Volume III: Issue 3

The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

Clause Discussed:
• Article I, Section 8, Clause 1

Concept Discussed:
• To lay and collect Taxes

The July 22, 1813 Act (III Stat. 22) covered in the previous issue of *The Beacon of Liberty* established collection districts within States for the purpose of assessing and collecting the direct Taxes and internal Duties which would be laid shortly thereafter.

Section 5 of that Act provided:

> "That whenever a direct tax shall be laid by the authority of the United States, the same shall 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."

The noteworthy difference between the 1798 valuation Act (I Stat. 580, covered in *Beacon* II:12) and this 1813 Act and was that all lands, dwelling houses and slaves assessed were now being enumerated and valued "at the rate each of them is worth in money".

By listing all assessed property in terms of monetary worth, different types of property were all reduced to a common denominator, *money*.

The benefit of this consistency was that many different types of property could be dealt with in similar fashion. The potential drawback of this consistency is that it opened the door to increased usage of direct Taxes if Congress desired.

Congress, by valuating all assessed property in monetary worth, could easily lay direct Taxes "on" personal property. Those types of property then commonly taxed by the States (cattle, horses, carriages, business property [grist mills, saw mills, iron works, forges, furnaces], goods or stock in trade, vessels and small boats, billiard tables, fireplaces, money [on hand, or due], etc.) were all likely candidates.

Valuing items by monetary worth invalidated the supreme Court's argument in *Hylton v. U. S.* that personal property was not properly subject to apportionment (because it was difficult to find one type of property universally located). With valuing items by monetary worth, direct Taxes could now be easily laid on a laundry-list of properties.

It would not matter greatly whether every type of the multiple properties levied were located within any particular State, for the properties levied and actually located therein were required to be precisely enumerated and valued. Where the property was actually found, it would add to the total assessment value. If it was not present, it would not add to the total.

To find an (equal) assessment rate, the amount of Tax apportioned to a State would be divided by the total dollar amount of the assessed property found there. Each type of assessed property would then pay this assessed rate upon its value. More property assessed within a State simply lowered the rate of assessment.

A primary drawback to this scheme would be that all property levied with a direct Tax would be enumerated and valued. Privacy concerns and questions of practicality abound in such a scenario, though most of the potential items were already being assessed by the States.

The main drawback to laying direct Taxes is that property owners find the forecasting of the laying of such Taxes difficult. Property owners could not therefore know their ultimate cost of owning property at the time of purchase to be sure they would have adequate funds to fully cover the cost of ownership. A fiscally-conservative Congress would therefore either *rarely* or *constantly* resort to apportioned Taxes to minimize this problem.

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Congress could refrain from laying direct Taxes except in cases of necessity to protect Citizens, which was the expected route of Congress. Congress could alternatively regularly lay mild direct Taxes to which Citizens could become accustomed (still allowing them to plan their expenditures accordingly).

The very nature of direct Taxes, even those laid on monetary worth, more harshly affect Citizens than uniform Duties, but the former would offer far greater protection to Citizens than uniform Excises laid on the *use* of property.

Uniform Excises laid on *use* affect Citizens every bit as severely as direct Taxes (Excises on *use* are laid on [the use of] property already owned, the property must be enumerated, etc.), but do not have their protective mechanism (apportionment). With this type of Excise, Congress can easily "target" specific property for political purposes, with only their discretion to keep them in check.

If assessed property is owned, then all Taxes (or Excises laid on *use*) levied upon it must be paid, even if the property owner is unable. Uniform Duties and Imposts, on the other hand, generally only affect Citizens as they spend their money. If consumers do not have enough money to pay for the consumable item with the incorporated Duty, then they do not consume (but at least they know going in whether or not they can afford it).

The door to the widespread levying of apportioned direct Taxes, though opened, was little used. In fact, it would be difficult in the 21st century to argue that direct Taxation was used even to the degree that the framers of the Constitution first envisioned. Only five legislative Acts laid direct Taxes on the United States (in 1798, 1813, 1815, 1816, and 1861, at $2 million, $3 million, $6 million, $3 million, and $20 million, respectively). Direct Taxes, as a percentage of all government revenue to 1857, supplied only approximately 3/4 of one percent). There has not been a direct Tax laid since 1861.

