Volume I: Issue 6

The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

Clause Discussed:
- Article I, Section 2, Clause 3

Concepts Discussed:
- Apportionment
- Direct Taxes

Apportionment

Article I, Section 2, Clause 3 of the Constitution reads;

> "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."

This clause details the manner of distribution for the Members of the House of Representatives among the several States, as well as the distribution of any direct taxes laid upon the United States. The basis for the distribution of Representatives and Taxes is *proportional*; meaning in the proportion of State population to the total population.

Since the House of Representatives is tied to population, this House is structured as if to give equal political voice to the Citizens themselves (only indirectly), rather than to co-equal States of a confederated Union. More populous States are allowed a greater number of Representatives, but are also liable for a greater amount of direct taxes. Greater voice is tied to greater responsibility.

Tying direct taxes and Representatives to population was an effective means for ensuring honest government. A State would not try to increase its population numbers artificially to gain Representatives if it knew it would pay a higher amount of direct taxes. A State would not try to decrease its population numbers artificially to lower any direct taxes laid upon it as it would lose Representatives.

The tying of representation together with taxation was in line with the *no taxation without representation* issue from the Revolutionary era, when British Stamp and Tea taxes were laid upon the colonists who did not have a corresponding voice in (British) Parliament. This revolutionary slogan shows that American colonists, while not necessarily enamored with it, found (limited) taxation only disagreeable when there was not a corresponding voice in government. That direct taxation was intertwined with representation to ensure an adequate voice in government was an attempt to permanently lock the two concepts together to prevent separation.

Clause 3 helped ensure that the federal government had the ability to raise revenue more efficiently, which it did not have under the Confederacy. **Article VIII** of the **Articles of Confederation** detailed Congress' ability to lay taxes under that Confederacy:

> "All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

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> "The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the United States in Congress assembled."

When the States, assembled in Congress under the Articles, decided that monies were needed to pay for necessary common expenses, they would come to an agreement on the total amount of funds necessary. This dollar amount was then divvied up among the States "in proportion to the value of all land (and the buildings and improvements thereon) within each state, granted to or surveyed for any person". These *apportioned* lands differed from un-apportioned land (which was un-owned property held nominally by a State or the United States in trust for its Citizens) by the fact that they were owned privately and taxed accordingly.

The States were left to individually collect the taxes from their Citizens which the group of States ordered. The monies collected by the States were then sent to the "common treasury" from where they were defrayed for necessary expenses.

As one may imagine, this mechanism had varied success among the different States, in line with varied results of most group activities. The group specified the amount of tax levied, but the individual States were left to lay & collect their portion of the total from their Citizens.

Even the States more responsible in collecting their portion had less initiative the next time a tax was laid, as the group suffers when individuals do not pull their own weight. When some get by with doing less (or at least less efficiently), it encourages their poor behavior next time, and it discourages next time those who pulled their own weight the first time. A lack of coercive power proved ineffectual at raising the necessary sums of revenue under the Articles.

The power of direct taxation under the Constitution, with the federal apparatus performing and overseeing the collection process, was viewed as a necessary power by the constitutional convention delegates and seconded by the State ratifying conventions.

The power to lay a direct tax was mainly a war-time power to increase the amount of revenue from which the government could draw to meet the increased demand to adequately protect life and property especially needed in periods of war or pending war.

This is exactly how this power was ultimately used in the United States. The first apportioned, direct tax was laid in 1798 to gear up for war with France which appeared inevitable (but never actually materialized). The history of the United States shows only two other periods of direct taxation: during the War of 1812 and the Civil War eras.

The 1798 tax statute shows the legal requirements in regards to the imposition of an apportioned, direct tax. This tax was enacted as reported in Volume I of the Statutes at Large, beginning on page 597, entitled "*An Act to lay and collect a direct tax within the United States*" and enacted on July 14th, 1798 (**I Stat. 597, 1798**).

Section 1 of the said act states:

> "That a direct tax of two millions of dollars shall be, and hereby is laid upon the United States, and apportioned to the states respectively, in the manner following: —
>
> "To the state of New Hampshire, seventy-seven thousand seven hundred and five dollars, thirty-six cents and two mills.
>
> "To the state of Massachusetts, two hundred and sixty thousand four hundred and thirty-five dollars, twenty-one cents and two mills..."

