY AUTHOR BEYOND ORIGINAL WE THE PEOPLE HEARING

5.26. Admit that in Matt 20:25-27 and Mark 10:42-43 and Luke 22:25-27 Jesus tells Christians to *not have dominion over others*, *but to serve*. CHRISTIANS SERVE. CHRISTIANS DON'T LORD over those who are not under them. They also don't use their vote or their right to sit on a jury to cause the government or their elected representatives or the IRS to lord over others.

> *Matt. 20:25-27: "But Jesus called them to Himself and said, 'You know that the rulers of the Gentiles lord it over them, and those who are great exercise authority over them. Yet it shall not be so among you; but whoever desires to be great among you, let him be your servant. And whoever desires to be first among you, let him be your slave [not your master]---just as the Son of Man did not come to be served, but to serve, and to give His life a ransom for many." (KJV)*

5.27. Admit that using mandatory income taxes to plunder people's property, income, labor, and assets in the name of socialist programs such as Social Security and Welfare by using the force and color of law amounts to "imposing dominion" over others.

5.28. Admit that Jesus said:

> *"Away with you , Satan! For it is written, 'You shall worship the Lord your God, and Him **ONLY** [NOT the government!] you shall serve.'"*
> *[Bible, Matt. 4:10, KVJ]*

5.29. Admit that if *service to God ONLY [not the government]*, and not *dominion over others*, are the mandates of Jesus

Christ and of Christianity, then socialism and mandatory income taxes that go with them is entirely incompatible and in conflict with the Judeo Christian values of this country .

5.30. Admit that if mandatory income taxes and socialism are incompatible and contradictory to the free exercise of Christianity in this country, then the First Amendment to the U.S. Constitution causes and allows one's religious values to supercede the requirement to pay income taxes as follows:

> *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."*

- Click here for First Amendment

5.31. Admit that the the filing of tax returns with zero amounts in full compliance to the tax laws is frequently punished with a "frivolous return penalty", even though it could and often is interpreted by a reasonable persons as a First Amendment right to petition the government for redress of grievances.

- Click here for First Amendment

5.32. Admit that the free exercise of First Amendment rights *may not* be lawfully taxed, penalized, or regulated in any way by either the federal or state government.

- Click here for First Amendment

5.33. Admit that the purpose of law is to prevent injustice more than to promote justice.

5.34. Admit that *no injustice occurs* when persons refuse to pay for or receive social security benefits or any other government entitlement program.

5.35. Admit that *injustice does occur* and a reduction of personal sovereignty do inevitably occur when our elected representatives spend beyond their means perpetually and have to perpetually raise taxes and confiscate progressively more of our income to make payments on the debt.

5.36. Admit that Congress may not delegate authority given to it by the Constitution.

5.37. Admit that the Federal Reserve Act delegates Congress' authority in part under Article 1, Section 8, Clauses 5 and 6 to the Federal Reserve:

> *To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;*
>
> *To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;*

- Click here for Constitution Article 1

5.38. Admit that Congress delegating its authority through the Internal Revenue Code to collect taxes under Article 1, Section 8, Clause 1 of the U.S. Constitution to an agency in the Executive branch called the Internal Revenue Service is an exercise of authority it *doesn't Constitutionally have*.

- Click here for Constitution Article 1

5.39. Admit that because the IRS is part of the Executive branch and not the Legislative branch, and because none of the persons working for the IRS in the executive branch are elected like those in Congress, then the federal income tax amounts to *taxation without representation*, rebellion against which was one of very situations that gave rise to the birth to this country.

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SECTION 5-FIRST AMENDMENT SUMMARY

The 1st Amendment to the U.S Constitution reiterates the bedrock principle that People are Sovereign and have the unalienable right to petition the government for redress of grievances and to be properly answered.

The entire Citizen's Truth-in-Taxation Hearing is the direct result of a petition from the People to the government regarding the income tax system of this nation.

As of this writing, the Government has refused to respond to this petition in writing and has also failed to appear in public to answer the specific legal charges contained herein -- even though they had agreed in writing July, 2001 to do so.

We must now open our hearts and our minds and consider that something very wrong is transforming our nation. Under the guise of using the income tax system as an instrumentality in "helping us", our nation is rapidly transforming into socialist democracy.

In this brave new world, the rights of the individual are subservient to the wants of the many. The tax laws are used as tools, and as weapons to achieve these ends.

There is no right, or liberty which will not be sacrificed on the alter of "goodness". Property, labor, wealth, freedom, liberty, speech, petition, due process are all eliminated to enhance the efficiency and effectiveness of the taxing machine.

In a vicious cycle, the plunder of the tax system is used to further procure political influence and alter behavior in the masses as well as to ultimately control the means of production and force individual dependence on the State.

This is not the destiny of a free, spiritual and Sovereign People. Our Forefathers died to secure our rights with a prayer that we should never have to take to arms again.

Please read these final questions with these thoughts in mind and consider your role as a citizen of this nation.

Whether we stand together in the ballot box, the jury box or in the streets, the moment when the future of our Republic and the freedom of our People lies in the balance, has arrived.

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A "Republican Form of Government"

by Alfred Adask

> "The United States *shall* guarantee to every State in this Union a *Republican Form of Government*. . . ."

Article 4 Section 4 of the Federal Constitution is particularly interesting because it's one of the few sections of the Constitution which expressly *mandate* specific obligations for the Federal Government.

In contrast, read Article 1, Section 8, Clause 1:

> "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States . . . ."

Note that while this section grants Congress the power to "lay and collect Taxes," etc., it does not *mandate* that Congress shall do so. If Congress wants to "lay and collect taxes," they can; they have the power to do so. But if Congress doesn't want to "lay and collect taxes," they don't have to; they can refuse to exercise their power of taxation.

But under Article 4, Section 4, Congress has no such discretion. They *must* "guarantee to every State in this Union a *Republican Form of Government* . . . ."

The Federal mandate for a "Republican Form of Government" is echoed in Article 1, Section 2 of the Texas Constitution which reads,

> "INHERENT POLITICAL POWER; REPUBLIC FORM OF GOVERNMENT. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands

> pledged to the preservation of a *republican form of government*, and subject to this limitation *only*, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient." [Emph. add.]

In other words, the *only* form of government that can *ever* be lawful in Texas is a "*republican* form of government". We Texans can change our State government any way we please, any time we please, "subject to *one* limitation *only*"—that we preserve a "*republican* form of government"—no matter what. I suspect that several other state constitutions include similar guarantees of a "republican form of government". Seems that early Texans also thought a "*republican* form of government" was absolutely vital.

Republican mystery

Problem is, *what* is a "republican form of government"?

I've been intrigued by that question for several years, but a clear definition of the concept has persistently eluded me.

For example, according to the 1st Edition of *Black's Law Dictionary* (published in 1891),

> REPUBLICAN GOVERNMENT. A government in the republican form; a government of the people; a government by representatives chosen by the people. Cooley, Const. Law 194.

Gee, that's about as helpful as defining "black" as a "dark color". You'd think they could you be a bit more precise, no? If there was a concise definition there, I wasn't smart enough to see it.

I kept wondering why such an important concept was so poorly defined. After all, isn't it a fundamental rule of lexicography that definitions don't include the word being defined? If so, why did *Black's* use "*republican* form" to define "*republican* government"? Were they merely negligent or intentionally trying to obscure the concept?

Black's 4th Edition (published in 1968) provides virtually the same definition of "republican government" as *Black's* 1st (1891). Once again, we're essentially told that "republics" are very "republican".

That's not very elucidating. I couldn't believe that "representation" was all the founders sought to guarantee in Article 4 Section 4 of the Constitution. After all, virtually every form of government—even dictatorships and communists—have some kind of "representation" for the people.

I simply couldn't believe the Founders wasted quill and ink on Article 4 Section 4 of the Federal Constitution to simply mandate that the government allow the people to have representatives. A "Republican form of Government" had to mean much more. Further, the mysterious failure to concisely define a concept as fundamental and mandatory as "Republican Form of Government" implied that the meaning might be so important that it was intentionally obscured.

But what could that definition be?

Military intelligence

I read the comparative definitions of "democracy" and "republic" in *U.S. Government Training Manual No. 2000-25* for Army officers (published by the War Department on November 30, 1928). Those definitions illustrate that in 1928, democracy was officially viewed as dangerous and our military was sworn to defend our "Republic":

> DEMOCRACY: A government of the masses. Authority derived through mass meeting or any other form of "direct" expression. Results in mobocracy. Attitude toward property is communistic—negating property rights. Attitude toward law is that the will of the majority shall regulate, whether it be based upon deliberation or governed by passion, prejudice, and impulse, without restraint or regard to consequences. Results in demagogism, license, agitation, discontent, anarchy.
>
> REPUBLIC: Authority is derived through the election by the people of public officials best fitted to represent them. Attitude toward property is respect for laws and *individual rights*, and a sensible economic procedure. Attitude toward law is the administration of justice in accord with fixed principles and established evidence, with a strict regard to consequences. A greater number of citizens and extent of territory may be brought within its compass. Avoids the dangerous extreme of either tyranny or mobocracy. Results in statesmanship, liberty, reason, justice, contentment, and progress. . . . . [Emph. add.]

These military definitions were improvements over *Black's* 1st and 4th Editions. We can tell that the Army regarded "democracy" as contemptible and "republic" as noble, but otherwise, the essential meaning of "republican form of government" remained elusive.

Who hold sovereign power?

My search for the meanings of "republic," "democracy" and "republican form of government" ended with *Black's* 7th Edition (1999). Unlike previous editions, *Black's* 7th doesn't even define "republican government"—but it does offer an illuminating definition of:

> REPUBLIC. n. A system of government in which the people hold sovereign power and elect representatives who exercise that power. It contrasts on the one hand with a pure democracy, in which the people or community as an organized whole wield the sovereign power of government, and on the other with the rule of one person (such as a king, emperor, czar, or sultan).

Ohh, that's a *beauty!* I'd read that definition several times since 1999 without recognizing the inherent implications. But once I saw the implied meaning, I was electrified.

First, note that definition focuses on "*sovereign* power". Who "holds" sovereign power? The answer to that question provides the *essential distinction* between a republic, a democracy and a monarchy (and probably all other forms of government).

But what is "sovereign power"?

It's pretty obvious that the words "sovereign," "king" and "monarchy" are so closely associated as to be almost synonymous. Further, in Western civilization, whenever one or more individuals hold "sovereign power," it's almost certain that such power flows from *God*. For example, to be an earthly "sovereign" (King), one must gain the authority of sovereignty from *God*. This is the fundamental premise for the "divine right of kings" (sovereigns). I.e., God is the source of all "divine" rights.

All other sources of authority are transient and simply based on raw power, survival of the fittest, and the idea that "might makes right" ("right" meaning "sovereign power"). Without a claim of *divine* origin of right, such "sovereign" powers are subject to constant challenge by anyone who believes his personal power is comparable or superior to that of the existing King. But gilded with the presumption of a *divine* origin and implied Godly approval, "sovereign powers" can't be lawfully challenged by any mortal man. Such powers are, by definition, superior to any form of man-made (secular) political powers.

The idea that sovereign powers flow *directly from God* is consistent with the "Declaration of Independence" which reads in part,

> We hold these truths to be self-evident, that all men are created equal, that they are *endowed by their Creator* with certain *unalienable Rights*. . . . [Emph. add.]

Clearly, just as the "divine rights" of English kings flowed from God, so did our "unalienable Rights".

Further, if "*all* men [including kings] are created *equal*," then it follows that whatever "divine rights" were accorded to *kings* by God in 1776 must be *equal* to whatever "unalienable Rights" were simultaneously granted to "all men" by God as established by the "Declaration of Independence". After all, if all men (kings and commoners) are created equal, their God-given rights must likewise be equal. Ergo, "unalienable Rights" and "divine rights" should be synonymous. If so, any "divine right" that was recognized in English law as belonging to English kings in 1776 should also be included among the bundle of "unalienable Rights" accorded to Americans by the 1776 Declaration.

Government's purpose

The third sentence of the "Declaration of Independence" reads:

> That to *secure* these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. [Emph. add.]

Here we see the primary *purpose* for our "Form of Government": "to *secure* these rights".

What "rights"?

Answer: The "unalienable Rights" (including Life, Liberty and the pursuit of Happiness) mentioned in the Declaration's previous (second) sentence. Thus—if "unalienable," "divine," and "sovereign" rights are virtually synonymous—then the primary legitimate *purpose* for our government is to "secure" our God-given, unalienable (sovereign) Rights.

And who, pray tell, is the recipient of the Declaration's sovereign/ unalienable Rights? Is it We the People in a *collective* sense? Or is it We the People in an *individual* sense?

The correct answer is "individual".

God endows *me* with "certain unalienable Rights," and He endows *you* with "certain unalienable Rights" and He endows each of our neighbors with "certain unalienable Rights".

At the moment of creation, *each* of us—as *individuals*—are equally "endowed by our Creator" with "certain unalienable Rights". The idea that we are endowed *individually* (rather than collectively) with identical sets of sovereign/ unalienable Rights is further supported by the State constitutions and the Bill of Rights which make it clear that virtually all of our sovereign/ unalienable Rights are held as *individuals*.

All for none and none or all?

OK—big deal, hmm? We hold our unalienable Rights as "individuals". Someone alert the media.

Well, actually, it *is* a big deal because—if you'll recall—the *Black's* 7th definition of "republic" implies that the essential distinction between a monarchy, a republic and a democracy is determined by *who* holds the "sovereign powers":

> REPUBLIC. n. A system of government in which the *people* hold sovereign power and elect representatives who exercise that power. It contrasts on the one hand with a pure democracy, in which the people or community as an *organized whole* wield the sovereign power of government, and on the other with the rule of *one person* (such as a king, emperor, czar, or sultan). [Emph. add.]

Therefore, what is a *republic* and (by implication) a "Republican Form of Government"?

Black's 7th does not expressly answer that question but it does provide enough contrasting definitions to allow us to deduce the mysterious meaning of "republic".

First, a monarchy is the most easily understood form of government since the sovereign powers are held exclusively by *one* individual—the king. He alone has God-given, unalienable Rights. All others are "subjects" who have no legal authority or right to resist the King's will.

However, distinguishing between a democracy and a republic is more subtle. *Black's* 7th explains that in both a democracy and a republic, the sovereign powers are held by the *people*. Therefore, the first time you read that definition, you may be both confused and reassured. In either case, you see that the "people" hold the sovereign powers. OK, sounds great. We the People. Of the people, by the people, for the people. People, people, people. Sounds just like the all-American answer we'd expect to hear because we've been told all our lives that, in this country, the *people* are sovereign.

Uh-huh. But if you read the phrase defining a democracy again, you'll see that "people" is qualified by "as an organized whole." I believe that qualification is the key to understanding a republic.

If the "people" in a democracy hold sovereign power as an "organized whole," they hold that power as a *collective*. Unlike a monarchy where *one* individual (the king) holds all sovereign power, in a democracy, the sovereign power is held by the collective, by the *group*. But—in a democracy *no* individual holds any sovereign power.

OK. *Black's* 7th defines "republic" as a system of government in which the "people hold sovereign power."

So if a monarchy has *one* sovereign individual . . . and a democracy has *no* sovereign individuals . . . then it would seem to follow that in a republic . . . *all* individuals hold sovereign power!

Do you see the difference between a democracy and a republic? In both forms of government, the *people* hold the sovereign power—but in the democracy those powers are held by the people as a *collective*, while in the republic, those powers are held by the people as *individuals*.

Individually-held, God-given unalienable Rights

Thus, a "republic" is a system of government which recognizes that each person is *individually* "endowed by his Creator with certain unalienable Rights." I am individually endowed, you are individually endowed, our neighbors are each *individually* endowed.

Why is this *individual* endowment important? Because it doesn't matter how the majority votes in a republic—they can't arbitrarily deprive a single individual of his sovereign/unalienable Rights to "Life, Liberty and the pursuit of Happiness" unless some of those unalienable Rights have been expressly delegated to government through the Constitution.

In a republic, the majority can't vote to incarcerate (or execute) all the Jews, Blacks, Japanese or patriots. Why? Because in a republic, "all men are created equal and endowed by their Creator with certain unalienable Rights"—and no man or collection of men (not even a massive democratic majority) can arbitrarily deprive *any* individual (even if he's a "kike," "nigger," "gook," "political extremist" or "religious fundamentalist") of his God-given, unalienable Rights.

Why? Because in the American republic, every man holds the position of "sovereign" (one who enjoys the "divine rights of kings"). The American republic is essentially a nation of kings. Thus, as per the Declaration of Independence, a "Republican Form of Government" is one which *recognizes and "secures" each individual's "sovereign powers"—his individually-held, God-given, unalienable Rights.*[1]

A republic's covenant

In a republic, every individual's unalienable Rights cannot be violated or arbitrarily denied by any mortal man or democratic majority—*unless* that individual first violates his covenant with God. This principle is based on the premise that our "unalienable Rights" are *conditional*; they are given to each of us by God on condition that we obey the balance of God's laws (like "Thou shalt not kill, thou shalt not steal, etc.). If an individual chooses to violate God's law, he breaches his covenant with God, and his claim to God's protections, blessings

and endowment of "unalienable Rights" is forfeit.

For example, if it can be proved in a court of law that a particular individual has broken his covenant with God to "not kill," that individual forfeits his own unalienable Right to Life and may be lawfully executed. An eye for an eye, a tooth for a tooth . . . do unto others as you would have government do unto you.

However, in a republic, execution cannot be lawfully imposed on isolated individuals or groups who haven't *individually* breached their covenant with God. Why? Because that individual has God-given, unalienable Rights. Those individually-held rights are the basis for his defense. That's the foundation for his presumption of innocence.

Why? Because the votes and opinions of all mankind taken together are trivialities when compared to God. If God endows an individual with a particular Right, the whole of mankind lacks sufficient collective authority to arbitrarily revoke or violate that right—unless that individual has first breached his covenant with God.

Divine endowment

This Biblical interpretation may seem like so much "holy rolling," but it has great significance in a "Republican Form of Government". For example, in a republic, you can only be charged with an crime if you injure the person or property of another sovereign individual. So long as you don't injure, rob or kill another sovereign (and thereby violate *his* God-given, unalienable *Rights*), there is no crime. In a republic, there can be no crimes "against the state" (the collective)—only against God. Likewise, except for certain biblical prohibitions (like working on the Sabbath), there are no "victimless crimes" in a republic.

However, in a democracy, the majority (or their presumed agent, the government) can vote that any act is a crime (hate speech, for example), even if no individual's life, person or property is damaged. Thus, "victimless crimes" and "crimes against the state" (which are almost impossible in a true republic) are common under democracy. Why? Because there are no legitimate *victims* in a democracy. Why? Because, in a democracy, no individual has any unalienable Rights.

Without rights, you can't be a victim; there's nothing to damage. For example, to shoot a homo sapien without unalienable Rights is legally indistinguishable from killing a cow. Without God-given, unalienable Rights, there's nothing intrinsic to violate.

Sure, the democracy may vote that murder is wrong (at least when committed against the majority). But that democratic collective can likewise vote that murdering Jews, Blacks, homosexuals, patriots—or even specific individuals like Jesus Christ—is quite alright. As citizens of a democracy, we each have no more *individual* rights than cows. Without individually-held, God-given rights "secured" by a "Republican Form of Government," we have no intrinsic value and may be fairly characterized as "human resources". In a democracy, we each have no individually-held, unalienable Rights to shield us against the arbitrary will of the majority or their agents: government.

Think not? Ask Vickie Weaver about her unalienable Right to Life

in our fair "democracy". FBI hitman Lon Horiuchi simply shot her in the head like any other dumb animal. Why? Because, as a citizen of a democracy (where the sovereign powers are held by the *collective*) Vickie Weaver had no *individual* right to Life. Same was true for the Branch Davidians. Same is true for you and for me. In a democracy, there are no individually-held, unalienable Rights so we are all individually defenseless against the majority and/or the government.

Look at the ranchers and farmers in Klamath Falls, Oregon. They're losing their homes to save some suckerfish. They're shocked to learn that our government doesn't recognize or secure their "unalienable Rights to Life, Liberty and the pursuit of Happiness" (property).

But the truth is that—as citizens of a *democracy*—those individual ranchers don't have *any* unalienable Rights to their property. The democracy has "spoken" (if only by its silence). The majority has presumptively ruled (at least, they haven't complained loudly) that endangered suckerfish are more important than the "suckers" who allowed themselves to become citizens of a democracy. The citizens of Klamath Falls are learning that, as a tiny minority in a national democracy, they are as defenseless as Jews in a Nazi concentration camp.

Slowly, slowly, cookie frogee

This doesn't mean that a democratic government can do virtually anything it wants. It has to be careful. It can't murder so many citizens or steal so much property that the majority of citizens of the democracy wake up and vote to stop government from killing or robbing individuals.

So a democratic government has to be sneaky. It has to control public opinion. It has to follow (almost worship) the public opinion polls. It can only implement so much abuse as the public will endure without actually getting angry enough to vote the s.o.b.s out. As a result, the only thing a democracy fears is public exposure.

Conversely, in a republic, it's simply unlawful for an FBI hitman to kill a woman holding a baby and get away with it. In a republic, government officials can't flambe' a bunch of kids in Waco and walk away with promotions and a fat pensions. In a republic, you can't effec-

tively "seize" another person's property by declaring that property can no longer be used to raise cattle if that use adversely affects the lowly suckerfish. In a republic, *individuals* have unalienable Rights; suckerfish don't. Thus, the rights of individuals are superior to the interests of suckerfish. In a republic, neither a 99% democratic majority nor the Gates of Hell can lawfully prevail over the God-given, unalienable Rights with which every *individual* is endowed.

See the difference?

In a monarchy, *one* individual holds the sovereign powers. In a democracy, *no* individual holds sovereign powers. But in a republic only, *all* individuals hold "sovereign powers" (God-given, unalienable Rights).

Where would you rather live? Where *only one* individual had sovereign powers? Where *no* individual had sovereign powers? Or where *all* individuals (including you) have sovereign powers?

Democratic disabilities

Black's 7th defines "democracy" as a system of government in which, "the people or community *as an organized whole* wield the sovereign power of government." This implies that in a democracy, the *people* hold the sovereign power—but do so in the capacity of a single, artificial *collective*—not as an association of *individual* "sovereigns".

Thus, democracy is a *collectivist* political philosophy characterized by a lack of individually-held, God-given, "unalienable Rights". Also, note that the logical correlative of the *collective* rights of the "group" is the *absence* of rights for each *individual*. This absence of individually-held, God-given rights is the central feature of all collectivist philosophies (communism, socialism, etc.) since these systems presume that "sovereign power" is held by the *collective*, but not by any individuals.

Therefore, by definition, no citizen of a democracy can hold God-given, "unalienable Rights" to Life, Liberty and the pursuit of Happiness" as an *individual*.

Why? Because, if a democracy recognized the legitimacy of *individual* rights as God-given and thus superior to any claim of "collective" rights, the power of the democracy and majority rule over specific individuals or minorities would disappear. By simply invoking his God-given, unalienable Rights, any individual could thumb his nose at virtually any vote by the democratic majority. So long as I have an unalienable Right to Life, it matters not if 250 million Americans all vote to hang me. So long as I am *individually* "endowed by my Creator with certain unalienable Rights," I can tell the whole world to "stuff it" by simply invoking my *individually*-held, unalienable Rights.

Do you see my point? By *definition*, a democracy can't work—can't exercise the arbitrary authority of the majority over the minority—can't even *exist* where unalienable Rights are granted to *individuals* by the supreme authority of *God*.

And, at least coincidentally, according to Brock Chisolm, former Director of the UN's World Health Organization, "To achieve world government, it is necessary to remove from the minds of men, their

individualism, loyalty to family traditions, national patriotism and *religious* dogmas."

Do you see how a democracy—which denies both *individual* rights and the *God* that granted them—could diminish the republican forces of individualism and faith that would naturally resist one world government? Do you see how a "democratic form of government" might be ideal for implementing a New World Order?

In fact, if you'll read the United Nation's "Universal Declaration of Human Rights" (adopted Dec. 10, 1948), you'll see that Article 21(b) explains the basis of the U.N.'s one-world government:

> "The *will of the people* shall be the basis of the *authority* of government; this shall be expressed in periodic and genuine *elections* which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." [Emph. add.]

The basis for the authority of all U.N. governments isn't God, but the "will of the people" as expressed in "periodic elections" (rather than fixed constitutions). That's a democracy, folks. And that 1948 U.N. "Declaration" is probably the political foundation for the world's 20th century march toward our "beloved" democracy.

Think not?

Read Article 29(2) of the same U.N. "Declaration":

> "In the exercise of *his* rights and freedoms, everyone shall be subject only to . . . the rights and freedoms of *others* . . . in a *democratic* society." [Emph. add.]

In other words, despite the considerable list of rights which the U.N.'s "Declaration" claims to provide for all individuals, those individually-held "human rights " are absolutely subject to the "rights and freedoms of others". Note that "others" is plural. Thus, the individual's rights are always subject to that of the *group*, of the *collective*. In other words, whenever two or more are gathered in the U.N.'s name, a single person's claim to "individual rights" is meaningless.

As a collectivist form of government, the U.N. democracy is funda-

mentally indistinguishable from communism or socialism.[2] More importantly, by rejecting the concept of individually-held, *unalienable* Rights, every democracy (including the U.N., the New World Order and/or the United States) must likewise reject the *source* of those unalienable Rights: God.

Like all *collectivist* political systems, democracies must be *atheistic*. Although a particular democracy may allow its subjects to engage in some religious activity, none of those religious principles can be officially recognized or given any authority by the collectivist state. (Can you say "separation of church and state," boys and girls?)

Collective self-destruction

But democracies aren't merely dangerous to individuals, they're even dangerous to the collective because—without individually-held, unalienable Rights—there is no defense against unlimited government growth, taxation, regulation or oppression. A massive, unlimited New World Order (or American bureaucracy) is the inevitable expression and consequence of the principles of democracy.

Consider: In 1978, William E. Simon (Secretary of the Treasury in the Nixon and Ford administrations) complained that the federal expenditures exceeded $1 billion a day. Twenty-three years later, our federal government spends about $56 billion per day. Of course, our economy has grown since 1978, and inflation has reduced the value of $56 billion in today's dollars to about $20 billion in 1978 dollars.

Still, did federal expenditures (and taxes, regulations, and intrusion into private lives) grow at least ten-fold in the last 23 years because the citizens of our "democracy" *voted* for that growth? Or did it grow because in a democracy, we have no claim to the *individual* rights that would automatically inhibit such extraordinary government growth?

In a "Republican Form of Government"—where individually-held, God-given rights are presumed and "secured"—government can't grow except by the *express* will of the people as demonstrated through constitutional amendments. But in a democracy, where there are no God-given, individual rights to inhibit government growth, the will of the collective is expressed *only* every two years in the form of elections. Once elected, our "representatives" are empowered to vote for virtually *anything* and *everything* they want since they're presumed to enjoy the support of the majority of the collective. Unless the people complain bitterly and even vote against incumbents—without individually-held, God-given rights, there is no restriction on government growth in a democracy.

In a democracy, government can take your guns. They can take your kids, your property and your cash. In fact, they can take your life. Every one of those "takings" (and thousands more) are possible and absolutely legal because subjects of a democracy have *no* individually-held, unalienable Rights to protect them against arbitrary exercise of government power.

If it's lawful for government to take virtually anything it wants from subjects of the democratic collective, then it's certainly lawful for government to create and enlarge as many bureaucracies and enforcement agencies as it deems necessary to implement the unrestricted takings.

Do you see my point? God-given, unalienable Rights don't merely protect us as individuals from government oppression, they are the fundamental bulwark that protects the whole nation against the growth of massive, governmental bureaucracies.

The "First" Bill of Rights?

So what is the "Republican Form of Government" that's *mandated* by Article 4 Section 4 of the Federal Constitution?

Answer: A system of government that recognizes the God-given, unalienable Rights of *individuals*.

And what did the "Declaration of Independence" say was the fundamental purpose for all just government? "To secure these *rights* . . . ."

Which rights?

The "unalienable Rights" given to each *individual* by God and referenced in the previous sentence of the Declaration.

Thus, the first obligation of the "Republican Form of Government" *mandated* by Article 4 Section 4 of our Federal Constitution is to secure God-given, unalienable Rights to *individuals*. Not secure rights to the *collective* or some king—but to secure unalienable Rights to every *individual*.

And note that while, "among these are Life, Liberty and the pursuit of Happiness"—this general list of unalienable Rights is not exhaustive. It is obvious that there are other, unspecified unalienable Rights which must also be "secured" by government. If so, Article 4 Section 4 of the Federal Constitution might be viewed as the original "Bill of Rights".

Consider: The Federal Constitution was adopted in 1789. The Bill of Rights (first ten amendments) was adopted in 1791. But, in 1791, some people argued against adopting the Bill of Rights because 1) all unalienable Rights were already protected under the Constitution; and

2) by expressly specifying some Rights, government might later be able to argue that other rights which were not specified did not exist or were not protected.

Until recently, I viewed those 18th century arguments as unconvincing. But now that I see that a "Republican Form of Government" is one that recognizes and "secures" *all* God-given, unalienable Rights, I also see that Article 4 Section 4 of the Federal Constitution (and similar sections in State constitutions) seem to guarantee *all* unalienable Rights to *all* individuals.

Thus, the 1791 Bill of Rights may have truly been unnecessary, redundant or even counterproductive. Worse, by focusing on the specific rights enumerated in the first ten amendments, we may have lost sight of the "mother lode" of unalienable Rights: the Article 4 Section 4 guarantee of a "Republican Form of Government" (one that "secures" our unalienable Rights).

By focusing on each specific right in the Bill of Rights, it's become possible for democratic government to whittle away at each right whenever political conditions allow them to do so. They don't attack all our rights at once; they simply whittle away a little at "due process" today, "freedom of speech" tomorrow, and the right to "keep and bear arms" next month. In a sense, it's arguable that the Bill of Rights might allow government to "divide and conquer" our rights on a one-by-one basis and thereby slowly "cook" our freedoms like so many frogs. However, such cannibalism seems strictly prohibited under Article 4 Section 4 guarantee of a "Republican Form of Government".

The mandate remains

So far as I know, the last President to refer to this nation as a "republic" was John F. Kennedy. Since then, all presidents have referred to the United States only as a "democracy"—a political system which, by definition, *cannot* recognize the unalienable Rights and sovereign powers of *individuals*.

Does our current government secure our God-given, unalienable Rights? Obviously not.

Obvious conclusion? We no longer live in a republic. Instead, we're entrapped in a democracy where unalienable Rights are not recognized or "secured" and no individual or minority is safe from the majority's/ government's arbitrary exercise of power or oppression.

Nevertheless, Article 4 Section 4 of the Federal Constitution is *still there*, un-amended, and *mandating* that "The United States *shall* guarantee to every State in this Union a Republican Form of Government . . . ."

So we seem to have a constitutional conflict. Our Federal and (some) State constitutions mandate a republic, but our government only provides a democracy.

I suspect that this conflict between the Article 4 Section 4 mandate for a "Republican Form of Government" and our modern democracy can be exploited as a defense against government oppression. I suspect that a defendant who 1) understands the full meaning of a

"Republican Form of Government" and 2) demands that the Article 4 Section 4 guarantee of such government be enforced—may raise a constitutional conflict or "political question" too embarrassing for most prosecutors to face.

If so, cases against defendants might "disappear" if those defendants essentially argued that, as *individuals* "endowed with certain unalienable Rights," they could not be subject to the statutes, regulations and enforcement activities of a democracy—which, by definition, denies unalienable Rights.

More importantly, any government official who's taken an Oath of Office to support and defend the Constitution is duty bound to "guarantee" a "Republican Form of Government" and the attendant "unalienable Rights". Therefore, if an official sought to impose rules or regulation upon you that were based on democratic principles rather than unalienable Rights—that official might violate his Oath of Office and incur personal liability.

So, if you claim you still have the unalienable Rights referenced in the "Declaration of Independence" and seemingly guaranteed by Article 4 Section 4 of the Federal Constitution, will government *publicly* admit that it's not so? Even if government can prove that you don't have unalienable Rights, you're not in a "State of this Union," or the Republic is long dead, they'd be unlikely to make those admissions publicly since doing so could alert the democratic majority that they've been betrayed. Once "officially" alerted of their loss of individual rights, the public might rise up and vote (the democracy's one remaining "right") to restore the Republican Form of Government.[3]

Ironically, democracy only works if the public has no idea of what kind of mess they're really in. If your courtroom defense threatens to "sound the alarm," gov-co may decline to prosecute.

Further, I suspect that most government prosecutions for minor offenses (traffic, family law, etc.) take place in courts of *equity* rather than law. One axiom of equity jurisdiction is that the plaintiff must have "clean hands" to initiate a case in equity.

So, what would happen if the government tried to sue or indict you in a court of equity and you advised the court that the

government's "hands" were "unclean" since it was operating as a *democracy* rather than the "Republican Form of Government" mandated by the Federal and (possibly) State constitutions? Could failure to provide a "Republican Form of Government" cost government its standing to sue in equity?

Similarly, Article 4, Section 4 might not only offer an intriguing defense against government prosecution, it might even provide a basis for aggressively *suing* a governmental entity or official that violated or refused to "secure" our unalienable Rights. Until Federal and State constitutions are amended to remove the republican mandate, there appears to be no wiggle-room, no excuse for not providing the People with a "Republican Form of Government".

If so, any governmental agent or agency that's put on proper notice of their constitutionally-mandated duty to provide us with a "Republican Form of Government"—and nevertheless continues to prosecute us as a subjects of the unauthorized democracy—might be personally exposed to financial and even criminal liability. More, intentional failure to provide a "Republican Form of Government" is arguably treason (a hanging offense). In fact, it's arguable that (like all collectivist political systems) democracy itself is anathema to the Declaration of Independence, treason to the Constitution, and blasphemy to God.

Faced with charges that they've knowingly refused to provide a "Republican Form of Government" and "secure" our "unalienable Rights," what could government agents do? Admit to a jury that the American people haven't had any unalienable Rights since the 1930s? I don't think so. But even if they made that admission, would the jury believe them? Probably not.

And therein lies the great vulnerability of a democracy imposed through deceit and enforced public ignorance. Government secretly imposed the democracy, because they knew the American people would never accept it, if they understood that abandoning the republic meant abandoning their unalienable Rights. As a result, government is in the awkward position of a teenage boy who brings a hooker home while his folks are on vacation. If his parents come home early, the kid must either hide the whore or pass her off as his history teacher—but he can't possibly admit that he's got a whore in the house. Likewise, our government can't openly admit it's brought the disease-bearing whore of democracy into our republic. Ohh, she's here alright, but all gov-co can do is act innocent, keep a big supply of condoms handy and hope we don't find out she's not our long-lost Aunt.

What shall we do?

How can we eject the democratic bitch? The "Declaration of Independence" offers guidance:

> "That whenever *any* Form of Government becomes destructive of these ends [securing our unalienable Rights], it is the Right of the People to alter or to abolish it, and to institute

> new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness." [Emph. and bracket add.]

In short, we have an unalienable Right (some say, "duty") to *abolish* the democracy which denies our individually-held, God-given Rights. Based on the Article 4 Section 4 "guarantee," we can *demand* restoration of the "Republican Form of Government" that secures our unalienable Rights. Such overthrow won't happen soon since a successful referendum against democracy is a "political question" that will require a massive effort to educate the public to the blessings of a Republic and the disabilities of democracy.

However, for now, we can begin that educational process by simply challenging government to provide the "Republican Form of Government" that's guaranteed by our Federal and (some) State constitutions. As our understanding grows, and more people begin to defend themselves based on the constitutional guarantee of a "Republican Form of Government," we might see atheist democracy begin to crack, then crumble.

Summary

1. Unlike monarchies and democracies, only a true Republic can "secure" God-given, unalienable Rights to all *individuals*.

2. A "Republican Form of Government" is guaranteed to every "State of the Union" by Article 4 Section 4 of the Federal Constitution (and also some current State constitutions).

3. Contrary to those constitutional guarantees, our current government operates as a democracy which, by definition, recognizes the people's rights as a single *collective*, but denies their God-given, unalienable Rights as *individuals*.

4. The conflict between the constitutionally-mandated "Republican Form of Government" and our de facto democracy may provide a powerful strategy for challenging government enforcement programs which—implemented under the guise of *democracy*—ignore any individual's claim of God-given, unalienable Rights under the mandatory *Republic*.

In essence, the logic of this strategy might run something like this:

1. The "unalienable Rights" granted by God and declared in the "Declaration of Independence" are the constitutionalist's "holy grail". These are the rights to travel, to own firearms, to raise your children without government interference, to engage in any occupation that you desire, to worship God without restriction and to enjoy the "freedom" that every patriot seeks but hasn't found since the 1930's.

2. A "Republican Form of Government" is one that "secures" our God-given, individually-held "unalienable Rights".

3. Article 4 Section 4 of the Federal Constitution mandates that,

"The United States shall guarantee to every State in this Union a Republican Form of Government . . . ."

4. Virtually every government official has taken an Oath of Office to support and defend the Federal Constitution.

5. The Oath of Office should obligate all government officials to support and defend a "Republican Form of Government" that "secures" our "unalienable Rights".

6. Any official who knowingly supports and defends a democracy that denies your unalienable Rights may be personally liable for violating his Oath of Office, violating the Constitution, and committing criminal acts including treason. If two or more officials knowingly work together to deny or deprive you of your unalienable Rights and a Republican Form of Government, they may be guilty of conspiracy.

Of course, my analysis could be wrong. Maybe a "Republican Form of Government" does not necessarily secure unalienable Rights. If so, you've read this long-winded article for nothing.

But if my analysis is generally correct, legal arguments based on a thoroughly researched and properly presented demand for a "Republican Form of Government" may be powerful.

More research must be done, but for now, I believe this argument will make 'em blink.

[1] Not every "republic" conforms to this definition. For example, the former "Union of Soviet Socialist Republics" claimed to be composed of "Republics," but merely used that word as a political label. Those "Republics" were actually collectives where sovereign power was held by the collective, not individuals.

[2] If you read Article 22 of the U.N.'s "Declaration": "Everyone, as a member of society, has the right to *social security* . . . ." Does this imply that modern "social security" is a U.N. program? Is it possible that mere possession of a Social Security card is construed as evidence of your status as subject in an *international* democracy?

[3] The "right to vote" is the *only* right guaranteed to the citizens of a democracy. Hence the importance of the Federal Election Commission and enforcement of "voting rights".

Sovereignty Education and Defense Ministry (SEDM)
FORM INDEX

TABLE OF CONTENTS:

1. **SEQUENTIAL CATEGORIZED INDEX OF SEDM FORMS**
   - 1 General
   - 2 Affidavits
   - 3 Discovery
   - 4. Tax withholding, collection, and reporting
   - 5. Memorandums of Law
   - 6. Emancipation
   - 7. Response Letters
     - 7.1 General
     - 7.2 Federal
     - 7.3 State
2. **SITUATIONAL INDEX OF FORMS**
   - 2.1 Applying for a job and dealing with employers
   - 2.2 Changing your citizenship and domicile with state and federal governments
   - 2.3 General purpose
   - 2.4 Litigation
   - 2.5 Opening financial accounts or making investments without withholding or a number
   - 2.6 Responding to federal and state collection notices
   - 2.7 Withdrawing cash from financial institutions
   - 2.8 Quitting Social Security and Functioning Without an SSN
3. **ELECTRONIC FORMS COMPILATIONS**
4. **OTHER FORMS SITES**
   - 4.1 General Forms
   - 4.2 Tax Forms
   - 4.3 Legal Forms

This page contains a listing of all the free forms available on our website that may prove useful in various situations relating to sovereignty and taxes. The forms are arranged either by form number or by their use, to make finding them easier. The forms are provided in Adobe Acrobat format and may be viewed by downloading and installing the latest FREE Adobe Acrobat Reader from the link below:

http://www.adobe.com/products/acrobat/readstep2.html

Most of our forms are also FILLABLE from within the Acrobat Reader as well! Simply click on the fill-in box provided for each field, fill in the data, and save your copy of the form as a completed template. Then you can reuse the completed form again in the future so as to save you time in responding to tax collection notices. This is a very handy feature.

1. SEQUENTIAL CATEGORIZED INDEX OF SEDM FORMS

Section 5, the Memorandums of Law section, contains memorandums of law that you can attach to your pleadings and correspondence with opposing counsel during a legal dispute. Most of these memorandums of law end with a series of admissions relating to the subjects discussed in the memorandum, making them ideal for use as a discovery device during litigation as well.

Form #	Format	Title	Circumstances where used	Related Resources/Information	Date of Last Revision
1. GENERAL					
01.001	PDF	SEDM Articles of Mission	Our Mission Statement		11/29/2005
01.002	PDF	SEDM Member Agreement	Use this form to join the organization. You cannot use or view or obtain our materials without being a Member.	Member Agreement	11/11/2005
01.003	PDF	Fax Cover Sheet	Use this sheet to record your questions for comments to SEDM and then fax it to us.		4/13/2005
01.004	PDF	Famous Quotes about Rights and Liberty	Useful on any occasion		10/25/2005
01.005	HTML	Proof of Mailing	Useful to provide proof of what you mailed and when. OFFSITE LINK		10/15/2005
2. AFFIDAVITS					
02.001	PDF	Affidavit of Citizenship, Domicile, and Tax Status	Attach to an application for a financial account or job withholding form. Establishes and explains your status as a "national" and not a "citizen" under federal law.	1. Why you are a "national" or a "state national" and not a "U.S. citizen" 2. Why "domicile" and income taxes are voluntary	4/12/2006
02.002	PDF	Affidavit of Material Facts	Use this enclosure with a state response letter to establish citizenship and taxpayer status in a narrative format. Includes check marks in front of each item so that it can be reused again and made into a "Notice of Default" against a tax collection agency.	1. Federal Response Letters 2. State Response Letters	9/25/2005
02.003	PDF	Affidavit of Duress: Member Deposition	Members may use this if government attempts to compel them to attend a deposition which might either incriminate them or the SEDM ministry.		10/13/2006
02.004	PDF	Affidavit of Corporate Denial	Use this form to remove or destroy the jurisdiction of federal courts and the IRS to enforce any federal law against you.	1. Federal Jurisdiction 2. Why your Government is Either A Thief or You Are a Federal Employee for Federal Income Tax Purposes	1/29/2006
3. DISCOVERY					
03.001	ZIP file	Amplified Deposition Transcript	Use this transcript as a way to provide an amplified deposition transcript if the opposing U.S. Attorney insists that you did not answer some of the questions at a previous deposition. Scan in the original transcript, convert to text, and past into chapter 4 of this document.		2/20/2006
03.002	HTML	Handling and Getting a Due Process Hearing	This article shows how to fill out IRS form 12153 to maximize your chances of getting an in-person due process hearing.		NA
03.003	PDF	Admissions relating to alleged liability	Use this in your response to IRS notices as a way to establish what your liability is. Can be used in conjunction with Form 0001 above.	Master File Decoder Correcting Erroneous IRS form W-2's	9/30/2005
03.004	PDF	Deposition Agreement	Use this agreement when the government is attempting to depose an SEDM member. It ensures a fair hearing and equal opportunity to ask questions or each other.	Member Agreement (requires use of this form)	4/12/2006
03.005	PDF	Deposition Handout	Members may use this form to give to any government attorney or employee who has subpoenad them to give oral testimony under Federal Rule of Civil Procedure Rule 30 in relation to their involvement in this Ministry.	Federal Rule of Civil Procedure Rule 30 (OFFSITE LINK)	4/12/2006
03.006	PDF	SSA Form SSA-L996: Social Security Number Request for Extract or Photocopy	Use this form to obtain a copy of any Social Security records that the SSA is maintaining connected to your all caps name.	1. Socialism: The new American Civil Religion 2. Social Security: Mark of the Beast (OFFSITE LINK)	4/12/2006
03.007	PDF	Bureau of Public Debt FOIA	Use this form to obtain records of public debt issued in the name of an SSN, TIN, or SS Card Number. This constitutes proof that your application to SSA makes you into surety for federal debt.		11/17/2006
03.008	PDF	IRS Due Process Meeting Handout	Mail this form in advance of an IRS Audit or meeting and demand proof of authority on the record from the agent. Also bring it along with you to the due process meeting and demand that proof of jurisdiction be provided on the record using this form.	Nontaxpayer's Audit Defense Manual	12/13/2006
4. TAX WITHHOLDING, COLLECTION, AND REPORTING *(Please read Federal and State Tax Withholding Options for Private Employers)*					
04.001	HTML	IRS form W-8BEN	Provide to financial institutions and private employers to stop withholding and reporting of earnings.	About IRS form W-8BEN	4/13/2005
04.002	HTML	IRS form 56	Send this in to change your IRS status so that you aren't a fiduciary for an artificial entity or business	About IRS form 56	4/13/2005
04.003	HTML	IRS form 1098	Send in a corrected version of this report to zero out erroneous reports of mortgage interest payments "effectively connected with a trade or business".	Correcting Erroneous IRS form 1098's	4/13/2005
04.004	HTML	IRS form 1099	Send in a corrected version of this report to zero out erroneous reports of income "effectively connected with a trade or business".	Correcting Erroneous IRS form 1099's	4/13/2005
04.005	HTML	IRS form W-2	Send in to correct erroneous W-2 reports sent in by private employs with whom you have a W-8 on file and/or did not authorize withholding.	Correcting Erroneous IRS form W-2's	4/13/2005

04.006	PDF	Demand for Verified Evidence of "Trade or Business" Activity: Information Return	Use this form in the case where someone you work for or with is trying wants to fill out an Information Return against you, and you are not engaged in a "trade or business". This prevents you from having false or erroneous Information Returns filed against you by educating companies and financial institutions about their proper use.	The "Trade or Business" Scam	3/17/2006
04.007	PDF	Certification of Federally Privileged Status	Use this form with your private employer to get certification that you are not a federal "employee" or privileged "public official"	The "Trade or Business" Scam	3/17/2006
04.008	PDF	Demand for Verified Evidence of "Trade or Business" Activity: Currency Transaction Report (CTR)	Use this form in the case where you are trying to withdraw $10,000 or more from a financial institution in cash, and they want to fill out a Currency Transaction Report (CTR), Treasury form 8300, on the transaction. Typically, banks are not subject to federal legislative jurisdiction AND the CTR's can only be completed on those who are engaged in a "trade or business", which few Americans are.	The "Trade or Business" scam	1/23/2006
04.009	PDF	Tax Withholding and Reporting: What the Law Says	Present this form to private companies who you work for as a private employee, in order to educate them about what the law requires in the case of payroll withholding.	1. Federal and State Withholding Options for Private Employers (OFFSITE LINK) 2. Federal Tax Withholding	4/30/2006
04.010	PDF	IRS Form 1042	Send in a corrected version of this report to zero out erroneous reports of gross income for those nonresident aliens who are not engaged in a "trade or business".	Correcting Erroneous IRS form 1042's	11/15/2006
04.011	PDF	IRS Form 1098 Lender Letter	Send this form to lenders and mortgage companies who are wrongfully filing IRS form 1098's against you as a nonresident alien not engaged in a "trade or business" to get them to stop filing the false reports so that you don't have to correct them later.	Correcting Erroneous IRS form 1098's	11/15/2006
5. MEMORANDUMS OF LAW					
05.001	PDF	The Trade or Business Scam	Attach to your letters and correspondence to explain why you have no reportable income	1. Demand for Verified Evidence of Trade or Business Activity: CTR 2. Demand for Verified Evidence of Trade or Business Activity: Information Return	9/4/2006
05.002	PDF	Why Domicile and Income Taxes are Voluntary	Attach to your letters and correspondence to explain why you have no reportable income	Sovereignty Forms and Instructions: Cites by Topic, "Domicile" (OFFSITE LINK)	10/9/2005
05.003	PDF	Requirement for Consent	Attach to your letters and correspondence to explain why you aren't obligated to follow the I.R.C. because it isn't "law" for you	Declaration of Independence (OFFSITE LINK)	9/6/2006
05.004	PDF	Political Jurisdiction	Attach to legal pleadings in order to ensure that the court does not challenge or undermine your choice of citizenship or domicile. Establishes that any court which attempts to do this is involving itself in "political questions", which is a violation of the separation of powers doctrine.		9/25/2006
05.005	PDF	Federal Tax Withholding	For use in those seeking new employment or who wish to terminate employment tax withholding. Use in conjunction with the *Federal and State Tax Withholding Options for Private Employers* book. This is an abbreviated version of what appears in chapter 16 for management types who have little patience and a short attention span, which is most bosses.	Federal and State Tax Withholding Options for Private Employers (OFFSITE LINK) Income Tax Withholding and Reporting	3/23/2006
05.006	PDF	Why you are a "national" or "state national" and not a "U.S. citizen"	For use in obtaining a passport, for job applications, and to attach to court pleadings in which you are declaring yourself to be a "national" and a "nonresident alien".	Citizenship and Sovereignty Seminar Developing Evidence of Citizenship Seminar	8/23/2006
05.007	PDF	Reasonable Belief About Tax Liability	For use by those: 1. Establishing a reasonable belief about liability. 2. Corresponding with the IRS. 3. Being criminally prosecuted for failure to file or tax evasion.	Great IRS Hoax Federal and State Tax Withholding Options for Private Employers (OFFSITE LINK)	9/6/2006
05.008	PDF	Why Your Government is Either A Thief or You are a "Public Official" for Income Tax Purposes	Use this as an attachment to prove why Subtitle A of the Internal Revenue Code, in context of employment withholding and earnings on a 1040, are connected mainly with federal employment.		3/23/2006
05.009	PDF	Legal Requirement to File Federal Income Tax Returns	Use this as an attachment in response to a CP-518 IRS letter, or as part of a brief in response to criminal prosecution for "Willful Failure to File" under 26 USC §7203.	Reasonable Belief About Tax Liability	3/4/2006
05.010	PDF	Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents	Use this as an attachment in response to an IRS penalty collection notice to prove that you aren't responsible to pay the assessed penalty. Make sure you also follow the guidelines relating to SSNs in our article entitled "About SSNs/ TINs on Tax Correspondence"	26 U.S.C. §6671(b) (OFFSITE LINK) Sovereignty Forms and Instructions, Cites by Topic, "Bill of Attainder" (OFFSITE LINK)	1/26/2006
05.011	PDF	Why Assessments and Substitute for Returns are Illegal Under the I.R.C. Against Natural Persons	Use this as an attachment in response to an IRS or state "Notice of Proposed Assessment" or 90-day letter to show that the proposed assessment is illegal. Make sure you also attach IRS form 4852's and corrected 1099's to zero out illegal reports of taxable income using the links provided at the beginning of the memorandum.	Sovereignty Forms and Instructions, Cites by Topic, "assessments" (OFFSITE LINK)	1/8/2006

05.012	PDF	About SSNs and TINs on Government Forms and Correspondence	Use this form whenever you are filling out paperwork that asks for an SSN and the recipient won't accept the paperwork because you said "None" on the SSN block. The questions at the end will stop all such frivolous challenges by recipients of the forms you submit, if they have even half a brain.	Wrong Party Notice About IRS form W-8BEN	3/4/2006
05.013	PDF	Who are "taxpayers" and who Needs a "Taxpayer Identification Number"?	Attach this to financial account applications, job applications, etc. Shows why you don't need SSNs or TINs on government correspondence.	"Taxpayer" v. "Nontaxpayer", Which One are You? (OFFSITE LINK)	10/9/2005
05.014	PDF	The Meaning of the Words "includes" and "including"	Rebuttal to the most popular IRS lie and deception. Attach to response letters or legal pleading.	1. Rebutted Version of IRS The Truth About Frivolous Tax Arguments 2. Statutory Interpretation: General Principles and Recent Trends (OFFSITE LINK)	10/8/2006
05.015	PDF	Commercial Speech	Helpful to those facing injunctions.	Freedom of Speech and Press: Exceptions to the First Amendment (OFFSITE LINK)	7/24/2006
05.016	PDF	Socialism: The New American Civil Religion	Proves that government has become a false god and an idol in modern society in violation of the First Amendment.	1. Family Guardian: Communism and Socialism (OFFSITE LINK) 2. Social Security: Mark of the Beast (OFFSITE LINK) 3. The Law (OFFSITE LINK)	7/29/2006
05.017	PDF	Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction	Explains how federal agencies, courts, and the law profession unlawfully use "presumption" as a means to enlarge federal or government jurisdiction.	Sovereignty Forms and Instructions, Cites by Topic, "presumption" (OFFSITE LINK)	6/30/2006
05.018	PDF	Federal Jurisdiction	Explains choice of law in deciding federal jurisdiction in the context of federal income tax trials.		9/25/2006
05.019	PDF	Court Sanctions, Contempts, and Defaults	Describes circumstances under which court sanctions and contempt of court may lawfully be imposed in federal court.	1. Federal Rule of Civil Procedure Rule 11 (OFFSITE LINK) 2. Federal Rule of Civil Procedure Rule 37(b) (OFFSITE LINK)	2/17/2006
05.020	PDF	Nonresident Alien Position	Describes and defends the Nonresident Alien Position that is the foundation of this website.	About IRS Form W-8BEN	10/26/2006
05.021	PDF	Silence as a Weapon and a Defense in Legal Discovery	Describes how to use your constitutional rights to prevent incriminating yourself or prejudicing your Constitutional rights. Also describes how to respond to such tactic.	Federal Rule of Civil Procedure Rule 8(d) (OFFSITE LINK)	7/17/2006
05.022	PDF	Requirement for Reasonable Notice	Describes the requirement for reasonable notice and how you can find out what laws you are required to obey based on how they are noticed by the government.	Federal Register Act (OFFSITE LINK) Administrative Procedures Act (OFFSITE LINK)	8/15/2006
05.023	PDF	Government Conspiracy to Destroy the Separation of Powers	Describes historical efforts by the government to break down the separation of powers and destroy our God-given rights.	Separation of Powers Doctrine	9/5/2006
05.024	PDF	Apostille of Documents	Describes how to get your documents apostilled by the Secretary of State of your State for international use. This is useful for form 06.005 below.	State legal resources (OFFSITE LINK. find a state secretary of state)	8/18/2006
05.025	PDF	Government Burden of Proof	Describes the burden of proof imposed upon the government whenever enforcement actions are employed.		8/28/2006
05.026	PDF	How the Government Defrauds You Out of Legitimate Deductions for the Market Value of Your Labor	Describes how to lawfully and legally deduct the entire market value of your labor from your earnings on a federal or state tax return.	Is the Income Tax a Form of Slavery? (OFFSITE LINK)	10/14/2006
05.027	PDF	Meaning of the word "Frivolous"	Describes the meaning of the word "frivolous", how it is abused by the government and legal profession, and how to prevent such abuses		10/3/2006
05.028	PDF	Laws of the Bible	Index and authorities on all the moral laws of the Bible, and how to apply them to the practical affairs of daily secular life.	Holy Bible (OFFSITE LINK)	10/13/2006
05.029	PDF	Unlicensed Practice of Law	Those wishing to lawfully help or assist others in the practice of law, including in arguing before courts of law, may attach this to Litigation Tool 3.003 in order to prove that they have authority to do so.	Litigation Tool 3.003: Motion for Non-Bar Counsel	12/14/2006
6. EMANCIPATION					
06.001	PDF	Why You Aren't Eligible for Social Security	Use this form to apply for a driver's license without a Slave Surveillance Number. Most states require applications who are eligible for Social Security to provide a number. This pamphlet proves you aren't eligible and therefore don't need one.	Social Security: Mark of the Beast (OFFSITE LINK)	9/22/2005
06.002	PDF	Resignation of Compelled Social Security Trustee	Allows a person to legally and permanently quit Social Security. Used with permission from original author.	1. Social Security: Mark of the Beast (OFFSITE LINK) 2. Socialism: The New American Civil Religion 3. About IRS form 56	9/24/2005
06.003	PDF	Sovereignty Forms and Instructions Book	Free forms and instructions which help you achieve and defend personal sovereignty and the sovereignty of God in the practical affairs of your life. Also available in online version. This is an OFFSITE resource and we are not responsible for the content.	Online version of this book (OFFSITE LINK)	2/21/2006
06.004	PDF	Enumeration of Inalienable Rights	Use this form to litigate in court to defend your rights. Gives you standing without the need to quote federal statutes that you are not subject to anyway as a nonresident alien.	Constitution Annotated	4/24/2006

06.005	ZIP	Legal Notice of Change in Domicile/ Citizenship Records and Divorce from the United States	This form completely divorces the government and changes your status to that of a "stateless person" and a "transient foreigner" not subject to civil court jurisdiction and a "nontaxpayer". After filing this form, you can also use it to rebut tax collection notices.	1. Why you are a "national" or a "state national" and not a "U.S. citizen" 2. Why Domicile and Income Taxes are Voluntary	8/6/2006
7. RESPONSE LETTERS					
7.1 GENERAL					
07.011	PDF	Payment Delinquency and Copyright Violation Notice	Use this form to respond to state or federal tax collection notices. It can be used in connection with the Change of Address Attachment Affidavit.		9/8/2005
07.012	PDF	Wrong Party Notice	Send this notice if the state or IRS collection notice you received was delivered to a person with an all caps name or with any kind of identifying number.	About SSNs and TINs on Government Forms and Correspondence	10/4/2005
07.013	PDF	1098 Interest: Request for Filing Response	Send this form attached to a letter in which you respond to a state or IRS notice requesting you to file based on their receipt of an IRS form 1098, which is the form used by mortgage companies to report receipt of payments on a mortgage.	The "trade or business" scam	1/20/2006
07.014	PDF	Legal notice to cease and desist illegal enforcement activities	Use this form to officially notify the government collection agency that they are engaging in unlawful activity, are personally liable, and may not impose any provision of law against you without first proving you are a "taxpayer" with other than information hearsay returns.		8/1/2006
07.015	PDF	Third Party Tax Debt Collector Attachment	Use this form as an attachment to any correspondence you send a private debt collector in connection with any tax collection activity they are undertaking against you.		11/1/2006
7.2 FEDERAL					
07.021	PDF	Demand for Verified Evidence of Lawful Federal Assessment	Used in response to an IRS collection notice to request verified evidence validating the assessment connected to the amounts alleged to be owed.	1. Master File Decoder 2. Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents	4/12/2006
07.022	PDF	Assessment Response: Federal	Systematic way to respond to a federal penalty or tax assessment notice that is improper or illegal.	1. Why Assessments and Substitute for Returns are Illegal Under the I.R.C. Against Natural Persons 2. Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents	7/28/2006
07.023	PDF	Substitute for Federal Form 1040NR	Use this to respond to an IRS demand for a return to be filed.		10/5/2006
7.3 STATE					
07.031	PDF	Demand for Verified Evidence of Lawful State Assessment	Used in response to an State collection notice to request verified evidence validating the assessment connected to the amounts alleged to be owed.	1. Master File Decoder 2. Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents	4/12/2006
07.032	PDF	Assessment Response: State	Systematic way to respond to a state penalty or tax assessment notice that is improper or illegal.	1. Why Assessments and Substitute for Returns are Illegal Under the I.R.C. Against Natural Persons 2. Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents	4/13/2006
07.033	PDF	Substitute for State Nonresident Tax Return	Use this to respond to a state demand for a return to be filed.		8/11/2006

2. SITUATIONAL INDEX OF FORMS

Locate the situation you are in and then find forms relative to that specific situation in the subsections below. For further information pertinent to each situation, see:

- Our Situational References Page in the Liberty University, item 5.1.
- Subject Index (OFFSITE LINK)- Family Guardian

2.1. Applying for a job and Dealing with Employers

About IRS form W-8BEN: FORM 04.001 - this is the ONLY withholding form a nontaxpayer can use. The W-4 leads to BIG trouble and violation of law
Affidavit of Citizenship, Domicile, and Tax Status: FORM 02.001
Demand for Verified Evidence of "Trade or Business" Activity: Information Return: FORM 04.006- Use this form in the case where someone you work for or with may or definitely will file a fraudulent Information Return against you, and you are not engaged in a "trade or business". This prevents you from having false or erroneous Information Returns filed against you by educating companies and financial institutions about their proper use. Information Returns include

Federal Forms W-2, 1042-S, 1098, and 1099.
Federal Tax Withholding: FORM 05.005-brief pamphlet to hand to private employer to educate him about his withholding duties
Federal and State Withholding Options for Private Employers-lots of useful forms at the end of the document. Mainly for employees. Too long and may scare away private employers. Section 23.13, FORM 13 in that book is very useful to attach to your job application
Letter to Government Employer Stopping Withholding (OFFSITE LINK)
Letter to Commercial Employer Stopping Withholding (OFFSITE LINK)
Payroll Withholding Attachment (OFFSITE LINK)
Substitute IRS Form W-8BEN (OFFSITE LINK)
Who are "taxpayers" and who needs a "Taxpayer Identification Number": FORM 05.013 - short pamphlet you can attach to a job application to prove that you don't need to deduct or withhold and aren't a "taxpayer"

2.2. Changing your Citizenship and Domicile with State and Federal Governments

Change of Address Form Attachment (OFFSITE LINK)
Legal Notice of Change in Domicile/Citizenship Records and Divorce from the United States (OFFSITE LINK)
Passport Amendment Request (OFFSITE LINK)
Voter Registration Attachment (OFFSITE LINK)

2.3. General purpose

Attachment to Government Form that Asks for Social Security Number (OFFSITE LINK)
Famous Quotes About Rights and Liberty: FORM 01.003
Proof of Mailing: FORM 01.005 (OFFSITE LINK)
SEDM Fax Cover Sheet: FORM 01.004
SEDM Member Agreement: FORM 01.001

2.4. Litigation

SEDM Litigation Tools Page, Section 2

2.5. Opening financial accounts or making investments without withholding or a number

About SSNs/TINs on Government Forms and Correspondence: FORM 05.012- attach to account application to prove why you don't need a number
Affidavit of Citizenship, Domicile, and Tax Status: FORM 02.001
IRS Form W-8BEN: FORM 04.001
IRA Rollover Attachment (OFFSITE LINK)
Letter to remove SSN and tax withholding from account (OFFSITE LINK)
Legal Address Inquiry Letter Response (OFFSITE LINK)
Substitute IRS Form W-9 (OFFSITE LINK)
Who are "taxpayers" and who needs a "Taxpayer Identification Number": FORM 05.013-attach to account application to prove why you don't need a number

2.6. Responding to federal and state collection notices

Federal letter and notice index -index of all federal tax collection notices and letters and their responses
State letter and notice index - index of all state tax collection notices and letters and their reponses
Admissions relating to alleged liability: FORM 03.004
Affidavit of Material Facts: FORM 02.002
Demand for Verified Evidence of Lawful Federal Assessment: FORM 03.001

Demand for Verified Evidence of Lawful State Assessment: FORM 03.002
IRS Form W-8BEN: FORM 04.001
IRS Form 4852: FORM 04.002
IRS Form 1098: FORM 04.003
IRS Form 1099: FORM 04.004
IRS Form 56: FORM 04.004
Legal Requirement to File Federal Income Tax Returns: FORM 05.009
Test for Federal Tax Professionals (OFFSITE LINK)
Test for State Tax Professionals (OFFSITE LINK)
The Meaning of the Words "includes" and "including": FORM 05.014 - attach responses to prove the IRS is lying about the use of the word "includes" in determining the meaning of definitions within the I.R.C.
Who are "taxpayers" and who needs a "Taxpayer Identification Number": FORM 05.013-attach to account application to prove why you don't need a number
Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents: FORM 05.010
Why Assessments and Substitute for Returns are Illegal Under the I.R.C. Against Natural Persons: FORM 05.011
Writing Effective Response Letters-SEDM article
Wrong Party Notice: FORM 07.002 - use this form to explain why the TIN or SSN or the name on a collection notice are wrong. IRS cannot use any SSN, TIN, or all caps name to address you without assuming that you are a federal "employee"

2.7. Withdrawing cash from financial institutions

Demand for Verified Evidence of "Trade or Business" Activity: CTR: FORM 03.003 -use this if they try to violate the law by preparing a Currency Transaction Report for your withdrawal

2.8. Quitting Social Security and Functioning Without an SSN

Resignation of Compelled Social Security Trustee: FORM 06.002 - quit Social Security completely and get all your money back
Why You Aren't Eligible for Social Security: FORM 06.001 -use this to get a state driver's license without a Social Security Number
Wrong Party Notice: FORM 07.002 - use this form to explain why the TIN or SSN or the name on a collection notice are wrong. IRS cannot use any SSN, TIN, or all caps name to address you without assuming that you are a federal "employee"

3. ELECTRONIC FORMS COMPILATIONS

1. American Jurisprudence Pleading and Practice CD-ROM (OFFSITE LINK)-Excellent!
2. American Jurisprudence Legal Forms 2d CD (OFFSITE LINK)-Excellent!
3. Superforms- tax forms

4. OTHER FORMS SITES

NOTE: All of the links below are offsite links. We have no relationship with any of these parties.

4.1 General Forms

1. Sovereignty Forms and Instructions: Forms- Family Guardian
2. Common Law Venue: Forms Page

4.2 Tax Forms

1. Federal Forms and Publications- Family Guardian. Includes modified versions of most Federal Forms
2. Internal Revenue Service: Forms and Publications- WARNING: The forms from the IRS are designed to prejudice your rights and destroy your privacy. They ask for information that you aren't obligated by law to provide. You are much better off using the altered and "improved" versions of their forms posted on the Family Guardian website in link #2 above.
3. State Tax Forms
4. State Income Taxes
5. 1040.com-tax forms

4.3 Legal Forms

1. ContractStore
2. CourtTV Legal Forms
3. E-Z Legal forms
4. FindForms.com
5. Free Legal Forms -Pre-Paid Legal Services
6. HotDocs -legal forms preparation software
7. Law Forms USA
8. Law Guru -legal forms archive
9. Lectric Law Library: General Forms
10. Legal Forms On Demand
11. Legal Kits
12. LegalZoom
13. LexisOne Free Legal Forms -requires HotDocs installed, in most cases
14. U.S. Court Forms
15. U.S. Legal Forms
16. Versus Law U.S. Legal forms

Is the Income Tax a Form of Slavery?

http://www.lewrockwell.com/yates/yates17.html

Is the Income Tax a Form of Slavery?

by Steven Yates and Ray E. Bornert II

Slavery, we are reminded incessantly these days, was a terrible thing. In today's politically correct society, some blacks are demanding reparations for slavery because their remote ancestors were slaves. Slavery is routinely used to bash the South, although the slave trade began in the North, and slavery was once practiced in every state in the Union. Today's historians assure us that the War for Southern Independence was fought primarily if not exclusively over slavery, and that by winning that war, the North put an end to the peculiar institution once and for all.

Whoa! Time out! Shouldn't we back up and ask: what is slavery? It has been a while since those ranting on the subject have offered us a working definition of it. They will all claim that we know good and well what it is; why play games with the word? But given the adage that those who can control language can control policy, it surely can't hurt to revisit the definition of slavery. There are good reasons to suspect the motives of those who won't allow their basic terms to be defined or scrutinized.

Here is a definition, one that will make sense of the instincts telling us that slavery is indeed an abomination: *slavery is non-ownership of one's Person and Labor*. It is involuntary servitude. A slave must work under a whip, real or figurative, wielded by other persons, his owners, with no say in how (or even if) his labors are compensated. His is a one-way contract he cannot opt out of. A slave is tied to his master (and to the land where he labors). He cannot simply quit if he doesn't like it. Moreover, a slave can be bought and sold like any other commodity.

In this case slavery is at odds with libertarian social ethics, in which all human beings have a natural right to ownership of Person and Labor. According to libertarian social ethics, contracts should be voluntary and not coerced. This is sufficient for us to oppose slavery with all our might. However, notice that this clear definition of slavery is a double-edged sword. There is no reference to race in the above definition. That whites enslaved blacks early in our history is an historical accident; there is nothing inherently racial about slavery. Many peoples have been enslaved in the past, including whites. The South, too, has no intrinsic connection with slavery, given how we already noted that it was practiced in the North as well. No slaves were brought into the Confederacy during its brief, five-year existence, and it is very likely that the practice would have died out in a generation or two had the Confederacy won the war.

Finally, it is clear that when most people talk about slavery, they are referring to *chattel* slavery, the overt practice of buying, selling and owning people like farm animals or beasts of burden. Are there other forms of slavery besides chattel slavery?

Before answering, let's review our definition above and contrast slavery with sovereignty, in the sense of sovereignty over one's life. Slavery, we said, is nonownership of Person and Labor. In that case, *sovereignty is ownership of Person and Labor*. The basic contrast, then, is between slavery and sovereignty, and the issue is ownership. And there are two basic things one can own: one's Person (one's life), and one's Labor (the fruits

of one's labors, including personal wealth resulting from productive labors).

Let us quantify the situation. A plantation slave owned neither himself nor the fruits of his labors. That is, he owned 0% of Person and 0% of Labor. In an ideal libertarian order, ownership of Person and Labor would be just the opposite: 100% of both. In this case, we have a method allowing us to describe other forms of slavery by ascribing different percentages of ownership to Person and Labor. For example, we might say that a prison inmate owns 5% of Person and 50% of Labor. Inmates are highly confined in person yet they are allowed to own wealth both inside the prison and outside. Some, moreover, are allowed to work at jobs for which they are paid. When slavery was abolished, ownership of Person and Labor was transferred to the slave, and he became mostly free. So let us define the following categories in terms of individual percentage ownership:

Category	**Characteristics**
Chattel Slavery	0% ownership of Person and Labor
Partial Slavery	some % ownership of Person and Labor
Perfect Liberty	100% ownership of Person and Labor

With this in mind, here is our question for our readers: *how much ownership do you have in your person and your labor?* Are you really free? Or are you a partial slave? We are not, of course, talking about arrangements that cede a portion of ownership of Person and Labor to others through voluntary contract.

We submit that forcible taxation on your personal income makes you a partial slave? For if you are legally bound to hand a certain percentage of your income (the fruits of your labors) over to federal, state and local governments, then from the legal standpoint you only have "some % ownership" of your person and labor. The pivotal point is whether or not ownership is ceded through voluntary contract. Have you any recollection of any deals you signed with the IRS promising them payment of part of your income? If not, then if 30% of your income is paid in income taxes, then you have only 70% ownership of Labor. You are a slave from January through April – a very conservative estimate at best, today!

If one wants to stand on the U.S. Constitution as one's foundation, then the 13th Amendment to the U. S. Constitution can be used as an ironclad argument against a forcible direct tax on the labor of a human being. The 13th Amendment says: "Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have the power to enforce this article by appropriate legislation."

The 13th Amendment makes it very clear that we cannot legally or Constitutionally be forced into involuntary servitude.

As such, we maintain that a human being has an inalienable right to own 100 % of Person and 100% of Labor, including control over how the fruits of his actions are dispensed. A human being has an inalienable right to control the compensation for his labor while in the act of any service in the marketplace – e.g., digging ditches, flipping burgers, word-processing documents for a company, programming computers, preparing court cases, performing surgery, preaching sermons, or writing novels.

A forcible direct tax on the labor of a human being is in violation of this right as stated in the 13th Amendment. If we work 40 hours a week, and another entity forcibly conscripts 25 % of our compensation, then we argue that

we have been forced into involuntary servitude – slavery – for 10 of those 40 hours, and we were free for the other 30. If we could freely choose to work just the 30 hours and decline to work the 10 hours, then our wills would not be violated and the 13th Amendment would be honored.

However, Congress, the IRS and their Internal Revenue Code (IRC) lay direct claim to those ten hours (or some stated percentage) without our consent.

In other words, in a free and just society, a society in which there is no slavery of any form:

- Human beings are not forced to work for free, in whole or in part.
- Human beings are not slaves to anything or anyone.
- Anyone who attempts to force us to work for free, without compensation, has violated our rights under the 13th Amendment.

This, of course, is not the state of affairs in the United States of America at the turn of the millennium, in which:

- We labor involuntarily for at least four months out of every year for the government.
- We are, therefore, slaves for that period of time.
- The government, having forced us to work for free, without compensation, has violated the 13th Amendment.

Of course, what follows from all this discussion is that there is an issue about slavery. But it is not the issue politically correct historians and activists are raising. As for reparations, we suspect many of us might be willing to let bygones be bygones if we never had to pay out another dime to the IRS. We often read about how great the economy is supposedly doing. Just imagine how it would flourish if human beings owned 100% of Person and Labor, and could voluntarily invest the capital we currently pay to the government in our businesses, our homes, our schools, and our communities!

For those of you who believe that the 16th Amendment repealed, replaced, modified, appended, amended or superceded the 13th Amendment, you are mistaken. For an Amendment to be changed, in any way, there must be an Amendment that emphatically declares this action. There is absolutely nothing in the Constitution that alters the efficacy of the 13th Amendment in even the slightest way. The 16th merely allowed the government to enter the "National Social Benefits" business where it finances the system with the mandatory contributions of voluntary participants. While all Americans certainly understand the concept of mandatory contributions, they fail to understand the concept of voluntary participation, largely due to a very effective marketing campaign on the part of our central government for several generations now since the Great Depression. The 16th gave

the government the power to legally enter a contractual relationship with its citizens wherein the citizen contributes a portion of his labor in exchange for social benefits. In order for both Amendments to peacefully coexist, the contractual relationships in the system created by the 16th cannot be forced upon the citizens. For to do so would be to contradict the 13th completely.

Two final questions, and a few final thoughts. Can we really take seriously the carpings of politically correct historians about an arrangement (chattel slavery) that hasn't existed for 140 years when they completely ignore the structurally similar arrangements (tax slavery) that have existed right under their noses during most of the years since. And does a governmental system which systematically violates its own founding documents, and then oversees the imprisoning of those who refuse to recognize the legitimacy of the violations, really have a claim on the loyalty of those who would be loyal to the ideals represented in those founding documents?

Eventually, we have to make a decision. How long are we going to continue to put up with the present arrangements? In the Declaration of Independence is found these remarks: "... [a]nd accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed." We are accustomed to the income tax. Most people take it for granted, and don't look at fundamental issues. Yet some have indeed opted out of the tax system. It is necessary, at present, to become self-employed and hire oneself out based on a negotiated contract in which you determine your hourly rate and then bill for your time. Then you send your client an invoice, they write a check directly to you in response, and you take the check and deposit it in your bank account; you may wish to open a bank account with a name like John Smith Enterprises DBA (DBA stands for 'Doing Business As'). If the bank asks for a tax-ID number, you may give your social security number. This is perfectly legal since you are not a corporation nor are you required to be. Nor does the use of a government issued number contractually obligate you to participate in their system.

We should specify here that we are discussing taxes on income resulting from personal labor, to be carefully distinguished from taxes for the sale of material items, or excise taxes. These are an entirely separate matter.

By advocating opting out of the tax slavery system, we are not advocating anything illegal here; that is the most surprising thing of all. The Treasury Department nailed Al Capone not because of failure to pay taxes on his personal labor but for his failure to pay the excise tax on the sale of alcoholic beverages. So a plan to be self-employed that includes profit from the sale of material goods should include a plan to pay all the excise taxes; you risk a prison sentence if you don't. But the 13th Amendment directly prohibits anything or anyone from conscripting your person or the fruits of your physical or cognitive labors; to do so is make a slave of you. You may, of course, voluntarily participate in the SSA-W2 system by free choice. In this case you are required to submit to the rules as outlined in the Internal Revenue Code (IRC). And this means that you will contribute a significant fraction of your labor to pay for the group benefits of the system in which you are voluntarily participating.

Your relationship with the system technically begins with the assignment of a Social Security Number (Personal Tax ID Number). This government-issued number, however, does not contractually obligate you to anything. The government cannot conscript its citizens simply by assigning a number to them. Assigning the number is perfectly fine. But conscripting them in the process is a serious no-no. Some people that feel strongly about the last chapters of the book of Revelation might view this as pure – evil.

The critical point in the relationship begins when a citizen accepts a job with an IRS registered corporation. Accepting the government owned SSA-W2 job marries you to the system. The payroll department has the employee fill out a W4. This W4 officially notifies the employee that the job in question is officially part of the SSA-W2 system and that all job-income is subject first to the rules and regulations of the IRC and then secondly to the employee. When you sign that W4 you are at that point very, very married to the system.

So why not just decline to sign the W4?

You can decline to sign a W4 but this does not accomplish much nor does it unmarry you from the system. Your payroll office will merely use the IRC defaults already present in the payroll software and all deductions will be based on those parameters.

Okay, you might say, fine, I'll sign a W4 but I'll direct my payroll department to withhold zero. (You can do this for federal withholding but not for social security tax.) This still does not unmarry you from the system. Your payroll department still reports the gross income and deductions for your SSA-W2 job to the IRS each and every quarter. And at the end of the year you will probably end up writing a large check to the IRS for the group contributions you declined to pay during the year.

You then might say, Okay, then I'll just direct my payroll office to decline to report income to the IRS.

Reply: they cannot legally decline to report your SSA-W2 income because of their contractual obligations under the IRC that were agreed to when they established their official IRS registered corporation. The corporation can get into deep trouble by violating their contract.

Okay, you reply in turn, I'll just get the corporation to create a non-SSA-W2 job for me.

Response this time: the corporation cannot do this either; their contract under the IRC requires every single employee-job in that corporation to be an SSA-W2 job. This is similar to labor union practices of insisting that all jobs in a plant be union jobs.

You retort: isn't this a government monopoly on every corporate job in America???

The short answer is YES.

So how can I legally decline to work for free?

The answer is to decline to be an 'employee' of an official IRS registered corporation.

How is that possible?

The answer is simple. You become an independent contractor. The Supreme Court upholds the sovereignty of the individual and has declared that your "...power to contract is unlimited." Corporations hire the labors of non-employees each and every day.

If there is an infestation of cockroaches near the employee break-room, the corporation doesn't create an SSA-W2 employee exterminator job. They hire a contract exterminator to kill the bugs. When the bug-man arrives they don't hand him a W4 and ask him to declare his allowances, they lead him straight to the big-fat-ugly

roaches and implore him to vanquish the vermin immediately. When the bug-man finishes the job he hands them an invoice for his services. And the company sends him a check to pay the invoice. And nowhere on that check will you find a federal, state, county or city withholding deduction or a social security deduction or a medical or dental deduction or a garnishment or an "I'll-be-needing-an-accountant-to-figure-all-this-out" deduction or a "Tuesday-Save-The-Turnips-Tax" deduction. On the contrary, the bug-man receives full remuneration for his service. This simple arrangement is completely legal and the IRC has zero contractual claim to any part of this check (assuming the bug-man has made no contract under the IRC). And anyone or anything that attempts to forcibly conscript any part of that check is violating the bug-man's rights under the 13th Amendment.

SUPREME COURT RULING ON INDIVIDUAL SOVEREIGNTY

"There is a clear distinction in this particular case between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for an examination at the suit of the State. The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights." Hale v. Henkel, 201 U.S. 43 at 47 (1905).

What does the bug-man do with his check?

The short answer is ... he keeps it ... all of it.

What about filing a tax return?

The bug-man declines to file a return since he has nothing to report that is under the jurisdiction of the IRC. Since he does not work in a government owned SSA-W2 job he is out of the system and under no contractual obligation to make contributions. The corporation that wrote him a check for his service legally reports it as an internal business expense. He is legally classified as a non-participant.

If you are in the SSA-W2 system:

The purpose of an individual year-end tax-return is to settle the exact amount of contractually required contributions to the SSA-W2 system as determined by the IRC. Filing is purely voluntary. You can decline to file but doing so does not release you from your contractual obligations under the IRC. In the absence of a tax-return, the IRC permits the IRS to file a tax-return on your behalf and they are allowed to file a return that maximally favors them. And this they will do if it creates a receivable – accounting lingo for – "you owe them money." They will decline to file a return if it would create a payable – accounting lingo for "they owe you money." If the IRS files a return and creates a receivable against you they will send you a notice declaring their claim. If you decline to pay, the IRC permits the IRS to file a tax-lien against you. This of course will be seen on your credit report. And the end result is your credit is damaged. The IRS computers will see to it that the lien remains on your credit report until the lien is paid. You can't beat a computer.

What if I file a return but cheat like crazy?

This is a very bad idea. The Treasury Department nailed Leona Helmsley not because she failed to pay taxes on her personal labor but because she filed a fraudulent tax return. Filing a dishonest tax return puts you at risk. The IRS is very astute at defending itself. Basically the IRS is responsible for enforcing the IRC rules. If you are in the SSA-W2 system you have to live by the IRC. If you decide to stay in the system, we recommend securing the services of a highly qualified CPA or tax attorney that can assist you in filing the most advantageous return possible without committing fraud or risking an audit.

In the end, the law does allow you to opt-out because you can't be forced to work for free. If you do opt-out there are at least 2 potential inconveniences you need to understand:

1) Difficulty with conventional loans.

You will have a far more difficult time getting loans from conventional banks, because so often these depend on verifying your income with signed tax returns you no longer have. You can hire an accountant to compose a certified financial statement that some loan institutions may accept as valid proof of income.

2) No unemployment benefits.

This benefit is part of the SSA-W2 system and since you're not in the system you can't use the benefits. If you have no contracts you only have yourself to complain to, you can't complain to the government because you can't get anyone to do business with you.

Moreover, some who have opted out have moved all their physical assets into a trust. This measure makes it almost impossible for the IRS to touch the assets. The IRS, after all, cannot simply decide to go after a person's wealth. They have to obey IRC rules as well. If there is no income over which they have jurisdiction then they can legally do nothing.

It is worth noting, finally, that the government is in the "National Social Benefits" business. The government entered this business with the ratification of the 16th Amendment and has achieved a near perfect monopoly in this market (a violation of anti-trust laws). If you don't believe this, try finding a non-SSA-W2 job with a U.S. corporation. As such, it is in the interest of any business that has a monopoly to get the customers to believe that there is no alternative to the present business relationship. The government is not about to provide any of its customers (you and I) with any information suggesting otherwise. In obtaining such information, we are clearly on our own; no government agency will assist you in opting out of the income tax system or the social security system, with the possible exception of the U.S. Supreme Court, should the right case one day come before them.

So one's best weapon is still the Declaration of Independence, the U.S. Constitution, the 13th Amendment, and information. Whatever the inconveniences, the reward is personal sovereignty – otherwise known as freedom.

October 7, 2000

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Ray E. Bornert II is President of HixoxiH Software. A portion of this article has been adapted from his essay

Are You A Slave? *He lives in Snellville, Georgia.*

Steven Yates Archives

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THE GREAT IRS HOAX: WHY WE DON'T OWE INCOME TAX

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"Who is John Galt?"

Welcome to our free download page. The *Great IRS Hoax: Why We Don't Owe Income Tax* is a an ***amazing*** documentary that exposes the lie that the IRS and our tyrannical government "servants" have foisted upon us all these years:

> *"That we are liable for IRC Subtitle A income tax as American Nationals living in the 50 states of the Union with earnings from within the 50 states of the Union that does not originate from the government."*

Through a detailed and very thorough analysis of both enacted law and IRS behavior unrefuted by any of the 100,000 people who have downloaded the book, including present and former (after they learn the truth!) employees of the Treasury and IRS, it reveals why Subtitle A of the Internal Revenue Code is private law/special law that one only becomes subject to by engaging in an excise taxable activity such as a "trade or business", which is a type of federal employment and agency that puts people under federal jurisdiction who would not otherwise be subject. It proves using the government's own laws and publications and court rulings that for everyone in states of the Union who has not availed themselves of this excise taxable privilege of federal employment/agency, Subtitle A of the I.R.C. is not "law" and does not require the average American domiciled in states of the Union to pay a "tax" to the federal government. The book also explains how Social Security is the de facto mechanism by which "taxpayers" are recruited, and that the program is illegally administered in order to illegally expand federal jurisdiction into the states using private law. This book does not challenge or criticize the constitutionality of any part of the Internal Revenue Code nor any state revenue code, but simply proves that these codes are being misrepresented and illegally enforced by the IRS and state revenue agencies against persons who are not their proper subject. This book might just as well be called *The Emperor Who Had No Clothes* because of the massive and blatant fraud that it exposes on the part of our public servants.

"But Dad, the emperor is naked!"

Five years of continuous research by the author(s) and their readers went into writing this very significant and incredible book. This book is *very different* from most other tax books because:

1. The book is written in part by our tens of thousands of readers and growing...***THAT'S YOU***! We invite and frequently receive good new ideas and materials from legal researchers and ordinary people like YOU, and when we get them, we add them to the book after we research and verify them for ourselves to ensure their accuracy. Please keep your excellent ideas coming, because this is a team effort, guys!
2. *We use words right out of the government's own mouth, in most cases, as evidence of most assertions we make*. If the government calls the research and processes found in this book frivolous, they would have to call the Supreme Court, the Statutes at Large, the Treasury Regulations (26 C.F.R.) and the U.S. Code frivolous, because everything derives from these sources.
3. Ever since the first version was published back in Nov. 2000, we have invited, and even *begged*, the government continually and repeatedly, both on our website and in our book and in correspondence with the IRS and the Senate Finance Committee (click here to read our letter to Senator Grassley under "Political Activism"), and in the We The People Truth in Taxation Hearings to provide a signed affidavit on government stationary along with supporting evidence that disproves *anything* in this book . We have even promised to post the government's rebuttal on our web site *unedited* because we are more interested in the truth than in our own agenda. Yet, some ***criminal public servants*** have consistently and steadfastly refused their legal duty under the First Amendment Petition Clause to answer our concerns and questions, thereby hiding from the truth and obstructing justice in violation of 18 U.S.C. Chapter 73. By their failure to answer they have defaulted and admitted to the complete truthfulness of this book pursuant to Federal Rule of Civil Procedure 8(d). If the "court of public opinion" really were a court, and if the public really were *fully educated* about the law as it is the purpose of this book to bring about, the IRS and our federal government would have been convicted long ago of the following crimes by their own treasonous words and actions thoroughly documented in this book (click here for more details):

    - Establishment of the U.S. government as a "religion" in violation of First Amendment (see section 4.3.2 of this book and our article entitled: Our Government has Become Idolatry and a False Religion)
    - Obstruction of justice under 18 U.S.C. Chapter 73
    - Conspiracy against rights under 18 U.S.C. §241
    - Extortion under 18 U.S.C. §872 .
    - Wrongful actions of Revenue Officers under 26 U.S.C. §7214
    - Engaging in monetary transactions derived from unlawful activity under 18 U.S.C. §1957
    - Mailing threatening communications under 18 U.S.C. §876
    - False writings and fraud under 18 U.S.C. §1018
    - Taking of property without due process of law under 26 CFR §601.106(f)(1)
    - Fraud under 18 U.S.C. §1341
    - Continuing financial crimes enterprise (RICO) under 18 U.S.C. §225
    - Conflict of interest of federal judges under 28 U.S.C. §455
    - Treason under Article III, Section 3, Clause 1 of the U.S. Constitution
    - Breach of fiduciary duty in violation of 26 CFR 2635.101, Executive order order 12731, and Public Law 96-303
    - Peonage and obstructing enforcement under Thirteenth Amendment, 18 U.S.C. §1581 and 42 U.S.C. §1994
    - Bank robbery under 18 U.S.C. §2113 (in the case of fraudulent notice of levies)

4. We keep the level of the writing to where a person of average intelligence and no legal background can understand and substantiate the claims we are making for himself.
5. We show you how and where to go to substantiate every claim we make and we encourage you to check the facts for yourself so you will believe what we say is absolutely accurate and truthful.
6. All inferences made are backed up by extensive legal research and justification, and therefore tend to be more convincing and authoritative and understandable than most other tax books. We assume up front that you will

question *absolutely every assertion* that we make because we encourage you to do exactly that, so we try to defend every assertion in advance by answering the most important questions that we think will come up. We try to reach *no* unsubstantiated conclusions whatsoever and we avoid the use of personal opinions or anecdotes or misleading IRS publications. Instead, we always try to back up our conclusions with evidence or an authoritative government source such as a court cite or a regulation or statute or quotes from the authors of the law themselves, and we verify every cite so we don't destroy our credibility with irrelevant or erroneous data or conclusions. Frequent corrections and feedback from our 100,000 readers (and growing) also helps considerably to ensure continual improvements in the accuracy and authority and credibility of the document.

7. Absolutely everything in the book is consistent with itself and we try very hard not to put the reader into a state of "cognitive dissonance", which is a favorite obfuscation technique of our public dis-servants and legal profession. No part of this book conflicts with any other part and there is complete "cognitive unity". Every point made supports and enhances every other point. If the book is truthful, then this must be the case. A true statement cannot conflict with itself or it simply can't be truthful.
8. With every point we make, we try to answer the question of "why" things are the way they are so you can understand our reasoning. We don't flood you with a bunch of rote facts to memorize without explaining why they are important and how they fit in the big picture so you can decide for yourself whether you think it is worth your time to learn them. That way you can learn to think strategically, like most lawyers do.
9. We practice exactly what we preach and what we put in the book is based on lessons learned actually doing what is described. That way you will believe what we say and see by our example that we are very sincere about everything that we are telling you. Since we aren't trying to sell you anything, then there *can't* be any other agenda than to help you learn the truth and achieve personal freedom.
10. This is also the ONLY book that explains and compares all the major theories and tax honesty groups and sifts the wheat from the chaff to extract the "best of breed" approach from each advocate which has the best foundation in law and can most easily be defended in court.
11. The entire book, we believe, completely, truthfully, and convincingly answers the following very important question:

    "How can we interpret and explain the Internal Revenue Code in a way that makes it completely lawful and Constitutional, both from the standpoint of current law and from a historical perspective?"

If you don't have a lot of time to read EVERYTHING, we recommend reading at least the following chapters in the order listed: 1, 3, 4, 5 (these are mandatory).

TESTIMONIALS: Click here to hear what people are saying about this book!

If you are from the government and think that this book might be encouraging some kind of illegal activity, click here to find a rebuttal of such an accusation and detailed research on why we are *not* subject to state or federal jurisdiction for anything related to this website or our ministry.

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1	Introduction	115	1,275	PDF	PDF

2	U.S. Government Background	128	1,432		
3	Legal Authority for Income Taxes in the United States	173	1,833		
4	Know Your Citizenship Status and Rights!	376	4,424		
5	The Evidence: Why We Aren't Liable to File Returns or Pay Income Tax	539	5,467		
6	History of Federal Government Income Tax Fraud, Racketeering, and Extortion in the U.S.A.	179	1,864		
7	Case Studies	45	420		
8	Resources for Tax Freedom Fighters	9	97		
9	Definitions	14	220		

The *Great IRS Hoax* book draws on works from several prominent sources and authors, such as:

1. The U.S. Constitution.
2. The Family Constitution
3. Amendments to the U.S. Constitution.
4. The Declaration of Independence.
5. The United States Code (U.S.C.), Title 26 (Internal Revenue Code), both the current version and amended past versions.
6. U.S. Supreme Court Cases.
7. U.S. Tax Court findings.
8. The Code of Federal Regulations (CFR), Title 26, both the current version and amended past versions.
9. IRS Forms and Publications (directly from the IRS Website at http://www.irs.gov).
10. U.S. Treasury Department Decisions.
11. Federal District Court cases.
12. Federal Appellate (circuit) court cases.
13. Several websites.
14. A book entitled *Losing Your Illusions* by Gordon Phillips of Private Arena (http://privatearena.com/).

15. A book entitled *IRS Humbug*, by Frank Kowalik.
16. A book entitled *Federal Mafia*, by Irwin Schiff (http://paynoincometax.com).
17. A book entitled *Constitutional Income*, by Phil Hart (http://constitutionalincome.com/).
18. Case studies of IRS enforcement tactics (http://www.neo-tech.com/irs-class-action/).
19. Case studies of various tax protester groups.
20. The IRS' own publications about Tax Protesters.
21. A book entitled *Why No One is Required to File Tax Returns* by William Conklin (http://www.anti-irs.com)
22. Writings of Thomas Jefferson, the author of the Declaration of Independence.
23. Department of Justice, Tax Division, Criminal Tax Manual
24. Several other books mentioned on our Recommended Reading page.

Below is a complete outline of the content of this very extensive work:

PREFACE

Testimonials
Preface
Conventions Used Consistently Throughout This Book
Table of Contents
Table of Authorities

Cases
Statutes
Regulations
Other Authorities

Index
Revision History

1. INTRODUCTION

1.1 Help! Where can I get help with my tax problem?
1.2 Summary of the Purpose of this document
1.3 Who Is This Document Intended To Help?
1.4 Why Should I Believe This Book or Your Website?

1.4.1 Mission statement
1.4.2 Motivation and Inspiration
1.4.3 Ministry
1.4.4 Schooling
1.4.5 Criticism
1.4.6 Pricing
1.3.7 Frequently Asked Questions About Us

1.4.7.1 Question 1: Do you file 1040 forms?
1.4.7.2 Question 2: Do you have any court cites favorable to your position?
1.4.7.3 Question 3: Isn't it a contradiction for you to be working for the government on the one hand and criticizing the government on the other hand.
1.4.7.4 Question 4: Isn't it a contradiction to be paid by the very tax dollars from

the government that you tell people not to pay?
1.4.7.5 Question 5: Do you have to quote the Bible so much?
1.4.7.6 Question 6: Aren't you endangering yourself by criticizing government?
1.4.7.7 Question 7: How come I can't select or copy text from the electronic version of this document?
1.4.7.8 Question 8: I'm afraid to act on the contents of this book. What should I do?

1.5 Who Is Really Liable for the Income Tax?
1.6 Amazing Facts About the Income Tax
1.7 So if citizens don't need to pay income tax, how could so many people be fooled for so long?
1.8 Our Own Ignorance, Laziness, Arrogance, Disorganization, and Apathy: Public Enemy #1
1.9 Political "Tax" Prisoners
1.10 What Attitude are Christians Expected to Have About This Document?

1.10.1 Jesus Christ, Son of God, was a tax protester!
1.10.2 The Fifth Apostle Jesus Called and the first "Sinner" Called to Repentance Were Tax Collectors
1.10.3 The FIRST to Be Judged By God Will Be Those Who Took the Mark of the Beast: The Socialist (Social) Security Number
1.10.4 Our obligations as Christians
1.10.5 Civil Disobedience to Corrupt Governments is a Biblical Mandate
1.10.6 Why you can't trust Lawyers and Most Politicians
1.10.7 How can I wake up fellow Christians to the truths in this book?

1.11 Common Objections to the Recommendations In This Document

1.11.1 Why can't you just pay your taxes like everyone else?
1.11.2 What do you mean my question is irrelevant?
1.11.3 How Come my Accountant or Tax Attorney Doesn't Know This?
1.11.4 Why Doesn't the Media Blow the Whistle on This?
1.11.5 Why Won't the IRS and the US Congress Tell Us The Truth?
1.11.6 But how will government function if we don't pay?
1.11.7 What kind of benefits could the government provide without taxes?
1.11.8 I Believe You But I'm Too Afraid to Confront the IRS
1.11.9 The Views Expressed in This Book are Overly Dogmatic or Extreme

1.12 Analysis of financial impact of ending federal income taxes

2. U.S. GOVERNMENT BACKGROUND

2.1 Code of Ethics for Government Service
2.2 The Limited Powers and Sovereignty of the United States Government
2.3 Thomas Jefferson on Property Rights and the Foundations of Government
2.4 The Freedom Test

2.4.1 Are You Free or Do You Just Think You Are?
2.4.2 Key to Answers
2.4.3 Do You Still Think You Are Free?

2.5 14 Signposts to Slavery
2.6 The Mind-Boggling Burden to Society of Slavery to the Income Tax
2.7 America: Home of the Slave and Hazard to the Brave

2.7.1 Karl Marx's Communist Manifesto: Alive and Well In America

2.7.2 Public (Government) Schooling
2.7.3 The Socialist Plan to Make America Communist
2.7.4 IRS Secret Police/KGB in Action!

2.8 Sources of Government Tyranny and Oppression

2.8.1 Deception: The religion of Satan and our government
2.8.2 Presumption
2.8.3 Illegal Acts and Legal Obfuscation
2.8.4 Propaganda, and Political Warfare
2.8.5 Compelled Income Taxes on Labor (slavery!)
2.8.6 The Socialist (Social) Security Number: Mark of the Beast

2.8.6.1 Coercion: The Enumeration At Birth Program
2.8.6.2 Coercion: Denying Benefits for Those who Refuse to Provide Socialist Security Numbers

2.8.7 National ID Cards
2.8.8 Paper Money

2.8.8.1 What is Money?
2.8.8.2 The Founders Rejected Paper Currency
2.8.8.3 War of Independence Fought Over Paper Money
2.8.8.4 President Thomas Jefferson: Foe of Paper Money
2.8.8.5 Wealth confiscation through inflation
2.8.8.6 The Most Dangerous Man in the Mid South
2.8.8.7 What Type of "Money" Do You Pay Your Taxes With To the IRS?