Neither, however, would it be difficult to argue that few of the framers ever expected such attempts to bypass the strict constitutional protections of property (by looking at the *use* of property, or, later, at *sources* of income). Thankfully, the laying of Excises on the *use* of property was a tactic little-used during the first era of government (from the establishment of the Constitution to the Civil War). The sum total of all internal Duties (and Excises) laid during this time amounted to only 1.35 percent of all revenue collected (to 1857). Excises on *use* amounted to only a small portion of that (less than $1.5 million).

Direct Tax Acts laid during the War of 1812

The first direct Tax laid during the War of 1812 was laid August 2, 1813 (III Stat. 53). Three million dollars were "laid upon the United States, and apportioned to the states respectively" in Section 1 of the Act. On January 9, 1815, Congress enacted a $6 million direct Tax and directed that it be laid *annually* (III Stat 164). On February 27, 1815, Congress also laid an annual $19,998.40 Tax on the *District of Columbia* (III Stat. 216).

On March 5, 1816 (III Stat. 255), Congress repealed the *annual* nature of the 1815 direct Taxes, and laid a new $3 million Tax at the same rate per State as laid in 1813 (and Congress laid a $9,999.20 direct Tax on the District of Columbia).

Within the Acts, each State was apportioned the following amounts of Tax:

Direct Tax Quotas and Acts of the War of 1812

	August 2, 1813	January 9, 1815	February 27, 1815	March 5, 1816
States	III Stat. 53	III Stat. 164	III Stat. 216	III Stat. 255
New Hampshire	$96,793.37	$193,586.74		$96,793.37
Massachusetts	$316,270.98	$632,541.96		$316,270.98
Rhode Island	$34,702.18	$69,404.36		$34,702.18
Connecticut	$118,167.71	$236,335.42		$118,167.71
Vermont	$98,343.71	$196,687.42		$98,343.71
New York	$430,141.62	$860,283.24		$430,141.62
New Jersey	$108,871.83	$217,743.66		$108,871.83
Pennsylvania	$365,479.16	$730,958.32		$365,479.16
Delaware	$32,046.25	$64,092.50		$32,046.25
Maryland	$151,623.94	$303,247.88		$151,623.94
Virginia	$369,018.44	$738,036.88		$369,018.44
Kentucky	$168,928.76	$337,857.52		$168,928.76
Ohio	$104,150.14	$208,300.28		$104,150.14
North Carolina	$220,238.28	$440,476.56		$220,238.28
Tennessee	$110,086.55	$220,173.10		$110,086.55
South Carolina	$151,905.48	$303,810.96		$151,905.48
Georgia	$94,936.49	$189,872.98		$94,936.49
Louisiana	$28,295.11	$56,590.22		$28,295.11
Total	**$3,000,000.00**	**$6,000,000.00**		**$3,000,000.00**
District of Columbia			$19,998.40	$9,999.20

New apportionment procedures were added to the direct Tax Acts laid during the War of 1812. In 1798, each State received its apportioned share of the $2 million then levied. The Citizens of each State were obligated to pay their respective share depending upon the assessed property they owned. The State was looked at as a whole, both in population and assessable property.

Beginning in 1813, however, the apportionment process was broken down even further. Besides apportioning to each State the total amounts listed above, a later section of the Act apportioned to each *County* the County's portion of the State's Tax, based upon the population of the County as compared to the State.

Section 2 of the August 2, 1813 Act, for example, apportioned New Hampshire's quota of $96,793.37 (as laid by Section 1) so that Rockingham County paid $25,298.89; Strafford County, $17,698.66; Hillsborough County, $20,219.16; Cheshire County, $19,318.03; Grafton County, $11,910.43; and Coos County, $2,348.20.

The further the direct Tax was apportioned, the more the Tax represented the actual property and population found within a smaller locale. Apportioning to the County level eliminated the subsidy of one County to another that was possible under State apportionment.

Direct Taxes laid upon the United States

Direct Taxes, though specifically laid on property (owned by individuals), are "laid upon the United States, and apportioned to the States respectively" as detailed in Section 1 of the August 2, 1813 Act. Words of identical meaning were used in 1798, 1815 and 1816 (and 1861).