Section 1 shows, regarding direct taxation, a specific dollar figure to be raised is *pre-determined from the onset* and a precise amount of tax is "laid upon the United States, and apportioned to the states respectively".

Each State is specifically charged with an amount of money to be raised (not just here apportioned down to the hundredth part of a dollar — a penny; but to the thousandth part — a *mill*!) based upon their population in proportion to the total population of all the States.

Section 2 specified that the tax would be:

> "assessed upon dwelling-houses, lands and slaves, according to the valuations and enumerations to be made pursuant to the act[1], intituled '*An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States*,' and in the following manner..."

The July 9th, 1798 enumeration act referenced above allowed for the enumeration of all slaves "above the age of twelve, and under the age of fifty years", except those who were infirmed, disabled, or otherwise "incapable of work" (Section 8).

The July 14th taxing act specified, in **Section 2**, that:

> "upon every slave which shall be enumerated according to the act aforesaid, there shall be assessed fifty cents."

A slave *not enumerated* (a slave under 12 years of age, over 50 years, or infirmed) was **not** considered a *slave* for purposes of the act imposing a direct tax on *slaves* (as enumerated). It is imperative to understand how words are specifically used or defined within any Act to properly understand the reach of that law.

A slave other than as specifically enumerated was not a *slave* for purposes of the act imposing a direct tax on *slaves*.

1. I Stat. 580, ch. 70, July 9, 1798).

In other words, when the July 14th Act assessed a direct tax "upon dwelling-houses, lands and *slaves*", it did not matter what was the common definition of a slave. One had to look to the specific wording within the act to properly determine the extent and scope of that law. An understanding of who was a *slave* only in common usage could even lead to errors regarding the applicability of this particular law.

Every *dwelling-house* over the value of one hundred dollars was assessed in Section 2 of the taxing act. Houses, with up to two acres of land, valued over $100 and up to $500, were assessed a direct tax at the rate equal to the sum of "two tenths of one per centum on the amount of the valuation." Houses over $500 in value up to $1,000 were assessed at three tenths of one percent (a house worth $1,000 would therefore incur a tax liability of $3.00). This rate continued to rise in tenths up to a cap of one percent for houses valued at more than thirty thousand dollars.

Likewise with a *slave*, so to was a *dwelling-house* indirectly defined within the acts as those *dwelling-houses* valued at more than $100. Dwelling-houses valued at less than $100 were not taxable *dwelling-houses* for the purposes of a direct tax assessed on *dwelling-houses (*valued at more than $100).

Exceptions within laws are sometimes placed there at Congress' discretion, as when Congress has the lawful authority to act even without exemptions. Congress, in the above examples, provided exemptions to lessen the financial impact of those owning relatively unproductive slaves or those thought least capable of paying a tax on their houses of low value.

Exceptions to the rule make the rule more difficult to follow; as such, they are not generally inserted without reason. By resorting to varying rates and exceptions, Congress was seeking to raise revenue, but with minimal resistance, by taxing greater those deemed most able to withstand higher rates and amounts. Had unproductive slaves not been exempted, Congress would have likely placed a lower assessment, but upon **all** slaves (thereby eliciting anger from owners of unproductive slaves who were no longer exempted).

Exceptions within laws are also sometimes placed within those laws to keep Congress within their lawful operating authority. In these instances, exceptions and limited definitions are of crucial importance to understand to successfully maintain limited government operating according to the express rules of the Constitution. Failure to include exceptions under these cases would result in Congress passing a law in excess of their actual stated authority. As there can be no law in excess of Congress' actual authority, any such law would be void if not for these exceptions.

Exceptions within laws are also sometimes placed there to keep Congress within their actual lawful operating authority.

The 1798 act laying a direct tax on the States was enacted by Congress within their authority under Article I:2:3, Art. I:8:1, and Art. I:9:4 to provide sufficient revenue to levy war according to Art. I:8:11. Within these powers, Congress had the ability to assess the tax upon every single slave and every single house without exception. The slaves and dwelling houses so excepted were very clearly delineated so most anyone reading these sections would quickly understand with little thought who and what were taxed or not taxed.