2.8.9 The Federal Reserve

2.8.9.1 The Federal Reserve System Explained
2.8.9.2 Lewis v. United States Ruling
2.8.9.3 Federal Reserve Never Audited

2.8.10 Debt
2.8.11 Surrendering Freedoms in the Name of Government-Induced Crises
2.8.12 Judicial Tyranny

2.8.12.1 Conflict of Interest and Bias of Federal Judges
2.8.12.2 Sovereign Immunity
2.8.12.3 Cases Tried Without Jury
2.8.12.4 Attorney Licensing
2.8.12.5 Protective Orders
2.8.12.6 "Frivolous" Penalties
2.8.12.7 Non-publication of Court Rulings

2.8.12.7.1 Background
2.8.12.7.2 Publication Procedures Have Been Changed Unilaterally
2.8.12.7.3 Publication is Essential to a Legal System Based on Precedent
2.8.12.7.4 Citizens in a Democracy are Entitled to Consistent Treatment From the Courts
2.8.12.7.5 Operational Realities of Non-publication
2.8.12.7.6 Impact of Non-publication Inside the Courts
2.8.12.7.7 Openness

2.8.12.7.8 Constitutional Considerations
2.8.12.7.9 Opinions Are Necessary, Even in "Insignificant Matters"
2.8.12.7.10 Impact on the Legal System in Society
2.8.12.7.11 Questions to Ponder

2.9 The Social Security Fraud

2.9.1 Social Security is NOT a Contract!
2.9.2 Social Security is Voluntary Not Mandatory
2.9.3 A Legal Con Game (Forbes Magazine, March 27, 1995)
2.9.4 The Legal Ponzi Scheme (Forbes Magazine, October 9, 1995)
2.9.5 The Social Security Mess: A Way Out, (Reader's Digest, December 1995)

2.10 They Told The Truth!: Amazing Quotes About the U.S. Government

2.10.1 ...About The Internal Revenue Service
2.10.2 ...About Social Security
2.10.3 ...About The Law
2.10.4 ...About Money, Banking & The Federal Reserve
2.10.5 ...About the New World Order
2.10.6 ...About the "Watchdog Media"
2.10.7 ...About Republic v. Democracy
2.10.8 ...About Citizens, Politicians and Government
2.10.9 ...About Liberty, Slavery, Truth, Rights & Courage

2.11 Bill of No Rights|
2.12 Am I A Bad American?-Absolutely Not!
2.13 How to Teach Your Child About Politics
2.14 If Noah Were Alive Today
2.15 Prayer at the Opening of the Kansas Senate
2.16 The Ghost of Valley Forge
2.17 Last Will and Testament of Jesse Cornish
2.18 America?
2.19 Grateful Slave
2.20 Economics 101

3. LEGAL AUTHORITY FOR INCOME TAXES IN THE UNITED STATES

3.1 Quotes from Thomas Jefferson on the Foundations of Law and Government
3.2 Biblical Law: The Foundation of ALL Law
3.3 The Purpose of Law
3.4 Natural Law
3.5 The Law of Tyrants
3.6 Basics of Federal Laws

3.6.1 Precedence of Law
3.6.2 Legal Language: Rules of Statutory Construction
3.6.3 How Laws Are Made
3.6.4 Positive Law
3.6.5 Discerning Legislative Intent and Resolving conflicts between the U.S. Code and the Statutes At Large (SAL)

3.7 Declaration of Independence

3.7.1 Dysfunctional Government
3.7.2 God Given Rights
3.7.3 Taxation Without Consent

3.8 U.S. Constitution

3.8.1 Constitutional Government
3.8.2 Enumerated Powers, Four Taxes & Two Rules
3.8.3 Constitutional Taxation Protection
3.8.4 Colonial Taxation Light
3.8.5 Taxation Recapitulation
3.8.6 Direct vs. Indirect Taxes
3.8.7 Article I, Section 8, Clauses 1 and 3: The Power to Tax and Regulate Commerce
3.8.8 Bill of Rights

3.8.8.1 1st Amendment: The Right to Petitioner the Government for Redress of Grievances
3.8.8.2 4th Amendment: Prohibition Against Unreasonable Search and Seizure Without Probable Cause
3.8.8.3 5th Amendment: Compelling Citizens to Witness Against Themselves

3.8.8.3.1 Introduction
3.8.8.3.2 More IRS Double-Speak/Illogic
3.8.8.3.3 The Privacy Act Notice
3.8.8.3.4 IRS Deception in the Privacy Act Notice
3.8.8.3.5 IRS Fear Tactics to Keep You "Volunteering"
3.8.8.3.6 Jesus' Approach to the 5th Amendment Issue
3.8.8.3.7 Conclusion

3.8.8.4 6th Amendment: Rights of Accused in Criminal Prosecutions
3.8.8.5 10th Amendment: Reservation of State's Rights

3.8.9 13th Amendment: Abolition of Slavery
3.8.10 14th Amendment: Requirement for Due Process to Deprive Of Property
3.8.11 16th Amendment: Income Taxes

3.8.11.1 Legislative Intent of the 16th Amendment According to President William H. Taft
3.8.11.2 Understanding the 16th Amendment
3.8.11.3 History of the 16th Amendment
3.8.11.4 Fraud Shown in Passage of 16th Amendment
3.8.11.5 What Tax Is Parent To The Income Tax?
3.8.11.6 Income Tax DNA - Government Lying, But Not Perjury?
3.8.11.7 More Government Lying, Still Not Perjury?
3.8.11.8 There Can Be No Unapportioned Direct Tax
3.8.11.9 The Four Constitutional Taxes
3.8.11.10 Oh, What Tangled Webs We Weave...
3.8.11.11 Enabling Clauses

3.9 U.S. Code (U.S.C.) Title 26: Internal Revenue Code (IRC)

3.9.1 Word Games: Deception Using Definitions

3.9.1.1 "citizen" (undefined)
3.9.1.2 "Compliance" (undefined)

3.9.1.3 "Domestic corporation" (in 26 U.S.C. §7701(a)(4))
3.9.1.4 " Employee" (in 26 U.S.C. §7701)
3.9.1.5 "Foreign corporation" (in 26 U.S.C. §7701(a)(5))
3.9.1.6 " Employer" (in 26 U.S.C. §3401)
3.9.1.7 "Gross Income"(26 U.S.C. Sec. 71-86)
3.9.1.8 "Includes" and "Including" (26 U.S.C. §7701(c))
3.9.1.9 "Income"
3.9.1.10 "Individual" (never defined)
3.9.1.11 “Levy” (in 26 U.S.C. §7701(a)(21))
3.9.1.12 "Liable" (undefined)
3.9.1.13 "Must" means "May"
3.9.1.14 "Nonresident alien" (26 U.S.C. . §7701(b)(1)(B))
3.9.1.15 "Person" (26 U.S.C. . §7701(a)1)
3.9.1.16 "Personal services" (not defined)
3.9.1.17 "Required"
3.9.1.18 "Shall" actually means "May"
3.9.1.19 "State" (in 26 U.S.C. §7701)
3.9.1.20 "Tax" (not defined)
3.9.1.21 "Taxpayer" (in 26 U.S.C. §7701)
3.9.1.22 "Taxpayer" (in 26 U.S.C. §7701)
3.9.1.23 "United States" (in 26 U.S.C. §7701)
3.9.1.24 "U.S. Citizen"
3.9.1.25 "Voluntary" (undefined)
3.9.1.26 "Wages" (in 26 U.S.C. . §3401(a))
3.9.1.27 "Withholding agent" (in 26 U.S.C. §7701)

3.9.2 26 USC Sec. 1: Tax Imposed
3.9.3 26 USC Sec. 61: Gross Income
3.9.4 26 USC Sec. 63: Taxable Income Defined
3.9.5 26 USC Sec. 861: Source Rules and Other Rules Relating to FOREIGN INCOME
3.9.6 26 USC Sec. 871: Tax on nonresident alien individuals
3.9.7 26 USC Sec. 872: Gross income
3.9.8 26 USC Sec. 3405: Employer Withholding
3.9.9 26 USC Sec. 6702: Frivolous Income Tax Return
3.9.10 26 USC Sec. 7201: Attempt to Evade or Defeat Tax
3.9.11 26 USC Sec. 7203: Willful Failure to File Return, Supply Information, or Pay Tax
3.9.12 26 USC Sec. 7206: Fraud and False Statements

3.10 U.S. Code Title 18: Crimes and Criminal Procedure

3.10.1 18 U.S.C. 6002-6003

3.11 U.S. Code Title 5, Sections 551 through 559: Administrative Procedures Act
3.12 Code of Federal Regulations (CFR) Title 26

3.12.1 How to Read the Income Tax Regulations
3.12.2 Types of Federal Tax Regulations

3.12.2.1 Treasury Regulations
3.12.2.2 "Legislative" and "interpretive" Regulations
3.12.2.3 Procedural Regulations

3.12.3 You Cannot Be Prosecuted for Violating an Act Unless You Violate It’s Implementing Regulations
3.12.4 Part 1, Subchapter N of the 26 Code of Federal Regulations
3.12.5 26 CFR Sec. 1.861-8(a): Taxable Income

3.12.6 26 CFR Sec. 1.861-8T(d)(2)(ii)(A): Exempt income
3.12.7 26 CFR Sec. 1.861-8T(d)(2)(iii): Income Not Exempt from Taxation
3.12.8 26 CFR Sec. 1.861-8(f)1: Determination of Taxable Income
3.12.9 26 CFR Sec. 1.863-1: Determination of Taxable Income
3.12.10 26 CFR Sec. 31: Employment Taxes and Collection of Income Taxes at the Source
3.12.11 26 CFR Sec. 31.3401(c)-1: Employee

3.13 Treasury Decisions and Orders

3.13.1 Treasury Delegation of Authority Order 150-37: Always Question Authority!
3.13.2 Treasury Decision Number 2313: March 21, 1916

3.14 Supreme Court Cases Related To Income Taxes in the United States

3.14.1 1818: U.S. v. Bevans (16 U.S. 336)
3.14.2 1883: Butchers' Union Co. v. Crescent City Co. (111 U.S. 746)
3.14.3 1894: Caha v. United States (152 U.S. 211)
3.14.4 1895: Pollack v. Farmer's Loan and Trust Company (157 U.S. 429, 158 U.S. 601)
3.14.5 1900: Knowlton v. Moore (178 U.S. 41)
3.14.6 1901: Downes v. Bidwell (182 U.S. 244)
3.14.7 1906: Hale v. Henkel (201 U.S> 43)
3.14.8 1911: Flint v. Stone Tracy Co. (*220 U.S. 107)*
3.14.9 1914: Weeks v. U.S. (*232 U.S. 383)*
3.14.10 1916: Brushaber vs. Union Pacific Railroad (*240 U.S. 1)*
3.14.11 1916: Stanton v. Baltic Mining (240 U.S. 103)
3.14.12 1918: Peck v. Lowe (247 U.S. 165)
3.14.13 1920: Evens v. Gore (253 U.S. 245)
3.14.14 1920: Eisner v. Macomber (252 U.S. 189)
3.14.15 1922: Bailey v. Drexel Furniture Co. (259 U.S. 20)
3.14.16 1924: Cook v. Tait (265 U.S. 47)
3.14.17 1930: Lucas v. Earl (281 U.S. 111)
3.14.18 1935: Railroad Retirement Board v. Alton Railroad Company (295 U.S. 330)
3.14.19 1938: Hassett v. Welch (303 U.S. 303)
3.14.20 1945: Hooven & Allison Co. v. Evatt (324 U.S. 652)
3.14.21 1959: Flora v. U.S. (362 U.S. 145)
3.14.22 1960: U.S. v. Mersky (361 U.S. 431)
3.14.23 1961: James v. United States (366 US 213, p. 213, 6L Ed 2d 246)
3.14.24 1970: Brady v. U.S. (379 U.S. 742)
3.14.25 1974: California Bankers Association v. Shultz (416 U.S. 25)
3.14.26 1975: Garner v. U.S. (424 U.S. 648)
3.14.27 1976: Fisher v. United States (425 U.S. 391)
3.14.28 1978: Central Illinois Public Service Co. v. United States (435 U.S. 21)
3.14.29 1985: U.S. v. Doe (465 U.S. 605)
3.14.30 1991: Cheek v. United States (498 U.S. 192)
3.14.31 1992: United States v. Burke (504 U.S. 229, 119 L Ed 2d 34, 112 S Ct. 1867)
3.14.32 1995: U.S. v. Lopez (000 U.S. U10287)

3.15 Federal District and Circuit Court Cases

3.15.1 Commercial League Assoc. v. The People, 90 Ill. 166
3.15.2 Jack Cole Co. vs. Alfred McFarland, Sup. Ct. Tenn 337 S.W. 2d 453
3.15.3 1916: Edwards v. Keith 231 F 110, 113
3.15.4 1925: Sims v. Ahrens, 271 SW 720
3.15.5 1937: Stapler v. U.S., 21 F. Supp. AT 739
3.15.6 1937: White Packing Co. v. Robertson, 89 F.2d 775, 779 the 4th Circuit Court
3.15.7 1939: Graves v. People of State of New York (306 S.Ct. 466)

3.15.8 1943: Helvering v. Edison Brothers' Stores, 8 Cir. 133 F2d 575
3.15.9 1946: Lauderdale Cemetary Assoc. v. Mathews, 345 PA 239, 47 A. 2d 277, 280
3.15.10 1947: McCutchin v. Commissioner of IRS, 159 F2d 472 5th Cir. 02/07/1947
3.15.11 1952: Anderson Oldsmobile , Inc. vs Hofferbert, 102 F. Supp. 902
3.15.12 1955: Oliver v. Halstead, 196 VA 992, 86 S.E. 2d 858
3.15.13 1958: Lyddon Co. vs. U.S., 158 Fed. Supp 951
3.15.14 1960: Commissioner of IRS v. Duberstein, 80 5. Ct. 1190
3.15.15 1962: Simmons v. United States, 303 F.2d 160
3.15.16 1969: Conner v. U.S. 303 F. Supp. 1187 Federal District Court, Houston
3.15.17 1986: U.S. v. Stahl, 792 F.2d 1438

3.16 IRS Publications
3.17 Topical Legal Discussions

3.17.1 Uncertainty of the Federal Tax Laws
3.17.2 Reasonable Cause
3.17.3 The Collective Entity Rule
3.17.4 Due Process

3.17.4.1 What is Due Process of Law?
3.17.4.2 Due process principles and tax collection
3.17.4.3 Substantive Rights and Essentials of Due Process

3.17.5 There's No Duty To Convert Money Into Income
3.17.6 What's Income and Why Does It Matter?
3.17.7 The President's Role In Income Taxation
3.17.8 A Historical Perspective on Income Taxes

4. KNOW YOUR CITIZENSHIP STATUS AND RIGHTS!

4.1 Natural Order
4.2 Rights v. Privileges

4.2.1 Rights Defined and Explained
4.2.2 What is the Difference Between a “Right” and a “Privilege”?
4.2.3 Fundamental Rights: Granted by God and Cannot be Regulated by the Government
4.2.4 The Two Classes of Rights: Civil and Political
4.2.5 Why we MUST know and assert our rights and can't depend on anyone to help us
4.2.6 Why you shouldn't cite federal statutes as authority for protecting your rights

4.3 Government

4.3.1 What is government?
4.3.2 Biblical view of taxation and government
4.3.3 The purpose of government: Protection of the weak from harm and evil
4.3.4 Equal protection
4.3.5 How government and God compete to provide "protection"
4.3.6 Separation of powers doctrine
4.3.7 "Sovereign"="Foreign"="Alien"
4.3.8 The purpose of income taxes: government protection of the assets of the wealthy
4.3.9 Why all man-made law is religious in nature
4.3.10 The Unlimited Liability Universe
4.3.11 The result of following government's laws instead of God's laws is slavery, servitude, and captivity
4.3.12 Government-instituted slavery using "privileges"

4.3.13 Our Government has become idolatry and a false religion
4.3.14 Socialism is Incompatible with Christianity
4.3.15 All Governments are Corporations
4.3.16 How public servants eliminate or hide the requirement for "consent" to become "Masters"

4.3.16.1 Rigging government forms to prejudice our rights
4.3.16.2 Misrepresenting the law in government publications
4.3.16.3 Automation
4.3.16.4 Concealing the real identities of government wrongdoers
4.3.16.5 Making it difficult, inconvenient, or costly to obtain information about illegal government activities
4.3.16.6 Ignoring correspondence and/or forcing all complaints through an unresponsive legal support staff that exasperates and terrorizes "customers"
4.3.16.7 Deliberately dumbing down and propagandizing government support personnel who have to implement the law
4.3.16.8 Creating or blaming a scapegoat beyond their control
4.3.16.9 Terrorizing and threatening, rather than helping, the ignorant

4.3.17 Why good government demands more than just "obeying the law"

4.4 The Constitution is Supposed to Make You the SOVEREIGN and the Government Your Servant

4.4.1 The Constitution does not bind citizens
4.4.2 The Constitution as a Legal Contract
4.4.3 How the Constitution is Administered by the Government
4.4.4 If the Constitution is a Contract, why don't we have to sign it and how can our predecessors bind us to it without our signature?
4.4.5 Authority delegated by the Constitution to Public Servants
4.4.6 Voting by Congressman
4.4.7 Our Government is a band of robbers and thieves, and murderers!
4.4.8 Oaths of Public Office
4.4.9 Tax Collectors
4.4.10 Oaths of naturalization given to aliens
4.4.11 Oaths given to secessionists and corporations
4.4.12 Oaths of soldiers and servicemen
4.4.13 Treaties
4.4.14 Government Debts
4.4.15 Our rulers are a secret society!
4.4.16 The agenda of our public servants is murder, robbery, slavery, despotism, and oppression

4.5 The U.S.A. is a Republic, Not a Democracy

4.5.1 Republican mystery
4.5.2 Military Intelligence
4.5.3 Sovereign power
4.5.4 Government's purpose
4.5.5 Who holds the sovereign power?
4.5.6 Individually-held God-given unalienable Rights
4.5.7 A republic's covenant
4.5.8 Divine endowment
4.5.9 Democracies must by nature be deceptive to maintain their power
4.5.10 Democratic disabilities
4.5.11 Collective self-destruction
4.5.12 The "First" Bill of Rights
4.5.13 The mandate remains
4.5.14 What shall we do?

4.5.15 Sorry, Mr. Franklin, "We're All Democrats Now"

4.5.15.1 Introduction
4.5.15.2 Transition to Democracy
4.5.15.3 Current Understanding
4.5.15.4 Democracy Subverts Liberty and Undermines Prosperity
4.5.15.5 Foreign Affairs and Democracy
4.5.15.6 Foreign Policy, Welfare, and 9/11
4.5.15.7 Paying for Democracy
4.5.15.8 Confusion Regarding Democracy
4.5.15.9 The Way Out

4.5.16 Summary

4.6 The Three Definitions of "United States"
4.7 Two Political Jurisdictions: "National government" vs "General/federal government"
4.8 The Federal Zone
4.9 Police Powers
4.10 "Resident", "Residence" and "Domicile"
4.11 Citizenship

4.11.1 Introduction
4.11.2 Sovereignty
4.11.3 "Citizens" v. "Nationals"
4.11.4 Two Classes and Four Types of American Citizens
4.11.5 Federal citizens

4.11.5.1 Types of citizenship under federal law
4.11.5.2 History of federal citizenship
4.11.5.3 Constitutional Basis of federal citizenship
4.11.5.4 The voluntary nature of citizenship: Requirement for "consent" and "intent"
4.11.5.5 How you unknowingly volunteered to become a "citizen of the United States" under federal statutes
4.11.5.6 Presumptions about "citizen of the United States" status
4.11.5.7 Privileges and Immunities of U.S. citizens
4.11.5.8 Definitions of federal citizenship terms
4.11.5.9 Further study

4.11.6 State Citizens/Nationals
4.11.7 Citizenship and all political rights are exercised are INVOLUNTARILY exercised and therefore CANNOT be taxable and cannot be called "privileges"

4.11.7.1 Voting
4.11.7.2 Paying taxes
4.11.7.3 Jury Service
4.11.7.4 Citizenship

4.11.8 "Nationals" and "U.S. Nationals

4.11.8.1 Legal Foundations of "national" Status
4.11.8.2 Voting as a "national" or "state national"
4.11.8.3 Serving on Jury Duty as a "national" or "state national"
4.11.8.4 Summary of Constraints Applying to "national" status
4.11.8.5 Rebutted arguments against those who believe people born in the states of the Union are not "nationals"

4.11.8.6 Sovereign Immunity of American Nationals

4.11.9 Rights Lost by Becoming a Federal Citizen
4.11.10 How do we lose our sovereignty and become U.S. citizens?
4.11.11 Expatriation

4.11.11.1 Definition
4.11.11.2 Right of expatriation
4.11.11.3 Compelled expatriation as a punishment for a crime
4.11.11.4 Amending your citizenship status to regain your rights: Don't expatriate!

4.11.12 How the Government Has Obfuscated the Citizenship Issue to Unwittingly Make Us All "U. S. citizens"
4.11.13 Duties and Responsibilities of Citizens
4.11.14 Citizenship Summary

4.12 Two of You
4.13 Contracts
4.14 Our rights

4.14.1 No forced participation in Labor Unions or Occupational Licenses
4.14.2 Property Rights
4.14.3 No IRS Taxes
4.14.4 No Gun Control
4.14.5 Motor Vehicle Driving
4.14.6 Church Rights
4.14.7 No Marriage Licenses

4.14.7.1 REASON #1: The Definition of Marriage License Demands that we not Obtain One To Marry
4.14.7.2 REASON #2: When You Marry With a Marriage License, You Grant the State Jurisdiction Over Your Marriage
4.14.7.3 REASON #3: When You Marry With a Marriage License, You Place Yourself Under a Body of Law Which is Immoral
4.14.7.4 REASON #4: The Marriage License Invades and Removes God-Given Parental Authority
4.14.7.5 REASON #5: When You Marry with a Marriage License, You Are Like a Polygamist
4.14.7.6 When does the State Have Jurisdiction Over a Marriage?
4.14.7.7 History of Marriage Licenses in America
4.14.7.8 What Should We Do?

4.15 Sources of government authority to interfere with your rights
4.16 A Citizens Guide to Jury Duty

4.16.1 Jury Power in the System of Checks and Balances:
4.16.2 A Jury's Rights, Powers, and Duties:
4.16.3 Jurors Must Know Their Rights:
4.16.4 Our Defense - Jury Power:

4.17 The Buck Act of 1940

4.17.1 The united States of America
4.17.2 The "SHADOW" States of the Buck Act

4.18 Conflicts of Law: Violations of God's Laws by Man's Laws
4.19 How Do We Assert Our First Amendment Rights and How Does the Government Undermine Them?
4.20 The Solution

5. THE EVIDENCE: WHY WE AREN'T LIABLE TO FILE RETURNS OR PAY INCOME TAX

5.1 Introduction to Federal Taxation

5.1.1 The Power to Create is the Power to Tax
5.1.2 You Don't Pay "Taxes" to the IRS: You are instead subsidizing socialism
5.1.3 Lawful Subjects of Constitutional Taxation within States of the Union
5.1.4 Direct Taxes Defined
5.1.5 The Internal Revenue Code subtitle A is an indirect excise tax
5.1.6 What type of Tax Are You Paying the IRS--Direct or Indirect?
5.1.7 The Income Tax: Constitutional or Unconstitutional?
5.1.8 Taxable persons and objects within the I.R.C. Subtitle A
5.1.9 The "Dual" nature of the Internal Revenue Code
5.1.10 Brief History of Court Rulings Which Establish Income Taxes on Citizens outside the "federal zone" as "Direct Taxes"
5.1.11 The "Elevator Speech" version of the federal income tax fraud

5.2 Federal Jurisdiction to Tax

5.2.1 Territorial Jurisdiction
5.2.2 Sovereignty: Key to Understanding Federal Jurisdiction
5.2.3 Dual Sovereignty
5.2.4 The TWO sources of federal jurisdiction: "Domicile" and "Contract"
5.2.5 "Public" v. "Private" employment: You really work for Uncle Sam and not Your Private Employer If You Receive Federal Benefits
5.2.6 Social Security: The legal vehicle for extending Federal Jurisdiction into the states using Private/contract law
5.2.7 Oaths of Allegiance: Source of ALL government jurisdiction over people
5.2.8 How Does the Federal Government Acquire Jurisdiction Over an Area?
5.2.9 Limitations on Federal Taxation Jurisdiction
5.2.10 "United States" in the Internal Revenue Code means "federal zone"
5.2.11 "State" in the Internal Revenue Code mans a "federal State" and not a Union State
5.2.12 "foreign" means outside the federal zone and “foreign income” means outside the country in the context of the Internal Revenue Code
5.2.13 Background on State v. Federal Jurisdiction
5.2.14 Constitutional Federal Taxes under the I.R.C. apply to Imports (duties), Foreign Income of Aliens and Corporations, and Domiciliaries Living Abroad
5.2.15 "Employee" in the Internal Revenue Code mans appointed or elected government officers
5.2.16 The 50 States are "Foreign Countries" and "foreign states" with Respect to the Federal Government
5.2.17 You're not a "citizen" under the Internal Revenue Code
5.2.19 Rebutted DOJ and Judicial Lies Regarding Federal Jurisdiction

5.3 Know Your Proper Filing Status by Citizenship and Residency!

5.3.1 "Taxpayer" v. "Nontaxpayer"
5.3.2 A "return" is NOT a piece of paper within the I.R.C., it's a kickback of a federal payment
5.3.3 Summary of Federal Income Tax Filing Status by Citizenship and Residency.
5.3.4 What's Your Proper Federal Income Tax Filing Status?
5.3.5 Summary of State and Federal Income Tax Liability by Domicile and Citizenship

5.3.6 How to Revoke Your Election to be Treated as a U.S. Resident and Become a Nonresident
5.3.7 What Are the Advantages and Consequences of Filing as a Nonresident Citizen?
5.3.8 Tactics Useful for Employees of the U.S. Government

5.4 The Truth About "Voluntary" Aspect of Income Taxes

5.4.1 The true meaning of "voluntary"
5.4.2 "Law" or "Contract"?

5.4.2.1 Public v. Private law
5.4.2.2 Why and how the government deceives you into believing that "private law" is "public law" in order to PLUNDER and ENSLAVE you unlawfully
5.4.2.3 Comity
5.4.2.4 Positive Law
5.4.2.5 Justice
5.4.2.6 Invisible consent: The Tool of Tyrants

5.4.3 Understanding Administrative Law
5.4.4 The three methods for exercising our Constitutional right to contract
5.4.5 Federalism
5.4.6 The Internal Revenue Code is not Public or Positive Law, but Private Law

5.4.6.2 Proof that the I.R.C. is not Positive Law
5.4.6.3 The "Tax Code" is a state-sponsored Religion, not a law
5.4.6.4 How you were duped into signing up to the contract and joining the state-sponsored religion and what the contract says
5.4.6.5 Modern tax trials are religious "inquisitions" and not valid legal processes
5.4.6.6 How to skip out of "government church worship services"

5.4.7 No Taxation Without Consent
5.4.8 Why "domicile" and income taxes are voluntary

5.4.8.1 Definition
5.4.8.2 "Domicile"="allegiance" and "protection"
5.4.8.3 Domicile is a First Amendment choice of political affiliation
5.4.8.4 "Domicile" and "residence" compared
5.4.8.5 Choice of Domicile is a voluntary choice
5.4.8.6 Divorcing the "state": Persons with no domicile
5.4.8.7 You can only have one Domicile and that place and government becomes your main source of protection
5.4.8.8 Affect of domicile on citizenship and synonyms for domicile
5.4.8.9 It is idolatry for Christians to have an earthly domicile
5.4.8.10 Legal presumptions about domicile
5.4.8.11 How the government interferes with your ability to voluntarily choose a domicile
5.4.8.12 Domicile on government forms
5.4.8.13 The Driver's License Trap: How the state manufactures privileged "residents"

5.4.9 The IRS is NOT authorized to perform enforcement actions
5.4.10 I.R.C. Subtitle A is voluntary for those with no domicile in the District of Columbia and no federal employment
5.4.11 The money you send to the IRS is a Gift to the U.S. government
5.4.12 Taxes paid on One's Own Labor are Slavery
5.4.13 The word "shall" in the tax code actually means "may"
5.4.14 Constitutional Due Process Rights in the Context of Income Taxes

5.4.14.1 What is Due Process of Law?
5.4.14.2 Violation of Due Process using "Presumptions"
5.4.14.3 Substantive Rights and Essentials of Due Process Background
5.4.14.4 Due Process principles and tax collection

5.4.15 IRS has NO Legal Authority to Assess You With an Income Tax Liability
5.4.16 IRS Has No Legal Authority to Assess Penalties on Subtitle A Income Taxes
5.4.17 No Implementing Regulations Authorizing Collection of Subtitles A through C income Taxes on Natural Persons
5.4.18 No Implementing Regulations for "Tax Evasion" or "Willful Failure to File" Under 26 U.S. C. §§7201 or 7203!
5.4.19 The "person" addressed by criminal provisions of the IRC isn't you!
5.4.20 The Secretary of the Treasury Has NO delegated Authority to Collect Income Taxes in the 50 States!
5.4.21 The Department of Justice has NO Authority to Prosecute IRC Subtitle A Income Tax Crimes!
5.4.22 The federal courts can't sentence you to federal prison for Tax crimes if you are a "U.S. citizen" and the crime was committed outside the federal zone
5.4.23 You Don't Have to Provide a Social Security Number on Your Tax Return
5.4.24 Your private employer Isn't authorized by law to act as a federal "withholding agent"
5.4.25 The money you pay to government is an illegal bribe to public officials
5.4.26 How a person can "volunteer" to become liable for paying income tax?
5.4.27 Popular illegal government techniques for coercing "consent"

5.4.27.1 Deceptive language and words of art
5.4.27.2 Fraudulent forms and publications
5.4.27.3 Political propaganda
5.4.27.4 Deception of private companies and financial institutions
5.4.27.5 Legal terrorism
5.4.27.6 Coercion of federal judges
5.4.27.7 Manipulation, licensing, and coercion of CPA's, Payroll clerks, Tax Preparers, and Lawyers

5.5 Why We Aren't Liable to *File* Tax Returns or Keep Records

5.5.1 It's illegal and impossible to "file" your own tax return
5.5.2 Why God says you can't file tax returns
5.5.3 You're Not a "U.S. citizen" If You File Form 1040, You're an "Alien"!
5.5.4 You're NOT the "individual" mentioned at the top of the 1040 form if you are a "U.S. citizen" Residing in the "United States"**!
5.5.5 No Law Requires You to Keep Records
5.5.6 Federal courts have NO statutory authority to enforce criminal provisions of the Internal Revenue Code outside the federal zone
5.5.7 Objections to filing based on Rights
5.5.8 Do We Have to Sign the 1040 Form Under Penalty of Perjury?

5.5.8.1 Definitions
5.5.8.2 Exegesis
5.5.8.3 Conclusion
5.5.8.4 Social Comment

5.5.9 1040 and Especially 1040NR Tax Forms Violate the Privacy Act and Therefore Need Not Be Submitted

5.5.9.1 IRS Form 1040

5.5.9.2 IRS Form 1040NR
5.5.9.3 Analysis and Conclusions

5.5.10 If You Don't File, the IRS Can't File a Substitute for Return for You Under 26 U.S.C. §6020 (b)

5.6 Why We Aren't Liable to *Pay* Income Tax

5.6.1 There's No Statute Making Anyone Liable to Pay Subtitle A Income Taxes!
5.6.2 Your income isn't taxable because it is "notes" and "obligations" of the U.S. government
5.6.3 Constitutional Constraints on Federal Taxing Power
5.6.4 Exempt Income
5.6.5 The Definition of "income" for the purposes of the Internal Revenue Code
5.6.6 Gross Income
5.6.7 You Don't Earn "Wages" So Your Earnings Can't be Taxed
5.6.8 Employment Withholding Taxes are Gifts to the U.S. Government!
5.6.9 The Deficiency Notices the IRS Sends to Individuals are Actually Intended for Businesses!
5.6.10 The Irwin Schiff Position
5.6.11 The Federal Employee Kickback Position
5.6.12 You don't have any taxable sources of income
5.6.13 The "trade or business" scam

5.6.13.1 Introduction
5.6.13.2 Proof IRC Subtitle A is an Excise tax only on activities in connection with a "trade or business"
5.6.13.3 Synonyms for "trade or business"
5.6.13.4 I.R.C. requirements for the exercise of a "trade or business"
5.6.13.5 Willful IRS deception in connection with a "trade or business"
5.6.13.6 Proving the government deception yourself
5.6.13.7 How the "scheme" is perpetuated
5.6.13.8 False IRS presumptions that must be rebutted
5.6.13.9 Why I.R.C. Subtitle A income taxes are "indirect" and Constitutional
5.6.13.10 The scam is the basis for all income reporting used to enforce income tax collection
5.6.13.11 How the scam affects you and some things to do about it
5.6.13.12 Other important implications of the scam
5.6.13.13 Further study

5.6.14 The Nonresident Alien Position

5.6.14.1 Why all people born in states of the Union are "nonresident aliens" under the tax code
5.6.14.2 Tax Liability and Responsibilities of Nonresident Aliens
5.6.14.3 How "Nonresident Alien Nontaxpayers" are tricked into becoming "Resident Alien Taxpayers"
5.6.14.4 Withholding on Nonresident Aliens
5.6.14.5 Overcoming Deliberate Roadblocks to Using the Nonresident Alien Position

5.6.14.5.1 The deception that scares people away from claiming nonresident alien status
5.6.14.5.2 Tricks Congress Pulled to Undermine the Nonresident Alien Position
5.6.14.5.3 How to Avoid Jeopardizing Your Nonresident Citizen or Nonresident Alien Status
5.6.14.5.4 "Will I Lose My Military Security Clearance or Social Security Benefits by Becoming a Nonresident Alien or a 'U.S.

national'?"

5.6.14.6 Rebutted Objections to the Nonresident Alien Position

5.6.14.6.1 Tax, Accounting, and Legal Profession Objections
5.6.14.6.2 Objections of friends and family

5.6.14.6 How To Correct Government Records to Reflect Your True Status as a Nonresident Alien

5.6.15 All compensation for your personal labor is deductible from "gross income" on your tax return

5.6.15.1 Why One's Own Labor is not an article of Commerce and cannot produce "profit" in the Context of oneself
5.6.15.2 Why Labor is Property
5.6.15.3 Why the Cost of Labor is Deductible from Gross Receipts in Computing Tax

5.6.16 IRS Has no Authority to Convert a Tax Class 5 "gift" into a Tax Class 2 liability
5.6.17 The "Constitutional Rights Position"
5.6.18 The Internal Revenue Code was Repealed in 1939 and we have no tax law
5.6.19 Use of the term "State" in Defining State Taxing Jurisdiction
5.6.20 Why you aren't an "exempt" individual

5.7 Flawed Tax Arguments to Avoid

5.7.1 Summary of Flawed Arguments
5.7.2 Rebutted Version of the IRS Pamphlet "The Truth About Frivolous Tax Arguments"
5.7.3 Rebutter Version of Congressional Research Service Report 97-59A entitled "Frequently Asked Questions Concerning the Federal Income Tax"
5.7.4 Rebutter Version of Dan Evans "Tax Resister FAQ"
5.7.5 The "861 Source" Position

5.7.5.1 Introduction and definitions
5.7.5.2 The Basics of the Law
5.7.5.3 English vs. Legalese
5.7.5.4 Sources of Income
5.7.5.5 Determining Taxable Income
5.7.5.6 Specific Taxable Sources

5.7.5.6.1 Sources "within" the United States: Income Originating Inside the District of Columbia
5.7.5.6.2 Sources "without" the United States: Income Originating Inside the 50 states, territories and possessions, and Foreign Nations

5.7.5.7 Operative Sections
5.7.5.8 Summary of the 861 position
5.7.5.9 Why Hasn't The 861 Issue Been Challenged in Court Already?
5.7.5.10 Common IRS (and DOJ) objections to the 861/source issue with rebuttal

5.7.5.10.1 "We are all taxpayers. You can't get out of paying income tax because the law says you are liable."
5.7.5.10.2 IRC Section 861 falls under Subchapter N, Part I, which deals only with FOREIGN Income

5.7.5.10.3 "Section 861 says all income is taxable"
5.7.5.10.4 The Sixteenth Amendment says “from whatever source derived”…this means the source doesn’t matter!
5.7.5.10.5 “The courts have consistently ruled against th 861 issue”
5.7.5.10.6 “You are misunderstanding and misapplying the law and you’re headed for harm”
5.7.5.10.7 "Commissioner v. Glenshaw Glass Co. case makes the source of income irrelevant and taxes all 'sources'"
5.7.5.10.8 Frivolous Return Penalty Assessed by the IRS for those Using the 861 Position
5.7.5.10.9 The income tax is a direct, unapportioned tax on income, not an excise tax, so you still are liable for it

5.7.5.11 Why the 861 argument is subordinate to the jurisdictional argument

5.8 Considerations Involving Government Employment Income
5.9 So What Would Have to Be Done To the Constitution To Make Direct Income Taxes Legal?
5.10 Abuse of Legal Ignorance and Presumption: Weapons of tyrants

5.10.1 Application of "innocent until proven guilty" maxim of American Law
5.10.2 Role of Law and Presumption in Proving Guilt
5.10.3 Statutory Presumptions that Injure Rights are Unconstitutional
5.10.4 Purpose of Due Process: To completely remove "presumption" from legal proceedings
5.10.5 Application of "Expressio unius est exclusio alterius" rule
5.10.6 Scams with the Word "includes"
5.10.7 Guilty Until Proven Innocent: False Presumptions of Liability Based on Treacherous Definitions
5.10.8 Purpose of Vague Laws is to Chain you to IRS Control
5.10.9 Why the “Void for Vagueness Doctrine” of the U.S. Supreme Court Should be Invoked By The Courts to Render the Internal Revenue Code Unconstitutional

5.11 Other Clues and Hints At The Correct Application of the IRC

5.11.1 On the Record
5.11.2 Section 306
5.11.3 Strange Links
5.11.4 Following Instructions
5.11.5 Treasury Decision 2313
5.11.6 Other Clues
5.11.7 5 U.S.C., Section 8422: Deductions of OASDI for Federal Employees

5.12 How Can I Know When I've Discovered the Truth About Income Taxes?
5.13 How the Government exploits our weaknesses to manufacture "taxpayers"
5.14 Federal income taxes within territories and possessions of the United States
5.15 Congress has made you a Political "tax prisoner" and a "feudal serf" in your own country!
5.16 The Government's Real Approach Towards Tax Law

6. HISTORY OF FEDERAL GOVERNMENT INCOME TAX FRAUD, RACKETEERING AND EXTORTION IN THE U.S.A.

6.1 How Scoundrels Corrupted Our Republican Form of Government
6.2 General Evolution
6.3 The Laws of Tyranny
6.4 Presidential Scandals Related to Income Taxes and Socialism

6.4.1 1925: William H. Taft's Certiorari Act of 1925
6.4.2 1933: FDR's Great American Gold Robbery

6.4.2.1 Money Background
6.4.2.2 The Trading With the Enemy Act: Day the President Declared War on His Own People!
6.4.2.3 FDR's Gold Robbery Scam
6.4.2.4 FDR Defends the Federal Damn Reserve

6.4.3 1935: FDR's Socialist (Social) Security Act of 1935

6.4.3.1 FDR's Pep-Talk to Congress, January 17, 1935
6.4.3.2 FDR and the Birth of Social Security: Destroying Rugged Individuality

6.4.4 1937: FDR's Stacking of the Supreme Court
6.4.5 1943: FDR's Executive Order 9397: Bye-Bye Privacy and Fourth Amendment!

6.5 History of Congressional Cover-Ups and Tax Code Obfuscation

6.5.1 No Taxation Without Representation!
6.5.2 The Corruption of Our Tax System by the Courts and the Congress: Downes v. Bidwell, 182 U.S. 244, 1901
6.5.3 Why the Lawyers in Congress Just Love the Tax Code
6.5.4 Elements of the IRS Cover-Up/Conspiracy to Watch For
6.5.5 IRS Form 1040: Conspiracy by Congress to Violate Rights
6.5.6 Whistleblower Retaliation, Indifference, and Censorship

6.3.6.1 We the People Truth In Taxation Hearing, February 27-28, 2002
6.3.6.2 We the People Efforts: April 5, 2001 Senate Hearing
6.3.6.3 Cover-Up of Jan. 20, 2002: Congress/DOJ/IRS/ Renege on a Written Agreement to Hold a Truth in Taxation Hearing with We The People Under First Amendment

6.5.7 Cover-Up of 2002: 40 U.S.C. §255 Obfuscated
6.5.8 Cover-Up of 1988: Changed Title of Part I, Subchapter N to Make it Refer Only to Foreign Income
6.5.9 Cover-Up of 1986: Obfuscation of 26 U.S.C. §931
6.5.10 Cover-Up of 1982: Footnotes Removed from IRC Section 61 Pointing to Section 861
6.5.11 Cover-Up of 1978: Confused IRS Regulations on “Sources”
6.5.12 Cover-Up of 1954: Hiding of Constitutional Limitations On Congress’ Right To Tax
6.5.13 1952: Office of Collector of Internal Revenue Eliminated
6.5.14 Cover-Up of 1939: Removed References to Nonresident Aliens from the Definition of “Gross Income
6.5.15 1932: Revenue Act of 1932 imposes first excise income tax on federal judges and public officers
6.5.16 1918: "Gross income" first defined in the Revenue Act of 1918
6.5.17 1911: Judicial Code or 1911
6.5.18 1909: Corporate Excise Tax of 1909
6.5.19 1872: Office of the Assessor of Internal Revenue Eliminated
6.5.20 1862: First Tax on "Officers" of the U.S. Government

6.6 Treasury/IRS Cover-Ups, Obfuscation, and Scandals

6.6.1 Elements of the IRS Cover-Up/Conspiracy to Watch For
6.6.2 26 CFR 1.0-1: Publication of Internal Revenue Code WITHOUT Index

6.6.3 Official/Qualified Immunity and Anonymity
6.6.4 Church Censorship, Manipulation, and Castration by the IRS
6.6.5 IRS Form W-4 Scandals

6.5.5.1 Fraud on the W-4 Form
6.5.5.2 Unconstitutional IRS/Treasury Regulations

6.6.6 Illegal Treasury Regulation 26 CFR 301.6331-1
6.6.7 IRS Form 1040: Irrational Conspiracy to Violate Rights
6.6.8 IRS Form W-4 Scandals

6.6.8.1 Fraud on the W-4 Form
6.6.8.2 Unconstitutional IRS/Treasury Regulations Relating to the W-4
6.6.8.3 Line 3a of W-4 modifies and obfuscates 26 U.S.C. 3402(n)

6.6.9 Whistleblower Retaliation

6.6.9.1 IRS Historian Quits-Then Gets Audited
6.6.9.2 IRS Raided the Save-A-Patriot Fellowship

6.6.10 IRS has NO Delegated Authority to Impose Penalties or Levies or Seizures for Nonpayment of Subtitle A Personal Income Taxes

6.6.10.1 What Particular Type of Tax is Part 301 of IRS Regulations?
6.6.10.2 Parallel Table of Authorities 26 CFR to 26 U.S.C.

6.6.11 Service of Illegal Summons
6.6.12 IRS Publication 1: Taxpayer rights...Oh really?
6.6.13 Cover-Up of March 2004: IRS Removed List of Return Types Authorized for SFR from IRM Section 5.1.11.9
6.6.14 Cover-Up of Jan. 2002: IRS Removed the Internal Revenue Manual (IRM) from their Website Search Engine
6.6.15 W-8 Certificate of Foreign Status Form Removed from the IRS Website December 2000 and replaced with W-8 BEN
6.6.16 Cover-Up of 1999: IRS CID Agent Joe Banister Terminated by IRS For Discovering the Truth About Voluntary Nature of Income Taxes
6.6.17 Cover-Up of 1995: Modified Regulations to Remove Pointers to Form 2555 for IRC Section 1 Liability for Federal Income Tax
6.6.18 Cover-Up of 1993--HOT!!: IRS Removed References in IRS Publication 515 to Citizens Not Being Liable for Tax and Confused New Language

6.7 Department of State (DOS) Scandals Related to Income Taxes
6.8 Department of Justice Scandals Related to Income Taxes

6.8.1 Prosecution of Dr. Phil Roberts: Political "Tax" Prisoner
6.8.2 Fraud on The Court: Demjanuk v. Petrovsky, 10 F.3d 338

6.9 Judicial Conspiracy to Protect the Income Tax

6.9.1 Abuse of "Case Law"
6.9.2 The Federal Mafia Courts Stole Your Seventh Amendment Right to Trial by Jury!
6.9.3 You Cannot Obtain Declaratory Judgments in Federal Income Tax Trials Held In Federal Courts
6.9.4 The Changing Definition of “Direct, Indirect, and Excise Taxes”

6.9.4.1 Definition of terms and legal framework
6.9.4.2 The Early Supreme Court View of Direct vs. Indirect/Excise Taxes Prior to Passage of the 16th Amendment 1913
6.9.4.3 Common Manifestations of the Judicial Conspiracy
6.9.4.4 Judicial Conspiracy Following Passage of 16th Amendment in 1913
6.9.4.5 The Federal District Court Conspiracy to Protect the Income Tax
6.9.4.6 State Court Rulings

6.9.5 2003: Federal Court Ban's Irwin Schiff's Federal Mafia Tax book
6.9.6 2002: Definition for "Acts of Congress" removed from Federal Rules of Criminal Procedure
6.9.7 1992: William Conklin v. United States
6.9.8 1986: 16th Amendment: U.S. v. Stahl, 792 F.2d 1438 (1986)
6.9.9 1938: O'Malley v. Woodrough, 307 U.S. 277
6.9.10 1924: Miles v. Graham, 268 U.S. 601
6.9.11 1915: Brushaber v. Union Pacific Railroad, 240 U.S. 1
6.9.12 Conclusions

6.10 Legal Profession Scandals

6.10.1 Legal Dictionary Definitions of "United States"
6.10.2 The Taxability of Wages and Income Derived from "Labor" Rather than "Profit" as Described in CLE Materials

6.11 Social Security Chronology
6.12 Conclusion: The Duck Test

7. CASE STUDIES

7.1 An Epidemic of Non-Filers
7.2 Individuals

7.2.1 Joseph Banister: Former IRS Criminal Investigative Division (CID) Agent
7.2.2 Gaylon Harrell
7.2.5 Fred Allnut
7.2.6 Lloyd Long

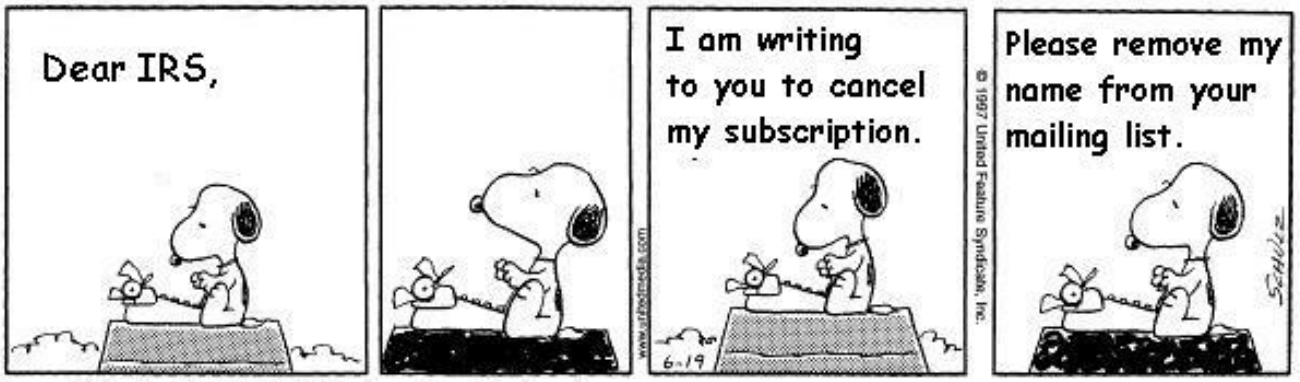
7.3 Employers

7.3.1 Arrow Custom Plastics Ends Withholding

8. RESOURCES FOR TAX FRAUD FIGHTERS

8.1 Websites
8.2 Books and Publications
8.3 Legal Resources

9. DEFINITIONS



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RENDERING UNTO CAESAR

Wed, February 21, 2001

I've been pilloried by Christians for the last week for opposing the federal seizure of a church in Indianapolis.

Most of the criticism boils down to two scriptural references, which, these folks apparently believe, mean Christians should never resist evil perpetrated by government. The first reference is one found in the Gospel accounts of Matthew, Mark and Luke in which Jesus said "Render unto Caesar the things that are Caesar's and unto God the things that are God's."

The second reference cited by readers is Romans 13, in which the Apostle Paul advocates submission to earthly rulers.

A great many Christians -- including many pastors -- wrote to me explaining that it is the duty of good citizens and churches to "render unto Caesar."

I hardly know where to begin in addressing such a fundamental issue. But let me start by asking all Americans who subscribe to this principle as an absolute how our founding fathers, many of them devout Christians, justified breaking the bonds with their rulers in Great Britain? Were they not under a scriptural obligation to render unto King George? Have you read the Declaration of Independence?

I strongly suggest that my dear misguided Christian friends spend a little time reading the great debates that precipitated the War for Independence -- all of which took place among men far more learned in the Scriptures than the average modern Christian.

It's important to consider the circumstances and the audience behind Jesus' instructions to "render unto Caesar." The Sadducees were attempting to trap Jesus into advocating open contempt for Caesar. He recognized their wicked and hypocritical little game and answered them with a totally truthful response that astonished everyone.

But think about it. There are two components to Jesus' words. We are to "render unto Caesar the things that are Caesar's," but we are also to "render unto God the things that are God's." Well, everything ultimately belongs to God. But, most of all, this injunction by Jesus instructs us that government laws cannot trump God's laws -- ever.

If government commands you to do evil, as a Christian you must resist. There is no alternative. Citing the "render unto Caesar" line is an excuse for accountability to God -- nothing more, nothing less.

Furthermore, it needs to be pointed out to my critics that in America we don't have a Caesar. Never have, never will. You see, our system of government is called a free republic and it is based on the concept of constitutional self-government. We have no "rulers" in America -- except ourselves and our God. We believe in the rule of law, not the rule of men.

This is an important distinction, not a semantic one.

Nowhere in the Bible does it teach us to obey evil rulers. Nowhere. Quite the contrary. In fact, the Bible has inspired more non-violent civil disobedience movements than any other religious document. The example of Jesus and the apostles was to submit to arrest, submit to being jailed, even submit to execution. But, in no way, can one derive from biblical example that we are to do evil because we are told to do so by government.

I believe it is evil -- pure and simple -- for the Internal Revenue Service to force a church to serve as its unpaid tax collection agency. That is the issue in Indianapolis. Armed federal agents seized the Indianapolis Baptist Church because it refused to collect withholding taxes from employees.

This is an act of conscience that demands respect -- not only for churches but for independent, privately held, tax-paying businesses as well. The IRS cannot at once pretend the income tax is voluntary and at the same time demand that employers collect it from employees before they ever see it.

It is stealing. And stealing is forbidden in the Ten Commandments. Christians are not to countenance stealing, because stealing is evil. Christians are to resist evil -- even at a cost of life itself.

I for one am not accountable to any Caesar, thank God. I am accountable to my Creator. My rights and responsibilities as a free man descend not from government, but from God Almighty.

I would love to ask my Christian critics how they feel about those heroes who risked death in Nazi Germany because they refused to render Jews unto Hitler?

The greatest acts of moral courage in the last 2,000 years have been the countless examples of individuals standing up to tyrants against all odds. Sadly, it seems many modern American Christians are content to sit on their duffs and condone evil because of their own scriptural illiteracy and moral blindness.

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Socialism v. Capitalism: Which Is the Moral System

http://www.ashbrook.org/publicat/onprin/v1n3/thompson.html

Socialism vs. Capitalism: Which is the Moral System?

On Principle, v1n3
Autumn 1993

by: C. Bradley Thompson

Throughout history there have been two basic forms of social organization: collectivism and individualism. In the twentieth-century collectivism has taken many forms: socialism, fascism, nazism, welfare-statism and communism are its more notable variations. The only social system commensurate with individualism is laissez-faire capitalism.

The extraordinary level of material prosperity achieved by the capitalist system over the course of the last two-hundred years is a matter of historical record. But very few people are willing to defend capitalism as morally uplifting.

It is fashionable among college professors, journalists, and politicians these days to sneer at the free-enterprise system. They tell us that capitalism is base, callous, exploitative, dehumanizing, alienating, and ultimately enslaving.

The intellectuals' mantra runs something like this: In theory socialism is the morally superior social system despite its dismal record of failure in the real world. Capitalism, by contrast, is a morally bankrupt system despite the extraordinary prosperity it has created. In other words, capitalism at best, can only be defended on pragmatic grounds. We tolerate it because it works.

Under socialism a ruling class of intellectuals, bureaucrats and social planners decide what people want or what is good for society and then use the coercive power of the State to regulate, tax, and redistribute the wealth of those who work for a living. In other words, socialism is a form of legalized theft.

The morality of socialism can be summed-up in two words: envy and self-sacrifice. Envy is the desire to not only possess another's wealth but also the desire to see another's wealth lowered to the level of one's own. Socialism's teaching on self-sacrifice was nicely summarized by two of its greatest defenders, Hermann Goering and Bennito Mussolini. The highest principle of Nazism (National Socialism), said Goering, is: "Common good comes before private good." Fascism, said Mussolini, is " a life in which the individual, through the sacrifice of his own private interests…realizes that completely spiritual existence in which his value as a man lies."

Socialism is the social system which institutionalizes envy and self-sacrifice: It is the social system which uses compulsion and the organized violence of the State to expropriate wealth from the producer class for its redistribution to the parasitical class.

Despite the intellectuals' psychotic hatred of capitalism, it is the only *moral* and *just* social system.

Capitalism is the only moral system because it requires human beings to deal with one another as traders--that is, as free moral agents trading and selling goods and services on the basis of mutual consent.

Capitalism is the only just system because the sole criterion that determines the value of thing exchanged is the free, voluntary, universal judgement of the consumer. Coercion and fraud are anathema to the free-market system.

It is both moral and just because the degree to which man rises or falls in society is determined by the degree to which he uses his mind. Capitalism is the only social system that rewards merit, ability and achievement, regardless of one's birth or station in life.

Yes, there are winners and losers in capitalism. The winners are those who are honest, industrious, thoughtful, prudent, frugal, responsible, disciplined, and efficient. The losers are those who are shiftless, lazy, imprudent, extravagant, negligent, impractical, and inefficient.

Capitalism is the only social system that rewards virtue and punishes vice. This applies to both the business executive and the carpenter, the lawyer and the factory worker.

But how does the entrepreneurial mind work? Have you ever wondered about the mental processes of the men and women who invented penicillin, the internal combustion engine, the airplane, the radio, the electric light, canned food, air conditioning, washing machines, dishwashers, computers, etc.?

What are the characteristics of the entrepreneur? The entrepreneur is that man or woman with unlimited drive, initiative, insight, energy, daring creativity, optimism and ingenuity. The entrepreneur is the man who sees in every field a potential garden, in every seed an apple. Wealth starts with ideas in people's heads.

The entrepreneur is therefore above all else a man of the mind. The entrepreneur is the man who is constantly thinking of new ways to improve the material or spiritual lives of the greatest number of people.

And what are the social and political conditions which encourage or inhibit the entrepreneurial mind? The free-enterprise system is not possible without the sanctity of private property, the freedom of contract, free trade and the rule of law.

But the one thing that the entrepreneur values over all others is freedom--the freedom to experiment, invent and produce. The one thing that the entrepreneur dreads is government intervention. Government taxation and regulation are the means by which social planners punish and restrict the man or woman of ideas.

Welfare, regulations, taxes, tariffs, minimum-wage laws are all immoral because they use the coercive power of the state to organize human choice and action; they're immoral because they inhibit or deny the freedom to choose how we live our lives; they're immoral because they deny our right to live as autonomous moral agents; and they're immoral because they deny our essential humanity. If you think this is hyperbole, stop paying your taxes for a year or two and see what happens.

The requirements for success in a free society demand that ordinary citizens order their lives in accordance with certain virtues--namely, rationality, independence, industriousness, prudence, frugality, etc. In a free capitalist society individuals must choose for themselves how they will order their lives and the values they will pursue. Under socialism, most of life's decisions are made for you.

Both socialism and capitalism have incentive programs. Under socialism there are built-in incentives to shirk responsibility. There is no reason to work harder than anyone else becuase the rewards are shared and therefore minimal to the hard-working individual; indeed, the incentive is to work less than others because the immediate loss is shared and therefore minimal to the slacker.

Under capitalism, the incentive is to work harder because each producer will receive the total value of his production--the rewards are not shared. Simply put: socialism rewards sloth and penalizes hard work while capitalism rewards hard work and penalizes sloth.

According to socialist doctrine, there is a limited amount of wealth in the world that must be divided equally between all citizens. One person's gain under such a system is another's loss.

According to the capitalist teaching, wealth has an unlimited growth potential and the fruits of one's labor should be retained in whole by the producer. But unlike socialism, one person's gain is everybody's gain in the capitalist system. Wealth is distributed unequally but the ship of wealth rises for everyone.

Sadly, America is no longer a capitalist nation. We live under what is more properly called a mixed economy--that is, an economic system that permits private property, but only at the discretion of government planners. A little bit of capitalism and a little bit of socialism.

When government redistributes wealth through taxation, when it attempts to control and regulate business production and trade, who are the winners and losers? Under this kind of economy the winners and losers are reversed: the winners are those who scream the loudest for a handout and the losers are those quiet citizens who work hard and pay their taxes.

As a consequence of our sixty-year experiment with a mixed economy and the welfare state, America has created two new classes of citizens. The first is a debased class of dependents whose means of survival is contingent upon the forced expropriation of wealth from working citizens by a professional class of government social planners. The forgotten man and woman in all of this is the quiet, hardworking, lawabiding, taxpaying citizen who minds his or her own business but is forced to work for the government and their serfs.

The return of capitalism will not happen until there is a moral revolution in this country. We must rediscover and then teach our young the virtues associated with being free and independent citizens. Then and only then, will there be social justice in America.

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SOCIAL SECURITY: Idolatry and Slavery

http://www.mercyseat.net/BROCHURES/ssnarticle.htm

SOCIAL SECURITY:

Idolatry and Slavery

By Pastor Matt Trewhella

Mercy Seat Christian Church 10240 W. National Ave. PMB #129 West Allis, Wisconsin 53227

The Bible addresses all matters of life. In this pamphlet is an outline establishing that the Bible stands in opposition to the Social Security system enacted in America in 1935. Social Security is an unBiblical, idolatrous system for the following reasons:

1. Social Security is a violation of the 1st Commandment.

God says in Exodus chapter 20, verse 2, "I am the Lord your God, who brought you out of the land of Egypt, out of the house of bondage." He then says in verse 3, "You shall have no other gods before Me." This is the first commandment. In this commandment, God forbids us to have any other gods. He forbids idolatry. Hence, in the first commandment, God requires that we fear, love, and trust Him above all things. We trust God above all things when we commit our lives completely to His keeping and rely on Him for help in every need (Psalm 118:8,9; Matthew 6:25-34; Philippians 4:19). When it comes to Social Security, the State is demanding that we trust it for our needs in our old age. When the State demands that we trust in it for such needs, it is usurping the place of God because the State has no God-given authority to demand that it care for people in their old age. It is demanding that it be recognized as God. It is declaring itself to be a god. Therefore, Social Security is a violation of the 1st commandment.

2. Social Security is a violation of the 10th Commandment.

God says in Exodus chapter 20, verse 17, "You shall not covet your neighbors' house, you shall not covet your neighbor's wife, nor his man-servant, nor his maid-servant, nor his ox, nor his ass, nor any thing that is your neighbors." In this commandment, God forbids every sinful desire to get our neighbors' possessions openly or by trickery. Hence, He requires us to be content with what He has given us. Dorcas Hardy, who was the Commissioner of Social Security from 1986 to 1989, in her book *Social Insecurity*, makes it clear that Social Security is not insurance, nor is it a pension. She states that Social Security is *"a transfer of wealth from young to old."* Social Security is the State taking money from one group of people and giving it to another group of people. It is old people coveting young people's money through the coercive arm of the State. The covetous nature is seen in old people by how vociferously they respond to any legislation which might touch Social Security (Colossians 3:5). They have an attitude of "I've paid all these years, so I want mine." Therefore, Social Security is a violation of the 10th commandment because it is based on covetousness and it breeds covetousness.

3. Social Security violates God's work ethic.

The Bible has much to say against laziness. Sluggards and sloths are mentioned 15 times in the book of Proverbs alone. Proverbs 26:14 states, "As the door turns upon its hinges, so doth the slothful upon his bed." The Bible extols the virtues of

hard work, yet says nothing about retirement. God requires us to be honest and industrious and to help our neighbor in their need. Retirement is what Americans look forward to in order to pursue their own self-interests such as golf and fishing. Rarely is retirement used as an opportunity for further service to God. At the turn of the century, two-thirds of the men over age 65 were still working. Today, since Social Security was enacted, 5 out of 6 men over the age of 65 are *not* working. Social Security encourages laziness and self-centeredness, therefore, Social Security violates God's work ethic.

4. Social Security violates the jurisdiction of the Family and the Church.

God has established four governments. 1.) Self-government 2.) Family government 3.) Church government, and 4.) Civil government. Each government has its own jurisdiction and function. The Scripture declares in First Timothy chapter 5, verse 8, "But if anyone does not provide for his own, and especially those of his household, he has denied the faith and is worse than an infidel." God has established that *families* provide for the needs of their members. Sadly, many children do not want to care for their parents in their old age. They like the State to care for their parents so that they can carry on with their self-centered life. God has also established that when the need is too much to bear for the family alone, the Church is to help with the needs of the family (Romans 12:13; Galatians 6:10). The Scriptures *do not* place care for the needs of the family in the hands of the State. Social Security is an attempt to bypass God's order and trust the State to care for our needs, or the needs of our parents, in old age, therefore, Social Security violates the jurisdiction of the family and the Church.

5. Social Security undermines the Family.

The family's chief end is to glorify God, obey His laws, advance His kingdom, and enjoy His blessings, now and forever. The enemies of God and the family are all those who seek to destroy the family and tread upon God's Holy Law. When the State demands that we trust in it for our needs, it is usurping the place of God. It is demanding that it be recognized as God. The reason the State wants people to trust in it for their needs is because it wants to win the allegiance of family members to itself (rather than to one another). The State knows that if we trust in it for our needs, it *will* win our allegiance. Therefore, Social Security undermines our allegiance to our family members and to God. It is an attack on the family and a violation of God's Holy Law (Exodus 20:3,12).

6. A person who numbers his child with the State is giving him or her a mark.

In Ezekiel 9:4-6, God instructs one of His agents to "put a mark on the foreheads of the men who sigh and cry over all the abominations that are done" within Jerusalem. All were to be slain except those who received the mark. They were spared death. They belonged to the Lord. In Exodus 12, the doorposts were marked with blood so that the destroyer did not touch those who belonged to the Lord. In Revelation 7:3, we see that God seals those that are His on their foreheads. Satan also wants to mark those that are his. In Revelation 13:16-17, he marks them in the forehead and hand with a number. A mark is a sign of ownership. Webster's Dictionary defines *mark* as "a letter, numeral etc. put on something to indicate quality, provenance, ownership etc." The Social Security number establishes a guardian/ward relation with the State. A number given by the State for such a purpose denotes ownership by the State, therefore we should not allow our children to be numbered by the State. Our children belong to God, not the State.

7. A person who numbers his child with the State renders unto Caesar that which is not Caesar's.

Marriage is the joining together by God of a man and a woman in order to raise a family and exercise dominion. Children, under the parents' God-bestowed authority, are to receive education and discipline, and are to be trained as trustees of the family property. In the family, the husband, under Christ's leadership, is in loving authority over his wife and children, and both parents are in authority over their children as directed by the Bible. The Scriptures teach that children are gifts from God (Psalm 127:3-5). The Scriptures teach that God gives children to parents (I Chronicles 25:5). *Parenthood is a right given by God, not a privilege granted by the State.* Jesus taught, "Render to Caesar the things that are Caesar's, and to God the things that are God's" (Mark 12:17). Children are made in God's image. They bear His inscription, not Caesar's. We are not to render them unto Caesar. A number given by the State denotes ownership by the State, therefore, we should not allow our children to be numbered by the State.

8. A person who numbers his child with the State enslaves his child.

Jesus is Lord, not Caesar. Our children belong to God. They are not to be the slaves of men. What is the purpose of a number given by the State? *Control*. The State wants to control, which is to enslave our children by giving them a number. The Scriptures declare, "You were bought with a price; *do not become the slaves of men*." (I Corinthians 7:23). We are to be the slaves of God (Romans 6:22). We are to be the slaves of Christ (Romans 1:1; Galatians 1:10). He bought us. A number given by the State denotes ownership by the State, therefore, we must uphold the Lordship of Christ and not allow our children to be numbered by the State.

A Historical Perspective

Some years after the Revolutionary War, the U.S. Congress passed a pension plan for all veterans of that war. All veterans desiring a pension were to apply at designated places, show evidence of their military status, and dictate to a court clerk their memories of the war. The resultant memoirs give us vivid glimpses of that war. When you read these memoirs however, you notice a blatant lack of reference to religion or God or the Bible. You are left wondering, "weren't there any Christian people that fought in this war or lived in this era?"

The reason for these blatant omissions to religion, God,or the Bible is because no Christian veteran would apply for a federal pension, and the churches were united in their opposition to any such application. They believed that participation in a state or federal pension plan was morally wrong and idolatrous. They based their stand on many Old Testament and New Testament texts of Scripture. They saw their position summed up by I Timothy 5:8, "But if anyone does not provide for his own, and especially those of his household, he has denied the faith and is worse than an infidel." They saw it as their God-given duty to care for their own family members.

What a contrast to the Church in 1935 when Social Security was implemented. Churches stood by in silence and submitted to this act of aggression by the State into the jurisdiction of the Family and the Church. In fact, by 1954, clergymen were added to the list of those who could be a part of the Social Security system because the clergy in this nation begged to be a part of it.

If you would like a large packet of information in order to learn more about this important topic, send fifteen dollars to:

Mercy Seat Christian Church
10240 W. National Ave. PMB #129
Milwaukee, WI 53227
262-675-2804

This pamphlet is available in print form. Click here to order.

SOME FURTHER THOUGHTS REGARDING SOCIAL SECURITY:

Getting a Social Security number is voluntary. There is no law or statute which requires you to obtain one either for yourself or your child. A brochure which I obtained from the Social Security Administration in March

of 1997, entitled *Numbers for Newborns*, asks the question, "Must My Baby Have A Social Security Number Now?" The answer given in the brochure states, "No! Getting a Social Security number for your baby is strictly **voluntary**."

Now, so often when the State says something is "voluntary", they use some other device to try and coerce you into "volunteering". For example, when it comes to the School to Work program which is being initiated in Wisconsin and throughout the nation, they will say "taking this Certificate of Mastery test is purely voluntary." But then they tell you, "Oh, but if you don't take the test you are automatically excluded from getting the best jobs in society." This is the underhanded deception of the State. They will try to "coax" you into volunteering. The carrot is usually money. When it comes to Social Security, the State says getting a Social Security number is voluntary. But then the IRS comes along and says you cannot claim your child as an exemption on your tax return and get a refund unless you have a Social Security number for him or her.

The past. In the past, those who did not have Social Security numbers for their children and therefore did not put any numbers on their tax returns, simply received a letter of warning from the IRS, stating that they must have Social Security numbers on their return next year or they would be penalized. They would be told that the IRS would let it go this year, but next year they must have the numbers. My wife, Clara, and I received these letters for ten years. We were never penalized.

The present. In 1996 however, things changed. Section 151(e) of the Internal Revenue Code was changed by the GATT/WTO legislation. Three families in our congregation no longer merely received a threatening letter, but were sent notice by the IRS that they could not get their refund without their children having Social Security numbers. They were told they now owed the IRS money because they could not claim their children as dependents without the number. All three families wrote to the IRS stating that they have *religious objections* to getting their children Social Security numbers. Two of the three families have since received their tax refund *without* Social Security numbers for their children. The third family is still waiting to hear from the IRS.

(A side note. The family who is still waiting to hear from the IRS, formerly received Social Security benefits. The mother in this family had been married before. Her first husband died. The daughter from her first marriage was receiving survivor benefits from Social Security as a result. But because of coming to realize that Social Security is unBiblical and idolatrous, they wrote to the Social Security Administration to refuse receiving further money from it. So, here they refused to receive money from the State through Social Security, but now the State is harassing them over Social Security numbers.)

The future. 1997 stands to be an interesting year. In 1996, Congress passed the Small Business Jobs Protection Act which contained legislation which once again modified Section 151(e) of the Internal Revenue Code. The modification further strengthens the language that you must have a Social Security number for your children in order to claim them as dependents. (*Update: See article enclosed titled - *What to do when the IRS sends you notice that they will not send you your refund because you don't have Social Security numbers for your children*.)

Supplemental Security Income. The Supplemental Security Income (SSI) is administered by the Social Security Administration. SSI gives $5000.00 to $20,000.00 "backpay" checks to drug addicts and drunkards (and for a host of other lame reasons) for their "disability." They then pay these people $500.00 a month because of their "disability." This is not compassion. This money does not help these people, it hurts them. Why? Because they take it and booze up for a few days until their broke. This enables them economically to continue in their "disability", it does not help them. Many end up in hospitals after their livers finally fail. You're told that the money taken from your check each week for Social Security does not go toward SSI, but it really does, in part at least. Each year there is a surplus of money given to Social Security. This is not kept in some little account for you somewhere, rather the surplus is put into the "general" tax fund. SSI is part of the "general" tax fund. So, drug addicts and drunkards are rewarded by our government, but honest, hardworking families, like the one

mentioned above from our congregation, are harassed by it.

How Do We Respond To The UnBiblical Social Security System?

When a teaching like this is given, there is potential for people to become judgmental or harsh.

First, we must repent of the idolatry we have been involved in when it comes to Social Security, and we must call others to repentance too. We must recognize that God is the one in whom we are to trust, not the State. We must also recognize that while repentance and forgiveness are instant gifts of God's mercy and grace, it takes time, discipline, hard work, sacrifice, and perseverance to "rebuild the walls that have fallen down."

RESTRUCTURING OUR LIVES - *WHAT INDIVIDUALS CAN DO*.

A.) People who receive Social Security money. The elderly people who are receiving Social Security benefits, or are nigh to receiving benefits, should consider refusing to receive the benefits if they can financially do without them, or if they can continue to work. They should also see if their children or other family members can help them in their financial situation if they need it now, or if they cannot work as much or at all in the near future. Children should understand that it is their God-given duty before God to care for their parents in their old age (Exodus 20:12; I Timothy 5:8). However, those elderly people who are unable to do without their Social Security money because of their situation should not be held in ill repute for the following reasons:

1. They were deceived all of their lives by our government into thinking that Social Security was insurance, or a pension, or that there were little individual accounts that they were paying into and when they turn 65 they'll get it back. They were deceived all of their lives, therefore they were planning on having this money in their old age. They did not structure their lives to do without it. Now, in their old age, it *could* be impossible for them to restructure to do without it with as few years as they have left to live.

2. Many elderly people have children who refuse to do their God-given duty and care for their parents in their old age. These children have believed the Statist lie that their parents should be cared for by the State and not by them.

3. We are dealing with generational sin when it comes to Social Security. When the people of God see a sin which has been going on for generations in their midst, and repent of it, it can be so imbedded in the culture that it takes *time* and much restructuring to root it out (read Nehemiah).

B.) No young Christian should receive Social Security benefits. No Christian should be receiving SSI benefits. We should not get our children Social Security numbers. We should all work to see the Social Security system abolished.

(Important note. When your child is born at a hospital, the hospital personnel will come to you and ask that you fill out the birth certificate form and check the box to receive a Social Security number for your child. Refuse to do so. Just record your child's birth in your Family Bible. If they try to tell you that you cannot leave the hospital unless you fill out the birth certificate form and check the box to receive a Social Security number, just ask them "what are the terms of this kidnapping?" They will back off real fast. Remember, receiving a Social Security number is voluntary. So is receiving a birth certificate. You are not required to sign for or fill out either. You need to know that many hospitals now automatically apply for your child to get a Social Security number when you fill out the birth certificate form. You need neither (regardless of what they tell you) and you're wise not to fill out or sign for either.)

RESTRUCTURING OUR LIVES - *WHAT CHURCHES CAN DO.*

God uses the wicked for His purposes. Sometimes He uses what the wicked do for good in His people's lives. What they mean for evil, God can use for good. Social Security looks like tyranny, and it is. But God could use it to get His people out of their *safety zones*. Upon recognizing Social Security for what it is, namely idolatry, Christians could begin new jobs, new trades, entrepreneurship could explode, a parallel economy could be established, Christian colleges could begin to set up their own accreditation boards rather than going to the pagans for accreditation. Or some of God's people might consider more earnestly going into the ministry or into missions. We need to have compassion, band together, and help each other out in restructuring our lives to be free and not part of the idolatrous Social Security system.

A.) Churches should preach about Social Security. The Bible speaks to all matters of life. The pulpits in America need to condemn this system for what it is - blatant idolatry. Pastors need to preach sermons about *The Bible and Social Security*, and expose it for what it is. In 1976, economist Jodie Allen, who is a socialist, wrote an article in the *Washington Post* entitled *Social Security: The Largest Welfare Program*. She details the response she received and what she learned:

I was deluged with calls and letters from the guardians of the Social Security system saying, "Gee, Jodie, we always liked you but how could you say this." I acted very politely and I said, "Well, what's the matter with this, isn't it true?" And they said, "Oh, yes, it's true, but once you start saying this kind of thing, you don't know where it's going to end up." Then I came to perceive that Social Security was not a program, it was a religion. It's very hard to reform a religion.

And it is a religion. Social Security is socialism. Socialism puts man at the center, and makes the State god. As a religion, the State has every intention of enforcing its law/order. By the State demanding that we trust in it for our needs, it is usurping the place of God. It is demanding that it be recognized as God. This idolatrous system should be condemned by pulpits in America, and people should be called upon to repent of their idolatry for receiving from it or paying homage to it.

B.) Churches should stand with those who are persecuted by the State. Our congregation has every intention of helping the family that's still waiting to hear from the IRS. Churches should make sure they stand with families who are harassed by the IRS. This includes helping them finance a fight in the courts, or staging an effort with Congressmen to get new laws passed to see that the harassment ceases.

C.) Churches should help those families that are in need. There are times when the burden to meet a family member's needs becomes too great for the family alone. In such times, the church should step forward to help. An elderly person upon recognizing the idolatry of Social Security might want to no longer be a part of it, but simply cannot afford not receiving all or some of the money. The church should consider what it might be able to do in such a situation. A system should be established within the church whereby people can approach the deacons when they are in serious need.

(Important note. We are not to be moving people from a statist welfare system to an ecclesiastical welfare system. It is primarily the *family's* responsibility to care for the needs of its members. The church steps in to help only when the need becomes too great.)

D.) Churches should help organize apprenticeships. This is important if we are going to see the next generation raised to know what it means to be a freeman. Churches could hold meetings with their men and women to brainstorm as how to live in this culture without a Social Security number. The meetings could also serve to hook young people up with other men or women in the church who could apprentice them in a trade. We must

restructure and begin to rebuild the wall.

FINAL NOTE - the Church of old versus the present day Church.

Some will say, "Though I participate in the Social Security system, it is not idolatrous because I know in my heart that the State isn't God, nor am I trusting in the government to meet my needs."

We must remember however, idolatry is not just a condition of the heart - *it is an action.* The early Church could have easily said, "You know that I don't believe that the Emperor is God, Lord. I know he's a false god. You also know, Lord, that if I don't throw in this pinch of incense I will be jailed and well, I have a responsibility to provide for my family. You know my heart, Lord." They could have easily justified and rationalized throwing in the pinch of incense. But they didn't because they knew that idolatry wasn't just a condition of the heart - it was an action, and by throwing in the incense they were committing idolatry.

I considered entitling this article *Social Security: None Dare Call it Idolatry*. Why? Because we are all up to our eyeballs in this economic system (especially those who have national ministries or are in comfortable denominational positions and could therefore inform thousands about the idolatrous nature of the Social Security system). Many will therefore chafe at this position paper because they have so much treasure built up in this economic system they never want to see it fall even though the Social Security system is idolatrous and unBiblical. It is because their god is the god of money and not the God of the Bible that they *dare not call it idolatry*.

God help us to repent, and trust in Him as He has decreed!

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The Ghost of Valley Forge

http://www.eddiekahn.com/ghost_of_valley_forge.htm

I had a dream the other night I didn't understand,
A figure walking through the mist, with flintlock in his hand.

His clothes were torn and dirty, as he stood there by my bed,
He took off his three-cornered hat, and speaking low he said:

"We fought a revolution to secure our liberty,
We wrote the Constitution, as a shield from tyranny.

For future generations, this legacy we gave,
In this, the land of the free and home of the brave.

The freedom we secured for you, we hoped you'd always keep,
But tyrants labored endlessly while your parents were asleep.

Your freedom gone -- your courage lost -- you're no more than a slave,
In this, the land of the free and the home of the brave.

You buy permits to travel, and permits to own a gun,
Permits to start a business, or to build a place for one.

On land that you believe you own, you pay a yearly rent,
Although you have no voice in choosing how the money's spent.

Your children must attend a school that doesn't educate,
Your moral values can't be taught, according to the state.

You read about the current "news" in a very biased press,
You pay a tax you do not owe, to please the IRS.

Your money is no longer made of silver or of gold,
You trade your wealth for paper, so life can be controlled.

You pay for crimes that make our Nation turn from God to shame,
You've taken Satan's number, as you've traded in your name.

You've given government control to those who do you harm,

So they can padlock churches, and steal the family farm.

And keep our country deep in debt, put men of God in jail,
Harass your fellow countryman while corrupted courts prevail.

Your public servants don't uphold the solemn oath they've sworn,
Your daughters visit doctors so children won't be born.

Your leaders ship artillery and guns to foreign shores,
And send your sons to slaughter, fighting other people's wars.

Can you regain your Freedom for which we fought and died?
Or don't you have the courage, or the faith to stand with pride?

Are there no more values for which you'll fight to save?
Or do you wish your children live in fear and be a slave?

Sons of the Republic, arise and take a stand!
Defend the Constitution, the Supreme Law of the Land!

Preserve our Republic, and each God-given right!
And pray to God to keep the torch of freedom burning bright!"

As I awoke he vanished, in the mist from whence he came,
His words were true, we are not free, and we have ourselves to blame.

For even now as tyrants trample each God-given right,
We only watch and tremble -- too afraid to stand and fight.

If he stood by your bedside in a dream while you're asleep,
And wonder what remains of your right he fought to keep.

What would be your answer if he called out from the grave?
Is this still the land of the free and home of the brave?

Two Political Jurisdictions: "National" government v. "Federal/General" government"

Related references/articles:

- National vs. Federal government compared
- "State"-defined
- "United States"-defined
- "de facto"-defined
- "de jure"-defined
- Separation of Powers Doctrine-described
- Separation of Powers-defined
- Federalist paper #39: The Conformity of the Plan to Republican Principles

Many people are blissfully unaware that there are actually *two* mutually exclusive political jurisdictions within United States the country. Your citizenship status determines which of the two political jurisdictions you are a member of and you have an option to adopt either. This book describes how to regain the model on the right, the "Federal government", which we also call the "United States of America" throughout this book. We have prepared a table to compare the two and explain what we mean. The vast majority of Americans fall under the model on the left, and their own ignorance, fear, and apathy has put them there. The model on the left treats the everyone as part of the federal corporation called the "United States" the *federal corporation*, which is how the law defines it in 28 U.S.C. §3002(15)(A). This area is also called "the federal zone" throughout this book. The "United States" first became a federal corporation in 1871 and you can read this law for yourself right from the Statutes at Large:

http://famguardian.org/Subjects/Taxes/16Amend/SpecialLaw/DCCorpStatuesAtLarge.pdf

Table 1: Two Political Jurisdictions within our Country

TWO POLITICAL JURISDICTIONS WITHIN OUR COUNTRY		
Characteristic	***"National government"***	***"Federal/general government"***
Also called	"United States" the Corporation	"United States of America"
Geographical territory	Federal zone	50 states of the Union
God that is worshipped: See Matt. 6:24	Mammon/man/government (Satan) Idolatry One nation under "fraud"	God One nation under "God"
Freedom and liberty	Counterfeit, man-made freedom. Freedom granted not by God, but by the government. "*Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with His wrath?*" [Thomas Jefferson: Notes on Virginia Q.XVIII, 1782. ME 2:227]	Liberty direct from God Himself: "***Where the spirit of the Lord is, there is Liberty.***" 2 Corinthians 3:17 (Bible)

Religious foundation	This ***government/state is god***. It sets the morals and values of those in its jurisdiction. These value are ever changing at their whim.	Sovereign Citizens are created by God and are answerable to their Maker who is Omnipotent. The Bible is the Basis of all Law and moral standards. In 1820, the USA government purchased 20,000 bibles for distribution.
Sovereign to whom citizens owe "allegiance"	Government ***"Allegiance.*** *Obligation of* ***fidelity and obedience to government*** *in consideration for protection that government gives. U.S. v. Kyh, D.C.N.Y., 49 F.Supp 407, 414. See also Oath of allegiance or loyalty." [Black's Law Dictionary, Sixth Edition, p. 74]*	"state", which is the collection of *individual* sovereigns within a republican form of government. The People, as individuals, are the "sovereigns": *"The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative. Through the medium of their Legislature they may exercise all the powers which previous to the Revolution could have been exercised either by the King alone, or by him in conjunction with his Parliament; subject only to those restrictions which have been imposed by the Constitution of this State or of the U.S." [Lansing v. Smith, 21 D. 89., 4 Wendel 9 (1829) (New York)]*
Source of law	"The state", which is mob rule living under a democracy rather than a republic. "***You shall not follow a crowd to do evil****; nor shall you testify in a dispute so as to turn aside after many to pervert justice." [Exodus 23:2, Bible, NKJV]*	God, as revealed in the Bible/ten commandments. The sovereign People as individuals, to the extent that they are implementing God's law, and within the limits prescribed by the Bill of Rights and the Equal rights of others. (See book *Biblical Institutes of Law*, by Rousas Rushdoony)
Purpose of law	Protect rulers in government from the irate "serfs" and tax "slaves" that they govern and from the inevitable consequences of their tyranny and abuse	Protect sovereign people from tyranny in government and from hurting each other
Political hierarchy (lower number has higher precedence)	1. Ruler/king (supersedes God) 2. Legislature 3. Laws 4. Subjects/citizens (slaves/serfs of the state) NO GOD. Atheist or anti-spiritual (remove prayer from schools, because belief in God threatens government authority).	1. God 2. World 3. Man 4. "We the people" 5. Grand jury, Elections, Trial jury 6. U.S. Constitution 7. Human government & organized church
Political system	***Municipal corporation*** ***Totalitarian Socialist democracy*** "***Socialism***: **1.** any of various economic and political theories advocating collective or governmental ownership and administration of the means of production and distribution of goods. **2 a:** a system of society or group living in which there is no private property **b:** a system or condition of society in which the means of production are owned and controlled by the state **3: a** stage of society in Marxist theory transitional between capitalism and communism and distinguished by unequal distribution of goods and pay according to work done." [Merriam Webster's Ninth New Collegiate Dictionary, ISBN 0-97779-508-8, 1983] "*Democracy has never been and never can be so desirable as aristocracy or monarchy, but while it lasts, is more bloody than either. Remember, democracy never lasts long. It soon wastes, exhausts, and murders itself. There never was a democracy that never did commit suicide.*" [John Adams, 1815]	***Republic*** "*Republic*: A commonwealth; that form of government which the administration of affairs is open to all the citizens. In another sense, it signifies the state, independently of its form of government." (Black's Law Dictionary, Sixth Edition, page 1302) "*Commonwealth*: The public or common weal or welfare… It generally designates, when so employed, a republican frame of government, one in which the welfare and rights of the entire mass of people are the main consideration, rather than the privileges of a class or the will of a monarch; or it may designate the body of citizens living under such a government." (Black's Law Dictionary, Sixth Edition, page 278)

Status	U.S. continues to be in a permanent state of national emergency since March 9, 1933, and possible as far back as the Civil War. See Senate report 93-549.	No state of Emergency and is not at war.
Pledge	"I pledge allegiance to the IRS, and to the tyrannical totalitarian oligarchy for which is stands. One nation, under fraud, indivisible, with slavery, injustice, and atheism for all."	"I pledge allegiance to the united states of America, and to the ***Republic*** for which is stands, one nation, ***under God***, indivisible, with liberty and justice for all."
Form of government	De facto (unlawful) (See our article entitled "How Scoundrels Corrupted Our Republican Form of Government" for details on how our government was rendered unlawful)	De jure (lawful)
Constitution	Constitution of the "United States" (See http://www.access.gpo.gov/congress)	Constitution of the "United States of America" (See http://www.access.gpo.gov/congress)
Creator	Merchants, bankers through President Lincoln and his Cohorts by act of treason. This martial law government is a fiction managing civil affairs	Created by God and sovereign Citizens acting under His delegated authority (see Gen. 1:26 and Gen. 2:15-17 in the Bible)
Origins	Gettysburg Address in 1864 and the Incorporation of District of Columbia by Act of February 21, 1871 under the Emergency War Powers Act and the Reconstruction Act	Started with the Declaration of Independence n 1776, Articles of Confederation in 1778, and the Constitution in 1787
Existence	Still existing as long as: 1. "state of war" or "emergency" exists. 2. The President does not terminate "martial" or "emergency" powers by Executive Order or decree, or 3. The people do not resist submission and terminate by restoring lawful civil courts, processes and procedures under authority of the "inherent political powers" of the people.	Adjournment of Congress sine die occurred in 1861
Governing body	The President (Caesar) rules by Executive Order (Unconstitutional). Congress and the Courts are under the President as branches of the Executive Department. Congress sits by resolution not by positive law. The Judges are actually administrative referees and cannot rule on rights.	"We the People", who rule themselves through their *servant* elected representatives. See Lincoln's Gettysburg Address, in which he said: "*A government of the people, for the people, and by the people*" Three separate Departments for the *servants*: 1. Executive. 2. Legislative-can enact *positive law*. 3. Judicial
Citizenship	"**U.S. citizen**" (Chattel Property of the government) are belligerents in the field and are "subject to its jurisdiction" (Washington, D.C.) 14th Amendment citizens, implemented by the Civil Rights Act of 1866 for the newly freed slaves (are now the slaves of the corporate government plantation) (See 8 U.S.C. 1401(a) at http://www4.law.cornell.edu/uscode/8/1401.html)	**"national"** is "sovereign", "Freemen", and "Freeborn". Unless that right is given up knowingly, intentionally, and voluntarily. "National of the United States of America" (see 8 U.S.C. 1101(a)(22)(B) at http://www4.law.cornell.edu/uscode/8/1101.html)

Implications of citizenship	**"U.S. citizens"** were declared **enemies** of the U.S. by F.D.R. by Executive Order No. 2040 and ratified by Congress on March 9, 1933. FDR changed the meaning of The Trading with the Enemy Act of December 6, 1917 by changing the word "**without**" to citizens "**within**" the United States	"**nationals**" are Sovereign citizens who supercede the U.S. Government is the enemy of liberty and should be kept as small as practical. *"Government big enough to supply everything you need is big enough to take everything you have. The course of history shows that as a government grows, liberty decreases." Thomas Jefferson*
Jurisdiction	Expands and conquers by deceit and fraud. Uses "words of art" to deceive the people.	Restricted by the Constitution to the 10 mile square area called Washington D.C., U.S. possessions, such as Puerto Rico, Guam, and its enclaves for forts and arsenals.
Civic duties-qualifications for	Must be a "citizen of the United States" to vote or serve jury duty	Must clarify citizenship when registering to vote and serving jury duty. In some states, cannot vote or serve jury duty
Vote	Is recommendation only.	Counts like one of the Board of Directors.
Rights and privileges	Inalienable rights. Rights from the corporate government. Statutory taxable "privileges" "Invisible contract" with federal government to "buy" (bribe into existence) these statutory privileges through taxes. See 48 U.S.C. §1421b: Statutory Bill of Rights. "The privileges and immunities clause of the 14th Amendment protects very few rights because it **neither** incorporates the Bill of Rights **nor** protects all rights of individual citizens. Instead, this provision protects **only** those rights **peculiar to being a citizen of the federal government; it does not protect those rights which relate to state citizenship**." *Jones v. Temmer* 829 F. Supp. 1226 (Emphasis added.)	Unalienable Rights. Rights from God. Constitutional rights-cannot be taxed
Value of the individual	**Bond Servant** To cover the debt in 1933 and future debt, the corporate government determined and established the value of the future labor of each individual in its jurisdiction to be $630,000. A bond of $630,000 is set on each Certificate of Live Birth. The certificates are bundled together into sets and then placed as securities on the open market. These certificates are then purchased by the Federal Reserve and/or foreign bankers. The purchaser is the "holder" of "Title." This process made each and every person in this jurisdiction a bond servant.	**Freeborn** Freeman Freeholder Sovereign "We the people..."
Welfare/social security	**YES**: Socialism-allowed and encouraged	**NO**: Not allowed. Everyone takes care of themselves
FAMILY		
Purpose of sex	Recreation and sin. When children result from such sin, then abortion (murder) frees sexual perverts and fornicators from the consequences of or liability for such sin and maintains their quality of life. Permissiveness by government of abortion becomes a license to sin without consequence.	Procreation. Gen. 1:22: "*And God blessed them, saying, "**Be fruitful and multiply**, and fill the waters in the seas, and let birds multiply on the earth.*" Psalms 127: 4-5: "***Like arrows in the hand of a warrior, So are the children of one's youth. Happy is the man who has his quiver full of them;*** *They shall not be ashamed, But shall speak with their enemies in the gate.*"

Purpose of marriage	An extension of the "welfare state" that financially enslaves men to the state and their wives and thereby undermines male sovereignty in the family. Prov. 31:3 says: "*Do not give your strength [or sovereignty] to women, nor your ways to that which destroys kings.*"	To make families self-governing by creating a chain of authority within them (see Eph. 5:22-24). Honor God and produce godly offspring. (Malachi 2:15)
Birth certificate	**Birth Certificate** when the baby's footprint is placed thereon before it touches the land. The certificate is recorded at a County Recorder, then sent to a Secretary of State which sends it to the Bureau of Census of the Commerce Department. This process converts a man's life, labor, and property to **an asset** of the US government when this person receives a benefit from the government such as a drivers license, food stamps, free mail delivery, etc. This person becomes a ***fictional persona*** **in commerce**. The Birth Certificate is an unrevealed "**Trust Instrument**" originally designed for the children of the newly freed black slaves after the 14th Amendment. The US has the ability to tax and regulate commerce EVERYWHERE.	
Education of young	Public schooling (brain washing of the young). School vouchers not allowed. This is a central plank in the Communist Manifesto. Purpose is to create better state "serfs".	Private schooling and school vouchers. Prayer permitted in schools.
STATES		
The word "State"	In U.S. Titles and Codes "State" refers to U.S. possessions such as Puerto Rico, Guam, etc.	"state" when used by itself refers to the "Republics" of The united states of America
State governments	Politicians of each state formed a new government and incorporated it into the federal US government corporation and are therefore under its jurisdiction. e.g. "State of California" corporate California California State	All of the states are "**Republics**" e.g. "The Republic of California" "California republic" "California state" or just "California"
Origins of the states	The corporate States are controlled by the corporate US government by its purse strings such as grants, funding, matching funds, revenue sharing, disaster relief, etc. The citizens of such States are "subjects" and are called "**Residents**"	**Sovereign Citizens** created the states (Republics) and are Sovereign over the states. The Republics and the people created the USA government and are sovereign over the USA government.
State constitution	The original constitution was revised and adopted by the corporate State of California on May 7, 1879 It has been revised many times hence.	California was admitted into the union as a Republic on September 9, 1850. The people created the original state constitution to give the government limited powers and to act on behalf of, and for the people. Called The "Organic" state constitution.
Rights of citizens in state	A one word change in the original State (California) constitution from "unalienable" to "inalienable" made rights into privileges *"Inalienable" means government given rights. "Unalienable" means God given rights.*	Adjournment ***sine die*** occurred in California in April 27, 1863
JUSTICE SYSTEM		
Judicial function	Judicial Branch under the President	Judicial Department
Separation of powers	It is not separate, but is an arm of the legislature	Separate from all other Departments
Purpose of federal courts	Maximize power and control and revenues of federal government	Protect the Constitutional rights of persons domiciled in states of the Union
Constitutional authority for federal courts	Article I, II, and IV ("U.S. District Courts" and "Tax Court")	Article III ("district courts of the United States" in the District of Columbia, Hawaii, and the Court of Claims)

Venue	federal (***feudal***) venue	***judicial*** venue
Courts	**Corporate Administrative Arbitration Boards** Consisting of an Arbitrator (so-called "Judge") and a panel of corporate employees (so-called "Juries") Panel decisions (recommendation) can be reversed by the Arbitrator	**Constitutional Judicial Courts** with real Judges and real Juries who can judge the law as well as the facts Jury decisions cannot be reversed by the judge
Type of courts	Equity Courts, Municipal Courts--Merchant Law, Military Law, Marshall Law, Summary Court Martial proceedings, and administrative ***ad hock*** tribunals (similar to Admiralty/Maritime) now governed by "The Manual of Courts Martial (under Acts of War) and the War Powers Act of 1933.	**Common Law Court**(s)
Trials	All legal actions are pursued under the "**color of law**" Color of law means "appears to be" law, but is not	The **7th Amendment** guarantees a trial by jury according to the rules of the common law when the value in controversy exceeds $20
Requirements of law	Covers a vast number of volumes of text that even attorneys can't absorb or comprehend such as: 1. Regulations 2. Codes 3. Rules 4. Statutes Prior to bankruptcy of 1933 "**Public Law**" Now the so-called courts administer "**Public Policy**" through the "**Uniform Commercial Code**" (instituted in 1967)	**Common Law** Has two requirements: Do not Offend Anyone Honor all contracts
Basis of judicial decisions	No ***stare decisis*** Means no precedent binds any court, because they have no law standard of absolute right and wrong by which to measure a ruling—what is legal today may not be legal tomorrow. So-called "court decisions" are administrative opinions only and are basically decided on the basis of "What is best for the corporate government."	**Constitution** Supreme Law of the land restricting governments. The "organic" Constitution and its amendments are created by the Sovereign living souls (We the people...") to institute, restrict, and restrain a limited government.
Nature of acts regulated	**Legal** or Illegal	**Lawful** or Unlawful
Lingo	"**at Law**" "Attorney at law"	"**in-Law**" (i.e. "Son-in-law" or a "covenant in law")
Legal Counsel	**Attorney** an **"Esquire"** (British nobility) Attorney-at-law (licensed agents of the corporate administrative courts and tribunals in the US for the Crown of England) Attorneys swear an oath to uphold the "BAR ASSOCIATION". The first letter of B.A.R stands for "British". (British Accreditation Regency) The BAR was First organized in Mississippi in 1825. The *"integrated bar"* movement, meaning "the condition precedent to the right to practice law," was initiated in the US in 1914 by the American Jurisprudence Society. --Black's Law Dictionary, 4th edition	**Counsel** or "Counselor in-Law" (Lawyer)
Claims	"Charge" or "Complaint" (administrative jurisdiction)	"**Claim**" (equity/common law jurisdiction)
Plaintiff/damaged party.	Compels performance No damaged party is necessary.	Must have **damaged party**
Court proceeding	"Public"	"**Private**

Rights under justice system	No rights except statutory Civil Rights granted by Congress. Restricts freedoms and liberties.	Maintains rights, freedoms, and liberties
Role of courts	US citizens are at the mercy of government and the administrative courts and tribunals Servants (subjects/ bond-servants) cannot sue the Master (Corporate government).	Unalienable rights, fundamental rights, substantial rights and other rights of living souls are all protected by The Law and protected by The "organic" Constitution and its amendments.
Bill of rights	The actual "Bill of Rights" was a declaration in 1689 by King William and Queen Mary to their loyal subjects of the British crown. If you are in this jurisdiction, you are a subject of the crown as well?	The first ten articles of **amendment to the constitution** are sometimes referred to as "**Bill of Rights**" which is incorrect. They are not a "Bill" but are simply amendments.
Due process	Due Process is optional--Sometimes Gestapo-like tactics without reservation.	**Due Process** is required Writ of **habeas corpus**
Innocence before the law	*Guilty until proven innocent*	***Innocent*** *until proven guilty*
Juries	The juror judges only the facts and not the law--The judge gives the statute, regulation, code, rule, etc. Juries selected ONLY from within the federal zone	Jurors judge the law ***as well as*** the facts. Juries selected ONLY from within states of the Union and NOT the federal zone.
DEBT		
Bankruptcy	First **bankruptcy** was in 1863 In 1865 the total debt was $2,682,593,026.53 A portion was funded by **1040 Bonds** to run not less than 10 nor more than 40 years at an interest rate of 6% Members of Congress are the official **Trustees** in the bankruptcy of the US and the re-organization	None
Income tax revenues necessary to pay debt	"All individual Income Tax revenues are gone before one nickel is spent on services taxpayers expect from government" --Ronald Reagan, 1984 Grace Commission Report	Wouldn't it be nice to be completely out of debt, personally, and have a stash of gold and silver besides?
TAXATION		
Federal income taxes	1. Illegally enforced. Government lies to citizens to steal their money. Corruption in the court. 2. States destroy personal liberties to get their share of federal matching funds. Example: Requirement to provide SSN to get a state driver's license.	Federal government has very limited income from only taxing foreign imports into states. Can't twist state's arm to destroy civic rights because it has so little income it won't give it away.
State income taxes	Treated as a "nonresident" of your state living on federal property (See, for example: http://www.leginfo.ca.gov/cgi-bin/displaycode?section=rtc&group=17001-18000&file=17001-17039.1 and look at 17016 and 17018 off the California website at http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=rtc&codebody=&hits=20)	Treated as a resident of your state and not taxed because it would violate the Bill of Rights and 1:9:4 and 1:2:3 of the U. S. Constitution.
Personal Income tax rates (State plus Federal)	High: 50-70% because working is a "privilege" and because it is a "privilege" to be part of the "commune".	None: Working is a "right"
Limits	No limit on taxation	Limits on taxation
Purpose of Taxation	1. Wealth redistribution (socialism) and to appease the whims of the democratic majority in spiteful disregard of the Bill of Rights. 2. Stabilize fiat currency system	Support *only* the government and not the people in any way. See *Loan Assoc. v. Topeka*, 87 U.S. (20 Wall.) 655 (1874)
Income taxes	Income taxes are legal and ever increasing	Direct taxes such as "**Income taxes**" are **unlawful**
Indirect taxes	Other taxation's such as inheritance taxes are legal	Indirect taxes such as excise tax and import duties are lawful

IRS	IRS's 1040 forms originated from the 1040 Bonds used for funding Lincoln's War 1863, first year income tax was ever used in history of US The IRS is a collection arm of the Federal Reserve. The Federal Reserve was created by the Bank of England in 1913 and is owned by foreign investors. The IRS is not listed as a government agency like other government agencies.	No IRS
FLAG		
Flag	**Not an American flag**  Some say it is a flag of Admiralty/Maritime type jurisdiction and is not suppose to be used on Land. Others say it's not a flag at all, but fiction. However, the gold fringe which surrounds the flag gives notice that the American flag has been captured and is now being used by the corporate so-called "government.	**American Flag**  plain and simple--no gold fringe or other ornaments and symbolism attached
Requirements for flags	Appears to be an "American flag" but has one or more of the following: 1. **Gold fringe** along its borders (called "a badge") 2. **Gold braided cord** (tassel) hanging from pole 3. **Ball** on top of pole (last cannon ball fired) 4. **Eagle** on top of pole 5. **Spear** on top of pole Yellow fringed flag is not described in Title 4 of USC and therefore is illegal on land except for maybe (1) the President since he is in charge of Navel Forces on high seas, and (2) naval offices and yards. President Eisenhower settled the debate on the width of the fringe. The so-called justification for a Navel/Maritime flag to be on land is that all land was under the high water mark at one time even if it was eons ago.	Prior to the 1950's, state republic flags were mostly flown, but when a USA flag was flown it was one of the following: 1. **Military flag**--Horizontal stripes, white stars on blue background** 2. **Peace flag**--vertical stripes, blue stars on white background--last flown before Civil War** **Has no fringe, braid (tassel), eagle, ball, spear, etc. (Although the codes do not apply here, the USA Military flag is described in Title 4 of USC) The continental USA is at peace
BENEFITS		
Benefits	**Inalienable rights** Government given rights that are really **Privileges.** Can be taken away at any time So-called Benefits are as follows: 1. **Social Security** (You paid all your working life and there are no guarantees that there will be money for you) 2. **Medicare** 3. **Medicaid** 4. **Grants** 5. **Disaster relief** 6. **Food Stamps**	**Unalienable rights** God given rights *"...incapable [emphasis added] of being aliened, that is, sold and transferred."* **Black's Law Dictionary, Revised Fourth Edition, 1968, page 1693.** Enjoy: 1. **Life** 2. **Liberty** 3. pursuit of **Happiness**

	7. **Licenses and Registration** (Permission) 8. **Privileges** only, no Rights 9. **Experimentation** on citizens without their consent. **Corporate government steals your money and gets credit for helping others with it. Politicians in return create more such programs to get more votes. Eventually there is no more to collect and give. Everyone becomes takers and there are no givers. The government then collapses within. That is why democracy never survives, because the looters eventually outnumber the producers.**	4. **full property ownership**. No US benefits--Every living soul is responsible for themselves and has the option of helping others. Each living soul gives accordingly to help others in need and receives the credit or gives the credit to his Maker and Provider. No tax burdens or government debt obligations.
RECORDS		
Location of records	County Clerk **Recorders Office** Created by statute to keep track of the corporate government's holdings which are applied as collateral to the increasing debt. The written records are a continuation of the "**Doomsday Book**" which keeps track of the Crown of England's holdings. The "Doomsday Book" originated as a written record of the conquered holdings of king William, which was later the basis of his taxes and grants. Property recorded at the recorders office makes the corporate defacto government "holders in due course" Your TV is not recorded there, therefore you are "holder in due course" for the TV.	***Ex-officio*** clerks County Clerk is also Clerk of the superior court, (i.e. a court of common law) and courts of record Records are also kept by Citizens such as in a family Bible
Birth certificate	"Birth Certificate" is required. It puts one into commerce as a *fictional persona*	Record the date family members are born married, and the date they pass on in the Family Bible
Marriage	Must file a "Marriage License". The Corporate State becomes the third party to your union and whatever you conceive is theirs and becomes their property in commerce.	Common Law Marriage Married by a minister or living together for more than 7 years constitutes a marriage Pastor may issue a Certificate of Matrimony
PROPERTY		
Property	Privilege to use 1. Fee title--Feudal Title 2. **Grant Deed** and **Trust Deed** Note: GRANTOR and GRANTEE in all caps are ***fictional persona*** 3. Property tax (Must pay) 4. Other taxes (such as water district taxes) 5. Subject to control by government 6. Vehicle Registration (The incorporated State owns vehicles on behalf of US) 7. Property and vehicles are collateral for the government debt	Full and complete ownership 1. **Allodial Title**--Land Patents--Allodial Freeholder 2. Can not be taxed (Only voluntary) 3. You are **king of your castle** 4. No government intrusion, involvement, or controls
MONEY		
Substance	Has no substance--Built on credit	Has **substance**
Controller of value	Controlled by US Treasury	Controlled by Treasury of the united States of America

Money symbol	Phony/Fiat Money All computer programs are designed with the "$" having only one line through it	Real Money Most of us were taught to write the "S" with two lines through it. The two lines was a derivative of the "U" inside the "S" signifying real US currency based on the American silver dollar and gold-backed currency.
Legal tender	1. Federal Reserve Notes (FRN's)*** 2. Bonds 3. Other Notes--evidences of debt 4. Cashless society--Electronic banking ***Issued by the **Federal Reserve Bank** (FRB)--A private corporation created by the Bank of England in 1913 and is owned by foreign bankers/investors The Federal Reserve is a continuation of the "**Exchequer**" of the Crown of England.	**Silver coins*** (Silver dollar--standard unit of value) **Gold Coins*** Paper currency redeemable in gold or silver* Spanish milled dollar *Issued by the Treasury Department of the USA (A Republic).
Minting of money	The government must borrow before FRN's are printed. The FRB pays 2½ ¢ per FRN note printed whether $1 or $1000. The US in-turn pays FRB interest indefinitely for each outstanding note or representation of a note. With electronic banking FRN's are created out of nothing and nothing being printed. *What a deal!*	Coinage started in 1783. The first paper currency was issued in 1862. "Silver Certificates" last printed in 1957. Coinage of Silver coins for circulation ended with the 1964 coins. Redemption of "Silver Certificates" ended on June 24, 1968.
History	The Greenback Act was revoked and replaced with the National Banking Act in 1863. An Act passed on April 12, 1866 authorized the sale of bonds to retire currency called greenbacks. FRN's (Federal Reserve Notes) were first issued in 1914. Just prior to the Stock Market crash of 1929, millions of dollars of gold was taken out of this Country and transferred to England.	Constitution made all currency gold and silver.
ROADWAYS		
Use of roadways	Drivers Licenses are required, because driving is **a privilege**.	Sovereigns have **a right** to use the public ways.
Driving "privileges"	May lose privilege or have it suspended at the whim of government	"**Liberty** of the common way"
Driver's licenses	Must comply with the Department of Motor Vehicles, the Vehicle Code, which is ever changing, and the Highway Patrol. Even a "Class 3" Driver's license is a "commercial" license. A "Driver" is one who does commercial business on the highways	No "Driver's License" is required for private, personal, and recreational use of the roadways. A "driver's license" can only be required for those individuals or businesses operating a business within the rights-of-ways such as Taxi Drivers, Truck Drivers, Bus Drivers, Chauffeurs, etc.
Definition of "Vehicle"	"Vehicle"--automobile or truck doing business on the highway	"Car"--short for "carriage" such as "horseless carriage" for private use
"Passenger"	"Passenger"--A paying customer who wants to be transported to another location	"Guest"--One who comes along for pleasure or private reasons without cost
Movement	"Drive"--The act of commercial use of the right-of-way	"Travel"--The act of private, personal, and recreational use of the roadways
MAIL		
Types of mail	**Domestic** Mail that moves between D.C., possessions and territories of the U.S.	**Non-domestic** Mail that moves outside of D.C. its possessions and territories
Zip codes	**Zip Codes** are required when using "jurisdictional regions or zones" such as "CA", NV, AZ, etc.	Zip Code not required and should not be used.
Cost of stamp	Cost is 34 cents for first class	3 cents--Sovereign to Sovereign Otherwise 34 cents

Designation of regions	Must now use "jurisdictional regions or zones" such as "CA", NV, AZ, etc. Purposely used ***ad nauseum*** which means "no name at all"	Write out the state completely such as "California" or abbreviated "Calif.". Never use "CA" for an address to a Sovereign or in your return address.
GUNS		
Philosophy on gun ownership	This government **wants to disarm** the Citizens so as to have complete control and power. Every tyrannical government in the past has taken away the guns to prevent any serious opposition or rebellion. History continues to repeat itself because the new generations who come along don't know or tend to forget about the past and will say it will not happen here.	Sovereign Citizens have **a right** to own and use guns--"Right to bear arms" against "enemies foreign and **domestic**". The founding fathers knew the importance of protecting themselves from governments who get out of hand.
Legal constraints on gun ownership	Disregards the 2nd Amendment or justifies what weapons should not be legal. Ever changing and ever restrictive. Requires **registration of guns**. If any of you saw the motion picture called "Red Dawn" would realize that the enemy finds these lists and then goes door to door collecting all of the guns.	**2nd Amendment** Protects the Right of the people to keep and bear arms.
RELIGION		
Relationship between church and state	This government wants to control the churches by having them come under their jurisdiction as **corporations** under **Section 501(c)(3)**. This is to prevent the clergy, Pastors, Ministers, etc. from having any political influence on its members or the public in general. This government regulates what is to be said and not to be said. These churches also display the **gold fringe flag**. Their faith is in the government and not in God. They exist by permission of this government not by God alone.  They **signed away their Birthright** for a so-called benefit: "Tax-exempt corporation".	Churches exist alone. No permission of government required.  1st Amendment Protects against government making a law that would respect an establishment of religion or prohibit the free exercise of a religion.

 Last revision: April 06, 2006 02:33 PM

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Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** **2001** (99) IRS Use Only—Do not write or staple in this space.

OMB No. 1545-0074

Label (See instructions on page 19.) **Use the IRS label.** Otherwise, please print or type.

LABEL HERE

For the year Jan. 1–Dec. 31, 2001, or other tax year beginning , 2001, ending , 20

Your first name and initial	Last name	**Your social security number**
If a joint return, spouse's first name and initial	Last name	**Spouse's social security number**
Home address (number and street). If you have a P.O. box, see page 19.	Apt. no.	
City, town or post office, state, and ZIP code. If you have a foreign address, see page 19.		

Important! You **must** enter your SSN(s) above.

Presidential Election Campaign (See page 19.)

Note. Checking "Yes" will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want $3 to go to this fund? . . . ▶

You	Spouse
☐ Yes ☐ No	☐ Yes ☐ No

Filing Status

Check only one box.

1 ☐ Single

2 ☐ Married filing joint return (even if only one had income)

3 ☐ Married filing separate return. Enter spouse's social security no. above and full name here. ▶

4 ☐ Head of household (with qualifying person). (See page 19.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶

5 ☐ Qualifying widow(er) with dependent child (year spouse died ▶). (See page 19.)

Exemptions

6a ☐ **Yourself.** If your parent (or someone else) can claim you as a dependent on his or her tax return, **do not** check box 6a . . . .

b ☐ **Spouse** . . . .

c **Dependents:**

(1) First name Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if qualifying child for child tax credit (see page 20)
			☐
			☐
			☐
			☐
			☐
			☐

If more than six dependents, see page 20.

No. of boxes checked on 6a and 6b

No. of your children on 6c who:
- **lived with you**
- **did not live with you due to divorce or separation (see page 20)**

Dependents on 6c not entered above

Add numbers entered on lines above ▶

d Total number of exemptions claimed 6d

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see page 21.