This wording was made more literal beginning in 1813, when Congress allowed (by Section 7) a 15% deduction off the amount due within each State if a State directly paid its quota into the Treasury in a timely manner (before February 10, 1814 [allowing States the notice of six months from August, 1813]). If States could not pay in such a timely manner, Section 7 alternatively allowed a 10% deduction if they could pay by May 1, 1814 (allowing States the notice of 9 months). The use of this mechanism assured the United States a quicker payment (of a lesser sum) without collection expenses.

The States, at their discretion, assumed the debt which was otherwise collectable only upon the assessed property of individuals. A benefit allowed by this mechanism was that the States could then use their collection procedures and officers already in place for added efficiency.

If the State did not elect to pay its quota itself, the State had nothing to do with the direct Tax. Collectors working under the supervision of the Commissioner of the Revenue (acting under the Secretary of the Treasury) then collected the Tax from the State Citizens on the property assessed by the Tax Act (as in 1798).

The implications of this alternative collection mechanism were significant and far-reaching. This mechanism properly supported the concept of State sovereignty within a dual structure of the federal/State government system. This process of the States paying the quotas themselves more-closely followed the original *requisition* system used under the Articles of Confederation, but it provided the vital safety feature that if the State failed to pay the appropriate funds, the federal collection process resumed on the property of individuals (specifically see the proviso in Section 5 of the 1816 direct Tax Act; III Stat. 255 @ 256).

The States, in ratifying the Constitution, gave up the ability to lay Imposts (without the consent of Congress, see Art. I:10:2). They did not, however, give up the ability to lay direct Taxes on the property of their Citizens. Both the State and federal governments therefore have the ability lay such direct Taxes. Letting the States collect federal direct Taxes helps to minimize federal intervention into the lives of State Citizens.

The mechanism specified in 1813 (and in all later direct Tax Acts) allowed each State individually the discretion to pay to the Government of the United States the State's quota. The States would then individually collect the Tax from their own Citizens *according to their normal methods of taxation* with their own revenue officers.

It would thus not matter greatly which types of property Congress would specify, *for they would only be attached if the State did not assume the quota*. The State would lay Taxes on items of its chosing. This feature made the assessed property specified by Congress largely immaterial (in States which assumed their quota).

State assumption of federal direct Tax quotas allowed the States to choose the items to assess and levy with Taxes.

Though the direct Tax Acts laid Taxes amounting to $14 million between 1798 and 1816, only $12.74 million was collected by the United States due to such discounts.

The total *amount* of direct Taxes to be laid are determined by Congressional discretion, as are the *types* of property levied (until States assume their quotas and then they direct the property levied). The amount of Tax is then apportioned to the States under the express terms of the Constitution (Article I, Section 2, Clause 3 and Article I, Section 9, Clause 4).

As far as the Constitution is concerned, the *amount* of Tax is irrelevant — there are no minimum nor even maximum amount or percentage standards which Congress must follow. Neither does the Constitution care which property is actually levied, since taxation has nothing strictly to do with targeting property. Which property happened to be levied with the Tax was financially immaterial as long as it could provide the necessary sums (apportioned) with the minimum of collection difficulties.

The War of 1812 was drawing to a close by the end of 1814,[1] but this did not then stop new Duties and Taxes from being laid.

Direct Taxes were laid again on the United States on January 9, 1815 and March 5, 1816. Just as there was a time lag between when the war began and when new revenue laws were enacted, there was also a time lag between when the war ended and when revenue laws stopped being enacted.

Section 27 of the January 9, 1815 direct Tax Act, like the direct Tax Acts both before and after this, empowered the district tax collectors to seize property and sell it at a public sale (under regulations listed to protect Citizens and their property except as otherwise allowed) for collection of the amounts due. The amount necessary to clear the books of delinquent accounts was the amount of Tax due plus twenty percent (for the cost of sale, interest, penalty, etc.).

The Act allowed a two-year redemption period after the sale, during which time the defaulted owner or his heirs could redeem land by payment of the amount due and 20 % per year. Only after the redemption period expired was the purchaser finally given a deed for his earlier purchase of land.

Congress later gave numerous extensions (six Acts allowing 14 additional years) for the redemption of land before the purchaser at public sale was given a deed to the property.[2]

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1. The Treaty of Ghent was signed by the American plenipotentiaries (foreign ministers John Q. Adams, James A. Bayard, Henry Clay, Jonathan Russell and Albert Gallatin) and British counterparts on December 24, 1814 (VIII Stat. 218). The First Article of this treaty stated "All hostilities, both by sea and land, shall cease as soon as this treaty shall have been ratified by both parties".