In a purely hypothetical case, what if Congress were not so inclined to be perfectly forthright in their objectives and attempt to stretch their lawful authority by somewhat deceptive, although still legal means?

Congressmen, in writing and enacting law, are ultimately responsible for the clarity of that law. If, under the 1798 act or some other act, Congress desired to be less-than-direct in their wording, does this necessarily make the law any less valid? A law which is difficult-to-follow is still a law nonetheless (unless it is so confusing that it is held void for vagueness. A look at many confusing laws on the books acknowledges that a law must be extremely vague before this void-for-vagueness principle may apply).

If the exempted slave (under 12, over 50, or infirmed) in the 1798 act was excepted out in a different section in a less-clear manner, the enumerated slaves would still be legally excepted, even if not every tax-paying slave-owner realized some of his slaves were not *slaves* for purposes of this act.

The taxing act could have simply stated that "a tax of fifty cents is assessed upon every slave" and buried the definition of a *slave* deep within the act as "a person held to labour, over the age of 12, under the age of 50, and not infirmed or otherwise permanently incapable of work". The legal workings would be the same as the fully disclosed version, whether or not every slave-owner read and understood the exemptions. If some slave-owners happened to pay more tax than they were legally required, they would simply not be availing themselves to all the exemptions the law provided them.

The 1798 law was laid by a Congress who had no need for any type of deceptive shenanigans, as they had the full legal authority to act as they did.

Contrary to the beliefs of many, all laws enacted by Congress MUST conform (in one manner or another)

to the supreme Law. The United States are (still) a Union of laws, even if few understand how those laws operate in conformance with the Constitution. Failure to understand how Congress passes laws which appear to operate apart from or superior to the Constitution does necessarily mean that Congress violates law (which they are incapable of doing).

Of course, there are few reasons for Congress to act in a manner less clear than that of which they are capable. One reason may be that they are not capable of writing more clearly and concisely. This could happen due to incompetence or because the subject matter is very complicated and the rules for dealing with that matter very strict.

Another reason is more sinister, as when Congress wishes to exercise more power, but are unwilling to ask the States for additional authority through the amendment process (which is so purposely cumbersome that it has only been amended 27 times in two centuries). Wording a legislative act so it appears to be more commanding than it legally is may certainly catch a few people off guard. Congress can thus gain ability expediently (although possibly only partially and/or temporarily), even in cases where it would be unable legitimately.

The Varying Rate of Direct Taxation

With the assessment per enumerated slave fixed at *fifty cents* and the assessment per *dwelling-house* fixed at varying percentages based upon the house's valuation over $100, any given State would therefore raise by these methods the resultant amount of tax which computes based upon the number of such slaves and the number and valuation of such houses owned within that State.

As the 1798 valuation and enumeration act had only been enacted five days earlier than the 1798 taxation act, Congress did not yet have an accurate enumeration of slaves or the value and number of houses in each of the States. They could not thus pin the value in each State to slaves and houses to come up precisely with the State's share of the tax by this method alone.

This means that there had to be some variable in each State to make up the difference of the money which houses and slaves raised from the total amount levied. This was specified within **Section 2** of the taxing act:

> "the whole amount of the sums so to be assessed upon *dwelling-houses* and *slaves* within each state respectively, shall be deducted from the sum hereby apportioned to such state, and the remainder of the said sum shall be assessed upon the *lands* within such state according to the valuations to be made pursuant to the act aforesaid, and at such rate per centum as will be sufficient to produce the said remainder."

In other words, the rates of taxation on *slaves* and *dwelling-houses* would necessarily be low enough so no State would go over their allotted amounts.

Owners of *slaves* in any State would all pay the same fifty cent assessment per enumerated slave. Owners of like-valued *houses* in every State would also pay the said rates. However, owners who had additional real property would pay **varying rates** per the valuation of that property, State-to-State.

A direct tax can be placed upon the person himself and/or upon articles of his wealth. If a (capitation) tax of $1 was laid upon every *person*, then all such *persons* would pay the same $1 tax. A direct tax placed upon an article of wealth in regards to its enumeration would also pay the same amount of tax. If a direct tax of $5 was assessed upon every *dwelling-house*, then every owner of every *dwelling-house* would pay the same $5 rate.