Enclose, but do not attach, any payment. Also, please use **Form 1040-V.**

7	Wages, salaries, tips, etc. Attach Form(s) W-2		7
8a	**Taxable** interest. Attach Schedule B if required		8a
b	**Tax-exempt** interest. **Do not** include on line 8a	8b	
9	Ordinary dividends. Attach Schedule B if required		9
10	Taxable refunds, credits, or offsets of state and local income taxes (see page 22)		10
11	Alimony received		11
12	Business income or (loss). Attach Schedule C or C-EZ		12
13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ ☐		13
14	Other gains or (losses). Attach Form 4797		14
15a	Total IRA distributions . 15a	b Taxable amount (see page 23)	15b
16a	Total pensions and annuities 16a	b Taxable amount (see page 23)	16b
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17
18	Farm income or (loss). Attach Schedule F		18
19	Unemployment compensation		19
20a	Social security benefits . 20a	b Taxable amount (see page 25)	20b
21	Other income. List type and amount (see page 27)		21
22	Add the amounts in the far right column for lines 7 through 21. This is your **total income** ▶		22

Adjusted Gross Income

23	IRA deduction (see page 27)	23	
24	Student loan interest deduction (see page 28)	24	
25	Archer MSA deduction. Attach Form 8853	25	
26	Moving expenses. Attach Form 3903	26	
27	One-half of self-employment tax. Attach Schedule SE	27	
28	Self-employed health insurance deduction (see page 30)	28	
29	Self-employed SEP, SIMPLE, and qualified plans	29	
30	Penalty on early withdrawal of savings	30	
31a	Alimony paid b Recipient's SSN ▶	31a	
32	Add lines 23 through 31a		32
33	Subtract line 32 from line 22. This is your **adjusted gross income** ▶		33

Tax and Credits

Standard Deduction for—

- People who checked any box on line 35a or 35b **or** who can be claimed as a dependent, see page 31.
- All others:

Single, $4,550

Head of household, $6,650

Married filing jointly or Qualifying widow(er), $7,600

Married filing separately, $3,800

34	Amount from line 33 (adjusted gross income)			34
35a	Check if: ☐ **You** were 65 or older, ☐ Blind; ☐ **Spouse** was 65 or older, ☐ Blind. Add the number of boxes checked above and enter the total here ▶ **35a**			
b	If you are married filing separately and your spouse itemizes deductions, or you were a dual-status alien, see page 31 and check here ▶ **35b** ☐			
36	**Itemized deductions** (from Schedule A) **or** your **standard deduction** (see left margin)			36
37	Subtract line 36 from line 34			37
38	If line 34 is $99,725 or less, multiply $2,900 by the total number of exemptions claimed on line 6d. If line 34 is over $99,725, see the worksheet on page 32			38
39	**Taxable income.** Subtract line 38 from line 37. If line 38 is more than line 37, enter -0-			39
40	**Tax** (see page 33). Check if any tax is from **a** ☐ Form(s) 8814 **b** ☐ Form 4972			40
41	**Alternative minimum tax** (see page 34). Attach Form 6251			41
42	Add lines 40 and 41 ▶			42
43	Foreign tax credit. Attach Form 1116 if required	43		
44	Credit for child and dependent care expenses. Attach Form 2441	44		
45	Credit for the elderly or the disabled. Attach Schedule R	45		
46	Education credits. Attach Form 8863	46		
47	Rate reduction credit. See the worksheet on page 36	47		
48	Child tax credit (see page 37)	48		
49	Adoption credit. Attach Form 8839	49		
50	Other credits from: **a** ☐ Form 3800 **b** ☐ Form 8396 **c** ☐ Form 8801 **d** ☐ Form (specify) _____	50		
51	Add lines 43 through 50. These are your **total credits**			51
52	Subtract line 51 from line 42. If line 51 is more than line 42, enter -0- ▶			52

Other Taxes

53	Self-employment tax. Attach Schedule SE			53
54	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137			54
55	Tax on qualified plans, including IRAs, and other tax-favored accounts. Attach Form 5329 if required			55
56	Advance earned income credit payments from Form(s) W-2			56
57	Household employment taxes. Attach Schedule H			57
58	Add lines 52 through 57. This is your **total tax** ▶			58

Payments

If you have a qualifying child, attach Schedule EIC.

59	Federal income tax withheld from Forms W-2 and 1099	59		
60	2001 estimated tax payments and amount applied from 2000 return	60		
61a	**Earned income credit (EIC)**	61a		
b	Nontaxable earned income **61b**			
62	Excess social security and RRTA tax withheld (see page 51)	62		
63	Additional child tax credit. Attach Form 8812	63		
64	Amount paid with request for extension to file (see page 51)	64		
65	Other payments. Check if from **a** ☐ Form 2439 **b** ☐ Form 4136	65		
66	Add lines 59, 60, 61a, and 62 through 65. These are your **total payments** ▶			66

Refund

Direct deposit? See page 51 and fill in 68b, 68c, and 68d.

67	If line 66 is more than line 58, subtract line 58 from line 66. This is the amount you **overpaid**			67
68a	Amount of line 67 you want **refunded to you** ▶			68a
▶ b	Routing number ▶ **c** Type: ☐ Checking ☐ Savings			
▶ d	Account number			
69	Amount of line 67 you want **applied to your 2002 estimated tax** ▶	69		

Amount You Owe

70	**Amount you owe.** Subtract line 66 from line 58. For details on how to pay, see page 52 ▶			70
71	Estimated tax penalty. Also include on line 70	71		

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see page 53)? ☐ **Yes.** Complete the following. ☐ **No**

Designee's name ▶ Phone no. ▶ ( ) Personal identification number (PIN) ▶

Sign Here

Joint return? See page 19.

Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation	Daytime phone number
			( )
Spouse's signature. If a joint return, **both** must sign.	Date	Spouse's occupation	

Paid Preparer's Use Only

Preparer's signature	Date	Check if self-employed ☐	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code		EIN	
		Phone no. ( )	

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Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** **2001** (99) IRS Use Only—Do not write or staple in this space.

OMB No. 1545-0074

Label (See instructions on page 19.) **Use the IRS label.** Otherwise, please print or type.

LABEL HERE

For the year Jan. 1–Dec. 31, 2001, or other tax year beginning , 2001, ending , 20

Your first name and initial	Last name	**Your social security number**
If a joint return, spouse's first name and initial	Last name	**Spouse's social security number**
Home address (number and street). If you have a P.O. box, see page 19.	Apt. no.	
City, town or post office, state, and ZIP code. If you have a foreign address, see page 19.		

Important! You **must** enter your SSN(s) above.

Presidential Election Campaign (See page 19.)

Note. Checking "Yes" will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want $3 to go to this fund? . . . ▶

You	Spouse
☐ Yes ☐ No	☐ Yes ☐ No

Filing Status

Check only one box.

1 ☐ Single

2 ☐ Married filing joint return (even if only one had income)

3 ☐ Married filing separate return. Enter spouse's social security no. above and full name here. ▶

4 ☐ Head of household (with qualifying person). (See page 19.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶

5 ☐ Qualifying widow(er) with dependent child (year spouse died ▶). (See page 19.)

Exemptions

6a ☐ **Yourself.** If your parent (or someone else) can claim you as a dependent on his or her tax return, **do not** check box 6a . . . .

b ☐ **Spouse** . . . .

c **Dependents:**

(1) First name Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if qualifying child for child tax credit (see page 20)
			☐
			☐
			☐
			☐
			☐
			☐

If more than six dependents, see page 20.

No. of boxes checked on 6a and 6b

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- **did not live with you due to divorce or separation (see page 20)**

Dependents on 6c not entered above

Add numbers entered on lines above ▶

d Total number of exemptions claimed 6d

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see page 21.

Enclose, but do not attach, any payment. Also, please use **Form 1040-V.**

7	Wages, salaries, tips, etc. Attach Form(s) W-2		7
8a	**Taxable** interest. Attach Schedule B if required		8a
b	**Tax-exempt** interest. **Do not** include on line 8a	8b	
9	Ordinary dividends. Attach Schedule B if required		9
10	Taxable refunds, credits, or offsets of state and local income taxes (see page 22)		10
11	Alimony received		11
12	Business income or (loss). Attach Schedule C or C-EZ		12
13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ ☐		13
14	Other gains or (losses). Attach Form 4797		14
15a	Total IRA distributions . 15a	b Taxable amount (see page 23)	15b
16a	Total pensions and annuities 16a	b Taxable amount (see page 23)	16b
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17
18	Farm income or (loss). Attach Schedule F		18
19	Unemployment compensation		19
20a	Social security benefits . 20a	b Taxable amount (see page 25)	20b
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33	Subtract line 32 from line 22. This is your **adjusted gross income** ▶		33

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Married filing separately, $3,800

34	Amount from line 33 (adjusted gross income)			34
35a	Check if: ☐ **You** were 65 or older, ☐ Blind; ☐ **Spouse** was 65 or older, ☐ Blind. Add the number of boxes checked above and enter the total here ▶ **35a**			
b	If you are married filing separately and your spouse itemizes deductions, or you were a dual-status alien, see page 31 and check here ▶ **35b** ☐			
36	**Itemized deductions** (from Schedule A) **or** your **standard deduction** (see left margin)			36
37	Subtract line 36 from line 34			37
38	If line 34 is $99,725 or less, multiply $2,900 by the total number of exemptions claimed on line 6d. If line 34 is over $99,725, see the worksheet on page 32			38
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47	Rate reduction credit. See the worksheet on page 36	47		
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49	Adoption credit. Attach Form 8839	49		
50	Other credits from: **a** ☐ Form 3800 **b** ☐ Form 8396 **c** ☐ Form 8801 **d** ☐ Form (specify) _____	50		
51	Add lines 43 through 50. These are your **total credits**			51
52	Subtract line 51 from line 42. If line 51 is more than line 42, enter -0- ▶			52

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55	Tax on qualified plans, including IRAs, and other tax-favored accounts. Attach Form 5329 if required			55
56	Advance earned income credit payments from Form(s) W-2			56
57	Household employment taxes. Attach Schedule H			57
58	Add lines 52 through 57. This is your **total tax** ▶			58

Payments

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65	Other payments. Check if from **a** ☐ Form 2439 **b** ☐ Form 4136	65		
66	Add lines 59, 60, 61a, and 62 through 65. These are your **total payments** ▶			66

Refund

Direct deposit? See page 51 and fill in 68b, 68c, and 68d.

67	If line 66 is more than line 58, subtract line 58 from line 66. This is the amount you **overpaid**			67
68a	Amount of line 67 you want **refunded to you** ▶			68a
▶ b	Routing number ▶ **c** Type: ☐ Checking ☐ Savings			
▶ d	Account number			
69	Amount of line 67 you want **applied to your 2002 estimated tax** ▶	69		

Amount You Owe

70	**Amount you owe.** Subtract line 66 from line 58. For details on how to pay, see page 52 ▶			70
71	Estimated tax penalty. Also include on line 70	71		

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see page 53)? ☐ **Yes.** Complete the following. ☐ **No**

Designee's name ▶ Phone no. ▶ ( ) Personal identification number (PIN) ▶

Sign Here

Joint return? See page 19.

Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation	Daytime phone number
			( )
Spouse's signature. If a joint return, **both** must sign.	Date	Spouse's occupation	

Paid Preparer's Use Only

Preparer's signature	Date	Check if self-employed ☐	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code		EIN	
		Phone no. ( )	

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- Seventeenth Amendment - Popular Election of Senators
- Eighteenth Amendment - Prohibition of Intoxicating Liquors
- Nineteenth Amendment - Woman's Suffrage Rights
- Twentieth Amendment - Commencement of the Terms of the President, Vice President and Members of Congress.
- Twenty-First Amendment - Repeal of the Eighteenth Amendment
- Twenty-Second Amendment - Presidential Tenure
- Twenty-Third Amendment - Presidential Electors for the District of Columbia
- Twenty-Fourth Amendment - Abolition of the Poll Tax Qualification in Federal Elections
- Twenty-Fifth

Amendment - Presidential Vacancy, Disability, and Inability
- Twenty-Sixth Amendment - Reduction of Voting Age Qualification
- Twenty-Seventh Amendment - Congressional Pay Limitation

- Original Senate Document Available in text and acrobat (.pdf) format from the US Government Printing Office Web Site.
- U.S. Constitution From Cornell Law School.
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The Congressional Research Service, Library of Congress prepared this document, *The Constitution of the United States of America: Analyis and Interpretation*. Johnny H. Killian and George A. Costello edited the 1992 Edition. Johnny H. Killian, George A. Costello and Kenneth R. Thomas edited the 1996 and 1998 Supplements. George A. Costello and Kenneth R. Thomas edited the 2000 Supplement.

FindLaw has divided the document up into smaller sections for the Web and added hyperlinks between the sections, as well as links to Supreme court cases cited in the annotations. FindLaw also incorporated the 1996, 1998 and 2000 Supplements into the 1992 Edition text.

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U.S. Constitution: Article I

Article Text | Annotations

Article I

Section 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the age of

twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

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Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

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The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

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take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts,

Magazines, Arsenals, dock-Yards and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9.

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census of Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State.

Section 10.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact

with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Annotations

Article I - Legislative Department

- **Section 1. Legislative Powers**
- **Separation of Powers and Checks and Balances**
  - The Theory Elaborated and Implemented
  - Judicial Enforcement
- **Bicameralism**
- **Enumerated, Implied, Resulting, and Inherent Powers**
- **Delegation of Legislative Power**
  - Origin of the Doctrine of Nondelegability
  - Delegation Which Is Permissible
    - Filling Up the Details
    - Contingent Legislation
  - The Effective Demise of the Nondelegation Doctrine
    - The Regulatory State
    - Standards
    - Foreign Affairs
    - Delegations to the States
    - Delegation to Private Persons
    - Delegation and Individual Liberties
  - Punishment of Violations
- **Congressional Investigations**
  - Source of the Power to Investigate
  - Investigations of Conduct of Executive Department
  - Investigations of Members of Congress

- Investigations in Aid of Legislation
  - Purpose
  - Protection of Witnesses: Pertinency and Related Matters
  - Protection of Witnesses: Constitutional Guarantees
- Sanctions of the Investigatory Power: Contempt

- **Section 2. The House of Representatives**
- **Clause 1. Congressional Districting**
  - Elector Qualifications
- **Clause 2. Qualifications of Members of Congress**
  - When the Qualifications Must Be Possessed
  - Exclusivity of Constitutional Qualifications
  - Congressional Additions
  - State Additions
- **Clause 3. Apportionment of Seats in the House**
  - The Census Requirement
- **Clause 4. Vacancies**
- **Clause 5. Officers and Power of Impeachment**

- **Section 3. The Senate**
- **Clause 1. Composition and Selection**
- **Clause 2. Classes of Senators**
- **Clause 3. Qualifications**
- **Clause 4. The Vice President**
- **Clause 5. Officers**
- **Clause 6. Trial of Impeachments**
- **Clause 7. Judgments on Impeachment**

- **Section 4. Elections**
- **Clause 1. Congressional Power to Regulate**
  - Federal Legislation Protecting Electoral Process

- **Clause 2. Time of Assembling**

- **Section 5. Powers and Duties of the Houses**
- **Clause 1. Power to Judge Elections**
- **Clause 2. Rules of Proceedings**
- **Clause 3. Duty to Keep a Journal**
- **Clause 4. Adjournments**
- **POWERS AND DUTIES OF THE HOUSES**
    - Power To Judge Elections
    - "A Quorum to Do Business"
    - Rules of Proceedings
    - Powers of the Houses Over Members
    - Duty To Keep a Journal

- **Section 6. Rights and Disabilities of Members**
- **Clause 1. Compensation and Immunities**
    - Congressional Pay
    - Privilege from Arrest
    - Privilege of Speech or Debate
        - Members
        - Congressional Employees
- **Clause 2. Disabilities**
    - Appointment to Executive Office
    - Incompatible Offices

- **Section 7. Legislative Process**
- **Clause 1. Revenue Bills**
- **Clause 2. Approval by the President**
    - The Veto Power
- **Clause 3. Presentation of Resolutions**
    - The Legislative Veto

- **Section 8. Powers of Congress**
- **Clause 1. Power to Tax and Spend**
    - Kinds of Taxes Permitted
        - Decline of the Forbidden Subject Matter Test
        - Federal Taxation of State Interests

        - Scope of State Immunity from Federal Taxation
        - Uniformity Requirement
    - Purposes of Taxation
        - Regulation by Taxation
        - Extermination by Taxation
        - Promotion of Business: Protective Tariff
    - Spending for the General Welfare
        - Scope of the Power
    - Social Security Act Cases
    - An Unrestrained Federal Spending Power
    - Conditional Grants-In-Aid
    - Earmarked Funds
    - Debts of the United States
- **Clause 2. Borrowing Power**
- **Clause 3. Commerce Power**
    - Power to Regulate Commerce
        - Purposes Served by the Grant
        - Definition of Terms
            - Commerce
            - Among the Several States
            - Regulate
            - Necessary and Proper Clause
            - Federalism Limits on Exercise of Commerce Power
            - Illegal Commerce
    - Interstate versus Foreign Commerce
    - Instruments of Commerce
    - Congressional Regulation of Waterways
        - Navigation
        - Hydroelectric Power; Flood Control
    - Congressional Regulation of Land Transportation

- Federal Stimulation of Land Transportation
- Federal Regulation of Land Transportation
- Federal Regulation of Intrastate Rates (The Shreveport Doctrine)
- Federal Protection of Labor in Interstate Rail Transportation
- Regulation of Other Agents of Carriage and Communications

○ Congressional Regulation of Commerce as Traffic
- The Sherman Act: Sugar Trust Case
- Sherman Act Revived
- The "Current of Commerce" Concept: The Swift Case
- The Danbury Hatters Case
- Stockyards and Grain Futures Acts
- Securities and Exchange Commission

○ Congressional Regulation of Production and Industrial Relations: Antidepression Legislation
- National Industrial Recovery Act
- Agricultural Adjustment Act
- Bituminous Coal Conservation Act
- Railroad Retirement Act
- National Labor Relations Act
- Fair Labor Standards Act
- Agricultural Marketing Agreement Act

○ Acts of Congress Prohibiting Commerce

- Foreign Commerce: Jefferson's Embargo
- Foreign Commerce: Protective Tariffs
- Foreign Commerce: Banned Articles
- Interstate Commerce: Power to Prohibit Questioned
- Interstate Commerce: National Prohibitions and State Police Power
- The Lottery Case
- The Darby Case

- The Commerce Clause as a Source of National Police Power
  - Is There an Intrastate Barrier to Congress' Commerce Power?
  - Civil Rights
  - Criminal Law
- The Commerce Clause as a Restraint on State Powers
  - Doctrinal Background
  - The State Proprietary Activity Exception
  - Congressional Authorization of Impermissible State Action

- State Taxation and Regulation: The Old Law
  - General Considerations
  - Taxation
  - Regulation
- State Taxation and Regulation: The Modern Law
  - General Considerations
  - Taxation
  - Regulation
- Foreign Commerce and State Powers
- Concurrent Federal and State Jurisdiction

- The General Issue: Preemption
  - Preemption Standards
  - The Standards Applied
  - Federal Versus State Labor Laws
- Commerce With Indian Tribes

- **Clause 4. Naturalization and Bankruptcies**
  - Naturalization and Citizenship
    - Nature and Scope of Congress' Power
    - Categories of Citizens: Birth and Naturalization
    - The Naturalization of Aliens
  - Rights of Naturalized Persons
  - Expatriation: Loss of Citizenship
  - Aliens
    - The Power of Congress to Exclude Aliens
    - Deportation
  - Bankruptcy
    - Persons Who May Be Released from Debt
    - Liberalization of Relief Granted and Expansion of the Rights of the Trustee
    - Constitutional Limitations on the Bankruptcy Power
    - Constitutional Status of State Insolvency Laws: Preemption
- **Clauses 5 and 6. Money**
  - Fiscal and Monetary Powers of Congress
    - Coinage, Weights, and Measures
    - Punishment of Counterfeiting
    - Borrowing Power versus Fiscal Power

- **Clause 7. Post Office**
  - Postal Power
    - "Establish"
    - Power to Protect the Mails
    - Power to Prevent Harmful Use of the Postal Facilities
    - Exclusive Power as an Adjunct to Other Powers
    - State Regulations Affecting the Mails
- **Clause 8. Copyrights and Patents**
  - Copyrights and Patents
    - Scope of the Power
    - Patentable Discoveries
    - Procedure in Issuing Patents
    - Nature and Scope of the Right Secured
    - Power of Congress over Patent Rights
    - State Power Affecting Payments and Copyrights
    - Trade-Marks and Advertisements
- **Clause 9. Creation of Courts**
- **Clause 10. Maritime Crimes**
  - Piracies, Felonies, and Offenses Against the Law of Nations
    - Origin of the Clause
    - Definition of Offenses
    - Extraterritorial Reach of the Power
- **Clauses 11, 12, 13, and 14. War; Military Establishment**
  - The War Power
    - Source and Scope
      - Three Theories
      - An Inherent Power
      - A Complexus of Granted Powers
    - Declaration of War
  - The Power to Raise and Maintain Armed Forces

- Purpose of Specific Grants
- Time Limit on Appropriations for the Army
- Conscription
- Care of the Armed Forces
- Trial and Punishment of Offenses: Servicemen, Civilian Employees, and Dependents
  - Servicemen
  - Civilians and Dependents

War Legislation
- War Powers in Peacetime
- Delegation of Legislative Power in Wartime

Constitutional Rights in Wartime
- Constitution and the Advance of the Flag
  - Theater of Military Operations
  - Enemy Country
  - Enemy Property
  - Prizes of War
- The Constitution at Home in Wartime
  - Personal Liberty
  - Enemy Aliens
  - Eminent Domain
  - Rent and Price Controls

Clauses 15 and 16. The Militia

The Militia Clause
- Calling Out the Militia
- Regulation of the Militia

Clause 17. District of Columbia; Federal Property

Seat of the Government

Authority Over Places Purchased
- "Places"
- Duration of Federal Jurisdiction

        - Reservation of Jurisdiction by States
- **Clause 18. Necessary and Proper Clause**
    - Coefficient or Elastic Clause
        - Scope of Incidental Powers
        - Operation of Coefficient Clause
        - Definition of Punishment and Crimes
        - Chartering of Banks
        - Currency Regulations
        - Power to Charter Corporations
        - Courts and Judicial Proceedings
        - Special Acts Concerning Claims
        - Maritime Law

- **Section 9. Powers Denied to Congress**
- **Clause 1. Importation of Slaves**
    - General Purpose of Sec. 9
- **Clause 2. Habeas Corpus Suspension**
- **Clause 3. Bills of Attainder and Ex Post Facto Laws**
    - Bills of Attainder
    - Ex Post Facto Laws
        - Definition
        - What Constitutes Punishment
        - Change in Place or Mode of Trial
- **Clause 4. Taxes**
    - Direct Taxes
        - The Hylton Case
        - From the Hylton to the Pollock Case
        - Restriction of the Pollock Decision
        - Miscellaneous
- **Clause 5. Duties on Exports from States**

- Taxes on Exports
  - Stamp Taxes
- **Clause 6. Preference to Ports**
  - The "No Preference" Clause
- **Clause 7. Appropriations and Accounting of Public Money**
  - Appropriations
  - Payment of Claims
- **Clause 8. Titles of Nobility; Presents**

- **Section 10. Powers Denied to the States**

- **Clause 1. Not to Make Treaties, Coin Money, Pass Ex Post Facto Laws, Impair Contracts**
  - Treaties, Alliances, or Confederations
  - Bills of Credit
  - Legal Tender
  - Bills of Attainder
  - Ex Post Facto Laws
    - Scope of the Provision
    - Denial of Future Privileges to Past Offenders
    - Changes in Punishment
    - Changes in Procedure
  - Obligation of Contracts
    - "Law" Defined
    - Status of Judicial Decisions
    - "Obligation" Defined
    - "Impair" Defined
    - Vested Rights Not Included
    - Public Grants That Are Not "Contracts"
    - Tax Exemptions: When Not "Contracts"
    - "Contracts" Include Public Contracts and Corporate Charters
    - Corporate Charters: Different Ways of Regarding

        - Reservation of Right to Alter or Repeal Corporate Charters
        - Corporation Subject to the Law and Police Power
        - Strict Construction of Charters, Tax Exemptions
        - Strict Construction and the Police Power
        - Doctrine of Inalienability as Applied to Eminent Domain, Taxing, and Police Powers
        - Private Contracts
        - Remedy a Part of the Private Obligation
        - Private Contracts and the Police Power
        - Evaluation of the Clause Today
- **Clause 2. Not to Levy Duties on Exports and Imports**
    - Duties on Exports and Imports
        - Scope
        - Privilege Taxes
        - Property Taxes
        - Inspection Laws
- **Clause 3. Not to Lay Tonnage Duties, Keep Troops, Make Compacts, or Engage in War**
    - Tonnage Duties
    - Keeping Troops
    - Interstate Compacts
        - Background of Clause
        - Subject Matter of Interstate Compacts
        - Consent of Congress
        - Grants of Franchise to Corporations by Two States
        - Legal Effects of Interstate Compacts

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U.S. Constitution: Article I

Article Text | Annotations

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Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9.

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases or Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census of Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State.

Section 10.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Annotations

Article I - Legislative Department

- **Section 1. Legislative Powers**
- **Separation of Powers and Checks and Balances**
  - The Theory Elaborated and Implemented
  - Judicial Enforcement
- **Bicameralism**
- **Enumerated, Implied, Resulting, and Inherent Powers**
- **Delegation of Legislative Power**
  - Origin of the Doctrine of Nondelegability
  - Delegation Which Is Permissible
    - Filling Up the Details
    - Contingent Legislation
  - The Effective Demise of the Nondelegation Doctrine
    - The Regulatory State
    - Standards
    - Foreign Affairs
    - Delegations to the States
    - Delegation to Private Persons
    - Delegation and Individual Liberties
  - Punishment of Violations
- **Congressional Investigations**
  - Source of the Power to Investigate
  - Investigations of Conduct of Executive Department
  - Investigations of Members of Congress
  - Investigations in Aid of Legislation
    - Purpose
    - Protection of Witnesses: Pertinency and Related Matters
    - Protection of Witnesses: Constitutional Guarantees
  - Sanctions of the Investigatory Power: Contempt

- **Section 2. The House of Representatives**
- **Clause 1. Congressional Districting**
  - Elector Qualifications
- **Clause 2. Qualifications of Members of Congress**
  - When the Qualifications Must Be Possessed
  - Exclusivity of Constitutional Qualifications
  - Congressional Additions
  - State Additions
- **Clause 3. Apportionment of Seats in the House**
  - The Census Requirement
- **Clause 4. Vacancies**
- **Clause 5. Officers and Power of Impeachment**

- **Section 3. The Senate**
- **Clause 1. Composition and Selection**
- **Clause 2. Classes of Senators**
- **Clause 3. Qualifications**
- **Clause 4. The Vice President**
- **Clause 5. Officers**
- **Clause 6. Trial of Impeachments**

- **Clause 7. Judgments on Impeachment**

- **Section 4. Elections**
- **Clause 1. Congressional Power to Regulate**
  - Federal Legislation Protecting Electoral Process
- **Clause 2. Time of Assembling**

- **Section 5. Powers and Duties of the Houses**
- **Clause 1. Power to Judge Elections**
- **Clause 2. Rules of Proceedings**
- **Clause 3. Duty to Keep a Journal**
- **Clause 4. Adjournments**
- **POWERS AND DUTIES OF THE HOUSES**
  - Power To Judge Elections
  - "A Quorum to Do Business"
  - Rules of Proceedings
  - Powers of the Houses Over Members
  - Duty To Keep a Journal

- **Section 6. Rights and Disabilities of Members**
- **Clause 1. Compensation and Immunities**
  - Congressional Pay
  - Privilege from Arrest
  - Privilege of Speech or Debate
    - Members
    - Congressional Employees
- **Clause 2. Disabilities**
  - Appointment to Executive Office
  - Incompatible Offices

- **Section 7. Legislative Process**
- **Clause 1. Revenue Bills**
- **Clause 2. Approval by the President**
  - The Veto Power
- **Clause 3. Presentation of Resolutions**
  - The Legislative Veto

- **Section 8. Powers of Congress**
- **Clause 1. Power to Tax and Spend**
  - Kinds of Taxes Permitted
    - Decline of the Forbidden Subject Matter Test
    - Federal Taxation of State Interests
    - Scope of State Immunity from Federal Taxation
    - Uniformity Requirement
  - Purposes of Taxation
    - Regulation by Taxation
    - Extermination by Taxation
    - Promotion of Business: Protective Tariff
  - Spending for the General Welfare
    - Scope of the Power

- Social Security Act Cases
- An Unrestrained Federal Spending Power
- Conditional Grants-In-Aid
- Earmarked Funds
- Debts of the United States

- **Clause 2. Borrowing Power**
- **Clause 3. Commerce Power**
  - Power to Regulate Commerce
    - Purposes Served by the Grant
    - Definition of Terms
      - Commerce
      - Among the Several States
      - Regulate
      - Necessary and Proper Clause
      - Federalism Limits on Exercise of Commerce Power
      - Illegal Commerce
  - Interstate versus Foreign Commerce
  - Instruments of Commerce
  - Congressional Regulation of Waterways
    - Navigation
    - Hydroelectric Power; Flood Control
  - Congressional Regulation of Land Transportation
    - Federal Stimulation of Land Transportation
    - Federal Regulation of Land Transportation
    - Federal Regulation of Intrastate Rates (The Shreveport Doctrine)
    - Federal Protection of Labor in Interstate Rail Transportation
    - Regulation of Other Agents of Carriage and Communications
  - Congressional Regulation of Commerce as Traffic
    - The Sherman Act: Sugar Trust Case
    - Sherman Act Revived
    - The "Current of Commerce" Concept: The Swift Case
    - The Danbury Hatters Case
    - Stockyards and Grain Futures Acts
    - Securities and Exchange Commission
  - Congressional Regulation of Production and Industrial Relations: Antidepression Legislation
    - National Industrial Recovery Act
    - Agricultural Adjustment Act
    - Bituminous Coal Conservation Act
    - Railroad Retirement Act
    - National Labor Relations Act
    - Fair Labor Standards Act
    - Agricultural Marketing Agreement Act
  - Acts of Congress Prohibiting Commerce
    - Foreign Commerce: Jefferson's Embargo
    - Foreign Commerce: Protective Tariffs
    - Foreign Commerce: Banned Articles
    - Interstate Commerce: Power to Prohibit Questioned
    - Interstate Commerce: National Prohibitions and State Police Power
    - The Lottery Case
    - The Darby Case

- The Commerce Clause as a Source of National Police Power
  - Is There an Intrastate Barrier to Congress' Commerce Power?
  - Civil Rights
  - Criminal Law
- The Commerce Clause as a Restraint on State Powers
  - Doctrinal Background
  - The State Proprietary Activity Exception
  - Congressional Authorization of Impermissible State Action
- State Taxation and Regulation: The Old Law
  - General Considerations
  - Taxation
  - Regulation
- State Taxation and Regulation: The Modern Law
  - General Considerations
  - Taxation
  - Regulation
- Foreign Commerce and State Powers
- Concurrent Federal and State Jurisdiction
  - The General Issue: Preemption
    - Preemption Standards
    - The Standards Applied
    - Federal Versus State Labor Laws
- Commerce With Indian Tribes

- **Clause 4. Naturalization and Bankruptcies**
  - Naturalization and Citizenship
    - Nature and Scope of Congress' Power
    - Categories of Citizens: Birth and Naturalization
    - The Naturalization of Aliens
  - Rights of Naturalized Persons
  - Expatriation: Loss of Citizenship
  - Aliens
    - The Power of Congress to Exclude Aliens
    - Deportation
  - Bankruptcy
    - Persons Who May Be Released from Debt
    - Liberalization of Relief Granted and Expansion of the Rights of the Trustee
    - Constitutional Limitations on the Bankruptcy Power
    - Constitutional Status of State Insolvency Laws: Preemption
- **Clauses 5 and 6. Money**
  - Fiscal and Monetary Powers of Congress
    - Coinage, Weights, and Measures
    - Punishment of Counterfeiting
    - Borrowing Power versus Fiscal Power
- **Clause 7. Post Office**
  - Postal Power
    - "Establish"
    - Power to Protect the Mails
    - Power to Prevent Harmful Use of the Postal Facilities
    - Exclusive Power as an Adjunct to Other Powers
    - State Regulations Affecting the Mails
- **Clause 8. Copyrights and Patents**

- Copyrights and Patents
  - Scope of the Power
  - Patentable Discoveries
  - Procedure in Issuing Patents
  - Nature and Scope of the Right Secured
  - Power of Congress over Patent Rights
  - State Power Affecting Payments and Copyrights
  - Trade-Marks and Advertisements
- **Clause 9. Creation of Courts**
- **Clause 10. Maritime Crimes**
  - Piracies, Felonies, and Offenses Against the Law of Nations
    - Origin of the Clause
    - Definition of Offenses
    - Extraterritorial Reach of the Power
- **Clauses 11, 12, 13, and 14. War; Military Establishment**
  - The War Power
    - Source and Scope
      - Three Theories
      - An Inherent Power
      - A Complexus of Granted Powers
    - Declaration of War
  - The Power to Raise and Maintain Armed Forces
    - Purpose of Specific Grants
    - Time Limit on Appropriations for the Army
    - Conscription
    - Care of the Armed Forces
    - Trial and Punishment of Offenses: Servicemen, Civilian Employees, and Dependents
      - Servicemen
      - Civilians and Dependents
  - War Legislation
    - War Powers in Peacetime
    - Delegation of Legislative Power in Wartime
  - Constitutional Rights in Wartime
    - Constitution and the Advance of the Flag
      - Theater of Military Operations
      - Enemy Country
      - Enemy Property
      - Prizes of War
    - The Constitution at Home in Wartime
      - Personal Liberty
      - Enemy Aliens
      - Eminent Domain
      - Rent and Price Controls
- **Clauses 15 and 16. The Militia**
  - The Militia Clause
    - Calling Out the Militia
    - Regulation of the Militia
- **Clause 17. District of Columbia; Federal Property**
  - Seat of the Government
  - Authority Over Places Purchased

        - "Places"
        - Duration of Federal Jurisdiction
        - Reservation of Jurisdiction by States
- **Clause 18. Necessary and Proper Clause**
    - Coefficient or Elastic Clause
        - Scope of Incidental Powers
        - Operation of Coefficient Clause
        - Definition of Punishment and Crimes
        - Chartering of Banks
        - Currency Regulations
        - Power to Charter Corporations
        - Courts and Judicial Proceedings
        - Special Acts Concerning Claims
        - Maritime Law

- **Section 9. Powers Denied to Congress**
- **Clause 1. Importation of Slaves**
    - General Purpose of Sec. 9
- **Clause 2. Habeas Corpus Suspension**
- **Clause 3. Bills of Attainder and Ex Post Facto Laws**
    - Bills of Attainder
    - Ex Post Facto Laws
        - Definition
        - What Constitutes Punishment
        - Change in Place or Mode of Trial
- **Clause 4. Taxes**
    - Direct Taxes
        - The Hylton Case
        - From the Hylton to the Pollock Case
        - Restriction of the Pollock Decision
        - Miscellaneous
- **Clause 5. Duties on Exports from States**
    - Taxes on Exports
        - Stamp Taxes
- **Clause 6. Preference to Ports**
    - The "No Preference" Clause
- **Clause 7. Appropriations and Accounting of Public Money**
    - Appropriations
    - Payment of Claims
- **Clause 8. Titles of Nobility; Presents**

- **Section 10. Powers Denied to the States**
- **Clause 1. Not to Make Treaties, Coin Money, Pass Ex Post Facto Laws, Impair Contracts**
    - Treaties, Alliances, or Confederations
    - Bills of Credit
    - Legal Tender
    - Bills of Attainder
    - Ex Post Facto Laws
        - Scope of the Provision
        - Denial of Future Privileges to Past Offenders
        - Changes in Punishment

        - Changes in Procedure
    - Obligation of Contracts
        - "Law" Defined
        - Status of Judicial Decisions
        - "Obligation" Defined
        - "Impair" Defined
        - Vested Rights Not Included
        - Public Grants That Are Not "Contracts"
        - Tax Exemptions: When Not "Contracts"
        - "Contracts" Include Public Contracts and Corporate Charters
        - Corporate Charters: Different Ways of Regarding
        - Reservation of Right to Alter or Repeal Corporate Charters
        - Corporation Subject to the Law and Police Power
        - Strict Construction of Charters, Tax Exemptions
        - Strict Construction and the Police Power
        - Doctrine of Inalienability as Applied to Eminent Domain, Taxing, and Police Powers
        - Private Contracts
        - Remedy a Part of the Private Obligation
        - Private Contracts and the Police Power
        - Evaluation of the Clause Today
- **Clause 2. Not to Levy Duties on Exports and Imports**
    - Duties on Exports and Imports
        - Scope
        - Privilege Taxes
        - Property Taxes
        - Inspection Laws
- **Clause 3. Not to Lay Tonnage Duties, Keep Troops, Make Compacts, or Engage in War**
    - Tonnage Duties
    - Keeping Troops
    - Interstate Compacts
        - Background of Clause
        - Subject Matter of Interstate Compacts
        - Consent of Congress
        - Grants of Franchise to Corporations by Two States
        - Legal Effects of Interstate Compacts

What about those who believe they don't have to pay taxes?

There have always been individuals who, for a variety of reasons, argue that various taxes are illegal. They use false, misleading, or unorthodox tax advice to gain followers. The courts have repeatedly rejected their arguments as frivolous, and now routinely impose financial penalties for raising such meritless defenses.

The promoters of this tax advice often charge hefty fees or commissions to subscribe to their philosophies. Unfortunately, in the end, you may pay more in penalties, interest, and legal fees for following their bad advice. Their philosophies have lead to the financial ruin of innocent taxpayers deceived by false information. Believe it or not – a number of individuals who market these ideas actually pay taxes.

The IRS has focused its efforts against willful nonfilers and noncompliance schemes by adopting a twofold approach:

1.

Assist taxpayers to correct their filing status and comply with the tax law.

2.

Vigorously apply both civil and criminal sanctions against individuals who persist in violating the tax law.

Report suspicious or misleading tax information to your local IRS office or Call 1-800-829-0433

Maintaining public confidence in the fairness of tax laws is paramount. Recommending prosecution of those who willfully violate tax laws demonstrates the IRS' commitment to ensuring that everyone pays their fair share of taxes

IRS
Department of the Treasury
Internal Revenue Service
www.irs.gov
Publication 2105 (Rev. 10-1999)
Catalog Number 23871N

Why do I have to Pay TAXES?

1. **The United States Constitution,** Article 1, Section 8, Clause 1, states "The Congress shall have the Power To lay and collect Taxes, Duties, Imposts and Excises to pay the Debts and provide for the common Defense and general Welfare of the United States."

2. **The Sixteenth Amendment to the Constitution,** ratified on February 3, 1913, states, "The Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration".

3. **Congress** used the power granted by the Constitution and Sixteenth Amendment and made laws requiring all individuals to pay tax.

4. **Congress** has delegated to the IRS the responsibility of administering and enforcing these laws known as the Internal Revenue Code. Congress enacts the tax laws, IRS enforces them.

5. **Courts** have historically held there are no Constitutional or legal grounds for failure to file tax returns and failure to pay taxes.

6. **The term voluntary compliance** means that each of us is responsible for filing a tax return when required and for determining and paying the correct amount of tax.

7. **Failing to file** required returns and failing to pay taxes may result in criminal prosecution and/or civil penalties.

8. **While taxpayers have the right to contest** their tax liabilities in the courts, taxpayers do not have the right to violate and disobey tax laws.

Just the Facts

Commonly Used Frivolous Arguments:

Unscrupulous individuals and promoters advocating willful noncompliance with the tax laws have used a variety of false or misleading arguments for not paying taxes. Here are some of the most common arguments

- **Constitutional Argument:** Filing a Form 1040 violates the Fifth Amendment right against self-incrimination or the Fourth Amendment right to privacy.

  The Truth: The courts have consistently held that disclosure of the type of routine financial information required on a tax return does not incriminate an individual or violate the right to privacy.

- **Religious Arguments:** Use the freedom of religion clause of the First Amendment by taking a vow of poverty or fraudulently claiming charitable contributions of 50% or more of your adjusted gross income.

  The Truth: Claiming a vow of poverty or claiming fraudulent charitable contributions to a church for money which is ultimately used to pay personal expenses is not legal.

- **Internal Revenue Code (IRC) Arguments:** (1) The filing and paying of tax is voluntary. (2) The Internal Revenue Code doesn't apply to me because I am not a government employee nor I am a resident of a sovereign state.

  The Truth: The tax law is found in Title 26 of the United States Code. Section 6012 of the Code makes clear that only individuals whose income falls below a specified level do not have to file returns. While our tax system is based on self-assessment and reporting, compliance with tax laws is mandatory. State citizenship does not negate the applicability of the IRC on individuals working and residing in the United States

- **Wages are not Income Arguments:** Labor worth a certain amount is exchanged for money worth the same amount and therefore there is no income to be taxed.

  The Truth: The arguments that taxes on income derived from property are unconstitutional, or that income is limited to gain or profit, are consistently dismissed by the courts. Congress has determined (through the IRC), that all income is taxable unless specifically excluded by some part of the Internal Revenue Code.

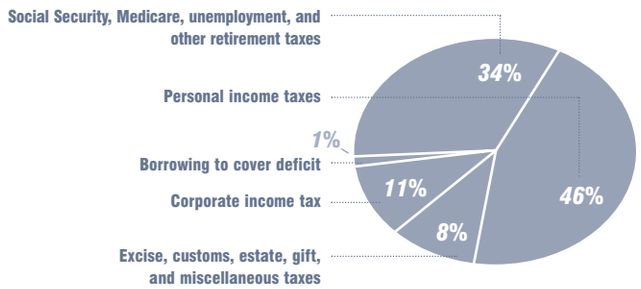
- **Forming a Trust Argument:** Forming a business trust to hold your income and assets will avoid taxes. A family estate trust will allow you to reduce or eliminate your tax liability.

  The Truth: Establishing a trust, foreign or domestic, for the sole purpose of hiding your income and assets from taxation is illegal and will not absolve you of your tax liability.

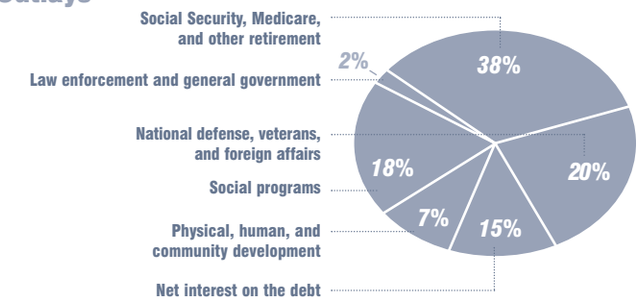
How are your tax dollars used to benefit the citizens of the United States? Which of these services have you or your family used lately or will use in the future?

Income and Outlays: These charts show the relative size of the major categories of Federal income and outlays for fiscal year 1997.

Income



Outlays



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U.S. Supreme Court

POLLOCK v. FARMERS' LOAN & TRUST CO., 157 U.S. 429 (1895)

157 U.S. 429

POLLOCK
v.
FARMERS' LOAN & TRAUST CO. et al. 1
No. 893.

April 8, 1895

[157 U.S. 429, 430] This was a bill filed by Charles Pollock, a citizen of the state of Massachusetts, on behalf of himself and all other stockholders of the defendant company similarly situated, against the Farmesr' Loan & Trust Company, a corporation of the state of New York, and its directors, alleging that the capital stock of the corporation consisted of $1,000,000, divided into 40,000 shares of the par value of $25 each; that the company was authorized to invest its assets in public stocks and bonds of the United States, of individual states, or of any incorporated city or county, or in such real or personal securities as it might deem proper; and also to take, accept, and execute all such trusts of every description as might be committed to it by any person or persons or any corporation, by grant, assignment, devise, or bequest, or by order of any court of record of New York, and to receive and take any real estate which might be the subject of such trust; that the property and assets of the company amounted to more than $5,000,000, or which at least $1,000,000 was invested in real estate owned by the company in fee, at least $2,000,000 in bonds of the city of New York, and at least $1,000,000 in the bonds and stocks of other corporations of the United States; that the net profits or income of the defendant company during the year ending December 31, 1894, amounted to more than the sum of $3,000,000 above its actual operation and business expenses, including lossess and interest on bonded and other indebtedness; that from its real estate the company derived an income of $50,000 per annum, after deducting all county, state, and municipal taxes; and that the company derived an income or profit

of about $60,000 per annum fro its investments in municipal bonds.

It was further alleged that under and by virtue of the pow- [157 U.S. 429, 431] ers conferred upon the company it had from time to time taken and executed, and was holding and executing, numerous trusts committed to the company by many persons, copartnerships, unincorporated associations, and corpoa tions, by grant, assinment, devise, and bequest, and by orders of various courts, and that the company now held as trustee for many minors, individuals, corpartnerships, associations, and corporations, resident in the United States and elsewhere, many parcels of real estate situated in the various states of the United States, and amounting in the aggregate, to a value exceeding $5,000,000, the rents and income of which real estate collected and received by said defendant in its fiduciary capacity annually exceeded the sum of *200,000.

The bill also averred that complainant was, and had been since May 20, 1892, the owner and registered holder of 10 shares of the capital stock of the company, of a value exceeding the sum of $5,000; that the capital stock was divied among a large number of different persons, who, as such stockholders, constituted a large body; that the bill was filed for an object common to them all, and that he therefore brought suit not only in his own behalf as a stockholder of the company, but also as a representative of and on behalf of such of the other stockholders similarly situated and interested as might choose to intervene and become parties.

It was then alleged that the management of the stock, property, affairs, and concerns of the company was committed, under its acts of incorporation, to its directors, and charged that the company and a majority of its directors claimed and asserted that under and by virtue of the alleged authority of the provisions of an act of congress of the United States entitled 'An act to reduce taxation, to provide revenue for the government, and for other purposes,' passed August 15, 1894, the company was liable, and that they intended to pay, to the United States, before July 1, 1895, a tax of 2 per centum on the net profits of said company for the year ending December 31, 1894, above actual operating and business expenses, including the income derived from its real estate and [157 U.S. 429, 432] its bonds of the city of New York; and that the directors claimed and asserted that a similar tax must be paid upon the amount of the incomes, gains, and profits, in excess of $4,000, of all minors and others for whom the company was acting in a fiduciary capacity. And, further, that the company and its directors had avowed their intention to make and file with the collector of internal revenue for the Second district of the city of New York a list, return, or statement showing the amount of the net income of the company received during the year 1894, as aforesaid, and likewise to make and render a list or return to said collector of internal revenue, prior to that date, of the amount of the income, gains and profits of all minors and other persons having incomes in excess of $3,500, for whom the company was acting in a fiduciary capacity.

The bill charged that the provisions in respect of said alleged income tax incorporated in the act of congress were unconstututional, null, and void, in that the tax was a direct tax in respect of the real estate held and owned by the company in its own right and in its fiduciary capacity as aforesaid, by being imposed upon the rents, issues, and profits os said real estate, and was likewise a direct tax in respect of its personal property and the personal property held by it for others for whom it acted in its fiduciary capacity as aforesaid, which direct taxes were not, in and by said act, apportioned among the several states, as required by section 2 of article 1 of the constitution; and that, if the income tax so incorporated in the act of congress aforesaid were held not to be a direct tax, nevertheless its provisions were unconstitutional, null, and void, in that they were not uniform throughout the United States, as required in and by section 8 of article 1 of the constitution of the United States, upon many grounds and in many particulars specifically set forth.

The bill further charged that the income-tax provisions of the act were likewise unconstitutional, in that they imposed a tax on incomes not taxable ud er the constitution, and likewise income derived from the stocks and bonds of the states of the United States, and counties and municipalities therein, [157 U.S. 429, 433] which stocks and bonds are among the means and instrumentalities employed for carrying on their repective governments, and are not proper subjects of the taxing power of congress, and which states and their counties and muncipalities are independent of the general government of the United States, and the respective stocks and bonds of which are, together with the power of the states to borrow in any form, exempt from federal taxation.

Other grounds of unconstitutionality were assigned, and the violation of articles 4 and 5 of the constitution asserted.

The bill further averred that the suit was not a collusive one, to confer on a court of the United States jurisdiction of the case, of which it would not otherwise have cognizance and that complainant had requested the company and its directors to omit and to refuse to pay said income tax, and to contest the constiutionality of said act, and to refrain from voluntarily making lists, returns, and statements on its own behalf and on behalf of the minors and other persons for whom its was acting in a fiduciary capacity, and to apply to a court of competent jurisdiction to determine its liability under said act; but that the company and a majority of its directors, after a meeting of the directors, at which the matter and the request of complainant were formally laid before them for action, had rejused, and still refuse, and intend omitting, to comply with complainant's demand, and had resolved and determined and intended to comply with all and singular the provisions of the said act of congress, and to pay the tax upon all its net profits or income as aforesaid, including its rents from real estate and its income from municipal bonds, and a copy of the refusal of the company was annexed to the complaint.

It was also alleged that if the company and its directors, as they propered and had declared their intention to do, should pay the tax out of its gains, income, and profits, or out of the gains, income, and profits of the property held by it in its fiduciary capacity they will diminish the assets of the company and lessen the dividends thereon and the value of the shares; that voluntary compliance with the income-tax provisions would expose the company to a multiplicity of suits, not only by and [157 U.S. 429, 434] on behalf of its numerous shareholders, but by and on behalf of numberous minors and others for whom it acts in a fiduciary capacity, and that such numerous suits would work irreparable injury to the business of the company, and subject it to great and irreparable damage, and to liability to the beneficiaries aforesaid, to the irreparable damage of complainant and all its shareholders.

The bill further averred that this was a suit of a civil nature in equity; that the matter in dispute exceeded, exclusive of costs, the sum of $5,000, and arose under the constitution or laws of the United States; and that there was furthermore a controversy between citizens of different states.

The prayer was that it might be adjudged and decreed that the said provisions known as the income tax incorporated in said act of congress passed August 15, 1894, are unconstitutional, null, and void; that the defendants be restrained from volunarily complying with the provisions of said act, and making the list, returns, and statements above referred to, or paying the tax aforesaid; and for general relief.

The defendants demurred on the ground of want of equity, and, the cause having been brought on to be heard upon the bill and demurrer thereto, the demurrer was sustained, and the bill of complaint dismissed, with costs, whereupon the record recited that the constitutionality of a law of the United States was drawn in question, and an appeal was allowed directly to this court.

An abstract of the act in question will be found in the margin. 1 [157 U.S. 429, 435] By the third clause

of section 2 of article 1 of the constitt ion it was provided: 'Representatives and direct taxes shall [157 U.S. 429, 436] be apportioned among the several states which may be included within this Union, according to their respective num- [157 U.S. 429, 437] bers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of [157 U.S. 429, 438] years, and excluding Indians not taxed, three-fifths of all other persons.' This was amended by the second section of the [157 U.S. 429, 439] fourteenth amendment, declared ratified July 28, 1868, so that the whole number of persons in each state should be counted, [157 U.S. 429, 440] Indians not taxed excluded, and the provision, as thus amended, remains in force. [157 U.S. 429, 441] The acutal enumeration was prescribed to be made within three years after the first meeting of congrees, and within every subsequent term of ten years, in such manner as should be directed.

Section 7 requires 'all bills for raising revenue shall originate in the house or representatives.'

The first clause of section 8 reads thus: 'The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.' And the third clause thus: 'To regulate commerce with foreigh nation, and among the several states, and with the Indian tribes.'

The fourth, fifth, and sixth clauses of section 9 are as follows:

> 'No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.
>
> 'No tax or duty shall be laid on articles exported from any state.
>
> 'No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bount to, or from, one state, be obliged to enter, clear, or pay duties in another.'

It is also provided by the second clause of section 10 that 'no state shall, without consent of the congress, lay any imposts or duties on imports or exports, except what may be [157 U.S. 429, 442] absolutely necessary for executing its inspection laws'; and, by the third clause, that 'no state shall, without the consent of congress, lay any duty of tonnage.'

The first clause of section 9 provides: 'The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand and eight hundred and eight, but a tax or duty may be imposed on such importations, not exceeding ten dollars for each person.'

Article 5 prescribes the mode for the amendment of the constitution, and concludes with this proviso: 'Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article.'

B. H. Bristow, Wm. D. Gurtrie, David Willcox, Charles Steele, and

[157 U.S. 429, 469] Assistant Attorney General Whitney, for the United States.

[157 U.S. 429, 513] Herbert B. Turner, for appellee Farmers' Loan & Trust Company.

James C. Carter, Wm. C. Gulliver, and F. B. Candler, for appellee Continental Trust Company.

Attorney General Olney and

[157 U.S. 429, 532] Jos. H. Choate, Charles F. Southmayd, for appellants Pollock and Hyde.

[157 U.S. 429, 553]

Mr. Chief Justice FULLER, after stating the facts in the foregoing language, delivered the opinion of the court.

The jurisdiction of a court of equity to prevent any threatened breach of trust in the misapplication or diversion of the funds of a corporation by illegal payments out of its capital or profits has been frequently sustained. Dodge v. Woolsey, 18 How. 331; Hawes v. Oakland, 104 U.S. 450 . [157 U.S. 429, 554] As in Dodge v. Woolsey, this bill proceeds on the ground that the defendants would be guilty of such breach of trust or duty in voluntarily making return for the imposition of, and paying, an unconstitutional tax; and also on allegations of threatened multiplicity of suits and irreparable injury.

The objection of adequate remedy at law was not raised below, nor is it now raised by appellees, if it could be entertained at all at this stage of the proceedings; and, so far as it was within the power of the government to do so, the question of jurisdiction, for the purposes of the case, was explicitly waived on the argument. The relief sought was in respect of voluntary action by the defendant company, and not in respect of the assessment and collection themselves. Under these circumstances, we should not be justified in declining to proceed to judgment upon the merits. Pelton v. Bank, 101 U.S. 143 , 148; Cummings v. Bank, Id. 153, 157; Reynes v. Dumont, 130 U.S. 354 , 9 Sup. Ct. 486.

Since the opinion in Marbury v. Madison, 1 Cranch, 137, 177, was delivered, it has not been doubted that it is within judicial competency, by express provisions of the constitution or by necessary inference and implication, to determine whether a given law of the United States is or is not made in pursuance of the constitution, and to hold it valid or void accordingly. 'If,' said Chief Justice Marshall, 'both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution, or conformably to the constitution, disregarding the law, the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.' And the chief justice added that the doctrine 'that courts must close their eyes on the constitution, and see only the law,' 'would subvert the very foundation of all written constitutions.' Necessarily the power to declare a law unconstitutional is always exercised with reluctance; but the duty to do so, in a proper case, cannot be declined, and must be discharged in accordance with the deliberate judgment of the tribunal in which the validity of the enactment is directly drawn in question. [157 U.S. 429, 555] The contention of the complainant is:

First. That the law in question, in imposing a tax on the income or rents of real estate, imposes a tax upon the real estate itself; and in imposing a tax on the interest or other income of bonds or other personal property, held for the purposes of income or ordinarily yielding income, imposes a tax upon the personal estate itself; that such tax is a direct tax, and void because imposed without regard to the rule of apportionment; and that by reason thereof the whole law is invalidated.

Second. That the law is invalid, because imposing indirect taxes in violation of the constitutional requirement of uniformity, and therein also in violation of the implied limitation upon taxation that all tax laws must apply equally, impartially, and unformly to all similarly situated. Under the second head, it is contended that the rule of uniformity is violated, in that the law taxes the income of certain

corporations, companies, and associations, no matter how created or organized, at a higher rate than the incomes of individuals or partnerships derived from precisely similar property or business; in that it exempts from the operation of the act and from the burden of taxation numerous corporations, companies, and associations having similar property and carrying on similar business to those expressly taxed; in that it denies to individuals deriving their income from shares in certain corporations, companies, and associations the benefit of the exemption of $ 4,000 granted to other persons interested in similar property and business; in the exemption of $4,000; in the exemption of building and loan associations, savings banks, mutual life, fire, marine, and accident insurance companies, existing solely for the pecuniary profit of their members,-these and other exemptions being alleged to be purely arbitrary and capricious, justified by no public purpose, and of such magnitude as to ina lidate the entire enactment; and in other particulars.

Third. That the law is invalid so far as imposing a tax upon income received from state and municipal bonds.

The constitution provides that representatives and direct [157 U.S. 429, 556] taxes shall be apportioned among the several states according to numbers, and that no direct tax shall be laid except according to the enumeration provided for; and also that all duties, imposts, and excises shall be uniform throughout the United States.

The men who framed and adopted that instrument had just emerged from the struggle for independence whose rallying cry had been that 'taxation and representation go together.'

The mother country had taught the colonists, in the contests waged to establish that taxes could not be imposed by the sovereign except as they were granted by the representatives of the realm, that self-taxation constituted the main security against oppression. As Burke declared, in his speech on conciliation with America, the defenders of the excellence of the English constitution 'took infinite pains to inculcate, as a fundamental principle, that, in all monarchies, the people must, in effect, themselves, mediately or immediately, possess the power of granting their own money, or no shadow of liberty could subsist.' The principle was that the consent of those who were expected to pay it was essential to the validity of any tax.

The states were about, for all national purposes embraced in the constitution, to become one, united under the same sovereign authority, and governed by the same laws. But as they still retained their jurisdiction over all persons and things within their territorial limits, except where surrendered to the general government or restrained by the constitution, they were careful to see to it that taxation and representation should go together, so that the sovereignty reserved should not be impaired, and that when congress, and especially the house of representatives, where it was specifically provided that all revenue bills must originate, voted a tax upon property, it should be with the consciousness, and under the responsibility, that in so doing the tax so voted would proportionately fall upon the immediate constituents of those who imposed it.

More than this, by the constitution the states not only gave to the nation the concurrent power to tax persons and [157 U.S. 429, 557] property directly, but they surrendered their own power to levy taxes on imports and to regulate commerce. All the 13 were seaboard states, but they varied in maritime importance, and differences existed between them in population, in wealth, in the character of property and of business interests. Moreover, they looked forward to the coming of new states from the great West into the vast empire of their anticipations. So when the wealthier states as between themselves and their less favored associates, and all as between themselves and those who were to come, gave up for the common good the great sources of revenue derived through commerce, they did so in reliance on

the protection afforded by restrictions on the grant of power.

Thus, in the matter of taxation, the constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely, the rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises.

The rule of uniformity was not prescribed to the exercise of the power granted by the first paragraph of section 8 to lay and collect taxes, because the rule of apportionment as to taxes had already been laid down in the third paragraph of the second section.

And this view was expressed by Mr. Chief Justice Cause in The License Tax Cases, 5 Wall. 462, 471, when he said: 'It is true that the power of congress to tax is a very extensive power. It is given in the constitution, with only one exception and only two qualifications. Congress cannot tax exports, and it must impose direct taxes by the rule of apportionmn t, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion.'

And although there have been, from time to time, intimations that there might be some tax which was not a direct tax, nor included under the words 'duties, imports, and excises,' such a tax, for more than 100 years of national existence, has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue. [157 U.S. 429, 558] The first question to be considered is whether a tax on the rents or income of real estate is a direct tax within the meaning of the constitution. Ordinarily, all taxes paid primarily by persons who can shift the burden upon some one else, or who are under no legal compulsion to pay them, are considered indirect taxes; but a tax upon property holders in respect of their estates, whether real or personal, or of the income yielded by such estates, and the payment of which cannot be avoided, are direct taxes. Nevertheless, it may be admitted that, although this definition of direct taxes is prima facie correct, and to be applied in the consideration of the question before us, yet the constitution may bear a different meaning, and that such different meaning must be recognized. But in arriving at any conclusion upon this point we are at liberty to refer to the historical circumstances attending the framing and adoption of the constitution, as well as the entire frame and scheme of the instrument, and the consequences naturally attendant upon the one construction or the other.

We inquire, therefore, what, at the time the constitution was framed and adopted, were recognized as direct taxes? What did those who framed and adopted it understand the terms to designate and include?

We must remember that the 55 members of the constitutional convention were men of great sagacity, fully conversant with governmental problems, deeply conscious of the nature of their task, and profoundly convinced that they were laying the foundations of a vast future empire. 'To many in the assembly the work of the great French magistrate on the 'Spirit of Laws,' of which Washington with his own hand had copied an abstract by Madison, was the favorite manual. Some of them had made an analysis of all federal governments in ancient and modern times, and a few were well versed in the best English, Swiss, and Dutch writers on government. They had immediately before them the example of Great Britain, and they had a still better school of political wisdom in the republican constitutions of their several states, which many of them had assisted to frame.' 2 Bancr. Hist. Const. 9.

The Federalist demonstrates the value attached by Hamilton, [157 U.S. 429, 559] Madison, and Jay to historical experience, and shows that they had made a careful study of many forms of government. Many of the framers were particularly versed in the literature of the period,-Franklin, Wilson, and Hamilton for example. Turgot had published in 1764 his work on taxation, and in 1766 his essay on 'The Formation and Distribution of Wealth,' while Adam Smith's 'Wealth of Nations' was published in

1776. Franklin, in 1766, had said, upon his examination before the house of commons, that: 'An external tax is a duty laid on commodities imported; that duty is added to the first cost and other charges on the commodity, and, when it is offered to sale, makes a part of the price. If the people do not like it at that price, they refuse it. They are not obliged to pay it. But an internal tax is forced from the people without their consent, if not laid by their own representatives. The stamp act says we shall have no commerce, make no exchange of property with each other, neither purchase nor grant, nor recover debts; we shall neither marry nor make our wills,-unless we pay such and such sums; and thus it is intended to extort our money from us, or ruin us by the consequences of refusing to pay.' 16 Parl. Hist. 144.

They were, of course, familiar with the modes of taxation pursued in the several states. From the report of Oliver Wolcott, when secretary of the treasury, on direct taxes, to the house of representatives, December 14, 1796,-his most important state paper (Am. St. P. 1 Finance, 431),-and the various state laws then existing, it appears that prior to the adoption of the constitution nearly all the states imposed a poll tax, taxes on land, on cattle of all kinds, and various kinds of personal property, and that, in addition, Massachusetts, Connecticut, Pennsylvania, Delaware, New Jersey, Virginia, and South Carolina assessed their citizens upon their profits from professions, trades, and employments.

Congress, under the articles of confederation, had no actual operative power of taxation. It could call upon the states for their respective contributions or quotas as previously determined on; but, in case of the failure or omission of the states to furnish such contribution, there were no means of [157 U.S. 429, 560] compulsion, as congress had no power whatever to lay any tax upon individuals. This imperatively demanded a remedy; but the opposition to granting the power of direct taxation in addition to the substantially exclusive power of laying imposts and duties was so strong that it required the convention, in securing effective powers of taxation to the federal government, to use the utmost care and skill to so harmonize conflicting interests that the ratification of the instrument could be obtained.

The situation and the result are thus described by Mr. Chief Justice Chase in Lane Co. v. Oregon, 7 Wall. 71, 76: 'The people of the United States constitute one nation, under one government; and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each state compose a state, having its own government, and endowed with all the functions essential to separate and independent existence. The states disunited might continue to exist. Without the states in union, there could be no such political body as the United States. Both the states and the United States existed before the constitution. The people, through that instrument, established a more perfect union by substituting a national government, acting, with ample power, directly upon the citizens, instead of the confederate government, which acted with powers, greatly restricted, only upon the states. But in many articles of the constitution the necessary existence of the states, and, within their proper spheres, the independent authority of the states, is distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them and to the people all powers not expressly delegated to the national government are reserved. The general condition was well stated by Mr. Madison in the Federalist, thus: 'The federal and state governments are in fact but different agents and trustees of the people, constituted with different powers, and designated for different purposes.' Now, to the existence of the states, themselves necessary to the existence of the United States, the power of taxation is indispensable. It is an essantial function of [157 U.S. 429, 561] government. It was exercised by the colonies; and when the colonies became states, both before and after the formation of the confederation, it was exercised by the new governments. Under the articles of confederation the government of the United States was limited in the exercise of this power to requisitions upon the states, while the whole power of direct and indirect taxation of persons and property, whether by taxes on polls, or duties on imports, or duties on internal production, manufacture, or use, was acknowledged to belong exclusively to the states, without any other limitation than that of noninterference with certain treaties made by congress. The constitution, it is true, greatly changed this condition of things. It gave

the power to tax, both directly and indirectly, to the nationl government, and, subject to the one prohibition of any tax upon exports and to the conditions of uniformity in respect to indirect, and of proportion in respect to direct, taxes, the power was given without any express reservation. On the other hand, no power to tax exports, or imports except for a single purpose and to an insignificant extent, or to lay any duty on tonnage, was permitted to the states. In respect, however, to property, business, and persons, within their respective limits, their power of taxation remained and remains entire. It is, indeed, a concurrent power, and in the case of a tax on the same subject by both governments the claim of the United States, as the supreme authority, must be preferred; but with this qualification it is absolute. The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the legislatures to which the states commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the state constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the national government. There is nothing in the constitution which contemplates or authorizes any direct abridgment of this power by national legislation. To the extent just indicated it is as complete in the states as the like [157 U.S. 429, 562] power, within the limits of the constitution, is complete in congress.'

On May 29, 1787, Charles Pinckney presented his draft of a proposed constitution, which provided that the proportion of direct taxes should be regulated by the whole number of inhabitants of every description, taken in the manner prescribed by the legislature, and that no tax should be paid on articles exported from the United States. 1 Elliot, Deb. 147, 148.

Mr. Randolph's plan declared 'that the right of suffrage, in the national legislature, ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other may seem best, in different cases.' 1 Elliot, Deb. 143.

On June 15, Mr. Paterson submitted several resolutions, among which was one proposing that the United States in congress should be authorized to make requisitions in proportion to the whole number of white and other free citizens and inhabitants, including those bound to servitude for a term of years, and three-fifths of all other person, except Indians not taxed. 1 Elliot, Deb. 175, 176.

On the 9th of July, the proposition that the legislature be authorized to regulate the number of representatives according to wealth and inhabitants was approved, and on the 11th it was voted that, 'in order to ascertain the alterations that may happen in the population and wealth of the several states, a census shall be taken,' although the resolution of which this formed a part was defeated. 5 Elliot, Deb. 288, 295; 1 Elliot, Deb. 200.

On July 12th, Gov. Morris moved to add to the clause empowering the legislature to vary the representatiton according to the amount of wealth and number of the inhabitants a proviso that taxation should be in proportion to representation, and, admitting that some objections lay against his proposition, which would be removed by limiting it to direct taxation, since 'with regard to indirect taxes on exports and imports, and on consumption, the rule would be inapplicable,' varied his motion by inserting the word 'direct,' whereupon it passed as follows: 'Provided, always, that direct taxation [157 U.S. 429, 563] ought to be proportioned to representation.' 5 Elliott, Deb. 302.

Amendments were proposed by Mr. Ellsworth and Mr. Wilson to the effect that the rule of contribution by direct taxation should be according to the number of white inhabitants and three-fifths of every other description, and that, in order to ascertain the alterations in the direct taxation which might be required from time to time, a census should be taken. The word 'wealth was struck out of the clause on motion of Mr. Randolph; and the whole proposition, proportionate representation to direct taxation, and both to

the white and three-fifths of the colored in habitants, and requiring a census, was adopted.

In the course of the debates, and after the motion of Mr. Ellsworth that the first census be taken in three years after the meeting of congress had been adopted, Mr. Madison records: 'Mr. King asked what was the precise meaning of 'direct taxation.' No one answered.' But Mr. Gerry immediately moved to amend by the insertion of the clause that 'from the first meeting of the legislature of the United States until a census shall be taken, all moneys for supplying the public treasury by direct taxation shall be raised from the several states according to the number of their representatives respectively in the first branch.' This left for the time the matter of collection to the states. Mr. Langdon objected that this would bear unreasonably hard against New Hampshire, and Mr. Martin said that direct taxation should not be used but in cases of absolute necessity, and then the states would be the best judges of the mode. 5 Elliot, Deb. 451, 453.

Thus was accomplished one of the great compromises of the constitution, resting on the doctrine that the right of representation ought to be conceded to every community on which a tax is to be imposed, but crystallizing it in such form as to allay jealousies in respect of the future balance of power; to reconcile conflicting views in respect of the enumeration of slaves; and to remove the objection that, in adjusting a system of representation between the states, regard should be had to their relative wealth, since those who were to be most heavily [157 U.S. 429, 564] taxed ought to have a proportionate influence in the goverment.

The compromise, in embracing the power of direct taxation, consisted not simply in including part of the slaves in the enumeration of population, but in providing that, as between state and state, such taxation should be proportioned to representation. The establishment of the same rule for the apportionment of taxes as for regulating the proportion of representatives, observed Mr. Madison in No. 54 of the Federalist, was by no means founded on the same principle, for, as to the former, it had reference to the proportion of wealth, and, although in respect of that it was in ordinary cases a very unfit measure, it 'had too recently obtained the general sanction of America not to have found a ready preference with the convention,' while the opposite interests of the states, balancing each other, would produce impartiality in enumeration. By prescribing this rule, Hamilton wrote (Federalist, No. 36) that the door was shut 'to partiality or oppression,' and 'the abuse of this power of taxation to have been provided against with guarded circumspection'; and obviously the operation of direct taxation on every state tended to prevent resort to that mode of supply except under pressure of necessity, and to promote prudence and economy in expenditure.

We repeat that the right of the federal government to directly assess and collect its own taxes, at least until after requisitions upon the states had been made and failed, was one of the chief points of conflict; and Massachusetts, in ratifying, recommended the adoption of an amendment in these words: 'That congress do not lay direct taxes but when the moneys arising from the impost and excise are insufficient for the public exigencies, nor then until congress shall have first made a requisition upon the states to assess, levy, and pay their respective proportions of such requisition, agreeably to the census fixed in the said constitution, in such way and manner as the legislatures of the states shall think best.' 1 Elliot, Deb. 322. And in this South Carolina, New Hampshire, and Rhode Island concurred. Id. 325, 326, 329, 336. [157 U.S. 429, 565] Luther Martin, in his well known communication to the legislature of Maryland in January, 1788, ep ressed his views thus: 'By the power to lay and collect taxes they may proceed to direct taxation on every individual, either by a capitation tax on their heads, or an assessment on their property. ... Many of the members, and myself in the number, thought that states were much better judges of the circumstances of their citizens, and what sum of money could be collected from them by direct taxation, and of the manner in which it could be raised with the greatest ease and convenience to their citizens, than the general government could be; and that the general government ought not to have

the power of laying direct taxes in any case but in that of the delinquency of a state.' 1 Elliot, Deb. 344, 368, 369.

Ellsworth and Sherman wrote the governor of Connecticut, September 26, 1787, that it was probable 'that the principal branch of revenue will be duties on imports. What may be necessary to be raised by direct taxation is to be apportioned on the several states, according to the number of their inhabitants; and although congress may raise the money by their own authority, if necessary, yet that authority need not be exercised if each state will furnish its quota.' 1 Elliot, Deb. 492.

And Ellsworth, in the Connecticut convention, in discussing the power of congress to lay taxes, pointed out that all sources of revenue, excepting the impost, still lay open to the states, and insisted that it was 'necessary that the power of the general legislature should extend to all the objects of taxation, that government should be able to command all the resources of the country, because no man can tell what our exigencies may be. Wars have now become rather wars of the purse than of the sword. Government must therefore be able to command the whole power of the purse . ... Direct taxation can go but little way towards raising a revenue. To raise money in this way, people must be provident; they must constantly be laying up money to answer the demands of the collector. But you cannot make people thus provident. If you would do anything to the purpose, you must come in when they are spending, and take a part with them. ... [157 U.S. 429, 566] All nations have seen the necessity and propriety of raising a revenue by indirect taxation, by duties upon articles of consumption. ... In England the whole public revenue is about twelve millions sterling per annum. The land tax amounts to about two millions; the window and some other taxes, to about two millions more. The other eight millions are raised upon articles of consumption. ... This constitution defines the extent of the powers of the general government. If the general legislature should at any time overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the constitution does not authorize, it is void; and the judicial power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void.' 2 Elliot, Deb. 191, 192, 196.

In the convention of Massachusetts by which the constitution was ratified, the second section of article 1 being under consideration, Mr. King said: 'It is a principle of this constitution that representation and taxation should go hand in hand. ... By this rule are representation and taxation to be apportioned. And it was adopted, because it was the language of all America. According to the Confederation, ratified in 1781, the sums for the general welfare and defense should be apportioned according to the surveyed lands, and improvements thereon, in the several states; but that it hath never been in the power of congress to follow that rule, the returns from the several states being so very imperfect.' 2 Elliot, Deb. 36.

Theophilus Parsons observed: 'Congress have only a concurrent right with each state in laying direct taxes, not an exclusive right; and the right of each state to direct taxation is equally as extensive and perfect as the right of congress.' 2 Elliot, Deb. 93. And John Adm s, Dawes, Sumner, King, and Sedgwick all agreed that a direct tax would be the last source of revenue resorted to by congress.

In the New York convention, Chancellor Livingston pointed out that, when the imposts diminished and the expenses of the government increased, 'they must have recourse to direct [157 U.S. 429, 567] taxes; that is, taxes on land and specific duties.' 2 Elliot, Deb. 341. And Mr. Jay, in reference to an amendment that direct taxes should not be imposed until requisition had been made and proved fruitless, argued that the amendment would involve great difficulties, and that it ought to be considered that direct taxes were of two kinds,-general and specific. Id. 380, 381.

In Virginia, Mr. John Marshall said: 'The objects of direct taxes are well understood. They are but few.

What are they? Lands, slaves, stock of all kinds, and a few other articles of domestic property. ... They will have the benefit of the knowledge and experience of the state legislature. They will see in what manner the legislature of Virginia collects its taxes. ... Cannot congress regulate the taxes so as to be equal on all parts of the community? Where is the absurdity of having thirteen revenues? Will they clash with or injure each other? If not, why cannot congress make thirteen distinct laws, and impose the taxes on the general objects of taxation in each state, so as that all persons of the society shall pay equally, as they ought? 3 Elliot, Deb. 229, 235. At that time, in Virginia, lands were taxed, and specific taxes assessed on certain specified objects. These objects were stated by Sec. Wolcott to be taxes on lands, houses in towns, slaves, stud horses, jackasses, other horses and mules, billiard tables, four-wheeled riding carriages, phaetons, stage wagons, and riding carriages with two wheels; and it was undoubtedly to these objects that the future chief justice referred.

Mr. Randolph said: 'But in this new constitution there is a more just and equitable rule fixed,-a limitation beyond which they cannot go. Representatives and taxes go hand in hand. According to the one will the other be regulated. The number of representatives is determined by the number of inhabitants. They have nothing to do but to lay taxes accordingly.' 3 Elliot, Deb. 121.

Mr. George Nicholas said: 'The proportion of taxes is fixed by the number of inhabitants, and not regulated by the extent of territory or fertility of soil. ... Each state [157 U.S. 429, 568] will know, from its population, its proportion of any general tax. As it was justly observed by the gentleman over the way [Mr. Randolph], they cannot possibly exceed that proportion. They are limited and restrained expressly to it. The state legislatures have no check of this kind. Their power is uncontrolled.' 3 Elliot, Deb. 243, 244.

Mr. Madison remarked that 'they will be limited to fix the proportion of each state, and they must raise it in the most convenient and satisfactory manner to the public.' 3 Elliot, Deb. 255.

From these references-and they might be extended indefinitely-it is clear that the rule to govern each of the great classes into which taxes were divided was prescribed in view of the commonly accepted distinction between them and of the taxes directly levied under the systems of the states; and that the difference between direct and indirect taxation was fully appreciated is supported by the congressional debates after the government was organized.

In the debates in the house of representatives preceding the passage of the act of congress to lay 'duties upon carriages for the conveyance of persons,' approved June 5, 1794 (1 Stat. 373, c. 45), Mr. Sedgwick said that 'a capitation tax, and taxes on land and on property and income generally, were direct charges, as well in the immediate as ultimate sources of contribution. He had considered those, and those only, as direct taxes in their operation and effects. On the other hand, a tax imposed on a specific article of personal property, and particularly of objects of luxury, as in the caseu nder consideration, he had never supposed had been considered a direct tax, within the meaning of the constitution.'

Mr. Dexter observed that his colleague 'had stated the meaning of direct taxes to be a capitation tax, or a general tax on all the taxable property of the citizens; and that a gentleman from Virginia [Mr. Nicholas] thought the meaning was that all taxes are direct which are paid by the citizen without being recompensed by the consumer; but that, where the tax was only advanced and repaid by the consumer, the tax was indirect. He thought that both opinions were just, [157 U.S. 429, 569] and not inconsistent, though the gentlemen had differed about them. He thought that a general tax on all taxable property was a direct tax, because it was paid without being recompensed by the consumer.' Ann. 3d Cong. 644, 646.

At a subsequent day of the debate, Mr. Madison objected to the tax on carriages as 'an unconstitutional

tax'; but Fisher Ames declared that he had satisfied himself that it was not a direct tax, as 'the duty falls not on the possession, but on the use.' Ann. 730.

Mr. Madison wrote to Jefferson on May 11, 1794: 'And the tax on carriages succeeded, in spite of the constitution, by a majority of twenty, the advocates for the principle being re-enforced by the adversaries to luxuries.' 'Some of the motives which they decoyed to their support ought to premonish them of the danger. By breaking down the barriers of the constitution, and giving sanction to the idea of sumptuary regulations, wealth may find a precarious defense in the shield of justice. If luxury, as such, is to be taxed, the greatest of all luxuries, says Paine, is a great estate. Even on the present occasion, it has been found prudent to yield to a tax on transfers of stock in the funds and in the banks.' 2 Mad. Writings, 14.

But Albert Gallatin, in his Sketch of the Finances of the United States, published in November, 1796, said: 'The most generally received opinion, however, is that, by direct taxes in the constitution, those are meant which are raised on the capital or revenue of the peopel; by indirect, such as are raised on their expense. As that opinion is in itself rational, and conformable to the decision which has taken place on the subject of the carriage tax, and as it appears important, for the sake of preventing future controversies, which may be not more fatal to the revenue than to the tranquillity of the Union, that a fixed interpretation should be generally adopted, it will not be improper to corroborate it by quoting the author from whom the idea seems to have been borrowed.' He then quotes from Smith's Wealth of Nations, and continues: 'The remarkable coincidence of the clause of the constitution with this passage in using the word 'capitation' as a generic [157 U.S. 429, 570] expression, including the different species of direct taxes,-an acceptation of the word peculiar, it is believed, to Dr. Smith,-leaves little doubt that the framers of the one had the other in view at the time, and that they, as well as he, by direct taxes, meant those paid directly from the falling immediately on the revenue; and by indirect, those which are paid indirectly out of the revenue by falling immediately upon the expense.' 3 Gall. Writings (Adams' Ed.) 74, 75.

The act provided in its first section 'that there shall be levied, collected, and paid upon all carriages for the conveyance of persons, which shall be kept by or for any person for his or her own use, or to be let out to hire or for the conveyance of passengers, the several duties and rates following'; and then followed a fixed yearly rate on every coach, chariot, phaeton, and coachee, every four-wheel and every two-wheel top carriage, and upon every other two-wheel carriage varying according to the vehicle.

In Hylton v. U. S. (decided in March, 1796) 3 Dall. 171, this court held the act to be constitutional, because not laying a direct tax. Chief Justice Ellsworth and Mr. Justice Cushing took no part in the decision, and Mr. Justie Wilson gave no reasons.

Mr. Justice Chase said that he was inclined to think (but of this he did not 'give a judicial opinion') that 'the direct taxes contemplated by the constitution are only two, to wit, a capitation or poll tax, simply, without regard to property, profession, or any other circumstance, and a tax on land'; and that he doubted 'whether a tax, by a general assessment of personal property, within the United States, is included within the term 'direct tax.'' But he thought that 'an annual tax on carriages for the conveyance of persons may be considered as within the power granted to congress to lay duties. The term 'duty' is the most comprehensive next to the general term 'tax'; and practically in Great Britain (whence we take our general ideas of taxes, duties, imposts, excises, customs, etc.), embraces taxes on stamps, tolls for passage, etc., and is not confined to taxes on importation only. It seems to me that a tax on expense is an indirect [157 U.S. 429, 571] tax; and I think an annual tax on a carriage for the conveyance of persons is of that kind, because a carriage is a consumable commodity, and such annual tax on it is on the expense of the owner.'

Mr. Justice Paterson said that 'the constitution declares that a capitation tax is a direct tax; and, both in theory and practice, a tax on land is deemed to be a direct tax. ... It is not necessary to determine whether a tax on the product of land be a direct or indirect tax. Perhaps, the immediate product of land, in its original and crude state, ought to be considered as the land itself; it makes part of it; or else the provision made against taxing exports would be easily eluded. Land, independently of its produce, is of no value. ... Whether direct taxes, in the sense of the constitution, comprehend any other tax than a capitation tax, and taxes on land, is a questionable point. ... But as it is not before the court, it would be improper to give any decisive opinion upon it.' And he concluded: 'All taxes on expenses or consumption are indirect taxes A tax on carriages is of this kind, and, of course, is not a direct tax.' This conclusion he fortified by reading extracts from Adam Smith on the taxation of consumable commodities.

Mr. Justice Iredell said: 'There is no necessity or propriety in determining what is or is not a direct or indirect tax in all cases. Some difficulties may occur which we do not at present foresee. Perhaps a direct tax, in the sense of the constitution, can mean nothing but a tax on something inseparably annexed to the soil; something capable of apportionment under all such circumstances. A land or a poll tax may be considered of this description. ... In regard to other articles, there may possibly be considerable doubt. It is sufficient, on the present occasion, for the court to be satisfied that this is not a direct tax contemplated by the constitution, in order to affirm the present judgment.'

It will be perceived that each of the justices, while suggesting doubt whether anything but a capitation or a land tax was a direct tax within the meaning of the constitution, distinctly avoided expressing an opinion upon that question or [157 U.S. 429, 572] laying down a comprehensive definition, but confined his opinion to the case before the court.

The general line of observation was obviously influenced by Mr. Hamilton's brief for the government, in which he said: 'The following are presumed to be the only direct taxes: Capitation or poll taxes, taxes on lands and buildings, general assessments, whether on the whole property of individuals, or on their whole real or personal estate. All else must, of necessity, be considered as indirect taxes.' 7 Hamilton's Works (Lodge's Ed.) 332.

Mr. Hamilton also argued: 'If the meaning of the word 'excise' is to be sought in a British statute, it will be found to include the duty on carriages, which is there considered as an 'excise.' ... An argument results from this, though not perhaps a conclusive one, yet, where so important ad istinction in the constitution is to be realized, it is fair to seek the meaning of terms in the statutory language of that country from which our jurisprudence is derived.' 7 Hamilton's Works (Lodge's Ed.) 333.

If the question had related to an income tax, the reference would have been fatal, as such taxes have been always classed by the law of Great Britain as direct taxes.

The above act was to be enforced for two years, but before it expired was repealed, as was the similar act of May 28, 1796, c. 37, which expired August 31, 1801 (1 Stat. 478, 482).

By the act of July 14, 1798, when a war with France was supposed to be impending, a direct tax of two millions of dollars was apportioned to tbe states respectively, in the manner prescribed, which tax was to be collected by officers of the United States, and assessed upon 'dwelling houses, lands, and slaves,' according to the valuations and enumerations to be made pursuant to the act of July 9, 1798, entitled 'An act to provide for the valuation of lands and dwelling houses and the enumeration of slaves within the United States.' 1 Stat. 597, c. 75; Id. 580, c. 70. Under these acts, every dwelling house was assessed according to a prescribed value, and the sum of 50 cents upon every slave enumerated, and the residue

of the sum apportioned was directed to be assessed upon the lands within each state according to the valuation [157 U.S. 429, 573] made pursuant to the prior act, and at such rate per centum as would be sufficient to produce said remainder. By the act of August 2, 1813, a direct tax of three millions of dollars was laid and apportioned to the states respectively, and reference had to the prior act of July 22, 1813, which provided that, whenever a direct tax should be laid by the authority of the United States, the same should be assessed and laid 'on the value of all lands, lots of ground with their improvements, dwelling houses, and slaves, which several articles subject to taxation shall be enumerated and valued by the respective assessors at the rate each of them is worth in money.' 3 Stat. 53, c. 37; Id. 22, c. 16. The act of January 9, 1815, laid a direct tax of six millions of dollars, which was apportioned, assessed, and laid as in the prior act on all lands, lots of grounds with their improvements, dwelling houses, and slaves. These acts are attributable to the war of 1812.

The act of August 6, 1861 (12 Stat. 294, c. 45), imposed a tax of twenty millions of dollars, which was apportioned and to be levied wholly on real estate, and also levied taxes on incomes, whether derived from property or profession, trade or vocation (12 Stat. 309). And this was followed by the acts of July 1, 1862 (12 Stat. 473, c. 119); March 3, 1863 (12 Stat. 718, 723, c. 74); June 30, 1864 (13 Stat. 281, c. 173); March 3, 1865 (13 Stat. 479, c. 78); March 10, 1866 (14 Stat. 4, c. 15); July 13, 1866 (14 Stat. 137, c. 184); March 2, 1867 (14 Stat. 477, c. 169); and July 14, 1870 (16 Stat. 256, c. 255). The differences between the latter acts and that of August 15, 1894, call for no remark in this connection. These acts grew out of the war of the Rebellion, and were, to use the language of Mr. Justice Miller, 'part of the system of taxing incomes, earnings, and profits adopted during the late war, and abandoned as soon after that war was ended as it could be done safely.' Railroad Co. v. Collector, 100 U.S. 595 , 598.

From the foregoing it is apparent (1) that the distinction between direct and indirect taxation was well understood by the framers of the constitution and those who adopted it; (2) that, under the state system of taxation, all taxes on [157 U.S. 429, 574] real estate or personal property or the rents or income thereof were regarded as direct taxes; (3) that the rules of apportionment and of uniformity were adopted in view of that distinction and those systems; (4) that whether the tax on carriages was direct or indirect was disputed, but the tax was sustained as a tax on the use and an excise; (5) that the original expc tation was that the power of direct taxation would be exercised only in extraordinary exigencies; and down to August 15, 1894, this expectation has been realized. The act of that date was passed in a time of profound peace, and if we assume that no special exigency called for unusual legislation, and that resort to this mode of taxation is to become an ordinary and usual means of supply, that fact furnishes an additional reason for circumspection and care in disposing of the case.

We proceed, then, to examine certain decisions of this court under the acts of 1861 and following years, in which it is claimed that this court had heretofore adjudicated that taxes like those under consideration are not direct taxes, and subject to the rule of apportionment, and that we are bound to accept the rulings thus asserted to have been made as conclusive in the premises. Is this contention well founded as respects the question now under examination? Doubtless the doctrine of stare decisis is a salutary one, and to be adhered to on all proper occasions, but it only arises in respect of decisions directly upon the points in issue.

The language of Chief Justice Marshall in Cohens v. Virginia, 6 Wheat. 264, 399, may profitably again be quoted: 'It is a maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of the maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it

are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.' [157 U.S. 429, 575] So in Carroll v. Carroll's Lessee, 16 How. 275, 286, where a statute of the state of Maryland came under review, Mr. Justice Curtis said: 'If the construction put by the court of a state upon one of its statutes was not a matter in judgment, if it might have been decided either way without affecting any right brought into question, then, according to the principles of the common law, an opinion on such a question is not a decision. To make it so, there must have been an application of the judicial mind to the precise question necessary to be determined to fix the rights of the parties, and decide to whom the property in contestation belongs. And therefore this court, and other courts organized under the common law, has never held itself bound by any part of an opinion, in any case, which was not needful to the ascertainment of the right or title in question between the parties.'

Nor is the language of Mr. Chief Justice Taney inapposite, as expressed in The Genesee Chief, 12 How. 443, wherein it was held that the lakes, and navigable waters connecting them, are within the scope of admiralty and maritime jurisdiction as known and understood in the United States when the constitution was adopted, and the preceding case of The Thomas Jefferson, 10 Wheat. 428, was overruled. The chief justice said: 'It was under the influence of these precedents and this usage that the case of The Thomas Jefferson, 10 Wheat. 428, was decided in this court, and the jurisdiction of the courts of admiralty of the United States declared to be limited to the ebb and flow of the tide. The Orleans v. Phoebus, 11 Pet. 175, afterwards followed this case, merely as a point decided. It is the decision in the case of The Thomas Jefferson which mainly embarrasses the court in the present inquiry. We are sensible of the great weight to which it is entitled. But at the same time we are convinced that if we follow it we follow an erroneous decision into which the court fell, when the great importance of the question as it now presents itself could not be foreseen, and the subject did not therefore receive that deliberate consideration which at this time would have been i ven to it by the eminent men who presided here when that case was decided. [157 U.S. 429, 576] For the decision was made in 1825, when the commerce on the rivers of the West and on the Lakes was in its infancy, and of little importance, and but little regarded, compared with that of the present day. Moreover, the nature of the questions concerning the extent of the admiralty jurisdiction, which have arisen in this court, were not calculated to call its attention particularly to the one we are now considering.'

Manifestly, as this court is clothed with the power and intrusted with the duty to maintain the fundamental law of the constitution, the discharge of that duty requires it not to extend any decision upon a constitutional question if it is convinced that error in principle might supervene.

Let us examine the cases referred to in the light of these observations.

In Insurance Co. v. Soule, 7 Wall. 433, the validity of a tax which was described as 'upon the business of an insurance company,' was sustained on the ground that it was 'a duty or excise,' and came within the decision in Hylton's Case. The arguments for the insurance company were elaborate, and took a wide range, but the decision rested on narrow ground, and turned on the distinction between an excise duty and a tax strictly so termed, regarding the former a charge for a privilege, or on the transaction of business, without any necessary reference to the amount of property belonging to those on whom the charge might fall, although it might be increased or diminished by the extent to which the privilege was exercised or the business done. This was in accordance with Society v. Coite, 6 Wall. 594, Provident Inst. v. Massachusetts, Id. 611, and Hamilton Co. v. Massachusetts, Id. 632, in which cases there was a difference of opinion on the question whether the tax under consideration was a tax on the property, and not upon the franchise or privilege. And see Van Allen v. Assessors, 3 Wall. 573; Home Ins. Co. v. New York, 134 U.S. 594 , 10 Sup. Ct. 593; Pullman's Palace Car Co. v. Pennsylvania, 141 U.S. 18 , 11 Sup. Ct. 876.

In Bank v. Fenno, 8 Wall. 533, a tax was laid on the circulation of state banks or national banks paying out the notes of individuals or state banks, and it was [157 U.S. 429, 577] held that it might well be classed under the head of duties, and as falling within the same category as Soule's Case, 7 Wall. 433. It was declared to be of the same nature as excise taxation on freight receipts, bills of lading, and passenger tickets issued by a railroad company. Referring to the discussions in the convention which framed the constitution, Mr. Chief Justice Chase observed that what was said there 'doubtless shows uncertainty as to the true meaning of the term 'direct tax,' but it indicates also an understanding that direct taxes were such as may be levied by capitation and on land and appurtenances, or perhaps by valuation and assessment of personal property upon general lists; for these were the subjects from which the states at that time usually raised their principal supplies.' And in respect of the opinions in Hylton's Case the chief justice said: 'It may further be taken as established upon the testimony of Paterson that the words 'direct taxes,' as used in the constitution, comprehended only capitation taxes and taxes on land, and perhaps taxes on personal property by general valuation and assessment of the various descriptions possessed within the several states.'

In National Bank v. U. S., 101 U.S. 1 , involving the constitutionality of section 3413 of the Revised Statutes, enacting that 'every national banking association, state bank, or banker, or association, shall pay a tax of ten per centum on the amount of notes of any town, city, or municipal corporation, paid out by them,' Bank v. Fenno was cited with approval to the point that congress, having undertaken to provide a currency for the whole country, might, to secure the benefit of it to the people, restrain, by suitable enactments, the i rculation as money of any notes not issued under its authority; and Mr. Chief Justice Waite, speaking for the court, said, 'The tax thus laid is not on the obligation, but on its use in a particular way.'

Scholey v. Rew, 23 Wall. 331, was the case of a succession tax, which the court held to be 'plainly an excise tax or duty' 'upon the devolution of the estate, or the right to become beneficially entitled to the same or the income thereof in [157 U.S. 429, 578] possession or expectancy.' It was like the succession tax of a state, held constitutional in Mager v. Grima, 8 How. 490; and the distinction between the power of a state and the power of the United States to regulate the succession of property was not referred to, and does not appear to have been in the mind of the court. The opinion stated that the act of parliament from which the particular provision under consideration was borrowed had received substantially the same construction, and cases under that act hold that a succession duty is not a tax upon income or upon property, but on the actual benefit derived by the individual, determined as prescribed. In re Elwes, 3 Hurl. & N. 719; Attorney General v. Earl of Sefton, 2 Hurl. & C. 362, 3 Hurl. & C. 1023, and 11 H. L. Cas. 257.

In Railroad Co. v. Collector, 100 U.S. 595 , the validity of a tax collected of a corporation upon the interest paid by it upon its bonds was held to be 'essentially an excise on the business of the class of corporations mentioned in the statute.' And Mr. Justice Miller, in delivering the opinion, said: 'As the sum involved in this suit is small, and the law under which the tax in question was collected has long since been repealed, the case is of little consequence as regards any principle involved in it as a rule of future action.'

All these cases are distinguishable from that in hand, and this brings us to consider that of Springer v. U. S., 102 U.S. 586 , chiefly relied on and urged upon us as decisive.

That was an action of ejectment, brought on a tax deed issued to the United States on sale of defendant's real estate for income taxes. The defendant contended that the deed was void, because the tax was a direct tax, not levied in accordance with the constitution. Unless the tax were wholly invalid, the defense failed.

The statement of the case in the report shows that Springer returned a certain amount as his net income for the particular year, but does not give the details of what his income, gains, and profits consisted in.

The original record discloses that the income was not [157 U.S. 429, 579] derived in any degree from real estate, but was in part professional as attorney at law, and the rest interest on United States bonds. It would seem probable that the court did not feel called upon to advert to the distinction between the latter and the former source of income, as the validity of the tax as to either would sustain the action.

The opinion thus concludes: 'Our conclusions are that direct taxes, within the meaning of the constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate; and that the tax of which the plaintiff in error complains is within the category of an excise or duty.'

While this language is broad enough to cover the interest as well as the professional earnings, the case would have been more significant as a precedent if the distinction had been brought out in the report and commented on in arriving at judgment, for a tax on professional receipts might be treated as an excise or duty, and therefore indirect, when a tax on the income of personalty might be held to be direct.

Be this as it may, it is conceded in all these cases, from that of Hylton to that of Springer, that taxes on land are direct taxes, and in none of them is it determined that taxes on rents or income derived from land are not taxes on land.

We admit that it may not unreasonably be said that logically, if taxes on the rents, issues, and profits of real estate are equivalent to taxes on real estate, and are therefore direct taxes, taxes on the income of personal property as such are equivalent to taxes on such property, and therefore direct taxes. But we are considering the rule stare decisis, and we must decline to hold ourselves bound to extend the scope of decisions,- none of which discussed the question whether a tax on the income from personalty is equivalent to a tax on that personalty, but all of which held real estate liable to direct taxation only,-so as to sustain a tax on the income of realty on the ground of being an excise or duty.

As no capitation or other direct tax was to be laid otherwise than in proportion to the population, some other direct tax than a capitation tax (and, it might well enough be argued, some other tax of the same kind as a capitation tax) must be [157 U.S. 429, 580] referred to, and it has always been considered that a tax upon real estate eo nomine, or upon its owners in respect thereof, is a direct tax, within the meaning of the constitution. But is there any distinction between the real estate itself or its owners in respect of it and the rents or income of the real estate coming to the owners as the natural and ordinary incident of their ownership?

If the constitution had provided that congress should not levy any tax upon the real estate of any citizen of any state, could it be contended that congress could put an annual tax for five or any other number of years upon the rent or income of the real estate? And if, as the constitution now reads, no unapportioned tax can be imposed upon real estate, can congress without apportionment nevertheless impose taxes upon such real estate under the guise of an annual tax upon its rents or income?

As, according to the feudal law, the whole beneficial interest in the land consisted in the right to take the rents and profits, the general rule has always been, in the language of Coke, that 'if a man seised of land in fee by his deed granteth to another the profits of those lands, to have and to hold to him and his heirs, and maketh livery secundum formam chartae, the whole land itself doth pass. For what is the land but the profits thereof?' Co. Litt. 45. And that a devise of the rents and profits or of the income of lands passes the land itself both at law and in equity. 1 Jarm. Wills (5th Ed.) *798, and cases cited.

The requirement of the constitution is that no direct tax shall be laid otherwise than by apportionment. The prohibition is not against direct taxes on land, from which the implication is sought to be drawn that indirect taxes on land would be constitutional, but it is against all direct taxes; and it is admitted that a tax on real estate is a direct tax. Unless, therefore, a tax upon rents or income issuing out of lands is intrinsically so different from a tax on the land itself that it belongs to a wholly different class of taxes, such taxes must be regarded as falling within the same category as a tax on real estate eo nomine. The name of the tax is unimpor- [157 U.S. 429, 581] tant. The real question is, is there any basis upon which to rest the contention that real estate belongs to one of the two great classes of taxes, and the rent or income which is the incident of its ownership belongs to the other? We are unable to perceive any ground for the alleged distinction. An annual tax upon the annual value or annual user of real estate appears to us the same in substance as an annual tax on the real estate, which would be paid out of the rent or income. This law taxes the income received from land and the growth or produce of the land. Mr. Justice Paterson observed in Hylton's Case, 'land, independently of its produce, is of no value,' and certainly had no thought that direct taxes were confined to unproductive land.

If it be true that by varying the form the substance may be changed, it is not easy to see that anything would remain of the limitations of the constitution, or of the rule of taxation and representation, so carefully recognized and guarded in favor of the citizens of each state. But cos titutional provisions cannot be thus evaded. It is the substance, and not the form, which controls, as has indeed been established by repeated decisions of this court. Thus in Brown v. Maryland, 12 Wheat. 419, 444, it was held that the tax on the occupation of an importer was the same as a tax on imports, and therefore void. And Chief Justice Marshall said: 'It is impossible to conceal from ourselves that this is varying the form without varying the substance. It is treating a prohibition which is general as if it were confined to a particular mode of doing the forbidden thing. All must perceive that a tax on the sale of an article imported only for sale is a tax on the article itself.'

In Weston v. City Council, 2 Pet. 449, it was held that a tax on the income of United States securities was a tax on the securities themselves, and equally inadmissible. The ordinance of the city of Charleston involved in that case was exceedingly obscure; but the opinions of Mr. Justice Thompson and Mr. Justice Johnson, who dissented, make it clear that the levy was upon the interest of the bonds and not upon the bonds, and they held that it was an income tax, and as [157 U.S. 429, 582] such sustainable; but the majority of the court, Chief Justice Marshall delivering the opinion, overruled that contention.

So in Dobbins v. Commissioners, 16 Pet. 435, it was decided that the income from an official position could not be taxed if the office itself was exempt.

In Almy v. California, 24 How. 169, it was held that a duty on a bill of lading was the same thing as a duty on the article which it represented; in Railroad Co v. Jackson, 7 Wall. 262, that a tax upon the interest payable on bonds was a tax not upon the debtor, but upon the security; and in Cook v. Pennsylvania, 97 U.S. 566 , that a tax upon the amount of sales of goods by an auctioneer was a tax upon the goods sold.

In Philadelphia & S. S. S. Co. v. Pennsylvania, 122 U.S. 326 , 7 Sup. Ct. 1118, and Leloup v. Port of Mobile, 127 U.S. 640 , 8 Sup. Ct. 1380, it was held that a tax on income received from interstate commerce was a tax upon the commerce itself, and therefore unauthorized. And so, although it is thoroughly settled that where by way of duties laid on the transportation of the subjects of interstate commerce, and on the receipts derived therefrom, or on the occupation or business of carrying it on, a tax is levied by a state on interstate commerce, such taxation amounts to a regulation of such commerce, and cannot be sustained, yet the property in a state belonging to a corporation, whether foreign or

domestic, engaged in foreign or domestic commerce, may be taxed; and when the tax is substantially a mere tax on property, and not one imposed on the privilege of doing interstate commerce, the exaction may be sustained. 'The substance, and not the shadow, determines the validity of the exercise of the power.' Telegraph Co. v. Adams, 155 U.S. 688 , 15 Sup. Ct. 268.

Nothing can be clearer than that what the constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any state through a majority made up from the other states. It is true that the effect of requiring direct taxes to be apportioned among the states in proportion to their population is necessarily that the amount of taxes on the individual [157 U.S. 429, 583] taxpayer in a state having the taxable subject-matter to a larger extent in proportion to its population than another state has, would be less than in such other state; but this inequality must be held to have been contemplated, and was manifestly designed to operate to restrain the exercise of the power of direct taxation to extraordinary emergencies, and to prevent an attack upon accumulated property by mere force of numbers.

It is not doubted that property owners ought to contribute in just measure to the expenses of the government. As to the states and their municipalities, this is reached largely through the imposition of dirc t taxes. As to the federal government, it is attained in part through excises and indirect taxes upon luxuries and consumption generally, to which direct taxation may be added to the extent the rule of apportionment allows. And through one mode or the other the entire wealth of the country, real and personal, may be made, as it should be, to contribute to the common defense and general welfare.

But the acceptance of the rule of apportionment was one of the compromises which made the adoption of the constitution possible, and secured the creation of that dual form of government, so elastic and so strong, which has thus far survived in unabated vigor. If, by calling a tax indirect when it is essentially direct, the rule of protection could be frittered away, one of the great landmarks defining the boundary between the nation and the states of which it is composed, would have disappeared, and with it one of the bulwarks of private rights and private property.

We are of opinion that the law in question, so far as it levies a tax on the rents or income of real estate, is in violation of the constitution, and is invalid.

Another question is directly presented by the record as to the validity of the tax levied by the act upon the income derived from municipal bonds. The averment in the bill is that the defendant company owns two millions of the municipal bonds of the city of New York, from which it derives an annual income of $60,000, and that the directors of the company intend to return and pay the taxes on the income so derived.

The constitution contemplates the independent exercise by [157 U.S. 429, 584] the nation and the state, severally, of their constitutional powers.

As the states cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the constitution to tax either the instrumentalities or the property of a state.

A municipal corporation is the representative of the state, and one of the instrumentalities of the state government. It was long ago determined that the property and revenues of municipal corporations are not subjects of federal taxation. Collector v. Day, 11 Wall. 113; U. S. v. Railroad Co., 17 Wall. 322, 332. In Collector v. Day it was adjudged that congress had no power, even by an act taxing all incomes, to levy a tax upon the salaries of judicial officers of a state, for reasons similar to those on which it had

been held in Dobbins v. Commissioners, 16 Pet. 435, that a state could not tax the salaries OF OFFICERS OF THE UNITED STATES. MR. Justice nelson, in delIvering judgment, said: 'The general government and the states, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former, in its appropriate sphere, is supreme; but the states, within the limits of their powers not granted, or, in the language of the tenth amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the states.'

This is quoted in Van Brocklin v. Tennessee, 117 U.S. 151, 178 , 6 S. Sup. Ct. 670, and the opinion continues: 'Applying the same principles, this court in U. S. v. Baltimore & O. R. Co., 17 Wall. 322, held that a municipal corporation within a state could not be taxed by the United States on the dividends or interest of stock or bonds held by it in a railroad or canal company, because the municipal corporation was a representative of the state, created by the state to exercise a limited portion of its powers of government, and therefore its revenues, like those of the state itself, were not taxable by the United States. The revenues thus adjudged to be exempt from federal taxa- [157 U.S. 429, 585] tion were not themselves appropriated to any specific public use, nor derived from property held by the state or by the municipal corpr ation for any specific public use, but were part of the general income of that corporation, held for the public use in no other sense than all property and income belonging to it in its municipal character must be so held. The reasons for exempting all the property and income of a state, or of a municipal corporation, which is a political division of the state, from federal taxation, equally require the exemption of all the property and income of the national government from state taxation.'

In Morcantile Bank v. City of New York, 121 U.S. 138, 162 , 7 S. Sup. Ct. 826, this court said: 'Bonds issued by the state of New York, or under its authority, by its public municipal bodies, are means for carrying on the work of the government, and are not taxable, even by the United States, and it is not a part of the policy of the government which issues them to subject them to taxation for its own purposes.'