On February 16, 1815, the Senate unanimously consented to the treaty, officially ending hostilities and the war (Vol. 2, Senate Executive Journal, 13th Congress, 3rd Session, page 620).

2. On April 20, 1818 (III Stat. 441 @ 442), Congress extended the redemption period allowing property owners three additional years before purchasers were given title to the lands they purchased.

On May 11, 1820 (III Stat. 575), Congress again extended the redemption period three years.

On February 4, 1822 (III Stat. 649), Congress extended the redemption period one year.

On March 3, 1823 (III Stat. 776), Congress extended the redemption period two years.

On May 16, 1826 (IV Stat. 168), Congress extended the redemption period two years.

And, on April 28, 1828 (IV Stat. 263), Congress extended the redemption period for the final time, for three more years after the end of the current session of Congress.

Every chance was extended to the original land owners to pay the Taxes due so they could keep (or regain) their land. This was proper, as the primary purpose of the Act was to raise necessary revenue for the government to *protect* property and persons (from an invading military), not to *punish* property owners or *favor* certain speculators of defaulted land.

Internal Duties Repealed

With the conclusion of the war came lessened need for new revenues. One could hardly argue that the United States were yet back on firm financial ground however.[3] The United States would ultimately spend an estimated $158 million dollars on the war ($93 million of original war costs, $49 million of Veteran's benefits, and $16 million of Interest).[4]

The Duties laid in 1813 and 1815 all had provisions that they could only be laid and collected for one year following the termination of the war (the deadline was therefore February of 1816).

Extensions were granted in amendatory Acts, such as the one enacted December 15, 1814 (III Stat. 148 @ 151), that the Duties laid on the use of carriages "shall be laid, levied, and collected, during the present war between the United States and Great Britain, and until the purposes aforesaid shall be completely accomplished" (the aforesaid purposes being "to reduce and eventually to extinguish the public debt").

With a fiscally-conservative foresight seldom shown by modern-day politicians, Duties were repealed in a relatively short period following the close of the war (as opposed to the 20th-century routine of war legislation continuing long after its original purpose expired).

This freedom from Duties allowed productive Citizens best use of their capital, helping to improve the local and national economy while maintaining the proper limited sphere of government.

On February 22, 1816, Congress repealed the Duties (III Stat. 254) which had been laid on goods manufactured in the United States. Shortly thereafter, on April 9, 1816, Congress repealed the Duty (III Stat. 264) on household furniture kept for use and also on watches kept for use.

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3. A primary reason given for creating the second Bank of the United States in 1816 (April 10th; III Stat. 266) was to help stimulate the dismal economy (by providing a circulating medium of exchange).

4. U. S. Serial Set, 93rd Congress, 1st Session, House Document # 93-78 *Historical Statistics of the United States, Colonial Times to 1970*, Pg. 1140, Chart Series Y 849, Y850, Y851, & Y 854.

One and a half years later, the first Act of the Fifteenth Congress gave Americans a Christmas present they would not soon forget. On December 23rd, 1817, Congress enacted *An Act to abolish the internal duties* (III Stat. 401). That Act abolished all remaining internal Duties, effective January 1st, 1818. All internal Duties were thus repealed within three years of the end of the war.

Section 1 of the 1817 Act stated, in part:

> "*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That from and after the thirty-first day of December, one thousand eight hundred and seventeen, the internal duties on licenses to distillers; on refined sugars; licenses to retailers; sales at auction; carriages for the conveyance of persons; and stamped vellum, parchment, and paper, shall be discontinued; and all acts, and parts of acts, relative thereto, shall, from and after the said thirty-first day of December, be repealed."

A proviso was included in Section 1 which kept alive the collection of all Duties owed through 1817 past that date (payment was required of all Duties, fines, and penalties incurred through 1817, even though the actual payment of the old obligations would possibly take place after 1817).

Section 2 stated, in part:

> "That the offices of the collectors of the internal duties and direct tax shall continue in each collection district, respectively, until the collection of the duties above mentioned, and of the direct tax, shall be completed in such district, and no longer…and the office of commissioner of the revenue shall cease, and be discontinued, whenever the collection of the duties and tax above mentioned shall be completed, unless sooner discontinued by the President of the United States, who shall be, and hereby is empowered, whenever the collection of the said duties and tax shall have been so far completed as, in his opinion, to render that measure expedient, to discontinue the said office."