Since the tax is apportioned to the various States according to the *numbers* of their population, any tax other than on those numbers of population will necessarily be more cumbersome.

When the direct tax is assessed on articles of one's wealth (property), people in a State with low population with large amount of the targeted wealth would pay a relatively low assessment per article of wealth. Any State with a larger population base and a low amount of the targeted wealth could pay much more per valuation of property.

Hypothetically, if State A had 12% of the overall population of the United States, it got 12% of the total amount of the tax bill. Within that State, the owners of *dwelling-houses, lands* & *slaves* (in this case) would share 100% of that State's bill. In each State, the total revenue of money generated from the prescribed assessments on *slaves* and *dwelling-houses* would vary in percentage relation to the total amount assessed. The difference would necessarily be paid within that State upon the remaining amount of *land* which was assessed.

If few wealthy people happened to own much of the remaining *land* in that State, they would thus have to come up with much of the remainder of the assessed tax. The varying impact of this form of taxation is often greatly resented by those impacted in a greater fashion.

Direct taxation is burdensome to Congress because of the rule of apportionment; the necessity of performing a comprehensive single-purpose assessment; because of the need to draw up the amount of tax before it is spent; because of States becoming involved as States; and because the amount of tax paid by persons of each State vary (unless directly placed upon the person themselves).

Because the amount of the tax (on land, in the instance above) varies, some Citizens see directly how

they are affected more than others. Because it is out in the open, they know what is happening, thus they seek to protect their wealth and confront their Congressmen. The wealthier the people (the more slaves and the greater value of one's house and lands owned), the more the tax affected them (there were no "escape-routes" through credits, deduction of expenses, etc.).

The wealthiest people in the State were affected in greater degree to those of less means. Wealthier people tend to have the most political "pull." Congressmen seeking re-election do not tend to enjoy being confronted by wealthy, angry constituents — thus, this is not a very popular method of raising revenue with Congressmen.

Direct taxation necessarily limits the total revenue which Congress would raise through this mechanism to the dollar amount laid. Congressmen, seeking to maximize revenue with minimal work, do not generally like to "cap" the amount they are seeking to raise, especially when great effort is required and they stand a good chance of offending their usual supporters. Congress thus seeks to raise revenue with less effort where they can obtain a greater potential amount of revenue, where they can *let the 'profits' run*.

The apportionment of direct taxation is such an important principle that it is the only rule within the main body of the Constitution which is specifically repeated. **Article I, Section 9, Clause 4** mandates that:

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

The apportionment of direct taxation is such an important principle that it is the only rule within the main body of the Constitution which is specifically repeated.

The tax accorded to each State was based upon the State's population, but may actually be placed upon property. Only when the tax *based* upon population is *placed* upon population (numbers) will each and every person within every State pay the same amount of tax. Within the authority to lay a direct tax is the authority to lay a tax on each person, in the form of a capitation (from the Latin *capit* or *caput* meaning *head*) or poll tax.

Census or Enumeration

Article I, Section 2, Clause 3 mandates that an *Enumeration* be performed within three years of the first meeting of the Congress of the United States and within every subsequent term of ten years thereafter. Art. I:9:4 prohibits any direct tax from being laid unless in proportion to the *Census* or *Enumeration*.

The specified purpose of this census is to collect the population numbers for the apportionment of direct taxes and Representatives. Since there has not been a direct tax imposed since the Civil War, the census today primarily maintains proper representation numbers.

When a direct tax is laid, the numbers of persons in each State as of the most recent census provides the proportional basis used in determining the dollar amount of direct tax laid upon each State in the Union.

As far as the persons or items upon which the tax is assessed, however, current information is used. Thus Congress provides for current assessments to enumerate and valuate said assessed persons or items.

The July 9th, 1798 enumeration act covered above, states, in **Section 8,** that the:

> "commissioners…shall inquire after and concerning all lands, dwelling-houses and slaves…by reference to any records or documents, and to any lists of assessment taken under the laws of their respective states, and by all other lawful ways and means; and to value and enumerate the said dwelling-houses, lands and slaves."