The question in Bonaparte v. Tax Court, 104 U.S. 592 , was whether the registered public debt of one state, exempt from taxation by that state, or actually taxed there, was taxable by another state, when owned by a citizen of the latter, and it was held that there was no provision of the constitution of the United States which prohibited such taxation. The states had not covenanted that this could not be done, whereas, under the fundamental law, as to the power to borrow money, neither the United States, on the one hand, nor the states on the other, can interfere with that power as possessed by each, and an essential element of the sovereignty of each.

The law under consideration provides 'that nothing herein contained shall apply to states, counties or municipalities.' It is contended that, although the property or revenues of the states or their instrumentalities cannot be taxed, nevertheless the income derived from state, county, and municipal securities can be taxed. But we think the same want of power to tax the property or revenues of the states or their instrumentalities exists in relation to a tax on the income from their securities, and for the same reason; and that reason [157 U.S. 429, 586] is given by Chief Justice Marshall, in Weston v. City Council, 2 Pet. 449, 468, where he said: 'The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burthen on the operations of government. It may be carried to an extent which shall arrest them entirely. ... The tax on government stock is thought by this court to be a tax on the contract, a tax on the power a to borrow money on the credit of the United States, and consequently to be repugnant to the constitution.' Applying this language to these municipal securities, it is obvious that taxation on the interest therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the

states and their instrumentalities to borrow money, and consequently repugnant to the constitution.

Upon each of the other questions argued at the bar, to wit: (1) Whether the void provisions as to rents and income from real estate invalidated the whole act; (2) whether, as to the income from personal property, as such, the act is unconstitutional, as laying direct taxes; (3) whether any part of the tax, if not considered as a direct tax, is invalid for want of uniformity on either of the grounds suggested,-the justices who heard the argument are equally divided, and therefore no opinion is expressed.

The result is that the decree of the circuit court is reversed and the cause remanded, with directions to enter a decree in favor of the complainant in respect only of the voluntary payment of the tax on the rents and income of the real estate of the defendant company, and of that which it holds in trust, and on the income from the municipal bonds w ned or so held by it.

Mr. Justice FIELD.

I also desire to place my opinion on record upon some of the important questions discussed in relation to the direct and indirect taxes proposed by the income tax law of 1894. [157 U.S. 429, 587] Several suits have been instituted in state and federal courts, both at law and in equity, to test the validity of the provisions of the law, the determination of which will necessitate careful and extended consideration.

The subject of taxation in the new government which was to be established created great interest in the convention which framed the constitution, and was the cause of much difference of opinion among its members, and earnest contention between the states. The great source of weakness of the confederation was its inability to levy taxes of any kind for the support of its government. To raise revenue it was obliged to make requisitions upon the states, which were respected or disregarded at their pleasure. Great embarrassments followed the consequent inability to obtain the necessary funds to carry on the government. One of the principal objects of the proposed new government was to obviate this defect of the confederacy, by conferring authority upon the new government, by which taxes could be directly laid whenever desired. Great difficulty in accomplishing this object was found to exist. The states bordering on the ocean were unwilling to give up their right to lay duties upon imports, which were their chief source of revenue. The other states, on the other hand, were unwilling to make any agreement for the levying of taxes directly upon real and personal property, the smaller states fearing that they would be overborne by unequal burdens forced upon them by the action of the larger states. In this condition of things, great embarrassment was felt by the members of the convention. It was feared at times that the effort to form a new government would fail. But happily a compromise was effected by an agreement that direct taxes should be laid by congress by apportioning them among the states according to their representation. In return for this concession by some of the states, the other states bordering on navigable waters consented to relinquish to the new government the control of duties, imposts, and excises, and the regulation of commerce, with the condition that the duties, imposts, and excises should be uniform throughout the United States. So that, on the one [157 U.S. 429, 588] hand, anything like oppression or undue advantage of any one state over the others would be prevented by the apportionment of the direct taxes among the states according to their representation, and, on the other hand, anything like oppression or hardship in the levying of duties, imposts, and excises would be avoided by the provision that they should be uniform throughout the United States. This compromise was essential to the continued union and harmony of the states. It protected every state from being controlled in its taxation by the superior numbers of one or more other states.

The constitution, accordingly, when completed, divided the taxes which might be levied under the authority of congress into those which were direct and those which were indirect. Direct taxes, in a general and large sense, may be described as taxes derived immediately from the person, or from real or

personal property, without any recourse therefrom to other sources for reimbursement. In a more restricted sense, they have sometimes been confined to taxes on real property, including the rents and income derived therefrom. Such taxes are conceded to be direct taxes, however taxes on other property are designated, and they are to be apportioned among the states of the Union according to their respective numbers. The second section of article 1 of the constitution declares that representatives and direct taxes shall be thus apportioned. It had been a favorite doctrine in England and in the colonies, before the adoption of the constitution, that taxation and representato n should go together. The constitution prescribes such apportionment among the several states according to their respective numbers, to be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

Some decisions of this court have qualified or thrown doubts upon the exact meaning of the words 'direct taxes.' Thus, in Springer v. U. S., 102 U.S. 586 , it was held that a tax upon gains, profits, and income was an excise or duty, and not a direct tax, within the meaning of the constitution, and [157 U.S. 429, 589] that its imposition was not, therefore, unconstitutional. And in Insurance Co. v. Soule, 7 Wall. 433, it was held that an income tax or duty upon the amounts insured, renewed, or continued by insurance companies, upon the gross amounts of premiums received by them and upon assessments made by them, and upon dividends and undistributed sums, was not a direct tax, but a duty or excise.

In the discussions on the subject of direct taxes in the British parliament, an income tax has been generally designated as a direct tax, differing in that respect from the decision of this court in Springer v. U. S. But, whether the latter can be accepted as correct or otherwise, it does not affect the tax upon real property and its rents and income as a direct tax. Such a tax is, by universal consent, recognized to be a direct tax.

As stated, the rents and income of real property are included in the designation of direct taxes, as part of the real property. Such has been the law in England for centuries, and in this country from the early settlement of the colonies; and it is strange that any member of the legal profession should at this day question a doctrine which has always been thus accepted by common-law lawyers. It is so declared in approved treatises upon real property and in accepted authorities on particular branches of real estate law, and has been so announced in decisions in the English courts and our own courts without number. Thus, in Washburn on Real Property, it is said that 'a devise of the rents and profits of land, or the income of land, is equivalent to a devise of the land itself, and will be for life or in fee, according to the limitation expressed in the devise.' Volume 2, p. 695, 30.

In Jarman on Wills it is laid down that 'a devise of the rents and profits or of the income of land passes the land itself, both at law and in equity; a rule, it is said, founded on the feudal law, according to which the whole beneficial interest in the land consisted in the right to take the rents and profits. And since the act 1 Vict. c. 26, such a devise carries the fee simple; but before that act it carried no more than an estate for life, unless words of inheritance were [157 U.S. 429, 590] added.' Mr. Jarman cites numerous authorities in support of his statement. South v. Alleine, 1 Salk. 228; Goldin v. Lakeman, 2 Barn. & Adol. 42; Johnson v. Arnold, 1 Ves. Sr. 171; Baines v. Dixon, Id. 42; Mannox v. Greener, L. R. 14 Eq. 456; Blann v. Bell, 2 De Gex, M. & G. 781; Plenty v. West, 6 C. B. 201.

Coke upon Littleton says: 'If a man seised of lands in fee by his deed granteth to another the profits of those lands, to have and to hold to him and his heires, and maketh livery secundum formam chartae, the whole land itselfe, doth passe; for what is the land but the profits thereof?' Lib. 1, p. 4b., c. 1, 1.

In Goldin v. Lakeman, Lord Tenterden, Chief Justice of the court of the king's bench, to the same effect, said, 'It is an established rule that a devise of the rents and profits is a devise of the land.' And, in

Johnson v. Arnold, Lord Chancellor Hardwicke reiterated profits of lands is a devise of the lands themselves' profits of lands is a devise of the lands themselves'

The same rule is announced in this country,-the court of errors of New York, in Patterson v. Ellis, 11 Wend. 259, 298, holding that the 'devise of the interest or of the rents and prf its is a devise of the thing itself, out of which that interest or those rents and profits may issue;' and the supreme court of Massachusetts, in Reed v. Reed, 9 Mass. 372, 374, that 'a devise of the income of lands is the same, in its effect, as a devise of the lands.' The same view of the law was expressed in Anderson v. Greble, 1 Ashm. 136, 138; King, the president of the court, stating, 'I take it to be a well-settled rule of law that by a devise of the rent, profits, and income of land, the land itself passes.' Similar adjudications might be repeated almost indefinitely. One may have the reports of the English courts examined for several centuries without finding a single decision or even a dictum of thier judges in conflict with them. And what answer do we receive to these adjudications? Those rejecting them furnish no proof that the framers of the constitution did not follow them, as the great body of the people of the country then did. An incident which occurred in this court and room 20 [157 U.S. 429, 591] years ago may have become a precedent. To a powerful argument then being made by a distinguished counsel, on a public question, one of the judges exclaimed that there was a conclusive answer to his position, and that was that the court was of a different opinion. Those who decline to recognize the adjudications cited may likewise consider that they have a conclusive answer to them in the fact that they also are of a different opinion. I do not think so. The law, as expounded for centuries, cannot be set aside or disregarded because some of the judges are now of a different opinion from those who, a century ago, followed it, in framing our constitution.

Hamilton, speaking on the subject, asks, 'What, in fact, is property but a fiction, without the beneficial use of it?' and adds, 'In many cases, indeed, the income or annuity is the property itself.' 3 Hamilton, Works (Putnam's Ed.) p. 34.

It must be conceded that whatever affects any element that gives an article its value, in the eye of the law, affects the article itself.

In Brown v. Maryland, 12 Wheat. 419, it was held that a tax on the occupation of an importer is the same as a tax on his imports, and as such was invalid. It was contended that the state might tax occupations and that this was nothing more; but the court said, by Chief Justice Marshall (page 444): 'It is impossible to conceal from ourselves that this is varying the form without varying the substance. It is treating a prohibition which is general as if it were confined to a particular mode of doing the forbidden thing. All must perceive that a tax on the sale of an article imported only for sale is a tax on the article itself.'

In Weston v. Council, 2 Pet. 449, it was held that a tax upon stock issued for loans to the United States was a tax upon the loans themselves, and equally invalid. In Dobbins v. Commissioner, 16 Pet. 435, it was held that the salary of an officer of the United States could not be taxed, if the office was itself exempt. In Almy v. California, 24 How. 169, it was held that a duty on a bill of lading was the same thing as a duty on the article transported. In Cook v. Pennsylvania, 97 U.S. 566 , it was held that a tax upon the amount [157 U.S. 429, 592] of sales of goods made by an auctioneer was a tax upon the goods sold. In Philadelphia & S. S. S. Co. v. Pennsylvania, 122 U.S. 326 , 7 Sup. Ct. 1118, and Leloup v. Port of Mobile, 127 U.S. 640, 648 , 8 S. Sup. Ct. 1380, it was held that a tax upon the income received from interstate commerce was a tax upon the commerce itself, and equally unauthorized. The same doctrine was held in People v. Commissioners of Taxes, etc., 90 N. Y. 63; State Freight Tax Case, 15 Wall. 232, 274; Welton v. Missouri. 91 U.S. 275 , 278; and in Fargo v. Michigan, 121 U.S. 230 , 7 Sup. Ct. 857.

The law, so far as it imposes a tax upon land by taxation of the rents and income thereof, must therefore fail, as it does not follow the rule of apportionment. The constitution is imperative in its directions on h is subject, and admits of no departure from them.

But the law is not invalid merely in its disregard of the rule of apportionment of the direct tax levied. There is another and an equally cogent objection to it. In taxing incomes other than rents and profits of real estate it disregards the rule of uniformity which is prescribed in such cases by the constitution. The eighth section of the first article of the constitution declares that 'the congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.' Excises are a species of tax consisting generally of duties laid upon the manufacture, sale, or consumption of commodities within the country, or upon certain callings or occupations, often taking the form of exactions for licenses to pursue them. The taxes created by the law under consideration, as applied to savings banks, insurance companies, whether of fire, life, or marine, to building or other associations, or to the conduct of any other kind of business, are excise taxes, and fall within the requirement, so far as they are laid by congress, that they must be uniform throughout the United States.

The uniformity thus required is the uniformity throughout the United States of the duty, impost, and excise levied; that is, the tax levied cannot be one sum upon an article at one [157 U.S. 429, 593] place, and a different sum upon the same article at another place. The duty received must be the same at all places throughout the United States, proportioned to the quantity of the article disposed of, or the extent of the business done. If, for instance, one kind of wine or grain or produce has a certain duty laid upon it, proportioned to its quantity, in New York, it must have a like duty, proportioned to its quantity, when imported at Charleston or San Francisco; or if a tax be laid upon a certain kind of business, proportioned to its extent, at one place, it must be a like tax on the same kind of business, proportioned to its extent, at another place. In that sense, the duty must be uniform throughout the United States.

It is contended by the government that the constitution only requires an uniformity geographical in its character. That position would be satisfied if the same duty were laid in all the states, however variant it might be in different places of the same state. But it could not be sustained in the latter case without defeating the equality, which is an essential element of the uniformity required, so far as the same is practicable.

In U. S. v. Singer, 15 Wall. 111, 121, a tax was imposed upon a distiller, in the nature of an excise, and the question arose whether in its imposition upon different distillers the uniformity of the tax was preserved, and the court said: 'The law is not in our judgment subject to any constitutional objection. The tax imposed upon the distiller is in the nature of an excise, and the only limitation upon the power of congress in the imposition of taxes of this character is that they shall be 'uniform throughout the United States.' The tax here is uniform in its operation; that is, it is assessed equally upon all manufacturers of spirits, wherever they are. The law does not establish one rule for one distiller and a different rule for another, but the same rule for all alike.'

In the Head Money Cases, 112 U.S. 580, 594 , 5 S. Sup. Ct. 247, a tax was imposed upon the owners of steam vessels for each passenger landed at New York from a foreign port, and it was objected that the tax was not levied by any rule of uniformity, but the court, by Justice Miller, replied: 'The tax is uniform when [157 U.S. 429, 594] it operates with the same force and effect in every place where the subject of it is found. The tax in this case, which, as far as it can be called a tax, is an excise duty on the business of bringing passengers from foreign countries into this, by ocean navigation is uniform, and operates precisely alike in every port of the United States where such passengers can be landed.' In the

decision in that case, in the circuit court (18 Fed. 135, 139), Mr. Justice Blatchford, in addition to pointing out that 'the act was not passed in the exercise of the power of laying taxes,' but was a regulation of commerce, used the following language: 'Aside from this, the tax applies uniformly to all steam and sail vessels coming to all ports in the United States, from all foreign ports, with all alien passengers. The tax being a license tax on the business, the rule of uniformity is sufficiently observed if the tax extends to all persons of the class selected by congress; that is, to all owners of such vessels. Congress has the exclusive power of selecting the class. It has regulated that particular branch of commerce which concerns the bringing of alien passengers,' and that taxes shall be levied upon such property as shall be prescribed by law. The object of this provision was to prevent unjust discriminations. It prevents property from being classified, and taxed as classed, by different rules. All kinds of property must be taxed uniformly or be entirely exempt. The uniformity must be coextensive with the territory to which the tax applies.

Mr. Justice Miller, in his lectures on the constitution, 1889-1890 (pages 240, 241), said of taxes levied by congress: 'The tax must be uniform on the particular article; and it is uniform, within the meaning of the constitutional requirement, if it is made to bear the same percentage over all the United States. That is manifestly the meaning of this word, as used in this clause. The framers of the constitution could not have meant to say that the government, in raising its revenues, should not be allowed to discriminate between the articles which it should tax.' In discussing generally the requirement of uniformity found in state constitutions, he said: 'The difficulties in the way of this construction have, however, been very largely obviated by the meaning of the word [157 U.S. 429, 595] 'uniform,' which has been adopted, holding that the uniformity must refer to articles of the same class; that is, different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times.'

One of the learned counsel puts it very clearly when he says that the correct meaning of the provisions requiring duties, imposts, and excises to be 'uniform throughout the United States' is that the law imposing them should 'have an equal and uniform application in every part of the Union.'

If there were any doubt as to the intention of the states to make the grant of the right to impose indirect taxes subject to the condition that such taxes shall be in all respects uniform and impartial, that doubt, as said by counsel, should be resolved in the interest of justice, in favor of the taxpayer.'

Exemptions from the operation of a tax always create inequalities. Those not exempted must, in the end, bear an additional burden or pay more than their share. A law containing arbitrary exemptions can in no just sense be termed 'uniform.' In my judgment, congress has rightfully no power, at the expense of others, owning property of the like character, to sustain private trading corporations, such as building and loan associations, savings banks, and mutual life, fire, marine, and accident insurance companies, formed under the laws of the various states, which advance no national purpose or public interest, and exist solely for the pecuniary profit of their members.

Where property is exempt from taxation, the exemption, as has been justly stated, must be supported by some consideration that the public, and not private, interests will be advanced by it. Private corporations and private enterprises cannot be aided under the pretense that it is the exercise of the discretion of the legislature to exempt them. Association v. Topeka, 20 Wall. 655; Parkersburg v. Brown, 106 U.S. 487 , 1S up. Ct. 442; Barbour v. Board, 82 Ky. 645, 654, 655; City of Lexington v. McQuillan's Heirs, 9 Dana, 513, 516, 517; and Sutton's Heirs v. City of Louisville, 5 Dana, 28-31.

Cooley, in his treatise on Taxation (2d Ed. 215), justly [157 U.S. 429, 596] observes that 'it is difficult to conceive of a justifiable exemption law which should select single individuals or corporations, or single

articles of property, and, taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate tax legislation.'

The income tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of $4,000 and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation. Hamilton says in one of his papers (the Continentalist): 'The genius of liberty reprobates everything arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the state demands; whatever liberty we may boast of in theory, it cannot exist in fact while [arbitrary] assessments continue.' 1 Hamilton's Works (Ed. 1885) 270. The legislation, in the discrimination it makes, is class legislation. Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by reason of their birth, or wealth, or religion, it is class legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society. It was hoped and believed that the great amendments to the constitution which followed the late Civil War had rendered such legislation impossible for all future time. But the objectionable legislation reappears in the act under consideration. It is the same in essential character as that of the English income statute of 1691, which taxed Protestants at a certain rate, Catholics, as a class, at double the rate of Protestants, and Jews at another and separate rate. Under wise and constitutional legislation, every citizen should contribute his proportion, however small the sum, to the support of the government, and it is no kindness to urge any of our citizens to escape from that obligation. If he contributes the smallest mite of his earnings to that purpose, he will have a greater regard for the government and more self-respect [157 U.S. 429, 597] for himself, feeling that, though he is poor in fact, he is not a pauper of his government. And it is to be hoped that, whatever woes and embarrassments may betide our people, they may never lose their manliness and self-respect. Those qualities preserved, they will ultimately triumph over all reverses of fortune.

There is nothing in the nature of the corporations or associations exempted in the present act, or in their method of doing business, which can be claimed to be of a public or benevolent nature. They differ in no essential characteristic in their business from 'all other corporations, companies, or associations doing business for profit in the United States.' Section 32, Law of 1894.

A few words as to some of them, the extent of their capital and business, and of the exceptions made to their taxation:

(1) As to Mutual Savings Banks. Under income tax laws prior to 1870, these institutions were specifically taxed. Under the new law, certain institutions of this class are exempt, provided the shareholders do not participate in the profits, and interest and dividends are only paid to the depositors. No limit is fixed to the property and income thus exempted,- it may be $100,000 or $100,000,000. One of the counsel engaged in this case read to us during the argument from the report of the comptroller of the currency, sent by the president to congress, December 3, 1894, a statement to the effect that the total number of mutual savings banks exempted were 646, and the total number of stock savn gs banks were 378, and showed that they did the same character of business and took in the money of depositors for the purpose of making it bear interest, with profit upon it in the same way; and yet the 646 are exempt, and the 378 are taxed. He also showed that the total deposits in savings banks were $1, 748,000,000.

(2) As to Mutual Insurance Corporations. These companies were taxed under previous income tax laws. They do business somewhat differently from other companies; but they conduct a strictly private business, in which the public has no interest, and have been often held not to be benevolent or charitable organizations. [157 U.S. 429, 598] The sole condition for exempting them under the present law

is declared to be that they make loans to or divide their profits among their members or depositors or policy holders. Every corporation is carried on, however, for the benefit of its members, whether stockholders, or depositors, or policy holders. If it is carried on for the benefit of its shareholders, every dollar of income is taxed; if it is carried on for the benefit of its policy holders or depositors, who are but another class of shareholders, it is wholly exempted. In the state of New York the act exempts the income from over $1,000,000,000 of property of these companies. The leading mutual life insurance company has property exceeding $204,000, 000 in value, the income of which is wholly exempted. The insertion of the exemption is stated by counsel to have saved that institution fully $200, 000 a year over other insurance companies and associations, having similar property and carrying on the same business, simply because such other companies or associations divide their profits among their shareholders instead of their policy holders.

(3) As to Building and Loan Associations. The property of these institutions is exempted from taxation to the extent of millions. They are in no sense benevolent or charitable institutions, and are conducted solely for the pecuniary profit of their members. Their assets exceed the capital stock of the national banks of the country. One, in Dayton, Ohio, has a capital of $10,000,000, and Pennsylvania has $65,000,000 invested in these associations. The census report submitted to congress by the president, May 1, 1894, shows that their property in the United States amounts to over $628,000,000. Why should these institutions and their immense accumulations of property singled out for the special favor of congress, and be freed from their just, equal, and proportionate share of taxation, when others engaged under different names, in similar business, are subjected to taxation by this law? The aggregate amount of the saving to these associations, by reason of their exemption, is over $600,000 a year.

If this statement of the exemptions of corporations under the law of congress, taken from the carefully prepared briefs of counsel [157 U.S. 429, 599] and from reports to congress, will not satisfy parties interested in this case that the act in question disregards, in almost every line and provision, the rule of uniformity required by the constitution, then 'neither will they be persuaded, though one rose from the dead.' That there should be any question or any doubt on the subject surpasses my comprehension. Take the case of mutual savings banks and stock savings banks. They do the same character of business, and in the same way use the money of depositors, loaning it at interest for profit, yet 646 of them, under the law before us, are exempt from taxation on their income, and 378 are taxed upon it. How the tax on the income of one kind of these banks can be said to be laid upon any principle of uniformity, when the other is exempt from all taxation, I repeat, surpasses my comprehension.

But there are other considerations against the law which are equally decisive. They relate to the uniformity and equality required in all taxation, national and state; to the invalidity of taxation by the United States of the income of the bonds and securities of the states and f their municipal bodies; and the invalidity of the taxation of the salaries of the judges of the United States courts.

As stated by counsel: 'There is no such thing in the theory of our national government as unlimited power of taxation in congress. There are limitations, as he justly observes, of its powers arising out of the essential nature of all free governments; there are reservations of individual rights, without which society could not exist, and which are respected by every government. The right of taxation is subject to these limitations.' Citizens' Savings Loan Ass'n v. Topeka, 20 Wall. 655, and Parkersburg v. Brown, 106 U.S. 487 , 1 Sup. Ct. 442.

The inherent and fundamental nature and character of a tax is that of a contribution to the support of the government, levied upon the principle of equal and uniform apportionment among the persons taxed, and any other exaction does not come within the legal definition of a 'tax.'

This inherent limitation upon the taxing power forbids the imposition of taxes which are unequal in their operation upon [157 U.S. 429, 600] similar kinds of property, and necessarily strikes down the gross and arbitrary distinctions in the income law as passed by congress. The law, as we have seen, distinguishes in the taxation between corporations by exempting the property of some of them from taxation, and levying the tax on the property of others, when the corporations do not materially differ from one another in the character of their business or in the protection required by the government. Trifling differences in their modes of business, but not in their results, are made the ground and occasion of the greatest possible differences in the amount of taxes levied upon their incomes, showing that the action of the legislative power upon them has been arbitrary and capricious, and sometimes merely fanciful.

There was another position taken in this case which is not the least surprising to me of the many advanced by the upholders of the law, and that is that if this court shall declare that the exemptions and exceptions from taxation, extended to the various corporations mentioned, fire, life, and marine insurance companies, and to mutual savings banks, building, and loan associations, violate the requirement of uniformity, and are therefore void, the tax as to such corporations can be enforced, and that the law will stand as though the exemptions had never been inserted. This position does not, in my judgment, rest upon any solid foundation of law or principle. The abrogation or repeal of an unconstitutional or illegal provision does not operate to create and give force to any enactment or part of an enactment which congress has not sanctioned and promulgated. Seeming support of this singular position is attributed to the decision of this court in Huntington v. Worthen, 120 U.S. 97 , 7 Sup. Ct. 469. But the examination of that case will show that it does not give the slightest sanction to such a doctrine. There the constitution of Arkansas had provided that all property subject to taxation should be taxed according to its value, to be ascertained in such manner as the general assembly should direct, making the same equal and uniform throughout the state, and certain public property was declared by statute to be exempt from taxation, which statute was subsequently held to be unconstitutional. The court decided that the unconsti- [157 U.S. 429, 601] tutional part of the enactment, which was separable from the remainder, could be omitted and the remainder enforced; a doctrine undoubtedly sound, and which has never, that I am aware of, been questioned. But that is entirely different from the position here taken, that exempted things can be taxed by striking out their exemption.

The law of 1894 says there shall be assessed, levied, and collected, 'except as herein otherwise provided,' 2 per centum of the amount, etc. If the exceptions are stricken out, there is nothing to be assessed and collected except what congress has otherwise affirmatively ore red. Nothing less can have the force of law. This court is impotent to pass any law on the subject. It has no legislative power. I am unable, therefore, to see how we can, by declaring an exemption or exception invalid, thereby give effect to provisions as though they were never exempted. The court by declaring the exemptions invalid cannot, by any conceivable ingenuity, give operative force as enacting clauses to the exempting provisions. That result is not within the power of man.

The law is also invalid in its provisions authorizing the taxation of the bonds and securities of the states and of their municipal bodies. It is objected that the cases pending before us do not allege any threatened attempt to tax the bonds or securities of the state, but only of municipal bodies of the states. The law applies to both kinds of bonds and securities, those of the states as well as those of municipal bodies, and the law of congress we are examining, being of a public nature, affecting the whole community, having been brought before us and assailed as unconstitutional in some of its provisions, we are at liberty, and I think it is our duty, to refer to other unconstitutional features brought to our notice in examining the law, though the particular points of their objection may not have been mentioned by counsel. These bonds and securities are as important to the performance of the duties of the state as like bonds and securities of the United States are important to the performance of their duties, and are as exempt from the taxation of the United States as the former are exempt from the

taxation of the states. As stated by Judge [157 U.S. 429, 602] Cooley in his work on the Principles of Constitutional Law: 'The power to tax, whether by the United States or by the states, is to be construed in the light of and limited by the fact that the states and the Union are inseparable, and that the constitution contemplates the perpetual maintenance of each with all its constitutional powers, unembarrassed and unimpaired by any action of the other. The taxing power of the federal government does not therefore extend to the means or agencies through or by the employment of which the states perform their essential functions; since, if these were within its reach, they might be embarrassed, and perhaps wholly paralyzed, by the burdens it should impose. 'That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, in respect to those very measures, is declared to be supreme over that which exerts the control,-are propositions not to be denied.' It is true that taxation does not necessarily and unavoidably destroy, and that to carry it to the excess of destruction would be an abuse not to be anticipated; but the very power would take from the states a portion of their intended liberty of independent action within the sphere of their powers, and would constitute to the state a perpetual danger of embarrassment and possible annihilation. The constitution contemplates no such shackles upon state powers, and by implication forbids them.'

The internal revenue act of June 30, 1864, in section 122, provided that railroad and certain other companies specified, indebted for money for which bonds had been issued, upon which interest was stipulated to be paid, should be subject to pay a tax of 5 per cent. on the amount of all such interest, to be paid by the corporations, and by them deducted from the interest payable to the holders of such bonds; and the question arose in U. S. v. Baltimore & O. R. Co., 17 Wall. 322, whether the tax imposed could be thus collected from the revenues of a city owning such bonds. This court answered the question as follows: 'There is no dispute about the gen- [157 U.S. 429, 603] eral rules of the law applicable to this subject. The power of taxation by the federal government upon thes ubjects and in the manner prescribed by the act we are considering is undoubted. There are, however, certain departments which are excepted from the general power. The right of the states to administer their own affairs through their legislative, executive, and judicial departments, in their own manner, through their own agencies, is conceded by the uniform decisions of this court, and by the practice of the federal government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power of the federal government. If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed if any interference is permitted. Hence, the beginning of such taxation is not allowed on the one side, is not claimed on the other.'

And, again: 'A municipal corporation like the city of Baltimore is a representative not only of the state, but it is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the state. The state may withdraw these local powers of government at pleasure, and may, through its legislature or other appointed channels, govern the local territory as it governs the state at large. It may enlarge or contract its powers or destroy its existence. As a portion of the state, in the exercise of a limited portion of the powers of the state, its revenues, like those of the state, are not subject to taxation.'

In Collector v. Day, 11 Wall. 113, 124, the court, speaking by Mr. Justice Nelson, said: 'The general government and the states, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former, in its appropriate sphere, is supreme; but the states, within the limits of their powers not granted, or, in the language of the tenth amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the states.' [157 U.S. 429, 604] According to the census reports, the bonds and securities of the states amount to the sum of

$1,243,268,000, on which the income or interest exceeds the sum of $65,000,000 per annum, and the annual tax of 2 per cent. upon this income or interest would be $1,300,000.

The law of congress is also invalid in that it authorizes a tax upon the salaries of the judges of the courts of the United States, against the declaration of the constitution that their compensation shall not be diminished during their continuance in office. The law declares that a tax of 2 per cent. shall be assessed, levied, and collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on within the United States or elsewhere, or from any source whatever. The annual salary of a justice of the supreme court of the United States is $10,000, and this act levies a tax of 2 per cent. on $6, 000 of this amount, and imposes a penalty upon those who do not make the payment or return the amount for taxation.

The same objection, as presented to a consideration of the objection to the taxation of the bonds and securities of the states, as not being specially taken in the cases before us, is urged here to a consideration of the objection community, and attacked for its unconstitutionality of the judges of the courts of the United States. The answer given to that objection may be also given to the present one. The law of congress, being of a public nature, affecting the interests of the whole community, and attacked for jits unconstitutionality in certain particulars, may be considered with reference to other unconstitutional provisions called to our attention upon examining the law, thouh not specifically noticed in the objections taken in the records or briefs of counsel that the constitution may not be violated from the carelessness or oversight of counsel in any particular. See O'Neil v. Vermont, 144 U.S. 359 , 12 Sup. Ct. 693.

Besides, there is a duty which this court owes to the 100 [157 U.S. 429, 605] other United States judges who have small salaries, and who, having their compensation reduced by the tax, may be seriously affected by the law.

The constitution of the United States provides in the first section of article 3 that 'the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.' The act of congress under discussion imposes, as said, a tax on $6,000 of this compensation, and therefore diminishes each year the compensation provided for every justice. How a similar law of congress was regarded 30 years ago may be shown by the following incident, in which the justices of this court were assessed at 3 per cent. upon their salaries. Against this Chief Justice Taney protested in a letter to Mr. Chase, then secretary of the treasury, appealing to the above article in the constitution, and adding: 'If it [his salary] can be diminished to that extent by the means of a tax, it may, in the same way, be reduced from time to time, at the pleasure of the legislature.' He explained in his letter the object of the constitutional inhibition thus:

> 'The judiciary is one of the three great departments of the government created and established by the constitution. Its duties and powers are specifically set forth, and are of a character that require it to be perfectly independent of the other departments. And in order to place it beyond the reach, and above even the suspicion, of any such influence, the power to reduce their compensation is expressly withheld from congress, and excepted from their powers of legislation.
>
> 'Language could not be more plain than that used in the constitution. It is, moreover, one of its

> most important and essential provisions. For the articles which limit the powers of the legislative and executive branches of the government, and those which provide safeguards for the protection of the citizen in his person and property, would be of little value [157 U.S. 429, 606] without a judiciary to uphold and maintain them which was free from every influence, direct or indirect, that might by possibility, in times of political excitement, warp their judgment.
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> 'Upon these grounds, I regard an act of congress retaining in the treasury a portion of the compensation of the judges as unconstitutional and void.'

This letter of Chief Justice Taney was addressed to Mr. Chase, then secretary of the treasury, and afterwards the successor of Mr. Taney as chief justice. It was dated February 16, 1863; but as no notice was taken of it, on the 10th of March following, at the request of the chief justice, the court ordered that his letter to the secretary of the treasury be entered on the records of the court, and it was so entered. And in the memoir of the chief justice it is stated that the letter was, by this order, preserved 'to testify to future ages that in war, no less than in peace, Chief Justice Taney strove to protect the constitution from violation.'

Subsequently, in 1869, and during the administration of President Grant, when Mr. Boutwell was secretary of the treasury, and Mr. Hoar, of Massachusetts, was attorney general, there were in several of the statutes of the United States, for the assessment and collection of internal revenue, provisions for taxing the salaries of all civil officers of the United States, which included, in their literal application, the salaries of the president and of the judges oft he United States. The question arose whether the law which imposed such a tax upon them was constitutional. The opinion of the attorney general thereon was requested by the secretary of the treasury. The attorney general, in reply, gave an elaborate opinion advising the secretary of the treasury that no income tax could be lawfully assessed and collected upon the salaries of those officers who were in office at the time the statute imposing the tax was passed, holding on this subject the views expressed by Chief Justice Taney. His opinion is published in volume 13 of the Opinions of the Attorney General, at page 161. I am informed that it has been fol- [157 U.S. 429, 607] lowed ever since without question by the department supervising or directing the collection of the public revenue.

Here I close my opinion. I could not say less in view of questions of such gravity that go down to the very foundation of the government. If the provisions of the constitution can be set aside by an act of congress, where is the course of usurpation to end? The present assault upon capital is but the beginning. It will be but the stepping-stone to others, larger and more sweeping, till our political contests will become a war of the poor against the rich,-a war constantly growing in intensity and bitterness. 'If the court sanctions the power of discriminating taxation, and nullifies the uniformity mandate of the constitution,' as said by one who has been all his life a student of our institutions, 'it will mark the hour when the sure decadence of our present government will commence.' If the purely arbitrary limitation of four thousand dollars in the present law can be sustained, none having less than that amount of income being assessed or taxed for the support of the government, the limitation of future congresses may be fixed at a much larger sum, at five or ten or twenty thousand dollars, parties possessing an income of that amount alone being bound to bear the burdens of government; or the limitation may be designated at such an amount as a board of 'walking delegates' may deem necessary. There is no safety in allowing the limitation to be adjusted except in strict compliance with the mandates of the constitution, which require its taxation, if imposed by direct taxes, to be apportioned among the states according to their representation, and, if imposed by indirect taxes, to be uniform in operation and, so far as practicable, in proportion to their property, equal upon all citizens. Unless the rule of the constitution governs, a majority may fix the limitation at such rate as will not include any of their own number.

I am of opinion that the whole law of 1894 should be declared void, and without any binding force,-that part which relates to the tax on the rents, profits, or income from real estate, that is, so much as constitutes part of the direct tax, because not imposed by the rule of apportionment according [157 U.S. 429, 608] to the representation of the states, as prescribed by the constitution; and that part which imposes a tax upon the bonds and securities of the several states, and upon the bonds and securities of their municipal bodies, and upon on the salaries of judges of the courts of the United States, as being beyond the power of congress; and that part which lays duties, imposts, and excises, as void in not providing for the uniformity required by the constitution in such cases.

Mr. Justice WHITE (dissenting).

My brief judicial experience has convinced me that the custom of filing long dissenting opinions is one 'more honored in the breach than in the observance.' The only purpose which an elaborate dissent can accomplish, if any, is to weaken the effect of the opinion of the majority, and thus engender want of confidence in the conclusions of courts of last resort. This consideration would impel me to content myself with simply recording my dissent in the present case, were it not for the fact that I consider that the result of the opinion just announced is to overthrow a long n d consistent line of decisions, and to deny to the legislative department of the government the possession of a power conceded to it by universal consensus for 100 years, and which has been recognized by repeated adjudications of this court. The issues presented are as follows:

Complainant, as a stockholder in a corporation, avers that the latter will voluntarily pay the income tax, levied under the recent act of congress; that such tax is unconstitutional; and that its voluntary payment will seriously affect his interest by defeating his right to test the validity of the exaction, and also lead to a multiplicity of suits against the corporation. The prayer of the bill is as follows: First, that it may be decreed that the provisions known as 'The Income Tax Law,' incorporated in the act of congress passed August 15, 1894, are unconstitutional, null, and void; second, that the defendant be restrained from voluntarily complying with the provisions of that act by making its returns and statements, [157 U.S. 429, 609] and paying the tax. The bill, therefore, presents two substantial questions for decision: The right of the plaintiff to relief in the form in which he claims it, and his right to relief on the merits.

The decisions of this court hold that the collection of a tax levied by the government of the United States will not be restrained by its courts. Cheatham v. U. S., 92 U.S. 85 ; Snyder v. Marks, 109 U.S. 189 , 3 Sup. Ct. 157. See, also, Elliott v. Swartwout, 10 Pet. 137; City of Philadelphia v. Collector, 5 Wall. 720; Hornthal v. Collector, 9 Wall. 560. The same authorities have established the rule that the proper course, in a case of illegal taxation, is to pay the tax under protest or with notice of suit, and then bring an action against the officer who collected it. The statute law of the United States, in express terms, gives a party who has paid a tax under protest the right to sue for its recovery. Rev. St. 3226.

The act of 1867 forbids the maintenance of any suit 'for the purpose of restraining the assessment or collection of any tax.' The provisions of this act are now found in Rev. St. 3224.

The complainant is seeking to do the very thing which, according to the statute and the decisions above referred to, may not be done. If the corporator cannot have the collection of the tax enjoined, it seems obvious that he cannot have the corporation enjoined from paying it, and thus do by indirection what he cannot do directly.

It is said that such relief as is here sought has been frequently allowed. The cases relied on are Dodge v. Woolsey, 18 How. 331, and Hawes v. Oakland, 104 U.S. 450 . Neither of these authorities, I submit, is in point. In Dodge v. Woolsey, the main question at issue was the validity of a state tax, and that case

did not involve the act of congress to which I have referred. Hawes v. Oakland was a controversy between a stockholder and a corporation, and had no reference whatever to taxation.

The complainant's attempt to establish a right to relief upon the ground that this is not a suit to enjoin the tax, but [157 U.S. 429, 610] one to enjoin the corporation from paying it, involves the fallacy already pointed out,-that is, that a party can exercise a right indirectly which he cannot assert directly,-that he can compel his agent, through process of this court, to violate an act of congress.

The rule which forbids the granting of an injunction to restrain the collection of a tax is founded on broad reasons of public policy, and should not be ignored. In Cheatham v. U. S., supra, which involved the vaildity of an income tax levied under an act of congress prior to the one here in issue, this court, through Mr. Justice Miller, said:

> 'If there existed in the courts, state or national, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of the government might be placed in the power of a hostile judiciary. Dows v. City of Chicago, 11 Wall. 108. While a fe e course of remonstrance and appeal is allowed within the departments before the money is finally exacted, the general government has wisely made the payment of the tax claimed, whether of customs or of internal revenue, a condition precedent to a resort to the courts by the party against whom the tax is assessed. In the internal revenue branch it has further prescribed that no such suit shall be brought until the remedy by appeal has been tried; and, if brought after this, it must be within six months after the decision on the appeal. We regard this as a condition on which alone the government consents to litigate the lawfulness of the original tax. It is not a hard condition. Few governments have conceded such a right on any condition. If the compliance with this condition requires the party aggrieved to pay the money, he must do it.'

Again, in State Railroad Tax Cases, 92 U.S. 575 , the court said:

> 'That there might be no misunderstanding of the universality of this principle, it was expressly enacted, in 1867, that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' Rev. St. 3224. And, though this was intended to apply alone to taxes levied by the United States, it shows the sense [157 U.S. 429, 611] of congress of the evils to be feared in courts of justice could, in any case, interfere with the process of collecting the taxes on which the government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the experience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and, to do this successfully, other instrumentalities and other modes of procedure are necessary than those which belong to courts of justice. See Cheatham v. Norvell, decided at this term; Nichols v. U. S., 7 Wall. 122; Dows v. City of Chicago, 11 Wall. 108.'

The contention that a right to equitable relief arises from the fact that the corporator is without remedy, unless such relief be granted him, is, I think, without foundation. This court has repeatedly said that the illegality of a tax is not ground for the issuance of an injunction against its collection, if there be an adequate remedy at law open to the payer (Dows v. City of Chicago, 11 Wall. 108; Hannewinkle v. Georgetown, 15 Wall. 547; Board v. McComb, 92 U.S. 531 ; State Railroad Tax Cases, 92 U.S. 575 ; Union Pacific Ry. Co. v. Cheyenne, 113 U.S. 516 , 5 Sup. Ct. 601; Milwaukee v. Koeffler, 116 U.S. 219 , 6 Sup. Ct. 372; Express Co. v. Seibert, 142 U.S. 339 , 12 Sup. Ct. 250), as in the case where the state statute, by which the tax is imposed, allows a suit for its recovery after payment under protest (Shelton v. Platt, 139 U.S. 591 , 11 Sup. Ct. 646; Allen v. Car Co., 139 U.S. 658 , 11 Sup. Ct. 682).

The decision here is that this court will allow, on the theory of equitable right, a remedy expressly forbidden by the statutes of the United States, though it has denied the existence of such a remedy in the case of a tax levied by a state.

Will it be said that, although a stockholder cannot have a corporation enjoined from paying a state tax where the state statute gives him the right to sue for its recovery, yet when the United States not only gives him such right, but, in addition, forbids the issue of an injunction to prevent the payment of federal taxes, the court will allow to the stock- [157 U.S. 429, 612] holder a remedy against the United States tax which it refuses against the state tax?

The assertion that this is only a suit to prevent the voluntary payment of the tax suggests that the court may, by an order operating directly upon the defendant corporation, accomplish a result which the statute manifestly intended should not be accomplished by suit in any court. A final judgment forbidding the corporation from paying the tax will have the effect to prevent its collection, for it could not be that the court would permit a tax to be collected from a corport ion which it had enjoined from paying. I take it to be beyond dispute that the collection of the tax in question cannot be restrained by any proceeding or suit, whatever its form, directly against the officer charged with the duty of collecting such tax. Can the statute be evaded, in a suit between a corporation and a stockholder, by a judgment forbidding the former from paying the tax, the collection of which cannot be restrained by suit in any court? Suppose, notwithstanding the final judgment just rendered, the collector proceeds to collect from the defendant corporation the taxes which the court declares, in this suit, cannot be legally assessed upon it. If that final judgment is sufficient in law to justify resistance against such collection, then we have a case in which a suit has been maintained to restrain the collection of taxes. If such judgment does not conclude the collector, who was not a party to the suit in which it was rendered, then it is of no value to the plaintiff. In other words, no form of expression can conceal the fact that the real object of this suit is to prevent the collection of taxes imposed by congress, notwithstanding the express statutory requirement that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' Either the decision of the constitutional question is necessary or it is not. If it is necessary, then the court, by way of granting equitable relief, does the very thing which the act of congress forbids. If it is unnecessary, then the court decides the act of congress here asserted unconstitutional, without being obliged to do so by the requirements of the case before it. [157 U.S. 429, 613] This brings me to the consideration of the merits of the cause.

The constitutional provisions respecting federal taxation are four in number, and are as follows:

> '(1) Representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons.' Article 1, 2, cl. 3. The fourteenth amendment modified this provision, so that the whole number of persons in each state should be counted, 'Indians not taxes' excluded.
>
> '(2) The congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.' Article 1, 8, cl. 1.
>
> '(3) No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.' Article 1, 9, cl. 4.
>
> '(4) No tax or duty shall be laid on articles exported from any state.' Article 1, 9, cl. 5.

It has been suggested that, as the above provisions ordain the apportionment of direct taxes, and authorize congress to 'lay and collect taxes, duties, imposts, and excises,' therefore there is a class of taxes which are neither direct, and are not duties, imposts, and excises, and are exempt from the rule of apportionment on the one hand, or of uniformity on the other. The soundness of this suggestion need not be discussed, as the words, 'duties, imposts, and excises,' in conjunction with the reference to direct taxes, adequately convey all power of taxation to the federal government.

It is not necessary to pursue this branch of the argument, since it is unquestioned that the provisions of the constitution vest in the United States plenary powers of taxation; that is, all the powers which belong to a government as such except [157 U.S. 429, 614] that of taxing exports. The court in this case so says, and quotes approvingly the language of this court, speaking through Mr. Chief Justice Chase, in License Tax Cases, 5 Wall. 462, as follows:

> 'It is true that the power of congress to tax is a very extensive power. It is given in the constitution with only one exception and only two qualifications. Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject and may be exercised at discretion.'

In deciding, then, the question of whether the income tax violates the constitution, we have to determine, not the existence of a power in congress, but whether an admittedly unlimited power to tax (the income tax not being a tax on exports) has been used according to the restrictions, as to methods for its exercise, found in the constitution. Not power, it must be borne in mind, but the manner of its use, it the only issue presented in this case. The limitations in regard to the mode of direct taxation imposed by the constitution are that capitation and other direct taxes shall be apportioned among the states according to their respective numbers, while duties, imposts, and excises must be uniform throughout the United States. The meaning of the word 'uniform' in the constitution need not be examined, as the court is divided upon that a subject, and no expression of opinion thereon is conveyed or intended to be conveyed in this dissent.

In considering whether we are to regard an income tax as 'direct' or otherwise, it will, in my opinion, serve no useful purpose, at this late period of our political history, to seek to ascertain the meaning of the word 'direct' in the constitution by resorting to the theoretical opinions on taxation found in the writings of some economists prior to the adoption of the constitution or since. These economists teach that the question of whether a tax is direct or indirect depends not upon whether it is directly levied upon a person, but upon whether, when so levied, it may be ultimately shifted from the person [157 U.S. 429, 615] in question to the consumer, thus becoming, while direct in the method of its application, indirect in its final results, because it reaches the person who really pays it only indirectly. I say it will serve no useful purpose to examine these writers, because, whatever may have been the value of their opinions as to the economic sense of the word 'direct,' they cannot now afford any criterion for determining its meaning in the constitution, inasmuch as an authoritative and conclusive construction has been given to that term, as there used, by an interpretation adopted shortly after the formation of the constitution by the legislative department of the government, and approved by the executive; by the adoption of that interpretation from that time to the present without question, and its exemplification and enforcement in many legislative enactments, and its acceptance by the authoritative text writers on the constitution; by the sanction of that interpretation, in a decision of this court rendered shortly after the constitution was adopted; and finally by the repeated reiteration and affirmance of that interpretation, so that it has become imbedded in our jurisprudence, and therefore may be considered almost a part of the written constitution itself.

Instead, therefore, of following counsel in their references to economic writers and their discussion of

the motives and thoughts which may or may not have been present in the minds of some of the framers of the constitution, as if the question before us were one of first impression, I shall confine myself to a demonstration of the truth of the propositions just laid down.

In 1794 (1 Stat. 373, c. 45) congress levied, without reference to apportionment, a tax on carriages 'for the conveyance of persons.' The act provided 'that there shall be levied, collected, and paid upon all carriages for the conveyance of persons which shall be kept by, or for any person for his or her own use, or to be let out to hire, or for the conveying of passengers, the several duties and rates following'; and then came a yearly tax on every c oach, chariot, phaeton, and coachee, every four-wheeled and every [157 U.S. 429, 616] two-wheeled top carriage, and upon every other two-wheeled carriage,' varying in amount according to the vehicle.

The debates which took place at the passage of that act are meagerly preserved. It may, however, be inferred from them that some considered that whether a tax was 'direct' or not in the sense of the constitution depended upon whether it was levied on the object or on its use. The carriage tax was defended by a few on the ground that it was a tax on consumption. Mr. Madison opposed it as unconstitutional, evidently upon the conception that the word 'direct' in the constitution was to be considered as having the same meaning as that which had been attached to it by some economic writers. His view was not sustained, and the act passed by a large majority,-49 to 22. It received the approval of Washington. The congress which passed this law numbered among its members many who sat in the convention which framed the constitution. It is moreover safe to say that each member of that congress, even although he had not been in the convention, had, in some way, either directly or indirectly, been an influential actor in the events which led up to the birth of that instrument. It is impossible to make an analysis of this act which will not show that its provisions constitute a rejection of the economic construction of the word 'direct,' and this result equally follows, whether the tax be treated as laid on the carriage itself or on its use by the owner. If viewed in one light, then the imposition of the tax on the owner of the carriage, because of his ownership, necessarily constituted a direct tax under the rule as laid down by economists. So, also, the imposition of a burden of taxation on the owner for the use by him of his own carriage made the tax direct according to the same rule. The tax having been imposed without apportionment, it follows that those who voted for its enactment must have give to the word 'direct,' in the constitution, a different significance from that which is affixed to it by the economists referred to.

The validity of this carriage tax act was considered by this court in Hylton v. U. S., 3 Dall. 171. Chief Justice Ellsworth and Mr. Justice Cushing took no part in [157 U.S. 429, 617] the decision. Mr. Justice Wilson stated that he had, in the circuit court of Virginia, expressed his opinion in favor of the constitutionality of the tax. Mr. Justice Chase, Mr. Justice Paterson, and Mr. Justice Iredell each expressed the reasons for his conclusions. The tax, though laid, as I have said, on the carriage, was held not to be a direct tax under the constitution. Two of the judges who sat in that case (Mr. Justice Paterson and Mr. Justice Wilson) had been distinguished members of the constitutional convention. Excepts from tne observations of the justices are given in the opinion of the court. Mr. Justice Paterson, in addition to the language there quoted, spoke as follows (the italics being mine):

> 'I never entertained a doubt that the principal-I will not say the only-objects that the framers of the constitution contemplated as falling within the rule of apportionment were a capitation tax and a tax on land. Local considerations and the particular circumstances and relative situation of the states naturally lead to this view of the subject. The provision was made in favor of the Southern states. They possessed a large number of slaves. They had extensive tracts of territory, thinly settled, and not very productive. A majority of the states had but few slaves, and several of them a limited territory, well settled, and in a high state of cultivation. The Southern states, if no

> provision had been introduced in the constitution, would have been wholly at the mercy of the other states Congress, in such case, might tax slaves at discretion or arbitrarily, and land in every part on the Union after the same rate or measure,-so much a head in the first instance, and so much an acre in the second. To guardt hem against imposition in these particulars was the reason of introducing the clause in the constitution which directs that representatives and direct taxes shall be apportioned among the states according to their respective numbers.'

It is evident that Mr. Justice Chase coincided with these views of Mr. Justice Paterson, though he was perhaps not quite so firmly settled in his convictions, for he said:

> 'I am inclined to think-but of this I do not give a judicial [157 U.S. 429, 618] opinion-that the direct taxes contemplated by the constitution are only two, to wit, a capitation or poll tax simply, without regard to property, profession, or any other circumstances, and the tax on land. I doubt whether a tax by a general assessment of personal property within the United States is included within the term 'direct tax."

Mr. Justice Iredell certainly entertained similar views, since he said:

> 'Some difficulties may occur which we do not at present foresee. Perhaps a direct tax in the sense of the constitution can mean nothing but a tax on something inseparably annexed to the soil; something capable of apportionment under all such circumstances. A land of a poll tax may be considered of this description. ... In regard to other articles there may possibly be considerable doubt.'

These opinions strongly indicate that the real convictions of the justices were that only capitation taxes and taxes on land were direct within the meaning of the constitution, but they doubted whether some other objects of a kindred nature might not be embraced in that word. Mr. Justice Paterson had no doubt whatever of the limitation, and Justice Iredell's doubt seems to refer only to things which were inseparably connected with the soil, and which might therefore be considered, in a certain sense, as real estate.

That case, however, established that a tax levied without apportionment on an object of personal property was not a 'direct tax' within the meaning of the constitution. There can be no doubt that the enactment of this tax and its interpretation by the court, as well as the suggestion, in the opinions delivered, that nothing was a 'direct tax,' within the meaning of the constitution, but a capitation tax and a tax on land, were all directly in conflict with the views of those who claimed at the time that the word 'direct' in the constitution was to be interpreted according to the views of economists. This is conclusively shown by Mr. Madison's language. He asserts not only that the act had been passed contrary to the constitution, but that the decision of the court was likewise in violation of that instrument. Ever since the announce- [157 U.S. 429, 619] ment of the decision in that case, the legislative department of the government has accepted the opinions of the justices, as well as the decision itself, as conclusive in regard to the meaning of the word 'direct'; and it has acted upon that assumption in many instances, and always with executive indorsement. All the acts passed levying direct taxes confined them practically to a direct levy on land. True, in some of these acts a tax on slaves was included, but this inclusion, as has been said by this court, was probably based upon the theory that these were in some respects taxable along with the land, and therefore their inclusion indicated no departure by congress from the meaning of the word 'direct' necessarily resulting from the decision in the Hylton Case, and which, moreover, had been expressly elucidated and suggested as being practically limited to capitation taxes and taxes on real estate by the justices who expressed opinions in that case.

These acts imposing direct taxes having been confined in their operation exclusively to real estate and slaves, the subject-matters indicated as the proper objects of direct taxation in the Hylton Case are the strongest possible evidence that this suggestion was accepted as conclusive, and had become a settled rule of law. Some of these acts were passed at times of great public necessity, whn revenue was urgently required. The fact that no other subjects were selected for the purposes of direct taxation, except those which the judges in the Hylton Case had suggested as appropriate therefor, seems to me to lead to a conclusion which is absolutely irresistible,-that the meaning thus affixed to the word 'direct' at the very formation of the government was considered as having been as irrevocably determined as if it had been written in the constitution in express terms. As I have already observed, every authoritative writer who has discussed the constitution from that date down to this has treated this judicial and legislative ascertainment of the meaning of the word 'direct' in the constitution as giving it a constitutional significance, without reference to the theoretical distinction between 'direct' and 'indirect,' made by some economists prior to the constitution or since. This doc- [157 U.S. 429, 620] trine has become a part of the hornbook of American constitutional interpretation, has been taught as elementary in all the law schools, and has never since then been anywhere authoritatively questioned. Of course, the text-books may conflict in some particulars, or indulge in reasoning not always consistent, but as to the effect of the decision in the Hylton Case and the meaning of the word 'direct,' in the constitution, resulting therefrom, they are a unit. I quote briefly from them.

Chancellor Kent, in his Commentaries, thus states the principle:

> 'The construction of the powers of congress relative to taxation was brought before the supreme court, in 1796, in the case of Hylton v. U. S. By the act of June 5, 1794, congress laid a duty upon carriages for the conveyance of persons, and the question was whether this was a 'direct tax,' within the meaning of the constitution. If it was not a direct tax, it was admitted to be rightly laid, under that part of the constitution which declares that all duties, imposts, and excises shall be uniform throughout the United States; but, if it was a direct tax, it was not constitutionally laid, for it must then be laid according to the census, under that part of the constitution which declares that direct taxes shall be apportioned among the several states according to numbers. The circuit court in Virginia was divided in opinion on the question, but on appeal to the supreme court it was decided that the tax on carriages was not a direct tax, within the letter or meaning of the constitution, and was therefore constitutionally laid.
>
> 'The question was deemed of very great importance, and was elaborately argued. It was held that a general power was given great was held that a general power was given to kind or nature, without any restraint. They had plenary power over every species of taxable property, except exports. But there were two rules prescribed for their government,- the rule of uniformity, and the rule of apportionment. Three kinds of taxes, viz. duties, imposts, and excises, were to be laid by the first rule; and capitation and other direct taxes, by the second rule. If there were any other species of taxes, as the [157 U.S. 429, 621] court seemed to suppose there might be, that were not direct, and not included within the words 'duties, imposts, or excises,' they were to be laid by the rule of uniformity or not, as congress should think proper and reasonable.
>
> 'The constitution contemplated no taxes as direct taxes but such as congress could lay in proportion to the census; and the rule of apportionment could not reasonably apply to a tax on carriages, nor could the tax on carriages be laid by that rule without very great inequality and injustice. If two states, equal in census, were each to pay 8,000 dollars by a tax on carriages, and in one state there were 100 carriages and in another 1,000, the tax on each carriage would be ten times as much in one state as in the other. While A. in the one state, would pay for his carriage eight dollars, B., in the other state, would pay for his carriage eighty dollars. In this way itw as

> shown by the court that the notion that a tax on carriages was a 'direct tax,' within the purview of the constitution, and to be apportioned sccording to the census, would lead to the grossest abuse and oppression. This argument was conclusive against the construction set up, and the tax on carriages was considered as included within the power to lay duties; and the better opinion seemed to be that the direct taxes contemplated by the constitution were only two, viz. a capitation or poll tax and a tax on land.' Kent. Comm. pp. 254-256.

Story, speaking on the same subject, says:

> 'Taxes on lands, houses, and other permanent real estate, or on parts or appurtenances thereof, have always been deemed of the same character; that is, direct taxes. It has been seriously doubted if, in the sense of the constitution, any taxes are direct taxes except those on polls or on lands. Mr. Justice Chase, in Hylton v. U. S., 3 Dall. 171, said: 'I am inclined to think that the direct taxes contemplated by the constitution are only two, viz., a capitation or poll tax simply, without regard to property, profession, or other circumstances, and a tax on land. I doubt whether a tax by a general assessment of personal property within the United States is included within the term 'direct tax." Mr. Justice Paterson in the same case said: 'It is not necessary to deter- [157 U.S. 429, 622] mine whether a tax on the produce of land be a direct or an indirect tax. Perhaps the immediate product of land, in its original and crude state, ought to be considered as a part of the land itself. When the produce is converted into a manufacture it assumes a new shape, etc. Whether 'direct taxes,' in the sense of the constitution, comprehend any other tax than a capitation tax, or a tax on land, is a questionable point, etc. I never entertained a doubt that the principal-I will not say the only-objects that the framers of the constitution contemplated, as falling within the rule of apportionment, were a capitation tax and a tax on land.' And he proceeded to state that the rule of apportionment, both as regards representatives and as regards direct taxes, was adopted to guard the Southern states against undue impositions and oppressions in the taxing of slaves. Mr. Justice Iredell in the same case said: 'Perhaps a direct tax, in the sense of the constitution, can mean nothing but a tax on something inseparably annexed to the soil; something capable of apportionment under all such circumstances. A land or poll tax may be considered of this description. The latter is to be considered so, particularly under the present constitution, on account of the slaves in the Southern states, who give a ratio in the representation in the proportion of three to five. Either of these is capable of an apportionment. In regard to other articles, there may possibly to considerable doubt.' The reasoning of the Federalists seems to lead to the same result.' Story, Const. 952.

Cooley, in his work on Constitutional Limitations (page 595), thus tersely states the rule:

> 'Direct taxes, when laid by congress, must be apportioned among the several states according to the representative population. The term 'direct taxes,' as employed in the constitution, has a technical meaning, and embraces capitation and land taxes only.'

Miller on the Constitution (section 282a) thus puts it:

> 'Under the provisions already quoted, the question then came up as to what is a 'direct tax,' and also upon what property it is to be levied, as distinguished from any other tax. In regard to this it is sufficient to say that it is believed that no other than a capitation tax of so much per head and a land tax is a 'direct tax,' [157 U.S. 429, 623] within the meaning of the constitution of the United States. All other taxes, except imposts, are properly called 'excise taxes.' 'Direct taxes,' within the meaning of the constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate.'

In Pomeroy's Constitutional Law (section 281) we read as follows:

I t becomes necessary, therefore, to inquire a little more particularly what are direct and what indurect taxes. Few cases on the general question of taxation have arisen and been decided by the supreme court, for the simple reason that, until the past few years, the United States has generally been able to obtain all needful revenue from the single source of duties upon imports. There can be no doubt, however, that all the taxes provided for in the internal revenue acts now and what indirect taxes. Few cases on the

> 'This subject came before the supreme court of the United States in a very early case,-Hylton v. U. S. In the year 1794, congress laid a tax of ten dollars on all carriages, and the rate was thus made uniform. The validity of the statute was disputed. It was claimed that the tax was direct, and should have been apportioned among the states. The court decided that this tax was not direct. The reasons given for the decision are unanswerable, and would seem to cover all the provisions of the present internal revenue laws.'

Hare, in his treatise on American Constitutional Law (pages 249, 250), is to the like affect:

> 'Agreeably to section 9 of article 1, paragraph 4, 'no capitation or other direct tax shall be laid except in proportion to the census or enumeration hereinbefore directed to be taken'; while section 3 of the same article requires that representation and direct taxes shall be apportioned among the several states ... according to their respective numbers. 'Direct taxes,' in the sense of the constitution, are poll taxes and taxes on land.'

Burroughs on Taxation (page 502) takes the same view:

> 'Direct Taxes. The kinds of taxation authorized are both direct and indirect. The construction given to the expression 'direct taxes' is that it included only a tax on land and a poll [157 U.S. 429, 624] tax, and this is in accord with the views of writers upon political economy.'

Ordroneaux, in his Constitutional Legislation (page 225), says:

> 'Congress having been given the power 'to lay and collect taxes, duties, imposts, and excises,' the above three provisions are limitations upon the exercise of this authority:
>
> '(1) By distinguishing between direct and indirect taxes as to their mode of assessment;
>
> '(2) By establishing a permanent freedom of trade between the states; and
>
> '(3) By prohibiting any discrimination in favor of particular states, through revenue laws establishing a preference between their ports and those of others.
>
> 'These provisions should be read together, because they are at the foundation of our system of national taxation.
>
> 'The two rules prescribed for the government of congress in laying taxes are those of apportionment for direct taxes and uniformity for indirect. In the first class are to be found capitation or poll taxes and taxes on land; in the second, duties, imposts, and excises.
>
> 'The provision relating to capitation taxes was made in favor of the Southern states, and for the protection of slave property. While they possessed a large number of persons of this class, they

> also had extensive tracts of sparsely settled and unproductive lands. At the same time an opposite condition, both as to land territory and population, existed in a majority of the other states. Were congress permitted to tax slaves and land in all parts of the country at a uniform rate, the Southern slave states must have been placed at a great disadvantage. Hence, and to guard against this inequality of circumstances, there was introduced into the constitution the further provision that 'representatives and direct taxes shall be apportioned among the states according to their respective numbers.' This changed the basis of direct taxation from a strictly monetary standard, which could not, equitably, be made uniform throughout the country, to one resting upon population as the measure of representation. But for this congress might have taxed slaves arbitrarily, and [157 U.S. 429, 625] at its pleasure, as so much property, and land uniformly throughou the Union, regardless of differences in productiveness. It is not strange, therefore, that it Hylton v. U. S. the court said that: 'The rule of apportionment is radically wrong, and cannot be supported by and solid reasoning. It ought not, therefore, to be extended by construction. Apportionment is an operation on states, and involves valuations and assessments which are arbitrary, and should not be resorted to but in case of necessity.'
>
> 'Direct taxes being now well settled in their meaning, a tax on carriages left for the use of the owner is not a capitation tax; nor a tax on the business of an insurance company; nor a tax on a bank's circulation; nor a tax on income; nor a succession tax. The foregoing are not, properly speaking, direct taxes within the meaning of the constitution, but excise taxes or duties.'

Black, writing on Constitutional Law, says:

> 'But the chief difficulty has arisen in determining what is the difference between direct taxes and such as are indirect. In general usage, and according to the terminology of political economy, a direct tax is one which is levied upon the person who is to pay it, or upon his land or personalty, or his business or income, as the case may be. An indirect tax is one assessed upon the manufacturer or dealer in the particular commodity, and paid by him, but which really falls upon the consumer, since it is added to the market price of the commodity which he must pay. But the course of judicial decision has determined that the term 'direct,' as here applied to taxes, is to be taken in a more restricted sense. The supreme court has ruled that only land taxes and capitation taxes are 'direct,' and no others. In 1794 congress levied a tax of ten dollars on all carriages kept for use, and it was held that this was not a direct tax. And so also an income tax is not to be considered direct. Neither is a tax on the circulation of state banks, nor a succession tax, imposed upon every 'devolution of title to real estate." Op. cit. p. 162.

Not only have the other departments of the government accepted the significance attached to the word 'direct' in the [157 U.S. 429, 626] Hylton Case by their actions as to direct taxes, but they have also relied on it as conclusive in their dealings with indirect taxes by levying them solely upon objects which the judges in that case declared were not objects of direct taxation. Thus the affirmance by the federal legislature and executive of the doctrine established as a result of the Hylton Case has been twofold.

From 1861 to 1870 many laws levying taxes on income were enacted, as follows: Act Aug. 1861 (12 Stat. 309, 311); Act July, 1862 (12 Stat. 473, 475); Act March, 1863 (12 Stat. 718, 723); Act June, 1864 (13 Stat. 281, 285); Act March, 1865 (13 Stat. 479, 481); Act March, 1866 (14 Stat. 4, 5); Act July, 1866 (14 Stat. 137-140); Act March, 1867 (14 Stat. 477-480); Act July, 1870 (16 Stat. 256-261).

The statutes above referred to cover all income and every conceivable source of revenue from which it could result,-rentals from real estate, products of personal property, the profits of business or professions.

The validity of these laws has been tested before this court. The first case on the subject was that of Insurance Co. v. Soule, 7 Wall. 443. The controversy in that case arose under the ninth section of the act of July 13, 1866 (14 Stat. 137, 140), which imposed a tax on 'all dividends in scrip and money, thereafter declared due, wherever and whenever ths same shall be payable, to stockholders, policy holders, or depositors or parties whatsoever, including non-residents whether citizens or aliens, as part of the earnings, incomes or gains of any bank, trust company, savings institution, and of any fire, marine, life, or inland insurance company, either stock or mutual, under whatever name or style known or called in the United States or territories, whether specially incorporated or existing under general laws, and on all undistributed sum or sums made or added during the year to their surpu or contingent funds.'

It will be seen that the tax imposed was levied on the income of insurance companies as a unit, including every possible [157 U.S. 429, 627] source of revenue, whether from personal or real property, from business gains or otherwise. The case was presented here on a certificate of division of opinion below. One of the questions propounded was 'whether the taxes paid by the plaintiff and sought to be recovered in this action are not direct taxes, within the meaning of the constitution of the United States.' The issue, therefore, necessarily brought before this court was whether an act imposing an income tax on every possible source of revenue was valid or invalid. The case was carefully, ably, elaborately, and learnedly argued. The brief on behalf of the company, filed by Mr. Wills, was supported by another, signed by Mr. W. O. Bartlett, which covered every aspect of the contention. It rested the weight of its argument against the statute on the fact that it included the rents of real estate among the sources of income taxed, and therefore put a direct tax upon the land. Able as have been the arguments at bar in the present case, an examination of those then presented will disclose the fact that every view here urged was there pressed upon the court with the greatest ability, and after exhaustive research, equaled, but not surpassed, by the eloquence and learning which has accompanied the presentation of this case. Indeed, it may be said that the principal authorities cited and relied on now can be found in the arguments which were then submitted. It may be added that the case on behalf of the government was presented by Attorney General Evarts.

The court answered all the contentions by deciding the generic question of the validity of the tax, thus passing necessarily upon every issue raised, as the whole necessarily includes every one of its parts. I quote the reasoning applicable to the matter now in hand:

> 'The sixth question is: 'Whether the taxes paid by the plaintiff, and sought to be recovered back in this action, are not direct taxes, within the meaning of the constitution of the United States.' In considering this subject it is proper to advert to the several provisions of the constitution relating to taxation by congress. 'Representatives and direct taxes shall be apportioned among the several states which shall be in- [157 U.S. 429, 628] cluded in this Union according to their respective numbers,' etc. 'Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.' 'No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.' 'No tax or duty shall be laid on articles exported from any state.'
>
> 'These clauses contain the entire grant of the taxing power by the organic law, with the limitations which that instrument imposes.
>
> 'The national government, though supreme within its own sphere, is one of limited jurisdiction and specific functions. It has no faculties but such as the constitution has given it, either expressly or incidentally by necessary intendment. Whenever any act done under its authority is challenged,

the proper sanction must be found in its charter, or the act is ultra vires and void. This test must be applied in the examination of the question before us. If the tax to which it refers is a 'direct tax,' it is clear that it has not been laid in conformity to the requirements of the constitution. It is therefore necessary to asscertain to which of the categories named in the eighth section of the first article it belongs.

'What are direct taxes was elaborately argued and considered by this court in Hylton v. U. S., decided in the year 1796. One of the members of the court (Justice Wilson) had been a distinguished member of the convention which framed the constituto n. It was unanimously held by the four justices who heard the argument that a tax upon carriages kept by the owner for his own use was not a direct tax. Justice Chase said: 'I am inclined to think-but of this I do not give a judicial opinion-that the direct taxes contemplated by the constitution are only two, to wit, a capitation or poll tax simply, without regard to property, profession, or any other circumstances, and a tax on land.' Paterson, J., followed in the same line of remark. He said: 'I never entertained a doubt that the principal (I will not say [157 U.S. 429, 629] the only) object the framers of the constitution contemplated as falling within the rule of apportionment was a capitation tax or a tax on land . ... The constitution declares that a capitation tax is a direct tax, and both in theory and practice a tax on land is deemed to be a direct tax. In this way the terms 'direct taxes' 'capitation and other direct tax' are satisfied.'

'The views expressed in this case are adopted by Chancellor Kent and Justice Story in their examination of the subject. 'Duties' are defined by Tomlin to be things due and recoverable by law. The term, in its widest signification, is hardly less comprehensive than 'taxes.' It is applied, in its most restricted meaning, to customs; and in that sense is nearly the synonym of 'imposts.'

"Impost' is a duty on imported goods and merchandise. In a larger sense, it is any tax or imposition. Cowell says it is distinguished from 'custom,' 'because custom is rather the profit which the prince makes on goods shipped out.' Mr. Madison considered the terms 'duties' and 'imposts' in these clauses as synonymous. Judge Tucker thought 'they were probably intended to comprehend every species of tax or contribution not included under the ordinary terms 'taxes' and 'excises."

"Excise' is defined to be an inland imposition, sometimes upon the consumption of the commodity, and sometimes upon the retail sale; sometimes upon the manufacturer, and sometimes upon the vendor.

'The taxing power is given in the most comprehensive terms. The only limitations imposed are that direct taxes, including the capitation tax, shall be apportioned; that duties, imposts, and excises shall be uniform; and that no duties shall be imposed upon articles exported from any state. With these exceptions, the exercise of the power is, in all respects, unfettered.

'If a tax upon carriages, kept for his own use by the owner, is not a direct tax, we can see no ground upon which a tax upon the business of an insurance company can be held to belong to that class of revenue charges.

'It has been held that congress may require direct taxes to [157 U.S. 429, 630] be laid and collected in the territories as well as in the states.

'The consequences which would follow the apportionment of the tax in question among the states and territories of the Union in the manner prescribed by the constitution must not be overlooked.

> They are very obvious. Where such corporations are numerous and rich, it might be light; where none exist, it could not be collected; where they are few and poor, it would fall upon them with such weight as to involve annihilation. It cannot be supposed that the framers of the constitution intended that any tax should be apportioned, the collection of which on that principle would be attended with such results. The consequences are fatal to the proposition.
>
> 'To the question under consideration it must be answered that the tax to which it relates is not a direct tax, but a duty or excise; that it was obligatory on the plaintiff to pay it.
>
> 'The other questions certified up are deemed to be sufficiently answered by the answers given to the first and sixth questions.'

This opinion, it seems to me, closes the door to discussion in regard to the meaning of the word 'direct' in the constitution, and renders unnecessary a resort to the conflicting opinions of the framers, or to the theories of the economists. It adopts that construction of the word which confines it to capitation taxesa nd a tax on land, and necessarily rejects the contention that that word was to be construed in accordance with the economic theory of shifting a tax from the shoulders of the person upon whom it was immediately levied to those of some other person. This decision moreover, is of great importance, because it is an authoritative reaffirmance of the Hylton Case, and an approval of the suggestions there made by the justices, and constitutes another sanction given by this court to the interpretation of the constitution adopted by the legislative, executive, and judicial departments of the government, and thereafter continuously acted upon.

Not long thereafter, in Bank v. Fenno, & Wall. 533, the question of the application of the word 'direct' was again submitted to this court. The issue there was whether a tax on the circulation of state banks was 'direct,' within [157 U.S. 429, 631] the meaning of the constitution. It was ably argued by the most distinguished counsel, Reverdy Johnson and Caleb Cushing representing the bank, and Attorney General Hoar, the United States. The brief of Mr. Cushing again presented nearly every point now urged upon our consideration. It cited copiously from the opinions of Adam Smith and others. The constitutionality of the tax was maintained by the government on the ground that the meaning of the word direct' in the constitution, as interpreted by the Hylton Case, as enforced by the continuous legislative construction, and as sanctioned by the consensus of opinion already referred to, was finally settled. Those who assailed the tax there urged, as is done here, that the Hylton Case was not conclusive, because the only question decided was the particular matter at issue, and insisted that the suggestions of the judges were mere dicta, and not to be followed. They said that Hylton v. U. S. adjudged one point alone, which was that a tax on a carriage was not a direct tax, and that from the utterances of the judges in the case it was obvious that the general question of what was a direct tax was but crudely considered. Thus the argument there presented to this court the very view of the Hylton Case, which has been reiterated in the argument here, and which is sustained now. What did this court say then, speaking through Chief Justice Chase, as to these arguments? I take very fully from its opinion:

> 'Much diversity of opinion has always prevailed upon the question, what are direct taxes? Attempts to answer it by reference to the definitions of political economists have been frequently made, but without satisfactory results. The enumeration of the different kinds of taxes which congress was authorized to impose was probably made with very little reference to their speculations. The great work of Adam Smith, the first comprehensive treatise on political economy in the English language, had then been recently published; but in this work, though there are passages which refer to the characteristic difference between direct and indirect taxation, there is nothing which affords any valuable light on the use of the words 'direct taxes,' in

the constitution. [157 U.S. 429, 632] 'We are obliged, therefore, to resort to historical evidence, and to seek the meaning of the words in the use and in the opinion of those whose relations to the government, and means of knowledge, warranted them in speaking with authority.

'And, considered in this light, the meaning and application of the rule, as to direct taxes, appears to us quite clear.

'It is, as we think, distinctly shown in every act of congress on the subject.

'In each of these acts a gross sum was laid upon the United States, and the total amount was apportioned to the several states according to their respective numbers of inhabitants, as ascertained by the last preceding census. Having been apportioned, provision was made for the imposition of the tax upon the subjects specified in the act, fixing its total sum.

'In 1798, when the first direct tax was imposed, the total amount was fixed at two millions of dl lars; in 1813, the amount of the second direct tax was fixed at three millions; in 1815, the amount of the third at six millions, and it was made an annual tax; in 1816, the provision making the tax annual was repealed by the repeal of the first section of the act of 1815, and the total amount was fixed for that year at three millions of dollars. No other direct tax was imposed until 1861, when a direct tax of twenty millions of dollars was laid, and made annual; but the provision making it annual was suspended, and no tax, except that first laid, was ever apportioned. In each instance the total sum was apportioned among the states by the constitutional rule, and was assessed at prescribed rates on the subjects of the tax. The subjects, in 1798, 1813, 1815, 1816, were lands, improvements, dwelling houses, and slaves; and in 1861, lands, improvements, and dwelling houses only. Under the act of 1798, slaves were assessed at fifty cents on each; under the other acts, according to valuation by assessors.

'This review shows that personal property, contracts, occupations, and the like, have never been regarded by congress as proper subjects of direct tax. It has been supposed that slaves must be considered as an exception to this observation. But the exception is rather apparent than real. As persons, slaves [157 U.S. 429, 633] were proper subjects of a capitation tax, which is described in the constitution as a direct tax; as property, they were, by the laws of some, if not most, of the states, classed as real property, descendible to heirs. Under the first view, they would be subject to the tax of 1798, as a capitation tax; under the latter, they would be subject to the taxation of the other years, as realty. That the latter view was that taken by the framers of the acts, after 1798, becomes highly probable, when it is considered that, in the states where slaves were held, much of the value which would otherwise have attached to land passed into the slaves. If, indeed, the land only had been valued without the slaves, the land would have been subject to much heavier proportional imposition in those states than in states where there were no slaves; for the proportion of tax imposed on each state was determined by population, without reference to the subjects on which it was to be assessed.

'The fact, then, that slaves were valued, under the acts referred to, for from showing, as some have supposed, that congress regarded personal property as a proper object of direct taxation, under the constitution, shows only that congress, after 1798, regarded slaves, for the purposes of taxation, as realty.

'It may be rightly affirmed, therefore, that, in the practical construction of the constitution by congress, direct taxes have been limited to taxes on land and appurtenances, and taxes on polls, or capitation taxes.

> 'And this construction is entitled to great consideration, especially in the absence of anything adverse to it in the discussions of the convention which framed, and of the conventions which ratified, the constitution. ...
>
> 'This view received the sanction of this bourt two years before the enactment of the first law imposing direct taxes eo nomine.'

The court then reviews the Hylton Case, repudiates the attack made upon it, reaffirms the construction placed on it by the legislative, executive, and judicial departments, and Company Case, to which I have referred. expressly adheres to the ruling in the insurance Company Case, to whichI have referred. Summing up, it said: [157 U.S. 429, 634] 'It follows necessarily that the power to tax without apportionment extends to all other objects. Taxes on other objects are included under the heads of taxes not direct, duties, imposts, and excises, and must be laid and collected by the rule of uniformity. The tax under consideration is a tax on bank circulation, and may very well be classed under the head of duties. Certainly it is not, in the sense of the constitution, a direct tax. It may be said to come within the same category f taxation as the tax on incomes of insurance companies, which this court, at the last term, in the case of Insurance Co. v. Soule, held not to be a direct tax.'

This case was, so far as the question of direct taxation is concerned, decided by an undivided court; for, although Mr. Justice Nelson dissented from the opinion, it was not on the ground that the tax was a direct tax, but on another question.

Some years after this decision the matter again came here for adjudication, in the case of Scholey v. Rew, 23 Wall. 331. The issue there involved was the validity of a tax placed by a United States statute on the right to take real estate by inheritance. The collection of the tax was resisted on the ground that it was direct. The brief expressly urged this contention, and said the tax in question was a tax on land, if ever there was one. It discussed the Hylton Case, referred to the language used by the various judges, and sought to place upon it the construction which we are now urged to give it, and which has been so often rejected by this court.

This court again by its unanimous judgment answered all these contentions. I quote its language:

> 'Support to the first objection is attempted to be drawn from that clause of the constitution which provides that direct taxes shall be apportioned among the several states which may be included within the Union, according to their respective numbers, and also from the clause which provides that no capitation or other direct tax shall be laid, unless in proportion to the census or amended enumeration; but it is clear that the tax or duty levied by the act under consideration is not a direct tax, within the meaning of either of those [157 U.S. 429, 635] provisions. Instead of that, it is plainly an excise tax or duty, authorized by section 8 of article 1, whih vests the power in congress to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare. ...
>
> 'Indirect taxes, such as duties of impost and excises, and every other description of the same, must be uniform; and direct taxes must be laid in proportion to the census or enumeration, as remodeled in the fourteenth amendment. Taxes on lands, houses, and other permanent real estate have always been deemed to be direct taxes, and capitation taxes, by the express words of the constitution, are within the same category; but it never has been decided that any other legal exactions for the support of the federal government fall within the condition that, unless laid in proportion to numbers, that the assessment is invalid.

> 'Whether direct taxes, in the sense of the constitution, comprehend any other tax than a capitation tax and a tax on land, is a question not absolutely decided, nor is it necessary to determine it in the present case, as it is expressly decided that the term does not include the tax on income, which cannot be distinguished in principle from a succession tax, such as the one involved in the present controversy.'

What language could more clearly and forcibly reaffirm the previous rulings of the court upon this subject? What stronger indorsement could be given to the construction of the constitution which had been given in the Hylton Case, and which had been adopted and adhered to by all branches of the government almost from the hour of its establishment? It is worthy of note that the court here treated the decision in the Hylton Case as conveying the view that the only direct taxes were 'taxes on land and appurtenances.' In so doing it necessarily again adopted the suggestion of the justices there made, thus making them the adjudged conclusions of this court. It is too late now to destroy the force of the opinions in that case by qualifying them as mere dicta, when they have again and again been expressly approved by this court.

If there were left a doubt as to what this established con- [157 U.S. 429, 636] struction is, it seems to be entirely removed by the case of Springer v. U. S., 102 U.S. 586 . Springer was assessed fr an income tax on his professional earnings and on the interest on United States bonds. He declined to pay. His real estate was sold in consequence. The suit involved the validity of the tax, as a basis for the sale. Again every question now presented was urged upon this court. The brief of the plaintiff in error, Springer, made the most copious references to the economic writers, continental and English. It cited the opinions of the framers of the constitution. It contained extracts from the journals of the convention, and marshaled the authorities in extensive and impressive array. It reiterated the argument against the validity of an income tax which included rentals. It is also asserted that the Hylton Case was not authority, because the expressions of the judges, in regard to anything except the carriage tax, were mere dicta.

The court adhered to the ruling announced in the previous cases, and held that the tax was not direct, within the meaning of the constitution. It re-examined and answered everything advanced here, and said, in summing up the case:

> 'Our conclusions are that direct taxes, within the meaning of the constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate; and that the tax of which the plaintiff in error complained is within the category of an excise or duty.'

The facts, then, are briefly these: At the very birth of the government a contention arose as to the meaning of the word 'direct.' That controversy was determined by the legislative and executive departments of the government. Their action came to this court for review, and it was approved. Every judge of this court who expressed an opinion made use of language which clearly showed that he thought the word 'direct,' in the constitution, applied only to capitation taxes and taxes directly on land. Thereafter the construction thus given was accepted everywhere as definitive. The matter came again and again to this court, and in every case the original ruling was adhered to. The suggestions made in the Hylton Case were adopted here, and [157 U.S. 429, 637] in the last case here decided, reviewing all the others, this court said that direct taxes, within the meaning of the constitution, were only taxes on land, and capitation taxes. And now, after a hundred years, after long- continued action by other departments of the government, and after repeated adjudications of this court, this interpretation is overthrown, and the congress is declared not to have a power of taxation which may at some time, as it has in the past, prove necessary to the very existence of the government. By what process of reasoning is this to be done? By resort to theories, in order to construe the word 'direct' in its economic sense,

instead of in accordance with its meaning in the constitution, when the very result of the history which I have thus briefly recounted is to show that the economic construction of the word was repudiated by the framers themselves, and has been time and time again rejected by this court; by a resort to the language of the framers and a review of their opinions, although the facts plainly show that they themselves settled the question which the court now virtually unsettles. In view of all that has taken place, and of the many decisions of this court, the matter at issue here ought to be regarded as closed forever.

The injustice and harm which must always result from overthrowing a long and settled practice sanctioned by the decisions of this court could not be better illustrated than by the example which this case affords. Under the income-tax laws which prevailed in the past for many years, and which covered every conceivable source of income,-rentals from real estate,- and everything else, vast sums were collected from the people of the United States. The decision here rendered announces that those sums were wrongfully taken, and thereby, it seems to me, creates a claim, in equity and good conscience, against the government for an enormous amount of money. Thus, form the change of view by this court, it happens that an act of congress, passed for the purpose of raising revenue, in strict conformity with the practice of the government from the earliest time, and in accordance with the oft-repeated decisions of this court, furnishes the [157 U.S. 429, 638] occasion for creating a claim against the government for hundreds of millions of dollars. I say, creating a claim, because, if the government be in good conscience bound to refund that which has been taken from the citizen in violation of the constitution, although the technical right may have disappeared by lapse of time, or because the decisions of this court have misled the citizen to his grievous injury, the equity endures, and will present itself to the conscience of the government. This consequence shows how necessary it is that the court should not overthrow its past decisions. A distinguished writer aptly points out the wrong which must result to society from a shifting judicial interpretation. He says:

> 'If rules and maxims of law were to ebb and flow with the taste of the judge, or to assume that shape which, in his fancy, best becomes the times; if the decisions of one case were not to be ruled by or depend at all upon former determinations in other cases of a like nature,-I should be glad to know what person would venture to purchase an estate without first having the judgment of a court of justice respecting the identical title under which he means to purchase. No reliance could be had upon precedents. Former resolutions upon titles of the same kind could afford him no assurance at all. Nay, even a decision of a court of justice upon the very identical title would be nothing more than a precarious, temporary security. The practice upon which it was founded might, in the course of a few years, become antiquated. The same title might be again drawn into dispute. The taste and fashion of the times might be improved, and on that ground a future judge might hold himself at liberty, if not consider it his duty, to pay as little regard to the maxims and decisions of his predecessor as that predecessor did to the maxims and decisions of those who went before him.' Fearne, Rem. (London Ed. 1801) p. 264.

The disastrous consequences to flow from disregarding settled decisions, thus cogently described, must evidently become greatly magnified in a case like the present, when the opinion of the court affects fundamental principles of the government by denying an essential power of taxation [157 U.S. 429, 639] long conceded to exist, and often exerted by congress. If it was necessary that the previous decisions of this court should be repudiated, the power to amend the constitution existed, and should have been availed of. Since the Hylton Case was decided, the constitution has been repeatedly amended. The construction which confined the word 'direct' to capitation and land taxes was not changed by these amendments, and it should not now be reversed by what seems to me to be a judicial amendment of the constitution.

The finding of the court in this case that the inclusion of rentals from real estate in an income tax makes

it direct, to that extent, is, in my judgment, conclusively denied by the authorities to which I have referred, and which establish the validity of an income tax in itself. Hence, I submit, the decisions necessarily reverses the settled rule which it seemingly adopts in part. Can there be serious doubt that the question of the validity of an income tax, in which the rentals of real estate are included, is covered by the decisions which say that an income tax is generically indirect, and that, therefore, it is valid without apportionment? I mean, of course could there be any such doubt, were it not for the present opinion of the court? Before undertaking to answer this question I deem it necessary to consider some arguments advanced or suggestions made.

(1) The opinions of Turgot and Smith and other economists are cited, and it is said their views were known to the framers o the constitution, and we are then referred to the opinions of the framers themselves. The object of the collocation of these two sources of authority is to show that there was a concurrence between them as to the meaning of the word 'direct.' But, in order to reach this conclusion, we are compelled to overlook the fact that this court has always held, as appears from the preceding cases, that the opinions of the economists threw little or no light on the interpretation of the word 'direct,' as found in the constitution. And the whole effect of the decisions of this court is to establish the proposition that the word has a different significance in the constitution from that which Smith and Turgot have given to it when used in a general economic sense. Indeed, it seems to me [157 U.S. 429, 640] that the conclusion deduced from this line of thought itself demonstrates its own unsoundness. What is that conclusion? That the framers well understood the meaning of 'direct.'

Now, it seems evident that the framers, who well understood the meaning of this word, have themselves declared in the most positive way that it shall not be here construed in the sense of Smith and Turgot. The congress which passed the carriage tax act was composed largely of men who had participated in framing the constitution. That act was approved by Washington, who had presided over the deliberations of the convention. Certainly, Washington himself, and the majority of the framers, if they well understood the sense in which the word 'direct' was used, would have declined to adopt and approve a taxing act which clearly violated the provisions of the constitution, if the word 'direct,' as therein used, had the meaning which must be attached to it if read by the light of the theories of Turgot and Adam Smith. As has already been noted, all the judges who expressed opinions in the Hylton Case suggested that 'direct,' in the constitutional sense, referred only to taxes on land and capitation taxes. Could they have possible made this suggestion if the word had been used as Smith and Turgot used it? It is immaterial whether the suggestions of the judges were dicta or not. They could not certainly have made this intimation, if they understood the meaning of the word 'direct' as being that which it must have imported if construed according to the writers mentioned. Take the language of Mr. Justice Paterson, 'I never entertained a doubt that the principal, I will not say the only, objects that the framers of the constitution contemplated as falling within the rule of apportionment were a capitation tax and a tax on land.' He had borne a conspicuous part in the convention. Can we say that he understood the meaning of the framers, and yet, after the lapse of a hundred years, fritter away that language, uttered by him from this bench in the first great case in which this court was called upon to interpret the meaning of the word 'direct'? It cannot be said that his language was used carelessly, or without a knowledge of its great import. The debate upon the passage [157 U.S. 429, 641] of the carriage tax act had manifested divergence of opinion as to the meaning of the word 'direct.' The magnitude of the issue is shown by all contemporaneous authority to have been deeply felt, and its far-reaching consequence was appreciated. Those controversies came here for settlement, and were then determined with a full knowledge of the importance of the issues. They should not be now reopened.

The argument, then, it seems to me, reduces itself to this: That the framers well knew the meaning of the word 'direct'; that, so well understanding it, they practically interpreted it in such a way as to plainly indicate that it had a sense contrary to that now given to it, in the view adopted by the court. Although they thus comprehended the meaning of the word and interpreted it at an early day, their interpretation

is now to be overthrown by resorting to the economists whose construction was repudiated by them. It is thus demonstrable that the conclusion deduced from th premise that the framers well understood the meaning of the word 'direct' involves a fallacy; in other words, that it draws a faulty conclusion, even if the predicate upon which the conclusion is rested be fully admitted. But I do not admit the premise. The views of the framers, cited in the argument, conclusively show that they did not well understand, but were in great doubt as to, the meaning of the word 'direct.' The use of the word was the result of a compromise. It was accepted as the solution of a difficulty which threatened to frustrate the hopes of those who looked upon the formation of a new government as absolutely necessary to escape the condition of weakness which the articles of confederation had shown. Those who accepted the compromise viewed the word in different lights, and expected different results to flow from its adoption. This was the natural result of the struggle which was terminated by the adoption of the provision as to representation and direct taxes. That warfare of opinion had been engendered by the existence of slavery in some of the states, and was the consequence of the conflict of interest thus brought about. In reaching a settlement, the minds of those who acted on it were naturally concerned in the main with the cause of the [157 U.S. 429, 642] contention, and not with the other things which had been previously settled by the convention. Thus, while there was, in all probability, clearness of vision as to the meaning of the word 'direct,' in relation to its bearing on slave property, there was inattention in regard to other things, and there were therefore diverse opinions as to its proper signification. That such was the case in regard to many other clauses of the constitution has been shown to be the case by those great controversies of the past, which have been peacefully settled by the adjudications of this court. While this difference undoubtedly existed as to the effect to be given the word 'direct,' the consensus of the majority of the framers as to its meaning was shown by the passage of the carriage tax act. That consensus found adequate expression in the opinions of the justices in the Hylton Case, and in the decree of this court there rendered. The passage of that act, those opinions, and that decree, settled the proposition that the word applied only to capitation taxes and taxes on land.

Nor does the fact that there was difference in the minds of the framers as to the meaning of the word 'direct' weaken the binding force of the interpretation placed upon that word from the beginning; for, if such difference existed, it is certainly sound to hold that a contemporaneous solution of a doubtful question, which has been often confirmed by this court, should not now be reversed. The framers of the constitution, the members of the earliest congress, the illustrious man first called to the office of chief executive, the jurists who first sat in this court, two of whom had borne a great part in the labors of the convention, all of whom dealt with this doubtful question, surely occupied a higher vantage ground for its correct solution than do those of our day. Here, then, is the dilemma: If the framers understood the meaning of the word 'direct' in the constitution, the practical effect which they gave to it should remain undisturbed; if they were in doubt as to the meaning, the interpretation long since authoritatively affixed to it should be upheld.

(2) Nor do I think any light is thrown upon the question of whether the tax here under consideration is direct or indi- [157 U.S. 429, 643] rect by referring to the principle of 'taxation without representation,' and the great struggle of our forefathers for its enforcement. It cannot be said that the congress which passed this act was not the representative body fixed by the constitution. Nor can it be contended that the struggle for the enforcement of the principle involved the contention that representation should be in exact proportion to the wealth taxed. If the argument be used in order to draw h e inference that because, in this instance, the indirect tax imposed will operate differently through various sections of the country, therefore that tax should be treated as direct, it seems to me it is unsound. The right to tax, and not the effects which may follow from its lawful exercise, is the only judicial question which this court is called upon to consider. If an indirect tax, which the constitution has not subjected to the rule of apportionment, is to be held to be a direct tax, because it will bear upon aggregations of property in different sections of the country according to the extent of such aggregations, then the power is denied to congress to do that which the constitution authorizes because the exercise of a lawful power is

supposed to work out a result which, in the opinion of the court, was not contemplated by the fathers. If this be sound, then every question which has been determined in our past history is now still open for judicial reconstruction. The justness of tariff legislation has turned upon the assertion on the one hand, denied on the other, that it operated unequally on the inhabitants of different sections of the country. Those who opposed such legislation have always contended that its necessary effect was not only to put the whole burden upon the section, but also to directly enrich certain of our citizens at the expense of the rest, and thus build up great fortunes, to the benefit of the few and the detriment of the many. Whether this economic contention be true or untrue is not the question. Of course, I intimate no view on the subject. Will it be said that if, to- morrow, the personnel of this court should be changed, it could deny the power to enact tariff legislation which has been admitted to exist in congress from the beginning, upon the ground that such legislation beneficially affects one section or set of people [157 U.S. 429, 644] to the detriment of others, within the spirit of the constitution, and therefore constitutes a direct tax?

(3) Nor, in my judgment, does any force result from the argument that the framers expected direct taxes to be rarely resorted to, and, as the present tax was imposed without public necessity, it should be declared void.

It seems to me that this statement begs the whole question, for it assumes that the act now before us levies a direct tax, whereas the question whether the tax is direct or not is the very issue involved in this case. If congress now deems it advisable to resort to certain forms of indirect taxation which have been frequently, though not continuously, availed of in the past, I cannot see that its so doing affords any reason for converting an indirect into a direct tax in order to nullify the legislative will. The policy of any particular method of taxation, or the presence of an exigency which requires its adoption, is a purely legislative question. It seems to me that it violates the elementary distinction between the two departments of the government to allow an opinion of this court upon the necessity or expediency of a tax to affect or control our determination of the existence of the power to impose it.

But I pass from these considerations to approach the question whether the inclusion of rentals from real estate in an income tax renders such a tax to that extent 'direct' under the constitution, because it constitutes the imposition of a direct tax on the land itself.

Does the inclusion of the rentals from real estate in the sum going to make up the aggregate income from which (in order to arrive at taxable income) is to be deducted insurance, repairs, losses in business, and $4, 000 exemption, make the tax on income so ascertained a direct tax on such real estate?

In answering this question, we must necessarily accept the interpretation of the word 'direct' authoritatively given by the history of the government and the decisions of this court just cited. To adopt that interpretation for the general purposes of an income tax, and then repudiate it because of one of the elements of wi ch it is composed, would violate every [157 U.S. 429, 645] elementary rule of construction. So, also, to seemingly accept that interpretation, and then resort to the framers and the economists in order to limit its application and give it a different significance, is equivalent to its destruction, and amounts to repudiating it without directly doing so. Under the settled interpretation of the word, we ascertain whether a tax be 'direct' or not by considering whether it is a tax on land or a capitation tax. And the tax on land, to be within the provision for apportionment, must be direct. Therefore we have two things to take into account: Is it a tax on land, and is it direct thereon, or so immediately on the land as to be equivalent to a direct levy upon it? To say that any burden on land, even though indirect, must be apportioned, is not only to incorporate a new provision in the constitution, but is also to obliterate all the decisions to which I have referred, by construing them as holding that, although the constitution forbids only a direct tax on land without apportionment, it must

be so interpreted as to bring an indirect tax on land within its inhibition.

It is said that a tax on the rentals is a tax on the land, as if the act here under consideration imposed an immediate tax on the rentals. This statement, I submit, is a misconception of the issue. The point involved is whether a tax on net income, when such income is made up by aggregating all sources of revenue and deducting repairs, insurance, losses in business, exemptions, etc., becomes, to the extent to which real-estate revenues may have entered into the gross income, a direct tax on the land itself. In other words, does that which reaches an income, and thereby reaches rentals indirectly, and reaches the land by a double indirection, amount to a direct levy on the land itself? It seems to me the question, when thus accurately stated, furnishes its own negative response, Indeed, I do not see how the issue can be stated precisely and logically without making it apparent on its face that the inclusion of rental from real property in income is nothing more than an indirect tax upon the land.

It must be borne in mind that we are not dealing with the want of power in congress to assess real estate at all. On [157 U.S. 429, 646] the contrary, as I have shown at the outset, congress has plenary power to reach real estate, both directly and indirectly. If it taxes real estate directly, the constitution commands that such direct imposition shall be apportioned. But because an excise or other indirect tax, imposed without apportionment, has an indirect effect upon real estate, no violation of the constitution is committed, because the constitution has left congress untrammeled by any rule of apportionment as to indirect taxes,-imposts, duties, and excises. The opinions in the Hylton Case, so often approved and reiterated, the unanimous views of the text writers, all show that a tax on land, to be direct, must be an assessment of the land itself, either by quantity or valuation. Here there is no such assessment. It is well also to bear in mind, in considering whether the tax is direct on the land, the fact that if land yields no rental it contributes nothing to the income. If it is vacant, the law does not force the owner to add the rental value to his taxable income. And so it is if he occupies it himself.

The citation made by counsel from Coke on Littleton, upon which so much stress is laid, seems to me to have no relevancy. The fact that where one delivers or agrees to give or transfer land, with all the fruits and revenues, it will be presumed to be a conveyance of the land, in no way supports the proposition that an indirect tax on the rental of land is a direct burden on the land itself. $Nor can I see the application of Brown v. Maryland; Western v. Peters; Dobbins v. Commissioners; Almy v. California; Cook v. Pennsylvania; Railroad Co. v. Jackson; Philadelphia & S. S. S. Co. v. Pennsylvania; Leloup v. Mobile; Telegraph Co. v. Adams. All thee cases involved the question whether, under the constitution, if no power existed to tax at all, either directly or indirectly, an indirect tax would be unconstitutional. These cases would be apposite to this is congress had no power to tax real estate. Were such the case, it might be that the imposition of an excise by congress which reached real estate indirectly would [157 U.S. 429, 647] necessarily violate the constitution, because, as it had no power in the premises, every attempt to tax, directly or indirectly, would be null. Here, on the contrary, it is not denied that the power to tax exists in congress, but the question is, is the tax direct or indirect, in the constitutional sense?

But it is unnecessary to follow the argument further; for, if I understand the opinions of this court already referred to, they absolutely settle the proposition that an inclusion of the rentals of real estate in an income tax does not violate the constitution. At the risk of repetition, I propose to go over the cases again for the purpose of Demonstrating this. In doing so, let it be understood at the outset that I do not question the authority of Cohens v. Virginia or Carroll v. Carroll's Lessee or any other of the cases referred to in argument of counsel. These great opinions hold that an adjudication need not be extended beyond the principles which it decides. While conceding this, it is submitted that, if decided cases do directly, affirmatively, and necessarily, in principle, adjudicate the very question here involved, then, under the very text of the opinions referred to by the court, they should conclude this question. In the first case, that of Hylton, is there any possibility, by the subtlest ingenuity, to reconcile the decision

here announced with what was there established?

In the second case (Insurance Co. v. Soule) the levy was upon the company, its premiums, its dividends, and net gains from all sources. The case was certified to this court, and the statement made by the judges in explanation of the question which they propounded says:

> 'The amount of said premiums, dividends, and net gains were truly stated in said lists or returns.' Original Record, p. 27.

It will be thus seen that the issue there presented was not whether an income tax on business gains was valid, but whether an income tax on gains from business and all other net gains was constitutional. Under this state of facts, the question put to the court was--

> 'Whether the taxes paid by the plaintiff, and sought to be recovered back, in this action, are not direct taxes within the meaning of the constitution of the United States.' [157 U.S. 429, 648] This tax covered revenue of every possible nature, and it therefore appears self-evident that the court could not have upheld the statute without deciding that the income derived from realty, as well as that derived from every other source, might be taxed without apportionment. It is obvious that, if the court had considered that any particular subject- matter which the statute reached was not constitutionally included, it would have been obliged, by every rule of safe judicial conduct, to qualify its answer as to this particular subject.

It is impossible for me to conceive that the court did not embrace in its ruling the constitutionality of an income tax which included rentals from real estate, since, without passing upon that question, it could not have decided the issue presented. And another reason why it is logically impossible that this question of the validity of the inclusion of the rental of real estate in an income tax could have been overlooked by the court is found in the fact, to which I have already adverted, that this was one of the principal points urged upon its attention, and the argument covered all the ground which has been occupied here,-indeed, the very citation from Coke upon Littleton, now urged as conclusive, was there made also in the brief of counsel. And although the return of income, involved in that case, was made 'in block,' the vey fact that the burden of the argument was that to include rentals from real estate, in income subject to taxation, made such tax pro tanto direct, seems to me to indicate that such rentals had entered into the return made by the corporation.

Again, in the case of Scholey v. Rew, the tax in question was laid directly on the right to take real estate by inheritance,-a right which the United States had no power to control. The case could not have been decided, in any point of view, without holding a tax upon that right was not direct, and that, therefore, it could be levied without apportionment. It is manifest that the court could not have overlooked the question whether this was a direct tax on the land or not, because in the argument of counsel it was said, if there was any tax in the world that was a tax on real estate which was [157 U.S. 429, 649] direct, that was the one. The court said it was not, and sustained the law. I repeat that the tax there was put directly upon the right to inherit, which congress had no power to regulate or control. The case was therefore greatly stronger than that here presented, for congress has a right to tax real estate directly with apportionment. That decision cannot be explained away by saying that the court overlooked the fact that congress had no power to tax the devolution of real estate, and treated it as a tax on such devolution. Will it be said, of the distinguished men who then adorned this bench, that, although the argument was pressed upon them that this tax was levied directly on the real estate, they ignored the elementary principle that the control of the inheritance of realty is a state and not a federal function? But, even if the case proceeded upon the theory that the tax was on the devolution of the real estate, and was therefore not direct, is it not absolutely decisive of this controversy? If to put a burden of taxation on the

right to take real estate by inheritance reaches realty only by indirection, how can it be said that a tax on the income, the result of all sources of revenue, including rentals, after deducting losses and expenses, which thus reaches the rentals indirectly, and the real estate indirectly through the rentals, is a direct tax on the real estate itself?

So, it is manifest in the Springer Case that the same question was necessarily decided. It seems obvious that the court intended in that case to decide the whole question, including the right to tax rental from real estate without apportionment. It was elaborately and carefully argued there that as the law included the rentals of land in the income taxed, and such inclusion was unconstitutional, this, therefore, destroyed that part of the law which imposed the tax on the revenues of personal property. Will it be said, in view of the fact that in this very case four of the judges of this court think that the inclusion of the rentals from real estate in an income tax renders the whole law invalid, that the question of the inclusion of the rentals was of no moment there, because the return there did not contain a mention of such rentals? Were [157 U.S. 429, 650] the great judges who then composed this court so neglectful that they did not see the importance of a question which is now considered by some of its members so vital that the result in their opinion is to annul the whole law, more especially when that question was pressed upon the court in argument with all possible vigor and earnestness? But I think that the opinion in the Springer Case clearly shows that the court did consider this question of importance, that it did intend to pass upon it, and that it deemed that it had decided all the questions affecting the validity of an income tax in passing upon the main issue, which included the others as the greater includes the less.

I can discover no principle upon which these cases can be considered as any less conclusive of the right to include rentals of land in the concrete result, income, than they are as to the right to levy a general income tax. Cera inly, the decisions which hold that an income tax as such is not direct, decide on principle that to include the rentals of real estate in an income tax does not make it direct. If embracing rentals in income makes a tax on income to that extent a 'direct' tax on the land, then the same word, in the same sentence of the constitution, has two wholly distinct constitutional meanings, and signifies one thing when applied to an income tax generally, and a different thing when applied to the portion of such a tax made up in part of rentals. That is to say, the word means one thing when applied to the greater, and another when applied to the lesser, tax.