In an 1802 Act (II Stat. 148), Congress abolished internal Duties and direct Taxes,[5] closed collection offices and terminated revenue positions which had been established in that earlier timeframe.

In 1813, due to the War of 1812, internal Duties and direct Taxes were again laid, collection offices were opened once more and the office of the Commissioner of the Revenue was again created.

In 1817, lightning struck twice within 15 years as history repeated itself. Congress once again repealed all internal Duties and direct Taxes,[5] eliminated the office of Commissioner of the Revenue and closed collection offices.

In 1817, Congress once again repealed all remaining internal Duties & direct Taxes, closed collection offices and eliminated the Office of Commissioner of the Revenue

For the next two generations following 1818, Congress enacted no more internal revenue statutes. No domestically-oriented Duties or Excises were laid, nor were any more apportioned Taxes levied. From 1818 until 1862, Congress relied upon *external* revenue — *Imposts* — for the vast bulk of the government's limited needs (fully 84% from 1791 to 1857).

Public land sales were the next major item to bring in revenue (10% of the total revenue to 1857 [in 1836, public land sales brought in 49% of all government revenue]).

Postal revenue and miscellaneous receipts (and through 1836, shareholder dividends from the second Bank of the United States) rounded out government revenue. The federal government was limited in scope and followed closely the commands of the Constitution.

The American Presidents elected in the 1830's, 1840's and 1850's (Presidents Van Buren, Harrison, Tyler, Polk, Taylor, Fillmore, Pierce and Buchanan) are relatively obscure men known today only to their ancestors and history buffs.[6] The general lack of recognition of these men today is, overall, a testament to them upholding their Oath of Office to properly fulfill their limited roles as directed by the Constitution.

Presidents beginning with Lincoln and continuing in the 20th century seemed more concerned with leaving a powerful legacy than with properly fulfilling their oath of office to "preserve, protect and defend the Constitution of the United States".[7]

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5. Direct Taxes are (generally) a one-time Tax. A Tax of a given amount is laid, and when paid, all Tax liability is extinguished (no future Tax liability remains). Direct Taxes have no reoccurring nature about them, unless they have express wording of an *annual* nature. In 1815, Congress laid an annual Tax, but the annual nature of the Tax was specifically repealed the following year (before it ever re-occurred annually).

Some Congressmen, in fact, even then doubted that Congress had the ability to lay an annual Tax, due to the effect that it would bind the next Congress of their ability to determine and lay the amount they thought necessary (due to the extensive nature of the assessment and collection of direct Taxes, only one Tax per year could realistically be laid [at least on any one item]).

6. "Old Hickory", General Andrew Jackson (President from 1829-1837), who won fame from the War of 1812 (and his fight to eliminate the second Bank of the United States), was the notable exception to obscurity from this period of time.

The primary criterion on which to judge a President should be how he fulfilled his constitutional oath to "preserve, protect and defend the Constitution of the United States".

Not again (from 1816) until 1861 (to be effective 1862) did Congress enact legislation to lay additional internal revenue (domestically-oriented Duties, Excises and direct Taxes).[8]

With the exchange of gunfire at Fort Sumter and the onset of Civil War came the primary assault to the Constitution and limited government. American government has not been the same since.

Taxation in the Second Era of Government

The method of study chosen by *The Beacon of Liberty* is to examine the fundamental powers of the Constitution. Learning these powers is easiest when the government readily followed the commands and limitations of the Constitution.

Beginning with the Civil War era, the Government of the United States began following a course quite independent of the Constitution. Thus the cut-off point for *The Beacon of Liberty* for normal study of constitutional powers will be approximately 1860.

After Congress' (Article I, Section 8) powers have all been discussed through to the second era of government, study of the remainder of the Constitution will temporarily halt.

Study will then shift to looking at one of Congress' enumerated powers ("to coin money") during the second and third periods of government. The highlight of an important power provides insight into the expansion also of other powers.

This diversion will provide readers with the fundamental working knowledge of the mechanism used by Congress to legally act independent of normal constitutional parameters. It will be a study designed to pull back the curtain of deception used for well over a century to expand government beyond recognition of the Constitution.