When the power to lay taxes on property is rated on its *quantity*, only a numerical representation of that property is required. This provides the property owner with much more inherent privacy, necessitating far less information being officially noted.

When the power to lay taxes is rated on property *value*, much more information is required for a *proper* determination of that *value*. Valuations are based upon inherently subjective estimates which change not only person-to-person, but season-to-season and place-to-place. It is for this reason that more information is needed when taxes are assessed according to *valuations*, in attempt to substantiate that variable value.

Laying taxes upon the *value* of the assessed property (with higher value being penalized with higher taxes — higher in *amount* **and** in *percentage*) is an attempt to withdraw more money from those deemed more able to withstand the progressing rate of taxation.

It should be noted that a **progressive rate of taxation** was one of the 10 precepts of Karl Marx's 1848 booklet, *The Manifesto of the Communist Party* — in line with the first portion of the communist creed "From each according to his ability."

The intent of the Communist Manifesto, of course, was to outline the course to cause a revolutionary destruction of capitalism to usher in a socialistic utopia. Marx maintained that *progressive taxation* was an integral component to bring about this goal.

Americans, by and large, do not question today the commonplace attempt to extract greater revenue of those deemed most able to afford it. It is *expected* that those

individuals of greater wealth *should* pay more for the same "service" as received by those of lesser wealth; that it is *proper* to punish some *because* of their success.

It is interesting to note that with the varying rates of direct taxation upon a State, the States *paying more taxes have more representation* than States paying less — i.e., with increased taxation came increased voice.

The principle of a greater vote when paying greater taxes is never considered with respect to persons.

A State, considered as a co-equal State with others as part of a confederated Union, would have the *same voice* as a State of any other size, importance, or wealth (as under the Continental Congress and Articles of Confederation), each State having but one vote.

Only when the States became considered as part of a government more national in character (which acted to a greater degree upon individual Citizens) were their size, importance, or wealth considered (indirectly, through the number of "their" greatest resource — "their" people) with respect to their voice.

In government, payment is often separated from the service, sometimes to the extent that it is nearly impossible to accurately gauge true costs. Tying payment directly to service, where possible, would be the first step in the goal to increase fairness among the users of that service. Those who use more would simply pay more (although volume discounts could apply — a *regressive* tax). Such user-fees do not artificially stimulate nor depress market conditions in the same manner where there is no tie between use and cost. An adequate pricing mechanism is the primary manner to instill fairness and justice.

It takes something truly extraordinary for many to question progressive taxation, which is based, at least in part, upon class envy. Finland's recently-publicized traffic fine equivalent to $103,000 for a violator of some means who was caught riding his Harley Davidson motorcycle at the rate of speed equivalent to 46 mph in a 30 mph zone provides such an example. Finland has a system of fines based upon, not just the severity of the offense, *but also the income of the offender*.

As this system of fines is not used in the United States, at least in regards to routine motor vehicle violations, most Americans should be able to see the injustice of this system. Yet most of these same people do not question the system of taxation which indefinitely charges a wealthy, childless couple exorbitant amounts in property taxation to send other people's kids to school or in a progressive income tax for wealth redistribution elsewhere.

Equality before the Law is no longer deemed by many to be an appropriate principle of law. It is held proper that government must first look at the ability to pay before giving the same service to different people.

Early American government often took steps to minimize the extent that the wealthy could obtain preferential treatment before the law. Too many government practices perhaps operate at the other extreme to punish those of moderate wealth over those of less wealth (it could still be arguable that those of extreme wealth are rewarded at the expense of others).

Real property and structures upon that property were rated according to their *value* within the July 14th, 1798 taxing act. **Section 9** of the July 9th valuation act directs assessors to make a list of *dwelling-houses*. This list is to specifically include the following information:

> "their situation, their dimensions or area, their number of stories, the number and dimensions of their windows, the materials whereof they are built, whether wood, brick, or stone, the number, the description and dimensions of the out-houses appurtenant to them, and the names of their owners or occupants."

Information of this type is necessary to accurately come to some objective measure of the subjective value of such dwelling-houses. As such, it follows that Congress would have the ability to collect information such as this about whatever property is assessed.