My inability to agree with the court in the conclusions which it has just expressed causes me much regret. Great as is my respect for any view by it announced, I cannot resist the conviction that its opinion and decree in this case virtually annul its previous decisions in regard to the powers of congress on the subject of taxation, and are therefore fraught with danger to the court, to each and every citizen, and to the republic. The conservation and orderly development of our institutions rest on our acceptance of the results of the past, and their use as lights to guide our steps in the future. Teach the lesson that settled principles may be overthrown [157 U.S. 429, 651] at any time, and confusion and turmoil must ultimately result. In the discharge of its function of interpreting the constitution this court exercises an august power. It sits removed from the contentions of political parties and the animosities of factions. It seems to me that the accomplishment of its lofty mission can only be secured by the stability of its teachings and the sanctity which surrounds them. If the permanency of its conclusions is to depend upon the personal opinions of those who, from time to time, may make up its membership, it will inevitably become a theater of political strife, and its action will be without coherence or consistency. There is no great principle of our constitutional law, such as the nature and extent of the commerce power, or the currency power, or other powers of the federal government, which has not been ultimately defined by the adjudications of this court after long and earnest struggle. If we are to go back to the original sources of our political system, or are to appeal to the writings of the economists in order to unsettle all these great principles, everything is lost, and nothing saved to the people. The rights of every individual are guarantied by the safeguards which have been thrown around them by our adjudications. If these are to be assailed and overthrown, as is the settled law of income taxation by this

opinion, as I understand it, the rights of property, so far as the federal constitution is concerned, are of little worth. My strong convictions forbid that I take part in a conclusion which seems to me so full of peril to the country. I am unwilling to do so, without reference to the question of what my personal opinion upon the subject might be if the question were a new one, and was thus unaffected by the action of the framers, the history of the government, and the long line of decisions by this court. The wisdom of our forefathers in adopting a written constitution has often been impeached upon the theory that the interpretation of a written instrument did not afford as complete protection to liberty as would be enjoyed under a constitution made up of the traditions of a free people. Writing, it has been said, does not insure greater stability than tradition does, while it [157 U.S. 429, 652] destroys flexibility. The answer has always been that by the foresight of the fathers the construction of our written constitution was ultimately confided to this body, which, from the nature of its judicial structure, could always be relied upon to act with perfect freedom from the influence of faction, and to preserve the benefits of consistent interpretation. The fundamental conception of a judicial body is that of one hedged about by precedentsw hich are binding on the court without regard to the personality of its members. Break down this belief in judicial continuity, and let it be felt that on great constitutional questions this court is to depart from the settled conclusions of its predecessors, and to determine them all according to the mere opinion of those who temporarily fill its bench, and our constitution will, in my judgment, be bereft of value, and become a most dangerous instrument to the rights and liberties of the people.

In regard to the right to include in an income tax the interest upon the bonds of municipal corporations, I think the decisions of this court, holding that the federal government is without power to tax the agencies of the state government, embrace such bonds, and that this settled line of authority is conclusive upon my judgment here. It determines the question that, where there is no power to tax for any purpose whatever, no direct or indirect tax can be imposed. The authorities cited in the opinion are decisive of this question. They are relevant to one case, and not to the other, because, in the one case, there is full power in the federal government to tax, the only controversy being whether the tax imposed is direct or indirect; while in the other there is no power whatever in the federal government, and therefore the levy, whether direct or indirect, is beyond the taxing power.

Mr. Justice HARLAN authorizes me to say that he concurs in the views herein expressed.

Mr. Justice HARLAN, dissenting.

I concur so entirely in the general views expressed by Mr. Justice WHITE in reference to the questions disposed of by the [157 U.S. 429, 653] opinion and judgment of the majority, that I will do no more than indicate, without argument, the conclusions reached by me after much consideration. Those conclusions are:

1. Giving due effect to the statutory provision that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court' (Rev. St. 3224), the decree below dismissing the bill should be affirmed. As the Farmers' Loan & Trust Company could not itself maintain a suit to restrain either the assessment or collection of the tax imposed by the act of congress, the maintenance of a suit by a stockholder to restrain that corporation and its directors from voluntarily paying such tax would tend to defeat the manifest object of the statute, and be an evasion of its provisions. Congress intended to forbid the issuing of any process that would interfere in any wise with the prompt collection of the taxes imposed. The present suits are mere devices to strike down a general revenue law by decrees, to which neither the government nor any officer of the United States could be rightfully made parties of record.

2. Upon principle, and under the doctrines announced by this court in numerous cases, a duty upon the

gains, profits, and income derived from the rents of land is not a 'direct' tax on such land within the meaning of the constitutional provisions requiring capitation or other direct taxes to be apportioned among the several states according to their respective numbers, determined in the mode prescribed by that instrument. Such a duty may be imposed by congress without apportioning the same among the states according to population.

3. While property, and the gains, profits, and income derived from property, belonging to private corporations and individuals, are subjects of taxation for the purpose of paying the debts and providing for the common defense and the general welfare of the United States, the instrumentalities employed by the states in execution of their powers are not subjects of taxation by the general government, any more than the instrumentalities of the United States are the subjects of taxation by the states; and any tax imposed directly upon interest derived from bonds issued by a municipal corporation [157 U.S. 429, 654] for public purposes, under the authority of the state whose instrumentality it is, is a burden upont he exercise of the powers of that corporation which only the state creating it may impose. In such a case it is immaterial to inquire whether the tax is, in its nature or by its operation, a direct or an indirect tax; for the instrumentalities of the states-among which, as is well settled, are municipal corporations, exercising powers and holding property for the benefit of the public-are not subjects of national taxation in any form or for any purpose, while the property of private corporations and of individuals is subject to taxation by the general government for national purposes. So it has been frequently adjudged, and the question is no longer an open one in this court.

Upon the several questions about which the members of this court are equally divided in opinion, I deem it appropriate to withhold any expression of my views, because the opinion of the chief justice is silent in regard to those questions. list or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return if he has reason to believe that the same is understated; and in case any such person having a taxable income shall neglect or refguse to make and render such list and return, or shall render a willfully false or fraudulent list or return, it shall be the duty of the collector or deputy collector, to make such list, according to the best information he can obtain, by the examination of such person, or any other evidence, and to add fifty per centum as a penalty to the amount of the tax due on such list in all cases of willful neglect or refusal to make and render a list or return; and in all cases of a willfully false or fraudulent list or return having been rendered to add one hundred per centum as a penalty to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of willful neglect or refusal to render a list or return, or of rendering a false or fraudulent return.' A provison was added that any person or corporation might show that he or its ward had no taxable income, or that the same had been paid elsewhere, and the collector might exempt from the tax for that year. 'Any person or company, corporation, or association feeling aggrieved by the decision of the deputy collector, in such cases may appeal toa the collector of the district, and his decision thereon, unless reversed by the commissioner of internal revenue, shall be final. If dissatishfied with the decision of the collector such person or corporation, company, or association may submit the case, with all the papers, to the commissioner of internal revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts having served notice to that effect upon the commissioner of internal revenue, as herein prescribed.' Provision was made for notice of time and place for taking testimony on both saides, and that no penalty should be assessed until after notice.

Footnotes

[Footnote 1] In this case, and in the case of Hyde v. Trust Co., 15 Sup. Ct. 717, petitions for rehearing were filed, upon which the following order was announced on April 23, 1895: 'It is ordered by the court that the consideration of the two petitions for rehearing in these cases be reserved until Monday, May

6th, next, when a full bench is expected, and in that event two counsel on a side will be heard at that time."

[Footnote 1] By sections 27-37 inclusive of the act of congress entitled 'An act to reduce taxation, to provide revenue for the government, and for other purposes,' received by the president August 15, 1894, and which, not having been returned by him to the house in which it originated within the time prescribed by the constitution of the United States, became a law without approval (28 Stat. 509, c. 349), it was provided that from and after January 1, 1895, and until January 1, 1900, 'there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, inter-

est, dividends, or salaries, or from any profession, trade, emploument, or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax of two per centum on the amount so derived over and above four thousand dollars, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States. ...

> 'Sec. 28. That in estimating the gains, profits, and income of any person there shall be included all income derived from interest upon notes, bonds, and other securities, except such bonds of the United States the principal and interest of which are by the law of their issuance exempt from all federal taxation; profits realized within the year from sales of real estate purchased within two years previous to the close of the year for which income is estimated; interest received or accrued upon all notes, bonds, mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectible, less the interest which has become due from said person or which has been paid by him during the year; the amount of all premium on bonds, notes, or couponds; the amount of sales of live stock, sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, and grain, or other vegetable or other productions, or other forms of indebtedness of the estate of such person, less the amount expended in the purchase or production of said stock or produce, and not including any part thereof consumed directly by the family; money and the value of all personal property acquired by gift or inheritance; all other gains, profits, and income derived from any source whatever except than portion of the salary, compensation, or pay received for services in the civil, military, naval, or other service of the United States, inclui ng senators, representatives, and delegates in congress, from which the tax has been deducted, and except that portion of any salary upon which the employer is required by law to withhold, and does withhold the tax and pays the same to the officer authorized to receive it. In computing incomes the necessary expenses actually incurred in carrying on any business, occupation, or profession shall be deducted and also all interest due or paid within the year by such person on existing indebtedness. And all national, state, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year shall be deducted from the gains, profits, or income of the person who has actually paid the same, whether such person be owner, tenant, or mortgagor; also losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated stated for by insurance or otherwise, and debts ascertained to be worthless, but excluding all estimated depreciation of values and losses within the year on sales of real estate purchased within two years previous to the year for which income is estimated: Provided, that no deduction shall be made for any amount paid out for new buildings, permanent im-

provements, or betterments, made to increase the value of any property or estate: provided further, that

only one deduction of four thousand dollars shall be made from the aggregate income of all the members of any family, composed of one or both parents, and one or more minor children, or husband and wife; that guardians shall be allowed to made a deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family and have joint property interests, the aggregate deduction in their favor shall not exceed four thousand dollars: and provided further, that in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of four thousand dollars ner annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid, and shall include that portion of any income or salary upon which a tax has not been paid by the employer, where the employer is required by law to pay on the excess over four thousand dollars: provided also, that in computing the income of any person, corporation, company, or association there shall not be included the amount received from any corporation, company, or association as dividends upon the stock of such corporation, company, or association if the tax of two per centum has been paid upon its net profits by said corporation, company, or association as required by this act.

> 'Sec. 29. That it shall be the duty of all persons of lawful age having an income of more than three thousand five hundred dollars for the taxable year, computed on the basis herein prescribed, to made and render a list or return, on or before the day provided by law, in such form and manner as may be directed by the commissioner of internal revenue, with the approval of the secreatary of the treasury, to the collector or a deputy collector of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, executors, administrators, agents, receivers, and all persons or corporations acting in any fiduciary capacity, shall make and render a list or return, as aforesaid, to the collector or a deputy collector of the district in which such person or corporation acting in a fiduciary capacity resides or does business, of the amount of income, gains, and profits of any minor or person for whom they act. but persons having less than three thousand five hundred dollars income are not required to make such report; and the collector or deputy collector, shall require every lit or return to verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return if he has reason to believe that the same is understated: and in case any such person having a taxable income shall neglect or refuse to make and render such list and return, or shall render a willfully false or fraudulent list or return, it shall be the duty of the

collector or deputy collector, to make such list, according to the best information he can obtain. by the examination of such person, or any other evidence, and to add fifty per centum as a penalty to the amount of the tax due on such list in all cases of willful neglect or refusal to make and render a list or return; and in all cases of a willfully false or fraudulent list or return having been rendered to add one hundred per centum as a penalty to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of willful neglect or refusal to render a list or return. or of rendering a false or fraudulent return.' A proviso was added that any person or corporation might show that he or its ward had no taxable income, or that the same had been paid elsewhere, and the collector might exempt from the tax for that year. 'Any person or company, corporation, or association feeling aggrieved by the decision of of the deputy collector, in such cases may appeal to the collector of the district, and his decision thereon, unless reversed by the commissioner of internal revenue, shall be final. If dissatisfied with the decision of the collector such person or corporation, company, or assiciation may submit the case, with all the papers, to the commissioner of internal revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts having served notice to that effect upon the commissioner of internal revenue, as herein prescribed.' Provision was made for notice of time and place for taking testimony on both sides, and that no penalty should be assed until after notice.

By section 30, the taxes on incomes were made payable on or before July 1st of each year, and 5 per cent. penalty levied on taxes unpaid, and interest.

By section 31, any non-resident might receive the benefit of the exemptions provided for, and 'in computing income he shall include all income from every source, but unless he be a citizen of the United States he shall only pay on that part of the income which is derived from any source in the United States. In case such non-resident fails to file such statement, the collector of each district shall collect the tax on the income dervied from property situated in his district, subject to income tax, making no allowance for exemptions, and all property belonging to such non-resident shall be liable to distraint for tax: provided, that non- resident corporations shall be subject to the same laws as to tax as resident corporations, and the collection of the tax shall be made in the same manner as provided for collections of taxes against non-resident persons.'

> 'Sec. 32. That there shall be assessed, levied, and collected, except as herein otherwise provided, a tax of two per centum annually on the net profits or income above actual operating and business expenses, including expenses for materials pruchased for manufacture or bought for resale, losses, and interest on bonded and other indebtedness of all banks, banking institutions, trust companies, saving institutions, fire, marine, life, and other

insurance companies, railroad, canal, turnpike, canal navigation, slack water, telephone, telegraph, express, electric light, gas, water, street railway compainies, and all other corporations, companies, or associations doing business for profit in the United States, no matter how created and organized but not including partnerships.'

The tax is made payable 'on or before the first day of July in each year; and if the president or other chief officer of any corporation, company, or association, or in th case of any foreign corporation, company, or association, the resident manager or agent shall neglect or refuse to file with the collector of the internal revenue district in which said corporation, company, or association shall be located or be engaged in business, a statement verified by his oath or affirmation, in such form as shall be prescribed by the commissioner of internal revenue, with the approval of the secretary of the treamsury, showing the amount of net profits or income received by said corporation, comapny, or association during the whole calendar year last preceding the date of filing said statement as hereinafter required, the corporation, company, or association making default shall forfeit as a penalty the sum of one thousand dollars and two per centum on the amount of taxes due, for each month until the same is apid, the payment of said penalty to be enforced as provided in other cases of neglect and refusal to make return of taxes under the internal revenue laws.

> 'The net profits or income of all corporations, companies, or associations shall include the amounts paid to sharehoders, or carried to the account of any fund, or used for construction, enlargement of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporations, companies, or associations.
>
> 'That nothing herein contained shall apply to states, counties, or municipalities; nor to corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary societies, orders, or associations operating upon the lodge system and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members; nor to the stocks, shares, funds, or securities held by any fiduciary or trustee for charitable, religious, or educational purposes; nor to building and loan associations or companies which make loans only to their shareholders; nor to such savings banks, savings institutions or

societies as shall, first, have no stockholders or members except depositors and no capital except deposits; secondly, shall not receive deposits to an agregate amount, in any one year, of more than one thousand dollars from the same depositor; thirdly, shall not allow an accumulation or total of deposits, by any one depositor, exceeding ten thousand dollars; foruthly, shall actually divide and distribute to its depositors, ratably to deposits, all the earnings over the necessary and proper expenses of such bank, institution, or society, except such as shall be applied to sur-

plus; fifthly, shall not possess, in any form, a surplus fund exceeding ten per centum of its agregate deposits; nor to such savings banks, savings institutions,#e shall be uniform throughout the United States.' And the third clause thus: 'To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.'

'Nor to any insurance company or association which conducts all its business solely upon the mutual plan, and only for the benefit of its policy holders or members, and having no capital stock and no stock or shareholders, and holding all its property in trust and in reserve for its policy holders or members; nor to that part of the business of any insurance company having a capital stock and stock and shareholders, which is conducted on the mutual plan, separate from its stock plan of insurance, and solely for the benefit of the policy holders and members insured on said mutual plan, and holding all the property belonging to and derived from said mutual part of its business in trust and reserve for the benefit of its policy holders and members insured on said mutual plan.

'That all state, county, municipal, and town taxes paid by corporations, companies, or associations, shall be included in the operating and business expenses of such corporations, companies, or associations.

'Sec. 33. That there shall be levied, collected, and paido n all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in congress, when exceeding the rate of four thousand dollars per annum, a tax of two per centum on the excess above the said four thousand dollars; and it shall be the duty of all paymasters and all disbursing officers under the government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of two per centum; and the pay roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment. And it shall be the duty of the accounting officers of the treasury department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the treasurer of the United States, or other officer authorized to receive the same. Every corporation which pays to any employe a salary or compensation exceeding four thousand dollars per annum shall report the same to the collector or

deputy collector of his district and said employe shall pay thereon, subject to the exemptions herein provided for, the tax of two per centum on the excess of his salary over four thousand dollars: provided, that salaries due to sstate county, or municipal officers shall be exempt from the income tax herein levied.'

By section 34, sections 3167, 3172, 3173, and 3176 of the Revised Statutes of the United States as amended were amended so as to provide that it should be unalwful for the collector and other officers to

make known, or to publish, amount or source of income, under penalty; that every collector should 'from tiem to time cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumberate said object'; that the tax returns must be made on or before the first Monday in March; that the collectors may make returns when particulars are furnished: that notice be given to absentees to render returns; that collectors may summon persons to produce books and testify concerning returns; that collectors may enter other districts to examine persons and books, and may make returns; and that penalties may be imposed on false returns.

By section 35 it was provided that corporations doing business for profit should make returns on or before the first Monday of March of each year 'of all the following matters for the whole calendar year last preceding the date of such return:

> 'First. The gross profits of such corporation, company, or association, from all kinds of business of every name and nature.
>
> 'Second. The expenses of such corporation, company, or association, exclusive of interest, annuities, and dividends.
>
> 'Third. The net profits of such corporation, company, or association, without allowance for interest, annuities, or dividends.
>
> 'Fourth. The amount paid on account of interest, annuities, and dividends, stated separately.
>
> 'Fifth. The amount paid in salaries of four thousand dollars or less to each person employed.
>
> 'Sixth. The amount paid in salaries of more than four thousand dollars to each person employed and the name and address of each of such persons and the amount paid to each.'

By section 36, that books of account should be kept by corporations as prescribed, and inspection thereof be granted under penalty.

By section 37 provision is made for receipts for taxes paid.

By a joint resolution of February 21, 1895, the time for making returns of income for the year 1894 was extended, and it was provided that 'in com-

puting incomes under said act the amounts necessarily paid for fire insurance premiums and for ordinary reparis shall be deducted'; and that 'in computing incomes under said act the amounts received as dividends upon the stock of any corporation, company or association shall not be included in case such dividends are also liable to the tax of two per centum upon the net profits of said corporation, company or association, although such tax may not have been actually paid by said corporation, company or association at the time of making returns by the person, corporation or association receiving such dividends, and returns or reports of the names and salaries of employes shall not be required from employers unless called for by the collector in order to verify the returns of employes.'

U.S. Code collection

- main page
- faq
- index
- search

TITLE 26 > Subtitle A

Subtitle A—Income Taxes

How Current is This?

- CHAPTER 1—NORMAL TAXES AND SURTAXES
- CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME
- CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS
- [CHAPTER 4—REPEALED]
- [CHAPTER 5—REPEALED]
- CHAPTER 6—CONSOLIDATED RETURNS

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U.S. Supreme Court

U.S. v. BUTLER, 297 U.S. 1 (1936)

297 U.S. 1

UNITED STATES
v.
BUTLER et al.
No. 401.

Argued Dec. 9, 10, 1935.
Decided Jan. 6, 1936.

[297 U.S. 1, 13] Messrs. Homer S. Cummings, Atty. Gen., and Stanley F. Reed, Sol. Gen., of Washington, D.C., for the United States.

Messrs. George Wharton Pepper, of Philadelphia, Pa., and Edward R. Hale and Bennett Sanderson, both of Boston, Mass., for respondents.

[297 U.S. 1, 53]

Mr. Justice ROBERTS delivered the opinion of the Court.

In this case we must determine whether certain provisions of the Agricultural Adjustment Act, 1933,1 conflict with the Federal Constitution.

Title 1 of the statute is captioned 'Agricultural Adjustment.' Section 1 (7 U.S.C.A. 601) recites that an economic emergency has arisen, due to disparity between the prices of agricultural and other commodities, with consequent destruction of farmers' purchasing power and breakdown in orderly

exchange, which, in turn, have affected transactions in agricultural commodities with a national public interest and burdened and obstructed the normal currents of commerce, calling for the enactment of legislation. [297 U.S. 1, 54] Section 2 (7 U.S.C.A. 602) declares it to be the policy of Congress:

> 'To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities2 a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period.'

The base period, in the case of cotton, and all other commodities except tobacco, is designated as that between August, 1909, and July, 1914

The further policies announced are an approach to the desired equality by gradual correction of present inequalities 'at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets,' and the protection of consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities or products derived therefrom, which is returned to the farmer, above the percentage returned to him in the base period.

Section 8 (48 Stat. 34) provides, amongst other things, that, 'In order to effectuate the declared policy,' the Secretary of Agriculture shall have power

> '(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as the Secretary deems fair and reasonable, to [297 U.S. 1, 55] be paid out of any moneys available for such payments. ...
>
> '(2) To enter into marketing agreements with processors, associations of producers, and others engaged in the handling, in the current of interstate or foreign commerce of any agricultural commodity or product thereof, after due notice and opportunity for hearing to interested parties. ...
>
> '(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof.'

It will be observed that the Secretary is not required, but is permitted, if, in his uncontrolled judgment, the policy of the act will so be promoted, to make agreements with individual farmers for a reduction of acreage or production upon such terms as he may think fair and reasonable.

Section 9(a), 48 Stat. 35 enacts:

> 'To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that rental or benefit payments are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. The processing tax shall be levied, assessed, and

collected upon the first domestic proc ssing of the commodity, whether of domestic production or imported, and shall be paid by the processor.'

The Secretary may from time to time, if he finds it necessary for the effectuation of the policy of the act, readjust the amount of the exaction to meet the require- [297 U.S. 1, 56] ments of subsection (b). The tax is to terminate at the end of any marketing year if the rental or benefit payments are discontinued by the Secretary with the expiration of that year.

Section 9(b), 7 U.S.C.A. 609(b), fixes the tax 'at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value,' with power in the Secretary, after investigation, notice, and hearing, to readjust the tax so as to prevent the accumulation of surplus stocks and depression of farm prices.

Section 9(c), 7 U.S.C.A. 609(c), directs that the fair exchange value of a commodity shall be such a price as will give that commodity the same purchasing power with respect to articles farmers buy as it had during the base period, and that the fair exchange value and the current average farm price of a commodity shall be ascertained by the Secretary from available statistics in his department.

Section 12(a), 7 U.S.C.A. 612(a), appropriates $100,000,000 'to be available to the Secretary of Agriculture for administrative expenses under this title (chapter) and for rental and benefit payments;' and Section 12(b), 7 U.S.C.A. 612(b), appropriates the proceeds derived from all taxes imposed under the act 'to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products. ... Administrative expenses, rental and benefit payments, and refunds on taxes.'

Section 15(d), 7 U.S.C.A. 615(d), permits the Secretary, upon certain conditions, to impose compensating taxes on commodities in competition with those subject to the processing tax.

By section 16 (see 7 U.S.C.A. 616) a floor tax is imposed upon the sale or other disposition of any article processed wholly or in chief value from any commodity with respect to which a processing tax is to be levied in amount equivalent to that of the processing tax which would be payable with respect to the commodity from which the article is processed if the processing had occurred on the date when the processing tax becomes effective. [297 U.S. 1, 57] On July 14, 1933, the Secretary of Agriculture, with the approval of the President, proclaimed that he had determined rental and benefit payments should be made with respect to cotton; that the marketing year for that commodity was to begin August 1, 1933; and calculated and fixed the rates of processing and floor taxes on cotton in accordance with the terms of the act.

The United States presented a claim to the respondents as receivers of the Hoosac Mills Corporation for processing and floor taxes on cotton levied under sections 9 and 16 of the act. The receivers recommended that the claim be disallowed. The District Court found the taxes valid and ordered them paid. 3 Upon appeal the Circuit Court of Appeals reversed the order. 4 The judgment under review was entered prior to the adoption of the amending act of August 24, 1935,5 and we are therefore concerned only with the original act.

First. At the outset the United States contends that the respondents have no standing to question the validity of the tax. The position is that the act is merely a revenue measure levying an excise upon the activity of processing cotton-a proper subject for the imposition of such a tax-the proceeds of which go into the federal Treasury and thus become available for appropriation for any purpose. It is said that what the respondents are endeavoring to do is to challenge the intended use of the money pursuant to Congressional appropriation when, by con ession, that money will have become the property of the

government and the taxpayer will no longer have any interest in it. Massachusetts v. Mellon, 262 U.S. 447 , 43 S.Ct. 597, is claimed to foreclose litigation by the respondents or other taxpayers, as such, looking to restraint of the expenditure of government funds. That case might be an authority [297 U.S. 1, 58] in the petitioners' favor if we were here concerned merely with a suit by a taxpayer to restrain the expenditure of the public moneys. It was there held that a taxpayer of the United States may not question expenditures from its treasury on the ground that the alleged unlawful diversion will deplete the public funds and thus increase the burden of future taxation. Obviously the asserted interest of a taxpayer in the federal government's funds and the supposed increase of the future burden of taxation is minute and indeterminable. But here the respondents who are called upon to pay moneys as taxes, resist the exaction as a step in an unauthorized plan. This circumstance clearly distinguishes the case. The government in substance and effect asks us to separate the Agricultural Adjustment Act into two statutes, the one levying an excise on processors of certain commodities; the other appropriating the public moneys independently of the first. Passing the novel suggestion that two statutes enacted as parts of a single scheme should be tested as if they were distinct and unrelated, we think the legislation now before us is not susceptible of such separation and treatment.

The tax can only be sustained by ignoring the avowed purpose and operation of the act, and holding it a measure merely laying an excise upon processors to raise revenue for the support of government. Beyond cavil the sole object of the legislation is to restore the purchasing power of agricultural products to a parity with that prevailing in an earlier day; to take money from the processor and bestow it upon farmers6 who will reduce their acreage for [297 U.S. 1, 59] the accomplishment of the proposed end, and, meanwhile, to aid these farmers during the period required to bring the prices of their crops to the desired level.

The tax plays an indispensable part in the plan of regulation. As stated by the Agricultural Adjustment Administrator, it is 'the heart of the law'; a means of 'accomplishing one or both of two things intended to help farmers attain parity prices and purchasing power.' 7 A tax automatically goes into effect for a commodity when the Secretary of Agriculture determines that rental or benefit payments are to be made for reduction of production of that commodity. The tax is to cease when rental or benefit payments cease. The rate is fixed with the purpose of bringing about crop reduction and price raising. It is to equal the difference between the 'current average farm price' and 'fair exchange value.' It may be altered to such amount as will prevent accumulation of surplus stocks. If the Secretary finds the policy of the act will not be promoted by the levy of the tax for a given commodity, he may exempt it. Section 11. The whole revenue from the levy is appropriated in aid of crop control; none of it is made available for general governmental use. The entire agricultural adjustment program embodied in title 1 of the act is to become inoperative when, in the judgment of the President, the national economic emergency ends; and as to any commodity he may terminate the provisions of the law, if he finds them no longer requisite to carrying out the declared policy with re pect to such commodity. Section 13, see 7 U.S.C.A. 613.

The statute not only avows an aim foreign to the procurement of revenue for the support of government, but by its operation shows the exaction laid upon processors to be the necessary means for the intended control of agricultural production. [297 U.S. 1, 60] In these aspects the tax, co-called, closely resembles that laid by the Act of August 3, 1882 (22 Stat. 314), entitled 'An Act to Regulate Immigration,' which came before this court in the Head Money Cases, 112 U.S. 580 , 5 S.Ct. 247. The statute directed that there should be levied, collected, and paid a duty of 50 cents for each alien passenger who should come by vessel from a foreign port to one in the United States. Payment was to be made to the collector of the port by the master, owner, consignee, or agent of the ship; the money was to be paid into the Treasury, was to be called the immigrant fund, and to be used by the Secretary of the Treasury to defray the expense of regulating immigration, for the care of immigrants, and relieving those in distress, and for the expenses of effectuating the act.

Various objections to the act were presented. In answering them the court said (112 U.S. 580 , page 595, 5 S.Ct. 247, 252):

> 'But the true answer to all these objections is that the power exercised in this instance is not the taxing power. The burden imposed on the ship-owner by this statute is the mere incident of the regulation of commerce-of that branch of foreign commerce which is involved in immigration. ...
>
> 'It is true, not much is said about protecting the ship-owner. But he is the man who reaps the profit from the transaction. ... The sum demanded of him is not, therefore, strictly speaking, a tax or duty within the meaning of the constitution. The money thus raised, though paid into the treasury, is appropriated in advance to the uses of the statute, and does not go to the general support of the government.'

While there the exaction was sustained as an appropriate element in a plan within the power of Congress 'to regulate commerce with foreign nations,' no question was made of the standing of the shipowner to raise the ques- [297 U.S. 1, 61] tion of the validity of the scheme, and consequently of the exaction which was an incident of it.

It is inaccurate and misleading to speak of the exaction from processors prescribed by the challenged act as a tax, or to say that as a tax it is subject to no infirmity. A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the government. The word has never been thought to connote the expropriation of money from one group for the benefit of another. We may concede that the latter sort of imposition is constitutional when imposed to effectuate regulation of a matter in which both groups are interested and in respect of which there is a power of legislative regulation. But manifestly no justification for it can be found unless as an integral part of such regulation. The exaction cannot be wrested out of its setting, denominated an excise for raising revenue, and legalized by ignoring its purpose as a mere instrumentality for bringing about a desired end. To do this would be to shut our eyes to what all others than we can see and understand. Child Labor Tax Case, 259 U.S. 20, 37 , 42 S.Ct. 449, 21 A.L.R. 1432.

We conclude that the act is one regulating agricultural production; that the tax is a mere incident of such regulation; and that the respondents have standing to challenge the legality of the exaction.

It does not follow that, as the act is not an exertion of the taxing power and the exaction not a true tax, the statute is void or the exaction uncollectible. For, to paraphrase what was said in the Head Money Cases, supra, 112 U.S. 580 , page 596, 5 S.Ct. 247, 252, if this is an expedient regulation by Congress, f a subject within one of its granted powers, 'and the end to be attained powers, within that power, the act is not void because, within a loose and more extended sense than was used in the constitution,' the exaction is called a tax. [297 U.S. 1, 62] Second. The government asserts that even if the respondents may question the propriety of the appropriation embodied in the statute, their attack must fail because article 1, 8 of the Constitution, authorizes the contemplated expenditure of the funds raised by the tax. This contention presents the great and the controlling question in the case. 8 We approach its decision with a sense of our grave responsibility to render judgment in accordance with the principles established for the governance of all three branches of the government.

There should be no misunderstanding as to the function of this court in such a case. It is sometimes said that the court assumes a power to overrule or control the action of the people's representatives. This is a misconception. The Constitution is the supreme law of the land ordained and established by the people. All legislation must conform to the principles it lays down. When an act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the

government has only one duty; to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former. All the court does, or can do, is to announce its considered judgment upon the ques- [297 U.S. 1, 63] tion. The only power it has, if such it may be called, is the power of judgment. This court neither approves nor condemns any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the Constitution; and, having done that, its duty ends. 9

The question is not what power the federal government ought to have, but what powers in fact have been given by the people. It hardly seems necessary to reiterate that ours is a dual form of government; that in every state there are two governments; the state and the United States. Each state has all governmental powers save such as the people, by their Constitution, have conferred upon the United States, denied to the states, or reserved to themselves. The federal union is a government of delegated powers. It has only such as are expressly conferred upon it and such as are reasonably to be implied from those granted. In this respect we differ radically from nations where all legislative power, without restriction or limitation, is vested in a parliament or other legislative body subject to no restrictions except the discretion of its members.

Article 1, 8, of the Constitution, vests sundry powers in the Congress. But two of its clauses have any bea ing upon the validity of the statute under review.

The third clause endows the Congress with power 'to regulate Commerce ... among the several States.' Despite a reference in its first section to a burden upon, and an obstruction of the normal currents of, commerce, the act under review does not purport to regulate transactions in interstate or foreign10 commerce. Its stated pur- [297 U.S. 1, 64] pose is the control of agricultural production, a purely local activity, in an effort to raise the prices paid the farmer. Indeed, the government does not attempt to uphold the validity of the act on the basis of the commerce clause, which, for the purpose of the present case, may be put aside as irrelevant.

The clause thought to authorize the legislation, the first, confers upon the Congress power 'to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States. ...' It is not contended that this provision grants power to regulate agricultural production upon the theory that such legislation would promote the general welfare. The government concedes that the phrase 'to provide for the general welfare' qualifies the power 'to lay and collect taxes.' The view that the clause grants power to provide for the general welfare, independently of the taxing power, has never been authoritatively accepted. Mr. Justice Story points out that, if it were adopted, 'it is obvious that under color of the generality of the words, to 'provide for the common defence and general welfare', the government of the United States is, in reality, a government of general and unlimited powers, notwithstanding the subsequent enumeration of specific powers.' 11 The true construction undoubtedly is that the only thing granted is the power to tax for the purpose of providing funds for payment of the nation's debts and making provision for the general welfare.

Nevertheless, the government asserts that warrant is found in this clause for the adoption of the Agricultural Adjustment Act. The argument is that Congress may appropriate and authorize the spending of moneys for the 'general welfare'; that the phrase should be liberally [297 U.S. 1, 65] construed to cover anything conducive to national welfare; that decision as to what will promote such welfare rests with Congress alone, and the courts may not review its determination; and, finally, that the appropriation under attack was in fact for the general welfare of the United States.

The Congress is expressly empowered to lay taxes to provide for the general welfare. Funds in the

Treasury as a result of taxation may be expended only through appropriation. Article 1, 9, cl. 7. They can never accomplish the objects for which they were collected, unless the power to appropriate is as broad as the power to tax. The necessary implication from the terms of the grant is that the public funds may be appropriated 'to provide for the general welfare of the United States.' These words cannot be meaningless, else they would not have been used. The conclusion must be that they were intended to limit and define the granted power to raise and to expend money. How shall they be construed to effectuate the intent of the instrument?

Since the foundation of the nation, sharp differences of opinion have persisted as to the true interpretation of the phrase. Madison asserted it amounted to no more than a reference to the other powers enumerated in the subsequent clauses of the same section; that, as the United States is a government of limited and enumerated powers, the grant of power to tax and spend for the general national welfare must be confined to the enumerated legislative fields committed to the Congress. In this view the phrase is mere tautology, for taxation and appropriation are or may be necessary incidents of the exercise of any of the enumerated legislative powers. Hamilton, on the other hand, maintained the clause confers a power separate and distinct from those later enumerated is not restricted in meaning by the grant of them, and Congress consequently has a substantive power to tax and to ap- [297 U.S. 1, 66] propriate, limited only by the requirement that it shall be exercised to provide for the general welfare of the United States. Each contention has had the support of those whose views are entitled to weight. This court has noticed the question, but has never found it necessary to decide which is the true construction. Mr. Justice Story, in his Commentaries, espouses the Hamiltonian position. 12 We shall not review the writings of public men and commentators or discuss the legislative practice. Study of all these leads us to conclude that the reading advocated by Mr. Justice Story is the correct one. While, therefore, the power to tax is not unlimited, its confines are set in the clause which confers it, and not in those of section 8 which bestow and define the legislative powers of the Congress. It results that the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution.

But the adoption of the broader construction leaves the power to spend subject to limitations.

As Story says: 'The Constitution was, from its very origin, contemplated to be the frame of a national government, of special and enumerated powers, and not of general and unlimited powers.' 13

Again he says: 'A power to lay taxes for the common defence and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them.' 14

That the qualifying phrase must be given effect all advocates of broad construction admit. Hamilton, in his [297 U.S. 1, 67] well known Report on Manufactures, states that the purpose must be 'general, and not local.' 15 Monroe, an advocate of Hamilton's doctrine, wrote: 'Have Congress a right to raise and appropriate the money to any and to every purpose according to their will and pleasure? They certainly have not.' 16 Story says that if the tax be not proposed for the common defense or general welfare, but for other objects wholly extraneous, it would be wholly indefensible upon constitutional principles. 17 And he makes it clear that the powers of taxation and appropriation extend only to matters of national, as distinguished from local, welfare.

As elsewhere throughout the Constitution the section in question lays down principles which control the use of the power, and does not attempt meticulous or detailed directions. Every presumption is to be indulged in favor of faithful compliance by Congress with the mandates of the fundamental law. Courts are reluctant to adjudge any statute in contravention of them. But, under our frame of government, no

other place is provided where the citizen may be heard to urge that the law fails to conform to the limits set upon the use of a granted power. When such a contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress. How great is the extent of that range, when the subject is the promotion of the general welfare of the United States, we need hardly remark. But, despite the breadth of the legislative discretion, our duty to hear and to render judgment remains. If the statute plainly violates the stated principle of the Constitution we must so declare. [297 U.S. 1, 68] We are not now required to ascertain the scope of the phrase 'general welfare of the United States' or to determine whether an appropriation in aid of agriculture falls within it. Wholly apart from that question, another principle embedded in our Constitution prohibits the enforcement of the Agricultural adjustment Act. The act invades the reserved rights of the states. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the federal government. The tax, the appropriation of the funds raised, and the direction for their disbursement, are but parts of the plan. They are but means to an unconstitutional end.

From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such as are conferred, are reserved to the states or to the people. To forestall any suggestion to the contrary, the Tenth Amendment was adopted. 18 The same proposition, otherwise stated, is that powers not granted are prohibited. None to regulate agricultural production is given, and therefore legislation by Congress for that purpose is forbidden.

It is an established principle that the attainment of a prohibited end may not be accomplished under the pretext of the exertion of powers which are granted.

> 'Should congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or should congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a de- [297 U.S. 1, 69] cision come before it, to say, that such an act was not the law of the land.' McCulloch v. Maryland, 4 Wheat. 316, 423.
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> 'Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not intrusted to the federal government. And we accept as established doctrine that any provision of an act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power, but solely to the achievement of something plainly within power reserved to the states, is invalid and cannot be enforced.' Linder v. United States, 268 U.S. 5, 17 , 45 S.Ct. 446, 449, 39 A.L.R. 229.

These principles are as applicable to the power to lay taxes as to any other federal power. Said the court, in McCulloch v. Maryland, supra, 4 Wheat. 316, 421: 'Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.'

The power of taxation, which is expressly granted, may, of course, be adopted as a means to carry into operation another power also expressly granted. But resort to the taxing power to effectuate an end which is not legitimate, not within the scope of the Constitution, is obviously inadmissible.

> 'Congress is not empowered to tax for those purposes which are within the exclusive province of the states.' Gibbons v. Ogden, 9 Wheat. 1, 199.
>
> 'There are, indeed, certain virtual limitations, arising from the principles of the Constitution itself.

> It would undoubtedly be an abuse of the (taxing) power if so exercised as to impair the separate existence and independent self-government of the States, or if exercised for ends [297 U.S. 1, 70] inconsistent with the limited grants of power in the Constitution.' Veazie Bank v. Fenno, 8 Wall. 533, 541.

In the Child Labor Tax Case, 259 U.S. 20 , 42 S.Ct. 449, 21 A.L.R. 1432, and in Hill v. Wallace, 259 U.S. 44 , 42 S.Ct. 453, this court had before it statutes which purported to be taxing measures. But their purpose was found to be to regulate the conduct of manufacturing and trading, not in interstate commerce, but in the states- matters not within any power conferred upon Congress by the Constitution- and the levy of the tax a means to force compliance. The court held this was not a constitutional use, but an unconstitutional abuse of the power to tax. In Linder v. United States, supra, we held that the power to tax could not justify the regulation of the practice of a profession, under the pretext of raising revenue. In United States v. Constantine, 296 U.S. 287 , 56 S.Ct. 223, we declared that Congress could not, in the guise of a tax, impose sanctions for violation of state law respecting the local sale of liquor. These decisions demonstrate that Congress could not, under the pretext of raising revenue, lay a tax on processors who refuse to pay a certain price for cotton and exempt those who agree so to do, with the purpose of benefiting producers.

Third. If the taxing power may not be used as the instrument to enforce a regulation of matters of state concern with respect to which the Congress has no authority to interfere, may it, as in the present case, be employed to raise the money necessary to purchase a compliance which the Congress is powerless to command? The government asserts that whatever might be said against the validity of the plan, if compulsory, it is constitutionally sound because the end is accomplished by voluntary co- operation. There are two sufficient answers to the contention. The regulation is not in fact voluntary. The farmer, of course, may refuse to comply, but the price of such refusal is the loss of benefits. The amount offered is intended to be sufficient to exert pressure on him to [297 U.S. 1, 71] agree to the proposed regulation. 19 The power to confer or withhold unlimited benefits is the power to coerce or destroy. If the cotton grower elects not to accept the benefits, he will receive less for his crops; those who receive payments will be able to undersell him. The result may well to financial ruin. The coercive purpose and intent of the statute is not obscured by the fact that it has not been perfectly successful. It is pointed out that, because there still remained a minority whom the rental and benefit payments were insufficient to induce to surrender their independence of action, the Congress has gone further, and, in the Bankhead Cotton Act, used the taxing power in a more directly minatory fashion to compel submission. This progression only serves more fully to expose the coercive purpose of the so-called tax imposed by the present act. It is clear that the Department of Agriculture has properly described the plan as one to keep a nonco-operating minority in line. This is coercion by economic pressure. The asserted power of choice is illusory.

In Frost & Frost Trucking Company v. R.R. Commission, 271 U.S. 583 , 46 S.Ct. 605, 47 A.L.R. 457, a state act was considered which provided for supervision and regulation of transportation for hire by automobile on the public highways. Certificates of convenience and necessity were to be obtained by persons desiring to use the highways for this purpose. The regulatory [297 U.S. 1, 72] commission required that a private contract carrier should secure such a certificate as a condition of its operation. The effect of the commission's action was to transmute the private carrier into a public carrier. In other words, the privilege of using the highways as a private carrier for compensation was conditioned upon his dedicating his property to the quasi public use of public transportation. While holding that the private carrier was not obliged to submit himself to the condition, the commission denied him the privilege of using the highways if he did not do so. The argument was, as here, that the carrier had a free choice. This court said, in holding the act as construed unconstitutional: 'If so, constitutional guaranties, so carefully safeguarded against direct assault, are open to destruction by the indirect, but no less effective, process of requiring a surrender, which, though in form voluntary, in fact lacks none of

the elements of compulsion. Having regard to form alone, the act here is an offer to the private carrier of a privilege, which the state may grant or deny, upon a condition which the carrier is free to accept or reject. In reality, the carrier is given no choice, except a choice between the rock and the whirlpool-an option to forego a privilege which may be vital to his livelihood or submit to a requirement which may constitute an intolerable burden.' 271 U.S. 583 , page 593, 46 S.Ct. 605, 607, 47 A.L.R. 457.

But if the plan were one for purely voluntary co-operation it would stand no better so far as federal power is concerned. At best, it is a scheme for purchasing with federal funds submission to federal regulation of a subject reserved to the states.

It is said that Congress has the undoubted right to appropriate money to executive officers for expenditure under contracts between the government and individuals; that much of the total expenditures is so made. But appropriations and expenditures under contracts for proper [297 U.S. 1, 73] governmental purposes cannot justify contracts which are not within federal power. And contracts for the reduction of acreage and the control of production are outside the range of that power. An appropriation to be expended by the United States under contracts calling for violation of a state law clearly would offend the Constitution. Is a statute less objectionable which authorizes expenditure of federal moneys to induce action in a field in which the United States has no power to intermeddle? The Congress cannot invade state jurisdiction to compel individual action; no more can it purchase such action.

We are referred to numerous types of federal appropriation which have been made in the past, and it is asserted no question has been raised as to their validity. We need not stop to examine or consider them. As was said in Commonwealth of Massachusetts v. Mellon, supra (262 U.S. 447 , page 487, 43 S.Ct. 597, 601): 'As an examination of the acts of Congress will disclose, a large number of statutes appropriating or involving the expenditure of moneys for nonfederal purposes have been enacted and carried into effect.'

As the opinion points out, such expenditures have not been challenged because no remedy was open for testing their constitutionality in the courts.

We are not here concerned with a conditional appropriation of money, nor with a provision that if certain conditions are not complied with the appropriation shall no longer be available. By the Agricultural Adjustment Act the amount of the tax is appropriated to be expended only in payment under contracts whereby the parties bind themselves to regulation by the federal government. There is an obvious difference between a statute stating the conditions upon which moneys shall be expended and one effective only upon assumption of a contractual obligation to submit to a regulation which otherwise could not be enforced. Many examples pointing the distinction might be cited. We are ref rred to appropriations in aid [297 U.S. 1, 74] of education, and it is said that no one has doubted the power of Congress to stipulate the sort of education for which money shall be expended. But an appropriation to an educational institution which by its terms is to become available only if the beneficiary enters into a contract to teach doctrines subversive of the Constitution is clearly bad. An affirmance of the authority of Congress so to condition the expenditure of an appropriation would tend to nullify all constitutional limitations upon legislative power.

But it is said that there is a wide difference in another respect, between compulsory regulation of the local affairs of a state's citizens and the mere making of a contract relating to their conduct; that, if any state objects, it may declare the contract void and thus prevent those under the state's jurisdiction from complying with its terms. The argument is plainly fallacious. The United States can make the contract only if the federal power to tax and to appropriate reaches the subject-matter of the contract. If this does

reach the subject-matter, its exertion cannot be displaced by state action. To say otherwise is to deny the supremacy of the laws of the United States; to make them subordinate to those of a state. This would reverse the cardinal principle embodied in the Constitution and substitute one which declares that Congress may only effectively legislate as to matters within federal competence when the states do not dissent.

Congress has no power to enforce its commands on the farmer to the ends sought by the Agricultural Adjustment Act. It must follow that it may not indirectly accomplish those ends by taxing and spending to purchase compliance. The Constitution and the entire plan of our government negative any such use of the power to tax and to spend as the act undertakes to authorize. It does not help to declare that local conditions throughout the nation have created a situation of national concern; for this [297 U.S. 1, 75] is but to say that whenever there is a widespread similarity of local conditions, Congress may ignore constitutional limitations upon its own powers and usurp those reserved to the states. If, in lieu of compulsory regulation of subjects within the states' reserved jurisdiction, which is prohibited, the Congress could invoke the taxing and spending power as a means to accomplish the same end, clause 1 of section 8 of article 1 would become the instrument for total subversion of the governmental powers reserved to the individual states.

If the act before us is a proper exercise of the federal taxing power, evidently the regulation of all industry throughout the United States may be accomplished by similar exercises of the same power. It would be possible to exact money from one branch of an industry and pay it to another branch in every field of activity which lies within the province of the states. The mere threat of such a procedure might well induce the surrender of rights and the compliance with federal regulation as the price of continuance in business. A few instances will illustrate the thought.

Let us suppose Congress should determine that the farmer, the miner, or some other producer of raw materials is receiving too much for his products, with consequent depression of the processing industry and idleness of its employees. Though, by confession, there is no power vested in Congress to compel by statute a lowering of the prices of the raw material, the same result might be accomplished, if the questioned act be valid, by taxing the producer upon his output and appropriating the proceeds to the processors, either with or without conditions imposed as the consideration for payment of the subsidy.

We have held in A. L. A. Schechter Poultry Corp. v. United States, 295 U.S. 495 , 55 S.Ct. 837, 97 A.L.R. 947, that Congress has no power to regulate wages and hours of labor in a local business. If the petitioner is right, this very end may be accomplished by [297 U.S. 1, 76] a propriating money to be paid to employers from the federal treasury under contracts whereby they agree to comply with certain standards fixed by federal law or by contract.

Should Congress ascertain that sugar refiners are not receiving a fair profit, and that this is detrimental to the entire industry, and in turn has its repercussions in trade and commerce generally, it might, in analogy to the present law, impose an excise of 2 cents a pound on every sale of the commodity and pass the funds collected to such refiners, and such only, as will agree to maintain a certain price.

Assume that too many shoes are being manufactured throughout the nation; that the market is saturated, the price depressed, the factories running half time, the employees suffering. Upon the principle of the statute in question, Congress might authorize the Secretary of Commerce to enter into contracts with shoe manufacturers providing that each shall reduce his output, and that the United States will pay him a fixed sum proportioned to such reduction, the money to make the payments to be raised by a tax on all retail shoe dealers on their customers.

Suppose that there are too many garment workers in the large cities; that this results in dislocation of the economic balance. Upon the principle contended for, an excise might be laid on the manufacture of all garments manufactured and the proceeds paid to those manufacturers who agree to remove their plants to cities having not more than a hundred thousand population. Thus, through the asserted power of taxation, the federal government, against the will of individual states, might completely redistribute the industrial population.

A possible result of sustaining the claimed federal power would be that every business group which thought itself underprivileged might demand that a tax be laid on its vendors or vendees, the proceeds to be appropriated to the redress of its deficiency of income. [297 U.S. 1, 77] These illustrations are given, not to suggest that any of the purposes mentioned are unworthy, but to demonstrate the scope of the principle for which the government contends; to test the principle by its applications; to point out that, by the exercise of the asserted power, Congress would, in effect, under the pretext of exercising the taxing power, in reality accomplish prohibited ends. It cannot be said that they envisage improbable legislation. The supposed cases are no more improbable than would the present act have been deemed a few years ago.

Until recently no suggestion of the existence of any such power in the federal government has been advanced. The expressions of the framers of the Constitution, the decisions of this court interpreting that instrument and the writings of great commentators will be searched in vain for any suggestion that there exists in the clause under discussion or elsewhere in the Constitution, the authority whereby every provision and every fair, implication from that instrument may be subverted, the independence of the individual states obliterated, and the United States converted into a central government exercising uncontrolled police power in every state of the Union, superseding all local control or regulation of the affairs or concerns of the states.

Hamilton himself, the leading advocate of broad interpretation of the power to tax and to appropriate for the general welfare, never suggested that any power granted by the Constitution could be used for the destruction of local self-government in the states. Story countenances no such doctrine. It seems never to have occurred to them, or to those who have agreed with them, that the general welfare of the United States (which has aptly been termed 'an indestructible Union, composed of indestructible States,') might be served by obliterating the constituent members of the Union. But to this fatal conclu- [297 U.S. 1, 78] sion the doctrine contended for would inevitably lead. And its sole premise is that, though the makers of the Constitution, in erecting the ederal government, intended sedulously to limit and define its powers, so as to reserve to the states and the people sovereign power, to be wielded by the states and their citizens and not to be invaded by the United States, they nevertheless by a single clause gave power to the Congress to tear down the barriers, to invade the states' jurisdiction, and to become a parliament of the whole people, subject to no restrictions save such as are self-imposed. The argument, when seen in its true character and in the light of its inevitable results, must be rejected.

Since, as we have pointed out, there was no power in the Congress to impose the contested exaction, it could not lawfully ratify or confirm what an executive officer had done in that regard. Consequently the Act of 1935, 30, adding section 21(b) to Act of May 12, 1933 (7 U.S.C.A. 623(b), does not affect the rights of the parties.

The judgment is affirmed.

Mr. Justice STONE (dissenting).

I think the judgment should be reversed.

The present stress of widely held and strongly expressed differences of opinion of the wisdom of the Agricultural Adjustment Act makes it important, in the interest of clear thinking and sound result, to emphasize at the outset certain propositions which should have controlling influence in determining the validity of the act. They are:

1. The power of courts to declare a statute unconstitutional is subject to two guiding principles of decision which ought never to be absent from judicial consciousness. One is that courts are concerned only with the power to enact statutes, not with their wisdom. The other is that while unconstitutional exercise of power [297 U.S. 1, 79] by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self-restraint. For the removal of unwise laws from the statute books appeal lies, not to the courts, but to the ballot and to the processes of democratic government.

2. The constitutional power of Congress to levy an excise tax upon the processing of agricultural products is not questioned. The present levy is held invalid, not for any want of power in Congress to lay such a tax to defray public expenditures, including those for the general welfare, but because the use to which its proceeds are put is disapproved.

3. As the present depressed state of agriculture is nation wide in its extent and effects, there is no basis for saying that the expenditure of public money in aid of farmers is not within the specifically granted power of Congress to levy taxes to 'provide for the ... general welfare.' The opinion of the Court does not declare otherwise.

4. No question of a variable tax fixed from time to time by fiat of the Secretary of Agriculture, or of unauthorized delegation of legislative power, is now presented. The schedule of rates imposed by the secretary in accordance with the original command of Congress has since been specifically adopted and confirmed by act of Congress, which has declared that it shall be the lawful tax. Act of August 24, 1935, 49 Stat. 750, 7 U. S.C.A. 602 et seq. That is the tax which the government now seeks to collect. Any defects there may have been in the manner of laying the tax by the secretary have now been removed by the exercise of the power of Congress to pass a curative statute validating an intended, though defective, tax. United States v. Heinszen & Co., 206 U.S. 370 , 27 S.Ct. 742, 11 Ann.Cas. 688; Graham & Foster v. Goodcell, 282 U.S. 409 , 51 S.Ct. 186; cf. Milliken v. United States, 283 U.S. 15 , 51 S.Ct. 324. The Agricultural Adjustment Act as thus amended de- [297 U.S. 1, 80] clares that none of its provisions shall fail because others are pronounced invalid.

It is with these preliminary and hardly controverted matters in mind that we should direct our attention to the pivot on which the decision of the Court is made to turn. It is that a levy unquestionably with n the taxing power of Congress may be treated as invalid because it is a step in a plan to regulate agricultural production and is thus a forbidden infringement of state power. The levy is not any the less an exercise of taxing power because it is intended to defray an expenditure for the general welfare rather than for some other support of government. Nor is the levy and collection of the tax pointed to as effecting the regulation. While all federal taxes inevitably have some influence on the internal economy of the states, it is not contended that the levy of a processing tax upon manufacturers using agricultural products as raw material has any perceptible regulatory effect upon either their production or manufacture. The tax is unlike the penalties which were held invalid in the Child Labor Tax Case, 259 U.S. 20 , 42 S.Ct. 449, 21 A.L.R. 1432, in Hill v. Wallace, 259 U.S. 44 , 42 S.Ct. 453, in Linder v. United States, 268 U.S. 5, 17 , 45 S.Ct. 446, 39 A.L.R. 229, and in United States v. Constantine, 296 U.S. 287 , 56 S.Ct. 223, because they were themselves the instruments of regulation by virtue of their coercive effect on matters left to the control of the states. Here regulation, if any there be, is accomplished not by the tax, but by the method by which its proceeds are expended, and would equally

be accomplished by any like use of public funds, regardless of their source.

The method may be simply stated. Out of the available fund payments are made to such farmers as are willing to curtail their productive acreage, who in fact do so and who in advance have filed their written undertaking to do so with the Secretary of Agriculture. In saying that this method of spending public moneys is an invasion of the reserved powers of the states, the Court does not assert [297 U.S. 1, 81] that the expenditure of public funds to promote the general welfare is not a substantive power specifically delegated to the national government, as Hamilton and Story pronounced it to be. It does not deny that the expenditure of funds for the benefit of farmers and in aid of a program of curtailment of production of agricultural products, and thus of a supposedly better ordered national economy, is within the specifically granted power. But it is declared that state power is nevertheless infringed by the expenditure of the proceeds of the tax to compensate farmers for the curtailment of their cotton acreage. Although the farmer is placed under no legal compulsion to reduce acreage, it is said that the mere offer of compensation for so doing is a species of economic coercion which operates with the same legal force and effect as though the curtailment were made mandatory by act of Congress. In any event it is insisted that even though not coercive the expenditure of public funds to induce the recipients to curtail production is itself an infringement of state power, since the federal government cannot invade the domain of the states by the 'purchase' of performance of acts which it has no power to compel.

Of the assertion that the payments to farmers are coercive, it is enough to say that no such contention is pressed by the taxpayer, and no such consequences were to be anticipated or appear to have resulted from the administration of the act. The suggestion of coercion finds no support in the record or in any data showing the actual operation of the act. Threat of loss, not hope of gain, is the essence of economic coercion. Members of a long-depressed industry have undoubtedly been tempted to curtail acreage by the hope of resulting better prices and by the proffered opportunity to obtain needed ready money. But there is nothing to indicate that those who accepted benefits were impelled by fear of lower prices if they did not accept, or that at any stage in the operation [297 U.S. 1, 82] of the plan a farmer could say whether, apart from the certainty of cash payments at specified times, the advantage would lie with curtailment of production plus c mpensation, rather than with the same or increased acreage plus the expected rise in prices which actually occurred. Although the Agricultural Adjustment Act was put into operation in June, 1933, the official reports of the Department of Agriculture show that 6,343,000 acres of productive cotton land, 14 per cent. of the total, did not participate in the plan in 1934, and 2,790,000 acres, 6 per cent. of the total, did not participate in 1935. Of the total number of farms growing cotton, estimated at 1,500,000, 33 per cent. in 1934 and 13 per cent. in 1935 did not participate.

It is significant that in the congressional hearings on the bill that became the Bankhead Act, 48 Stat. 598, 7 U.S.C.A. 701 et seq., as amended by Act of June 20, 1934, 48 Stat. 1184, 7 U.S.C.A. 725, which imposes a tax of 50 per cent. on all cotton produced in excess of limits prescribed by the Secretary of Agriculture, there was abundant testimony that the restriction of cotton production attempted by the Agricultural Adjustment Act could not be secured without the coercive provisions of the Bankhead Act. See Hearing before Committee on Agriculture, U.S. Senate, on S. 1974, 73d Cong., 2d Sess.; Hearing before Committee on Agriculture, U.S. House of Representatives, on H.R. 8402, 73d Cong., 2d Sess. The Senate and House Committees so reported, Senate Report No. 283, 73d Cong., 2d Sess., p. 3; House Report No. 867, 73d Cong., 2d Sess., p. 3. The Report of the Department of Agriculture on the administration of the Agricultural Adjustment Act (February 15, 1934 to December 31, 1934), p. 50, points out that the Bankhead Act was passed in response to a strong sentiment in favor of mandatory production control 'that would prevent non-cooperating farmers from increasing their own plantings in order to capitalize upon the price advances that had resulted from the reductions made by contract [297 U.S. 1, 83] signers.' 1 The presumption of constitutionality of a statute is not to be overturned by an assertion of its coercive effect which rests on nothing more substantial than groundless speculation.

It is upon the contention that state power is infringed by purchased regulation of agricultural production that chief reliance is placed. It is insisted that, while the Constitution gives to Congress, in specific and unambiguous terms, the power to tax and spend, the power is subject to limitations which do not find their origin in any express provision of the Constitution and to which other expressly delegated powers are not subject.

The Constitution requires that public funds shall be spent for a defined purpose, the promotion of the general welfare. Their expenditure usually involves payment on terms which will insure use by the selected recipients within the limits of the constitutional purpose. Expenditures would fail of their purpose and thus lose their constitutional sanction if the terms of payment were not such that by their influence on the action of the recipients the permitted end would be attained. The power of Congress to spend is inseparable from persuasion to action over which Congress has no legislative control. Congress may not command that the science of agriculture be taught in state universities. But if it would aid the teaching of that science by grants to state institutions, it is appropriate, if not necessary, that the grant be on the condition, incorporated in the Morrill Act, 12 Stat. 503, 7 U.S.C.A. 301 et seq., 26 Stat. 417, 7 U.S.C.A. 321 et seq., that it be used for the intended purpose. Similarly it would seem to be compliance with the Constitution, not violation of it, for the government to take and the university to give a contract that the grant would be so used. It makes no dif- [297 U.S. 1, 84] ference that there is a promise to do an act which the condition is calculated to induce. Co dition and promise are alike valid since both are in furtherance of the national purpose for which the money is appropriated.

These effects upon individual action, which are but incidents of the authorized expenditure of government money, are pronounced to be themselves a limitation upon the granted power, and so the time-honored principle of constitutional interpretation that the granted power includes all those which are incident to it is reversed. 'Let the end be legitimate,' said the great Chief Justice, 'let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.' McCulloch v. Maryland, 4 Wheat. 316, 421. This cardinal guide to constitutional exposition must now be rephrased so far as the spending power of the federal government is concerned. Let the expenditure be to promote the general welfare, still if it is needful in order to insure its use for the intended purpose to influence any action which Congress cannot command because within the sphere of state government, the expenditure is unconstitutional. And taxes otherwise lawfully levied are likewise unconstitutional if they are appropriated to the expenditure whose incident is condemned.

Congress through the Interstate Commerce Commission has set aside intrastate railroad rates. It has made and destroyed intrastate industries by raising or lowering tariffs. These results are said to be permissible because they are incidents of the commerce power and the power to levy duties on imports. See Minnesota Rate Case 1913, 230 U.S. 352 , 33 S.Ct. 729, 48 L.R.A. (N.S.) 1151, Ann.Cas. 1916A, 18; Houston, E . & W.T.R. Co. v. U.S. (Shreveport Rate Case), 234 U.S. 342 , 34 S.Ct. 833; Board of Trustees of University of Illinois v. United States, 289 U.S. 48 , 53 S.Ct. 509. The only conclusion to be drawn is that re- [297 U.S. 1, 85] sults become lawful when they are incidents of those powers but unlawful when incident to the similarly granted power to tax and spend.

Such a limitation is contradictory and destructive of the power to appropriate for the public welfare, and is incapable of practical application. The spending power of Congress is in addition to the legislative power and not subordinate to it. This independent grant of the power of the purse, and its very nature, involving in its exercise the duty to insure expenditure within the granted power, presuppose freedom of selection among divers ends and aims, and the capacity to impose such conditions as will render the choice effective. It is a contradiction in terms to say that there is power to spend for the national welfare, while rejecting any power to impose conditions reasonably adapted to the attainment of the end

which alone would justify the expenditure.

The limitation now sanctioned must lead to absurd consequences. The government may give seeds to farmers, but may not condition the gift upon their being planted in places where they are most needed or even planted at all. The government may give money to the unemployed, but may not ask that those who get it shall give labor in return, or even use it to support their families. It may give money to sufferers from earthquake, fire, tornado, pestilence, or flood, but may not impose conditions, health precautions, designed to prevent the spread of disease, or induce the movement of population to safer or more sanitary areas. All that, because it is purchased regulation infringing state powers, must be left for the states, who are unable or unwilling to supply the necessary relief. The government may spend its money for vocational rehabilitation, 48 Stat. 389, but it may not, with the consent of all concerned, supervise the process which it undertakes to aid. It may spend its money for the suppression of the boll weevil, but may [297 U.S. 1, 86] not compensate the farmers for suspending the growth of otton in the infected areas. It may aid state reforestation and forest fire prevention agencies, 43 Stat. 653 (see 16 U.S.C.A. 471, 499 note, 505, 515, 564 et seq.), but may not be permitted to supervise their conduct. It may support rural schools, 39 Stat. 929 (20 U.S.C.A. 11 et seq.), 45 Stat. 1151 (20 U.S.C.A. 15a to 15c), 48 Stat. 792 (20 U.S.C.A. 15d to 15g), but may not condition its grant by the requirement that certain standards be maintained. It may appropriate moneys to be expended by the Reconstruction Finance Corporation 'to aid in financing agriculture, commerce and industry,' and to facilitate 'the exportation of agricultural and other products.' Do all its activities collapse because, in order to effect the permissible purpose in myriad ways the money is paid out upon terms and conditions which influence action of the recipients within the states, which Congress cannot command? The answer would seem plain. If the expenditure is for a national public purpose, that purpose will not be thwarted because payment is on condition which will advance that purpose. The action which Congress induces by payments of money to promote the general welfare, but which it does not command or coerce, is but an incident to a specifically granted power, but a permissible means to a legitimate end. If appropriation in aid of a program of curtailment of agricultural production is constitutional, and it is not denied that it is, payment to farmers on condition that they reduce their crop acreage is constitutional. It is not any the less so because the farmer at his own option promises to fulfill the condition.

That the governmental power of the purse is a great one is not now for the first time announced. Every student of the history of government and economics is aware of its magnitude and of its existence in every civilized government. Both were well understood by the framers of the Constitution when they sanctioned the grant of the spending power to the federal government, and both were recognized by Hamilton and Story, whose views of the [297 U.S. 1, 87] spending power as standing on a parity with the other powers specifically granted, have hitherto been generally accepted.

The suggestion that it must now be curtailed by judicial fiat because it may be abused by unwise use hardly rises to the dignity of argument. So may judicial power be abused. 'The power to tax is the power to destroy,' but we do not, for that reason, doubt its existence, or hold that its efficacy is to be restricted by its incidental or collateral effects upon the states. See Veazie Bank v. Fenno, 8 Wall. 533; McCray v. United States, 195 U.S. 27 , 24 S.Ct. 769, 1 Ann.Cas. 561; compare Magnano Co. v. Hamilton, 292 U.S. 40 , 54 S.Ct. 599. The power to tax and spend is not without constitutional restraints. One restriction is that the purpose must be truly national. Another is that it may not be used to coerce action left to state control. Another is the conscience and patriotism of Congress and the Executive. 'It must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.' Justice Holmes, in Missouri, Kansas & Texas R. Co. v. May, 194 U.S. 267, 270 , 24 S. Ct. 638, 639.

A tortured construction of the Constitution is not to be justified by recourse to extreme examples of

reckless congressional spending which might occur if courts could not prevent expenditures which, even if they could be thought to effect any national purpose, would be possible only by action of a legislature lost to all sense of public responsibility. Such suppositions are addressed to the mind accustomed to believe that it is the business of courts to sit in judgment on the wisdom of legislative action. Courts are not the only agency of government that must be assumed to have capacity to govern. Congress and the courts both unhappily may falter or be mistaken in the performance of their constitutional duty But interpretation of our great charter of government which proceeds on any assumption that the responsibility for the preservation of our institutions is the exclusive [297 U.S. 1, 88] concern of any one of the three branches of government, or that it alone can save them from destruction is far more likely, in the long run, 'to obliterate the constituent members' of 'an indestructible union of indestructible states' than the frank recognition that language, even of a constitution, may mean what it says: that the power to tax and spend includes the power to relieve a nationwide economic maladjustment by conditional gifts of money.

Mr. Justice BRANDEIS and Mr. Justice CARDOZO join in this opinion.

Footnotes

[Footnote 1] May 12, 1933, c. 25, 48 Stat. 31 (see 7 U.S.C.A. 601 et seq.).

[Footnote 2] Section 11 (48 Stat. 38) denominates wheat, cotton, field corn, hogs, rice, tobacco, and milk, and its products, 'basic agricultural commodities,' to which the act is to apply. Others have been added by later legislation.

[Footnote 3] Franklin Process Co. v. Hoosac Mills Corp. (D.C.) 8 F.Supp. 552.

[Footnote 4] Butler et al. v. United States (C.C.A.) 78 F.(2d) 1.

[Footnote 5] Public No. 320, 74th Congress, 1st Sess. (7 U.S.C.A. 602 et seq.).

[Footnote 6] U.S. Department of Agriculture, Achieving A Balanced Agriculture, p. 38: 'Farmers should not forget that all the processing tax money ends up in their own pockets. Even in those cases where they pay part of the tax, they get it all back. Every dollar collected in processing taxes goes to the farmer in benefit payments.'

U.S. Dept. of Agriculture, The Processing Tax, p. 1: 'Proceeds of processing taxes are passed to farmers as benefit payments.'

[Footnote 7] U.S. Department of Agriculture, Agricultural Adjustment, p. 9.

[Footnote 8] Other questions were presented and argued by counsel, but we do not consider or decide them. The respondents insist that the act in numerous respects delegates legislative power to the executive contrary to the principles announced in Panama Refining Company v. Ryan, 293 U.S. 388 , 55 S.Ct. 241, and A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 , 55 S.Ct. 837, 97 A.L.R. 947; that this unlawful delegation is not cured by the amending act of August 24, 1935 (7 U.S.C.A. 602 et seq.); that the exaction is in violation of the due process clause of the Fifth Amendment, since the legislation takes their property for a private use; that the floor tax is a direct tax and therefore void for lack of apportionment amongst the states, as required by article 1, 9; and that the processing tax is wanting in uniformity and so violates article 1, 8, cl. 1, of the Constitution.

[Footnote 9] Compare Adkins v. Children's Hospital, 261 U.S. 525, 544 , 43 S.Ct. 394, 24 A.L.R. 1238; Commonwealth of Massachusetts v. Mellon, 262 U.S. 447, 488 , 43 S.Ct. 597.

[Footnote 10] The enactment of protective tariff laws has its basis in the power to regulate foreign commerce. See Board of Trustees of University of Illinois v. United States, 289 U.S. 48, 58 , 53 S.Ct. 509.

[Footnote 11] Story, Commentaries on the Constitution of the United States (5th Ed.) vol. I, 907.

[Footnote 12] Loc. cit. chapter XIV, passim.

[Footnote 13] Loc. cit. 909.

[Footnote 14] Loc. cit. 922.

[Footnote 15] Works, vol. III, p. 250.

[Footnote 16] Richardson, Messages and Papers of the Presidents, vol. II, p. 167.

[Footnote 17] Loc. cit. p. 673.

[Footnote 18] The Tenth Amendment declares: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'

[Footnote 19] U.S. Dept. of Agriculture, Agricultural Adjustment, p. 9. 'Experience of cooperative associations and other groups has shown that without such Government support, the efforts of the farmers to band together to control the amount of their product sent to market are nearly always brought to nothing. Almost always, under such circumstances, there has been a noncooperating minority, which, refusing to go along with the rest, has stayed on the outside and tried to benefit from the sacrifices the majority has made. ... It is to keep this noncooperating minority in line, or at least prevent it from doing harm to the majority, that the power of the Government has been marshaled behind the adjustment programs.'

[Footnote 1] Whether coercion was the sole or the dominant purpose of the Bankhead Act, or whether the act was designed also for revenue or other legitimate ends, there is no occasion to consider now.

used in the phrase *or so* to indicate an estimate, approximation, or conjecture ⟨stayed a week or ~⟩ ⟨cost $15 or ~⟩

⁵so \'sō\ *var of* SOL

¹soak \'sōk\ *vb* [ME *soken*, fr. OE *socian;* akin to OE *sūcan* to suck] *vi* (bef. 12c) **1 :** to lie immersed in liquid (as water) **2 a :** to enter or pass through something by or as if by pores or interstices : PERMEATE **b :** to penetrate or affect the mind or feelings — usu. used with *in* or *into* **3 :** to drink alcoholic beverages intemperately ~ *vt* **1 :** to permeate so as to wet, soften, or fill thoroughly **2 :** to place in a surrounding element (as liquid) to wet or permeate thoroughly **3 :** to extract by or as if by steeping ⟨~ the dirt out⟩ **4 a :** to draw in by or as if by suction or absorption ⟨~*ed* up the sunshine⟩ **b :** to intoxicate (oneself) by drinking alcoholic beverages **5 :** to cause to pay an exorbitant amount — **soak·er** *n*

syn SOAK, SATURATE, DRENCH, STEEP, IMPREGNATE mean to permeate or be permeated with a liquid. SOAK implies usu. prolonged immersion as for softening or cleansing; SATURATE implies a resulting effect of complete absorption until no more liquid can be held; DRENCH implies a thorough wetting by something that pours down or is poured; STEEP suggests either the extraction of an essence (as of tea leaves) by the liquid or the imparting of a quality (as a color) to the thing immersed; IMPREGNATE implies a thorough interpenetration of one thing by another.

²soak *n* (1598) **1 a :** the act or process of soaking **:** the state of being soaked **b :** that (as liquid) in which something is soaked **2 :** DRUNKARD **3** *slang* **:** ²PAWN 2

soak·age \'sō-kij\ *n* (1766) **1 :** liquid gained by absorption or lost by seepage **2 :** the act or process of soaking **:** the state of being soaked

¹so–and–so \'sō-ən-ˌsō\ *n, pl* **so–and–sos** *or* **so–and–so's** \-ˌsōz\ (1596) **1 :** an unnamed or unspecified person, thing, or action **2 :** BASTARD 3

²so–and–so *adv* (1631) **1 :** to an unspecified amount or degree **2 :** in an unspecified manner or fashion

¹soap \'sōp\ *n* [ME *sope*, fr. OE *sāpe;* akin to OHG *seifa* soap, L *sebum* tallow] (bef. 12c) **1 a :** a cleansing and emulsifying agent made usu. by action of alkali on fat or fatty acids and consisting essentially of sodium or potassium salts of such acids **b :** a salt of a fatty acid and a metal **2 :** SOAP OPERA

²soap *vt* (1585) **1 :** to rub soap over or into **2 :** FLATTER

soap·bark \'sōp-ˌbärk\ *n* (1861) **:** a Chilean tree (*Quillaja saponaria*) of the rose family with shining leaves and terminal white flowers; *also* **:** its saponin-rich bark used in cleaning and in emulsifying oils

soap·ber·ry \-ˌber-ē\ *n* (1693) **:** any of a genus (*Sapindus* of the family Sapindaceae, the soapberry family) of chiefly tropical woody plants; *also* **:** the fruit of a soapberry and esp. of a tree (*S. saponaria*) that is saponin-rich and used as a soap substitute

soap·box \-ˌbäks\ *n* (1917) **:** an improvised platform used by a self-appointed, spontaneous, or informal orator — **soapbox** *adj*

soap bubble *n* (1815) **:** a hollow iridescent globe formed by blowing a film of soapsuds (as from a pipe)

soap·er \'sō-pər\ *n* (1946) **:** SOAP OPERA

soap opera *n* [fr. its frequently being sponsored by soap manufacturers] (1939) **:** a serial drama performed usu. on a daytime radio or television program and chiefly characterized by tangled interpersonal situations and melodramatic or sentimental treatment

soap plant *n* (1844) **:** a plant having a part (as a root or fruit) that may be used in place of soap; *esp* **:** a California plant (*Chlorogalum pomeridianum*) of the lily family

soap·stone \'sōp-ˌstōn\ *n* (ca. 1681) **:** a soft stone having a soapy feel and composed essentially of talc, chlorite, and often some magnetite

soap·suds \-ˌsədz\ *n pl* (1611) **:** SUDS 1

soap·wort \-ˌwərt, -ˌwȯ(ə)rt\ *n* (1548) **:** BOUNCING BET

soapy \'sō-pē\ *adj* **soap·i·er; -est** (1610) **1 :** smeared with soap **:** LATHERED **2 :** containing or combined with soap or saponin **3 a :** resembling or having the qualities of soap; *esp* **:** being smooth and slippery **b :** UNCTUOUS, SUAVE **4 :** of, relating to, or having the characteristics of soap opera — **soap·i·ly** \-pə-lē\ *adv* — **soap·i·ness** \-pē-nəs\ *n*

¹soar \'sō(ə)r, 'sȯ(ə)r\ *vi* [ME *soren*, fr. MF *essorer* to air, soar, fr. (assumed) VL *exaurare* to air, fr. L *ex-* + *aura* air — more at AURA] (14c) **1 a :** to fly aloft or about **b** (1) **:** to sail or hover in the air often at a great height : GLIDE (2) *of a glider* **:** to fly without engine power and without loss of altitude **2 :** to rise or increase dramatically (as in position, value, or price) **3 :** to ascend to a higher or more exalted level **4 :** to rise to majestic stature — **soar·er** *n*

²soar *n* (1596) **1 :** the range, distance, or height attained in soaring **:** the act of soaring **:** upward flight

soar·ing *n* (1575) **:** the act or process of soaring; *specif* **:** the act or sport of flying a heavier-than-air craft without power by utilizing ascending air currents

Soa·ve \'swäv-(ˌ)ā, sə-'wäv-\ *n* [*Soave*, village near Verona, Italy] (1943) **:** a dry white Italian wine

¹sob \'säb\ *vb* **sobbed; sob·bing** [ME *sobben*] *vi* (13c) **1 a :** to catch the breath audibly in a spasmodic contraction of the throat **b :** to cry or weep with convulsive catching of the breath **2 :** to make a sound like that of a sob or sobbing ~ *vt* **1 :** to bring (as oneself) to a specified state by sobbing ⟨*sobbed* himself to sleep⟩ **2 :** to utter with sobs ⟨*sobbed* out her grief⟩

²sob *n* (14c) **1 :** an act of sobbing **2 :** a sound like that of a sob

SOB \ˌes-ˌō-'bē\ *n* [son of a *bitch*] (ca. 1925) **:** BASTARD 3, SON OF A BITCH

¹so·ber \'sō-bər\ *adj* **so·ber·er** \-bər-ər\; **so·ber·est** \-b(ə-)rəst\ [ME *sobre*, fr. MF, fr. L *sobrius;* akin to L *ebrius* drunk] (14c) **1 a :** sparing in the use of food and drink **:** ABSTEMIOUS **b :** not addicted to intoxicating drink **c :** not drunk **2 :** marked by sedate or gravely or earnestly thoughtful character or demeanor **3** *archaic* **:** UNHURRIED, CALM **4 :** marked by temperance, moderation, or seriousness **5 :** subdued in tone or color **6 :** showing no excessive or extreme qualities of fancy, emotion, or prejudice ***syn*** see SERIOUS — **so·ber·ly** \-bər-lē\ *adv* — **so·ber·ness** *n*

²sober *vb* **so·bered; so·ber·ing** \-b(ə-)riŋ\ *vt* (14c) **:** to make sober ~ *vi* **:** to become sober — usu. used with *up*

so·ber·ing *adj* (1831) **:** tending to make one thoughtful or sober

so·ber·ize \'sō-bə-ˌrīz\ *vt* **-ized; -iz·ing** *archaic* (1706) **:** to make sober

so·ber·sid·ed \ˌsō-bər-'sīd-əd\ *adj* (1847) **:** solemn or serious in nature or appearance

so·ber·sides \'sō-bər-ˌsīdz\ *n pl but sing or pl in constr* (1705) **:** one who is sobersided

so·bri·ety \sə-'brī-ət-ē, sō-\ *n* [ME *sobrietie*, fr. MF *sobrieté*, fr. L *sobrietat-, sobrietas*, fr. *sobrius*] (14c) **:** the quality or state of being sober

so·bri·quet \'sō-bri-ˌkā, -ˌket, ˌsō-bri-'\ *n* [F] (1646) **:** a descriptive name or epithet : NICKNAME

sob sister *n* (1912) **1 :** a journalist who specializes in writing or editing sob stories or other material of a sentimental type **2 :** a sentimental and often impractical person usu. engaged in good works

sob story *n* (1916) **:** a sentimental story or account intended chiefly to evoke sympathy or sadness

so·cage \'säk-ij, 'sōk-\ *also* **soc·cage** \'säk-\ *n* [ME, fr. *soc* soke] (14c) **:** a tenure of land by agricultural service fixed in amount and kind or by payment of money rent only and not burdened with any military service — **so·cag·er** \-ij-ər\ *n*

so–called \'sō-'kȯld\ *adj* (1657) **1 :** commonly named **:** popularly so termed ⟨the ~ pocket veto⟩ **2 :** falsely or improperly so named ⟨deceived by a ~ friend⟩

soc·cer \'säk-ər\ *n* [by shortening & alter. fr. *association football*] (1891) **:** a game played on a field between two teams of 11 players each with the object to propel a round ball into the opponent's goal by kicking or by hitting it with any part of the body except the hands and arms — called also *association football*

so·cia·bil·i·ty \ˌsō-shə-'bil-ət-ē\ *n, pl* **-ties** (15c) **:** the quality or state of being sociable; *also* **:** the act or an instance of being sociable

¹so·cia·ble \'sō-shə-bəl\ *adj* [MF or L; MF, fr. L *sociabilis*, fr. *sociare* to join, associate, fr. *socius*] (1553) **1 :** inclined by nature to companionship with others of the same species : SOCIAL **2 a :** inclined to seek or enjoy companionship **b :** conducive to friendliness or pleasant social relations ***syn*** see GRACIOUS — **so·cia·ble·ness** *n* — **so·cia·bly** \-blē\ *adv*

²sociable *n* (1826) **:** an informal social gathering frequently involving a special activity or interest

¹so·cial \'sō-shəl\ *adj* [L *socialis*, fr. *socius* companion, ally, associate; akin to L *sequi* to follow — more at SUE] (1665) **1 :** involving allies or confederates ⟨the *Social* War between the Athenians and their allies⟩ **2 a :** marked by or passed in pleasant companionship with one's friends or associates ⟨leads a very full ~ life⟩ **b :** SOCIABLE **c :** of, relating to, or designed for sociability ⟨a ~ club⟩ **3 :** of or relating to human society, the interaction of the individual and the group, or the welfare of human beings as members of society ⟨~ institutions⟩ **4 :** tending to form cooperative and interdependent relationships with one's fellows : GREGARIOUS **b :** living and breeding in more or less organized communities ⟨~ insects⟩ **c** *of a plant* **:** tending to grow in groups or masses so as to form a pure stand **5 a :** of, relating to, or based on rank or status in a particular society ⟨a member of our ~ set⟩ **b :** of, relating to, or characteristic of the upper classes **c :** FORMAL

²social *n* (1870) **:** SOCIABLE

social climber *n* (1924) **:** one who attempts to gain a higher social position or acceptance in fashionable society — **social climbing** *n*

social contract *n* [trans. of F *contrat social*] (1849) **:** an actual or hypothetical agreement among individuals forming an organized society or between the community and the ruler that defines and limits the rights and duties of each

social Darwinism *n* (1939) **:** an extension of Darwinism to social phenomena; *specif* **:** a theory in sociology: sociocultural advance is the product of intergroup conflict and competition and the socially elite classes (as those possessing wealth and power) possess biological superiority in the struggle for existence

social democracy *n* (ca. 1890) **:** a political movement advocating a gradual and peaceful transition from capitalism to socialism by democratic means — **social democrat** *n* — **social democratic** *adj*

social disease *n* (1918) **1 :** VENEREAL DISEASE **2 :** a disease (as tuberculosis) whose incidence is directly related to social and economic factors

social engineering *n* (1925) **:** management of human beings in accordance with their place and function in society **:** applied social science — **social engineer** *n*

social gospel *n* (1920) **1 :** the application of Christian principles to social problems **2** *cap S&G* **:** a movement in American Protestant Christianity esp. in the first part of the 20th century to bring the social order into conformity with Christian principles

social insurance *n* (1917) **:** protection of the individual against economic hazards (as unemployment, old age, or disability) in which the government participates or enforces the participation of employers and affected individuals

so·cial·ism \'sō-shə-ˌliz-əm\ *n* (1839) **1 :** any of various economic and political theories advocating collective or governmental ownership and administration of the means of production and distribution of goods **2 a :** a system of society or group living in which there is no private property **b :** a system or condition of society in which the means of production are owned and controlled by the state **3 :** a stage of society in Marxist theory transitional between capitalism and communism and distinguished by unequal distribution of goods and pay according to work done

so·cial·ist \'sōsh-(ə-)list\ *n* (1833) **1 :** one who advocates or practices socialism **2** *cap* **:** a member of a socialist party or political group — **socialist** *adj, often cap* — **so·cial·is·tic** \ˌsō-shə-'lis-tik\ *adj* — **so·cial·is·ti·cal·ly** \-ti-k(ə-)lē\ *adv*

socialist realism *n* (ca. 1943) **:** a Marxist aesthetic theory calling for the didactic use of literature, art, and music to develop social consciousness in an evolving socialist state — **social realist** *n*

so·cial·ite \'sō-shə-ˌlīt\ *n* (1929) **:** a socially prominent person

so·ci·al·i·ty \ˌsō-shē-'al-ət-ē\ *n, pl* **-ties** (1649) **1 a :** SOCIABILITY **b :** an instance of social intercourse or sociability **2 :** the tendency to associate in or form social groups

so·cial·ize \'sō-shə-ˌlīz\ *vb* **-ized; -iz·ing** *vt* (1836) **1 :** to make social; *esp* **:** to fit or train for a social environment **2 a :** to constitute on a socialistic basis ⟨~ industry⟩ **b :** to adapt to social needs or uses ⟨~ science⟩ **3 :** to organize group participation in ⟨~ a recitation⟩ ~ *vi* **:** to participate actively in a social group — **so·cial·iza·tion** \ˌsōsh-(ə-)lə-'zā-shən\ *n* — **so·cial·iz·er** \'sō-shə-ˌlī-zər\ *n*

socialized medicine *n* (1938) **:** medical and hospital services for the members of a class or population administered by an organized group (as a state agency) and paid for from funds obtained usu. by assessments, philanthropy, or taxation

U.S. Supreme Court

POLLOCK v. FARMERS' LOAN & TRUST CO., 157 U.S. 429 (1895)

157 U.S. 429

POLLOCK
v.
FARMERS' LOAN & TRAUST CO. et al. 1
No. 893.

April 8, 1895

[157 U.S. 429, 430] This was a bill filed by Charles Pollock, a citizen of the state of Massachusetts, on behalf of himself and all other stockholders of the defendant company similarly situated, against the Farmesr' Loan & Trust Company, a corporation of the state of New York, and its directors, alleging that the capital stock of the corporation consisted of $1,000,000, divided into 40,000 shares of the par value of $25 each; that the company was authorized to invest its assets in public stocks and bonds of the United States, of individual states, or of any incorporated city or county, or in such real or personal securities as it might deem proper; and also to take, accept, and execute all such trusts of every description as might be committed to it by any person or persons or any corporation, by grant, assignment, devise, or bequest, or by order of any court of record of New York, and to receive and take any real estate which might be the subject of such trust; that the property and assets of the company amounted to more than $5,000,000, or which at least $1,000,000 was invested in real estate owned by the company in fee, at least $2,000,000 in bonds of the city of New York, and at least $1,000,000 in the bonds and stocks of other corporations of the United States; that the net profits or income of the defendant company during the year ending December 31, 1894, amounted to more than the sum of $3,000,000 above its actual operation and business expenses, including lossess and interest on bonded and other indebtedness; that from its real estate the company derived an income of $50,000 per annum, after deducting all county, state, and municipal taxes; and that the company derived an income or profit

of about $60,000 per annum fro its investments in municipal bonds.

It was further alleged that under and by virtue of the pow- [157 U.S. 429, 431] ers conferred upon the company it had from time to time taken and executed, and was holding and executing, numerous trusts committed to the company by many persons, copartnerships, unincorporated associations, and corpoa tions, by grant, assinment, devise, and bequest, and by orders of various courts, and that the company now held as trustee for many minors, individuals, corpartnerships, associations, and corporations, resident in the United States and elsewhere, many parcels of real estate situated in the various states of the United States, and amounting in the aggregate, to a value exceeding $5,000,000, the rents and income of which real estate collected and received by said defendant in its fiduciary capacity annually exceeded the sum of *200,000.

The bill also averred that complainant was, and had been since May 20, 1892, the owner and registered holder of 10 shares of the capital stock of the company, of a value exceeding the sum of $5,000; that the capital stock was divied among a large number of different persons, who, as such stockholders, constituted a large body; that the bill was filed for an object common to them all, and that he therefore brought suit not only in his own behalf as a stockholder of the company, but also as a representative of and on behalf of such of the other stockholders similarly situated and interested as might choose to intervene and become parties.

It was then alleged that the management of the stock, property, affairs, and concerns of the company was committed, under its acts of incorporation, to its directors, and charged that the company and a majority of its directors claimed and asserted that under and by virtue of the alleged authority of the provisions of an act of congress of the United States entitled 'An act to reduce taxation, to provide revenue for the government, and for other purposes,' passed August 15, 1894, the company was liable, and that they intended to pay, to the United States, before July 1, 1895, a tax of 2 per centum on the net profits of said company for the year ending December 31, 1894, above actual operating and business expenses, including the income derived from its real estate and [157 U.S. 429, 432] its bonds of the city of New York; and that the directors claimed and asserted that a similar tax must be paid upon the amount of the incomes, gains, and profits, in excess of $4,000, of all minors and others for whom the company was acting in a fiduciary capacity. And, further, that the company and its directors had avowed their intention to make and file with the collector of internal revenue for the Second district of the city of New York a list, return, or statement showing the amount of the net income of the company received during the year 1894, as aforesaid, and likewise to make and render a list or return to said collector of internal revenue, prior to that date, of the amount of the income, gains and profits of all minors and other persons having incomes in excess of $3,500, for whom the company was acting in a fiduciary capacity.

The bill charged that the provisions in respect of said alleged income tax incorporated in the act of congress were unconstututional, null, and void, in that the tax was a direct tax in respect of the real estate held and owned by the company in its own right and in its fiduciary capacity as aforesaid, by being imposed upon the rents, issues, and profits os said real estate, and was likewise a direct tax in respect of its personal property and the personal property held by it for others for whom it acted in its fiduciary capacity as aforesaid, which direct taxes were not, in and by said act, apportioned among the several states, as required by section 2 of article 1 of the constitution; and that, if the income tax so incorporated in the act of congress aforesaid were held not to be a direct tax, nevertheless its provisions were unconstitutional, null, and void, in that they were not uniform throughout the United States, as required in and by section 8 of article 1 of the constitution of the United States, upon many grounds and in many particulars specifically set forth.

The bill further charged that the income-tax provisions of the act were likewise unconstitutional, in that they imposed a tax on incomes not taxable ud er the constitution, and likewise income derived from the stocks and bonds of the states of the United States, and counties and municipalities therein, [157 U.S. 429, 433] which stocks and bonds are among the means and instrumentalities employed for carrying on their repective governments, and are not proper subjects of the taxing power of congress, and which states and their counties and muncipalities are independent of the general government of the United States, and the respective stocks and bonds of which are, together with the power of the states to borrow in any form, exempt from federal taxation.

Other grounds of unconstitutionality were assigned, and the violation of articles 4 and 5 of the constitution asserted.

The bill further averred that the suit was not a collusive one, to confer on a court of the United States jurisdiction of the case, of which it would not otherwise have cognizance and that complainant had requested the company and its directors to omit and to refuse to pay said income tax, and to contest the constiutionality of said act, and to refrain from voluntarily making lists, returns, and statements on its own behalf and on behalf of the minors and other persons for whom its was acting in a fiduciary capacity, and to apply to a court of competent jurisdiction to determine its liability under said act; but that the company and a majority of its directors, after a meeting of the directors, at which the matter and the request of complainant were formally laid before them for action, had rejused, and still refuse, and intend omitting, to comply with complainant's demand, and had resolved and determined and intended to comply with all and singular the provisions of the said act of congress, and to pay the tax upon all its net profits or income as aforesaid, including its rents from real estate and its income from municipal bonds, and a copy of the refusal of the company was annexed to the complaint.

It was also alleged that if the company and its directors, as they propered and had declared their intention to do, should pay the tax out of its gains, income, and profits, or out of the gains, income, and profits of the property held by it in its fiduciary capacity they will diminish the assets of the company and lessen the dividends thereon and the value of the shares; that voluntary compliance with the income-tax provisions would expose the company to a multiplicity of suits, not only by and [157 U.S. 429, 434] on behalf of its numerous shareholders, but by and on behalf of numberous minors and others for whom it acts in a fiduciary capacity, and that such numerous suits would work irreparable injury to the business of the company, and subject it to great and irreparable damage, and to liability to the beneficiaries aforesaid, to the irreparable damage of complainant and all its shareholders.

The bill further averred that this was a suit of a civil nature in equity; that the matter in dispute exceeded, exclusive of costs, the sum of $5,000, and arose under the constitution or laws of the United States; and that there was furthermore a controversy between citizens of different states.

The prayer was that it might be adjudged and decreed that the said provisions known as the income tax incorporated in said act of congress passed August 15, 1894, are unconstitutional, null, and void; that the defendants be restrained from volunarily complying with the provisions of said act, and making the list, returns, and statements above referred to, or paying the tax aforesaid; and for general relief.

The defendants demurred on the ground of want of equity, and, the cause having been brought on to be heard upon the bill and demurrer thereto, the demurrer was sustained, and the bill of complaint dismissed, with costs, whereupon the record recited that the constitutionality of a law of the United States was drawn in question, and an appeal was allowed directly to this court.

An abstract of the act in question will be found in the margin. 1 [157 U.S. 429, 435] By the third clause

of section 2 of article 1 of the constitt ion it was provided: 'Representatives and direct taxes shall [157 U.S. 429, 436] be apportioned among the several states which may be included within this Union, according to their respective num- [157 U.S. 429, 437] bers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of [157 U.S. 429, 438] years, and excluding Indians not taxed, three-fifths of all other persons.' This was amended by the second section of the [157 U.S. 429, 439] fourteenth amendment, declared ratified July 28, 1868, so that the whole number of persons in each state should be counted, [157 U.S. 429, 440] Indians not taxed excluded, and the provision, as thus amended, remains in force. [157 U.S. 429, 441] The acutal enumeration was prescribed to be made within three years after the first meeting of congrees, and within every subsequent term of ten years, in such manner as should be directed.

Section 7 requires 'all bills for raising revenue shall originate in the house or representatives.'

The first clause of section 8 reads thus: 'The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.' And the third clause thus: 'To regulate commerce with foreigh nation, and among the several states, and with the Indian tribes.'

The fourth, fifth, and sixth clauses of section 9 are as follows:

> 'No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.
>
> 'No tax or duty shall be laid on articles exported from any state.
>
> 'No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bount to, or from, one state, be obliged to enter, clear, or pay duties in another.'

It is also provided by the second clause of section 10 that 'no state shall, without consent of the congress, lay any imposts or duties on imports or exports, except what may be [157 U.S. 429, 442] absolutely necessary for executing its inspection laws'; and, by the third clause, that 'no state shall, without the consent of congress, lay any duty of tonnage.'

The first clause of section 9 provides: 'The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand and eight hundred and eight, but a tax or duty may be imposed on such importations, not exceeding ten dollars for each person.'

Article 5 prescribes the mode for the amendment of the constitution, and concludes with this proviso: 'Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article.'

B. H. Bristow, Wm. D. Gurtrie, David Willcox, Charles Steele, and

[157 U.S. 429, 469] Assistant Attorney General Whitney, for the United States.

[157 U.S. 429, 513] Herbert B. Turner, for appellee Farmers' Loan & Trust Company.

James C. Carter, Wm. C. Gulliver, and F. B. Candler, for appellee Continental Trust Company.

Attorney General Olney and

[157 U.S. 429, 532] Jos. H. Choate, Charles F. Southmayd, for appellants Pollock and Hyde.

[157 U.S. 429, 553]

Mr. Chief Justice FULLER, after stating the facts in the foregoing language, delivered the opinion of the court.

The jurisdiction of a court of equity to prevent any threatened breach of trust in the misapplication or diversion of the funds of a corporation by illegal payments out of its capital or profits has been frequently sustained. Dodge v. Woolsey, 18 How. 331; Hawes v. Oakland, 104 U.S. 450 . [157 U.S. 429, 554] As in Dodge v. Woolsey, this bill proceeds on the ground that the defendants would be guilty of such breach of trust or duty in voluntarily making return for the imposition of, and paying, an unconstitutional tax; and also on allegations of threatened multiplicity of suits and irreparable injury.

The objection of adequate remedy at law was not raised below, nor is it now raised by appellees, if it could be entertained at all at this stage of the proceedings; and, so far as it was within the power of the government to do so, the question of jurisdiction, for the purposes of the case, was explicitly waived on the argument. The relief sought was in respect of voluntary action by the defendant company, and not in respect of the assessment and collection themselves. Under these circumstances, we should not be justified in declining to proceed to judgment upon the merits. Pelton v. Bank, 101 U.S. 143 , 148; Cummings v. Bank, Id. 153, 157; Reynes v. Dumont, 130 U.S. 354 , 9 Sup. Ct. 486.

Since the opinion in Marbury v. Madison, 1 Cranch, 137, 177, was delivered, it has not been doubted that it is within judicial competency, by express provisions of the constitution or by necessary inference and implication, to determine whether a given law of the United States is or is not made in pursuance of the constitution, and to hold it valid or void accordingly. 'If,' said Chief Justice Marshall, 'both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution, or conformably to the constitution, disregarding the law, the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.' And the chief justice added that the doctrine 'that courts must close their eyes on the constitution, and see only the law,' 'would subvert the very foundation of all written constitutions.' Necessarily the power to declare a law unconstitutional is always exercised with reluctance; but the duty to do so, in a proper case, cannot be declined, and must be discharged in accordance with the deliberate judgment of the tribunal in which the validity of the enactment is directly drawn in question. [157 U.S. 429, 555] The contention of the complainant is:

First. That the law in question, in imposing a tax on the income or rents of real estate, imposes a tax upon the real estate itself; and in imposing a tax on the interest or other income of bonds or other personal property, held for the purposes of income or ordinarily yielding income, imposes a tax upon the personal estate itself; that such tax is a direct tax, and void because imposed without regard to the rule of apportionment; and that by reason thereof the whole law is invalidated.

Second. That the law is invalid, because imposing indirect taxes in violation of the constitutional requirement of uniformity, and therein also in violation of the implied limitation upon taxation that all tax laws must apply equally, impartially, and unformly to all similarly situated. Under the second head, it is contended that the rule of uniformity is violated, in that the law taxes the income of certain

corporations, companies, and associations, no matter how created or organized, at a higher rate than the incomes of individuals or partnerships derived from precisely similar property or business; in that it exempts from the operation of the act and from the burden of taxation numerous corporations, companies, and associations having similar property and carrying on similar business to those expressly taxed; in that it denies to individuals deriving their income from shares in certain corporations, companies, and associations the benefit of the exemption of $ 4,000 granted to other persons interested in similar property and business; in the exemption of $4,000; in the exemption of building and loan associations, savings banks, mutual life, fire, marine, and accident insurance companies, existing solely for the pecuniary profit of their members,-these and other exemptions being alleged to be purely arbitrary and capricious, justified by no public purpose, and of such magnitude as to ina lidate the entire enactment; and in other particulars.

Third. That the law is invalid so far as imposing a tax upon income received from state and municipal bonds.

The constitution provides that representatives and direct [157 U.S. 429, 556] taxes shall be apportioned among the several states according to numbers, and that no direct tax shall be laid except according to the enumeration provided for; and also that all duties, imposts, and excises shall be uniform throughout the United States.

The men who framed and adopted that instrument had just emerged from the struggle for independence whose rallying cry had been that 'taxation and representation go together.'

The mother country had taught the colonists, in the contests waged to establish that taxes could not be imposed by the sovereign except as they were granted by the representatives of the realm, that self-taxation constituted the main security against oppression. As Burke declared, in his speech on conciliation with America, the defenders of the excellence of the English constitution 'took infinite pains to inculcate, as a fundamental principle, that, in all monarchies, the people must, in effect, themselves, mediately or immediately, possess the power of granting their own money, or no shadow of liberty could subsist.' The principle was that the consent of those who were expected to pay it was essential to the validity of any tax.

The states were about, for all national purposes embraced in the constitution, to become one, united under the same sovereign authority, and governed by the same laws. But as they still retained their jurisdiction over all persons and things within their territorial limits, except where surrendered to the general government or restrained by the constitution, they were careful to see to it that taxation and representation should go together, so that the sovereignty reserved should not be impaired, and that when congress, and especially the house of representatives, where it was specifically provided that all revenue bills must originate, voted a tax upon property, it should be with the consciousness, and under the responsibility, that in so doing the tax so voted would proportionately fall upon the immediate constituents of those who imposed it.

More than this, by the constitution the states not only gave to the nation the concurrent power to tax persons and [157 U.S. 429, 557] property directly, but they surrendered their own power to levy taxes on imports and to regulate commerce. All the 13 were seaboard states, but they varied in maritime importance, and differences existed between them in population, in wealth, in the character of property and of business interests. Moreover, they looked forward to the coming of new states from the great West into the vast empire of their anticipations. So when the wealthier states as between themselves and their less favored associates, and all as between themselves and those who were to come, gave up for the common good the great sources of revenue derived through commerce, they did so in reliance on

the protection afforded by restrictions on the grant of power.

Thus, in the matter of taxation, the constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely, the rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises.

The rule of uniformity was not prescribed to the exercise of the power granted by the first paragraph of section 8 to lay and collect taxes, because the rule of apportionment as to taxes had already been laid down in the third paragraph of the second section.

And this view was expressed by Mr. Chief Justice Cause in The License Tax Cases, 5 Wall. 462, 471, when he said: 'It is true that the power of congress to tax is a very extensive power. It is given in the constitution, with only one exception and only two qualifications. Congress cannot tax exports, and it must impose direct taxes by the rule of apportionmn t, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion.'

And although there have been, from time to time, intimations that there might be some tax which was not a direct tax, nor included under the words 'duties, imports, and excises,' such a tax, for more than 100 years of national existence, has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue. [157 U.S. 429, 558] The first question to be considered is whether a tax on the rents or income of real estate is a direct tax within the meaning of the constitution. Ordinarily, all taxes paid primarily by persons who can shift the burden upon some one else, or who are under no legal compulsion to pay them, are considered indirect taxes; but a tax upon property holders in respect of their estates, whether real or personal, or of the income yielded by such estates, and the payment of which cannot be avoided, are direct taxes. Nevertheless, it may be admitted that, although this definition of direct taxes is prima facie correct, and to be applied in the consideration of the question before us, yet the constitution may bear a different meaning, and that such different meaning must be recognized. But in arriving at any conclusion upon this point we are at liberty to refer to the historical circumstances attending the framing and adoption of the constitution, as well as the entire frame and scheme of the instrument, and the consequences naturally attendant upon the one construction or the other.

We inquire, therefore, what, at the time the constitution was framed and adopted, were recognized as direct taxes? What did those who framed and adopted it understand the terms to designate and include?

We must remember that the 55 members of the constitutional convention were men of great sagacity, fully conversant with governmental problems, deeply conscious of the nature of their task, and profoundly convinced that they were laying the foundations of a vast future empire. 'To many in the assembly the work of the great French magistrate on the 'Spirit of Laws,' of which Washington with his own hand had copied an abstract by Madison, was the favorite manual. Some of them had made an analysis of all federal governments in ancient and modern times, and a few were well versed in the best English, Swiss, and Dutch writers on government. They had immediately before them the example of Great Britain, and they had a still better school of political wisdom in the republican constitutions of their several states, which many of them had assisted to frame.' 2 Bancr. Hist. Const. 9.

The Federalist demonstrates the value attached by Hamilton, [157 U.S. 429, 559] Madison, and Jay to historical experience, and shows that they had made a careful study of many forms of government. Many of the framers were particularly versed in the literature of the period,-Franklin, Wilson, and Hamilton for example. Turgot had published in 1764 his work on taxation, and in 1766 his essay on 'The Formation and Distribution of Wealth,' while Adam Smith's 'Wealth of Nations' was published in

1776. Franklin, in 1766, had said, upon his examination before the house of commons, that: 'An external tax is a duty laid on commodities imported; that duty is added to the first cost and other charges on the commodity, and, when it is offered to sale, makes a part of the price. If the people do not like it at that price, they refuse it. They are not obliged to pay it. But an internal tax is forced from the people without their consent, if not laid by their own representatives. The stamp act says we shall have no commerce, make no exchange of property with each other, neither purchase nor grant, nor recover debts; we shall neither marry nor make our wills,-unless we pay such and such sums; and thus it is intended to extort our money from us, or ruin us by the consequences of refusing to pay.' 16 Parl. Hist. 144.

They were, of course, familiar with the modes of taxation pursued in the several states. From the report of Oliver Wolcott, when secretary of the treasury, on direct taxes, to the house of representatives, December 14, 1796,-his most important state paper (Am. St. P. 1 Finance, 431),-and the various state laws then existing, it appears that prior to the adoption of the constitution nearly all the states imposed a poll tax, taxes on land, on cattle of all kinds, and various kinds of personal property, and that, in addition, Massachusetts, Connecticut, Pennsylvania, Delaware, New Jersey, Virginia, and South Carolina assessed their citizens upon their profits from professions, trades, and employments.

Congress, under the articles of confederation, had no actual operative power of taxation. It could call upon the states for their respective contributions or quotas as previously determined on; but, in case of the failure or omission of the states to furnish such contribution, there were no means of [157 U.S. 429, 560] compulsion, as congress had no power whatever to lay any tax upon individuals. This imperatively demanded a remedy; but the opposition to granting the power of direct taxation in addition to the substantially exclusive power of laying imposts and duties was so strong that it required the convention, in securing effective powers of taxation to the federal government, to use the utmost care and skill to so harmonize conflicting interests that the ratification of the instrument could be obtained.