It is proper to have a firm understanding of the Constitution and the powers of Congress before delving seriously into the actions of Congress which are inconsistent with the vast bulk of the Constitution's commands. Before one can learn which powers are abnormal, one must thoroughly understand the scope of the normal powers.

That said, a brief look into the second era of government is not necessarily here out of order.

On August 5, 1861 (XII Stat. 292), Congress (in Section 8) laid an *annual* $20 million direct Tax upon the United States and apportioned it to all the States and territories.

Assessed by the Act was (the monetary worth of) "all lands and lots of ground, with their improvements and dwelling-houses". Unlike previous direct Tax Acts, slaves were not assessed with a Tax.

Direct Tax Acts Laid on the United States			
Date of Enactment	Amount	U. S. Statutes at Large	Sections
July 14, 1798	$2 million	I Stat. 597	All
August 2, 1813	$3 million	III Stat. 53	All
January 9, 1815	$6 million	III Stat. 164	All
March 5, 1816	$3 million	III Stat. 255	All
August 5, 1861	$20 million	XII Stat. 292 @ 294	8-48, 52

Section 36 of the 1861 Act, like the direct Tax Acts before it, allowed for public sale of properties for non-payment of Taxes, allowing a two-year redemption period after sale which the owner or his heirs could pay the necessary fees to reclaim the land. No deed was given to the purchaser until the redemption period terminated.

The Act of June 7th, 1862 (XII Stat. 422) aided Congress in the collection of the direct Taxes laid in the "Insurrectionary Districts within the United States".

Section 1 of the Act imposed an additional *fifty* percent penalty for non-payment in those States or territories where "by reason of insurrection or rebellion, the civil authority for the Government of the United States is obstructed" and the direct Tax Act "cannot be peaceably executed".

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7. Abraham Lincoln, martyred in 1865, enjoys a popularity today perhaps unequaled except by George Washington. It is true that Lincoln presided over the government during the era which brought freedom to millions of deserving people, which is his commendable and perhaps redeeming attribute. However, the tactics set in motion during the war, measured in terms of the Presidential oath and the direction of post-war government, have violated the spirit of the Constitution more than any other President except Franklin D. Roosevelt.

The primary criterion to judge a President should be how he fulfilled his constitutional oath.

8. Though not normal internal revenue, *dividends* were received during much of the scheduled 20-year duration of the second Bank of the United States (in operation after enactment April 10th, 1816 [III Stat. 266]). These dividends added to the government revenue during this 1816-1861 period.

With a 50% penalty on a $20 million direct Tax laid annually[9] upon all the States (even those in rebellion against the United States), it did not take long for the delinquent Tax bills in the South to begin mounting to serious money.

Section 4 of the 1862 Act provided that the legal title to each parcel sold for Taxes would be forfeited and the title would "vest in the United States or in the purchasers at such sale, in fee simple, free and discharged from all prior liens, incumbrances, right, title and claim whatsoever".

Each purchaser, by Section 11, was required to be a "loyal citizen of the United States, or any person who shall have declared on oath his intention to become such".

Section 12 of the 1862 Act provided that all proceeds from land sales (or leases) be split, with *half* retained for the government of the United States; another *fourth* to be paid to the Governor of the State once "the people shall elect a Legislature and State officers who shall take an oath to support the Constitution of the United States"; and the final *fourth-part* to be paid over to the State to serve "as a fund to aid in the colonization or emigration from said State of any free person of African descent who may desire to remove therefrom to Hayti, Liberia, or any other tropical state or colony".[10]

In an 1865 amendatory Act (March 3rd, XIII Stat. 501), Congress provided, in **Section 2**:

> "That after the time allowed for the redemption of any lands…shall have passed, and after the purchase-money shall have been fully paid, the President is authorized and required to cause a patent or patents to be issued to any person as may be the bona fide purchaser, owner, assignee, or transferee of such lands."

Unlike the six extensions of 14 years following the War of 1812, extensions were not immediately given following the Civil War for redeeming land. Large areas of the South were put up for sale to the highest bidders qualified as "loyal citizens".[11]

With such a strict arrangement, it would be difficult to argue that the primary purpose of the 1861 direct Tax Act was to raise government funds if it weren't for the fact that the Civil War ultimately proved to be about 80 times as expensive (Northern expenditures only) as the War of 1812.