It should be noted that the above-referenced enumeration and valuation act was not a census act. Early decennial census acts collected data which was mainly numerical in origin. In each of the three periods when a direct tax was laid, a valuation act was enacted separate from the decennial census.

Had the 1798 direct taxation act resorted to using census data from 1790 for other than the apportionment of the dollar amount of the tax, this information would have been dated. The 1790 census data did not include any information regarding *valuation* of lands and dwelling-houses, though it did include some data regarding *numbers*.

The 1790 census tracked: head of household; number of free white males ages 16 and older; number of free white males under the age of 16; number of free white females; number of all other free persons; and the number of slaves.

In tracking the *head of household*, the government would thereby have *numbers* of households and could therefore lay a direct tax on the said *numbers* of households/dwelling-houses, though not their value (by only this information).

The main point to realize is that Congress *does* have the ability to collect information other than mere *numbers* of persons, providing it has a valid constitutional reason to do so (which includes laying an apportioned, direct tax on property).

One may possibly argue the uses for collecting information, but not necessarily the overall ability of government to collect such information. That there has not been an apportioned, direct tax in nearly 140 years does not invalidate Congress' ability to still actually lay such a tax today. Non-use of that power does not affect the overall ability to use that power; it being an expressly enumerated power of Congress.

Direct taxes are ultimately assessed upon people themselves, for inanimate property cannot do anything, including pay its own tax. Article I:9:4 begins by listing "No Capitation…Tax shall be laid", acknowledging that the tax is first and foremost assessed on *people* (literally on their *heads*).

The clause also acknowledges "other direct" taxes are capable of being laid. While not particularly specifying this *other tax*, this refers to taxes on *property*.

Under Article VIII of the Articles of Confederation (as covered earlier), the confederate Congress apportioned (private) *land* in proportion to its *value*. Thus, Congress under the Constitution did not receive any new grant of power in their ability to lay direct taxes upon property within the Constitution.

It should be noted, however, that the said apportioned taxes under the Confederation were "*allowed* by the United States in Congress assembled", but were actually "*laid* and *levied* by the authority and direction of the *legislatures* of the *several states*".

Direct taxation under the Constitution was seen as a necessary ace up the Legislator's sleeve, essentially only to provide sufficient revenue during war or pending war. It was used precisely as intended, providing revenue during three different war-time eras. There has not been a direct tax passed in the United States since the Civil War.

The government was expected to be funded in normal day-to-day operations in time of peace by the so-called *indirect taxation* power of Article I, Section 8, Clause 1: the ability to lay and collect uniform *Duties, Imposts*, and *Excises.*

Strictly speaking, an *indirect tax* is a constitutional contradiction. *Taxes* under the main body of the Constitution were only direct, apportioned taxes. *Duties, Imposts,* and *Excises* only indirectly effect people, as they are generally laid on items of people's expense (such as an *duty* due upon the importation of rubber) or an *excise* on government-granted benefits (such as corporate status).

When one reads that "Representatives and direct Taxes shall be apportioned", one should realize that the word *shall* is mandatory (in this instance, at least). Agents only have authority as given by the principal. When the principal tells the agent that he *shall* do something, that agent *must* do that which he has been directed to do and he has no volition to do otherwise (to the extent that the demand is legal and to the extent that the agent wishes to remain an agent). Representatives and direct taxes *must* therefore be apportioned.

This imperative nature of the word *shall* in this instance does not always carry a commanding tone, however. If some government official instructs an underling that this subordinate *shall* do something which is actually unlawful, the underling (though he may temporarily suffer from his refusal until his superior is reprimanded) is under no obligation to do that which is unlawful and actually forbidden. Every government employee, agent, member, or official, if he has not taken an express oath to uphold the Constitution — the (supreme) Law of the land — he is under an superior who has (and he is also under an implied and express obligation to so uphold the law).

The same is true of an official directing a Citizen that this Citizen *shall* do something; the Citizen is not required to do anything which violates his inherent rights or gives up his personal freedoms. In these instances, *shall* must be construed to mean *may* to keep that implied command from violating law. In a dichotomy between holding a command either as unlawful or as a request, it will be held as a request; for if unlawful, it cannot command.