The situation and the result are thus described by Mr. Chief Justice Chase in Lane Co. v. Oregon, 7 Wall. 71, 76: 'The people of the United States constitute one nation, under one government; and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each state compose a state, having its own government, and endowed with all the functions essential to separate and independent existence. The states disunited might continue to exist. Without the states in union, there could be no such political body as the United States. Both the states and the United States existed before the constitution. The people, through that instrument, established a more perfect union by substituting a national government, acting, with ample power, directly upon the citizens, instead of the confederate government, which acted with powers, greatly restricted, only upon the states. But in many articles of the constitution the necessary existence of the states, and, within their proper spheres, the independent authority of the states, is distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them and to the people all powers not expressly delegated to the national government are reserved. The general condition was well stated by Mr. Madison in the Federalist, thus: 'The federal and state governments are in fact but different agents and trustees of the people, constituted with different powers, and designated for different purposes.' Now, to the existence of the states, themselves necessary to the existence of the United States, the power of taxation is indispensable. It is an essantial function of [157 U.S. 429, 561] government. It was exercised by the colonies; and when the colonies became states, both before and after the formation of the confederation, it was exercised by the new governments. Under the articles of confederation the government of the United States was limited in the exercise of this power to requisitions upon the states, while the whole power of direct and indirect taxation of persons and property, whether by taxes on polls, or duties on imports, or duties on internal production, manufacture, or use, was acknowledged to belong exclusively to the states, without any other limitation than that of noninterference with certain treaties made by congress. The constitution, it is true, greatly changed this condition of things. It gave

the power to tax, both directly and indirectly, to the nationl government, and, subject to the one prohibition of any tax upon exports and to the conditions of uniformity in respect to indirect, and of proportion in respect to direct, taxes, the power was given without any express reservation. On the other hand, no power to tax exports, or imports except for a single purpose and to an insignificant extent, or to lay any duty on tonnage, was permitted to the states. In respect, however, to property, business, and persons, within their respective limits, their power of taxation remained and remains entire. It is, indeed, a concurrent power, and in the case of a tax on the same subject by both governments the claim of the United States, as the supreme authority, must be preferred; but with this qualification it is absolute. The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the legislatures to which the states commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the state constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the national government. There is nothing in the constitution which contemplates or authorizes any direct abridgment of this power by national legislation. To the extent just indicated it is as complete in the states as the like [157 U.S. 429, 562] power, within the limits of the constitution, is complete in congress.'

On May 29, 1787, Charles Pinckney presented his draft of a proposed constitution, which provided that the proportion of direct taxes should be regulated by the whole number of inhabitants of every description, taken in the manner prescribed by the legislature, and that no tax should be paid on articles exported from the United States. 1 Elliot, Deb. 147, 148.

Mr. Randolph's plan declared 'that the right of suffrage, in the national legislature, ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other may seem best, in different cases.' 1 Elliot, Deb. 143.

On June 15, Mr. Paterson submitted several resolutions, among which was one proposing that the United States in congress should be authorized to make requisitions in proportion to the whole number of white and other free citizens and inhabitants, including those bound to servitude for a term of years, and three-fifths of all other person, except Indians not taxed. 1 Elliot, Deb. 175, 176.

On the 9th of July, the proposition that the legislature be authorized to regulate the number of representatives according to wealth and inhabitants was approved, and on the 11th it was voted that, 'in order to ascertain the alterations that may happen in the population and wealth of the several states, a census shall be taken,' although the resolution of which this formed a part was defeated. 5 Elliot, Deb. 288, 295; 1 Elliot, Deb. 200.

On July 12th, Gov. Morris moved to add to the clause empowering the legislature to vary the representatiton according to the amount of wealth and number of the inhabitants a proviso that taxation should be in proportion to representation, and, admitting that some objections lay against his proposition, which would be removed by limiting it to direct taxation, since 'with regard to indirect taxes on exports and imports, and on consumption, the rule would be inapplicable,' varied his motion by inserting the word 'direct,' whereupon it passed as follows: 'Provided, always, that direct taxation [157 U.S. 429, 563] ought to be proportioned to representation.' 5 Elliott, Deb. 302.

Amendments were proposed by Mr. Ellsworth and Mr. Wilson to the effect that the rule of contribution by direct taxation should be according to the number of white inhabitants and three-fifths of every other description, and that, in order to ascertain the alterations in the direct taxation which might be required from time to time, a census should be taken. The word 'wealth was struck out of the clause on motion of Mr. Randolph; and the whole proposition, proportionate representation to direct taxation, and both to

the white and three-fifths of the colored in habitants, and requiring a census, was adopted.

In the course of the debates, and after the motion of Mr. Ellsworth that the first census be taken in three years after the meeting of congress had been adopted, Mr. Madison records: 'Mr. King asked what was the precise meaning of 'direct taxation.' No one answered.' But Mr. Gerry immediately moved to amend by the insertion of the clause that 'from the first meeting of the legislature of the United States until a census shall be taken, all moneys for supplying the public treasury by direct taxation shall be raised from the several states according to the number of their representatives respectively in the first branch.' This left for the time the matter of collection to the states. Mr. Langdon objected that this would bear unreasonably hard against New Hampshire, and Mr. Martin said that direct taxation should not be used but in cases of absolute necessity, and then the states would be the best judges of the mode. 5 Elliot, Deb. 451, 453.

Thus was accomplished one of the great compromises of the constitution, resting on the doctrine that the right of representation ought to be conceded to every community on which a tax is to be imposed, but crystallizing it in such form as to allay jealousies in respect of the future balance of power; to reconcile conflicting views in respect of the enumeration of slaves; and to remove the objection that, in adjusting a system of representation between the states, regard should be had to their relative wealth, since those who were to be most heavily [157 U.S. 429, 564] taxed ought to have a proportionate influence in the goverment.

The compromise, in embracing the power of direct taxation, consisted not simply in including part of the slaves in the enumeration of population, but in providing that, as between state and state, such taxation should be proportioned to representation. The establishment of the same rule for the apportionment of taxes as for regulating the proportion of representatives, observed Mr. Madison in No. 54 of the Federalist, was by no means founded on the same principle, for, as to the former, it had reference to the proportion of wealth, and, although in respect of that it was in ordinary cases a very unfit measure, it 'had too recently obtained the general sanction of America not to have found a ready preference with the convention,' while the opposite interests of the states, balancing each other, would produce impartiality in enumeration. By prescribing this rule, Hamilton wrote (Federalist, No. 36) that the door was shut 'to partiality or oppression,' and 'the abuse of this power of taxation to have been provided against with guarded circumspection'; and obviously the operation of direct taxation on every state tended to prevent resort to that mode of supply except under pressure of necessity, and to promote prudence and economy in expenditure.

We repeat that the right of the federal government to directly assess and collect its own taxes, at least until after requisitions upon the states had been made and failed, was one of the chief points of conflict; and Massachusetts, in ratifying, recommended the adoption of an amendment in these words: 'That congress do not lay direct taxes but when the moneys arising from the impost and excise are insufficient for the public exigencies, nor then until congress shall have first made a requisition upon the states to assess, levy, and pay their respective proportions of such requisition, agreeably to the census fixed in the said constitution, in such way and manner as the legislatures of the states shall think best.' 1 Elliot, Deb. 322. And in this South Carolina, New Hampshire, and Rhode Island concurred. Id. 325, 326, 329, 336. [157 U.S. 429, 565] Luther Martin, in his well known communication to the legislature of Maryland in January, 1788, ep ressed his views thus: 'By the power to lay and collect taxes they may proceed to direct taxation on every individual, either by a capitation tax on their heads, or an assessment on their property. ... Many of the members, and myself in the number, thought that states were much better judges of the circumstances of their citizens, and what sum of money could be collected from them by direct taxation, and of the manner in which it could be raised with the greatest ease and convenience to their citizens, than the general government could be; and that the general government ought not to have

the power of laying direct taxes in any case but in that of the delinquency of a state.' 1 Elliot, Deb. 344, 368, 369.

Ellsworth and Sherman wrote the governor of Connecticut, September 26, 1787, that it was probable 'that the principal branch of revenue will be duties on imports. What may be necessary to be raised by direct taxation is to be apportioned on the several states, according to the number of their inhabitants; and although congress may raise the money by their own authority, if necessary, yet that authority need not be exercised if each state will furnish its quota.' 1 Elliot, Deb. 492.

And Ellsworth, in the Connecticut convention, in discussing the power of congress to lay taxes, pointed out that all sources of revenue, excepting the impost, still lay open to the states, and insisted that it was 'necessary that the power of the general legislature should extend to all the objects of taxation, that government should be able to command all the resources of the country, because no man can tell what our exigencies may be. Wars have now become rather wars of the purse than of the sword. Government must therefore be able to command the whole power of the purse . ... Direct taxation can go but little way towards raising a revenue. To raise money in this way, people must be provident; they must constantly be laying up money to answer the demands of the collector. But you cannot make people thus provident. If you would do anything to the purpose, you must come in when they are spending, and take a part with them. ... [157 U.S. 429, 566] All nations have seen the necessity and propriety of raising a revenue by indirect taxation, by duties upon articles of consumption. ... In England the whole public revenue is about twelve millions sterling per annum. The land tax amounts to about two millions; the window and some other taxes, to about two millions more. The other eight millions are raised upon articles of consumption. ... This constitution defines the extent of the powers of the general government. If the general legislature should at any time overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the constitution does not authorize, it is void; and the judicial power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void.' 2 Elliot, Deb. 191, 192, 196.

In the convention of Massachusetts by which the constitution was ratified, the second section of article 1 being under consideration, Mr. King said: 'It is a principle of this constitution that representation and taxation should go hand in hand. ... By this rule are representation and taxation to be apportioned. And it was adopted, because it was the language of all America. According to the Confederation, ratified in 1781, the sums for the general welfare and defense should be apportioned according to the surveyed lands, and improvements thereon, in the several states; but that it hath never been in the power of congress to follow that rule, the returns from the several states being so very imperfect.' 2 Elliot, Deb. 36.

Theophilus Parsons observed: 'Congress have only a concurrent right with each state in laying direct taxes, not an exclusive right; and the right of each state to direct taxation is equally as extensive and perfect as the right of congress.' 2 Elliot, Deb. 93. And John Adm s, Dawes, Sumner, King, and Sedgwick all agreed that a direct tax would be the last source of revenue resorted to by congress.

In the New York convention, Chancellor Livingston pointed out that, when the imposts diminished and the expenses of the government increased, 'they must have recourse to direct [157 U.S. 429, 567] taxes; that is, taxes on land and specific duties.' 2 Elliot, Deb. 341. And Mr. Jay, in reference to an amendment that direct taxes should not be imposed until requisition had been made and proved fruitless, argued that the amendment would involve great difficulties, and that it ought to be considered that direct taxes were of two kinds,-general and specific. Id. 380, 381.

In Virginia, Mr. John Marshall said: 'The objects of direct taxes are well understood. They are but few.

What are they? Lands, slaves, stock of all kinds, and a few other articles of domestic property. ... They will have the benefit of the knowledge and experience of the state legislature. They will see in what manner the legislature of Virginia collects its taxes. ... Cannot congress regulate the taxes so as to be equal on all parts of the community? Where is the absurdity of having thirteen revenues? Will they clash with or injure each other? If not, why cannot congress make thirteen distinct laws, and impose the taxes on the general objects of taxation in each state, so as that all persons of the society shall pay equally, as they ought? 3 Elliot, Deb. 229, 235. At that time, in Virginia, lands were taxed, and specific taxes assessed on certain specified objects. These objects were stated by Sec. Wolcott to be taxes on lands, houses in towns, slaves, stud horses, jackasses, other horses and mules, billiard tables, four-wheeled riding carriages, phaetons, stage wagons, and riding carriages with two wheels; and it was undoubtedly to these objects that the future chief justice referred.

Mr. Randolph said: 'But in this new constitution there is a more just and equitable rule fixed,-a limitation beyond which they cannot go. Representatives and taxes go hand in hand. According to the one will the other be regulated. The number of representatives is determined by the number of inhabitants. They have nothing to do but to lay taxes accordingly.' 3 Elliot, Deb. 121.

Mr. George Nicholas said: 'The proportion of taxes is fixed by the number of inhabitants, and not regulated by the extent of territory or fertility of soil. ... Each state [157 U.S. 429, 568] will know, from its population, its proportion of any general tax. As it was justly observed by the gentleman over the way [Mr. Randolph], they cannot possibly exceed that proportion. They are limited and restrained expressly to it. The state legislatures have no check of this kind. Their power is uncontrolled.' 3 Elliot, Deb. 243, 244.

Mr. Madison remarked that 'they will be limited to fix the proportion of each state, and they must raise it in the most convenient and satisfactory manner to the public.' 3 Elliot, Deb. 255.

From these references-and they might be extended indefinitely-it is clear that the rule to govern each of the great classes into which taxes were divided was prescribed in view of the commonly accepted distinction between them and of the taxes directly levied under the systems of the states; and that the difference between direct and indirect taxation was fully appreciated is supported by the congressional debates after the government was organized.

In the debates in the house of representatives preceding the passage of the act of congress to lay 'duties upon carriages for the conveyance of persons,' approved June 5, 1794 (1 Stat. 373, c. 45), Mr. Sedgwick said that 'a capitation tax, and taxes on land and on property and income generally, were direct charges, as well in the immediate as ultimate sources of contribution. He had considered those, and those only, as direct taxes in their operation and effects. On the other hand, a tax imposed on a specific article of personal property, and particularly of objects of luxury, as in the caseu nder consideration, he had never supposed had been considered a direct tax, within the meaning of the constitution.'

Mr. Dexter observed that his colleague 'had stated the meaning of direct taxes to be a capitation tax, or a general tax on all the taxable property of the citizens; and that a gentleman from Virginia [Mr. Nicholas] thought the meaning was that all taxes are direct which are paid by the citizen without being recompensed by the consumer; but that, where the tax was only advanced and repaid by the consumer, the tax was indirect. He thought that both opinions were just, [157 U.S. 429, 569] and not inconsistent, though the gentlemen had differed about them. He thought that a general tax on all taxable property was a direct tax, because it was paid without being recompensed by the consumer.' Ann. 3d Cong. 644, 646.

At a subsequent day of the debate, Mr. Madison objected to the tax on carriages as 'an unconstitutional

tax'; but Fisher Ames declared that he had satisfied himself that it was not a direct tax, as 'the duty falls not on the possession, but on the use.' Ann. 730.

Mr. Madison wrote to Jefferson on May 11, 1794: 'And the tax on carriages succeeded, in spite of the constitution, by a majority of twenty, the advocates for the principle being re-enforced by the adversaries to luxuries.' 'Some of the motives which they decoyed to their support ought to premonish them of the danger. By breaking down the barriers of the constitution, and giving sanction to the idea of sumptuary regulations, wealth may find a precarious defense in the shield of justice. If luxury, as such, is to be taxed, the greatest of all luxuries, says Paine, is a great estate. Even on the present occasion, it has been found prudent to yield to a tax on transfers of stock in the funds and in the banks.' 2 Mad. Writings, 14.

But Albert Gallatin, in his Sketch of the Finances of the United States, published in November, 1796, said: 'The most generally received opinion, however, is that, by direct taxes in the constitution, those are meant which are raised on the capital or revenue of the peopel; by indirect, such as are raised on their expense. As that opinion is in itself rational, and conformable to the decision which has taken place on the subject of the carriage tax, and as it appears important, for the sake of preventing future controversies, which may be not more fatal to the revenue than to the tranquillity of the Union, that a fixed interpretation should be generally adopted, it will not be improper to corroborate it by quoting the author from whom the idea seems to have been borrowed.' He then quotes from Smith's Wealth of Nations, and continues: 'The remarkable coincidence of the clause of the constitution with this passage in using the word 'capitation' as a generic [157 U.S. 429, 570] expression, including the different species of direct taxes,-an acceptation of the word peculiar, it is believed, to Dr. Smith,-leaves little doubt that the framers of the one had the other in view at the time, and that they, as well as he, by direct taxes, meant those paid directly from the falling immediately on the revenue; and by indirect, those which are paid indirectly out of the revenue by falling immediately upon the expense.' 3 Gall. Writings (Adams' Ed.) 74, 75.

The act provided in its first section 'that there shall be levied, collected, and paid upon all carriages for the conveyance of persons, which shall be kept by or for any person for his or her own use, or to be let out to hire or for the conveyance of passengers, the several duties and rates following'; and then followed a fixed yearly rate on every coach, chariot, phaeton, and coachee, every four-wheel and every two-wheel top carriage, and upon every other two-wheel carriage varying according to the vehicle.

In Hylton v. U. S. (decided in March, 1796) 3 Dall. 171, this court held the act to be constitutional, because not laying a direct tax. Chief Justice Ellsworth and Mr. Justice Cushing took no part in the decision, and Mr. Justie Wilson gave no reasons.

Mr. Justice Chase said that he was inclined to think (but of this he did not 'give a judicial opinion') that 'the direct taxes contemplated by the constitution are only two, to wit, a capitation or poll tax, simply, without regard to property, profession, or any other circumstance, and a tax on land'; and that he doubted 'whether a tax, by a general assessment of personal property, within the United States, is included within the term 'direct tax.'' But he thought that 'an annual tax on carriages for the conveyance of persons may be considered as within the power granted to congress to lay duties. The term 'duty' is the most comprehensive next to the general term 'tax'; and practically in Great Britain (whence we take our general ideas of taxes, duties, imposts, excises, customs, etc.), embraces taxes on stamps, tolls for passage, etc., and is not confined to taxes on importation only. It seems to me that a tax on expense is an indirect [157 U.S. 429, 571] tax; and I think an annual tax on a carriage for the conveyance of persons is of that kind, because a carriage is a consumable commodity, and such annual tax on it is on the expense of the owner.'

Mr. Justice Paterson said that 'the constitution declares that a capitation tax is a direct tax; and, both in theory and practice, a tax on land is deemed to be a direct tax. ... It is not necessary to determine whether a tax on the product of land be a direct or indirect tax. Perhaps, the immediate product of land, in its original and crude state, ought to be considered as the land itself; it makes part of it; or else the provision made against taxing exports would be easily eluded. Land, independently of its produce, is of no value. ... Whether direct taxes, in the sense of the constitution, comprehend any other tax than a capitation tax, and taxes on land, is a questionable point. ... But as it is not before the court, it would be improper to give any decisive opinion upon it.' And he concluded: 'All taxes on expenses or consumption are indirect taxes A tax on carriages is of this kind, and, of course, is not a direct tax.' This conclusion he fortified by reading extracts from Adam Smith on the taxation of consumable commodities.

Mr. Justice Iredell said: 'There is no necessity or propriety in determining what is or is not a direct or indirect tax in all cases. Some difficulties may occur which we do not at present foresee. Perhaps a direct tax, in the sense of the constitution, can mean nothing but a tax on something inseparably annexed to the soil; something capable of apportionment under all such circumstances. A land or a poll tax may be considered of this description. ... In regard to other articles, there may possibly be considerable doubt. It is sufficient, on the present occasion, for the court to be satisfied that this is not a direct tax contemplated by the constitution, in order to affirm the present judgment.'

It will be perceived that each of the justices, while suggesting doubt whether anything but a capitation or a land tax was a direct tax within the meaning of the constitution, distinctly avoided expressing an opinion upon that question or [157 U.S. 429, 572] laying down a comprehensive definition, but confined his opinion to the case before the court.

The general line of observation was obviously influenced by Mr. Hamilton's brief for the government, in which he said: 'The following are presumed to be the only direct taxes: Capitation or poll taxes, taxes on lands and buildings, general assessments, whether on the whole property of individuals, or on their whole real or personal estate. All else must, of necessity, be considered as indirect taxes.' 7 Hamilton's Works (Lodge's Ed.) 332.

Mr. Hamilton also argued: 'If the meaning of the word 'excise' is to be sought in a British statute, it will be found to include the duty on carriages, which is there considered as an 'excise.' ... An argument results from this, though not perhaps a conclusive one, yet, where so important ad istinction in the constitution is to be realized, it is fair to seek the meaning of terms in the statutory language of that country from which our jurisprudence is derived.' 7 Hamilton's Works (Lodge's Ed.) 333.

If the question had related to an income tax, the reference would have been fatal, as such taxes have been always classed by the law of Great Britain as direct taxes.

The above act was to be enforced for two years, but before it expired was repealed, as was the similar act of May 28, 1796, c. 37, which expired August 31, 1801 (1 Stat. 478, 482).

By the act of July 14, 1798, when a war with France was supposed to be impending, a direct tax of two millions of dollars was apportioned to tbe states respectively, in the manner prescribed, which tax was to be collected by officers of the United States, and assessed upon 'dwelling houses, lands, and slaves,' according to the valuations and enumerations to be made pursuant to the act of July 9, 1798, entitled 'An act to provide for the valuation of lands and dwelling houses and the enumeration of slaves within the United States.' 1 Stat. 597, c. 75; Id. 580, c. 70. Under these acts, every dwelling house was assessed according to a prescribed value, and the sum of 50 cents upon every slave enumerated, and the residue

of the sum apportioned was directed to be assessed upon the lands within each state according to the valuation [157 U.S. 429, 573] made pursuant to the prior act, and at such rate per centum as would be sufficient to produce said remainder. By the act of August 2, 1813, a direct tax of three millions of dollars was laid and apportioned to the states respectively, and reference had to the prior act of July 22, 1813, which provided that, whenever a direct tax should be laid by the authority of the United States, the same should be assessed and laid 'on the value of all lands, lots of ground with their improvements, dwelling houses, and slaves, which several articles subject to taxation shall be enumerated and valued by the respective assessors at the rate each of them is worth in money.' 3 Stat. 53, c. 37; Id. 22, c. 16. The act of January 9, 1815, laid a direct tax of six millions of dollars, which was apportioned, assessed, and laid as in the prior act on all lands, lots of grounds with their improvements, dwelling houses, and slaves. These acts are attributable to the war of 1812.

The act of August 6, 1861 (12 Stat. 294, c. 45), imposed a tax of twenty millions of dollars, which was apportioned and to be levied wholly on real estate, and also levied taxes on incomes, whether derived from property or profession, trade or vocation (12 Stat. 309). And this was followed by the acts of July 1, 1862 (12 Stat. 473, c. 119); March 3, 1863 (12 Stat. 718, 723, c. 74); June 30, 1864 (13 Stat. 281, c. 173); March 3, 1865 (13 Stat. 479, c. 78); March 10, 1866 (14 Stat. 4, c. 15); July 13, 1866 (14 Stat. 137, c. 184); March 2, 1867 (14 Stat. 477, c. 169); and July 14, 1870 (16 Stat. 256, c. 255). The differences between the latter acts and that of August 15, 1894, call for no remark in this connection. These acts grew out of the war of the Rebellion, and were, to use the language of Mr. Justice Miller, 'part of the system of taxing incomes, earnings, and profits adopted during the late war, and abandoned as soon after that war was ended as it could be done safely.' Railroad Co. v. Collector, 100 U.S. 595 , 598.

From the foregoing it is apparent (1) that the distinction between direct and indirect taxation was well understood by the framers of the constitution and those who adopted it; (2) that, under the state system of taxation, all taxes on [157 U.S. 429, 574] real estate or personal property or the rents or income thereof were regarded as direct taxes; (3) that the rules of apportionment and of uniformity were adopted in view of that distinction and those systems; (4) that whether the tax on carriages was direct or indirect was disputed, but the tax was sustained as a tax on the use and an excise; (5) that the original expc tation was that the power of direct taxation would be exercised only in extraordinary exigencies; and down to August 15, 1894, this expectation has been realized. The act of that date was passed in a time of profound peace, and if we assume that no special exigency called for unusual legislation, and that resort to this mode of taxation is to become an ordinary and usual means of supply, that fact furnishes an additional reason for circumspection and care in disposing of the case.

We proceed, then, to examine certain decisions of this court under the acts of 1861 and following years, in which it is claimed that this court had heretofore adjudicated that taxes like those under consideration are not direct taxes, and subject to the rule of apportionment, and that we are bound to accept the rulings thus asserted to have been made as conclusive in the premises. Is this contention well founded as respects the question now under examination? Doubtless the doctrine of stare decisis is a salutary one, and to be adhered to on all proper occasions, but it only arises in respect of decisions directly upon the points in issue.

The language of Chief Justice Marshall in Cohens v. Virginia, 6 Wheat. 264, 399, may profitably again be quoted: 'It is a maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of the maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it

are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.' [157 U.S. 429, 575] So in Carroll v. Carroll's Lessee, 16 How. 275, 286, where a statute of the state of Maryland came under review, Mr. Justice Curtis said: 'If the construction put by the court of a state upon one of its statutes was not a matter in judgment, if it might have been decided either way without affecting any right brought into question, then, according to the principles of the common law, an opinion on such a question is not a decision. To make it so, there must have been an application of the judicial mind to the precise question necessary to be determined to fix the rights of the parties, and decide to whom the property in contestation belongs. And therefore this court, and other courts organized under the common law, has never held itself bound by any part of an opinion, in any case, which was not needful to the ascertainment of the right or title in question between the parties.'

Nor is the language of Mr. Chief Justice Taney inapposite, as expressed in The Genesee Chief, 12 How. 443, wherein it was held that the lakes, and navigable waters connecting them, are within the scope of admiralty and maritime jurisdiction as known and understood in the United States when the constitution was adopted, and the preceding case of The Thomas Jefferson, 10 Wheat. 428, was overruled. The chief justice said: 'It was under the influence of these precedents and this usage that the case of The Thomas Jefferson, 10 Wheat. 428, was decided in this court, and the jurisdiction of the courts of admiralty of the United States declared to be limited to the ebb and flow of the tide. The Orleans v. Phoebus, 11 Pet. 175, afterwards followed this case, merely as a point decided. It is the decision in the case of The Thomas Jefferson which mainly embarrasses the court in the present inquiry. We are sensible of the great weight to which it is entitled. But at the same time we are convinced that if we follow it we follow an erroneous decision into which the court fell, when the great importance of the question as it now presents itself could not be foreseen, and the subject did not therefore receive that deliberate consideration which at this time would have been i ven to it by the eminent men who presided here when that case was decided. [157 U.S. 429, 576] For the decision was made in 1825, when the commerce on the rivers of the West and on the Lakes was in its infancy, and of little importance, and but little regarded, compared with that of the present day. Moreover, the nature of the questions concerning the extent of the admiralty jurisdiction, which have arisen in this court, were not calculated to call its attention particularly to the one we are now considering.'

Manifestly, as this court is clothed with the power and intrusted with the duty to maintain the fundamental law of the constitution, the discharge of that duty requires it not to extend any decision upon a constitutional question if it is convinced that error in principle might supervene.

Let us examine the cases referred to in the light of these observations.

In Insurance Co. v. Soule, 7 Wall. 433, the validity of a tax which was described as 'upon the business of an insurance company,' was sustained on the ground that it was 'a duty or excise,' and came within the decision in Hylton's Case. The arguments for the insurance company were elaborate, and took a wide range, but the decision rested on narrow ground, and turned on the distinction between an excise duty and a tax strictly so termed, regarding the former a charge for a privilege, or on the transaction of business, without any necessary reference to the amount of property belonging to those on whom the charge might fall, although it might be increased or diminished by the extent to which the privilege was exercised or the business done. This was in accordance with Society v. Coite, 6 Wall. 594, Provident Inst. v. Massachusetts, Id. 611, and Hamilton Co. v. Massachusetts, Id. 632, in which cases there was a difference of opinion on the question whether the tax under consideration was a tax on the property, and not upon the franchise or privilege. And see Van Allen v. Assessors, 3 Wall. 573; Home Ins. Co. v. New York, 134 U.S. 594 , 10 Sup. Ct. 593; Pullman's Palace Car Co. v. Pennsylvania, 141 U.S. 18 , 11 Sup. Ct. 876.

In Bank v. Fenno, 8 Wall. 533, a tax was laid on the circulation of state banks or national banks paying out the notes of individuals or state banks, and it was [157 U.S. 429, 577] held that it might well be classed under the head of duties, and as falling within the same category as Soule's Case, 7 Wall. 433. It was declared to be of the same nature as excise taxation on freight receipts, bills of lading, and passenger tickets issued by a railroad company. Referring to the discussions in the convention which framed the constitution, Mr. Chief Justice Chase observed that what was said there 'doubtless shows uncertainty as to the true meaning of the term 'direct tax,' but it indicates also an understanding that direct taxes were such as may be levied by capitation and on land and appurtenances, or perhaps by valuation and assessment of personal property upon general lists; for these were the subjects from which the states at that time usually raised their principal supplies.' And in respect of the opinions in Hylton's Case the chief justice said: 'It may further be taken as established upon the testimony of Paterson that the words 'direct taxes,' as used in the constitution, comprehended only capitation taxes and taxes on land, and perhaps taxes on personal property by general valuation and assessment of the various descriptions possessed within the several states.'

In National Bank v. U. S., 101 U.S. 1 , involving the constitutionality of section 3413 of the Revised Statutes, enacting that 'every national banking association, state bank, or banker, or association, shall pay a tax of ten per centum on the amount of notes of any town, city, or municipal corporation, paid out by them,' Bank v. Fenno was cited with approval to the point that congress, having undertaken to provide a currency for the whole country, might, to secure the benefit of it to the people, restrain, by suitable enactments, the i rculation as money of any notes not issued under its authority; and Mr. Chief Justice Waite, speaking for the court, said, 'The tax thus laid is not on the obligation, but on its use in a particular way.'

Scholey v. Rew, 23 Wall. 331, was the case of a succession tax, which the court held to be 'plainly an excise tax or duty' 'upon the devolution of the estate, or the right to become beneficially entitled to the same or the income thereof in [157 U.S. 429, 578] possession or expectancy.' It was like the succession tax of a state, held constitutional in Mager v. Grima, 8 How. 490; and the distinction between the power of a state and the power of the United States to regulate the succession of property was not referred to, and does not appear to have been in the mind of the court. The opinion stated that the act of parliament from which the particular provision under consideration was borrowed had received substantially the same construction, and cases under that act hold that a succession duty is not a tax upon income or upon property, but on the actual benefit derived by the individual, determined as prescribed. In re Elwes, 3 Hurl. & N. 719; Attorney General v. Earl of Sefton, 2 Hurl. & C. 362, 3 Hurl. & C. 1023, and 11 H. L. Cas. 257.

In Railroad Co. v. Collector, 100 U.S. 595 , the validity of a tax collected of a corporation upon the interest paid by it upon its bonds was held to be 'essentially an excise on the business of the class of corporations mentioned in the statute.' And Mr. Justice Miller, in delivering the opinion, said: 'As the sum involved in this suit is small, and the law under which the tax in question was collected has long since been repealed, the case is of little consequence as regards any principle involved in it as a rule of future action.'

All these cases are distinguishable from that in hand, and this brings us to consider that of Springer v. U. S., 102 U.S. 586 , chiefly relied on and urged upon us as decisive.

That was an action of ejectment, brought on a tax deed issued to the United States on sale of defendant's real estate for income taxes. The defendant contended that the deed was void, because the tax was a direct tax, not levied in accordance with the constitution. Unless the tax were wholly invalid, the defense failed.

The statement of the case in the report shows that Springer returned a certain amount as his net income for the particular year, but does not give the details of what his income, gains, and profits consisted in.

The original record discloses that the income was not [157 U.S. 429, 579] derived in any degree from real estate, but was in part professional as attorney at law, and the rest interest on United States bonds. It would seem probable that the court did not feel called upon to advert to the distinction between the latter and the former source of income, as the validity of the tax as to either would sustain the action.

The opinion thus concludes: 'Our conclusions are that direct taxes, within the meaning of the constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate; and that the tax of which the plaintiff in error complains is within the category of an excise or duty.'

While this language is broad enough to cover the interest as well as the professional earnings, the case would have been more significant as a precedent if the distinction had been brought out in the report and commented on in arriving at judgment, for a tax on professional receipts might be treated as an excise or duty, and therefore indirect, when a tax on the income of personalty might be held to be direct.

Be this as it may, it is conceded in all these cases, from that of Hylton to that of Springer, that taxes on land are direct taxes, and in none of them is it determined that taxes on rents or income derived from land are not taxes on land.

We admit that it may not unreasonably be said that logically, if taxes on the rents, issues, and profits of real estate are equivalent to taxes on real estate, and are therefore direct taxes, taxes on the income of personal property as such are equivalent to taxes on such property, and therefore direct taxes. But we are considering the rule stare decisis, and we must decline to hold ourselves bound to extend the scope of decisions,- none of which discussed the question whether a tax on the income from personalty is equivalent to a tax on that personalty, but all of which held real estate liable to direct taxation only,-so as to sustain a tax on the income of realty on the ground of being an excise or duty.

As no capitation or other direct tax was to be laid otherwise than in proportion to the population, some other direct tax than a capitation tax (and, it might well enough be argued, some other tax of the same kind as a capitation tax) must be [157 U.S. 429, 580] referred to, and it has always been considered that a tax upon real estate eo nomine, or upon its owners in respect thereof, is a direct tax, within the meaning of the constitution. But is there any distinction between the real estate itself or its owners in respect of it and the rents or income of the real estate coming to the owners as the natural and ordinary incident of their ownership?

If the constitution had provided that congress should not levy any tax upon the real estate of any citizen of any state, could it be contended that congress could put an annual tax for five or any other number of years upon the rent or income of the real estate? And if, as the constitution now reads, no unapportioned tax can be imposed upon real estate, can congress without apportionment nevertheless impose taxes upon such real estate under the guise of an annual tax upon its rents or income?

As, according to the feudal law, the whole beneficial interest in the land consisted in the right to take the rents and profits, the general rule has always been, in the language of Coke, that 'if a man seised of land in fee by his deed granteth to another the profits of those lands, to have and to hold to him and his heirs, and maketh livery secundum formam chartae, the whole land itself doth pass. For what is the land but the profits thereof?' Co. Litt. 45. And that a devise of the rents and profits or of the income of lands passes the land itself both at law and in equity. 1 Jarm. Wills (5th Ed.) *798, and cases cited.

The requirement of the constitution is that no direct tax shall be laid otherwise than by apportionment. The prohibition is not against direct taxes on land, from which the implication is sought to be drawn that indirect taxes on land would be constitutional, but it is against all direct taxes; and it is admitted that a tax on real estate is a direct tax. Unless, therefore, a tax upon rents or income issuing out of lands is intrinsically so different from a tax on the land itself that it belongs to a wholly different class of taxes, such taxes must be regarded as falling within the same category as a tax on real estate eo nomine. The name of the tax is unimpor- [157 U.S. 429, 581] tant. The real question is, is there any basis upon which to rest the contention that real estate belongs to one of the two great classes of taxes, and the rent or income which is the incident of its ownership belongs to the other? We are unable to perceive any ground for the alleged distinction. An annual tax upon the annual value or annual user of real estate appears to us the same in substance as an annual tax on the real estate, which would be paid out of the rent or income. This law taxes the income received from land and the growth or produce of the land. Mr. Justice Paterson observed in Hylton's Case, 'land, independently of its produce, is of no value,' and certainly had no thought that direct taxes were confined to unproductive land.

If it be true that by varying the form the substance may be changed, it is not easy to see that anything would remain of the limitations of the constitution, or of the rule of taxation and representation, so carefully recognized and guarded in favor of the citizens of each state. But cos titutional provisions cannot be thus evaded. It is the substance, and not the form, which controls, as has indeed been established by repeated decisions of this court. Thus in Brown v. Maryland, 12 Wheat. 419, 444, it was held that the tax on the occupation of an importer was the same as a tax on imports, and therefore void. And Chief Justice Marshall said: 'It is impossible to conceal from ourselves that this is varying the form without varying the substance. It is treating a prohibition which is general as if it were confined to a particular mode of doing the forbidden thing. All must perceive that a tax on the sale of an article imported only for sale is a tax on the article itself.'

In Weston v. City Council, 2 Pet. 449, it was held that a tax on the income of United States securities was a tax on the securities themselves, and equally inadmissible. The ordinance of the city of Charleston involved in that case was exceedingly obscure; but the opinions of Mr. Justice Thompson and Mr. Justice Johnson, who dissented, make it clear that the levy was upon the interest of the bonds and not upon the bonds, and they held that it was an income tax, and as [157 U.S. 429, 582] such sustainable; but the majority of the court, Chief Justice Marshall delivering the opinion, overruled that contention.

So in Dobbins v. Commissioners, 16 Pet. 435, it was decided that the income from an official position could not be taxed if the office itself was exempt.

In Almy v. California, 24 How. 169, it was held that a duty on a bill of lading was the same thing as a duty on the article which it represented; in Railroad Co v. Jackson, 7 Wall. 262, that a tax upon the interest payable on bonds was a tax not upon the debtor, but upon the security; and in Cook v. Pennsylvania, 97 U.S. 566 , that a tax upon the amount of sales of goods by an auctioneer was a tax upon the goods sold.

In Philadelphia & S. S. S. Co. v. Pennsylvania, 122 U.S. 326 , 7 Sup. Ct. 1118, and Leloup v. Port of Mobile, 127 U.S. 640 , 8 Sup. Ct. 1380, it was held that a tax on income received from interstate commerce was a tax upon the commerce itself, and therefore unauthorized. And so, although it is thoroughly settled that where by way of duties laid on the transportation of the subjects of interstate commerce, and on the receipts derived therefrom, or on the occupation or business of carrying it on, a tax is levied by a state on interstate commerce, such taxation amounts to a regulation of such commerce, and cannot be sustained, yet the property in a state belonging to a corporation, whether foreign or

domestic, engaged in foreign or domestic commerce, may be taxed; and when the tax is substantially a mere tax on property, and not one imposed on the privilege of doing interstate commerce, the exaction may be sustained. 'The substance, and not the shadow, determines the validity of the exercise of the power.' Telegraph Co. v. Adams, 155 U.S. 688 , 15 Sup. Ct. 268.

Nothing can be clearer than that what the constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any state through a majority made up from the other states. It is true that the effect of requiring direct taxes to be apportioned among the states in proportion to their population is necessarily that the amount of taxes on the individual [157 U.S. 429, 583] taxpayer in a state having the taxable subject-matter to a larger extent in proportion to its population than another state has, would be less than in such other state; but this inequality must be held to have been contemplated, and was manifestly designed to operate to restrain the exercise of the power of direct taxation to extraordinary emergencies, and to prevent an attack upon accumulated property by mere force of numbers.

It is not doubted that property owners ought to contribute in just measure to the expenses of the government. As to the states and their municipalities, this is reached largely through the imposition of dirc t taxes. As to the federal government, it is attained in part through excises and indirect taxes upon luxuries and consumption generally, to which direct taxation may be added to the extent the rule of apportionment allows. And through one mode or the other the entire wealth of the country, real and personal, may be made, as it should be, to contribute to the common defense and general welfare.

But the acceptance of the rule of apportionment was one of the compromises which made the adoption of the constitution possible, and secured the creation of that dual form of government, so elastic and so strong, which has thus far survived in unabated vigor. If, by calling a tax indirect when it is essentially direct, the rule of protection could be frittered away, one of the great landmarks defining the boundary between the nation and the states of which it is composed, would have disappeared, and with it one of the bulwarks of private rights and private property.

We are of opinion that the law in question, so far as it levies a tax on the rents or income of real estate, is in violation of the constitution, and is invalid.

Another question is directly presented by the record as to the validity of the tax levied by the act upon the income derived from municipal bonds. The averment in the bill is that the defendant company owns two millions of the municipal bonds of the city of New York, from which it derives an annual income of $60,000, and that the directors of the company intend to return and pay the taxes on the income so derived.

The constitution contemplates the independent exercise by [157 U.S. 429, 584] the nation and the state, severally, of their constitutional powers.

As the states cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the constitution to tax either the instrumentalities or the property of a state.

A municipal corporation is the representative of the state, and one of the instrumentalities of the state government. It was long ago determined that the property and revenues of municipal corporations are not subjects of federal taxation. Collector v. Day, 11 Wall. 113; U. S. v. Railroad Co., 17 Wall. 322, 332. In Collector v. Day it was adjudged that congress had no power, even by an act taxing all incomes, to levy a tax upon the salaries of judicial officers of a state, for reasons similar to those on which it had

been held in Dobbins v. Commissioners, 16 Pet. 435, that a state could not tax the salaries OF OFFICERS OF THE UNITED STATES. MR. Justice nelson, in delIvering judgment, said: 'The general government and the states, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former, in its appropriate sphere, is supreme; but the states, within the limits of their powers not granted, or, in the language of the tenth amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the states.'

This is quoted in Van Brocklin v. Tennessee, 117 U.S. 151, 178 , 6 S. Sup. Ct. 670, and the opinion continues: 'Applying the same principles, this court in U. S. v. Baltimore & O. R. Co., 17 Wall. 322, held that a municipal corporation within a state could not be taxed by the United States on the dividends or interest of stock or bonds held by it in a railroad or canal company, because the municipal corporation was a representative of the state, created by the state to exercise a limited portion of its powers of government, and therefore its revenues, like those of the state itself, were not taxable by the United States. The revenues thus adjudged to be exempt from federal taxa- [157 U.S. 429, 585] tion were not themselves appropriated to any specific public use, nor derived from property held by the state or by the municipal corpr ation for any specific public use, but were part of the general income of that corporation, held for the public use in no other sense than all property and income belonging to it in its municipal character must be so held. The reasons for exempting all the property and income of a state, or of a municipal corporation, which is a political division of the state, from federal taxation, equally require the exemption of all the property and income of the national government from state taxation.'

In Morcantile Bank v. City of New York, 121 U.S. 138, 162 , 7 S. Sup. Ct. 826, this court said: 'Bonds issued by the state of New York, or under its authority, by its public municipal bodies, are means for carrying on the work of the government, and are not taxable, even by the United States, and it is not a part of the policy of the government which issues them to subject them to taxation for its own purposes.'

The question in Bonaparte v. Tax Court, 104 U.S. 592 , was whether the registered public debt of one state, exempt from taxation by that state, or actually taxed there, was taxable by another state, when owned by a citizen of the latter, and it was held that there was no provision of the constitution of the United States which prohibited such taxation. The states had not covenanted that this could not be done, whereas, under the fundamental law, as to the power to borrow money, neither the United States, on the one hand, nor the states on the other, can interfere with that power as possessed by each, and an essential element of the sovereignty of each.

The law under consideration provides 'that nothing herein contained shall apply to states, counties or municipalities.' It is contended that, although the property or revenues of the states or their instrumentalities cannot be taxed, nevertheless the income derived from state, county, and municipal securities can be taxed. But we think the same want of power to tax the property or revenues of the states or their instrumentalities exists in relation to a tax on the income from their securities, and for the same reason; and that reason [157 U.S. 429, 586] is given by Chief Justice Marshall, in Weston v. City Council, 2 Pet. 449, 468, where he said: 'The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burthen on the operations of government. It may be carried to an extent which shall arrest them entirely. ... The tax on government stock is thought by this court to be a tax on the contract, a tax on the power a to borrow money on the credit of the United States, and consequently to be repugnant to the constitution.' Applying this language to these municipal securities, it is obvious that taxation on the interest therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the

states and their instrumentalities to borrow money, and consequently repugnant to the constitution.

Upon each of the other questions argued at the bar, to wit: (1) Whether the void provisions as to rents and income from real estate invalidated the whole act; (2) whether, as to the income from personal property, as such, the act is unconstitutional, as laying direct taxes; (3) whether any part of the tax, if not considered as a direct tax, is invalid for want of uniformity on either of the grounds suggested,-the justices who heard the argument are equally divided, and therefore no opinion is expressed.

The result is that the decree of the circuit court is reversed and the cause remanded, with directions to enter a decree in favor of the complainant in respect only of the voluntary payment of the tax on the rents and income of the real estate of the defendant company, and of that which it holds in trust, and on the income from the municipal bonds w ned or so held by it.

Mr. Justice FIELD.

I also desire to place my opinion on record upon some of the important questions discussed in relation to the direct and indirect taxes proposed by the income tax law of 1894. [157 U.S. 429, 587] Several suits have been instituted in state and federal courts, both at law and in equity, to test the validity of the provisions of the law, the determination of which will necessitate careful and extended consideration.

The subject of taxation in the new government which was to be established created great interest in the convention which framed the constitution, and was the cause of much difference of opinion among its members, and earnest contention between the states. The great source of weakness of the confederation was its inability to levy taxes of any kind for the support of its government. To raise revenue it was obliged to make requisitions upon the states, which were respected or disregarded at their pleasure. Great embarrassments followed the consequent inability to obtain the necessary funds to carry on the government. One of the principal objects of the proposed new government was to obviate this defect of the confederacy, by conferring authority upon the new government, by which taxes could be directly laid whenever desired. Great difficulty in accomplishing this object was found to exist. The states bordering on the ocean were unwilling to give up their right to lay duties upon imports, which were their chief source of revenue. The other states, on the other hand, were unwilling to make any agreement for the levying of taxes directly upon real and personal property, the smaller states fearing that they would be overborne by unequal burdens forced upon them by the action of the larger states. In this condition of things, great embarrassment was felt by the members of the convention. It was feared at times that the effort to form a new government would fail. But happily a compromise was effected by an agreement that direct taxes should be laid by congress by apportioning them among the states according to their representation. In return for this concession by some of the states, the other states bordering on navigable waters consented to relinquish to the new government the control of duties, imposts, and excises, and the regulation of commerce, with the condition that the duties, imposts, and excises should be uniform throughout the United States. So that, on the one [157 U.S. 429, 588] hand, anything like oppression or undue advantage of any one state over the others would be prevented by the apportionment of the direct taxes among the states according to their representation, and, on the other hand, anything like oppression or hardship in the levying of duties, imposts, and excises would be avoided by the provision that they should be uniform throughout the United States. This compromise was essential to the continued union and harmony of the states. It protected every state from being controlled in its taxation by the superior numbers of one or more other states.

The constitution, accordingly, when completed, divided the taxes which might be levied under the authority of congress into those which were direct and those which were indirect. Direct taxes, in a general and large sense, may be described as taxes derived immediately from the person, or from real or

personal property, without any recourse therefrom to other sources for reimbursement. In a more restricted sense, they have sometimes been confined to taxes on real property, including the rents and income derived therefrom. Such taxes are conceded to be direct taxes, however taxes on other property are designated, and they are to be apportioned among the states of the Union according to their respective numbers. The second section of article 1 of the constitution declares that representatives and direct taxes shall be thus apportioned. It had been a favorite doctrine in England and in the colonies, before the adoption of the constitution, that taxation and representato n should go together. The constitution prescribes such apportionment among the several states according to their respective numbers, to be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

Some decisions of this court have qualified or thrown doubts upon the exact meaning of the words 'direct taxes.' Thus, in Springer v. U. S., 102 U.S. 586 , it was held that a tax upon gains, profits, and income was an excise or duty, and not a direct tax, within the meaning of the constitution, and [157 U.S. 429, 589] that its imposition was not, therefore, unconstitutional. And in Insurance Co. v. Soule, 7 Wall. 433, it was held that an income tax or duty upon the amounts insured, renewed, or continued by insurance companies, upon the gross amounts of premiums received by them and upon assessments made by them, and upon dividends and undistributed sums, was not a direct tax, but a duty or excise.

In the discussions on the subject of direct taxes in the British parliament, an income tax has been generally designated as a direct tax, differing in that respect from the decision of this court in Springer v. U. S. But, whether the latter can be accepted as correct or otherwise, it does not affect the tax upon real property and its rents and income as a direct tax. Such a tax is, by universal consent, recognized to be a direct tax.

As stated, the rents and income of real property are included in the designation of direct taxes, as part of the real property. Such has been the law in England for centuries, and in this country from the early settlement of the colonies; and it is strange that any member of the legal profession should at this day question a doctrine which has always been thus accepted by common-law lawyers. It is so declared in approved treatises upon real property and in accepted authorities on particular branches of real estate law, and has been so announced in decisions in the English courts and our own courts without number. Thus, in Washburn on Real Property, it is said that 'a devise of the rents and profits of land, or the income of land, is equivalent to a devise of the land itself, and will be for life or in fee, according to the limitation expressed in the devise.' Volume 2, p. 695, 30.

In Jarman on Wills it is laid down that 'a devise of the rents and profits or of the income of land passes the land itself, both at law and in equity; a rule, it is said, founded on the feudal law, according to which the whole beneficial interest in the land consisted in the right to take the rents and profits. And since the act 1 Vict. c. 26, such a devise carries the fee simple; but before that act it carried no more than an estate for life, unless words of inheritance were [157 U.S. 429, 590] added.' Mr. Jarman cites numerous authorities in support of his statement. South v. Alleine, 1 Salk. 228; Goldin v. Lakeman, 2 Barn. & Adol. 42; Johnson v. Arnold, 1 Ves. Sr. 171; Baines v. Dixon, Id. 42; Mannox v. Greener, L. R. 14 Eq. 456; Blann v. Bell, 2 De Gex, M. & G. 781; Plenty v. West, 6 C. B. 201.

Coke upon Littleton says: 'If a man seised of lands in fee by his deed granteth to another the profits of those lands, to have and to hold to him and his heires, and maketh livery secundum formam chartae, the whole land itselfe, doth passe; for what is the land but the profits thereof?' Lib. 1, p. 4b., c. 1, 1.

In Goldin v. Lakeman, Lord Tenterden, Chief Justice of the court of the king's bench, to the same effect, said, 'It is an established rule that a devise of the rents and profits is a devise of the land.' And, in

Johnson v. Arnold, Lord Chancellor Hardwicke reiterated profits of lands is a devise of the lands themselves' profits of lands is a devise of the lands themselves'

The same rule is announced in this country,-the court of errors of New York, in Patterson v. Ellis, 11 Wend. 259, 298, holding that the 'devise of the interest or of the rents and prf its is a devise of the thing itself, out of which that interest or those rents and profits may issue;' and the supreme court of Massachusetts, in Reed v. Reed, 9 Mass. 372, 374, that 'a devise of the income of lands is the same, in its effect, as a devise of the lands.' The same view of the law was expressed in Anderson v. Greble, 1 Ashm. 136, 138; King, the president of the court, stating, 'I take it to be a well-settled rule of law that by a devise of the rent, profits, and income of land, the land itself passes.' Similar adjudications might be repeated almost indefinitely. One may have the reports of the English courts examined for several centuries without finding a single decision or even a dictum of thier judges in conflict with them. And what answer do we receive to these adjudications? Those rejecting them furnish no proof that the framers of the constitution did not follow them, as the great body of the people of the country then did. An incident which occurred in this court and room 20 [157 U.S. 429, 591] years ago may have become a precedent. To a powerful argument then being made by a distinguished counsel, on a public question, one of the judges exclaimed that there was a conclusive answer to his position, and that was that the court was of a different opinion. Those who decline to recognize the adjudications cited may likewise consider that they have a conclusive answer to them in the fact that they also are of a different opinion. I do not think so. The law, as expounded for centuries, cannot be set aside or disregarded because some of the judges are now of a different opinion from those who, a century ago, followed it, in framing our constitution.

Hamilton, speaking on the subject, asks, 'What, in fact, is property but a fiction, without the beneficial use of it?' and adds, 'In many cases, indeed, the income or annuity is the property itself.' 3 Hamilton, Works (Putnam's Ed.) p. 34.

It must be conceded that whatever affects any element that gives an article its value, in the eye of the law, affects the article itself.

In Brown v. Maryland, 12 Wheat. 419, it was held that a tax on the occupation of an importer is the same as a tax on his imports, and as such was invalid. It was contended that the state might tax occupations and that this was nothing more; but the court said, by Chief Justice Marshall (page 444): 'It is impossible to conceal from ourselves that this is varying the form without varying the substance. It is treating a prohibition which is general as if it were confined to a particular mode of doing the forbidden thing. All must perceive that a tax on the sale of an article imported only for sale is a tax on the article itself.'

In Weston v. Council, 2 Pet. 449, it was held that a tax upon stock issued for loans to the United States was a tax upon the loans themselves, and equally invalid. In Dobbins v. Commissioner, 16 Pet. 435, it was held that the salary of an officer of the United States could not be taxed, if the office was itself exempt. In Almy v. California, 24 How. 169, it was held that a duty on a bill of lading was the same thing as a duty on the article transported. In Cook v. Pennsylvania, 97 U.S. 566 , it was held that a tax upon the amount [157 U.S. 429, 592] of sales of goods made by an auctioneer was a tax upon the goods sold. In Philadelphia & S. S. S. Co. v. Pennsylvania, 122 U.S. 326 , 7 Sup. Ct. 1118, and Leloup v. Port of Mobile, 127 U.S. 640, 648 , 8 S. Sup. Ct. 1380, it was held that a tax upon the income received from interstate commerce was a tax upon the commerce itself, and equally unauthorized. The same doctrine was held in People v. Commissioners of Taxes, etc., 90 N. Y. 63; State Freight Tax Case, 15 Wall. 232, 274; Welton v. Missouri. 91 U.S. 275 , 278; and in Fargo v. Michigan, 121 U.S. 230 , 7 Sup. Ct. 857.

The law, so far as it imposes a tax upon land by taxation of the rents and income thereof, must therefore fail, as it does not follow the rule of apportionment. The constitution is imperative in its directions on h is subject, and admits of no departure from them.

But the law is not invalid merely in its disregard of the rule of apportionment of the direct tax levied. There is another and an equally cogent objection to it. In taxing incomes other than rents and profits of real estate it disregards the rule of uniformity which is prescribed in such cases by the constitution. The eighth section of the first article of the constitution declares that 'the congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.' Excises are a species of tax consisting generally of duties laid upon the manufacture, sale, or consumption of commodities within the country, or upon certain callings or occupations, often taking the form of exactions for licenses to pursue them. The taxes created by the law under consideration, as applied to savings banks, insurance companies, whether of fire, life, or marine, to building or other associations, or to the conduct of any other kind of business, are excise taxes, and fall within the requirement, so far as they are laid by congress, that they must be uniform throughout the United States.

The uniformity thus required is the uniformity throughout the United States of the duty, impost, and excise levied; that is, the tax levied cannot be one sum upon an article at one [157 U.S. 429, 593] place, and a different sum upon the same article at another place. The duty received must be the same at all places throughout the United States, proportioned to the quantity of the article disposed of, or the extent of the business done. If, for instance, one kind of wine or grain or produce has a certain duty laid upon it, proportioned to its quantity, in New York, it must have a like duty, proportioned to its quantity, when imported at Charleston or San Francisco; or if a tax be laid upon a certain kind of business, proportioned to its extent, at one place, it must be a like tax on the same kind of business, proportioned to its extent, at another place. In that sense, the duty must be uniform throughout the United States.

It is contended by the government that the constitution only requires an uniformity geographical in its character. That position would be satisfied if the same duty were laid in all the states, however variant it might be in different places of the same state. But it could not be sustained in the latter case without defeating the equality, which is an essential element of the uniformity required, so far as the same is practicable.

In U. S. v. Singer, 15 Wall. 111, 121, a tax was imposed upon a distiller, in the nature of an excise, and the question arose whether in its imposition upon different distillers the uniformity of the tax was preserved, and the court said: 'The law is not in our judgment subject to any constitutional objection. The tax imposed upon the distiller is in the nature of an excise, and the only limitation upon the power of congress in the imposition of taxes of this character is that they shall be 'uniform throughout the United States.' The tax here is uniform in its operation; that is, it is assessed equally upon all manufacturers of spirits, wherever they are. The law does not establish one rule for one distiller and a different rule for another, but the same rule for all alike.'

In the Head Money Cases, 112 U.S. 580, 594 , 5 S. Sup. Ct. 247, a tax was imposed upon the owners of steam vessels for each passenger landed at New York from a foreign port, and it was objected that the tax was not levied by any rule of uniformity, but the court, by Justice Miller, replied: 'The tax is uniform when [157 U.S. 429, 594] it operates with the same force and effect in every place where the subject of it is found. The tax in this case, which, as far as it can be called a tax, is an excise duty on the business of bringing passengers from foreign countries into this, by ocean navigation is uniform, and operates precisely alike in every port of the United States where such passengers can be landed.' In the

decision in that case, in the circuit court (18 Fed. 135, 139), Mr. Justice Blatchford, in addition to pointing out that 'the act was not passed in the exercise of the power of laying taxes,' but was a regulation of commerce, used the following language: 'Aside from this, the tax applies uniformly to all steam and sail vessels coming to all ports in the United States, from all foreign ports, with all alien passengers. The tax being a license tax on the business, the rule of uniformity is sufficiently observed if the tax extends to all persons of the class selected by congress; that is, to all owners of such vessels. Congress has the exclusive power of selecting the class. It has regulated that particular branch of commerce which concerns the bringing of alien passengers,' and that taxes shall be levied upon such property as shall be prescribed by law. The object of this provision was to prevent unjust discriminations. It prevents property from being classified, and taxed as classed, by different rules. All kinds of property must be taxed uniformly or be entirely exempt. The uniformity must be coextensive with the territory to which the tax applies.

Mr. Justice Miller, in his lectures on the constitution, 1889-1890 (pages 240, 241), said of taxes levied by congress: 'The tax must be uniform on the particular article; and it is uniform, within the meaning of the constitutional requirement, if it is made to bear the same percentage over all the United States. That is manifestly the meaning of this word, as used in this clause. The framers of the constitution could not have meant to say that the government, in raising its revenues, should not be allowed to discriminate between the articles which it should tax.' In discussing generally the requirement of uniformity found in state constitutions, he said: 'The difficulties in the way of this construction have, however, been very largely obviated by the meaning of the word [157 U.S. 429, 595] 'uniform,' which has been adopted, holding that the uniformity must refer to articles of the same class; that is, different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times.'

One of the learned counsel puts it very clearly when he says that the correct meaning of the provisions requiring duties, imposts, and excises to be 'uniform throughout the United States' is that the law imposing them should 'have an equal and uniform application in every part of the Union.'

If there were any doubt as to the intention of the states to make the grant of the right to impose indirect taxes subject to the condition that such taxes shall be in all respects uniform and impartial, that doubt, as said by counsel, should be resolved in the interest of justice, in favor of the taxpayer.'

Exemptions from the operation of a tax always create inequalities. Those not exempted must, in the end, bear an additional burden or pay more than their share. A law containing arbitrary exemptions can in no just sense be termed 'uniform.' In my judgment, congress has rightfully no power, at the expense of others, owning property of the like character, to sustain private trading corporations, such as building and loan associations, savings banks, and mutual life, fire, marine, and accident insurance companies, formed under the laws of the various states, which advance no national purpose or public interest, and exist solely for the pecuniary profit of their members.

Where property is exempt from taxation, the exemption, as has been justly stated, must be supported by some consideration that the public, and not private, interests will be advanced by it. Private corporations and private enterprises cannot be aided under the pretense that it is the exercise of the discretion of the legislature to exempt them. Association v. Topeka, 20 Wall. 655; Parkersburg v. Brown, 106 U.S. 487 , 1S up. Ct. 442; Barbour v. Board, 82 Ky. 645, 654, 655; City of Lexington v. McQuillan's Heirs, 9 Dana, 513, 516, 517; and Sutton's Heirs v. City of Louisville, 5 Dana, 28-31.

Cooley, in his treatise on Taxation (2d Ed. 215), justly [157 U.S. 429, 596] observes that 'it is difficult to conceive of a justifiable exemption law which should select single individuals or corporations, or single

articles of property, and, taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate tax legislation.'

The income tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of $4,000 and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation. Hamilton says in one of his papers (the Continentalist): 'The genius of liberty reprobates everything arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the state demands; whatever liberty we may boast of in theory, it cannot exist in fact while [arbitrary] assessments continue.' 1 Hamilton's Works (Ed. 1885) 270. The legislation, in the discrimination it makes, is class legislation. Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by reason of their birth, or wealth, or religion, it is class legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society. It was hoped and believed that the great amendments to the constitution which followed the late Civil War had rendered such legislation impossible for all future time. But the objectionable legislation reappears in the act under consideration. It is the same in essential character as that of the English income statute of 1691, which taxed Protestants at a certain rate, Catholics, as a class, at double the rate of Protestants, and Jews at another and separate rate. Under wise and constitutional legislation, every citizen should contribute his proportion, however small the sum, to the support of the government, and it is no kindness to urge any of our citizens to escape from that obligation. If he contributes the smallest mite of his earnings to that purpose, he will have a greater regard for the government and more self-respect [157 U.S. 429, 597] for himself, feeling that, though he is poor in fact, he is not a pauper of his government. And it is to be hoped that, whatever woes and embarrassments may betide our people, they may never lose their manliness and self-respect. Those qualities preserved, they will ultimately triumph over all reverses of fortune.

There is nothing in the nature of the corporations or associations exempted in the present act, or in their method of doing business, which can be claimed to be of a public or benevolent nature. They differ in no essential characteristic in their business from 'all other corporations, companies, or associations doing business for profit in the United States.' Section 32, Law of 1894.

A few words as to some of them, the extent of their capital and business, and of the exceptions made to their taxation:

(1) As to Mutual Savings Banks. Under income tax laws prior to 1870, these institutions were specifically taxed. Under the new law, certain institutions of this class are exempt, provided the shareholders do not participate in the profits, and interest and dividends are only paid to the depositors. No limit is fixed to the property and income thus exempted,- it may be $100,000 or $100,000,000. One of the counsel engaged in this case read to us during the argument from the report of the comptroller of the currency, sent by the president to congress, December 3, 1894, a statement to the effect that the total number of mutual savings banks exempted were 646, and the total number of stock savn gs banks were 378, and showed that they did the same character of business and took in the money of depositors for the purpose of making it bear interest, with profit upon it in the same way; and yet the 646 are exempt, and the 378 are taxed. He also showed that the total deposits in savings banks were $1, 748,000,000.

(2) As to Mutual Insurance Corporations. These companies were taxed under previous income tax laws. They do business somewhat differently from other companies; but they conduct a strictly private business, in which the public has no interest, and have been often held not to be benevolent or charitable organizations. [157 U.S. 429, 598] The sole condition for exempting them under the present law

is declared to be that they make loans to or divide their profits among their members or depositors or policy holders. Every corporation is carried on, however, for the benefit of its members, whether stockholders, or depositors, or policy holders. If it is carried on for the benefit of its shareholders, every dollar of income is taxed; if it is carried on for the benefit of its policy holders or depositors, who are but another class of shareholders, it is wholly exempted. In the state of New York the act exempts the income from over $1,000,000,000 of property of these companies. The leading mutual life insurance company has property exceeding $204,000, 000 in value, the income of which is wholly exempted. The insertion of the exemption is stated by counsel to have saved that institution fully $200, 000 a year over other insurance companies and associations, having similar property and carrying on the same business, simply because such other companies or associations divide their profits among their shareholders instead of their policy holders.

(3) As to Building and Loan Associations. The property of these institutions is exempted from taxation to the extent of millions. They are in no sense benevolent or charitable institutions, and are conducted solely for the pecuniary profit of their members. Their assets exceed the capital stock of the national banks of the country. One, in Dayton, Ohio, has a capital of $10,000,000, and Pennsylvania has $65,000,000 invested in these associations. The census report submitted to congress by the president, May 1, 1894, shows that their property in the United States amounts to over $628,000,000. Why should these institutions and their immense accumulations of property singled out for the special favor of congress, and be freed from their just, equal, and proportionate share of taxation, when others engaged under different names, in similar business, are subjected to taxation by this law? The aggregate amount of the saving to these associations, by reason of their exemption, is over $600,000 a year.

If this statement of the exemptions of corporations under the law of congress, taken from the carefully prepared briefs of counsel [157 U.S. 429, 599] and from reports to congress, will not satisfy parties interested in this case that the act in question disregards, in almost every line and provision, the rule of uniformity required by the constitution, then 'neither will they be persuaded, though one rose from the dead.' That there should be any question or any doubt on the subject surpasses my comprehension. Take the case of mutual savings banks and stock savings banks. They do the same character of business, and in the same way use the money of depositors, loaning it at interest for profit, yet 646 of them, under the law before us, are exempt from taxation on their income, and 378 are taxed upon it. How the tax on the income of one kind of these banks can be said to be laid upon any principle of uniformity, when the other is exempt from all taxation, I repeat, surpasses my comprehension.

But there are other considerations against the law which are equally decisive. They relate to the uniformity and equality required in all taxation, national and state; to the invalidity of taxation by the United States of the income of the bonds and securities of the states and f their municipal bodies; and the invalidity of the taxation of the salaries of the judges of the United States courts.

As stated by counsel: 'There is no such thing in the theory of our national government as unlimited power of taxation in congress. There are limitations, as he justly observes, of its powers arising out of the essential nature of all free governments; there are reservations of individual rights, without which society could not exist, and which are respected by every government. The right of taxation is subject to these limitations.' Citizens' Savings Loan Ass'n v. Topeka, 20 Wall. 655, and Parkersburg v. Brown, 106 U.S. 487 , 1 Sup. Ct. 442.

The inherent and fundamental nature and character of a tax is that of a contribution to the support of the government, levied upon the principle of equal and uniform apportionment among the persons taxed, and any other exaction does not come within the legal definition of a 'tax.'

This inherent limitation upon the taxing power forbids the imposition of taxes which are unequal in their operation upon [157 U.S. 429, 600] similar kinds of property, and necessarily strikes down the gross and arbitrary distinctions in the income law as passed by congress. The law, as we have seen, distinguishes in the taxation between corporations by exempting the property of some of them from taxation, and levying the tax on the property of others, when the corporations do not materially differ from one another in the character of their business or in the protection required by the government. Trifling differences in their modes of business, but not in their results, are made the ground and occasion of the greatest possible differences in the amount of taxes levied upon their incomes, showing that the action of the legislative power upon them has been arbitrary and capricious, and sometimes merely fanciful.

There was another position taken in this case which is not the least surprising to me of the many advanced by the upholders of the law, and that is that if this court shall declare that the exemptions and exceptions from taxation, extended to the various corporations mentioned, fire, life, and marine insurance companies, and to mutual savings banks, building, and loan associations, violate the requirement of uniformity, and are therefore void, the tax as to such corporations can be enforced, and that the law will stand as though the exemptions had never been inserted. This position does not, in my judgment, rest upon any solid foundation of law or principle. The abrogation or repeal of an unconstitutional or illegal provision does not operate to create and give force to any enactment or part of an enactment which congress has not sanctioned and promulgated. Seeming support of this singular position is attributed to the decision of this court in Huntington v. Worthen, 120 U.S. 97 , 7 Sup. Ct. 469. But the examination of that case will show that it does not give the slightest sanction to such a doctrine. There the constitution of Arkansas had provided that all property subject to taxation should be taxed according to its value, to be ascertained in such manner as the general assembly should direct, making the same equal and uniform throughout the state, and certain public property was declared by statute to be exempt from taxation, which statute was subsequently held to be unconstitutional. The court decided that the unconsti- [157 U.S. 429, 601] tutional part of the enactment, which was separable from the remainder, could be omitted and the remainder enforced; a doctrine undoubtedly sound, and which has never, that I am aware of, been questioned. But that is entirely different from the position here taken, that exempted things can be taxed by striking out their exemption.

The law of 1894 says there shall be assessed, levied, and collected, 'except as herein otherwise provided,' 2 per centum of the amount, etc. If the exceptions are stricken out, there is nothing to be assessed and collected except what congress has otherwise affirmatively ore red. Nothing less can have the force of law. This court is impotent to pass any law on the subject. It has no legislative power. I am unable, therefore, to see how we can, by declaring an exemption or exception invalid, thereby give effect to provisions as though they were never exempted. The court by declaring the exemptions invalid cannot, by any conceivable ingenuity, give operative force as enacting clauses to the exempting provisions. That result is not within the power of man.

The law is also invalid in its provisions authorizing the taxation of the bonds and securities of the states and of their municipal bodies. It is objected that the cases pending before us do not allege any threatened attempt to tax the bonds or securities of the state, but only of municipal bodies of the states. The law applies to both kinds of bonds and securities, those of the states as well as those of municipal bodies, and the law of congress we are examining, being of a public nature, affecting the whole community, having been brought before us and assailed as unconstitutional in some of its provisions, we are at liberty, and I think it is our duty, to refer to other unconstitutional features brought to our notice in examining the law, though the particular points of their objection may not have been mentioned by counsel. These bonds and securities are as important to the performance of the duties of the state as like bonds and securities of the United States are important to the performance of their duties, and are as exempt from the taxation of the United States as the former are exempt from the

taxation of the states. As stated by Judge [157 U.S. 429, 602] Cooley in his work on the Principles of Constitutional Law: 'The power to tax, whether by the United States or by the states, is to be construed in the light of and limited by the fact that the states and the Union are inseparable, and that the constitution contemplates the perpetual maintenance of each with all its constitutional powers, unembarrassed and unimpaired by any action of the other. The taxing power of the federal government does not therefore extend to the means or agencies through or by the employment of which the states perform their essential functions; since, if these were within its reach, they might be embarrassed, and perhaps wholly paralyzed, by the burdens it should impose. 'That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, in respect to those very measures, is declared to be supreme over that which exerts the control,-are propositions not to be denied.' It is true that taxation does not necessarily and unavoidably destroy, and that to carry it to the excess of destruction would be an abuse not to be anticipated; but the very power would take from the states a portion of their intended liberty of independent action within the sphere of their powers, and would constitute to the state a perpetual danger of embarrassment and possible annihilation. The constitution contemplates no such shackles upon state powers, and by implication forbids them.'

The internal revenue act of June 30, 1864, in section 122, provided that railroad and certain other companies specified, indebted for money for which bonds had been issued, upon which interest was stipulated to be paid, should be subject to pay a tax of 5 per cent. on the amount of all such interest, to be paid by the corporations, and by them deducted from the interest payable to the holders of such bonds; and the question arose in U. S. v. Baltimore & O. R. Co., 17 Wall. 322, whether the tax imposed could be thus collected from the revenues of a city owning such bonds. This court answered the question as follows: 'There is no dispute about the gen- [157 U.S. 429, 603] eral rules of the law applicable to this subject. The power of taxation by the federal government upon thes ubjects and in the manner prescribed by the act we are considering is undoubted. There are, however, certain departments which are excepted from the general power. The right of the states to administer their own affairs through their legislative, executive, and judicial departments, in their own manner, through their own agencies, is conceded by the uniform decisions of this court, and by the practice of the federal government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power of the federal government. If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed if any interference is permitted. Hence, the beginning of such taxation is not allowed on the one side, is not claimed on the other.'

And, again: 'A municipal corporation like the city of Baltimore is a representative not only of the state, but it is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the state. The state may withdraw these local powers of government at pleasure, and may, through its legislature or other appointed channels, govern the local territory as it governs the state at large. It may enlarge or contract its powers or destroy its existence. As a portion of the state, in the exercise of a limited portion of the powers of the state, its revenues, like those of the state, are not subject to taxation.'

In Collector v. Day, 11 Wall. 113, 124, the court, speaking by Mr. Justice Nelson, said: 'The general government and the states, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former, in its appropriate sphere, is supreme; but the states, within the limits of their powers not granted, or, in the language of the tenth amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the states.' [157 U.S. 429, 604] According to the census reports, the bonds and securities of the states amount to the sum of

$1,243,268,000, on which the income or interest exceeds the sum of $65,000,000 per annum, and the annual tax of 2 per cent. upon this income or interest would be $1,300,000.

The law of congress is also invalid in that it authorizes a tax upon the salaries of the judges of the courts of the United States, against the declaration of the constitution that their compensation shall not be diminished during their continuance in office. The law declares that a tax of 2 per cent. shall be assessed, levied, and collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on within the United States or elsewhere, or from any source whatever. The annual salary of a justice of the supreme court of the United States is $10,000, and this act levies a tax of 2 per cent. on $6, 000 of this amount, and imposes a penalty upon those who do not make the payment or return the amount for taxation.

The same objection, as presented to a consideration of the objection to the taxation of the bonds and securities of the states, as not being specially taken in the cases before us, is urged here to a consideration of the objection community, and attacked for its unconstitutionality of the judges of the courts of the United States. The answer given to that objection may be also given to the present one. The law of congress, being of a public nature, affecting the interests of the whole community, and attacked for jits unconstitutionality in certain particulars, may be considered with reference to other unconstitutional provisions called to our attention upon examining the law, thouh not specifically noticed in the objections taken in the records or briefs of counsel that the constitution may not be violated from the carelessness or oversight of counsel in any particular. See O'Neil v. Vermont, 144 U.S. 359 , 12 Sup. Ct. 693.

Besides, there is a duty which this court owes to the 100 [157 U.S. 429, 605] other United States judges who have small salaries, and who, having their compensation reduced by the tax, may be seriously affected by the law.

The constitution of the United States provides in the first section of article 3 that 'the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.' The act of congress under discussion imposes, as said, a tax on $6,000 of this compensation, and therefore diminishes each year the compensation provided for every justice. How a similar law of congress was regarded 30 years ago may be shown by the following incident, in which the justices of this court were assessed at 3 per cent. upon their salaries. Against this Chief Justice Taney protested in a letter to Mr. Chase, then secretary of the treasury, appealing to the above article in the constitution, and adding: 'If it [his salary] can be diminished to that extent by the means of a tax, it may, in the same way, be reduced from time to time, at the pleasure of the legislature.' He explained in his letter the object of the constitutional inhibition thus:

> 'The judiciary is one of the three great departments of the government created and established by the constitution. Its duties and powers are specifically set forth, and are of a character that require it to be perfectly independent of the other departments. And in order to place it beyond the reach, and above even the suspicion, of any such influence, the power to reduce their compensation is expressly withheld from congress, and excepted from their powers of legislation.
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> 'Language could not be more plain than that used in the constitution. It is, moreover, one of its

> most important and essential provisions. For the articles which limit the powers of the legislative and executive branches of the government, and those which provide safeguards for the protection of the citizen in his person and property, would be of little value [157 U.S. 429, 606] without a judiciary to uphold and maintain them which was free from every influence, direct or indirect, that might by possibility, in times of political excitement, warp their judgment.
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> 'Upon these grounds, I regard an act of congress retaining in the treasury a portion of the compensation of the judges as unconstitutional and void.'

This letter of Chief Justice Taney was addressed to Mr. Chase, then secretary of the treasury, and afterwards the successor of Mr. Taney as chief justice. It was dated February 16, 1863; but as no notice was taken of it, on the 10th of March following, at the request of the chief justice, the court ordered that his letter to the secretary of the treasury be entered on the records of the court, and it was so entered. And in the memoir of the chief justice it is stated that the letter was, by this order, preserved 'to testify to future ages that in war, no less than in peace, Chief Justice Taney strove to protect the constitution from violation.'

Subsequently, in 1869, and during the administration of President Grant, when Mr. Boutwell was secretary of the treasury, and Mr. Hoar, of Massachusetts, was attorney general, there were in several of the statutes of the United States, for the assessment and collection of internal revenue, provisions for taxing the salaries of all civil officers of the United States, which included, in their literal application, the salaries of the president and of the judges oft he United States. The question arose whether the law which imposed such a tax upon them was constitutional. The opinion of the attorney general thereon was requested by the secretary of the treasury. The attorney general, in reply, gave an elaborate opinion advising the secretary of the treasury that no income tax could be lawfully assessed and collected upon the salaries of those officers who were in office at the time the statute imposing the tax was passed, holding on this subject the views expressed by Chief Justice Taney. His opinion is published in volume 13 of the Opinions of the Attorney General, at page 161. I am informed that it has been fol- [157 U.S. 429, 607] lowed ever since without question by the department supervising or directing the collection of the public revenue.

Here I close my opinion. I could not say less in view of questions of such gravity that go down to the very foundation of the government. If the provisions of the constitution can be set aside by an act of congress, where is the course of usurpation to end? The present assault upon capital is but the beginning. It will be but the stepping-stone to others, larger and more sweeping, till our political contests will become a war of the poor against the rich,-a war constantly growing in intensity and bitterness. 'If the court sanctions the power of discriminating taxation, and nullifies the uniformity mandate of the constitution,' as said by one who has been all his life a student of our institutions, 'it will mark the hour when the sure decadence of our present government will commence.' If the purely arbitrary limitation of four thousand dollars in the present law can be sustained, none having less than that amount of income being assessed or taxed for the support of the government, the limitation of future congresses may be fixed at a much larger sum, at five or ten or twenty thousand dollars, parties possessing an income of that amount alone being bound to bear the burdens of government; or the limitation may be designated at such an amount as a board of 'walking delegates' may deem necessary. There is no safety in allowing the limitation to be adjusted except in strict compliance with the mandates of the constitution, which require its taxation, if imposed by direct taxes, to be apportioned among the states according to their representation, and, if imposed by indirect taxes, to be uniform in operation and, so far as practicable, in proportion to their property, equal upon all citizens. Unless the rule of the constitution governs, a majority may fix the limitation at such rate as will not include any of their own number.

I am of opinion that the whole law of 1894 should be declared void, and without any binding force,-that part which relates to the tax on the rents, profits, or income from real estate, that is, so much as constitutes part of the direct tax, because not imposed by the rule of apportionment according [157 U.S. 429, 608] to the representation of the states, as prescribed by the constitution; and that part which imposes a tax upon the bonds and securities of the several states, and upon the bonds and securities of their municipal bodies, and upon on the salaries of judges of the courts of the United States, as being beyond the power of congress; and that part which lays duties, imposts, and excises, as void in not providing for the uniformity required by the constitution in such cases.

Mr. Justice WHITE (dissenting).

My brief judicial experience has convinced me that the custom of filing long dissenting opinions is one 'more honored in the breach than in the observance.' The only purpose which an elaborate dissent can accomplish, if any, is to weaken the effect of the opinion of the majority, and thus engender want of confidence in the conclusions of courts of last resort. This consideration would impel me to content myself with simply recording my dissent in the present case, were it not for the fact that I consider that the result of the opinion just announced is to overthrow a long n d consistent line of decisions, and to deny to the legislative department of the government the possession of a power conceded to it by universal consensus for 100 years, and which has been recognized by repeated adjudications of this court. The issues presented are as follows:

Complainant, as a stockholder in a corporation, avers that the latter will voluntarily pay the income tax, levied under the recent act of congress; that such tax is unconstitutional; and that its voluntary payment will seriously affect his interest by defeating his right to test the validity of the exaction, and also lead to a multiplicity of suits against the corporation. The prayer of the bill is as follows: First, that it may be decreed that the provisions known as 'The Income Tax Law,' incorporated in the act of congress passed August 15, 1894, are unconstitutional, null, and void; second, that the defendant be restrained from voluntarily complying with the provisions of that act by making its returns and statements, [157 U.S. 429, 609] and paying the tax. The bill, therefore, presents two substantial questions for decision: The right of the plaintiff to relief in the form in which he claims it, and his right to relief on the merits.

The decisions of this court hold that the collection of a tax levied by the government of the United States will not be restrained by its courts. Cheatham v. U. S., 92 U.S. 85 ; Snyder v. Marks, 109 U.S. 189 , 3 Sup. Ct. 157. See, also, Elliott v. Swartwout, 10 Pet. 137; City of Philadelphia v. Collector, 5 Wall. 720; Hornthal v. Collector, 9 Wall. 560. The same authorities have established the rule that the proper course, in a case of illegal taxation, is to pay the tax under protest or with notice of suit, and then bring an action against the officer who collected it. The statute law of the United States, in express terms, gives a party who has paid a tax under protest the right to sue for its recovery. Rev. St. 3226.

The act of 1867 forbids the maintenance of any suit 'for the purpose of restraining the assessment or collection of any tax.' The provisions of this act are now found in Rev. St. 3224.

The complainant is seeking to do the very thing which, according to the statute and the decisions above referred to, may not be done. If the corporator cannot have the collection of the tax enjoined, it seems obvious that he cannot have the corporation enjoined from paying it, and thus do by indirection what he cannot do directly.

It is said that such relief as is here sought has been frequently allowed. The cases relied on are Dodge v. Woolsey, 18 How. 331, and Hawes v. Oakland, 104 U.S. 450 . Neither of these authorities, I submit, is in point. In Dodge v. Woolsey, the main question at issue was the validity of a state tax, and that case

did not involve the act of congress to which I have referred. Hawes v. Oakland was a controversy between a stockholder and a corporation, and had no reference whatever to taxation.

The complainant's attempt to establish a right to relief upon the ground that this is not a suit to enjoin the tax, but [157 U.S. 429, 610] one to enjoin the corporation from paying it, involves the fallacy already pointed out,-that is, that a party can exercise a right indirectly which he cannot assert directly,-that he can compel his agent, through process of this court, to violate an act of congress.

The rule which forbids the granting of an injunction to restrain the collection of a tax is founded on broad reasons of public policy, and should not be ignored. In Cheatham v. U. S., supra, which involved the vaildity of an income tax levied under an act of congress prior to the one here in issue, this court, through Mr. Justice Miller, said:

> 'If there existed in the courts, state or national, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of the government might be placed in the power of a hostile judiciary. Dows v. City of Chicago, 11 Wall. 108. While a fe e course of remonstrance and appeal is allowed within the departments before the money is finally exacted, the general government has wisely made the payment of the tax claimed, whether of customs or of internal revenue, a condition precedent to a resort to the courts by the party against whom the tax is assessed. In the internal revenue branch it has further prescribed that no such suit shall be brought until the remedy by appeal has been tried; and, if brought after this, it must be within six months after the decision on the appeal. We regard this as a condition on which alone the government consents to litigate the lawfulness of the original tax. It is not a hard condition. Few governments have conceded such a right on any condition. If the compliance with this condition requires the party aggrieved to pay the money, he must do it.'

Again, in State Railroad Tax Cases, 92 U.S. 575 , the court said:

> 'That there might be no misunderstanding of the universality of this principle, it was expressly enacted, in 1867, that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' Rev. St. 3224. And, though this was intended to apply alone to taxes levied by the United States, it shows the sense [157 U.S. 429, 611] of congress of the evils to be feared in courts of justice could, in any case, interfere with the process of collecting the taxes on which the government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the experience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and, to do this successfully, other instrumentalities and other modes of procedure are necessary than those which belong to courts of justice. See Cheatham v. Norvell, decided at this term; Nichols v. U. S., 7 Wall. 122; Dows v. City of Chicago, 11 Wall. 108.'

The contention that a right to equitable relief arises from the fact that the corporator is without remedy, unless such relief be granted him, is, I think, without foundation. This court has repeatedly said that the illegality of a tax is not ground for the issuance of an injunction against its collection, if there be an adequate remedy at law open to the payer (Dows v. City of Chicago, 11 Wall. 108; Hannewinkle v. Georgetown, 15 Wall. 547; Board v. McComb, 92 U.S. 531 ; State Railroad Tax Cases, 92 U.S. 575 ; Union Pacific Ry. Co. v. Cheyenne, 113 U.S. 516 , 5 Sup. Ct. 601; Milwaukee v. Koeffler, 116 U.S. 219 , 6 Sup. Ct. 372; Express Co. v. Seibert, 142 U.S. 339 , 12 Sup. Ct. 250), as in the case where the state statute, by which the tax is imposed, allows a suit for its recovery after payment under protest (Shelton v. Platt, 139 U.S. 591 , 11 Sup. Ct. 646; Allen v. Car Co., 139 U.S. 658 , 11 Sup. Ct. 682).

The decision here is that this court will allow, on the theory of equitable right, a remedy expressly forbidden by the statutes of the United States, though it has denied the existence of such a remedy in the case of a tax levied by a state.

Will it be said that, although a stockholder cannot have a corporation enjoined from paying a state tax where the state statute gives him the right to sue for its recovery, yet when the United States not only gives him such right, but, in addition, forbids the issue of an injunction to prevent the payment of federal taxes, the court will allow to the stock- [157 U.S. 429, 612] holder a remedy against the United States tax which it refuses against the state tax?

The assertion that this is only a suit to prevent the voluntary payment of the tax suggests that the court may, by an order operating directly upon the defendant corporation, accomplish a result which the statute manifestly intended should not be accomplished by suit in any court. A final judgment forbidding the corporation from paying the tax will have the effect to prevent its collection, for it could not be that the court would permit a tax to be collected from a corport ion which it had enjoined from paying. I take it to be beyond dispute that the collection of the tax in question cannot be restrained by any proceeding or suit, whatever its form, directly against the officer charged with the duty of collecting such tax. Can the statute be evaded, in a suit between a corporation and a stockholder, by a judgment forbidding the former from paying the tax, the collection of which cannot be restrained by suit in any court? Suppose, notwithstanding the final judgment just rendered, the collector proceeds to collect from the defendant corporation the taxes which the court declares, in this suit, cannot be legally assessed upon it. If that final judgment is sufficient in law to justify resistance against such collection, then we have a case in which a suit has been maintained to restrain the collection of taxes. If such judgment does not conclude the collector, who was not a party to the suit in which it was rendered, then it is of no value to the plaintiff. In other words, no form of expression can conceal the fact that the real object of this suit is to prevent the collection of taxes imposed by congress, notwithstanding the express statutory requirement that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' Either the decision of the constitutional question is necessary or it is not. If it is necessary, then the court, by way of granting equitable relief, does the very thing which the act of congress forbids. If it is unnecessary, then the court decides the act of congress here asserted unconstitutional, without being obliged to do so by the requirements of the case before it. [157 U.S. 429, 613] This brings me to the consideration of the merits of the cause.

The constitutional provisions respecting federal taxation are four in number, and are as follows:

> '(1) Representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons.' Article 1, 2, cl. 3. The fourteenth amendment modified this provision, so that the whole number of persons in each state should be counted, 'Indians not taxes' excluded.
>
> '(2) The congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.' Article 1, 8, cl. 1.
>
> '(3) No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.' Article 1, 9, cl. 4.
>
> '(4) No tax or duty shall be laid on articles exported from any state.' Article 1, 9, cl. 5.

It has been suggested that, as the above provisions ordain the apportionment of direct taxes, and authorize congress to 'lay and collect taxes, duties, imposts, and excises,' therefore there is a class of taxes which are neither direct, and are not duties, imposts, and excises, and are exempt from the rule of apportionment on the one hand, or of uniformity on the other. The soundness of this suggestion need not be discussed, as the words, 'duties, imposts, and excises,' in conjunction with the reference to direct taxes, adequately convey all power of taxation to the federal government.

It is not necessary to pursue this branch of the argument, since it is unquestioned that the provisions of the constitution vest in the United States plenary powers of taxation; that is, all the powers which belong to a government as such except [157 U.S. 429, 614] that of taxing exports. The court in this case so says, and quotes approvingly the language of this court, speaking through Mr. Chief Justice Chase, in License Tax Cases, 5 Wall. 462, as follows:

> 'It is true that the power of congress to tax is a very extensive power. It is given in the constitution with only one exception and only two qualifications. Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject and may be exercised at discretion.'

In deciding, then, the question of whether the income tax violates the constitution, we have to determine, not the existence of a power in congress, but whether an admittedly unlimited power to tax (the income tax not being a tax on exports) has been used according to the restrictions, as to methods for its exercise, found in the constitution. Not power, it must be borne in mind, but the manner of its use, it the only issue presented in this case. The limitations in regard to the mode of direct taxation imposed by the constitution are that capitation and other direct taxes shall be apportioned among the states according to their respective numbers, while duties, imposts, and excises must be uniform throughout the United States. The meaning of the word 'uniform' in the constitution need not be examined, as the court is divided upon that a subject, and no expression of opinion thereon is conveyed or intended to be conveyed in this dissent.

In considering whether we are to regard an income tax as 'direct' or otherwise, it will, in my opinion, serve no useful purpose, at this late period of our political history, to seek to ascertain the meaning of the word 'direct' in the constitution by resorting to the theoretical opinions on taxation found in the writings of some economists prior to the adoption of the constitution or since. These economists teach that the question of whether a tax is direct or indirect depends not upon whether it is directly levied upon a person, but upon whether, when so levied, it may be ultimately shifted from the person [157 U.S. 429, 615] in question to the consumer, thus becoming, while direct in the method of its application, indirect in its final results, because it reaches the person who really pays it only indirectly. I say it will serve no useful purpose to examine these writers, because, whatever may have been the value of their opinions as to the economic sense of the word 'direct,' they cannot now afford any criterion for determining its meaning in the constitution, inasmuch as an authoritative and conclusive construction has been given to that term, as there used, by an interpretation adopted shortly after the formation of the constitution by the legislative department of the government, and approved by the executive; by the adoption of that interpretation from that time to the present without question, and its exemplification and enforcement in many legislative enactments, and its acceptance by the authoritative text writers on the constitution; by the sanction of that interpretation, in a decision of this court rendered shortly after the constitution was adopted; and finally by the repeated reiteration and affirmance of that interpretation, so that it has become imbedded in our jurisprudence, and therefore may be considered almost a part of the written constitution itself.

Instead, therefore, of following counsel in their references to economic writers and their discussion of

the motives and thoughts which may or may not have been present in the minds of some of the framers of the constitution, as if the question before us were one of first impression, I shall confine myself to a demonstration of the truth of the propositions just laid down.

In 1794 (1 Stat. 373, c. 45) congress levied, without reference to apportionment, a tax on carriages 'for the conveyance of persons.' The act provided 'that there shall be levied, collected, and paid upon all carriages for the conveyance of persons which shall be kept by, or for any person for his or her own use, or to be let out to hire, or for the conveying of passengers, the several duties and rates following'; and then came a yearly tax on every c oach, chariot, phaeton, and coachee, every four-wheeled and every [157 U.S. 429, 616] two-wheeled top carriage, and upon every other two-wheeled carriage,' varying in amount according to the vehicle.

The debates which took place at the passage of that act are meagerly preserved. It may, however, be inferred from them that some considered that whether a tax was 'direct' or not in the sense of the constitution depended upon whether it was levied on the object or on its use. The carriage tax was defended by a few on the ground that it was a tax on consumption. Mr. Madison opposed it as unconstitutional, evidently upon the conception that the word 'direct' in the constitution was to be considered as having the same meaning as that which had been attached to it by some economic writers. His view was not sustained, and the act passed by a large majority,-49 to 22. It received the approval of Washington. The congress which passed this law numbered among its members many who sat in the convention which framed the constitution. It is moreover safe to say that each member of that congress, even although he had not been in the convention, had, in some way, either directly or indirectly, been an influential actor in the events which led up to the birth of that instrument. It is impossible to make an analysis of this act which will not show that its provisions constitute a rejection of the economic construction of the word 'direct,' and this result equally follows, whether the tax be treated as laid on the carriage itself or on its use by the owner. If viewed in one light, then the imposition of the tax on the owner of the carriage, because of his ownership, necessarily constituted a direct tax under the rule as laid down by economists. So, also, the imposition of a burden of taxation on the owner for the use by him of his own carriage made the tax direct according to the same rule. The tax having been imposed without apportionment, it follows that those who voted for its enactment must have give to the word 'direct,' in the constitution, a different significance from that which is affixed to it by the economists referred to.

The validity of this carriage tax act was considered by this court in Hylton v. U. S., 3 Dall. 171. Chief Justice Ellsworth and Mr. Justice Cushing took no part in [157 U.S. 429, 617] the decision. Mr. Justice Wilson stated that he had, in the circuit court of Virginia, expressed his opinion in favor of the constitutionality of the tax. Mr. Justice Chase, Mr. Justice Paterson, and Mr. Justice Iredell each expressed the reasons for his conclusions. The tax, though laid, as I have said, on the carriage, was held not to be a direct tax under the constitution. Two of the judges who sat in that case (Mr. Justice Paterson and Mr. Justice Wilson) had been distinguished members of the constitutional convention. Excepts from tne observations of the justices are given in the opinion of the court. Mr. Justice Paterson, in addition to the language there quoted, spoke as follows (the italics being mine):

> 'I never entertained a doubt that the principal-I will not say the only-objects that the framers of the constitution contemplated as falling within the rule of apportionment were a capitation tax and a tax on land. Local considerations and the particular circumstances and relative situation of the states naturally lead to this view of the subject. The provision was made in favor of the Southern states. They possessed a large number of slaves. They had extensive tracts of territory, thinly settled, and not very productive. A majority of the states had but few slaves, and several of them a limited territory, well settled, and in a high state of cultivation. The Southern states, if no

> provision had been introduced in the constitution, would have been wholly at the mercy of the other states Congress, in such case, might tax slaves at discretion or arbitrarily, and land in every part on the Union after the same rate or measure,-so much a head in the first instance, and so much an acre in the second. To guardt hem against imposition in these particulars was the reason of introducing the clause in the constitution which directs that representatives and direct taxes shall be apportioned among the states according to their respective numbers.'

It is evident that Mr. Justice Chase coincided with these views of Mr. Justice Paterson, though he was perhaps not quite so firmly settled in his convictions, for he said:

> 'I am inclined to think-but of this I do not give a judicial [157 U.S. 429, 618] opinion-that the direct taxes contemplated by the constitution are only two, to wit, a capitation or poll tax simply, without regard to property, profession, or any other circumstances, and the tax on land. I doubt whether a tax by a general assessment of personal property within the United States is included within the term 'direct tax."

Mr. Justice Iredell certainly entertained similar views, since he said:

> 'Some difficulties may occur which we do not at present foresee. Perhaps a direct tax in the sense of the constitution can mean nothing but a tax on something inseparably annexed to the soil; something capable of apportionment under all such circumstances. A land of a poll tax may be considered of this description. ... In regard to other articles there may possibly be considerable doubt.'

These opinions strongly indicate that the real convictions of the justices were that only capitation taxes and taxes on land were direct within the meaning of the constitution, but they doubted whether some other objects of a kindred nature might not be embraced in that word. Mr. Justice Paterson had no doubt whatever of the limitation, and Justice Iredell's doubt seems to refer only to things which were inseparably connected with the soil, and which might therefore be considered, in a certain sense, as real estate.

That case, however, established that a tax levied without apportionment on an object of personal property was not a 'direct tax' within the meaning of the constitution. There can be no doubt that the enactment of this tax and its interpretation by the court, as well as the suggestion, in the opinions delivered, that nothing was a 'direct tax,' within the meaning of the constitution, but a capitation tax and a tax on land, were all directly in conflict with the views of those who claimed at the time that the word 'direct' in the constitution was to be interpreted according to the views of economists. This is conclusively shown by Mr. Madison's language. He asserts not only that the act had been passed contrary to the constitution, but that the decision of the court was likewise in violation of that instrument. Ever since the announce- [157 U.S. 429, 619] ment of the decision in that case, the legislative department of the government has accepted the opinions of the justices, as well as the decision itself, as conclusive in regard to the meaning of the word 'direct'; and it has acted upon that assumption in many instances, and always with executive indorsement. All the acts passed levying direct taxes confined them practically to a direct levy on land. True, in some of these acts a tax on slaves was included, but this inclusion, as has been said by this court, was probably based upon the theory that these were in some respects taxable along with the land, and therefore their inclusion indicated no departure by congress from the meaning of the word 'direct' necessarily resulting from the decision in the Hylton Case, and which, moreover, had been expressly elucidated and suggested as being practically limited to capitation taxes and taxes on real estate by the justices who expressed opinions in that case.

These acts imposing direct taxes having been confined in their operation exclusively to real estate and slaves, the subject-matters indicated as the proper objects of direct taxation in the Hylton Case are the strongest possible evidence that this suggestion was accepted as conclusive, and had become a settled rule of law. Some of these acts were passed at times of great public necessity, whn revenue was urgently required. The fact that no other subjects were selected for the purposes of direct taxation, except those which the judges in the Hylton Case had suggested as appropriate therefor, seems to me to lead to a conclusion which is absolutely irresistible,-that the meaning thus affixed to the word 'direct' at the very formation of the government was considered as having been as irrevocably determined as if it had been written in the constitution in express terms. As I have already observed, every authoritative writer who has discussed the constitution from that date down to this has treated this judicial and legislative ascertainment of the meaning of the word 'direct' in the constitution as giving it a constitutional significance, without reference to the theoretical distinction between 'direct' and 'indirect,' made by some economists prior to the constitution or since. This doc- [157 U.S. 429, 620] trine has become a part of the hornbook of American constitutional interpretation, has been taught as elementary in all the law schools, and has never since then been anywhere authoritatively questioned. Of course, the text-books may conflict in some particulars, or indulge in reasoning not always consistent, but as to the effect of the decision in the Hylton Case and the meaning of the word 'direct,' in the constitution, resulting therefrom, they are a unit. I quote briefly from them.

Chancellor Kent, in his Commentaries, thus states the principle:

> 'The construction of the powers of congress relative to taxation was brought before the supreme court, in 1796, in the case of Hylton v. U. S. By the act of June 5, 1794, congress laid a duty upon carriages for the conveyance of persons, and the question was whether this was a 'direct tax,' within the meaning of the constitution. If it was not a direct tax, it was admitted to be rightly laid, under that part of the constitution which declares that all duties, imposts, and excises shall be uniform throughout the United States; but, if it was a direct tax, it was not constitutionally laid, for it must then be laid according to the census, under that part of the constitution which declares that direct taxes shall be apportioned among the several states according to numbers. The circuit court in Virginia was divided in opinion on the question, but on appeal to the supreme court it was decided that the tax on carriages was not a direct tax, within the letter or meaning of the constitution, and was therefore constitutionally laid.
>
> 'The question was deemed of very great importance, and was elaborately argued. It was held that a general power was given great was held that a general power was given to kind or nature, without any restraint. They had plenary power over every species of taxable property, except exports. But there were two rules prescribed for their government,- the rule of uniformity, and the rule of apportionment. Three kinds of taxes, viz. duties, imposts, and excises, were to be laid by the first rule; and capitation and other direct taxes, by the second rule. If there were any other species of taxes, as the [157 U.S. 429, 621] court seemed to suppose there might be, that were not direct, and not included within the words 'duties, imposts, or excises,' they were to be laid by the rule of uniformity or not, as congress should think proper and reasonable.
>
> 'The constitution contemplated no taxes as direct taxes but such as congress could lay in proportion to the census; and the rule of apportionment could not reasonably apply to a tax on carriages, nor could the tax on carriages be laid by that rule without very great inequality and injustice. If two states, equal in census, were each to pay 8,000 dollars by a tax on carriages, and in one state there were 100 carriages and in another 1,000, the tax on each carriage would be ten times as much in one state as in the other. While A. in the one state, would pay for his carriage eight dollars, B., in the other state, would pay for his carriage eighty dollars. In this way itw as

> shown by the court that the notion that a tax on carriages was a 'direct tax,' within the purview of the constitution, and to be apportioned sccording to the census, would lead to the grossest abuse and oppression. This argument was conclusive against the construction set up, and the tax on carriages was considered as included within the power to lay duties; and the better opinion seemed to be that the direct taxes contemplated by the constitution were only two, viz. a capitation or poll tax and a tax on land.' Kent. Comm. pp. 254-256.

Story, speaking on the same subject, says:

> 'Taxes on lands, houses, and other permanent real estate, or on parts or appurtenances thereof, have always been deemed of the same character; that is, direct taxes. It has been seriously doubted if, in the sense of the constitution, any taxes are direct taxes except those on polls or on lands. Mr. Justice Chase, in Hylton v. U. S., 3 Dall. 171, said: 'I am inclined to think that the direct taxes contemplated by the constitution are only two, viz., a capitation or poll tax simply, without regard to property, profession, or other circumstances, and a tax on land. I doubt whether a tax by a general assessment of personal property within the United States is included within the term 'direct tax." Mr. Justice Paterson in the same case said: 'It is not necessary to deter- [157 U.S. 429, 622] mine whether a tax on the produce of land be a direct or an indirect tax. Perhaps the immediate product of land, in its original and crude state, ought to be considered as a part of the land itself. When the produce is converted into a manufacture it assumes a new shape, etc. Whether 'direct taxes,' in the sense of the constitution, comprehend any other tax than a capitation tax, or a tax on land, is a questionable point, etc. I never entertained a doubt that the principal-I will not say the only-objects that the framers of the constitution contemplated, as falling within the rule of apportionment, were a capitation tax and a tax on land.' And he proceeded to state that the rule of apportionment, both as regards representatives and as regards direct taxes, was adopted to guard the Southern states against undue impositions and oppressions in the taxing of slaves. Mr. Justice Iredell in the same case said: 'Perhaps a direct tax, in the sense of the constitution, can mean nothing but a tax on something inseparably annexed to the soil; something capable of apportionment under all such circumstances. A land or poll tax may be considered of this description. The latter is to be considered so, particularly under the present constitution, on account of the slaves in the Southern states, who give a ratio in the representation in the proportion of three to five. Either of these is capable of an apportionment. In regard to other articles, there may possibly to considerable doubt.' The reasoning of the Federalists seems to lead to the same result.' Story, Const. 952.

Cooley, in his work on Constitutional Limitations (page 595), thus tersely states the rule:

> 'Direct taxes, when laid by congress, must be apportioned among the several states according to the representative population. The term 'direct taxes,' as employed in the constitution, has a technical meaning, and embraces capitation and land taxes only.'

Miller on the Constitution (section 282a) thus puts it:

> 'Under the provisions already quoted, the question then came up as to what is a 'direct tax,' and also upon what property it is to be levied, as distinguished from any other tax. In regard to this it is sufficient to say that it is believed that no other than a capitation tax of so much per head and a land tax is a 'direct tax,' [157 U.S. 429, 623] within the meaning of the constitution of the United States. All other taxes, except imposts, are properly called 'excise taxes.' 'Direct taxes,' within the meaning of the constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate.'

In Pomeroy's Constitutional Law (section 281) we read as follows:

I t becomes necessary, therefore, to inquire a little more particularly what are direct and what indurect taxes. Few cases on the general question of taxation have arisen and been decided by the supreme court, for the simple reason that, until the past few years, the United States has generally been able to obtain all needful revenue from the single source of duties upon imports. There can be no doubt, however, that all the taxes provided for in the internal revenue acts now and what indirect taxes. Few cases on the

> 'This subject came before the supreme court of the United States in a very early case,-Hylton v. U. S. In the year 1794, congress laid a tax of ten dollars on all carriages, and the rate was thus made uniform. The validity of the statute was disputed. It was claimed that the tax was direct, and should have been apportioned among the states. The court decided that this tax was not direct. The reasons given for the decision are unanswerable, and would seem to cover all the provisions of the present internal revenue laws.'

Hare, in his treatise on American Constitutional Law (pages 249, 250), is to the like affect:

> 'Agreeably to section 9 of article 1, paragraph 4, 'no capitation or other direct tax shall be laid except in proportion to the census or enumeration hereinbefore directed to be taken'; while section 3 of the same article requires that representation and direct taxes shall be apportioned among the several states ... according to their respective numbers. 'Direct taxes,' in the sense of the constitution, are poll taxes and taxes on land.'

Burroughs on Taxation (page 502) takes the same view:

> 'Direct Taxes. The kinds of taxation authorized are both direct and indirect. The construction given to the expression 'direct taxes' is that it included only a tax on land and a poll [157 U.S. 429, 624] tax, and this is in accord with the views of writers upon political economy.'

Ordroneaux, in his Constitutional Legislation (page 225), says:

> 'Congress having been given the power 'to lay and collect taxes, duties, imposts, and excises,' the above three provisions are limitations upon the exercise of this authority:
>
> '(1) By distinguishing between direct and indirect taxes as to their mode of assessment;
>
> '(2) By establishing a permanent freedom of trade between the states; and
>
> '(3) By prohibiting any discrimination in favor of particular states, through revenue laws establishing a preference between their ports and those of others.
>
> 'These provisions should be read together, because they are at the foundation of our system of national taxation.
>
> 'The two rules prescribed for the government of congress in laying taxes are those of apportionment for direct taxes and uniformity for indirect. In the first class are to be found capitation or poll taxes and taxes on land; in the second, duties, imposts, and excises.
>
> 'The provision relating to capitation taxes was made in favor of the Southern states, and for the protection of slave property. While they possessed a large number of persons of this class, they

> also had extensive tracts of sparsely settled and unproductive lands. At the same time an opposite condition, both as to land territory and population, existed in a majority of the other states. Were congress permitted to tax slaves and land in all parts of the country at a uniform rate, the Southern slave states must have been placed at a great disadvantage. Hence, and to guard against this inequality of circumstances, there was introduced into the constitution the further provision that 'representatives and direct taxes shall be apportioned among the states according to their respective numbers.' This changed the basis of direct taxation from a strictly monetary standard, which could not, equitably, be made uniform throughout the country, to one resting upon population as the measure of representation. But for this congress might have taxed slaves arbitrarily, and [157 U.S. 429, 625] at its pleasure, as so much property, and land uniformly throughou the Union, regardless of differences in productiveness. It is not strange, therefore, that it Hylton v. U. S. the court said that: 'The rule of apportionment is radically wrong, and cannot be supported by and solid reasoning. It ought not, therefore, to be extended by construction. Apportionment is an operation on states, and involves valuations and assessments which are arbitrary, and should not be resorted to but in case of necessity.'
>
> 'Direct taxes being now well settled in their meaning, a tax on carriages left for the use of the owner is not a capitation tax; nor a tax on the business of an insurance company; nor a tax on a bank's circulation; nor a tax on income; nor a succession tax. The foregoing are not, properly speaking, direct taxes within the meaning of the constitution, but excise taxes or duties.'

Black, writing on Constitutional Law, says:

> 'But the chief difficulty has arisen in determining what is the difference between direct taxes and such as are indirect. In general usage, and according to the terminology of political economy, a direct tax is one which is levied upon the person who is to pay it, or upon his land or personalty, or his business or income, as the case may be. An indirect tax is one assessed upon the manufacturer or dealer in the particular commodity, and paid by him, but which really falls upon the consumer, since it is added to the market price of the commodity which he must pay. But the course of judicial decision has determined that the term 'direct,' as here applied to taxes, is to be taken in a more restricted sense. The supreme court has ruled that only land taxes and capitation taxes are 'direct,' and no others. In 1794 congress levied a tax of ten dollars on all carriages kept for use, and it was held that this was not a direct tax. And so also an income tax is not to be considered direct. Neither is a tax on the circulation of state banks, nor a succession tax, imposed upon every 'devolution of title to real estate." Op. cit. p. 162.

Not only have the other departments of the government accepted the significance attached to the word 'direct' in the [157 U.S. 429, 626] Hylton Case by their actions as to direct taxes, but they have also relied on it as conclusive in their dealings with indirect taxes by levying them solely upon objects which the judges in that case declared were not objects of direct taxation. Thus the affirmance by the federal legislature and executive of the doctrine established as a result of the Hylton Case has been twofold.

From 1861 to 1870 many laws levying taxes on income were enacted, as follows: Act Aug. 1861 (12 Stat. 309, 311); Act July, 1862 (12 Stat. 473, 475); Act March, 1863 (12 Stat. 718, 723); Act June, 1864 (13 Stat. 281, 285); Act March, 1865 (13 Stat. 479, 481); Act March, 1866 (14 Stat. 4, 5); Act July, 1866 (14 Stat. 137-140); Act March, 1867 (14 Stat. 477-480); Act July, 1870 (16 Stat. 256-261).

The statutes above referred to cover all income and every conceivable source of revenue from which it could result,-rentals from real estate, products of personal property, the profits of business or professions.

The validity of these laws has been tested before this court. The first case on the subject was that of Insurance Co. v. Soule, 7 Wall. 443. The controversy in that case arose under the ninth section of the act of July 13, 1866 (14 Stat. 137, 140), which imposed a tax on 'all dividends in scrip and money, thereafter declared due, wherever and whenever ths same shall be payable, to stockholders, policy holders, or depositors or parties whatsoever, including non-residents whether citizens or aliens, as part of the earnings, incomes or gains of any bank, trust company, savings institution, and of any fire, marine, life, or inland insurance company, either stock or mutual, under whatever name or style known or called in the United States or territories, whether specially incorporated or existing under general laws, and on all undistributed sum or sums made or added during the year to their surpu or contingent funds.'

It will be seen that the tax imposed was levied on the income of insurance companies as a unit, including every possible [157 U.S. 429, 627] source of revenue, whether from personal or real property, from business gains or otherwise. The case was presented here on a certificate of division of opinion below. One of the questions propounded was 'whether the taxes paid by the plaintiff and sought to be recovered in this action are not direct taxes, within the meaning of the constitution of the United States.' The issue, therefore, necessarily brought before this court was whether an act imposing an income tax on every possible source of revenue was valid or invalid. The case was carefully, ably, elaborately, and learnedly argued. The brief on behalf of the company, filed by Mr. Wills, was supported by another, signed by Mr. W. O. Bartlett, which covered every aspect of the contention. It rested the weight of its argument against the statute on the fact that it included the rents of real estate among the sources of income taxed, and therefore put a direct tax upon the land. Able as have been the arguments at bar in the present case, an examination of those then presented will disclose the fact that every view here urged was there pressed upon the court with the greatest ability, and after exhaustive research, equaled, but not surpassed, by the eloquence and learning which has accompanied the presentation of this case. Indeed, it may be said that the principal authorities cited and relied on now can be found in the arguments which were then submitted. It may be added that the case on behalf of the government was presented by Attorney General Evarts.

The court answered all the contentions by deciding the generic question of the validity of the tax, thus passing necessarily upon every issue raised, as the whole necessarily includes every one of its parts. I quote the reasoning applicable to the matter now in hand:

> 'The sixth question is: 'Whether the taxes paid by the plaintiff, and sought to be recovered back in this action, are not direct taxes, within the meaning of the constitution of the United States.' In considering this subject it is proper to advert to the several provisions of the constitution relating to taxation by congress. 'Representatives and direct taxes shall be apportioned among the several states which shall be in- [157 U.S. 429, 628] cluded in this Union according to their respective numbers,' etc. 'Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.' 'No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.' 'No tax or duty shall be laid on articles exported from any state.'
>
> 'These clauses contain the entire grant of the taxing power by the organic law, with the limitations which that instrument imposes.
>
> 'The national government, though supreme within its own sphere, is one of limited jurisdiction and specific functions. It has no faculties but such as the constitution has given it, either expressly or incidentally by necessary intendment. Whenever any act done under its authority is challenged,

the proper sanction must be found in its charter, or the act is ultra vires and void. This test must be applied in the examination of the question before us. If the tax to which it refers is a 'direct tax,' it is clear that it has not been laid in conformity to the requirements of the constitution. It is therefore necessary to asscertain to which of the categories named in the eighth section of the first article it belongs.

'What are direct taxes was elaborately argued and considered by this court in Hylton v. U. S., decided in the year 1796. One of the members of the court (Justice Wilson) had been a distinguished member of the convention which framed the constituto n. It was unanimously held by the four justices who heard the argument that a tax upon carriages kept by the owner for his own use was not a direct tax. Justice Chase said: 'I am inclined to think-but of this I do not give a judicial opinion-that the direct taxes contemplated by the constitution are only two, to wit, a capitation or poll tax simply, without regard to property, profession, or any other circumstances, and a tax on land.' Paterson, J., followed in the same line of remark. He said: 'I never entertained a doubt that the principal (I will not say [157 U.S. 429, 629] the only) object the framers of the constitution contemplated as falling within the rule of apportionment was a capitation tax or a tax on land . ... The constitution declares that a capitation tax is a direct tax, and both in theory and practice a tax on land is deemed to be a direct tax. In this way the terms 'direct taxes' 'capitation and other direct tax' are satisfied.'

'The views expressed in this case are adopted by Chancellor Kent and Justice Story in their examination of the subject. 'Duties' are defined by Tomlin to be things due and recoverable by law. The term, in its widest signification, is hardly less comprehensive than 'taxes.' It is applied, in its most restricted meaning, to customs; and in that sense is nearly the synonym of 'imposts.'

"Impost' is a duty on imported goods and merchandise. In a larger sense, it is any tax or imposition. Cowell says it is distinguished from 'custom,' 'because custom is rather the profit which the prince makes on goods shipped out.' Mr. Madison considered the terms 'duties' and 'imposts' in these clauses as synonymous. Judge Tucker thought 'they were probably intended to comprehend every species of tax or contribution not included under the ordinary terms 'taxes' and 'excises."

"Excise' is defined to be an inland imposition, sometimes upon the consumption of the commodity, and sometimes upon the retail sale; sometimes upon the manufacturer, and sometimes upon the vendor.

'The taxing power is given in the most comprehensive terms. The only limitations imposed are that direct taxes, including the capitation tax, shall be apportioned; that duties, imposts, and excises shall be uniform; and that no duties shall be imposed upon articles exported from any state. With these exceptions, the exercise of the power is, in all respects, unfettered.

'If a tax upon carriages, kept for his own use by the owner, is not a direct tax, we can see no ground upon which a tax upon the business of an insurance company can be held to belong to that class of revenue charges.

'It has been held that congress may require direct taxes to [157 U.S. 429, 630] be laid and collected in the territories as well as in the states.

'The consequences which would follow the apportionment of the tax in question among the states and territories of the Union in the manner prescribed by the constitution must not be overlooked.

> They are very obvious. Where such corporations are numerous and rich, it might be light; where none exist, it could not be collected; where they are few and poor, it would fall upon them with such weight as to involve annihilation. It cannot be supposed that the framers of the constitution intended that any tax should be apportioned, the collection of which on that principle would be attended with such results. The consequences are fatal to the proposition.
>
> 'To the question under consideration it must be answered that the tax to which it relates is not a direct tax, but a duty or excise; that it was obligatory on the plaintiff to pay it.
>
> 'The other questions certified up are deemed to be sufficiently answered by the answers given to the first and sixth questions.'

This opinion, it seems to me, closes the door to discussion in regard to the meaning of the word 'direct' in the constitution, and renders unnecessary a resort to the conflicting opinions of the framers, or to the theories of the economists. It adopts that construction of the word which confines it to capitation taxesa nd a tax on land, and necessarily rejects the contention that that word was to be construed in accordance with the economic theory of shifting a tax from the shoulders of the person upon whom it was immediately levied to those of some other person. This decision moreover, is of great importance, because it is an authoritative reaffirmance of the Hylton Case, and an approval of the suggestions there made by the justices, and constitutes another sanction given by this court to the interpretation of the constitution adopted by the legislative, executive, and judicial departments of the government, and thereafter continuously acted upon.

Not long thereafter, in Bank v. Fenno, & Wall. 533, the question of the application of the word 'direct' was again submitted to this court. The issue there was whether a tax on the circulation of state banks was 'direct,' within [157 U.S. 429, 631] the meaning of the constitution. It was ably argued by the most distinguished counsel, Reverdy Johnson and Caleb Cushing representing the bank, and Attorney General Hoar, the United States. The brief of Mr. Cushing again presented nearly every point now urged upon our consideration. It cited copiously from the opinions of Adam Smith and others. The constitutionality of the tax was maintained by the government on the ground that the meaning of the word direct' in the constitution, as interpreted by the Hylton Case, as enforced by the continuous legislative construction, and as sanctioned by the consensus of opinion already referred to, was finally settled. Those who assailed the tax there urged, as is done here, that the Hylton Case was not conclusive, because the only question decided was the particular matter at issue, and insisted that the suggestions of the judges were mere dicta, and not to be followed. They said that Hylton v. U. S. adjudged one point alone, which was that a tax on a carriage was not a direct tax, and that from the utterances of the judges in the case it was obvious that the general question of what was a direct tax was but crudely considered. Thus the argument there presented to this court the very view of the Hylton Case, which has been reiterated in the argument here, and which is sustained now. What did this court say then, speaking through Chief Justice Chase, as to these arguments? I take very fully from its opinion:

> 'Much diversity of opinion has always prevailed upon the question, what are direct taxes? Attempts to answer it by reference to the definitions of political economists have been frequently made, but without satisfactory results. The enumeration of the different kinds of taxes which congress was authorized to impose was probably made with very little reference to their speculations. The great work of Adam Smith, the first comprehensive treatise on political economy in the English language, had then been recently published; but in this work, though there are passages which refer to the characteristic difference between direct and indirect taxation, there is nothing which affords any valuable light on the use of the words 'direct taxes,' in

the constitution. [157 U.S. 429, 632] 'We are obliged, therefore, to resort to historical evidence, and to seek the meaning of the words in the use and in the opinion of those whose relations to the government, and means of knowledge, warranted them in speaking with authority.

'And, considered in this light, the meaning and application of the rule, as to direct taxes, appears to us quite clear.

'It is, as we think, distinctly shown in every act of congress on the subject.

'In each of these acts a gross sum was laid upon the United States, and the total amount was apportioned to the several states according to their respective numbers of inhabitants, as ascertained by the last preceding census. Having been apportioned, provision was made for the imposition of the tax upon the subjects specified in the act, fixing its total sum.

'In 1798, when the first direct tax was imposed, the total amount was fixed at two millions of dl lars; in 1813, the amount of the second direct tax was fixed at three millions; in 1815, the amount of the third at six millions, and it was made an annual tax; in 1816, the provision making the tax annual was repealed by the repeal of the first section of the act of 1815, and the total amount was fixed for that year at three millions of dollars. No other direct tax was imposed until 1861, when a direct tax of twenty millions of dollars was laid, and made annual; but the provision making it annual was suspended, and no tax, except that first laid, was ever apportioned. In each instance the total sum was apportioned among the states by the constitutional rule, and was assessed at prescribed rates on the subjects of the tax. The subjects, in 1798, 1813, 1815, 1816, were lands, improvements, dwelling houses, and slaves; and in 1861, lands, improvements, and dwelling houses only. Under the act of 1798, slaves were assessed at fifty cents on each; under the other acts, according to valuation by assessors.

'This review shows that personal property, contracts, occupations, and the like, have never been regarded by congress as proper subjects of direct tax. It has been supposed that slaves must be considered as an exception to this observation. But the exception is rather apparent than real. As persons, slaves [157 U.S. 429, 633] were proper subjects of a capitation tax, which is described in the constitution as a direct tax; as property, they were, by the laws of some, if not most, of the states, classed as real property, descendible to heirs. Under the first view, they would be subject to the tax of 1798, as a capitation tax; under the latter, they would be subject to the taxation of the other years, as realty. That the latter view was that taken by the framers of the acts, after 1798, becomes highly probable, when it is considered that, in the states where slaves were held, much of the value which would otherwise have attached to land passed into the slaves. If, indeed, the land only had been valued without the slaves, the land would have been subject to much heavier proportional imposition in those states than in states where there were no slaves; for the proportion of tax imposed on each state was determined by population, without reference to the subjects on which it was to be assessed.

'The fact, then, that slaves were valued, under the acts referred to, for from showing, as some have supposed, that congress regarded personal property as a proper object of direct taxation, under the constitution, shows only that congress, after 1798, regarded slaves, for the purposes of taxation, as realty.

'It may be rightly affirmed, therefore, that, in the practical construction of the constitution by congress, direct taxes have been limited to taxes on land and appurtenances, and taxes on polls, or capitation taxes.

> 'And this construction is entitled to great consideration, especially in the absence of anything adverse to it in the discussions of the convention which framed, and of the conventions which ratified, the constitution. ...
>
> 'This view received the sanction of this bourt two years before the enactment of the first law imposing direct taxes eo nomine.'

The court then reviews the Hylton Case, repudiates the attack made upon it, reaffirms the construction placed on it by the legislative, executive, and judicial departments, and Company Case, to which I have referred. expressly adheres to the ruling in the insurance Company Case, to whichI have referred. Summing up, it said: [157 U.S. 429, 634] 'It follows necessarily that the power to tax without apportionment extends to all other objects. Taxes on other objects are included under the heads of taxes not direct, duties, imposts, and excises, and must be laid and collected by the rule of uniformity. The tax under consideration is a tax on bank circulation, and may very well be classed under the head of duties. Certainly it is not, in the sense of the constitution, a direct tax. It may be said to come within the same category f taxation as the tax on incomes of insurance companies, which this court, at the last term, in the case of Insurance Co. v. Soule, held not to be a direct tax.'

This case was, so far as the question of direct taxation is concerned, decided by an undivided court; for, although Mr. Justice Nelson dissented from the opinion, it was not on the ground that the tax was a direct tax, but on another question.

Some years after this decision the matter again came here for adjudication, in the case of Scholey v. Rew, 23 Wall. 331. The issue there involved was the validity of a tax placed by a United States statute on the right to take real estate by inheritance. The collection of the tax was resisted on the ground that it was direct. The brief expressly urged this contention, and said the tax in question was a tax on land, if ever there was one. It discussed the Hylton Case, referred to the language used by the various judges, and sought to place upon it the construction which we are now urged to give it, and which has been so often rejected by this court.

This court again by its unanimous judgment answered all these contentions. I quote its language:

> 'Support to the first objection is attempted to be drawn from that clause of the constitution which provides that direct taxes shall be apportioned among the several states which may be included within the Union, according to their respective numbers, and also from the clause which provides that no capitation or other direct tax shall be laid, unless in proportion to the census or amended enumeration; but it is clear that the tax or duty levied by the act under consideration is not a direct tax, within the meaning of either of those [157 U.S. 429, 635] provisions. Instead of that, it is plainly an excise tax or duty, authorized by section 8 of article 1, whih vests the power in congress to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare. ...
>
> 'Indirect taxes, such as duties of impost and excises, and every other description of the same, must be uniform; and direct taxes must be laid in proportion to the census or enumeration, as remodeled in the fourteenth amendment. Taxes on lands, houses, and other permanent real estate have always been deemed to be direct taxes, and capitation taxes, by the express words of the constitution, are within the same category; but it never has been decided that any other legal exactions for the support of the federal government fall within the condition that, unless laid in proportion to numbers, that the assessment is invalid.

> 'Whether direct taxes, in the sense of the constitution, comprehend any other tax than a capitation tax and a tax on land, is a question not absolutely decided, nor is it necessary to determine it in the present case, as it is expressly decided that the term does not include the tax on income, which cannot be distinguished in principle from a succession tax, such as the one involved in the present controversy.'

What language could more clearly and forcibly reaffirm the previous rulings of the court upon this subject? What stronger indorsement could be given to the construction of the constitution which had been given in the Hylton Case, and which had been adopted and adhered to by all branches of the government almost from the hour of its establishment? It is worthy of note that the court here treated the decision in the Hylton Case as conveying the view that the only direct taxes were 'taxes on land and appurtenances.' In so doing it necessarily again adopted the suggestion of the justices there made, thus making them the adjudged conclusions of this court. It is too late now to destroy the force of the opinions in that case by qualifying them as mere dicta, when they have again and again been expressly approved by this court.

If there were left a doubt as to what this established con- [157 U.S. 429, 636] struction is, it seems to be entirely removed by the case of Springer v. U. S., 102 U.S. 586 . Springer was assessed fr an income tax on his professional earnings and on the interest on United States bonds. He declined to pay. His real estate was sold in consequence. The suit involved the validity of the tax, as a basis for the sale. Again every question now presented was urged upon this court. The brief of the plaintiff in error, Springer, made the most copious references to the economic writers, continental and English. It cited the opinions of the framers of the constitution. It contained extracts from the journals of the convention, and marshaled the authorities in extensive and impressive array. It reiterated the argument against the validity of an income tax which included rentals. It is also asserted that the Hylton Case was not authority, because the expressions of the judges, in regard to anything except the carriage tax, were mere dicta.

The court adhered to the ruling announced in the previous cases, and held that the tax was not direct, within the meaning of the constitution. It re-examined and answered everything advanced here, and said, in summing up the case:

> 'Our conclusions are that direct taxes, within the meaning of the constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate; and that the tax of which the plaintiff in error complained is within the category of an excise or duty.'

The facts, then, are briefly these: At the very birth of the government a contention arose as to the meaning of the word 'direct.' That controversy was determined by the legislative and executive departments of the government. Their action came to this court for review, and it was approved. Every judge of this court who expressed an opinion made use of language which clearly showed that he thought the word 'direct,' in the constitution, applied only to capitation taxes and taxes directly on land. Thereafter the construction thus given was accepted everywhere as definitive. The matter came again and again to this court, and in every case the original ruling was adhered to. The suggestions made in the Hylton Case were adopted here, and [157 U.S. 429, 637] in the last case here decided, reviewing all the others, this court said that direct taxes, within the meaning of the constitution, were only taxes on land, and capitation taxes. And now, after a hundred years, after long- continued action by other departments of the government, and after repeated adjudications of this court, this interpretation is overthrown, and the congress is declared not to have a power of taxation which may at some time, as it has in the past, prove necessary to the very existence of the government. By what process of reasoning is this to be done? By resort to theories, in order to construe the word 'direct' in its economic sense,

instead of in accordance with its meaning in the constitution, when the very result of the history which I have thus briefly recounted is to show that the economic construction of the word was repudiated by the framers themselves, and has been time and time again rejected by this court; by a resort to the language of the framers and a review of their opinions, although the facts plainly show that they themselves settled the question which the court now virtually unsettles. In view of all that has taken place, and of the many decisions of this court, the matter at issue here ought to be regarded as closed forever.

The injustice and harm which must always result from overthrowing a long and settled practice sanctioned by the decisions of this court could not be better illustrated than by the example which this case affords. Under the income-tax laws which prevailed in the past for many years, and which covered every conceivable source of income,-rentals from real estate,- and everything else, vast sums were collected from the people of the United States. The decision here rendered announces that those sums were wrongfully taken, and thereby, it seems to me, creates a claim, in equity and good conscience, against the government for an enormous amount of money. Thus, form the change of view by this court, it happens that an act of congress, passed for the purpose of raising revenue, in strict conformity with the practice of the government from the earliest time, and in accordance with the oft-repeated decisions of this court, furnishes the [157 U.S. 429, 638] occasion for creating a claim against the government for hundreds of millions of dollars. I say, creating a claim, because, if the government be in good conscience bound to refund that which has been taken from the citizen in violation of the constitution, although the technical right may have disappeared by lapse of time, or because the decisions of this court have misled the citizen to his grievous injury, the equity endures, and will present itself to the conscience of the government. This consequence shows how necessary it is that the court should not overthrow its past decisions. A distinguished writer aptly points out the wrong which must result to society from a shifting judicial interpretation. He says:

> 'If rules and maxims of law were to ebb and flow with the taste of the judge, or to assume that shape which, in his fancy, best becomes the times; if the decisions of one case were not to be ruled by or depend at all upon former determinations in other cases of a like nature,-I should be glad to know what person would venture to purchase an estate without first having the judgment of a court of justice respecting the identical title under which he means to purchase. No reliance could be had upon precedents. Former resolutions upon titles of the same kind could afford him no assurance at all. Nay, even a decision of a court of justice upon the very identical title would be nothing more than a precarious, temporary security. The practice upon which it was founded might, in the course of a few years, become antiquated. The same title might be again drawn into dispute. The taste and fashion of the times might be improved, and on that ground a future judge might hold himself at liberty, if not consider it his duty, to pay as little regard to the maxims and decisions of his predecessor as that predecessor did to the maxims and decisions of those who went before him.' Fearne, Rem. (London Ed. 1801) p. 264.

The disastrous consequences to flow from disregarding settled decisions, thus cogently described, must evidently become greatly magnified in a case like the present, when the opinion of the court affects fundamental principles of the government by denying an essential power of taxation [157 U.S. 429, 639] long conceded to exist, and often exerted by congress. If it was necessary that the previous decisions of this court should be repudiated, the power to amend the constitution existed, and should have been availed of. Since the Hylton Case was decided, the constitution has been repeatedly amended. The construction which confined the word 'direct' to capitation and land taxes was not changed by these amendments, and it should not now be reversed by what seems to me to be a judicial amendment of the constitution.

The finding of the court in this case that the inclusion of rentals from real estate in an income tax makes

it direct, to that extent, is, in my judgment, conclusively denied by the authorities to which I have referred, and which establish the validity of an income tax in itself. Hence, I submit, the decisions necessarily reverses the settled rule which it seemingly adopts in part. Can there be serious doubt that the question of the validity of an income tax, in which the rentals of real estate are included, is covered by the decisions which say that an income tax is generically indirect, and that, therefore, it is valid without apportionment? I mean, of course could there be any such doubt, were it not for the present opinion of the court? Before undertaking to answer this question I deem it necessary to consider some arguments advanced or suggestions made.

(1) The opinions of Turgot and Smith and other economists are cited, and it is said their views were known to the framers o the constitution, and we are then referred to the opinions of the framers themselves. The object of the collocation of these two sources of authority is to show that there was a concurrence between them as to the meaning of the word 'direct.' But, in order to reach this conclusion, we are compelled to overlook the fact that this court has always held, as appears from the preceding cases, that the opinions of the economists threw little or no light on the interpretation of the word 'direct,' as found in the constitution. And the whole effect of the decisions of this court is to establish the proposition that the word has a different significance in the constitution from that which Smith and Turgot have given to it when used in a general economic sense. Indeed, it seems to me [157 U.S. 429, 640] that the conclusion deduced from this line of thought itself demonstrates its own unsoundness. What is that conclusion? That the framers well understood the meaning of 'direct.'

Now, it seems evident that the framers, who well understood the meaning of this word, have themselves declared in the most positive way that it shall not be here construed in the sense of Smith and Turgot. The congress which passed the carriage tax act was composed largely of men who had participated in framing the constitution. That act was approved by Washington, who had presided over the deliberations of the convention. Certainly, Washington himself, and the majority of the framers, if they well understood the sense in which the word 'direct' was used, would have declined to adopt and approve a taxing act which clearly violated the provisions of the constitution, if the word 'direct,' as therein used, had the meaning which must be attached to it if read by the light of the theories of Turgot and Adam Smith. As has already been noted, all the judges who expressed opinions in the Hylton Case suggested that 'direct,' in the constitutional sense, referred only to taxes on land and capitation taxes. Could they have possible made this suggestion if the word had been used as Smith and Turgot used it? It is immaterial whether the suggestions of the judges were dicta or not. They could not certainly have made this intimation, if they understood the meaning of the word 'direct' as being that which it must have imported if construed according to the writers mentioned. Take the language of Mr. Justice Paterson, 'I never entertained a doubt that the principal, I will not say the only, objects that the framers of the constitution contemplated as falling within the rule of apportionment were a capitation tax and a tax on land.' He had borne a conspicuous part in the convention. Can we say that he understood the meaning of the framers, and yet, after the lapse of a hundred years, fritter away that language, uttered by him from this bench in the first great case in which this court was called upon to interpret the meaning of the word 'direct'? It cannot be said that his language was used carelessly, or without a knowledge of its great import. The debate upon the passage [157 U.S. 429, 641] of the carriage tax act had manifested divergence of opinion as to the meaning of the word 'direct.' The magnitude of the issue is shown by all contemporaneous authority to have been deeply felt, and its far-reaching consequence was appreciated. Those controversies came here for settlement, and were then determined with a full knowledge of the importance of the issues. They should not be now reopened.

The argument, then, it seems to me, reduces itself to this: That the framers well knew the meaning of the word 'direct'; that, so well understanding it, they practically interpreted it in such a way as to plainly indicate that it had a sense contrary to that now given to it, in the view adopted by the court. Although they thus comprehended the meaning of the word and interpreted it at an early day, their interpretation

is now to be overthrown by resorting to the economists whose construction was repudiated by them. It is thus demonstrable that the conclusion deduced from th premise that the framers well understood the meaning of the word 'direct' involves a fallacy; in other words, that it draws a faulty conclusion, even if the predicate upon which the conclusion is rested be fully admitted. But I do not admit the premise. The views of the framers, cited in the argument, conclusively show that they did not well understand, but were in great doubt as to, the meaning of the word 'direct.' The use of the word was the result of a compromise. It was accepted as the solution of a difficulty which threatened to frustrate the hopes of those who looked upon the formation of a new government as absolutely necessary to escape the condition of weakness which the articles of confederation had shown. Those who accepted the compromise viewed the word in different lights, and expected different results to flow from its adoption. This was the natural result of the struggle which was terminated by the adoption of the provision as to representation and direct taxes. That warfare of opinion had been engendered by the existence of slavery in some of the states, and was the consequence of the conflict of interest thus brought about. In reaching a settlement, the minds of those who acted on it were naturally concerned in the main with the cause of the [157 U.S. 429, 642] contention, and not with the other things which had been previously settled by the convention. Thus, while there was, in all probability, clearness of vision as to the meaning of the word 'direct,' in relation to its bearing on slave property, there was inattention in regard to other things, and there were therefore diverse opinions as to its proper signification. That such was the case in regard to many other clauses of the constitution has been shown to be the case by those great controversies of the past, which have been peacefully settled by the adjudications of this court. While this difference undoubtedly existed as to the effect to be given the word 'direct,' the consensus of the majority of the framers as to its meaning was shown by the passage of the carriage tax act. That consensus found adequate expression in the opinions of the justices in the Hylton Case, and in the decree of this court there rendered. The passage of that act, those opinions, and that decree, settled the proposition that the word applied only to capitation taxes and taxes on land.

Nor does the fact that there was difference in the minds of the framers as to the meaning of the word 'direct' weaken the binding force of the interpretation placed upon that word from the beginning; for, if such difference existed, it is certainly sound to hold that a contemporaneous solution of a doubtful question, which has been often confirmed by this court, should not now be reversed. The framers of the constitution, the members of the earliest congress, the illustrious man first called to the office of chief executive, the jurists who first sat in this court, two of whom had borne a great part in the labors of the convention, all of whom dealt with this doubtful question, surely occupied a higher vantage ground for its correct solution than do those of our day. Here, then, is the dilemma: If the framers understood the meaning of the word 'direct' in the constitution, the practical effect which they gave to it should remain undisturbed; if they were in doubt as to the meaning, the interpretation long since authoritatively affixed to it should be upheld.

(2) Nor do I think any light is thrown upon the question of whether the tax here under consideration is direct or indi- [157 U.S. 429, 643] rect by referring to the principle of 'taxation without representation,' and the great struggle of our forefathers for its enforcement. It cannot be said that the congress which passed this act was not the representative body fixed by the constitution. Nor can it be contended that the struggle for the enforcement of the principle involved the contention that representation should be in exact proportion to the wealth taxed. If the argument be used in order to draw h e inference that because, in this instance, the indirect tax imposed will operate differently through various sections of the country, therefore that tax should be treated as direct, it seems to me it is unsound. The right to tax, and not the effects which may follow from its lawful exercise, is the only judicial question which this court is called upon to consider. If an indirect tax, which the constitution has not subjected to the rule of apportionment, is to be held to be a direct tax, because it will bear upon aggregations of property in different sections of the country according to the extent of such aggregations, then the power is denied to congress to do that which the constitution authorizes because the exercise of a lawful power is

supposed to work out a result which, in the opinion of the court, was not contemplated by the fathers. If this be sound, then every question which has been determined in our past history is now still open for judicial reconstruction. The justness of tariff legislation has turned upon the assertion on the one hand, denied on the other, that it operated unequally on the inhabitants of different sections of the country. Those who opposed such legislation have always contended that its necessary effect was not only to put the whole burden upon the section, but also to directly enrich certain of our citizens at the expense of the rest, and thus build up great fortunes, to the benefit of the few and the detriment of the many. Whether this economic contention be true or untrue is not the question. Of course, I intimate no view on the subject. Will it be said that if, to- morrow, the personnel of this court should be changed, it could deny the power to enact tariff legislation which has been admitted to exist in congress from the beginning, upon the ground that such legislation beneficially affects one section or set of people [157 U.S. 429, 644] to the detriment of others, within the spirit of the constitution, and therefore constitutes a direct tax?

(3) Nor, in my judgment, does any force result from the argument that the framers expected direct taxes to be rarely resorted to, and, as the present tax was imposed without public necessity, it should be declared void.

It seems to me that this statement begs the whole question, for it assumes that the act now before us levies a direct tax, whereas the question whether the tax is direct or not is the very issue involved in this case. If congress now deems it advisable to resort to certain forms of indirect taxation which have been frequently, though not continuously, availed of in the past, I cannot see that its so doing affords any reason for converting an indirect into a direct tax in order to nullify the legislative will. The policy of any particular method of taxation, or the presence of an exigency which requires its adoption, is a purely legislative question. It seems to me that it violates the elementary distinction between the two departments of the government to allow an opinion of this court upon the necessity or expediency of a tax to affect or control our determination of the existence of the power to impose it.

But I pass from these considerations to approach the question whether the inclusion of rentals from real estate in an income tax renders such a tax to that extent 'direct' under the constitution, because it constitutes the imposition of a direct tax on the land itself.

Does the inclusion of the rentals from real estate in the sum going to make up the aggregate income from which (in order to arrive at taxable income) is to be deducted insurance, repairs, losses in business, and $4, 000 exemption, make the tax on income so ascertained a direct tax on such real estate?

In answering this question, we must necessarily accept the interpretation of the word 'direct' authoritatively given by the history of the government and the decisions of this court just cited. To adopt that interpretation for the general purposes of an income tax, and then repudiate it because of one of the elements of wi ch it is composed, would violate every [157 U.S. 429, 645] elementary rule of construction. So, also, to seemingly accept that interpretation, and then resort to the framers and the economists in order to limit its application and give it a different significance, is equivalent to its destruction, and amounts to repudiating it without directly doing so. Under the settled interpretation of the word, we ascertain whether a tax be 'direct' or not by considering whether it is a tax on land or a capitation tax. And the tax on land, to be within the provision for apportionment, must be direct. Therefore we have two things to take into account: Is it a tax on land, and is it direct thereon, or so immediately on the land as to be equivalent to a direct levy upon it? To say that any burden on land, even though indirect, must be apportioned, is not only to incorporate a new provision in the constitution, but is also to obliterate all the decisions to which I have referred, by construing them as holding that, although the constitution forbids only a direct tax on land without apportionment, it must

be so interpreted as to bring an indirect tax on land within its inhibition.

It is said that a tax on the rentals is a tax on the land, as if the act here under consideration imposed an immediate tax on the rentals. This statement, I submit, is a misconception of the issue. The point involved is whether a tax on net income, when such income is made up by aggregating all sources of revenue and deducting repairs, insurance, losses in business, exemptions, etc., becomes, to the extent to which real-estate revenues may have entered into the gross income, a direct tax on the land itself. In other words, does that which reaches an income, and thereby reaches rentals indirectly, and reaches the land by a double indirection, amount to a direct levy on the land itself? It seems to me the question, when thus accurately stated, furnishes its own negative response, Indeed, I do not see how the issue can be stated precisely and logically without making it apparent on its face that the inclusion of rental from real property in income is nothing more than an indirect tax upon the land.

It must be borne in mind that we are not dealing with the want of power in congress to assess real estate at all. On [157 U.S. 429, 646] the contrary, as I have shown at the outset, congress has plenary power to reach real estate, both directly and indirectly. If it taxes real estate directly, the constitution commands that such direct imposition shall be apportioned. But because an excise or other indirect tax, imposed without apportionment, has an indirect effect upon real estate, no violation of the constitution is committed, because the constitution has left congress untrammeled by any rule of apportionment as to indirect taxes,-imposts, duties, and excises. The opinions in the Hylton Case, so often approved and reiterated, the unanimous views of the text writers, all show that a tax on land, to be direct, must be an assessment of the land itself, either by quantity or valuation. Here there is no such assessment. It is well also to bear in mind, in considering whether the tax is direct on the land, the fact that if land yields no rental it contributes nothing to the income. If it is vacant, the law does not force the owner to add the rental value to his taxable income. And so it is if he occupies it himself.

The citation made by counsel from Coke on Littleton, upon which so much stress is laid, seems to me to have no relevancy. The fact that where one delivers or agrees to give or transfer land, with all the fruits and revenues, it will be presumed to be a conveyance of the land, in no way supports the proposition that an indirect tax on the rental of land is a direct burden on the land itself. $Nor can I see the application of Brown v. Maryland; Western v. Peters; Dobbins v. Commissioners; Almy v. California; Cook v. Pennsylvania; Railroad Co. v. Jackson; Philadelphia & S. S. S. Co. v. Pennsylvania; Leloup v. Mobile; Telegraph Co. v. Adams. All thee cases involved the question whether, under the constitution, if no power existed to tax at all, either directly or indirectly, an indirect tax would be unconstitutional. These cases would be apposite to this is congress had no power to tax real estate. Were such the case, it might be that the imposition of an excise by congress which reached real estate indirectly would [157 U.S. 429, 647] necessarily violate the constitution, because, as it had no power in the premises, every attempt to tax, directly or indirectly, would be null. Here, on the contrary, it is not denied that the power to tax exists in congress, but the question is, is the tax direct or indirect, in the constitutional sense?

But it is unnecessary to follow the argument further; for, if I understand the opinions of this court already referred to, they absolutely settle the proposition that an inclusion of the rentals of real estate in an income tax does not violate the constitution. At the risk of repetition, I propose to go over the cases again for the purpose of Demonstrating this. In doing so, let it be understood at the outset that I do not question the authority of Cohens v. Virginia or Carroll v. Carroll's Lessee or any other of the cases referred to in argument of counsel. These great opinions hold that an adjudication need not be extended beyond the principles which it decides. While conceding this, it is submitted that, if decided cases do directly, affirmatively, and necessarily, in principle, adjudicate the very question here involved, then, under the very text of the opinions referred to by the court, they should conclude this question. In the first case, that of Hylton, is there any possibility, by the subtlest ingenuity, to reconcile the decision

here announced with what was there established?

In the second case (Insurance Co. v. Soule) the levy was upon the company, its premiums, its dividends, and net gains from all sources. The case was certified to this court, and the statement made by the judges in explanation of the question which they propounded says:

> 'The amount of said premiums, dividends, and net gains were truly stated in said lists or returns.' Original Record, p. 27.

It will be thus seen that the issue there presented was not whether an income tax on business gains was valid, but whether an income tax on gains from business and all other net gains was constitutional. Under this state of facts, the question put to the court was--

> 'Whether the taxes paid by the plaintiff, and sought to be recovered back, in this action, are not direct taxes within the meaning of the constitution of the United States.' [157 U.S. 429, 648] This tax covered revenue of every possible nature, and it therefore appears self-evident that the court could not have upheld the statute without deciding that the income derived from realty, as well as that derived from every other source, might be taxed without apportionment. It is obvious that, if the court had considered that any particular subject- matter which the statute reached was not constitutionally included, it would have been obliged, by every rule of safe judicial conduct, to qualify its answer as to this particular subject.

It is impossible for me to conceive that the court did not embrace in its ruling the constitutionality of an income tax which included rentals from real estate, since, without passing upon that question, it could not have decided the issue presented. And another reason why it is logically impossible that this question of the validity of the inclusion of the rental of real estate in an income tax could have been overlooked by the court is found in the fact, to which I have already adverted, that this was one of the principal points urged upon its attention, and the argument covered all the ground which has been occupied here,-indeed, the very citation from Coke upon Littleton, now urged as conclusive, was there made also in the brief of counsel. And although the return of income, involved in that case, was made 'in block,' the vey fact that the burden of the argument was that to include rentals from real estate, in income subject to taxation, made such tax pro tanto direct, seems to me to indicate that such rentals had entered into the return made by the corporation.

Again, in the case of Scholey v. Rew, the tax in question was laid directly on the right to take real estate by inheritance,-a right which the United States had no power to control. The case could not have been decided, in any point of view, without holding a tax upon that right was not direct, and that, therefore, it could be levied without apportionment. It is manifest that the court could not have overlooked the question whether this was a direct tax on the land or not, because in the argument of counsel it was said, if there was any tax in the world that was a tax on real estate which was [157 U.S. 429, 649] direct, that was the one. The court said it was not, and sustained the law. I repeat that the tax there was put directly upon the right to inherit, which congress had no power to regulate or control. The case was therefore greatly stronger than that here presented, for congress has a right to tax real estate directly with apportionment. That decision cannot be explained away by saying that the court overlooked the fact that congress had no power to tax the devolution of real estate, and treated it as a tax on such devolution. Will it be said, of the distinguished men who then adorned this bench, that, although the argument was pressed upon them that this tax was levied directly on the real estate, they ignored the elementary principle that the control of the inheritance of realty is a state and not a federal function? But, even if the case proceeded upon the theory that the tax was on the devolution of the real estate, and was therefore not direct, is it not absolutely decisive of this controversy? If to put a burden of taxation on the

right to take real estate by inheritance reaches realty only by indirection, how can it be said that a tax on the income, the result of all sources of revenue, including rentals, after deducting losses and expenses, which thus reaches the rentals indirectly, and the real estate indirectly through the rentals, is a direct tax on the real estate itself?

So, it is manifest in the Springer Case that the same question was necessarily decided. It seems obvious that the court intended in that case to decide the whole question, including the right to tax rental from real estate without apportionment. It was elaborately and carefully argued there that as the law included the rentals of land in the income taxed, and such inclusion was unconstitutional, this, therefore, destroyed that part of the law which imposed the tax on the revenues of personal property. Will it be said, in view of the fact that in this very case four of the judges of this court think that the inclusion of the rentals from real estate in an income tax renders the whole law invalid, that the question of the inclusion of the rentals was of no moment there, because the return there did not contain a mention of such rentals? Were [157 U.S. 429, 650] the great judges who then composed this court so neglectful that they did not see the importance of a question which is now considered by some of its members so vital that the result in their opinion is to annul the whole law, more especially when that question was pressed upon the court in argument with all possible vigor and earnestness? But I think that the opinion in the Springer Case clearly shows that the court did consider this question of importance, that it did intend to pass upon it, and that it deemed that it had decided all the questions affecting the validity of an income tax in passing upon the main issue, which included the others as the greater includes the less.

I can discover no principle upon which these cases can be considered as any less conclusive of the right to include rentals of land in the concrete result, income, than they are as to the right to levy a general income tax. Cera inly, the decisions which hold that an income tax as such is not direct, decide on principle that to include the rentals of real estate in an income tax does not make it direct. If embracing rentals in income makes a tax on income to that extent a 'direct' tax on the land, then the same word, in the same sentence of the constitution, has two wholly distinct constitutional meanings, and signifies one thing when applied to an income tax generally, and a different thing when applied to the portion of such a tax made up in part of rentals. That is to say, the word means one thing when applied to the greater, and another when applied to the lesser, tax.

My inability to agree with the court in the conclusions which it has just expressed causes me much regret. Great as is my respect for any view by it announced, I cannot resist the conviction that its opinion and decree in this case virtually annul its previous decisions in regard to the powers of congress on the subject of taxation, and are therefore fraught with danger to the court, to each and every citizen, and to the republic. The conservation and orderly development of our institutions rest on our acceptance of the results of the past, and their use as lights to guide our steps in the future. Teach the lesson that settled principles may be overthrown [157 U.S. 429, 651] at any time, and confusion and turmoil must ultimately result. In the discharge of its function of interpreting the constitution this court exercises an august power. It sits removed from the contentions of political parties and the animosities of factions. It seems to me that the accomplishment of its lofty mission can only be secured by the stability of its teachings and the sanctity which surrounds them. If the permanency of its conclusions is to depend upon the personal opinions of those who, from time to time, may make up its membership, it will inevitably become a theater of political strife, and its action will be without coherence or consistency. There is no great principle of our constitutional law, such as the nature and extent of the commerce power, or the currency power, or other powers of the federal government, which has not been ultimately defined by the adjudications of this court after long and earnest struggle. If we are to go back to the original sources of our political system, or are to appeal to the writings of the economists in order to unsettle all these great principles, everything is lost, and nothing saved to the people. The rights of every individual are guarantied by the safeguards which have been thrown around them by our adjudications. If these are to be assailed and overthrown, as is the settled law of income taxation by this

opinion, as I understand it, the rights of property, so far as the federal constitution is concerned, are of little worth. My strong convictions forbid that I take part in a conclusion which seems to me so full of peril to the country. I am unwilling to do so, without reference to the question of what my personal opinion upon the subject might be if the question were a new one, and was thus unaffected by the action of the framers, the history of the government, and the long line of decisions by this court. The wisdom of our forefathers in adopting a written constitution has often been impeached upon the theory that the interpretation of a written instrument did not afford as complete protection to liberty as would be enjoyed under a constitution made up of the traditions of a free people. Writing, it has been said, does not insure greater stability than tradition does, while it [157 U.S. 429, 652] destroys flexibility. The answer has always been that by the foresight of the fathers the construction of our written constitution was ultimately confided to this body, which, from the nature of its judicial structure, could always be relied upon to act with perfect freedom from the influence of faction, and to preserve the benefits of consistent interpretation. The fundamental conception of a judicial body is that of one hedged about by precedentsw hich are binding on the court without regard to the personality of its members. Break down this belief in judicial continuity, and let it be felt that on great constitutional questions this court is to depart from the settled conclusions of its predecessors, and to determine them all according to the mere opinion of those who temporarily fill its bench, and our constitution will, in my judgment, be bereft of value, and become a most dangerous instrument to the rights and liberties of the people.

In regard to the right to include in an income tax the interest upon the bonds of municipal corporations, I think the decisions of this court, holding that the federal government is without power to tax the agencies of the state government, embrace such bonds, and that this settled line of authority is conclusive upon my judgment here. It determines the question that, where there is no power to tax for any purpose whatever, no direct or indirect tax can be imposed. The authorities cited in the opinion are decisive of this question. They are relevant to one case, and not to the other, because, in the one case, there is full power in the federal government to tax, the only controversy being whether the tax imposed is direct or indirect; while in the other there is no power whatever in the federal government, and therefore the levy, whether direct or indirect, is beyond the taxing power.

Mr. Justice HARLAN authorizes me to say that he concurs in the views herein expressed.

Mr. Justice HARLAN, dissenting.

I concur so entirely in the general views expressed by Mr. Justice WHITE in reference to the questions disposed of by the [157 U.S. 429, 653] opinion and judgment of the majority, that I will do no more than indicate, without argument, the conclusions reached by me after much consideration. Those conclusions are:

1. Giving due effect to the statutory provision that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court' (Rev. St. 3224), the decree below dismissing the bill should be affirmed. As the Farmers' Loan & Trust Company could not itself maintain a suit to restrain either the assessment or collection of the tax imposed by the act of congress, the maintenance of a suit by a stockholder to restrain that corporation and its directors from voluntarily paying such tax would tend to defeat the manifest object of the statute, and be an evasion of its provisions. Congress intended to forbid the issuing of any process that would interfere in any wise with the prompt collection of the taxes imposed. The present suits are mere devices to strike down a general revenue law by decrees, to which neither the government nor any officer of the United States could be rightfully made parties of record.

2. Upon principle, and under the doctrines announced by this court in numerous cases, a duty upon the

gains, profits, and income derived from the rents of land is not a 'direct' tax on such land within the meaning of the constitutional provisions requiring capitation or other direct taxes to be apportioned among the several states according to their respective numbers, determined in the mode prescribed by that instrument. Such a duty may be imposed by congress without apportioning the same among the states according to population.

3. While property, and the gains, profits, and income derived from property, belonging to private corporations and individuals, are subjects of taxation for the purpose of paying the debts and providing for the common defense and the general welfare of the United States, the instrumentalities employed by the states in execution of their powers are not subjects of taxation by the general government, any more than the instrumentalities of the United States are the subjects of taxation by the states; and any tax imposed directly upon interest derived from bonds issued by a municipal corporation [157 U.S. 429, 654] for public purposes, under the authority of the state whose instrumentality it is, is a burden upont he exercise of the powers of that corporation which only the state creating it may impose. In such a case it is immaterial to inquire whether the tax is, in its nature or by its operation, a direct or an indirect tax; for the instrumentalities of the states-among which, as is well settled, are municipal corporations, exercising powers and holding property for the benefit of the public-are not subjects of national taxation in any form or for any purpose, while the property of private corporations and of individuals is subject to taxation by the general government for national purposes. So it has been frequently adjudged, and the question is no longer an open one in this court.

Upon the several questions about which the members of this court are equally divided in opinion, I deem it appropriate to withhold any expression of my views, because the opinion of the chief justice is silent in regard to those questions. list or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return if he has reason to believe that the same is understated; and in case any such person having a taxable income shall neglect or refguse to make and render such list and return, or shall render a willfully false or fraudulent list or return, it shall be the duty of the collector or deputy collector, to make such list, according to the best information he can obtain, by the examination of such person, or any other evidence, and to add fifty per centum as a penalty to the amount of the tax due on such list in all cases of willful neglect or refusal to make and render a list or return; and in all cases of a willfully false or fraudulent list or return having been rendered to add one hundred per centum as a penalty to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of willful neglect or refusal to render a list or return, or of rendering a false or fraudulent return.' A provison was added that any person or corporation might show that he or its ward had no taxable income, or that the same had been paid elsewhere, and the collector might exempt from the tax for that year. 'Any person or company, corporation, or association feeling aggrieved by the decision of the deputy collector, in such cases may appeal toa the collector of the district, and his decision thereon, unless reversed by the commissioner of internal revenue, shall be final. If dissatishfied with the decision of the collector such person or corporation, company, or association may submit the case, with all the papers, to the commissioner of internal revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts having served notice to that effect upon the commissioner of internal revenue, as herein prescribed.' Provision was made for notice of time and place for taking testimony on both saides, and that no penalty should be assessed until after notice.

Footnotes

[Footnote 1] In this case, and in the case of Hyde v. Trust Co., 15 Sup. Ct. 717, petitions for rehearing were filed, upon which the following order was announced on April 23, 1895: 'It is ordered by the court that the consideration of the two petitions for rehearing in these cases be reserved until Monday, May

6th, next, when a full bench is expected, and in that event two counsel on a side will be heard at that time."

[Footnote 1] By sections 27-37 inclusive of the act of congress entitled 'An act to reduce taxation, to provide revenue for the government, and for other purposes,' received by the president August 15, 1894, and which, not having been returned by him to the house in which it originated within the time prescribed by the constitution of the United States, became a law without approval (28 Stat. 509, c. 349), it was provided that from and after January 1, 1895, and until January 1, 1900, 'there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, inter-

est, dividends, or salaries, or from any profession, trade, emploument, or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax of two per centum on the amount so derived over and above four thousand dollars, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States. ...

> 'Sec. 28. That in estimating the gains, profits, and income of any person there shall be included all income derived from interest upon notes, bonds, and other securities, except such bonds of the United States the principal and interest of which are by the law of their issuance exempt from all federal taxation; profits realized within the year from sales of real estate purchased within two years previous to the close of the year for which income is estimated; interest received or accrued upon all notes, bonds, mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectible, less the interest which has become due from said person or which has been paid by him during the year; the amount of all premium on bonds, notes, or couponds; the amount of sales of live stock, sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, and grain, or other vegetable or other productions, or other forms of indebtedness of the estate of such person, less the amount expended in the purchase or production of said stock or produce, and not including any part thereof consumed directly by the family; money and the value of all personal property acquired by gift or inheritance; all other gains, profits, and income derived from any source whatever except than portion of the salary, compensation, or pay received for services in the civil, military, naval, or other service of the United States, inclui ng senators, representatives, and delegates in congress, from which the tax has been deducted, and except that portion of any salary upon which the employer is required by law to withhold, and does withhold the tax and pays the same to the officer authorized to receive it. In computing incomes the necessary expenses actually incurred in carrying on any business, occupation, or profession shall be deducted and also all interest due or paid within the year by such person on existing indebtedness. And all national, state, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year shall be deducted from the gains, profits, or income of the person who has actually paid the same, whether such person be owner, tenant, or mortgagor; also losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated stated for by insurance or otherwise, and debts ascertained to be worthless, but excluding all estimated depreciation of values and losses within the year on sales of real estate purchased within two years previous to the year for which income is estimated: Provided, that no deduction shall be made for any amount paid out for new buildings, permanent im-

provements, or betterments, made to increase the value of any property or estate: provided further, that

only one deduction of four thousand dollars shall be made from the aggregate income of all the members of any family, composed of one or both parents, and one or more minor children, or husband and wife; that guardians shall be allowed to made a deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family and have joint property interests, the aggregate deduction in their favor shall not exceed four thousand dollars: and provided further, that in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of four thousand dollars ner annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid, and shall include that portion of any income or salary upon which a tax has not been paid by the employer, where the employer is required by law to pay on the excess over four thousand dollars: provided also, that in computing the income of any person, corporation, company, or association there shall not be included the amount received from any corporation, company, or association as dividends upon the stock of such corporation, company, or association if the tax of two per centum has been paid upon its net profits by said corporation, company, or association as required by this act.

> 'Sec. 29. That it shall be the duty of all persons of lawful age having an income of more than three thousand five hundred dollars for the taxable year, computed on the basis herein prescribed, to made and render a list or return, on or before the day provided by law, in such form and manner as may be directed by the commissioner of internal revenue, with the approval of the secreatary of the treasury, to the collector or a deputy collector of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, executors, administrators, agents, receivers, and all persons or corporations acting in any fiduciary capacity, shall make and render a list or return, as aforesaid, to the collector or a deputy collector of the district in which such person or corporation acting in a fiduciary capacity resides or does business, of the amount of income, gains, and profits of any minor or person for whom they act. but persons having less than three thousand five hundred dollars income are not required to make such report; and the collector or deputy collector, shall require every lit or return to verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return if he has reason to believe that the same is understated: and in case any such person having a taxable income shall neglect or refuse to make and render such list and return, or shall render a willfully false or fraudulent list or return, it shall be the duty of the

collector or deputy collector, to make such list, according to the best information he can obtain. by the examination of such person, or any other evidence, and to add fifty per centum as a penalty to the amount of the tax due on such list in all cases of willful neglect or refusal to make and render a list or return; and in all cases of a willfully false or fraudulent list or return having been rendered to add one hundred per centum as a penalty to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of willful neglect or refusal to render a list or return. or of rendering a false or fraudulent return.' A proviso was added that any person or corporation might show that he or its ward had no taxable income, or that the same had been paid elsewhere, and the collector might exempt from the tax for that year. 'Any person or company, corporation, or association feeling aggrieved by the decision of of the deputy collector, in such cases may appeal to the collector of the district, and his decision thereon, unless reversed by the commissioner of internal revenue, shall be final. If dissatisfied with the decision of the collector such person or corporation, company, or assiciation may submit the case, with all the papers, to the commissioner of internal revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts having served notice to that effect upon the commissioner of internal revenue, as herein prescribed.' Provision was made for notice of time and place for taking testimony on both sides, and that no penalty should be assed until after notice.

By section 30, the taxes on incomes were made payable on or before July 1st of each year, and 5 per cent. penalty levied on taxes unpaid, and interest.

By section 31, any non-resident might receive the benefit of the exemptions provided for, and 'in computing income he shall include all income from every source, but unless he be a citizen of the United States he shall only pay on that part of the income which is derived from any source in the United States. In case such non-resident fails to file such statement, the collector of each district shall collect the tax on the income dervied from property situated in his district, subject to income tax, making no allowance for exemptions, and all property belonging to such non-resident shall be liable to distraint for tax: provided, that non- resident corporations shall be subject to the same laws as to tax as resident corporations, and the collection of the tax shall be made in the same manner as provided for collections of taxes against non-resident persons.'

> 'Sec. 32. That there shall be assessed, levied, and collected, except as herein otherwise provided, a tax of two per centum annually on the net profits or income above actual operating and business expenses, including expenses for materials pruchased for manufacture or bought for resale, losses, and interest on bonded and other indebtedness of all banks, banking institutions, trust companies, saving institutions, fire, marine, life, and other

insurance companies, railroad, canal, turnpike, canal navigation, slack water, telephone, telegraph, express, electric light, gas, water, street railway compainies, and all other corporations, companies, or associations doing business for profit in the United States, no matter how created and organized but not including partnerships.'

The tax is made payable 'on or before the first day of July in each year; and if the president or other chief officer of any corporation, company, or association, or in th case of any foreign corporation, company, or association, the resident manager or agent shall neglect or refuse to file with the collector of the internal revenue district in which said corporation, company, or association shall be located or be engaged in business, a statement verified by his oath or affirmation, in such form as shall be prescribed by the commissioner of internal revenue, with the approval of the secretary of the treamsury, showing the amount of net profits or income received by said corporation, comapny, or association during the whole calendar year last preceding the date of filing said statement as hereinafter required, the corporation, company, or association making default shall forfeit as a penalty the sum of one thousand dollars and two per centum on the amount of taxes due, for each month until the same is apid, the payment of said penalty to be enforced as provided in other cases of neglect and refusal to make return of taxes under the internal revenue laws.

> 'The net profits or income of all corporations, companies, or associations shall include the amounts paid to sharehoders, or carried to the account of any fund, or used for construction, enlargement of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporations, companies, or associations.
>
> 'That nothing herein contained shall apply to states, counties, or municipalities; nor to corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary societies, orders, or associations operating upon the lodge system and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members; nor to the stocks, shares, funds, or securities held by any fiduciary or trustee for charitable, religious, or educational purposes; nor to building and loan associations or companies which make loans only to their shareholders; nor to such savings banks, savings institutions or

societies as shall, first, have no stockholders or members except depositors and no capital except deposits; secondly, shall not receive deposits to an agregate amount, in any one year, of more than one thousand dollars from the same depositor; thirdly, shall not allow an accumulation or total of deposits, by any one depositor, exceeding ten thousand dollars; foruthly, shall actually divide and distribute to its depositors, ratably to deposits, all the earnings over the necessary and proper expenses of such bank, institution, or society, except such as shall be applied to sur-

plus; fifthly, shall not possess, in any form, a surplus fund exceeding ten per centum of its agregate deposits; nor to such savings banks, savings institutions,#e shall be uniform throughout the United States.' And the third clause thus: 'To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.'

'Nor to any insurance company or association which conducts all its business solely upon the mutual plan, and only for the benefit of its policy holders or members, and having no capital stock and no stock or shareholders, and holding all its property in trust and in reserve for its policy holders or members; nor to that part of the business of any insurance company having a capital stock and stock and shareholders, which is conducted on the mutual plan, separate from its stock plan of insurance, and solely for the benefit of the policy holders and members insured on said mutual plan, and holding all the property belonging to and derived from said mutual part of its business in trust and reserve for the benefit of its policy holders and members insured on said mutual plan.

'That all state, county, municipal, and town taxes paid by corporations, companies, or associations, shall be included in the operating and business expenses of such corporations, companies, or associations.

'Sec. 33. That there shall be levied, collected, and paido n all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in congress, when exceeding the rate of four thousand dollars per annum, a tax of two per centum on the excess above the said four thousand dollars; and it shall be the duty of all paymasters and all disbursing officers under the government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of two per centum; and the pay roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment. And it shall be the duty of the accounting officers of the treasury department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the treasurer of the United States, or other officer authorized to receive the same. Every corporation which pays to any employe a salary or compensation exceeding four thousand dollars per annum shall report the same to the collector or

deputy collector of his district and said employe shall pay thereon, subject to the exemptions herein provided for, the tax of two per centum on the excess of his salary over four thousand dollars: provided, that salaries due to sstate county, or municipal officers shall be exempt from the income tax herein levied.'

By section 34, sections 3167, 3172, 3173, and 3176 of the Revised Statutes of the United States as amended were amended so as to provide that it should be unalwful for the collector and other officers to

make known, or to publish, amount or source of income, under penalty; that every collector should 'from tiem to time cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumberate said object'; that the tax returns must be made on or before the first Monday in March; that the collectors may make returns when particulars are furnished: that notice be given to absentees to render returns; that collectors may summon persons to produce books and testify concerning returns; that collectors may enter other districts to examine persons and books, and may make returns; and that penalties may be imposed on false returns.

By section 35 it was provided that corporations doing business for profit should make returns on or before the first Monday of March of each year 'of all the following matters for the whole calendar year last preceding the date of such return:

> 'First. The gross profits of such corporation, company, or association, from all kinds of business of every name and nature.
>
> 'Second. The expenses of such corporation, company, or association, exclusive of interest, annuities, and dividends.
>
> 'Third. The net profits of such corporation, company, or association, without allowance for interest, annuities, or dividends.
>
> 'Fourth. The amount paid on account of interest, annuities, and dividends, stated separately.
>
> 'Fifth. The amount paid in salaries of four thousand dollars or less to each person employed.
>
> 'Sixth. The amount paid in salaries of more than four thousand dollars to each person employed and the name and address of each of such persons and the amount paid to each.'

By section 36, that books of account should be kept by corporations as prescribed, and inspection thereof be granted under penalty.

By section 37 provision is made for receipts for taxes paid.

By a joint resolution of February 21, 1895, the time for making returns of income for the year 1894 was extended, and it was provided that 'in com-

puting incomes under said act the amounts necessarily paid for fire insurance premiums and for ordinary reparis shall be deducted'; and that 'in computing incomes under said act the amounts received as dividends upon the stock of any corporation, company or association shall not be included in case such dividends are also liable to the tax of two per centum upon the net profits of said corporation, company or association, although such tax may not have been actually paid by said corporation, company or association at the time of making returns by the person, corporation or association receiving such dividends, and returns or reports of the names and salaries of employes shall not be required from employers unless called for by the collector in order to verify the returns of employes.'

reduce sharply : CUT ~ *vi* : to lash out, cut, or thrash about with or as if with an edged blade — **slash•er** *n*

²**slash** *n* (1576) **1 :** the act of slashing; *also* : a long cut or stroke made by or as if by slashing **2 :** an ornamental slit in a garment **3 a :** an open tract in a forest strewn with debris (as from logging) **b :** the debris in such a tract **4 :** DIAGONAL 3 — called also *slash mark*

³**slash** *n* [prob. alter. of *plash* (marshy pool)] (1652) **:** a low swampy area often overgrown with brush

slash–and–burn *adj* (1939) **:** characterized or developed by girdling, felling, and burning trees to make land arable usu. for a temporary purpose

¹**slash•ing** \'slash-iŋ\ *n* (1596) **1 :** the act or process of slashing **2 :** an insert or layer of contrasting color revealed by a slash (as in a garment) **3 :** SLASH 3

²**slashing** *adj* (1735) **1 :** incisively satiric or critical **2 :** DRIVING, PELTING **3 :** VIVID, BRILLIANT — **slash•ing•ly** \-iŋ-lē\ *adv*

slash pine *n* [³*slash*] (1882) **:** a southern pine (*Pinus elliottii*) that is an important source of turpentine and lumber

slash pocket *n* (1942) **:** a pocket suspended on the wrong side of a garment from a finished slit on the right side that serves as its opening

¹**slat** \'slat\ *vt* **slat•ted; slat•ting** [prob. of Scand origin; akin to ON *sletta* to slap, throw] (13c) **1 :** to hurl or throw smartly **2 :** STRIKE, PUMMEL

²**slat** *n* [ME, slate, fr. MF *esclat* splinter, fr. OF, fr. *esclater* to burst, splinter] (1764) **1 :** a thin narrow flat strip esp. of wood or metal: as **a :** LATH **b :** LOUVER **c :** STAVE **d :** one of the thin flat members in the back of a ladder-back chair **2** *pl, slang* **:** RIBS — **slat** *adj*

³**slat** *vt* **slat•ted; slat•ting** (1886) **:** to make or equip with slats

¹**slate** \'slāt\ *n* [ME, fr. MF *esclat* splinter] (15c) **1 :** a piece of construction material (as laminated rock) prepared as a shingle for roofing and siding **2 :** a dense fine-grained metamorphic rock produced by the compression of various sediments (as clay or shale) so as to develop a characteristic cleavage **3 :** a tablet of material (as slate) used for writing on **4 a :** a written or unwritted record (as of deeds) **b :** a list of candidates for nomination or election **5 a :** a dark purplish gray **b :** any of various grays similar in color to common roofing slates — **slate** *adj* — **slate•like** \-,līk\ *adj*

²**slate** *vt* **slat•ed; slat•ing** (1530) **1 :** to cover with slate or a slatelike substance ⟨~ a roof⟩ **2 :** to register, schedule, or designate for action or appointment

³**slate** *vt* **slat•ed; slat•ing** [prob. alter. of ¹*slat*] (1825) **1 :** to thrash or pummel severely **2** *chiefly Brit* **:** to criticize or censure severely

slate black *n* (1889) **:** a nearly neutral slightly purplish black

slate blue *n* (1796) **:** a variable color averaging a grayish blue

slat•er \'slāt-ər\ *n* (15c) **1 :** one that slates **2** [¹*slate;* fr. its color] **a :** WOOD LOUSE **b :** any of various marine isopods

¹**slath•er** \'slaᵺ-ər\ *n* [origin unknown] (1876) **:** a great quantity — often used in pl.

²**slather** *vt* **slath•ered; slath•er•ing** \-(ə-)riŋ\ (1881) **1 a :** to spread thickly or lavishly **b :** to spread something thickly or lavishly on **2 :** to use or spend in a wasteful or lavish manner : SQUANDER

slat•ing \'slāt-iŋ\ *n* (1579) **:** the work of a slater

¹**slat•tern** \'slat-ərn\ *n* [prob. fr. G *schlottern* to hang loosely, slouch; akin to D *slodderen* to hang loosely, *slodder* slut] (ca. 1639) **:** an untidy slovenly woman; *also* **:** SLUT, PROSTITUTE

²**slattern** *adj* (1716) **:** SLATTERNLY

slat•tern•ly \'slat-ərn-lē\ *adj* (1830) **1 :** untidy and dirty through habitual neglect; *also* **:** CARELESS, DISORDERLY **2 :** of, relating to, or characteristic of a slut or prostitute — **slat•tern•li•ness** *n*

slaty *also* **slat•ey** \'slāt-ē\ *adj* (1529) **:** of, containing, or characteristic of slate; *also* **:** gray like slate

¹**slaugh•ter** \'slȯt-ər\ *n* [ME, of Scand origin; akin to ON *slātra* to slaughter; akin to OE *sleaht* slaughter, *slēan* to slay — more at SLAY] (14c) **1 :** the act of killing; *specif* **:** the butchering of livestock for market **2 :** killing of great numbers of human beings (as in battle or a massacre) **:** CARNAGE

²**slaughter** *vt* (1535) **1 :** to kill (animals) for food **:** BUTCHER **2 a :** to kill in a bloody or violent manner **:** SLAY **b :** to kill in large numbers **:** MASSACRE — **slaugh•ter•er** \-ər-ər\ *n*

slaugh•ter•house \'slȯt-ər-,haùs\ *n* (14c) **:** an establishment where animals are butchered

slaugh•ter•ous \'slȯt-ə-rəs\ *adj* (1582) **:** of or relating to slaughter **:** MURDEROUS — **slaugh•ter•ous•ly** *adv*

Slav \'slāv, 'slav\ *n* [ME *Sclav,* fr. ML *Sclavus,* fr. LGk *Sklabos,* fr. *Sklabēnoi* Slavs, of Slav origin; akin to OSlav *Slovėne,* a Slavic people in the area of Salonika] (14c) **:** a person who speaks a Slavic language as his native tongue — **Slav** *adj*

¹**slave** \'slāv\ *n* [ME *sclave,* fr. OF or ML; OF *esclave,* fr. ML *sclavus,* fr. *Sclavus* Slav; fr. the reduction to slavery of many Slavic peoples of central Europe] (13c) **1 :** a person held in servitude as the chattel of another **:** BONDMAN **2 :** one that is completely subservient to a dominating influence **3 :** a device (as the typewriter unit of a computer) that is directly responsive to another **4 :** DRUDGE, TOILER — **slave** *adj*

²**slave** *vb* **slaved; slav•ing** *vt* (1602) **1** *archaic* **:** ENSLAVE **2 :** to make directly responsive to another mechanism ~ *vi* **1 :** to work like a slave **:** DRUDGE **2 :** to traffic in slaves

slave driver *n* (1807) **1 :** a supervisor of slaves at work **2 :** a harsh taskmaster

slave•hold•er \'slāv-,hōl-dər\ *n* (1776) **:** an owner of slaves — **slave•holding** \-diŋ\ *adj or n*

slave–mak•ing ant \'slāv-,mā-kiŋ-\ *n* (1817) **:** an ant that attacks the colonies of ants of other species and carries off the larvae and pupae to be reared in its own nest as slaves

¹**sla•ver** \'slav-ər, 'slāv-, 'släv-\ *vb* **sla•vered; sla•ver•ing** \-(ə-)riŋ\ [ME *slaveren,* of Scand origin; akin to ON *slafra* to slaver; akin to MD *slabben* to slaver, L *labi* to slip — more at SLEEP] *vi* (14c) **:** DROOL, SLOBBER ~ *vt, archaic* **:** to smear with or as if with saliva

²**slaver** *n* (14c) **:** saliva dribbling from the mouth

³**slav•er** \'slā-vər\ *n* [¹*slave*] (1827) **1 a :** a person engaged in the slave

slav•ery \'slāv-(ə-)rē\ *n* (1551) **1 :** DRUDGERY, TOIL **2 :** submission to a dominating influence **3 a :** the state of a person who is a chattel of another **b :** the practice of slaveholding

slave state *n* (1809) **1 :** a state of the U.S. in which Negro slavery was legal until the Civil War **2 :** a nation subjected to totalitarian rule

slave trade *n* (1734) **:** traffic in slaves; *esp* **:** the buying and selling of Negroes for profit prior to the American Civil War

slav•ey \'slā-vē\ *n, pl* **slaveys** (ca. 1812) **:** DRUDGE; *esp* **:** a household servant who does general housework

¹**Slav•ic** \'slav-ik, 'släv-\ *adj* (1813) **:** of, relating to, or characteristic of the Slavs or their languages

²**Slavic** *n* (1866) **:** a branch of the Indo-European language family containing Belorussian, Bulgarian, Czech, Polish, Serbo-Croatian, Slovene, Russian, and Ukrainian — see INDO-EUROPEAN LANGUAGES table

Slav•i•cist \'slav-ə-səst, 'släv-\ *n* (1943) **:** a specialist in the Slavic languages or literatures

slav•ish \'slā-vish\ *adj* (1565) **1 a :** of or characteristic of a slave; *esp* **:** basely or abjectly servile **b** *archaic* **:** DESPICABLE, LOW **2** *archaic* **:** OPPRESSIVE, TYRANNICAL **3 :** copying obsequiously or without originality **:** IMITATIVE ***syn*** see SUBSERVIENT — **slav•ish•ly** *adv* — **slav•ish•ness** *n*

Slav•ist \'släv-əst, 'slav-\ *n* (1863) **:** SLAVICIST

slav•oc•ra•cy \slā-'väk-rə-sē\ *n* (1840) **:** a faction of slaveholders and advocates of slavery in the South before the Civil War

¹**Sla•vo•ni•an** \slə-'vō-nē-ən\ *n* [*Slavonia,* region of southeast Europe, fr. ML *Sclavonia, Slavonia* land of the Slavs, fr. *Sclavus* Slav] (1601) **:** SLOVENE 1b

²**Slavonian** *adj* (1605) **1 :** SLOVENE **2** *archaic* **:** SLAVIC

¹**Sla•von•ic** \slə-'vän-ik\ *adj* [NL *slavonicus,* fr. ML *Sclavonia, Slavonia*] (1645) **:** SLAVIC

²**Slavonic** *n* (1668) **1 :** SLAVIC **2 :** OLD CHURCH SLAVONIC

Slav•o•phile \'slav-ə-,fīl, 'släv-\ *or* **Slav•o•phil** \-,fil\ *n* (1877) **:** an admirer of the Slavs **:** an advocate of Slavophilism

Slav•oph•i•lism \sla-'väf-ə-,liz-əm, 'slav-ə-,fī-,liz-\ *n* (1877) **:** advocacy of Slavic and specif. Russian culture over western European culture esp. as practiced among some members of the Russian intelligentsia in the middle 19th century

slaw \'slȯ\ *n* (1861) **:** COLESLAW

slay \'slā\ *vb* **slew** \'slü\; **slain** \'slān\; **slay•ing** [ME *slen,* fr. OE *slēan* to strike, slay; akin to OHG *slahan* to strike, MIr *slacain* I beat] *vt* (bef. 12c) **1 :** to kill violently, wantonly, or in great numbers **2** *slang* **:** to affect overpoweringly **:** OVERWHELM ~ *vi* **:** KILL, MURDER ***syn*** see KILL — **slay•er** *n*

¹**sleave** \'slēv\ *n, archaic* (1605) **:** SKEIN ⟨sleep that knits up the raveled ~ of care —Shak.⟩

²**sleave** *vt* [(assumed) ME *sleven,* fr. OE *-slǣfan* to cut — more at SLIVER] *obs* (1628) **:** to separate (silk thread) into filaments

sleave silk *n, obs* (1588) **:** floss silk that is easily separated into filaments for embroidery

sleaze \'slēz *also* 'slāz\ *n* [back-formation fr. *sleazy*] (1954) **:** a sleazy quality or appearance

slea•zy \'slē-zē *also* 'slā-\ *adj* **slea•zi•er; -est** [origin unknown] (ca. 1670) **1 a :** lacking firmness of texture **:** FLIMSY **b :** carelessly made of inferior materials **:** SHODDY **2 :** marked by cheapness of character or quality **:** TAWDRY — **slea•zi•ly** \-zə-lē\ *adv* — **slea•zi•ness** \-zē-nəs\ *n*

¹**sled** \'sled\ *n* [ME *sledde,* fr. MD; akin to OE *slidan* to slide] (14c) **1 :** a vehicle on runners for transportation esp. on snow or ice; *esp* **:** a small steerable one used esp. by children for coasting down snow-covered hills **2 :** ROCKET SLED

²**sled** *vb* **sled•ded; sled•ding** *vt* (1706) **:** SLEDGE ~ *vi* **:** to ride on a sled or sleigh — **sled•der** *n*

sled•ding *n* (1682) **1 a :** the use of a sled **b :** the conditions under which one may use a sled **2 :** GOING 4

sled dog *n* (1692) **:** a dog trained to draw a sledge esp. in the Arctic regions — called also *sledge dog*

¹**sledge** \'slej\ *n* [ME *slegge,* fr. OE *slecg;* akin to ON *sleggja* sledgehammer, OE *slēan* to strike — more at SLAY] (bef. 12c) **:** SLEDGEHAMMER

²**sledge** *vb* **sledged; sledg•ing** (1654) **:** SLEDGEHAMMER

³**sledge** *n* [D dial. *sleedse;* akin to MD *sledde* sled] (1617) **1** *Brit* **:** SLEIGH **2 :** a vehicle with low runners that is used for transporting loads esp. over snow or ice

⁴**sledge** *vb* **sledged; sledg•ing** *vi* (1853) **1** *Brit* **:** to ride in a sleigh **2 :** to travel with a sledge ~ *vt* **:** to transport on a sledge

¹**sledge•ham•mer** \'slej-,ham-ər\ *n* [¹*sledge*] (15c) **:** a large heavy hammer that is wielded with both hands; *also* **:** something that resembles a sledgehammer in action

²**sledgehammer** *vt* (1834) **:** to strike with or as if with a sledgehammer ~ *vi* **:** to strike blows with or as if with a sledgehammer

³**sledgehammer** *adj* (1844) **:** marked by heavy-handed directness or the unsubtle use of force ⟨trusting in ~ warfare —C.J. Rolo⟩

¹**sleek** \'slēk\ *vb* [ME *sleken,* alter. of *sliken*] *vt* (15c) **1 :** SLICK **2 :** to cover up **:** gloss over ~ *vi* **:** SLICK

²**sleek** *adj* [alter. of ²*slick*] (1589) **1 a :** smooth and glossy as if polished ⟨~ dark hair⟩ **b :** having a smooth well-groomed look ⟨~ cattle grazing⟩ **c :** healthy-looking **2 :** SLICK 3 **3 a :** having a prosperous air **:** THRIVING **b :** having slender graceful lines **:** ELEGANT, STYLISH — **sleek•ly** *adv* — **sleek•ness** *n*

syn SLEEK, SLICK, GLOSSY, SILKEN mean having a smooth bright surface or appearance. SLEEK suggests a smoothness or brightness resulting from attentive grooming or physical conditioning ⟨a *sleek* racehorse⟩ SLICK suggests extreme smoothness that results in a slippery surface ⟨slipped and fell on the *slick* floor⟩ GLOSSY suggests a surface that is smooth and highly polished ⟨photographs having a *glossy* finish⟩ SILKEN implies the smoothness and luster as well as the softness of silk ⟨*silken* hair⟩

sleek•en \'slē-kən\ *vt* **sleek•ened; sleek•en•ing** \'slēk-(ə-)niŋ\ (1621) **:** to make sleek

sleek•it \'slē-kət\ *adj* [Sc, fr. pp. of ¹*sleek*] (1513) **1** *chiefly Scot* **:** SLEEK, SMOOTH **2** *chiefly Scot* **:** CRAFTY, DECEITFUL

¹**sleep** \'slēp\ *n* [ME *slepe,* fr. OE *slǣp;* akin to OHG *slāf* sleep, L *labi* to slip, slide] (bef. 12) **1 :** the natural periodic suspension of consciousness during which the powers of the body are restored **2 :** a state

\ə\ abut \ᵊ\ kitten, F table \ər\ further \a\ ash \ā\ ace \ä\ cot, cart \aù\ out \ch\ chin \e\ bet \ē\ easy \g\ go \i\ hit \ī\ ice \j\ job \ŋ\ sing \ō\ go \ȯ\ law \ȯi\ boy \th\ thin \ᵺ\ the \ü\ loot \ù\ foot \y\ yet \zh\ vision \à, ḵ, ⁿ, œ, œ̄, ue, ue̅, ʸ\ *see* Guide to Pronunciation

U.S. Supreme Court

HELVERING v. DAVIS, 301 U.S. 619 (1937)

301 U.S. 619 301 U.S. 672

HELVERING, Com'r of Internal Revenue, et al.
v.
DAVIS.
No. 910.

Argued May 5, 1937.
Decided May 24, 1937.

As Amended June 1, 1937. [301 U.S. 619, 620] Messrs. Homer S. Cummings, Atty. Gen., Robert H. Jackson, Asst. Atty. Gen., and Charles E. Wyzanski, Jr., Sp. Asst. Atty. Gen., for petitioners.

[301 U.S. 619, 625] Messrs. Edward F. McClennen and Jacob J. Kaplan, both of Boston, Mass ., for respondent.

[301 U.S. 619, 634]

Mr. Justice CARDOZO delivered the opinion of the Court.

The Social Security Act (Act of August 14, 1935, c. 531, 49 Stat. 620, 42 U.S.C., c. 7 (Supp.), 301 et seq. (42 U.S.C.A. 301 et seq.), is challenged once again.

In Steward Machine Co. v. Davis, 301 U.S. 548 , 57 S.Ct. 883, 81 L.Ed . --, decided this day, we have upheld the validity of Title IX of the act (section 901 et seq. (42 U.S.C.A. 1101 et seq.)), imposing an excise upon employers of eight or more. In this case Titles VIII and II (sections 801 et seq., 201 et seq.

(42 U.S.C.A. 1001 et seq., 401 et seq.)) are the subject of attack. Title VIII lays another excise upon employers in addition to the one imposed by Title IX (though with different exemptions). It lays a special income tax upon employees to be deducted from their wages and paid by the employers. Title II provides for the payment of Old Age Benefits, and supplies the motive and occasion, in the view of the assailants of the statute, for [301 U.S. 619, 635] the levy of the taxes imposed by Title VIII. The plan of the two titles will now be summarized more fully.

Title VIII, as we have said, lays two different types of tax, an 'income tax on employees,' and 'an excise tax on employers.' The income tax on employees is measured by wages paid during the calendar year. Section 801 (42 U.S.C.A. 1001). The excise tax on the employer is to be paid 'with respect to having individuals in his employ,' and, like the tax on employees, is measured by wages. Section 804 (42 U.S.C.A. 1004). Neither tax is applicable to certain types of employment, such as agricultural labor, domestic service, service for the national or state governments, and service performed by persons who have attained the age of 65 years. Section 811(b), 42 U.S.C.A. 1011(b). The two taxes are at the same rate. Sections 801, 804 (42 U.S.C.A. 1001, 1004). For the years 1937 to 1939, inclusive, the rate for each tax is fixed at one per cent. Thereafter the rate increases 1/2 of 1 per cent. every three years, until after December 31, 1948, the rate for each tax reaches 3 per cent. Ibid. In the computation of wages all remuneration is to be included except so much as is in excess of $3,000 during the calendar year affected. Section 811(a), 42 U.S.C.A. 1011(a). The income tax on employees is to be collected by the employer, who is to deduct the amount from the wages 'as and when paid.' Section 802(a), 42 U.S.C.A. 1002(a). He is indemnified against claims and demands of any person by reason of such payment. Ibid. The proceeds of both taxes are to be paid into the Treasury like internal revenue taxes generally, and are not ear-marked in any way. Section 807(a), 42 U.S.C.A. 1007(a). There are penalties for nonpayment. Section 807(c), 42 U.S.C.A. 1007(c).

Title II (section 201 et seq. (42 U.S.C.A. 401 et seq.)) has the caption 'Federal Old-Age Benefits.' The benefits are of two types, first, monthly pensions, and second, lump-sum payments, the payments of the second class being relatively few and unimportant.

The first section of this title creates an account in the United States Treasury to be known as the 'Old-Age [301 U.S. 619, 636] Reserve Account.' Section 201 (42 U.S.C.A. 401). No present appropriation, however, is made to that account. All that the statute does is to authorize appropriations annually thereafter, beginning with the fiscal year which ends June 30, 1937. How large they shall be is not known in advance. The 'amount sufficient as an annual premium' to provide for the required payments is 'to be determined on a reserve basis in accordance with accepted actuarial principles, and based upon such tables of mortality as the Secretary of the Treasury shall from time to time adopt, and upon an interest rate of 3 per centum per annum compounded annually.' Section 201(a), 42 U.S.C.A. 401(a). Not a dollar goes into the Account by force of the challenged act alone, unaided by acts to follow.

Section 202 and later sections (42 U.S.C.A. 402 et seq.) prescribed the form of benefits. The principal type is a monthly pension payable to a person after he has attained the age of 65. This benefit is available only to one who has worked for at least one day in each of at least five separate years since December 31, 1936, who has earned at least $2,000 since that date, and who is not then receiving wages 'with respect to regular employment.' Sections 202(a), (d), 210(c), 42 U.S.C.A. 402(a, d), 410(c). The benefits are not to begin before January 1, 1942. Section 202(a), 42 U.S.C.A. 402(a). In no event are they to exceed $85 a month. Section 202(b), 42 U.S.C.A. 402(b). They are to be measured (subject to that limit) by a percentage of the wages, the percentage decreasing at stated intervals as the wages become higher. Section 202(a), 42 U.S.C.A. 402(a). In addition to the monthly benefits, provision is made in certain contingencies for 'lump sum payments' of secondary importance. A summary by the Government of the four situations calling for such payments is printed in the margin. 1 [301 U.S. 619,

637] This suit is brought by a shareholder of the Edison Electric Illuminating Company of Boston, a Massachusetts corporation, to restrain the corporation from making payments and deductions called for by the act, which is stated to be void under the Constitution of the United States. The bill tells us that the corporation has decided to obey the statute, that it has reached this decision in the face of the complainant's protests, and that it will make the payments and deductions unless restrained by a decree. The expected consequences are indicated substantially as follows: The deductions from the wages of the employees will produce unrest among them, and will be followed, it is predicted, by demands that wages be increased. If the exactions shall ultimately be held void, the company will have parted with moneys which as a practical matter it will be impossible to recover. Nothing is said in the bill about the promise of indemnity. The prediction is made also that serious consequences will en- [301 U.S. 619, 638] sue if there is a submission to the excise. The corporation and its shareholders will suffer irreparable loss, and many thousands of dollars will be subtracted from the value of the shares. The prayer is for an injunction and for a declaration that the act is void.

The corporation appeared and answered without raising any issue of fact. Later the United States Commissioner of Internal Revenue and the United States Collector for the District of Massachusetts, petitioners in this court, were allowed to intervene. They moved to strike so much of the bill as has relation to the tax on employees, taking the ground that the employer, not being subject to tax under those provisions, may not challenge their validity, and that the complainant shareholder, whose rights are no greater than those of his corporation, has even less standing to be heard on such a question. The intervening defendants also filed an answer which restated the point raised in the motion to strike, and maintained the validity of Title VIII in all its parts. The District Court held that the tax upon employees was not properly at issue, and that the tax upon employers was constitutional. It thereupon denied the prayer for an injunction, and dismissed the bill. On appeal to the Circuit Court of Appeals for the First Circuit, the decree was reversed, one judge dissenting. Davis v. Edison Electric Illuminating Co., 89 F. (2d) 393. The court held that Title II was void as an invasion of powers reserved by the Tenth Amendment to the states or to the people, and that Title II in collapsing carried Title VIII along with it. As an additional reason for invalidating the tax upon employers, the court held that it was not an excise as excises were understood when the Constitution was adopted. Cf. Davis v. Boston & Maine R. Co. (C.C.A.) 89 F.(2d) 368, decided the same day.

A petition for certiorari followed. It was filed by the intervening defendants, the Commissioner, and the Collector, and brought two questions, and two only, to our [301 U.S. 619, 639] notice. We were asked to determine: (1) 'Whether the tax imposed upon employers by section 804 of the Social Security Act (42 U.S.C.A. 1004) is within the power of Congress under the Constitution,' and (2) 'Whether the validity of the tax imposed upon employees by section 801 of the Social Security Act (42 U.S.C.A. 1001) is properly in issue in this case, and if it is, whether that tax is within the power of Congress under the Constitution.' The defendant corporation gave notice to the clerk that it joined in the petition, but it has taken no part in any subsequent proceedings. A writ of certiorari issued. 301 U.S. 674 , 57 S.Ct. 792, 81 L. Ed. --.

First: Questions as to the remedy invoked by the complainant confront us at the outset.

Was the conduct of the company in resolving to pay the taxes a legitimate exercise of the discretion of the directors? Has petitioner a standing to challenge that resolve in the absence of an adequate showing of irreparable injury? Does the acquiescence of the company in the equitable remedy affect the answer to those questions? Though power may still be ours to take such objections for ourselves, is acquiescence effective to rid us of the duty? Is duty modified still further by the attitude of the Government, its waiver of a defense under section 3224 of the Revised Statutes (26 U.S.C.A. 1543), its waiver of a defense that the legal remedy is adequate, its earnest request that we determine whether the

law shall stand or fall? The writer of this opinion believes that the remedy is ill conceived, that in a controversy such as this a court must refuse to give equitable relief when a cause of action in equity is neither pleaded nor proved, and that the suit for an injunction should be dismissed upon that ground. He thinks this course should be followed in adherence to the general rule that constitutional questions are not to be determined in the absence of strict necessity. In that view he is supported by Mr. Justice BRANDEIS, Mr. Justice STONE, and Mr. Justice ROBERTS. However, a majority of the [301 U.S. 619, 640] court have reached a different conclusion. They find in this case extraordinary features making it fitting in their judgment to determine whether the benefits and the taxes are valid or invalid. They distinguish Norman v. Consolidated Gas Co., 89 F.(2d) 619, recently decided by the Circuit Court of Appeals for the Second Circuit, on the ground that in that case, the remedy was challenged by the company and the Government at every stage of the proceeding, thus withdrawing from the court any marginal discretion. The ruling of the majority removes from the case the preliminary objection as to the nature of the remedy which we took of our own motion at the beginning of the argument. Under the compulsion of that ruling, the merits are now here.

Second: The scheme of benefits created by the provisions of Title II is not in contravention of the limitations of the Tenth Amendment.

Congress may spend money in aid of the 'general welfare.' Constitution, art. 1, 8; United States v. Butler, 297 U.S. 1, 65 , 56 S. Ct. 312, 319, 102 A.L.R. 914. Steward Machine Co. v. Davis, supra. There have been great statesmen in our history who have stood for other views. We will not resurrect the contest. It is now settled by decision. United States v. Butler, supra. The conception of the spending power advocated by Hamilton and strongly reinforced by Story has prevailed over that of Madison, which has not been lacking in adherents. Yet difficulties are left when the power is conceded. The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be known through a formula in advance of the event. There is a middle ground or certainly a penumbra in which discretion is at large. The discretion, however, is not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment. This is now familiar law. [301 U.S. 619, 641] 'When such a contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress.' United States v. Butler, supra, 297 U.S. 1 , at page 67, 56 S.Ct. 312, 320, 102 A.L.R. 914. Cf. Cincinnati Soap Co. v. United States, 301 U.S. 308 , 57 S.Ct. 764, 81 L.Ed. --, May 3, 1937; United States v. Realty Co., 163 U.S. 427, 440 , 16 S.Ct. 1120; Head Money Cases, 112 U.S. 580, 595 , 5 S.Ct. 247. Nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the nation. What is critical or urgent changes with the times.

The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided. Unemployment spreads from state to state, the hinterland now settled that in pioneer days gave an avenue of escape. Home Building & Loan Association v. Blaisdell, 290 U.S. 398, 442 , 54 S.Ct. 231, 241, 88 A.L.R. 1481. Spreading from state to state, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the nation. If this can have been doubtful until now, our ruling today in the case of the Steward Machine Co., supra, has set the doubt at rest. But the ill is all one or at least not greatly different whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.

Congress did not improvise a judgment when it found that the award of old age benefits would be

conducive to the general welfare. The President's Committee on Economic Security made an investigation and report, aided by a research staff of Government officers and employees, and by an Advisory Council and seven other advisory [301 U.S. 619, 642] groups. 2 Extensive hearings followed before the House Committee on Ways and Means, and the Senate Committee on Finance. 3 A great mass of evidence was brought together supporting the policy which finds expression in the act. Among the relevant facts are these: The number of persons in the United States 65 years of age or over is increasing proportionately as well as absolutely. What is even more important the number of such persons unable to take care of themselves is growing at a threatening pace. More and more our population is becoming urban and industrial instead of rural and agricultural. 4 The evidence is impressive that among industrial workers the younger men and women are preferred over the older. 5 In times of retrenchment the older are commonly the first to go, and even if retained, their wages are likely to be lowered. The plight of men and women at so low an age as 40 is hard, almost hopeless, when they are driven to seek for reemployment. Statistics are in the brief. A few illustrations will be chosen from many there collected. In 1930, out of 224 American factories investigated, 71, or almost one third, had fixed maximum hiring age limits; in 4 plants the limit was under 40; in 41 it was under 46. In the other 153 plants there were no fixed limits, but in practice few were hired if they were over 50 years of age. 6 With the loss of savings inevitable in periods of idleness, [301 U.S. 619, 643] the fate of workers over 65, when thrown out of work, is little less than desperate. A recent study of the Social Security Board informs us that 'one-fifth of the aged in the United States were receiving old-age assistance, emergency relief, institutional care, employment under the works program, or some other form of aid from public or private funds; two-fifths to one-half were dependent on friends and relatives, one-eighth had some income from earnings; and possibly one-sixth had some savings or property. Approximately three out of four persons 65 or over were probably dependent wholly or partially on others for support.' 7 We summarize in the margin the results of other studies by state and national commissions. 8 They point the same way. [301 U.S. 619, 644] The problem is plainly national in area and dimensions. Moreover, laws of the separate states cannot deal with it effectively. Congress, at least, had a basis for that belief. States and local governments are often lacking in the resources that are necessary to finance an adequate program of security for the aged. This is brought out with a wealth of illustration in recent studies of the problem. 9 Apart from the failure of resources, states and local governments are at times reluctant to increase so heavily the burden of taxation to be borne by their residents for fear of placing themselves in a position of economic disadvantage as compared with neighbors or competitors. We have seen this in our study of the problem of unemployment compensation. Steward Machine Co. v. Davis, supra. A system of old age pensions has special dangers of its own, if put in force in one state and rejected in another. The existence of such a system is a bait to the needy and dependent elsewhere, encouraging them to migrate and seek a haven of repose. Only a power that is national can serve the interests of all.

Whether wisdom or unwisdom resides in the scheme of benefits set forth in Title II, it is not for us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here as often is with power, not with wisdom. Counsel for respondent has recalled to us the virtues of self-reliance and frugality. There is a possibility, he says, that aid from a paternal government [301 U.S. 619, 645] may sap those sturdy virtues and breed a race of weaklings. If Massachusetts so believes and shapes her laws in that conviction, must her breed of sons be changed, he asks, because some other philosophy of government finds favor in the halls of Congress? But the answer is not doubtful. One might ask with equal reason whether the system of protective tariffs is to be set aside at will in one state or another whenever local policy prefers the rule of laissez faire. The issue is a closed one. It was fought out long ago. 10

When money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the states. So the concept be not arbitrary, the locality must yield. Constitution, art. 6, par. 2.

Third: Title II being valid, there is no occasion to inquire whether Title VIII would have to fall if Title II were set at naught.

The argument for the respondent is that the provisions of the two titles dovetail in such a way as to justify the conclusion that Congress would have been unwilling to pass one without the other. The argument for petitioners is that the tax moneys are not earmarked, and that Congress is at liberty to spend them as it will. The usual separability clause is embodied in the act. Section 1103 (42 U.S.C.A. 1303).

We find it unnecessary to make a choice between the arguments, and so leave the question open.

Fourth: The tax upon employers is a valid excise or duty upon the relation of employment.

As to this we need not add to our opinion in Steward Machine Co. v. Davis, supra, where we considered a like question in respect of Title IX. [301 U.S. 619, 646] Fifth: The tax is not invalid as a result of its exemptions.

Here again the opinion in Steward Machine Co. v. Davis, supra, says all that need be said.

Sixth: The decree of the Court of Appeals should be reversed and that of the District Court affirmed. Ordered accordingly.

Decree of Court of Appeals reversed, and decree of District Court affirmed.

Mr. Justice McREYNOLDS and Mr. Justice BUTLER are of opinion that the provisions of the Act here challenged are repugnant to the Tenth Amendment, and that the decree of the Circuit Court of Appeals should be affirmed.

Footnotes

[Footnote 1] (1) If through an administrative error or delay a person who is receiving a monthly pension dies before he receives the correct amount, the amount which should have been paid to him is paid in a lump sum to his estate (section 203(c) 42 U.S.C.A. 403(c)).

(2) If a person who has earned wages in each of at least five separate years since December 31, 1936, and who has earned in that period more than $2,000, dies after attaining the age of 65, but before he has received in monthly pensions an amount equal to 3 1/2 per cent. of the 'wages' paid to him between January 1, 1937, and the time he reaches 65, then there is paid in a lump sum to his estate the difference between said 3 1/2 per cent. and the total amount paid to him during his life as monthly pensions (section 203(b), 42 U.S.C.A. 403(b)).

(3) If a person who has earned wages since December 31, 1936, dies before attaining the age of 65, then there is paid to his estate 3 1/2 per cent. of the 'wages' paid to him between January 1, 1937, and his death (section 203(a), 42 U.S.C.A. 403(b)).

(4) If a person has, since December 31, 1936, earned wages in employment covered by Title II, but has attained the age of 65 either without working for at least one day in each of 5 separate years since 1936, or without earning at least $2,000 between January 1, 1937, and the time he attains 65, then there is paid to him (or to his estate, section 204(b), 42 U.S.C.A. 404(b)), a lump sum equal to 3 1/2 per cent. of the 'wages' paid to him between January 1, 1937, and the time he attained 65 (section 204(a), 42

U.S.C.A. 404(a)).

[Footnote 2] Report to the President of the Committee on Economic Security, 1935.

[Footnote 3] Hearings before the House Committee on Ways and Means on H.R. 4120, 74th Congress, 1st session; Hearings before the Senate Committee on Finance on S. 1130, 74th Congress, 1st Session.

[Footnote 4] See Report of the Committee on Recent Social Trends, 1932, vol. 1, pp. 8, 502; Thompson and Whelpton, Population Trends in the United States, pp. 18, 19.

[Footnote 5] See the authorities collected at pp. 54-62 of the Government's brief.

[Footnote 6] Hiring and Separation Methods in American Industry, 35 Monthly Labor Review, pp. 1005, 1009.

[Footnote 7] Economic Insecurity in Old Age (Social Security Board, 1937), p. 15.

[Footnote 8] The Senate Committee estimated, when investigating the present act, that over one half of the people in the United States over 65 years of age are dependent upon others for support. Senate Report, No. 628, 74th Congress, 1st Session, p. 4. A similar estimate was made in the Report to the President of the Committee on Economic Security, 1935, p. 24.

A Report of the Pennsylvania Commission on Old Age Pensions made in 1919 (p. 108) after a study of 16,281 persons and interviews with more than 3,500 persons 65 years and over showed two fifths with no income but wages and one fourth supported by children; 1.5 per cent. had savings and 11.8 per cent. had property.

A report on old age pensions by the Massachusetts Commission on Pensions (Senate No. 5, 1925, pp. 41, 52) showed that in 1924 two thirds of those above 65 had, alone or with a spouse, less than $5,000 of property, and one fourth had none. Two thirds of those with less than $5, 000 and income of less than $1,000 were dependent in whole or in part on others for support.

A report of the New York State Commission made in 1930 (Legis. Doc. No. 67, 1930, p. 39) showed a condition of total dependency as to 58 per cent. of those 65 and over, and 62 per cent. of those 70 and over.

The national Government has found in connection with grants to states for old age assistance under another title of the Social Security Act (Title I (section 1 et seq., 42 U.S.C.A. 301 et seq.)) that in February, 1937, 38.8 per cent. of all persons over 65 in Colorado received public assistance; in Oklahoma the percentage was 44.1, and in Texas 37.5. In 10 states out of 40 with plans approved by the Social Security Board more than 25 per cent. of those over 65 could meet the residence requirements and qualify under a means test and were actually receiving public aid. Economic Insecurity in Old Age, supra, p. 15.

[Footnote 9] Economic Insecurity in Old Age, supra, chap. VI, p. 184.

[Footnote 10] IV Channing, History of the United States, p. 404 (South Carolina Nullification); 8 Adams, History of the United States (New England Nullification and the Hartford Convention).

U.S. Supreme Court

FLEMMING v. NESTOR, 363 U.S. 603 (1960)

363 U.S. 603

**FLEMMING, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, v. NESTOR.
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.
No. 54.
Argued February 24, 1960.
Decided June 20, 1960.**

Section 202 (n) of the Social Security Act, as amended, provides for the termination of old-age benefits payable to an alien who, after the date of its enactment (September 1, 1954), is deported under 241 (a) of the Immigration and Nationality Act on any one of certain grounds specified in 202 (n). Appellee, an alien who had become eligible for old-age benefits in 1955, was deported in 1956, pursuant to 241 (a) of the Immigration and Nationality Act, for having been a member of the Communist Party from 1933 to 1939. Since this was one of the grounds specified in 202 (n), his old-age benefits were terminated shortly thereafter. He commenced this action in a single-judge District Court, under 205 (g) of the Social Security Act, to secure judicial review of that administrative decision. The District Court held that 202 (n) deprived appellee of an accrued property right and, therefore, violated the Due Process Clause of the Fifth Amendment. Held:

1. Although this action drew into question the constitutionality of 202 (n), it did not involve an injunction or otherwise interdict the operation of the statutory scheme; 28 U.S.C. 2282, forbidding the issuance of an injunction restraining the enforcement, operation or execution of an Act of Congress for repugnance to the Constitution, except by a three-judge District Court, was not applicable; and jurisdiction over the action was properly exercised by the single-judge District Court. Pp. 606-608.

2. A person covered by the Social Security Act has not such a right in old-age benefit payments as would make every defeasance of "accrued" interests violative of the Due Process Clause of the Fifth Amendment. Pp. 608-611.

(a) The noncontractual interest of an employee covered by the Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits are based on his contractual premium payments. Pp. 608-610.

(b) To engraft upon the Social Security System a concept of "accrued property rights" would deprive it of the flexibility and [363 U.S. 603, 604] boldness in adjustment to ever-changing conditions which it demands and which Congress probably had in mind when it expressly reserved the right to alter, amend or repeal any provision of the Act. Pp. 610-611.

3. Section 202 (n) of the Act cannot be condemned as so lacking in rational justification as to offend due process. Pp. 611-612.

4. Termination of appellee's benefits under 202 (n) does not amount to punishing him without a trial, in violation of Art. III, 2, cl. 3, of the Constitution or the Sixth Amendment; nor is 202 (n) a bill of attainder or ex post facto law, since its purpose is not punitive. Pp. 612-621.

169 F. Supp. 922, reversed.

John F. Davis argued the cause for appellant. On the brief were Solicitor General Rankin, Assistant Attorney General Yeagley and Kevin T. Maroney.

David Rein argued the cause for appellee. With him on the brief was Joseph Forer.

MR. JUSTICE HARLAN delivered the opinion of the Court.

From a decision of the District Court for the District of Columbia holding 202 (n) of the Social Security Act (68 Stat. 1083, as amended, 42 U.S.C. 402 (n)) unconstitutional, the Secretary of Health, Education, and Welfare takes this direct appeal pursuant to 28 U.S.C. 1252. The challenged section, set forth in full in the margin, 1 provides for the termination of old-age, survivor, [363 U.S. 603, 605] and disability insurance benefits payable to, or in certain cases in respect of, an alien individual who, after September 1, 1954 (the date of enactment of the section), is deported under 241 (a) of the Immigration and Nationality Act (8 U.S.C. 1251 (a)) on any one of certain grounds specified in 202 (n).

Appellee, an alien, immigrated to this country from Bulgaria in 1913, and became eligible for old-age benefits in November 1955. In July 1956 he was deported pursuant to 241 (a) (6) (C) (i) of the Immigration and Nationality Act for having been a member of the Communist Party from 1933 to 1939. This being one of the benefit-termination deportation grounds specified in 202 (n), appellee's benefits were terminated soon thereafter, and notice of the termination was given to his wife, [363 U.S. 603, 606] who had remained in this country. 2 Upon his failure to obtain administrative reversal of the decision, appellee commenced this action in the District Court, pursuant to 205 (g) of the Social Security Act (53 Stat. 1370, as amended, 42 U.S.C. 405 (g)), to secure judicial review. 3 On cross-motions for summary judgment, the District Court ruled for appellee, holding 202 (n) unconstitutional under the Due Process Clause of the Fifth Amendment in that it deprived appellee of an accrued property right. 169 F. Supp. 922. The Secretary prosecuted an appeal to this Court, and, subject to a jurisdictional question hereinafter discussed, we set the case down for plenary hearing. 360 U.S. 915 .

The preliminary jurisdictional question is whether 28 U.S.C. 2282 is applicable, and therefore required that the case be heard below before three judges, rather than by a single judge, as it was. Section 2282 forbids the issuance, except by a three-judge District Court, of [363 U.S. 603, 607] any "interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution . . . ." Neither party requested a three-judge court below, and in this Court both parties argue the inapplicability of 2282. If the provision applies, we cannot reach the merits, but must vacate the judgment below and remand the case for consideration by a three-judge District Court. See Federal Housing Administration v. The Darlington, Inc., 352 U.S. 977 .

Under the decisions of this Court, this 205 (g) action could, and did, draw in question the constitutionality of 202 (n). See, e. g., Anniston Mfg. Co. v. Davis, 301 U.S. 337, 345 -346. However, the action did no more. It did not seek affirmatively to interdict the operation of a statutory scheme. A judgment for appellee would not put the operation of a federal statute under the restraint of an equity decree; indeed, apart from its effect under the doctrine of stare decisis, it would have no other result than to require the payment of appellee's benefits. In these circumstances we think that what was said in Garment Workers v. Donnelly Co., 304 U.S. 243 , where this Court dealt with an analogous situation, is controlling here:

> "[The predecessor of 2282] does not provide for a case where the validity of an Act of Congress is merely drawn in question, albeit that question be decided, but only for a case where there is an application for an interlocutory or permanent injunction to restrain the enforcement of an Act of Congress. . . . Had Congress intended the provision . . ., for three judges and direct appeal, to apply whenever a question of the validity of an Act of Congress became involved, Congress would naturally have used the familiar phrase `drawn in question' . . . ." Id., at 250. [363 U.S. 603, 608]

We hold that jurisdiction over the action was properly exercised by the District Court, and therefore reach the merits.

I.

We think that the District Court erred in holding that 202 (n) deprived appellee of an "accrued property right." 169 F. Supp., at 934. Appellee's right to Social Security benefits cannot properly be considered to have been of that order.