Clause 3 lists of the number of Representatives each State was initially allowed until the first enumeration was performed. This gives a rough estimate of how the population was distributed among the 13 States without seeing any other data.

Number of Representatives

Numbers of Representatives initially assigned to each State in relation to the total number of Representatives gives approximate proportional population figures of each State as compared with the United States.

New Hampshire	3/65	4.62%
Massachusetts	8/65	12.31%
Rhode Island	1/65	1.54%
Connecticut	5/65	7.69%
New York	6/65	9.23%
New Jersey	4/65	6.15%
Pennsylvania	8/65	12.31%
Delaware	1/65	1.54%
Maryland	6/65	9.23%
Virginia	10/65	15.38%
North Carolina	5/65	7.69%
South Carolina	5/65	7.69%
Georgia	3/65	4.62%
Total (United States)	65/65	100%

Clause 3 also mandates that:

"The Number of Representatives shall not exceed one for every thirty Thousand."

At first glance, it may appear that the restriction "shall not exceed" pertains to the *thirty Thousand (*persons) rather than the number of Representatives (one).

Mathematically expressing the ratio may make it easier to understand that the restriction pertains to the numerator rather than the denominator. The number of Representatives shall not exceed one for every thirty thousand persons can be written as the ratio 1:30,000 or as the fraction 1/30,000.

The clause prevents the ratio from reaching **two** *Representatives* per **thirty thousand** *persons* (2:30,000 or 2/30,000 — which is equivalent to 1:15,000 or 1/15,000).

Ratios above this, such as **one** Representative to 60,000 persons (1:60,000), are not prevented. One can see by this that the directive places a restriction on a *lower* ratio of Representatives to People, not *higher.*

There cannot be one Representative for any less than 30,000 people, except that "each State shall have at least one Representative".

In the 2000 census, there were 281,421,906 million people enumerated within the United States. With 435 Representatives, there is now (on average) one Representative for every 646,946 people.

With current population figures, one Representative for every 30,000 people would bring the number of Representatives to 9,380 — obviously unworkable. The framers of the Constitution were well aware that the future of America would bring large numbers of people from distant shores seeking peace and prosperity.

There are over four times the number of Representatives as there are Senators. This increases the chances that Citizens in each State would be able to eventually meet one of their Representatives and "bend his ear" should the need arise. The House of Representatives was set up with greater numbers to increase the chance that the common man would find his Representative more likely to at least listen to his views.

Plural Nature of Congress

Article I, Section 2, Clause 3, as covered above, declares, in part:

"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."

There is only *one* Congress, as noted in **Art. I:1**: "All legislative Powers…shall be vested in ***a*** Congress." As such, many people use the singular pronoun *it* in reference to Congress — such as "*Congress* has great powers and *it* meets at the Seat of the Government".

Congress, as noted also in **Art. I:1**, "consist(s) of a Senate and House of Representatives;" Congress is therefore not really an *it*; but a *they*, a plural entity composed of two parts. *They, them,* and *theirs* are then used to substitute for *Congress* within a sentence as the plural pronoun; the objective case of the plural pronoun; and as the possessive case of the plural pronoun.

The plural pronoun *they* is used within **Clause 3** to substitute for the *Congress of the United States*, acknowledging the plural meaning of the term:

"The actual Enumeration shall be made…after the first Meeting of the Congress of the United States…in such Manner as *they* shall by Law direct."

Congress, besides being a plural term for consisting of the Senate and House, is also a plural term due to the meaning of the word; that of the separate States assembling together as a Congress. In its correct nature, Congress consists of all the States.

Other clauses reinforce understanding of the plural nature of Congress.

Article I, Section 4, Clause 2 states that:

"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."

Article I, Section 7, Clause 2 declares that:

"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."

Article II, Section 2, Clause 2 states that:

"The Congress may by Law vest the Appointment of such inferior Officers, as *they* think proper."

Article II, Section 3 expresses that the President:

"Shall from time to time give to the Congress Information of the State of the Union, and recommend to *their* Consideration such Measures as he shall judge necessary and expedient."

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