The general purposes underlying the Social Security Act were expounded by Mr. Justice Cardozo in Helvering v. Davis, 301 U.S. 619, 640 -645. The issue here, however, requires some inquiry into the statutory scheme by which those purposes are sought to be achieved. Payments under the Act are based upon the wage earner's record of earnings in employment or self-employment covered by the Act, and take the form of old-age insurance and disability insurance benefits inuring to the wage earner (known as the "primary beneficiary"), and of benefits, including survivor benefits, payable to named dependents ("secondary beneficiaries") of a wage earner. Broadly speaking, eligibility for benefits depends on satisfying statutory conditions as to (1) employment in covered employment or self-employment (see 210 (a), 42 U.S.C. 410 (a)); (2) the requisite number of "quarters of coverage" - i. e., three-month periods during which not less than a stated sum was earned - the number depending generally on age (see 213-215, 42 U.S.C. 413-415); and (3) attainment of the retirement age (see 216 (a), 42 U.S.C. 416 (a)). 202 (a), 42 U.S.C. 402 (a). 4 Entitlement to benefits once gained, [363 U.S. 603, 609] is partially or totally lost if the beneficiary earns more than a stated annual sum, unless he or she is at least 72 years old. 203 (b), (e), 42 U.S.C. 403 (b), (e). Of special importance in this case is the fact that eligibility for benefits, and the amount of such benefits, do not in any true sense depend on contribution to the

program through the payment of taxes, but rather on the earnings record of the primary beneficiary.

The program is financed through a payroll tax levied on employees in covered employment, and on their employers. The tax rate, which is a fixed percentage of the first $4,800 of employee annual income, is set at a scale which will increase from year to year, presumably to keep pace with rising benefit costs. I. R. C. of 1954, 3101, 3111, 3121 (a). The tax proceeds are paid into the Treasury "as internal-revenue collections," I. R. C., 3501, and each year an amount equal to the proceeds is appropriated to a Trust Fund, from which benefits and the expenses of the program are paid. 201, 42 U.S.C. 401. It was evidently contemplated that receipts would greatly exceed disbursements in the early years of operation of the system, and surplus funds are invested in government obligations, and the income returned to the Trust Fund. Thus, provision is made for expected increasing costs of the program.

The Social Security system may be accurately described as a form of social insurance, enacted pursuant to Congress' power to "spend money in aid of the `general welfare,'" Helvering v. Davis, supra, at 640, whereby persons gainfully employed, and those who employ them, are taxed to permit the payment of benefits to the retired and disabled, and their dependents. Plainly the expectation is that many members of the present productive work force will in turn become beneficiaries rather than supporters of the program. But each worker's benefits, though flowing from the contributions he made to the [363 U.S. 603, 610] national economy while actively employed, are not dependent on the degree to which he was called upon to support the system by taxation. It is apparent that the noncontractual interest of an employee covered by the Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on his contractual premium payments.

It is hardly profitable to engage in conceptualizations regarding "earned rights" and "gratuities." Cf. Lynch v. United States, 292 U.S. 571, 576 -577. The "right" to Social Security benefits is in one sense "earned," for the entire scheme rests on the legislative judgment that those who in their productive years were functioning members of the economy may justly call upon that economy, in their later years, for protection from "the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near." Helvering v. Davis, supra, at 641. But the practical effectuation of that judgment has of necessity called forth a highly complex and interrelated statutory structure. Integrated treatment of the manifold specific problems presented by the Social Security program demands more than a generalization. That program was designed to function into the indefinite future, and its specific provisions rest on predictions as to expected economic conditions which must inevitably prove less than wholly accurate, and on judgments and preferences as to the proper allocation of the Nation's resources which evolving economic and social conditions will of necessity in some degree modify.

To engraft upon the Social Security system a concept of "accrued property rights" would deprive it of the flexibility and boldness in adjustment to ever-changing conditions which it demands. See Wollenberg, Vested Rights in Social-Security Benefits, 37 Ore. L. Rev. 299, 359. It was doubtless out of an awareness of the need for such flexibility that Congress included in the original Act, and [363 U.S. 603, 611] has since retained, a clause expressly reserving to it "[t]he right to alter, amend, or repeal any provision" of the Act. 1104, 49 Stat. 648, 42 U.S.C. 1304. That provision makes express what is implicit in the institutional needs of the program. See Analysis of the Social Security System, Hearings before a Subcommittee of the Committee on Ways and Means, House of Representatives, 83d Cong., 1st Sess., pp. 920-921. It was pursuant to that provision that 202 (n) was enacted.

We must conclude that a person covered by the Act has not such a right in benefit payments as would make every defeasance of "accrued" interests violative of the Due Process Clause of the Fifth

Amendment.

II.

This is not to say, however, that Congress may exercise its power to modify the statutory scheme free of all constitutional restraint. The interest of a covered employee under the Act is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause. In judging the permissibility of the cut-off provisions of 202 (n) from this standpoint, it is not within our authority to determine whether the Congressional judgment expressed in that section is sound or equitable, or whether it comports well or ill with the purposes of the Act. "Whether wisdom or unwisdom resides in the scheme of benefits set forth in Title II, it is not for us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here, as often, is with power, not with wisdom." Helvering v. Davis, supra, at 644. Particularly when we deal with a withholding of a noncontractual benefit under a social welfare program such as this, we must recognize that the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification. [363 U.S. 603, 612]

Such is not the case here. The fact of a beneficiary's residence abroad - in the case of a deportee, a presumably permanent residence - can be of obvious relevance to the question of eligibility. One benefit which may be thought to accrue to the economy from the Social Security system is the increased over-all national purchasing power resulting from taxation of productive elements of the economy to provide payments to the retired and disabled, who might otherwise be destitute or nearly so, and who would generally spend a comparatively large percentage of their benefit payments. This advantage would be lost as to payments made to one residing abroad. For these purposes, it is, of course, constitutionally irrelevant whether this reasoning in fact underlay the legislative decision, as it is irrelevant that the section does not extend to all to whom the postulated rationale might in logic apply. 5 See United States v. Petrillo, 332 U.S. 1, 8 -9; Steward Machine Co. v. Davis, 301 U.S. 548, 584 -585; cf. Carmichael v. Southern Coal Co., 301 U.S. 495, 510 -513. Nor, apart from this, can it be deemed irrational for Congress to have concluded that the public purse should not be utilized to contribute to the support of those deported on the grounds specified in the statute.

We need go no further to find support for our conclusion that this provision of the Act cannot be condemned as so lacking in rational justification as to offend due process.

III.

The remaining, and most insistently pressed, constitutional objections rest upon Art. I, 9, cl. 3, and Art. III, [363 U.S. 603, 613] 2, cl. 3, of the Constitution, and the Sixth Amendment. 6 It is said that the termination of appellee's benefits amounts to punishing him without a judicial trial, see Wong Wing v. United States, 163 U.S. 228 ; that the termination of benefits constitutes the imposition of punishment by legislative act, rendering 202 (n) a bill of attainder, see United States v. Lovett, 328 U.S. 303 ; Cummings v. Missouri, 4 Wall. 277; and that the punishment exacted is imposed for past conduct not unlawful when engaged in, thereby violating the constitutional prohibition on ex post facto laws, see Ex parte Garland, 4 Wall. 333. 7 Essential to the success of each of these contentions is the validity of characterizing as "punishment" in the constitutional sense the termination of benefits under 202 (n).

In determining whether legislation which bases a disqualification on the happening of a certain past event imposes a punishment, the Court has sought to discern the objects on which the enactment in question was [363 U.S. 603, 614] focused. Where the source of legislative concern can be thought to be the activity or status from which the individual is barred, the disqualification is not punishment even

though it may bear harshly upon one affected. The contrary is the case where the statute in question is evidently aimed at the person or class of persons disqualified. In the earliest case on which appellee relies, a clergyman successfully challenged a state constitutional provision barring from that profession - and from many other professions and offices - all who would not swear that they had never manifested any sympathy or support for the cause of the Confederacy. Cummings v. Missouri, supra. The Court thus described the aims of the challenged enactment:

> "The oath could not . . . have been required as a means of ascertaining whether parties were qualified or not for their respective callings or the trusts with which they were charged. It was required in order to reach the person, not the calling. It was exacted, not from any notion that the several acts designated indicated unfitness for the callings, but because it was thought that the several acts deserved punishment . . . ." Id., at 320. (Emphasis supplied.)

Only the other day the governing inquiry was stated, in an opinion joined by four members of the Court, in these terms:

> "The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession." De Veau v. Braisted, 363 U.S. 144, 160 (plurality opinion). [363 U.S. 603, 615]

In Ex parte Garland, supra, where the Court struck down an oath - similar in content to that involved in Cummings - required of attorneys seeking to practice before any federal court, as also in Cummings, the finding of punitive intent drew heavily on the Court's first-hand acquaintance with the events and the mood of the then recent Civil War, and "the fierce passions which that struggle aroused." Cummings v. Missouri, supra, at 322. 8 Similarly, in United States v. Lovett, supra, where the Court invalidated, as a bill of attainder, a statute forbidding - subject to certain conditions - the further payment of the salaries of three named government employees, the determination that a punishment had been imposed rested in large measure on the specific Congressional history which the Court was at pains to spell out in detail. See 328 U.S., at 308 -312. Most recently, in Trop v. Dulles, 356 U.S. 86 , which held unconstitutional a statute providing for the expatriation of one who had been sentenced by a court-martial to dismissal or dishonorable discharge for wartime desertion, the majority of the Court characterized the statute as punitive. However, no single opinion commanded the support of a majority. The plurality opinion rested its determination, at least in part, on its inability to discern any alternative purpose which the statute could be thought to serve. Id., at 97. The concurring opinion found in the specific historical evolution of the provision in question compelling evidence of punitive intent. Id., at 107-109. [363 U.S. 603, 616]

It is thus apparent that, though the governing criterion may be readily stated, each case has turned on its own highly particularized context. Where no persuasive showing of a purpose "to reach the person, not the calling," Cummings v. Missouri, supra, at 320, has been made, the Court has not hampered legislative regulation of activities within its sphere of concern, despite the often-severe effects such regulation has had on the persons subject to it. 9 Thus, deportation has been held to be not punishment, but an exercise of the plenary power of Congress to fix the conditions under which aliens are to be permitted to enter and remain in this country. Fong Yue Ting v. United States, 149 U.S. 698, 730 ; see Galvan v. Press, 347 U.S. 522, 530 -531. Similarly, the setting by a State of qualifications for the practice of medicine, and their modification from time to time, is an incident of the State's power to protect the health and safety of its citizens, and its decision to bar from practice persons who commit or have committed a felony is taken as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment of ex-felons. Hawker v. New York, 170 U.S. 189 . See De Veau v.

Braisted, supra (regulation of crime on the waterfront through disqualification of ex-felons from holding union office). Cf. Helvering v. Mitchell, 303 U.S. 391, 397 -401, holding that, with respect to deficiencies due to fraud, a 50 percent addition to the tax imposed was not punishment so as to prevent, upon principles of double jeopardy, its assessment against one acquitted of tax evasion.

Turning, then, to the particular statutory provision before us, appellee cannot successfully contend that the language and structure of 202 (n), or the nature of [363 U.S. 603, 617] the deprivation, requires us to recognize a punitive design. Cf. Wong Wing v. United States, supra (imprisonment, at hard labor up to one year, of person found to be unlawfully in the country). Here the sanction is the mere denial of a noncontractual governmental benefit. No affirmative disability or restraint is imposed, and certainly nothing approaching the "infamous punishment" of imprisonment, as in Wong Wing, on which great reliance is mistakenly placed. Moreover, for reasons already given (ante, pp. 611-612), it cannot be said, as was said of the statute in Cummings v. Missouri, supra, at 319; see Dent v. West Virginia, 129 U.S. 114, 126 , that the disqualification of certain deportees from receipt of Social Security benefits while they are not lawfully in this country bears no rational connection to the purposes of the legislation of which it is a part, and must without more therefore be taken as evidencing a Congressional desire to punish. Appellee argues, however, that the history and scope of 202 (n) prove that no such postulated purpose can be thought to have motivated the legislature, and that they persuasively show that a punitive purpose in fact lay behind the statute. We do not agree.

We observe initially that only the clearest proof could suffice to establish the unconstitutionality of a statute on such a ground. Judicial inquiries into Congressional motives are at best a hazardous matter, and when that inquiry seeks to go behind objective manifestations it becomes a dubious affair indeed. Moreover, the presumption of constitutionality with which this enactment, like any other, comes to us forbids us lightly to choose that reading of the statute's setting which will invalidate it over that which will save it. "[I]t is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void." Fletcher v. Peck, 6 Cranch 87, 128. [363 U.S. 603, 618]

Section 202 (n) was enacted as a small part of an extensive revision of the Social Security program. The provision originated in the House of Representatives. H. R. 9366, 83d Cong., 2d Sess., 108. The discussion in the House Committee Report, H. R. Rep. No. 1698, 83d Cong., 2d Sess., pp. 5, 25, 77, does not express the purpose of the statute. However, it does say that the termination of benefits would apply to those persons who were "deported from the United States because of illegal entry, conviction of a crime, or subversive activity . . . ." Id., at 25. It was evidently the thought that such was the scope of the statute resulting from its application to deportation under the 14 named paragraphs of 241 (a) of the Immigration and Nationality Act. Id., at 77. 10

The Senate Committee rejected the proposal, for the stated reason that it had "not had an opportunity to give sufficient study to all the possible implications of this provision, which involves termination of benefit rights under the contributory program of old-age and survivors insurance . . . ." S. Rep. No. 1987, 83d Cong., 2d Sess., p. 23; see also id., at 76. However, in Conference, the proposal was restored in modified form, 11 and as modified was enacted as 202 (n). See H. R. Conf. Rep. No. 2679, 83d Cong., 2d Sess., p. 18.

Appellee argues that this history demonstrates that Congress was not concerned with the fact of a beneficiary's [363 U.S. 603, 619] deportation - which it is claimed alone would justify this legislation as being pursuant to a policy relevant to regulation of the Social Security system - but that it sought to reach certain grounds for deportation, thus evidencing a punitive intent. 12 It is impossible to find in this meagre history the unmistakable evidence of punitive intent which, under principles already

discussed, is required before a Congressional enactment of this kind may be struck down. Even were that history to be taken as evidencing Congress' concern with the grounds, rather than the fact, of deportation, we do not think that this, standing alone, would suffice to establish a punitive purpose. This would still be a far cry from the situations involved in such cases as Cummings, Wong Wing, and Garland (see ante, p. 617), and from that in Lovett, supra, where the legislation was on its face aimed at particular individuals. The legislative record, however, falls short of any persuasive showing that Congress was in fact concerned alone with the grounds of deportation. To be sure Congress did not apply the termination [363 U.S. 603, 620] provision to all deportees. However, it is evident that neither did it rest the operation of the statute on the occurrence of the underlying act. The fact of deportation itself remained an essential condition for loss of benefits, and even if a beneficiary were saved from deportation only through discretionary suspension by the Attorney General under 244 of the Immigration and Nationality Act (66 Stat. 214, 8 U.S.C. 1254), 202 (n) would not reach him.

Moreover, the grounds for deportation referred to in the Committee Report embrace the great majority of those deported, as is evident from an examination of the four omitted grounds, summarized in the margin. 13 Inferences drawn from the omission of those grounds cannot establish, to the degree of certainty required, that Congressional concern was wholly with the acts leading to deportation, and not with the fact of deportation. 14 To hold otherwise would be to rest on the "slight implication and vague conjecture" against which Chief Justice Marshall warned. Fletcher v. Peck, supra, at 128.

The same answer must be made to arguments drawn from the failure of Congress to apply 202 (n) to beneficiaries [363 U.S. 603, 621] voluntarily residing abroad. But cf. 202 (t), ante, note 5. Congress may have failed to consider such persons; or it may have thought their number too slight, or the permanence of their voluntary residence abroad too uncertain, to warrant application of the statute to them, with its attendant administrative problems of supervision and enforcement. Again, we cannot with confidence reject all those alternatives which imaginativeness can bring to mind, save that one which might require the invalidation of the statute.

Reversed.

Footnotes

[Footnote 1] Section 202 (n) provides as follows:

> "(n) (1) If any individual is (after the date of enactment of this subsection) deported under paragraph (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), or (18) of section 241 (a) of the Immigration and Nationality Act, then, notwithstanding any other provisions of this title -
>
> "(A) no monthly benefit under this section or section 223 [42 U.S.C. 423, relating to "disability insurance benefits"] shall be paid to such individual, on the basis of his wages and self-employment income, for any month occurring (i) after the month in which [363 U.S. 603, 605] the Secretary is notified by the Attorney General that such individual has been so deported, and (ii) before the month in which such individual is thereafter lawfully admitted to the United States for permanent residence,
>
> "(B) if no benefit could be paid to such individual (or if no benefit could be paid to him if he were alive) for any month by reason of subparagraph (A), no monthly benefit under this section shall be paid, on the basis of his wages and self-employment income, for such month to any other person who is not a citizen of the United States and is outside the United States for any part of

such month, and

"(C) no lump-sum death payment shall be made on the basis of such individual's wages and self-employment income if he dies (i) in or after the month in which such notice is received, and (ii) before the month in which he is thereafter lawfully admitted to the United States for permanent residence.

"Section 203 (b) and (c) of this Act shall not apply with respect to any such individual for any month for which no monthly benefit may be paid to him by reason of this paragraph.

"(2) As soon as practicable after the deportation of any individual under any of the paragraphs of section 241 (a) of the Immigration and Nationality Act enumerated in paragraph (1) in this subsection, the Attorney General shall notify the Secretary of such deportation."

The provisions of 241 (a) of the Immigration and Nationality Act are summarized in notes 10, 13, post, pp. 618, 620.

[Footnote 2] Under paragraph (1) (B) of 202 (n) (see note 1, ante), appellee's wife, because of her residence here, has remained eligible for benefits payable to her as the wife of an insured individual. See 202 (b), 53 Stat. 1364, as amended, 42 U.S.C. 402 (b).

[Footnote 3] Section 205 (g) provides as follows:

"(g) Any individual, after any final decision of the Board made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Board may allow. . . . As part of its answer the Board shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for a rehearing. The findings of the Board as to any fact, if supported by substantial evidence, shall be conclusive . . . . The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions."

[Footnote 4] In addition, eligibility for disability insurance benefits is of course subject to the further condition of the incurring of a disability as defined in the Act. 223, 42 U.S.C. 423. Secondary beneficiaries must meet the tests of family relationship to the wage earner set forth in the Act. 202 (b)-(h), 42 U.S.C. 402 (b)-(h).

[Footnote 5] The Act does not provide for the termination of benefits of nonresident citizens, or of some aliens who leave the country voluntarily - although many nonresident aliens do lose their eligibility by virtue of the provisions of 202 (t), 70 Stat. 835, as amended, 42 U.S.C. 402 (t) - or of aliens deported pursuant to paragraphs 3, 8, 9, or 13 of the 18 paragraphs of 241 (a) of the Immigration and Nationality Act. See note 13, post.

[Footnote 6] Art. I, 9, cl. 3:

"No bill of attainder or ex post facto law shall be passed."

Art. III, 2, cl. 3:

> "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed . . . ."

Amend. VI:

> "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence."

[Footnote 7] Appellee also adds, but hardly argues, the contention that he has been deprived of his rights under the First Amendment, since the adverse consequences stemmed from "mere past membership" in the Communist Party. This contention, which is no more than a collateral attack on appellee's deportation, is not open to him.

[Footnote 8] See also Pierce v. Carskadon, 16 Wall. 234. A West Virginia statute providing that a nonresident who had suffered a judgment in an action commenced by attachment, but in which he had not been personally served and did not appear, could within one year petition the court for a reopening of the judgment and a trial on the merits, was amended in 1865 so as to condition that right on the taking of an exculpatory oath that the defendant had never supported the Confederacy. On the authority of Cummings and Garland, the amendment was invalidated.

[Footnote 9] As prior decisions make clear, compare Ex parte Garland, supra, with Hawker v. New York, supra, the severity of a sanction is not determinative of its character as "punishment."

[Footnote 10] Paragraphs (1), (2), and (10) of 241 (a) relate to unlawful entry, or entry not complying with certain conditions; paragraphs (6) and (7) apply to "subversive" and related activities; the remainder of the included paragraphs are concerned with convictions of designated crimes, or the commission of acts related to them, such as narcotics addiction or prostitution.

[Footnote 11] For example, under the House version termination of benefits of a deportee would also have terminated benefits paid to secondary beneficiaries based on the earning records of the deportee. The Conference proposal limited this effect to secondary beneficiaries who were nonresident aliens. See note 2, ante.

[Footnote 12] Appellee also relies on the juxtaposition of the proposed 108 and certain other provisions, some of which were enacted and some of which were not. This argument is too conjectural to warrant discussion. In addition, reliance is placed on a letter written to the Senate Finance Committee by appellant's predecessor in office, opposing the enactment of what is now 202 (u) of the Act, 70 Stat. 838, 42 U.S.C. 402 (u), on the ground that the section was "in the nature of a penalty and based on considerations foreign to the objectives" of the program. Social Security Amendments of 1955, Hearings before the Senate Committee on Finance, 84th Cong., 2d Sess., p. 1319. The Secretary went on to say that "present law recognizes only three narrowly limited exceptions [of which 202 (n) is one] to the basic principle that benefits are paid without regard to the attitudes, opinions, behavior, or personal characteristics of the individual . . . ." It should be observed, however, that the Secretary did not speak of 202 (n) as a penalty, as he did of the proposed 202 (u). The latter provision is concededly penal, and applies only pursuant to a judgment of a court in a criminal case.

[Footnote 13] They are: (1) persons institutionalized at public expense within five years after entry because of "mental disease, defect, or deficiency" not shown to have arisen subsequent to admission (241 (a) (3)); (2) persons becoming a public charge within five years after entry from causes not shown to have arisen subsequent to admission 241 (a) (8)); (3) persons admitted as nonimmigrants (see 101 (a) (15), 66 Stat. 167, 8 U.S.C. 1101 (a) (15)) who fail to maintain, or comply with the conditions of, such status (241 (a) (9)); (4) persons knowingly and for gain inducing or aiding, prior to or within five years after entry, any other alien to enter or attempt to enter unlawfully (241 (a) (13)).

[Footnote 14] Were we to engage in speculation, it would not be difficult to conjecture that Congress may have been led to exclude these four grounds of deportation out of compassionate or de minimis considerations.

MR. JUSTICE BLACK, dissenting.

For the reasons stated here and in the dissents of MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN I agree with the District Court that the United States is depriving appellee, Ephram Nestor, of his statutory right to old-age benefits in violation of the United States Constitution.

Nestor came to this country from Bulgaria in 1913 and lived here continuously for 43 years, until July 1956. He was then deported from this country for having been a Communist from 1933 to 1939. At that time membership in the Communist Party as such was not illegal and was not even a statutory ground for deportation. From December 1936 to January 1955 Nestor and his employers made regular payments to the Government under the Federal Insurance Contributions Act, 26 U.S.C. 3101-3125. These funds went to a special federal old-age and survivors insurance trust fund under 49 Stat. 622, 53 Stat. 1362, as amended, 42 U.S.C. 401, in return for which Nestor, like millions of others, expected to receive payments when he reached the statutory age. In 1954, 15 years after Nestor had last been a Communist, and 18 years after he began to make payments into the old-age security fund, Congress passed a law providing, among other things, that any person who had been deported from [363 U.S. 603, 622] this country because of past Communist membership under 66 Stat. 205, 8 U.S.C. 1251 (a) (6) (C) should be wholly cut off from any benefits of the fund to which he had contributed under the law. 68 Stat. 1083, 42 U.S.C. 402 (n). After the Government deported Nestor in 1956 it notified his wife, who had remained in this country, that he was cut off and no further payments would be made to him. This action, it seems to me, takes Nestor's insurance without just compensation and in violation of the Due Process Clause of the Fifth Amendment. Moreover, it imposes an ex post facto law and bill of attainder by stamping him, without a court trial, as unworthy to receive that for which he has paid and which the Government promised to pay him. The fact that the Court is sustaining this action indicates the extent to which people are willing to go these days to overlook violations of the Constitution perpetrated against anyone who has ever even innocently belonged to the Communist Party.

I.

In Lynch v. United States, 292 U.S. 571 , this Court unanimously held that Congress was without power to repudiate and abrogate in whole or in part its promises to pay amounts claimed by soldiers under the War Risk Insurance Act of 1917, 400-405, 40 Stat. 409. This Court held that such a repudiation was inconsistent with the provision of the Fifth Amendment that "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The Court today puts the Lynch case aside on the ground that "It is hardly profitable to engage in conceptualizations regarding `earned rights' and `gratuities.'" From this sound premise the Court goes on to say that while "The `right' to Social Security benefits is in one sense `earned,'" [363 U.S. 603, 623] yet the Government's insurance scheme now before us rests not on the idea

of the contributors to the fund earning something, but simply provides that they may "justly call" upon the Government "in their later years, for protection from `the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.'" These are nice words but they cannot conceal the fact that they simply tell the contributors to this insurance fund that despite their own and their employers' payments the Government, in paying the beneficiaries out of the fund, is merely giving them something for nothing and can stop doing so when it pleases. This, in my judgment, reveals a complete misunderstanding of the purpose Congress and the country had in passing that law. It was then generally agreed, as it is today, that it is not desirable that aged people think of the Government as giving them something for nothing. An excellent statement of this view, quoted by MR. JUSTICE DOUGLAS in another connection, was made by Senator George, the Chairman of the Finance Committee when the Social Security Act was passed, and one very familiar with the philosophy that brought it about:

> "It comports better than any substitute we have discovered with the American concept that free men want to earn their security and not ask for doles - that what is due as a matter of earned right is far better than a gratuity. . . .
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> . . . . .
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> "Social Security is not a handout; it is not charity; it is not relief. It is an earned right based upon the contributions and earnings of the individual. As an earned right, the individual is eligible to receive his benefit in dignity and self-respect." 102 Cong. Rec. 15110. [363 U.S. 603, 624]

The people covered by this Act are now able to rely with complete assurance on the fact that they will be compelled to contribute regularly to this fund whenever each contribution falls due. I believe they are entitled to rely with the same assurance on getting the benefits they have paid for and have been promised, when their disability or age makes their insurance payable under the terms of the law. The Court did not permit the Government to break its plighted faith with the soldiers in the Lynch case; it said the Constitution forbade such governmental conduct. I would say precisely the same thing here.

The Court consoles those whose insurance is taken away today, and others who may suffer the same fate in the future, by saying that a decision requiring the Social Security system to keep faith "would deprive it of the flexibility and boldness in adjustment to ever-changing conditions which it demands." People who pay premiums for insurance usually think they are paying for insurance, not for "flexibility and boldness." I cannot believe that any private insurance company in America would be permitted to repudiate its matured contracts with its policyholders who have regularly paid all their premiums in reliance upon the good faith of the company. It is true, as the Court says, that the original Act contained a clause, still in force, that expressly reserves to Congress "[t]he right to alter, amend, or repeal any provision" of the Act. 1104, 49 Stat. 648, 42 U.S.C. 1304. Congress, of course, properly retained that power. It could repeal the Act so as to cease to operate its old-age insurance activities for the future. This means that it could stop covering new people, and even stop increasing its obligations to its old contributors. But that is quite different from disappointing the just expectations of the contributors to the fund which the Government has compelled [363 U.S. 603, 625] them and their employers to pay its Treasury. There is nothing "conceptualistic" about saying, as this Court did in Lynch, that such a taking as this the Constitution forbids.

II.

In part II of its opinion, the Court throws out a line of hope by its suggestion that if Congress in the future cuts off some other group from the benefits they have bought from the Government, this Court

might possibly hold that the future hypothetical act violates the Due Process Clause. In doing so it reads due process as affording only minimal protection, and under this reading it will protect all future groups from destruction of their rights only if Congress "manifests a patently arbitrary classification, utterly lacking in rational justification." The Due Process Clause so defined provides little protection indeed compared with the specific safeguards of the Constitution such as its prohibitions against taking private property for a public use without just compensation, passing ex post facto laws, and imposing bills of attainder. I cannot agree, however, that the Due Process Clause is properly interpreted when it is used to subordinate and dilute the specific safeguards of the Bill of Rights, and when "due process" itself becomes so wholly dependent upon this Court's idea of what is "arbitrary" and "rational." See Levine v. United States, 362 U.S. 610, 620 (dissenting opinion); Adamson v. California, 332 U.S. 46, 89 -92 (dissenting opinion); Rochin v. California, 342 U.S. 165, 174 (concurring opinion). One reason for my belief in this respect is that I agree with what is said in the Court's quotation from Helvering v. Davis, 301 U.S. 619, 644 :

> "Whether wisdom or unwisdom resides in the scheme of benefits set forth in Title II, it is not for [363 U.S. 603, 626] us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here, as often, is with power, not with wisdom."

And yet the Court's assumption of its power to hold Acts unconstitutional because the Court thinks they are arbitrary and irrational can be neither more nor less than a judicial foray into the field of governmental policy. By the use of this due process formula the Court does not, as its proponents frequently proclaim, abstain from interfering with the congressional policy. It actively enters that field with no standards except its own conclusion as to what is "arbitrary" and what is "rational." And this elastic formula gives the Court a further power, that of holding legislative Acts constitutional on the ground that they are neither arbitrary nor irrational, even though the Acts violate specific Bill of Rights safeguards. See my dissent in Adamson v. California, supra. Whether this Act had "rational justification" was, in my judgment, for Congress; whether it violates the Federal Constitution is for us to determine, unless we are by circumlocution to abdicate the power that this Court has been held to have ever since Marbury v. Madison, 1 Cranch 137.

III.

The Court in part III of its opinion holds that the 1954 Act is not an ex post facto law or bill of attainder even though it creates a class of deportees who cannot collect their insurance benefits because they were once Communists at a time when simply being a Communist was not illegal. The Court also puts great emphasis on its belief that the Act here is not punishment. Although not believing that the particular label "punishment" is of decisive importance, I think the Act does impose punishment even in a classic sense. The basic reason for [363 U.S. 603, 627] Nestor's loss of his insurance payments is that he was once a Communist. This man, now 69 years old, has been driven out of the country where he has lived for 43 years to a land where he is practically a stranger, under an Act authorizing his deportation many years after his Communist membership. Cf. Galvan v. Press, 347 U.S. 522, 532 , 533 (dissenting opinions). Now a similar ex post facto law deprives him of his insurance, which, while petty and insignificant in amount to this great Government, may well be this exile's daily bread, for the same reason and in accord with the general fashion of the day - that is, to punish in every way possible anyone who ever made the mistake of being a Communist in this country or who is supposed ever to have been associated with anyone who made that mistake. See, e. g., Barenblatt v. United States, 360 U.S. 109 , and Uphaus v. Wyman, 360 U.S. 72 . In United States v. Lovett, 328 U.S. 303, 315 -316, we said:

> ". . . legislative acts, no matter what their form, that apply either to named individuals or to easily

> ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution."

Faithful observance of our holdings in that case, in Ex parte Garland, 4 Wall. 333, and in Cummings v. Missouri, 4 Wall. 277, would, in my judgment, require us to hold that the 1954 Act is a bill of attainder. It is a congressional enactment aimed at an easily ascertainable group; it is certainly punishment in any normal sense of the word to take away from any person the benefits of an insurance system into which he and his employer have paid their moneys for almost two decades; and it does all this without a trial according to due process of law. It is true that the Lovett, Cummings and Garland Court opinions were [363 U.S. 603, 628] not unanimous, but they nonetheless represent positive precedents on highly important questions of individual liberty which should not be explained away with cobwebbery refinements. If the Court is going to overrule these cases in whole or in part, and adopt the views of previous dissenters, I believe it should be done clearly and forthrightly.

A basic constitutional infirmity of this Act, in my judgment, is that it is a part of a pattern of laws all of which violate the First Amendment out of fear that this country is in grave danger if it lets a handful of Communist fanatics or some other extremist group make their arguments and discuss their ideas. This fear, I think, is baseless. It reflects a lack of faith in the sturdy patriotism of our people and does not give to the world a true picture of our abiding strength. It is an unworthy fear in a country that has a Bill of Rights containing provisions for fair trials, freedom of speech, press and religion, and other specific safeguards designed to keep men free. I repeat once more that I think this Nation's greatest security lies, not in trusting to a momentary majority of this Court's view at any particular time of what is "patently arbitrary," but in wholehearted devotion to and observance of our constitutional freedoms. See Wieman v. Updegraff, 344 U.S. 183, 192 (concurring opinion).

I would affirm the judgment of the District Court which held that Nestor is constitutionally entitled to collect his insurance.

MR. JUSTICE DOUGLAS, dissenting.

Appellee came to this country from Bulgaria in 1913 and was employed, so as to be covered by the Social Security Act, from December 1936 to January 1955 - a period of 19 years. He became eligible for retirement [363 U.S. 603, 629] and for Social Security benefits in November 1955 and was awarded $55.60 per month. In July 1956 he was deported for having been a member of the Communist Party from 1933 to 1939. Pursuant to a law, enacted September 1, 1954, he was thereupon denied payment of further Social Security benefits.

This 1954 law seems to me to be a classic example of a bill of attainder, which Art, I, 9 of the Constitution prohibits Congress from enacting. A bill of attainder is a legislative act which inflicts punishment without a judicial trial. Cummings v. Missouri, 4 Wall. 277, 323.

In the old days punishment was meted out to a creditor or rival or enemy by sending him to the gallows. But as recently stated by Irving Brant, 1

> ". . . By smiting a man day after day with slanderous words, by taking away his opportunity to earn a living, you can drain the blood from his veins without even scratching his skin.
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> "Today's bill of attainder is broader than the classic form, and not so tall and sharp. There is mental in place of physical torture, and confiscation of tomorrow's bread and butter instead of yesterday's land and gold. What is perfectly clear is that hate, fear and prejudice play the same

> role today, in the destruction of human rights in America that they did in England when a frenzied mob of lords, judges, bishops and shoemakers turned the Titus Oates blacklist into a hangman's record. Hate, jealousy and spite continue to fill the legislative attainder lists just as they did in the Irish Parliament of ex-King James." [363 U.S. 603, 630]

Bills of attainder, when they imposed punishment less than death, were bills of pains and penalties and equally beyond the constitutional power of Congress. Cummings v. Missouri, supra, at 323.

Punishment in the sense of a bill of attainder includes the "deprivation or suspension of political or civil rights." Cummings v. Missouri, supra, at 322. In that case it was barring a priest from practicing his profession. In Ex parte Garland, 4 Wall. 333, it was excluding a man from practicing law in the federal courts. In United States v. Lovett, 328 U.S. 303 , it was cutting off employees' compensation and barring them permanently from government service. Cutting off a person's livelihood by denying him accrued social benefits - part of his property interests - is no less a punishment. Here, as in the other cases cited, the penalty exacted has one of the classic purposes of punishment 2 - "to reprimand the wrongdoer, to deter others." Trop v. Dulles, 356 U.S. 86, 96 . [363 U.S. 603, 631]

Social Security payments are not gratuities. They are products of a contributory system, the funds being raised by payment from employees and employers alike, or in case of self-employed persons, by the individual alone. See Social Security Board v. Nierotko, 327 U.S. 358, 364 . The funds are placed in the Federal Old-Age and Survivors Insurance Trust Fund, 42 U.S.C. 401 (a); and only those who contribute to the fund are entitled to its benefits, the amount of benefits being related to the amount of contributions made. See Stark, Social Security: Its Importance to Lawyers, 43 A. B. A. J. 319, 321 (1957). As the late Senator George, long Chairman of the Senate Finance Committee and one of the authors of the Social Security system, said:

> "There has developed through the years a feeling both in and out of Congress that the contributory social insurance principle fits our times - that it serves a vital need that cannot be as well served otherwise. It comports better than any substitute we have discovered with the American concept that free men want to earn their security and not ask for doles - that what is due as a matter of earned right is far better than a gratuity. . . .
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> "Social security is not a handout; it is not charity; it is not relief. It is an earned right based upon the [363 U.S. 603, 632] contributions and earnings of the individual. As an earned right, the individual is eligible to receive his benefit in dignity and self-respect." 102 Cong. Rec. 15110.

Social Security benefits have rightly come to be regarded as basic financial protection against the hazards of old age and disability. As stated in a recent House Report:

> "The old-age and survivors insurance system is the basic program which provides protection for America's families against the loss of earned income upon the retirement or death of the family provider. The program provides benefits related to earned income and such benefits are paid for by the contributions made with respect to persons working in covered occupations." H. R. Rep. No. 1189, 84th Cong., 1st Sess. 2.

Congress could provide that only people resident here could get Social Security benefits. Yet both the House and the Senate rejected any residence requirements. See H. R. Rep. No. 1698, 83d Cong., 2d Sess. 24-25; S. Rep. No. 1987, 83d Cong., 2d Sess. 23. Congress concededly might amend the program

to meet new conditions. But may it take away Social Security benefits from one person or from a group of persons for vindictive reasons? Could Congress on deporting an alien for having been a Communist confiscate his home, appropriate his savings accounts, and thus send him out of the country penniless? I think not. Any such Act would be a bill of attainder. The difference, as I see it, between that case and this is one merely of degree. Social Security benefits, made up in part of this alien's own earnings, are taken from him because he once was a Communist.

The view that 202 (n), with which we now deal, imposes a penalty was taken by Secretary Folsom, appellant's [363 U.S. 603, 633] predecessor, when opposing enlargement of the category of people to be denied benefits of Social Security, e. g., those convicted of treason and sedition. He said:

> "Because the deprivation of benefits as provided in the amendment is in the nature of a penalty and based on considerations foreign to the objectives and provisions of the old-age and survivors insurance program, the amendment may well serve as a precedent for extension of similar provisions to other public programs and to other crimes which, while perhaps different in degree, are difficult to distinguish in principle.
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> "The present law recognizes only three narrowly limited exceptions 3 to the basic principle that benefits are paid without regard to the attitudes, opinions, behavior, or personal characteristics of the individual . . . ." Hearings, Senate Finance Committee on Social Security Amendments of 1955, 84th Cong., 2d Sess. 1319.

The Committee Reports, though meagre, support Secretary Folsom in that characterization of 202 (n). The House Report tersely stated that termination of the benefits would apply to those persons who were deported "because of illegal entry, conviction of a crime, or subversive activity." H. R. Rep. No. 1698, 83d Cong., 2d Sess. 25. The aim and purpose are clear - to take away from a person by legislative fiat property which he has accumulated because he has acted in a certain way or embraced a certain ideology. That is a modern version [363 U.S. 603, 634] of the bill of attainder - as plain, as direct, as effective as those which religious passions once loosed in England and which later were employed against the Tories here. 4 I would affirm this judgment.

[Footnote 1] Address entitled Bills of Attainder in 1787 and Today. Columbia Law Review dinner 1954, published in 1959 by the Emergency Civil Liberties Committee, under the title Congressional Investigations and Bills of Attainder.

[Footnote 2] The broad sweep of the idea of punishment behind the concept of the bill of attainder was stated as follows by Irving Brant, op. cit., supra, note 1, 9-10:

> "In 1794 the American people were in a state of excitement comparable to that which exists today. Supporters of the French Revolution had organized the Democratic Societies - blatantly adopting that subversive title. Then the Whisky Rebellion exploded in western Pennsylvania. The Democratic Societies were blamed. A motion censuring the Societies was introduced in the House of Representatives.
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> "There, in 1794, you had the basic division in American thought - on one side the doctrine of political liberty for everybody, with collective security resting on the capacity of the people for self-government; on the other side the doctrine that the people could not be trusted and political liberty must be restrained.
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> "James Madison challenged this latter doctrine. The investigative power of Congress over

> persons, he contended, was limited to inquiry into the conduct of individuals in the public service. `Opinions,' he said, `are not the subjects of legislation.' Start criticizing people for abuse of their reserved rights, and the censure might extend to freedom [363 U.S. 603, 631] of speech and press. What would be the effect on the people thus condemned? Said Madison:
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> "`It is in vain to say that this indiscriminate censure is no punishment. . . . Is not this proposition, if voted, a bill of attainder?'
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> "Madison won his fight, not because he called the resolution a bill of attainder, but because it attainted too many men who were going to vote in the next election. The definition, however, was there - a bill of attainder - and the definition was given by the foremost American authority on the principles of liberty and order underlying our system of government."

[Footnote 3] The three exceptions referred to were (1) 202 (n); (2) Act of September 1, 1954, 68 Stat. 1142, 5 U.S.C. 2281-2288; (3) Regulation of the Social Security Administration, 20 CFR 403.409 - denying dependent's benefits to a person found guilty of felonious homicide of the insured worker.

[Footnote 4] Brant, op. cit., supra, note 1, states at p. 9:

> "What were the framers aiming at when they forbade bills of attainder? They were, of course, guarding against the religious passions that disgraced Christianity in Europe. But American bills of attainder, just before 1787, were typically used by Revolutionary assemblies to rid the states of British Loyalists. By a curious coincidence, it was usually the Tory with a good farm who was sent into exile, and all too often it was somebody who wanted that farm who induced the legislature to attaint him. Patriotism could serve as a cloak for greed as easily as religion did in that Irish Parliament of James the Second.
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> "But consider a case in which nothing could be said against the motive. During the Revolution, Governor Patrick Henry induced the Virginia legislature to pass a bill of attainder condemning Josiah Phillips to death. He was a traitor, a murderer, a pirate and an outlaw. When ratification of the new Constitution came before the Virginia Convention, Henry inveighed against it because it contained no Bill of Rights. Edmund Randolph taunted him with his sponsorship of the Phillips bill of attainder. Henry then made the blunder of defending it. The bill was warranted, he said, because Phillips was no Socrates. That shocking defense of arbitrary condemnation may have produced the small margin by which the Constitution was ratified."

MR. JUSTICE BRENNAN, with whom THE CHIEF JUSTICE and MR. JUSTICE DOUGLAS join, dissenting.

When Nestor quit the Communist Party in 1939 his past membership was not a ground for his deportation. Kessler v. Strecker, 307 U.S. 22 . It was not until a year later that past membership was made a specific ground for deportation. 1 This past membership has cost Nestor [363 U.S. 603, 635] dear. It brought him expulsion from the country after 43 years' residence - most of his life. Now more is exacted from him, for after he had begun to receive benefits in 1955 - having worked in covered employment the required time and reached age 65 - and might anticipate receiving them the rest of his life, the benefits were stopped pursuant to 202 (n) of the Amended Social Security Act. 2 His predicament is very real - an aging man deprived of the means with which to live after being separated from his family and exiled to live among strangers in a land he quit 47 years ago. The common sense of it is that he has been punished severely for his past conduct.

Even the 1950 statute deporting aliens for past membership raised serious questions in this Court whether the prohibition against ex post facto laws was violated. In Galvan v. Press, 347 U.S. 522, 531 , we said "since the intrinsic consequences of deportation are so close to punishment for crime, it might fairly be said also that the ex post facto Clause, even though applicable only to punitive legislation, should be applied to deportation." However, precedents which treat deportation not as punishment, but as a permissible exercise of congressional power to enact the conditions under which aliens may [363 U.S. 603, 636] come to and remain in this country, governed the decision in favor of the constitutionality of the statute.

However, the Court cannot rest a decision that 202 (n) does not impose punishment on Congress' power to regulate immigration. It escapes the common-sense conclusion that Congress has imposed punishment by finding the requisite rational nexus to a granted power in the supposed furtherance of the Social Security program "enacted pursuant to Congress' power to `spend money in aid of the "general welfare."'" I do not understand the Court to deny that but for that connection, 202 (n) would impose punishment and not only offend the constitutional prohibition on ex post facto laws but also violate the constitutional guarantees against imposition of punishment without a judicial trial.

The Court's test of the constitutionality of 202 (n) is whether the legislative concern underlying the statute was to regulate "the activity or status from which the individual is barred" or whether the statute "is evidently aimed at the person or class of persons disqualified." It rejects the inference that the statute is "aimed at the person or class of persons disqualified" by relying upon the presumption of constitutionality. This presumption might be a basis for sustaining the statute if in fact there were two opposing inferences which could reasonably be drawn from the legislation, one that it imposes punishment and the other that it is purposed to further the administration of the Social Security program. The Court, however, does not limit the presumption to that use. Rather the presumption becomes a complete substitute for any supportable finding of a rational connection of 202 (n) with the Social Security program. For me it is not enough to state the test and hold that the presumption alone satisfies it. I find it necessary to examine the Act and its consequences to ascertain whether there [363 U.S. 603, 637] is ground for the inference of a congressional concern with the administration of the Social Security program. Only after this inquiry would I consider the application of the presumption.

The Court seems to acknowledge that the statute bears harshly upon the individual disqualified, but states that this is permissible when a statute is enacted as a regulation of the activity. But surely the harshness of the consequences is itself a relevant consideration to the inquiry into the congressional purpose. 3 Cf. Trop v. Dulles, 356 U.S. 86, 110 (concurring opinion).

It seems to me that the statute itself shows that the sole legislative concern was with "the person or class of persons disqualified." Congress did not disqualify for benefits all beneficiaries residing abroad or even all dependents residing abroad who are aliens. If that had been the case I might agree that Congress' concern would have been with "the activity or status" and not with the "person or class of persons disqualified." The scales would then be tipped toward the conclusion that Congress desired to limit benefit payments to beneficiaries residing in the United States so that the American economy would be aided by expenditure of benefits here. Indeed a proposal along those lines was submitted to Congress in [363 U.S. 603, 638] 1954, at the same time 202 (n) was proposed, 4 and it was rejected. 5

Perhaps, the Court's conclusion that regulation of "the activity or status" was the congressional concern would be a fair appraisal of the statute if Congress had terminated the benefits of all alien beneficiaries who are deported. But that is not what Congress did. Section 202 (n) applies only to aliens deported on one or more of 14 of the 18 grounds for which aliens may be deported. 6

H. R. Rep. No. 1698, 83d Cong., 2d Sess. 25, 77, cited by the Court, describes 202 (n) as including persons who were deported "because of unlawful entry, conviction of a crime, or subversive activity." The section, in addition, covers those deported for such socially condemned acts as narcotic addiction or prostitution. The common element of the 14 grounds is that the alien has been guilty of some blameworthy conduct. In other words Congress worked its will only on aliens deported for conduct displeasing to the lawmakers.

This is plainly demonstrated by the remaining four grounds of deportation, those which do not result in the cancellation of benefits. 7 Two of those four grounds cover persons who become public charges within five years after entry for reasons which predated the entry. A third ground covers the alien who fails to maintain his nonimmigrant status. The fourth ground reaches the alien who, prior to or within five years after entry, aids other aliens to enter the country illegally.

Those who are deported for becoming public charges clearly have not, by modern standards, engaged in conduct worthy of censure. The Government's suggestion [363 U.S. 603, 639] that the reason for their exclusion from 202 (n) was an unarticulated feeling of Congress that it would be unfair to the "other country to deport such destitute persons without letting them retain their modicum of social security benefits" appears at best fanciful, especially since, by hypothesis, they are deportable because the conditions which led to their becoming public charges existed prior to entry.

The exclusion from the operation of 202 (n) of aliens deported for failure to maintain nonimmigrant status rationally can be explained, in the context of the whole statute, only as evidencing that Congress considered that conduct less blameworthy. Certainly the Government's suggestion that Congress may have thought it unlikely that such persons would work sufficient time in covered employment to become eligible for Social Security benefits cannot be the reason for this exclusion. For frequently the very act which eventually results in the deportation of persons on that ground is the securing of private employment. Finally, it is impossible to reconcile the continuation of benefits to aliens who are deported for aiding other aliens to enter the country illegally, except upon the ground that Congress felt that their conduct was less reprehensible. Again the Government's suggestion that the reason might be Congress' belief that these aliens would not have worked in covered employment must be rejected. Five years after entry would be ample time within which to secure employment and qualify. Moreover the same five-year limitation applies to several of the 14 grounds of deportation for which aliens are cut off from benefits and the Government's argument would apply equally to them if that in fact was the congressional reason.

This appraisal of the distinctions drawn by Congress between various kinds of conduct impels the conclusion, beyond peradventure that the distinctions can be [363 U.S. 603, 640] understood only if the purpose of Congress was to strike at "the person or class of persons disqualified." The Court inveighs against invalidating a statute on "implication and vague conjecture." Rather I think the Court has strained to sustain the statute on "implication and vague conjecture," in holding that the congressional concern was "the activity or status from which the individual is barred." Today's decision sanctions the use of the spending power not to further the legitimate objectives of the Social Security program but to inflict hurt upon those who by their conduct have incurred the displeasure of Congress. The Framers ordained that even the worst of men should not be punished for their past acts or for any conduct without adherence to the procedural safeguards written into the Constitution. Today's decision is to me a regretful retreat from Lovett, Cummings and Garland.

Section 202 (n) imposes punishment in violation of the prohibition against ex post facto laws and without a judicial trial. 8 I therefore dissent.

[Footnote 1] The Alien Registration Act, 1940, 54 Stat. 673, made membership in an organization which advocates the overthrow of the Government of the United States by force or violence a ground for deportation even though the membership was terminated prior to [363 U.S. 603, 635] the passage of that statute. See Harisiades v. Shaughnessy, 342 U.S. 580 . Until the passage of the Internal Security Act of 1950, 64 Stat. 1006, 1008, it was necessary for the Government to prove in each case in which it sought to deport an alien because of membership in the Communist Party that that organization in fact advocated the violent overthrow of the Government. The 1950 Act expressly made deportable aliens who at the time of entry, or at any time thereafter were "members of or affiliated with . . . the Communist Party of the United States." See Galvan v. Press, 347 U.S. 522, 529 .

[Footnote 2] A comparable annuity was worth, at the time appellee's benefits were canceled, approximately $6,000. To date he has lost nearly $2,500 in benefits.

[Footnote 3] The Court, recognizing that Cummings v. Missouri, 4 Wall. 277, and Ex parte Garland, 4 Wall. 333, strongly favor the conclusion that 202 (n) was enacted with punitive intent, rejects the force of those precedents as drawing "heavily on the Court's first-hand acquaintance with the events and the mood of the then recent Civil War, and `the fierce passions which that struggle aroused.'" This seems to me to say that the provision of 202 (n) which cuts off benefits from aliens deported for past Communist Party membership was not enacted in a similar atmosphere. Our judicial detachment from the realities of the national scene should not carry us so far. Our memory of the emotional climate stirred by the question of communism in the early 1950's cannot be so short.

[Footnote 4] See H. R. Rep. No. 1698, 83d Cong., 2d Sess. 24-25.

[Footnote 5] See S. Rep. No. 1987, 83d Cong., 2d Sess. 23; H. R. Conf. Rep. No. 2679, 83d Cong., 2d Sess. 4.

[Footnote 6] See Court's opinion, ante, note 1.

[Footnote 7] See the Court's opinion, ante, note 13.

[Footnote 8] It is unnecessary for me to reach the question whether the statute also constitutes a bill of attainder. [363 U.S. 603, 641]

²libel *vb* **-beled** *or* **-belled; -bel·ing** *or* **-bel·ling** \-b(ə-)liŋ\ *vi* (1570) : to make libelous statements ~ *vt* : to make or publish a libel against — **li·bel·er** \-b(ə-)lər\ *n* — **li·bel·ist** \-bə-ləst\ *n*

li·bel·ant *or* **li·bel·lant** \'lī-bə-lənt\ *n* (1726) : one that institutes a suit by a libel

li·bel·ee *or* **li·bel·lee** \ˌlī-bə-'lē\ *n* (1856) : one against whom a libel has been filed in a court

li·bel·ous *or* **li·bel·lous** \'lī-b(ə-)ləs\ *adj* (1619) : constituting or including a libel : DEFAMATORY ⟨a ~ statement⟩

Li·be·ra \'lē-bə-ˌrä, 'lē-brə\ *n* [L, lit., deliver, imper. of *liberare* to liberate; fr. the first word of the responsory] (ca. 1903) : a Roman Catholic funeral responsory

¹lib·er·al \'lib(-ə)-rəl\ *adj* [ME, fr. MF, fr. L *liberalis* suitable for a freeman, generous, fr. *liber* free; akin to OE *lēodan* to grow, Gk *eleutheros* free] (14c) **1 a** : of, relating to, or based on the liberal arts ⟨~ education⟩ **b** *archaic* : of or befitting a man of free birth **2 a** : GENEROUS, OPENHANDED ⟨a ~ giver⟩ **b** : given or provided in a generous and openhanded way ⟨a ~ meal⟩ **c** : AMPLE, FULL **3** *obs* : lacking moral restraint : LICENTIOUS **4** : not literal or strict : LOOSE ⟨a ~ translation⟩ **5** : BROAD-MINDED; *esp* : not bound by authoritarianism, orthodoxy, or traditional forms **6 a** : of, favoring, or based upon the principles of liberalism **b** *cap* : of or constituting a political party advocating or associated with the principles of political liberalism; *esp* : of or constituting a political party in the United Kingdom associated with ideals of individual esp. economic freedom, greater individual participation in government, and constitutional, political, and administrative reforms designed to secure these objectives — **lib·er·al·ly** \-rə-lē\ *adv* — **lib·er·al·ness** *n*

syn LIBERAL, GENEROUS, BOUNTIFUL, MUNIFICENT mean giving freely and unstintingly. LIBERAL suggests openhandedness in the giver and largeness in the thing or amount given; GENEROUS stresses warmhearted readiness to give more than size or importance of the gift; BOUNTIFUL suggests lavish, unremitting giving or providing; MUNIFICENT suggests a scale of giving appropriate to lords or princes.

²liberal *n* (1816) : one who is liberal: as **a** : one who is open-minded or not strict in the observance of orthodox, traditional or established forms or ways **b** *cap* : a member or supporter of a liberal political party **c** : an advocate or adherent of liberalism esp. in individual rights

liberal arts *n pl* (14c) **1** : the medieval studies comprising the trivium and quadrivium **2** : the studies (as language, philosophy, history, literature, abstract science) in a college or university intended to provide chiefly general knowledge and to develop the general intellectual capacities (as reason and judgment) as opposed to professional or vocational skills

lib·er·al·ism \'lib(-ə)-rə-ˌliz-əm\ *n* (1819) **1** : the quality or state of being liberal **2** *a often cap* : a movement in modern Protestantism emphasizing intellectual liberty and the spiritual and ethical content of Christianity **b** : a theory in economics emphasizing individual freedom from restraint and usu. based on free competition, the self-regulating market, and the gold standard **c** : a political philosophy based on belief in progress, the essential goodness of man, and the autonomy of the individual and standing for the protection of political and civil liberties **d** *cap* : the principles and policies of a Liberal party — **lib·er·al·ist** \-rə-ləst\ *n or adj* — **lib·er·al·is·tic** \ˌlib(-ə)-rə-'lis-tik\ *adj*

lib·er·al·i·ty \ˌlib-ə-'ral-ət-ē\ *n, pl* **-ties** (14c) : the quality or state of being liberal; *also* : an instance of this

lib·er·al·ize \'lib(-ə)-rə-ˌlīz\ *vb* **-ized; -iz·ing** *vt* (1774) : to make liberal or more liberal ~ *vi* : to become liberal or more liberal — **lib·er·al·ization** \ˌlib(-ə)-rə-lə-'zā-shən\ *n* — **lib·er·al·iz·er** \'lib(-ə)-rə-ˌlī-zər\ *n*

lib·er·ate \'lib-ə-ˌrāt\ *vt* **-at·ed; -at·ing** [L *liberatus*, pp. of *liberare*, fr. *liber*] (ca. 1623) **1** : to set at liberty : FREE *specif* : to free (as a country) from domination by a foreign power **2** : to free from combination ⟨~ the gas by adding acid⟩ **3** : to take or take over illegally or unjustly ⟨a . . . barricade was constructed . . . with material *liberated* from a nearby construction site —Thorne Dreyer⟩ ***syn*** see FREE — **lib·er·a·tor** \-ˌāt-ər\ *n*

lib·er·at·ed *adj* (1946) : freed from or opposed to traditional social and sexual attitudes or roles ⟨a ~ woman⟩ ⟨a ~ marriage⟩

lib·er·a·tion \ˌlib-ə-'rā-shən\ *n* (15c) **1** : the act of liberating : the state of being liberated **2** : a movement seeking equal rights and status for a group ⟨women's ~⟩ — **lib·er·a·tion·ist** \-sh(ə-)nəst\ *n*

lib·er·tar·i·an \ˌlib-ər-'ter-ē-ən\ *n* (1789) **1** : an advocate of the doctrine of free will **2** : one who upholds the principles of absolute and unrestricted liberty esp. of thought and action — **libertarian** *adj* — **lib·er·tar·i·an·ism** \-ē-ə-ˌniz-əm\ *n*

lib·er·tin·age \'lib-ər-tē-nij\ *n* (1611) : LIBERTINISM

¹lib·er·tine \'lib-ər-ˌtēn\ *n* [ME *libertyn*, freedman, fr. L *libertinus*, fr. *libertinus*, adj., of a freedman, fr. *libertus* freedman, fr. *liber*] (1563) **1** : a freethinker esp. in religious matters — usu. used disparagingly **2** : a person who is unrestrained by convention or morality; *specif* : one leading a dissolute life

²libertine *adj* (1577) : of, relating to, or characteristic of a libertine

lib·er·tin·ism \'lib-ər-tē-ˌniz-əm, -tə-\ *n* (1611) : the quality or state of being libertine : the behavior of a libertine

lib·er·ty \'lib-ərt-ē\ *n, pl* **-ties** [ME, fr. MF *liberté*, fr. L *libertat-, libertas*, fr. *liber* free — more at LIBERAL] (14c) **1** : the quality or state of being free: **a** : the power to do as one pleases **b** : freedom from physical restraint **c** : freedom from arbitrary or despotic control **d** : the positive enjoyment of various social, political, or economic rights and privileges **e** : the power of choice **2 a** : a right or immunity enjoyed by prescription or by grant : PRIVILEGE **b** : permission esp. to go freely within specified limits **3** : an action going beyond normal limits: as **a** : a breach of etiquette or propriety : FAMILIARITY **b** : RISK, CHANCE ⟨took foolish *liberties* with his health⟩ **c** : a violation of rules or a deviation from standard practice **d** : a distortion of fact **4** : a short authorized absence from naval duty usu. for less than 48 hours ***syn*** see FREEDOM — **at liberty 1** : FREE **2** : at leisure : UNOCCUPIED

liberty cap *n* (1968) : a close-fitting conical cap used as a symbol of liberty by the French revolutionists and in the U.S. before 1800

liberty pole *n* (1770) : a tall flagstaff surmounted by a liberty cap or the flag of a republic and set up as a symbol of liberty

li·bid·i·nal \lə-'bid-ᵊn-əl, -'bid-nᵊl\ *adj* (1922) : of or relating to the libido — **li·bid·i·nal·ly** \-ē\ *adv*

li·bid·i·nous \-ᵊn-əs, -'bid-nəs\ *adj* [ME, fr. MF *libidineus*, fr. L *libidinosus*, fr. *libidin-, libido*] (15c) **1** : having or marked by lustful desires : LASCIVIOUS **2** : LIBIDINAL — **li·bid·i·nous·ly** *adv* — **li·bid·i·nous·ness** *n*

li·bi·do \lə-'bēd-(ˌ)ō, 'lib-ə-ˌdō\ *n, pl* **-dos** [NL *libidin-, libido*, fr. L, desire, lust, fr. *libēre* to please — more at LOVE] (1909) **1** : emotional or psychic energy that in psychoanalytic theory is derived from primitive biological urges and that is usu. goal-directed **2** : sexual drive

li·bra *for 1 & 2a* 'lē-brə *or* 'lī-brə, *for 2b* 'lē-brə *or* 'lēv-rə\ *n* [ME, fr. L (gen. *Librae*), lit., scales, pound] **1** *cap* **a** : a southern zodiacal constellation between Virgo and Scorpio represented by a pair of scales **b** (1) : the 7th sign of the zodiac in astrology — see ZODIAC table (2) : one born under this sign **2 a** *pl* **li·brae** \'lī-ˌbrē, 'lē-ˌbrī\ [L] : an ancient Roman unit of weight equal to 327.45 grams **b** [Sp & Pg, fr. L] : any of various Spanish, Portuguese, Colombian, or Venezuelan units of weight

Li·bran \'lē-brən, 'lī-\ *n* (1967) : LIBRA 1b(2)

li·brar·i·an \lī-'brer-ē-ən\ *n* (1713) : a specialist in the care or management of a library — **li·brar·i·an·ship** \-ˌship\ *n*

li·brary \'lī-ˌbrer-ē; *Brit usu & US sometimes* -brər-ē; *US sometimes* -brē, ÷ -ˌber-ē\ *n, pl* **-brar·ies** [ME, fr. ML *librarium*, fr. L, neut. of *librarius* of books, fr. *libr-, liber* book — more at LEAF] (14c) **1 a** : a place in which literary, musical, artistic, or reference materials (as books, manuscripts, recordings, or films) are kept for use but not for sale **b** : a collection of such materials **2 a** : a collection resembling or suggesting a library ⟨a ~ of computer programs⟩ ⟨wine ~⟩ **b** : MORGUE 2 **3 a** : a series of related books issued by a publisher **b** : a collection of publications on the same subject

usage While the pronunciation \'lī-ˌbrer-ē\ is the most frequent variant in the U.S., the other variants are not uncommon. The contraction \'lī-brē\ and the dissimilated form \'lī-ˌber-ē\ result from the relative difficulty of repeating \r\ in successive syllables and are heard from educated speakers, including college presidents and professors, as well as with somewhat greater frequency from less educated speakers.

library paste *n* (1953) : a thick white adhesive made from starch

library science *n* (1902) : the study or the principles and practices of library care and administration

li·bra·tion \lī-'brā-shən\ *n* [L *libration-, libratio*, fr. *libratus*, pp. of *librare* to balance, fr. *libra* scales] (1669) : an oscillation in the apparent aspect of a secondary body (as a planet or a satellite) as seen from the primary object around which it revolves — **li·bra·tion·al** \-shnəl, -shən-²l\ *adj* — **li·bra·to·ry** \'lī-brə-ˌtōr-ē, -ˌtȯr-\ *adj*

li·bret·tist \lə-'bret-əst\ *n* (1862) : the writer of a libretto

li·bret·to \lə-'bret-(ˌ)ō\ *n, pl* **-tos** *or* **-ti** \-(ˌ)ē\ [It, dim. of *libro* book, fr. L *libr-, liber*] (1742) **1** : the text of a work (as an opera) for the musical theater **2** : the book containing a libretto

li·bri·form \'lī-brə-ˌfȯrm\ *adj* [L *libr-, liber* + ISV *-iform*] (1877) : resembling phloem fibers

Lib·ri·um \'lib-rē-əm\ *trademark* — used for a preparation of chlordiazepoxide

Lib·y·an \'lib-ē-ən\ *n* (1607) **1** : a native or inhabitant of Libya **2** : a Berber language of ancient No. Africa — **Libyan** *adj*

lice *pl of* LOUSE

¹li·cense *or* **li·cence** \'līs-ᵊn(t)s\ *n* [ME, fr. MF *licence*, fr. L *licentia*, fr. *licent-, licens*, prp. of *licēre* to be permitted; akin to Latvian *likt* to come to terms] (14c) **1 a** : permission to act **b** : freedom of action **2 a** : a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful **b** : a document, plate, or tag evidencing a license granted **3 a** : freedom that allows or is used with irresponsibility **b** : disregard for rules of personal conduct : LICENTIOUSNESS **4** : deviation from fact, form, or rule by an artist or writer for the sake of the effect gained ***syn*** see FREEDOM

²license *also* **licence** *vt* **li·censed; li·cens·ing** (15c) **1** : to issue a license to **2** : to permit or authorize esp. by formal license — **li·cens·able** \-ᵊn-sə-bəl\ *adj* — **li·cens·er** \-sər\ *or* **li·cen·sor** \-sər, ˌlīs-ᵊn-'sȯ(ə)r\ *n*

licensed practical nurse *n* (1951) : a person who has undergone training and obtained a license (as from a state) conferring authorization to provide routine care for the sick

li·cens·ee \ˌlīs-ᵊn-'sē\ *n* (1864) : one that is licensed

license plate *n* (1926) : a plate or tag (as of metal) attesting that a license has been secured and usu. bearing a registration number

li·cen·sure \'līs-ᵊn-shər, -ˌshu(ə)r\ *n* (ca. 1846) : the granting of licenses esp. to practice a profession

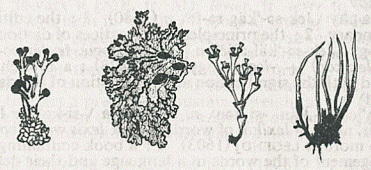
li·cen·te \lə-'sent-ē\ *n, pl* **licente** *or* **li·cen·ti** \-ē\ [native name in Lesotho] (1966) — see *loti* at MONEY table

li·cen·ti·ate \lī-'sen-chē-ət, *esp in sense 2* li-\ *n* [ML *licentiatus*, fr. pp. of *licentiare* to allow, fr. L *licentia*] (14c) **1** : one who has a license granted esp. by a university to practice a profession **2** : an academic degree ranking below that of doctor given by some European universities

li·cen·tious \lī-'sen-chəs\ *adj* [L *licentiosus*, fr. *licentia*] (1535) **1** : lacking legal or moral restraints; *esp* : disregarding sexual restraints **2** : marked by disregard for strict rules of correctness — **li·cen·tious·ly** *adv* — **li·cen·tious·ness** *n*

li·chee *var of* LITCHI

li·chen \'lī-kən\ *n* [L, fr. Gk *leichēn, lichēn;* akin to Gk *leichein* to lick] (1601) **1** : any of numerous complex hallophytic plants (group Lichenes) made up of an alga and a fungus growing in symbiotic association on a solid surface (as a rock) **2** : any of several skin diseases characterized by a papular eruption — **li·chened** \-kənd\ *adj* — **li·chen·ous** \-kə-nəs\ *adj*



lichen 1

SOCIAL SECURITY ADMINISTRATION
Application for a Social Security Card

Applying for a Social Security Card is easy AND it is free!

USE THIS APPLICATION TO APPLY FOR:

- An **original** Social Security card
- A **duplicate** Social Security card (same name and number)
- A **corrected** Social Security card (name change and same number)
- A **change of information** on your record other than your name (no card needed)

IMPORTANT: We CANNOT process this application unless you follow the instructions below and give us the evidence we need.

STEP 1 Read pages 1 through 3 which explain how to complete the application and what evidence we need.

STEP 2 Complete and sign the application using BLUE or BLACK ink. Do not use pencil or other colors of ink. Please print legibly.

STEP 3 Submit the completed and signed application with all required evidence to any Social Security office.

HOW TO COMPLETE THIS APPLICATION

Most items on the form are self-explanatory. Those that need explanation are discussed below. The numbers match the numbered items on the form. If you are completing this form for someone else, please complete the items as they apply to that person.

2. Show the address where you can receive your card 10 to 14 days from now.

3. If you check "Legal Alien **Not** Allowed to Work", you need to provide a document from the government agency requiring your Social Security number that explains why you need a number and that you meet all of the requirements for the benefit or service except for the number. A State or local agency requirement must conform with Federal law.

   If you check "Other", you need to provide proof you are entitled to a federally-funded benefit for which a Social Security number is required as a condition for you to receive payment.

5. Providing race/ethnic information is voluntary. However, if you do give us this information, it helps us prepare statistical reports on how Social Security programs affect people. We do not reveal the identities of individuals.

6. Show the month, day and full (4 digit) year of birth, for example, "1998" for year of birth.

8.B. Show the mother's Social Security number only if you are applying for an original Social Security card for a child under age 18. You may leave this item blank if the mother does not have a number or you do not know the mother's number. We will still be able to assign a number to the child.

9.B. Show the father's Social Security number only if you are applying for an original Social Security card for a child under age 18. You may leave this item blank if the father does not have a number or you do not know the father's number. We will still be able to assign a number to the child.

13. If the date of birth you show in item 6 is different from the date of birth you used on a prior application for a Social Security card, show the date of birth you used on the prior application and submit evidence of age to support the date of birth in item 6.

16. You **must** sign the application yourself if you are age 18 or older and are physically and mentally capable. If you are under age 18, you may also sign the application if you are physically and mentally capable. If you cannot sign your name, you should sign with an "X" mark and have two people sign as witnesses in the space beside the mark. If you are physically or mentally incapable of signing the application, generally a parent, close relative, or legal guardian may sign the application. Call us if you need clarification about who can sign.

ABOUT YOUR DOCUMENTS

- We need **ORIGINAL** documents or **copies certified by the custodian of the record.** We will return your documents after we have seen them.
- **We cannot accept photocopies or notarized copies of documents.**
- If your documents do not meet this requirement, we cannot process your application.

DOCUMENTS WE NEED

To apply for an **ORIGINAL CARD** (you have NEVER been assigned a Social Security number before), we need at least 2 documents as proof of:

- **Age,**
- **Identity, and**
- **U.S. citizenship or lawful alien status.**

To apply for a **DUPLICATE CARD** (same number, same name), we need proof of **identity**.

To apply for a **CORRECTED CARD** (same number, different name), we need proof of **identity**. We need one or more documents which identify you by the OLD NAME on our records and your NEW NAME. Examples include: a marriage certificate, divorce decree, or a court order that changes your name. Or we can accept two identity documents - one in your old name and one in your new name. (See IDENTITY, for examples of identity documents.)

IMPORTANT: If you are applying for a duplicate or corrected card and were **born outside the U.S.**, we also need proof of U.S. citizenship or lawful alien status. (See U.S. CITIZENSHIP or ALIEN STATUS for examples of documents you can submit.)

To **CHANGE INFORMATION** on your record other than your name, we need proof of:

- **Identity**, and
- **Another document which supports the change** (for example, a birth certificate to change your date and/or place of birth or parents' names).

AGE: We prefer to see your birth certificate. However, we can accept another document that shows your age if it is at least one year old. Some of the other documents we can accept are:

- Hospital record of your birth made before you were age 5
- Religious record showing your age made before you were 3 months old
- Passport
- Adoption record

Call us for advice if you cannot obtain one of these documents.

IDENTITY: We must see a document in the name you want shown on the card. The identity document must be of recent issuance so that we can determine your continued existence. We prefer to see a document with a photograph. However, we can generally accept a non-photo identity document if it has enough information to identify you (e.g., your name, as well as age, date of birth or parents' names). **WE CANNOT ACCEPT A BIRTH CERTIFICATE, HOSPITAL BIRTH RECORD, SOCIAL SECURITY CARD OR CARD STUB, OR SOCIAL SECURITY RECORD** as evidence of identity. Some documents we can accept are:

- Driver's license
- Employer ID card
- Passport
- Marriage or divorce record
- Adoption record
- Health insurance card (not a Medicare card)
- Military record
- Life insurance policy
- School ID card

As evidence of identity for infants and young children, we can accept :

- Doctor, clinic, hospital record
- Daycare center, school record
- Religious record (e.g., baptismal record)

IMPORTANT: If you are **applying for a card on behalf of someone else**, we must see proof of identity for both you and the person to whom the card will be issued.

U. S. CITIZENSHIP: We can accept most documents that show you were born in the U.S. If you are a U.S. citizen born outside the U.S., show us a U.S. consular report of birth, a U.S. passport, a Certificate of Citizenship, or a Certificate of Naturalization.

ALIEN STATUS: We need to see an unexpired document issued to you by the U.S. Immigration and Naturalization Service (INS), such as Form I-551, I-94, I-688B, or I-766. We CANNOT accept a receipt showing you applied for the document. If you are not authorized to work in the U.S., we can issue you a Social Security card if you are lawfully here and need the number for a valid nonwork reason. (See HOW TO COMPLETE THIS APPLICATION, Item 3.) Your card will be marked to show you cannot work. If you do work, we will notify INS.

HOW TO SUBMIT THIS APPLICATION

In most cases, you can mail this application with your evidence documents to any Social Security office. We will return your documents to you. If you do not want to mail your original documents, take them with this application to the nearest Social Security office.

EXCEPTION: If you are age 18 or older and have never been assigned a number before, you must apply in person.

If you have any questions about this form, or about the documents we need, please contact any Social Security office. A telephone call will help you make sure you have everything you need to apply for a card or change information on your record. You can find your nearest office in your local phone directory or on our website at www.ssa.gov.

THE PAPERWORK/PRIVACY ACT AND YOUR APPLICATION

The Privacy Act of 1974 requires us to give each person the following notice when applying for a Social Security number.

Sections 205(c) and 702 of the Social Security Act allow us to collect the facts we ask for on this form.

We use the facts you provide on this form to assign you a Social Security number and to issue you a Social Security card. You do not have to give us these facts, however, without them we cannot issue you a Social Security number or a card. Without a number, you may not be able to get a job and could lose Social Security benefits in the future.

The Social Security number is also used by the Internal Revenue Service for tax administration purposes as an identifier in processing tax returns of persons who have income which is reported to the Internal Revenue Service and by persons who are claimed as dependents on someone's Federal income tax return.

We may disclose information as necessary to administer Social Security programs, including to appropriate law enforcement agencies to investigate alleged violations of Social Security law; to other government agencies for administering entitlement, health, and welfare programs such as Medicaid, Medicare, veterans benefits, military pension, and civil service annuities, black lung, housing, student loans, railroad retirement benefits, and food stamps; to the Internal Revenue Service for Federal tax administration; and to employers and former employers to properly prepare wage reports. We may also disclose information as required by Federal law, for example, to the Department of Justice, Immigration and Naturalization Service, to identify and locate aliens in the U.S.; to the Selective Service System for draft registration; and to the Department of Health and Human Services for child support enforcement purposes. We may verify Social Security numbers for State motor vehicle agencies that use the number in issuing drivers licenses, as authorized by the Social Security Act. Finally, we may disclose information to your Congressional representative if they request information to answer questions you ask him or her.

We may use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies to determine whether a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about these and other reasons why information you provide us may be used or given out are available in Social Security offices. If you want to learn more about this, contact any Social Security office.

This information collection meets the clearance requirements of 44 U.S.C. §3507, as amended by section 2 of the **Paperwork Reduction Act of 1995**. You are not required to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take you about 8.5 to 9 minutes to read the instructions, gather the necessary facts, and answer the questions.

SOCIAL SECURITY ADMINISTRATION
Application for a Social Security Card

Form Approved
OMB No. 0960-0066

1 NAME TO BE SHOWN ON CARD — First | Full Middle Name | Last

1 FULL NAME AT BIRTH IF OTHER THAN ABOVE — First | Full Middle Name | Last

1 OTHER NAMES USED

2 MAILING ADDRESS Do Not Abbreviate — Street Address, Apt. No., PO Box, Rural Route No.; City; State; Zip Code

3 CITIZENSHIP (Check One)
- ☐ U.S. Citizen
- ☐ Legal Alien Allowed To Work
- ☐ Legal Alien **Not** Allowed To Work (See Instructions On Page 1)
- ☐ Other (See Instructions On Page 1)

4 SEX
- ☐ Male
- ☐ Female

5 RACE/ETHNIC DESCRIPTION (Check One Only - Voluntary)
- ☐ Asian, Asian-American or Pacific Islander
- ☐ Hispanic
- ☐ Black (Not Hispanic)
- ☐ North American Indian or Alaskan Native
- ☐ White (Not Hispanic)

6 DATE OF BIRTH Month, Day, Year

7 PLACE OF BIRTH (Do Not Abbreviate) City; State or Foreign Country; FCI — Office Use Only

8 A. MOTHER'S MAIDEN NAME — First | Full Middle Name | Last Name At Her Birth

8 B. MOTHER'S SOCIAL SECURITY NUMBER ☐☐☐-☐☐-☐☐☐☐

9 A. FATHER'S NAME — First | Full Middle Name | Last

9 B. FATHER'S SOCIAL SECURITY NUMBER ☐☐☐-☐☐-☐☐☐☐

10 Has the applicant or anyone acting on his/her behalf ever filed for or received a Social Security number card before?
- ☐ Yes (If "yes", answer questions 11-13.)
- ☐ No (If "no", go on to question 14.)
- ☐ Don't Know (If "don't know", go on to question 14.)

11 Enter the Social Security number previously assigned to the person listed in item 1. ☐☐☐-☐☐-☐☐☐☐

12 Enter the name shown on the most recent Social Security card issued for the person listed in item 1. — First | Middle Name | Last

13 Enter any different date of birth if used on an earlier application for a card. — Month, Day, Year

14 TODAY'S DATE Month, Day, Year

15 DAYTIME PHONE NUMBER ( ) Area Code Number

DELIBERATELY FURNISHING (OR CAUSING TO BE FURNISHED) FALSE INFORMATION ON THIS APPLICATION IS A CRIME PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.

16 YOUR SIGNATURE ▶

17 YOUR RELATIONSHIP TO THE PERSON IN ITEM 1 IS:
- ☐ Self
- ☐ Natural Or Adoptive Parent
- ☐ Legal Guardian
- ☐ Other (Specify)

DO NOT WRITE BELOW THIS LINE (FOR SSA USE ONLY)

NPN	DOC	NTI	CAN	ITV

PBC	EVI	EVA	EVC	PRA	NWR	DNR	UNIT

EVIDENCE SUBMITTED

SIGNATURE AND TITLE OF EMPLOYEE(S) REVIEWING EVIDENCE AND/OR CONDUCTING INTERVIEW

DATE

DCL DATE

SSA Procedure For Objecting to "Enumeration at Birth"

Orwellian Government Program Targets Newborns

SOCIAL SECURITY NUMBER POLICY AND GENERAL PROCEDURES
Parent objects to "Enumeration at Birth" program

Recently many new parents have found that Social Security numbers have been assigned to their newborn children over their objection and against their will. It has been discovered that the Social Security Administration has implemented a program referred to as "Enumeration at Birth" and has in place a specific procedure for parental objections. Note that this is a multi-step procedure and that at each step the bureacracy will attempt to talk the parent into keeping the assigned SSN. However, if the parent is persistent, the procedure exists for expunging the record.

The following was obtained in 1992 from the SSA policy manual. (Images of the manual pages may be found at the bottom of this page.)

```
        THE SOCIAL SECURITY NUMBER POLICY AND GENERAL PROCEDURES
------------------------------------------------------------------------
TN 16 6-90                                                  RM 00905.100B.


------------------------------------------------------------------------
00205.100       PARENT OBJECTS TO ASSIGNMENT OF SSN TO CHILD
                UNDER THE ENUMERATION AT BIRTH PROGRAM

A. POLICY       SSA does not change, void or cancel SSNs.  In special
                situations, SSA will delete the applicant information
                from the SSN record.
------------------------------------------------------------------------
B. PROCEDURE    A parent may object when a child is assigned an SSN.

                If a child is issued an SSN card via the Enumeration at
                Birth program (the online NUMIDENT shows "FMC:6" for
                Enumeration at Birth items) and the mother states she
                answered "no" to the enumeration question when providing
                birth information for the newborn, assume that the State
                inadvertantly keyed "yes", and follow these steps:
------------------------------------------------------------------------
STEP            ACTION
------------------------------------------------------------------------
1               Explain that the child will need an SSN, by at least
                age 2, if he/she will be listed as a dependent on an
                income tax return.

                *       If the parent accepts this explanation and will
                        keep the SSN card, stop.
```

	* If this is not acceptable, go to step 2.
2	Explain that on SSA's records, the account will remain dormant, unless earnings are posted on the record. * If the parent accepts this explanation and will keep the card, stop. * If the parent accepts the explanation but does want the SSN card, take the card and destroy the card (RM 00201.060). Explain that when an application is later made for an SSN card the same number will be assigned. * If the parent inists that we delete the SSN record, explain that the deletion action may take several months. (Go to step 3.)
3	* Document the parent's objection and advise the parent that the case must be sent to central office (CO) for review. * Explain to the parent that if we delete the applicant information from the SSN record, a subsequent SSN request (likely before the child is age 2) will result in a different SSN. In addition, if and when the parent files for an SSN for the child in the future, he/she should enter "no" in item 10 on the SS-5. * Forward all material pertinent to the situation (including the FO observation and recommendation) to CO at: Social Security Administration ORSI, DE, E&R 3-E-26 Operations Building 6401 Security Blvd. Baltimore, MD 21235
4	Request review of the case and action concerning the parent's request for deletion of the data from the SSN record. Send a copy of the entire file to the appropriate regional office so that they can discuss ongoing problems with the involved State.

Manual Pages:

D. PROCEDURE - ASSIGNING A SECOND SSN	STEP	ACTION
		NOTE: A development request from OCRO is only a recommendation that a second SSN be issued to the true NH, and can be done only if the NH agrees.
	3	- Associate the new SSN, once assigned, with the scrambled earnings file and send to OCRO via the SSA-7054. • Be sure to furnish the new second SSN with the scrambled earnings material (RM 03870.050).

00205.100 PARENT OBJECTS TO ASSIGNMENT OF SSN TO CHILD UNDER THE ENUMERATION AT BIRTH PROGRAM

A. POLICY

SSA does not change, void or cancel SSNs. In special situations, SSA will delete the applicant information from the SSN record.

B. PROCEDURE

A parent may object when a child is assigned an SSN.

If a child is issued an SSN card via the Enumeration at Birth program (the online NUMIDENT shows "FMC:8" for Enumeration at Birth items) and the mother states she answered "no" to the enumeration question when providing birth information for the newborn, assume that the State inadvertently keyed "yes", and follow these steps:

STEP	ACTION
1	Explain that the child will need an SSN, by at least age 9, if he/she will be listed as a dependent on an income tax return. • If the parent accepts this explanation and will keep the SSN card, stop. • If this is not acceptable, go to step 2.
2	Explain that on SSA's records, the account will remain dormant, unless earnings are posted on the record. • If the parent accepts this explanation and will keep the card, stop. - If the parent accepts the explanation but does not want the SSN card, take the card and destroy the card (RM 00301.060). Explain that when an application is later made for an SSN card the same number will be assigned. • If the parent insists that we delete the SSN record, explain that the deletion action may take several months. (Go to step 3.)

B. PROCEDURE (Cont.)

STEP	ACTION
3	• Document the parent's objection and advise the parent that the case must be sent to central office (CO) for review. • Explain to the parent that if we delete the applicant information from the SSN record, a subsequent SSN request (likely before the child is age 2) will result in a different SSN. In addition, if and when the parent files for an SSN for the child in the future , he/ she should enter "no" in item 10 on the SS-5. • Forward all material pertinent to the situation (including FO observation and recommendation) to CO at: Social Security Administration ORSI, DE, E&It 3-E-26 Operations Building 6401 Security Blvd. Baltimore, MD. 21235
4	Request review of the case and action concerning the parent's request for deletion of the data from the SSN record. Send a copy of the entire file to the appropriate regional office so that they can discuss ongoing problems with the involved State.

[END]

Back to BBS Files Menu...

King James Version for Matthew 20:25-27

Click to view instructions

Mat 20:25	But Jesus called them [unto him], and said, Ye know that the princes of the Gentiles exercise dominion over them, and they that are great exercise authority upon them.
Mat 20:26	But it shall not be so among you: but whosoever will be great among you, let him be your minister;
Mat 20:27	And whosoever will be chief among you, let him be your servant:

Return to top of page

King James Version for Mark 10:42-43

Click to view instructions

Mar 10:42 But Jesus called them [to him], and saith unto them, Ye know that they which are accounted to rule over the Gentiles exercise lordship over them; and their great ones exercise authority upon them.

Mar 10:43 But so shall it not be among you: but whosoever will be great among you, shall be your minister:

Return to top of page

King James Version for Luke 22:25-27

Click to view instructions

Luk 22:25 And he said unto them, The kings of the Gentiles exercise lordship over them; and they that exercise authority upon them are called benefactors.

Luk 22:26 But ye [shall] not [be] so: but he that is greatest among you, let him be as the younger; and he that is chief, as he that doth serve.

Luk 22:27 For whether [is] greater, he that sitteth at meat, or he that serveth? [is] not he that sitteth at meat? but I am among you as he that serveth.

Return to top of page

King James Version for Matthew 4:10

Click to view instructions

Mat 4:10 Then saith Jesus unto him, Get thee hence, Satan: for it is written, Thou shalt worship the Lord thy God, and him only shalt thou serve.

Return to top of page

Related FindLaw Resources
FindLaw Resources

Main Index > Cases and Codes > U.S. Constitution > First Amendment

U.S. Constitution: First Amendment

First Amendment - Religion and Expression

Amendment Text | Annotations

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Annotations

- **Religion**
- **An Overview**
  - Scholarly Commentary
  - Court Tests Applied to Legislation Affecting Religion
  - Government Neutrality in Religious Disputes
- **Establishment of Religion**
  - Financial Assistance to Church-Related Institutions
  - Governmental Encouragement of Religion in Public Schools: Released Time
  - Governmental Encouragement of Religion in Public Schools: Prayers and Bible Reading
  - Governmental Encouragement of Religion in Public Schools: Curriculum Restriction
  - Access of Religious Groups to Public

Freedom of Expression Law

Censorship

Religion and Military

Law School Constitutional Law

Property
- Tax Exemptions of Religious Property
- Exemption of Religious Organizations from Generally Applicable Laws
- Sunday Closing Laws
- Conscientious Objection
- Regulation of Religious Solicitation
- Religion in Governmental Observances
- Religious Displays on Government Property
- Miscellaneous

- **Free Exercise of Religion**
  - The Belief-Conduct Distinction
  - The Mormon Cases
  - The Jehovah's Witnesses Cases
  - Free Exercise Exemption from General Governmental Requirements
  - Religious Test Oaths
  - Religious Disqualification

- **Freedom of Expression--Speech and Press**
- **Adoption and Common Law Background**
- **Freedom of Expression: The Philosophical Basis**
- **Freedom of Expression: Is There a Difference Between Speech and Press**
- **The Doctrine of Prior Restraint**
  - Injunctions and the Press in Fair Trial Cases
  - Obscenity and Prior Restraint
- **Subsequent Punishment: Clear and Present Danger and Other Tests**
  - Clear and Present Danger
  - The Adoption of Clear and Present Danger
  - Contempt of Court and Clear and Present Danger
  - Clear and Present Danger Revised: Dennis
  - Balancing
  - The "Absolutist" View of the First Amendment, with a Note on "Preferred Position"
  - Of Other Tests and Standards:

Vagueness, Overbreadth, Least Restrictive Means, and Others
- Is There a Present Test?

- **Freedom of Belief**
  - Flag Salute Cases
  - Imposition of Consequences for Holding Certain Beliefs
- **Right of Association**
  - Political Association
  - Conflict Between Organization and Members
- **Maintenance of National Security and the First Amendment**
  - Punishment of Advocacy
  - Compelled Registration of Communist Party
  - Punishment for Membership in an Organization Which Engages in Proscribed Advocacy
  - Disabilities Attaching to Membership in Proscribed Organizations
  - Employment Restrictions and

- Loyalty Oaths
  - Legislative Investigations and the First Amendment
  - Interference With War Effort
  - Suppression of Communist Propaganda in the Mails
  - Exclusion of Certain Aliens as a First Amendment Problem
- **Particular Government Regulations Which Restrict Expression**
  - Government as Employer: Political and Other Outside Activities
  - Government as Employer: Free Expression Generally
  - Government as Educator
  - Government as Regulator of the Electoral Process: Elections
  - Government as Regulator of the Electoral Process: Lobbying
  - Government as Regulator of Labor Relations

- Government as Investigator: Journalist's Privilege
- Government and the Conduct of Trials
- Government as Administrator of Prisons
- Government and Power of the Purse

- **Governmental Regulation of Communications Industries**
  - Commercial Speech
  - Taxation
  - Labor Relations
  - Antitrust Laws
  - Radio and Television
  - Governmentally Compelled Right of Reply to Newspapers
  - Regulation of Cable Television
- **Government Restraint of Content of Expression**
  - Seditious Speech and Seditious Libel
  - Fighting Words and Other Threats to the Peace
  - Group Libel, Hate Speech
  - Defamation
  - Invasion of Privacy

- Emotional Distress Tort Actions
- "Right of Publicity" Tort Actions
- Publication of Legally Confidential Information
- Obscenity
- Child Pornography
- Nonobscene But Sexually Explicit and Indecent Expression

- **Speech Plus--The Constitutional Law of Leafleting, Picketing, and Demonstrating**
  - The Public Forum
  - Quasi-Public Places
  - Picketing and Boycotts by Labor Unions
  - Public Issue Picketing and Parading
  - Leafleting, Handbilling, and the Like
  - Sound Trucks, Noise
  - Door-to-Door Solicitation
  - The Problem of "Symbolic Speech"
- **Rights of Assembly and Petition**

- **Background and Development**
  - **The Cruikshank Case**
  - The Hague Case

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U.S. Constitution: First Amendment

First Amendment - Religion and Expression

Amendment Text | Annotations

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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- An Overview
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  - Governmental Encouragement of Religion in Public Schools: Released Time
  - Governmental Encouragement of Religion in Public Schools: Prayers and Bible Reading
  - Governmental Encouragement of Religion in Public Schools: Curriculum Restriction
  - Access of Religious Groups to Public Property
  - Tax Exemptions of Religious Property
  - Exemption of Religious Organizations from Generally Applicable Laws
  - Sunday Closing Laws
  - Conscientious Objection

    - Regulation of Religious Solicitation
    - Religion in Governmental Observances
    - Religious Displays on Government Property
    - Miscellaneous
- **Free Exercise of Religion**
    - The Belief-Conduct Distinction
    - The Mormon Cases
    - The Jehovah's Witnesses Cases
    - Free Exercise Exemption from General Governmental Requirements
    - Religious Test Oaths
    - Religious Disqualification
- **Freedom of Expression--Speech and Press**
- **Adoption and Common Law Background**
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- **The Doctrine of Prior Restraint**
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- **Subsequent Punishment: Clear and Present Danger and Other Tests**
    - Clear and Present Danger
    - The Adoption of Clear and Present Danger
    - Contempt of Court and Clear and Present Danger
    - Clear and Present Danger Revised: Dennis
    - Balancing
    - The "Absolutist" View of the First Amendment, with a Note on "Preferred Position"
    - Of Other Tests and Standards: Vagueness, Overbreadth, Least Restrictive Means, and Others
    - Is There a Present Test?
- **Freedom of Belief**
    - Flag Salute Cases
    - Imposition of Consequences for Holding Certain Beliefs
- **Right of Association**
    - Political Association
    - Conflict Between Organization and Members
- **Maintenance of National Security and the First Amendment**
    - Punishment of Advocacy
    - Compelled Registration of Communist Party
    - Punishment for Membership in an Organization Which Engages in Proscribed Advocacy
    - Disabilities Attaching to Membership in Proscribed Organizations
    - Employment Restrictions and Loyalty Oaths
    - Legislative Investigations and the First Amendment
    - Interference With War Effort
    - Suppression of Communist Propaganda in the Mails
    - Exclusion of Certain Aliens as a First Amendment Problem
- **Particular Government Regulations Which Restrict Expression**
    - Government as Employer: Political and Other Outside Activities
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    - Government as Regulator of the Electoral Process: Elections
    - Government as Regulator of the Electoral Process: Lobbying
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- Government as Investigator: Journalist's Privilege
- Government and the Conduct of Trials
- Government as Administrator of Prisons
- Government and Power of the Purse

- **Governmental Regulation of Communications Industries**
  - Commercial Speech
  - Taxation
  - Labor Relations
  - Antitrust Laws
  - Radio and Television
  - Governmentally Compelled Right of Reply to Newspapers
  - Regulation of Cable Television
- **Government Restraint of Content of Expression**
  - Seditious Speech and Seditious Libel
  - Fighting Words and Other Threats to the Peace
  - Group Libel, Hate Speech
  - Defamation
  - Invasion of Privacy
  - Emotional Distress Tort Actions
  - "Right of Publicity" Tort Actions
  - Publication of Legally Confidential Information
  - Obscenity
  - Child Pornography
  - Nonobscene But Sexually Explicit and Indecent Expression
- **Speech Plus--The Constitutional Law of Leafleting, Picketing, and Demonstrating**
  - The Public Forum
  - Quasi-Public Places
  - Picketing and Boycotts by Labor Unions
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  - Leafleting, Handbilling, and the Like
  - Sound Trucks, Noise
  - Door-to-Door Solicitation
  - The Problem of "Symbolic Speech"
- **Rights of Assembly and Petition**
- **Background and Development**
  - **The Cruikshank Case**
  - The Hague Case

FindLaw : Cases and Codes : U.S. Constitution : Article I

U.S. Constitution: Article I

Article Text | Annotations

Article I

Section 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law

direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United

States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5.

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6.

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7.

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9.

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases or Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census of Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State.

Section 10.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Annotations

Article I - Legislative Department

- **Section 1. Legislative Powers**
- **Separation of Powers and Checks and Balances**
  - The Theory Elaborated and Implemented
  - Judicial Enforcement
- **Bicameralism**
- **Enumerated, Implied, Resulting, and Inherent Powers**
- **Delegation of Legislative Power**
  - Origin of the Doctrine of Nondelegability
  - Delegation Which Is Permissible
    - Filling Up the Details
    - Contingent Legislation
  - The Effective Demise of the Nondelegation Doctrine
    - The Regulatory State
    - Standards
    - Foreign Affairs
    - Delegations to the States
    - Delegation to Private Persons
    - Delegation and Individual Liberties
  - Punishment of Violations
- **Congressional Investigations**
  - Source of the Power to Investigate
  - Investigations of Conduct of Executive Department
  - Investigations of Members of Congress
  - Investigations in Aid of Legislation
    - Purpose
    - Protection of Witnesses: Pertinency and Related Matters
    - Protection of Witnesses: Constitutional Guarantees
  - Sanctions of the Investigatory Power: Contempt

- **Section 2. The House of Representatives**
- **Clause 1. Congressional Districting**
  - Elector Qualifications
- **Clause 2. Qualifications of Members of Congress**
  - When the Qualifications Must Be Possessed
  - Exclusivity of Constitutional Qualifications
  - Congressional Additions
  - State Additions
- **Clause 3. Apportionment of Seats in the House**
  - The Census Requirement
- **Clause 4. Vacancies**
- **Clause 5. Officers and Power of Impeachment**

- **Section 3. The Senate**
- **Clause 1. Composition and Selection**
- **Clause 2. Classes of Senators**
- **Clause 3. Qualifications**
- **Clause 4. The Vice President**
- **Clause 5. Officers**
- **Clause 6. Trial of Impeachments**

- **Clause 7. Judgments on Impeachment**

- **Section 4. Elections**
- **Clause 1. Congressional Power to Regulate**
  - Federal Legislation Protecting Electoral Process
- **Clause 2. Time of Assembling**

- **Section 5. Powers and Duties of the Houses**
- **Clause 1. Power to Judge Elections**
- **Clause 2. Rules of Proceedings**
- **Clause 3. Duty to Keep a Journal**
- **Clause 4. Adjournments**
- **POWERS AND DUTIES OF THE HOUSES**
  - Power To Judge Elections
  - "A Quorum to Do Business"
  - Rules of Proceedings
  - Powers of the Houses Over Members
  - Duty To Keep a Journal

- **Section 6. Rights and Disabilities of Members**
- **Clause 1. Compensation and Immunities**
  - Congressional Pay
  - Privilege from Arrest
  - Privilege of Speech or Debate
    - Members
    - Congressional Employees
- **Clause 2. Disabilities**
  - Appointment to Executive Office
  - Incompatible Offices

- **Section 7. Legislative Process**
- **Clause 1. Revenue Bills**
- **Clause 2. Approval by the President**
  - The Veto Power
- **Clause 3. Presentation of Resolutions**
  - The Legislative Veto

- **Section 8. Powers of Congress**
- **Clause 1. Power to Tax and Spend**
  - Kinds of Taxes Permitted
    - Decline of the Forbidden Subject Matter Test
    - Federal Taxation of State Interests
    - Scope of State Immunity from Federal Taxation
    - Uniformity Requirement
  - Purposes of Taxation
    - Regulation by Taxation
    - Extermination by Taxation
    - Promotion of Business: Protective Tariff
  - Spending for the General Welfare
    - Scope of the Power

- Social Security Act Cases
- An Unrestrained Federal Spending Power
- Conditional Grants-In-Aid
- Earmarked Funds
- Debts of the United States

- **Clause 2. Borrowing Power**
- **Clause 3. Commerce Power**
  - Power to Regulate Commerce
    - Purposes Served by the Grant
    - Definition of Terms
      - Commerce
      - Among the Several States
      - Regulate
      - Necessary and Proper Clause
      - Federalism Limits on Exercise of Commerce Power
      - Illegal Commerce
  - Interstate versus Foreign Commerce
  - Instruments of Commerce
  - Congressional Regulation of Waterways
    - Navigation
    - Hydroelectric Power; Flood Control
  - Congressional Regulation of Land Transportation
    - Federal Stimulation of Land Transportation
    - Federal Regulation of Land Transportation
    - Federal Regulation of Intrastate Rates (The Shreveport Doctrine)
    - Federal Protection of Labor in Interstate Rail Transportation
    - Regulation of Other Agents of Carriage and Communications
  - Congressional Regulation of Commerce as Traffic
    - The Sherman Act: Sugar Trust Case
    - Sherman Act Revived
    - The "Current of Commerce" Concept: The Swift Case
    - The Danbury Hatters Case
    - Stockyards and Grain Futures Acts
    - Securities and Exchange Commission
  - Congressional Regulation of Production and Industrial Relations: Antidepression Legislation
    - National Industrial Recovery Act
    - Agricultural Adjustment Act
    - Bituminous Coal Conservation Act
    - Railroad Retirement Act
    - National Labor Relations Act
    - Fair Labor Standards Act
    - Agricultural Marketing Agreement Act
  - Acts of Congress Prohibiting Commerce
    - Foreign Commerce: Jefferson's Embargo
    - Foreign Commerce: Protective Tariffs
    - Foreign Commerce: Banned Articles
    - Interstate Commerce: Power to Prohibit Questioned
    - Interstate Commerce: National Prohibitions and State Police Power
    - The Lottery Case
    - The Darby Case

- The Commerce Clause as a Source of National Police Power
  - Is There an Intrastate Barrier to Congress' Commerce Power?
  - Civil Rights
  - Criminal Law
- The Commerce Clause as a Restraint on State Powers
  - Doctrinal Background
  - The State Proprietary Activity Exception
  - Congressional Authorization of Impermissible State Action
- State Taxation and Regulation: The Old Law
  - General Considerations
  - Taxation
  - Regulation
- State Taxation and Regulation: The Modern Law
  - General Considerations
  - Taxation
  - Regulation
- Foreign Commerce and State Powers
- Concurrent Federal and State Jurisdiction
  - The General Issue: Preemption
    - Preemption Standards
    - The Standards Applied
    - Federal Versus State Labor Laws
- Commerce With Indian Tribes

- **Clause 4. Naturalization and Bankruptcies**
  - Naturalization and Citizenship
    - Nature and Scope of Congress' Power
    - Categories of Citizens: Birth and Naturalization
    - The Naturalization of Aliens
  - Rights of Naturalized Persons
  - Expatriation: Loss of Citizenship
  - Aliens
    - The Power of Congress to Exclude Aliens
    - Deportation
  - Bankruptcy
    - Persons Who May Be Released from Debt
    - Liberalization of Relief Granted and Expansion of the Rights of the Trustee
    - Constitutional Limitations on the Bankruptcy Power
    - Constitutional Status of State Insolvency Laws: Preemption
- **Clauses 5 and 6. Money**
  - Fiscal and Monetary Powers of Congress
    - Coinage, Weights, and Measures
    - Punishment of Counterfeiting
    - Borrowing Power versus Fiscal Power
- **Clause 7. Post Office**
  - Postal Power
    - "Establish"
    - Power to Protect the Mails
    - Power to Prevent Harmful Use of the Postal Facilities
    - Exclusive Power as an Adjunct to Other Powers
    - State Regulations Affecting the Mails
- **Clause 8. Copyrights and Patents**

- Copyrights and Patents
  - Scope of the Power
  - Patentable Discoveries
  - Procedure in Issuing Patents
  - Nature and Scope of the Right Secured
  - Power of Congress over Patent Rights
  - State Power Affecting Payments and Copyrights
  - Trade-Marks and Advertisements
- **Clause 9. Creation of Courts**
- **Clause 10. Maritime Crimes**
  - Piracies, Felonies, and Offenses Against the Law of Nations
    - Origin of the Clause
    - Definition of Offenses
    - Extraterritorial Reach of the Power
- **Clauses 11, 12, 13, and 14. War; Military Establishment**
  - The War Power
    - Source and Scope
      - Three Theories
      - An Inherent Power
      - A Complexus of Granted Powers
    - Declaration of War
  - The Power to Raise and Maintain Armed Forces
    - Purpose of Specific Grants
    - Time Limit on Appropriations for the Army
    - Conscription
    - Care of the Armed Forces
    - Trial and Punishment of Offenses: Servicemen, Civilian Employees, and Dependents
      - Servicemen
      - Civilians and Dependents
  - War Legislation
    - War Powers in Peacetime
    - Delegation of Legislative Power in Wartime
  - Constitutional Rights in Wartime
    - Constitution and the Advance of the Flag
      - Theater of Military Operations
      - Enemy Country
      - Enemy Property
      - Prizes of War
    - The Constitution at Home in Wartime
      - Personal Liberty
      - Enemy Aliens
      - Eminent Domain
      - Rent and Price Controls
- **Clauses 15 and 16. The Militia**
  - The Militia Clause
    - Calling Out the Militia
    - Regulation of the Militia
- **Clause 17. District of Columbia; Federal Property**
  - Seat of the Government
  - Authority Over Places Purchased

        - "Places"
        - Duration of Federal Jurisdiction
        - Reservation of Jurisdiction by States
- **Clause 18. Necessary and Proper Clause**
    - Coefficient or Elastic Clause
        - Scope of Incidental Powers
        - Operation of Coefficient Clause
        - Definition of Punishment and Crimes
        - Chartering of Banks
        - Currency Regulations
        - Power to Charter Corporations
        - Courts and Judicial Proceedings
        - Special Acts Concerning Claims
        - Maritime Law

- **Section 9. Powers Denied to Congress**
- **Clause 1. Importation of Slaves**
    - General Purpose of Sec. 9
- **Clause 2. Habeas Corpus Suspension**
- **Clause 3. Bills of Attainder and Ex Post Facto Laws**
    - Bills of Attainder
    - Ex Post Facto Laws
        - Definition
        - What Constitutes Punishment
        - Change in Place or Mode of Trial
- **Clause 4. Taxes**
    - Direct Taxes
        - The Hylton Case
        - From the Hylton to the Pollock Case
        - Restriction of the Pollock Decision
        - Miscellaneous
- **Clause 5. Duties on Exports from States**
    - Taxes on Exports
        - Stamp Taxes
- **Clause 6. Preference to Ports**
    - The "No Preference" Clause
- **Clause 7. Appropriations and Accounting of Public Money**
    - Appropriations
    - Payment of Claims
- **Clause 8. Titles of Nobility; Presents**

- **Section 10. Powers Denied to the States**
- **Clause 1. Not to Make Treaties, Coin Money, Pass Ex Post Facto Laws, Impair Contracts**
    - Treaties, Alliances, or Confederations
    - Bills of Credit
    - Legal Tender
    - Bills of Attainder
    - Ex Post Facto Laws
        - Scope of the Provision
        - Denial of Future Privileges to Past Offenders
        - Changes in Punishment

        - Changes in Procedure
    - Obligation of Contracts
        - "Law" Defined
        - Status of Judicial Decisions
        - "Obligation" Defined
        - "Impair" Defined
        - Vested Rights Not Included
        - Public Grants That Are Not "Contracts"
        - Tax Exemptions: When Not "Contracts"
        - "Contracts" Include Public Contracts and Corporate Charters
        - Corporate Charters: Different Ways of Regarding
        - Reservation of Right to Alter or Repeal Corporate Charters
        - Corporation Subject to the Law and Police Power
        - Strict Construction of Charters, Tax Exemptions
        - Strict Construction and the Police Power
        - Doctrine of Inalienability as Applied to Eminent Domain, Taxing, and Police Powers
        - Private Contracts
        - Remedy a Part of the Private Obligation
        - Private Contracts and the Police Power
        - Evaluation of the Clause Today
- **Clause 2. Not to Levy Duties on Exports and Imports**
    - Duties on Exports and Imports
        - Scope
        - Privilege Taxes
        - Property Taxes
        - Inspection Laws
- **Clause 3. Not to Lay Tonnage Duties, Keep Troops, Make Compacts, or Engage in War**
    - Tonnage Duties
    - Keeping Troops
    - Interstate Compacts
        - Background of Clause
        - Subject Matter of Interstate Compacts
        - Consent of Congress
        - Grants of Franchise to Corporations by Two States
        - Legal Effects of Interstate Compacts