The United States (North only) spent almost $13 billion on the war ($3.2 billion of original war costs, $8.58 billion of Veteran's benefits, and $1.172 billion of Interest).[12]

Selling Southern property to collect on the direct Taxes levied during the war provided the legal basis for the transfer of wealth from the former plantation owners to those who could purchase (Northern opportunists).

Interestingly enough, a few decades years later, on March 2, 1891, Congress passed a law (26 Stat. 822) refunding all money collected under the direct Tax Act of August 5, 1861. By this time, ownership of significant amounts of property had already changed hands.

An 1891 House Judiciary Committee report[13] detailed that none of the Southern States assumed the obligation of the 1861 direct Tax quotas, although the Northern States assumed their quotas. When collections were suspended,[14] the total collection was shy by about $2.5 million (ignoring the 15% collection discounts taken by the North).

The written views of the minority of the committee questioned the logic of remitting the balance yet due and refunded the amount paid, especially when the majority admitted that "a complete restoration can not be made".

The 1891 Act refunded to the Northern States the moneys they paid (as their quotas). No attempt was made to extend the refund to the Northern Citizens who ultimately paid the Tax.

The amount of money collected from individuals in the South was directed to go into a trust fund for six years where the owners (or heirs) could present refund claims.

Any trust money remaining at the end of the term would belong to the State (the Southern States, since they never assumed their quotas, only received money under this mechanism of those funds where owners did not present valid and timely claims for their shares).

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9. Section 173 of the Act of June 30,1864 (XIII Stat. 223 @ 303-304) repealed the 1861 Act, thereby also repealing the annual nature of the Tax. Only the first year, 1862, was ever levied and (mostly) collected (before being later refunded entirely and the uncollected balance remitted).

10. As shown repeatedly, though abolitionists opposed slavery, many were also generally opposed to free blacks living amongst the white Citizens. This provides a clue that the stated objectives of government of this era do not necessarily coincide with the actual reasons of enacting legislation (those seeking to enact legislation may simply use the popular will for their own [hidden] objectives).

11. An 1872 Act (XVII Stat. 330) allowed a 2-year redemption window for confiscated lands still held by the United States to be transferred back to the owner or his heirs upon payment of the direct Taxes due, plus advertising, legal and other costs, and interest at ten per centum per annum.

12. U. S. Serial Set, 93rd Congress, 1st Session, House Document # 93-78 *Historical Statistics of the United States, Colonial Times to 1970*, Pg. 1140, Chart Series Y 849, Y850, Y851, & Y 854.

13. U. S. Serial Set, 51st Congress, 1st Session, House Report # 683, "*Direct Tax*". Microfiche Ref. # 2809.

14. Section 14 of an 1866 Act (XIV Stat. 328 @ 331) first granted authority to the Secretarty of the Treasury to suspend collection of the 1861 direct Tax .

Few Americans think that a government surplus could prove "troublesome", but the minority report referred to the 1891 surplus in this manner, due to the various designs to spend it on activities not otherwise designated by the Constitution.

The collection of government revenue is clearly tied to the power "to pay the Debts and provide for the common Defence and general Welfare of the United States".

That Congressmen have the moral and legal duty to spend such collected funds for only Constitutional purposes (or save them for future need) cannot be realistically doubted. It is obvious, however, that an overabundance of funds otherwise proves tempting.

Also intriguing is that Congress did not attempt to refund the income taxes (duties) raised during the Civil War era. At best, these income duties were viewed as war-time expedients; most considered them unconstitutional taxes for lack of apportionment.

Evidently, Congress in 1891 wanted to undercut the moral authority of apportioned Taxes while getting the States comfortable with kickbacks provided from annual income taxation. As cohorts in crime, the States readily accepted the 1891 disbursements of federal largess.

Income Taxes and Income Duties

Just a few years later, in 1894, Congress enacted another unapportioned income tax Act (28 Stat. 509 @ 553), similar to those enacted during the Civil War.

The first income tax Act had been enacted on August 5, 1861 (XII Stat. 292 @ 309 [Sections 49-51]), scheduled to become effective January 1, 1862.

The "income tax" portion of the Act was quickly repealed (without collection of any taxes) by Congress in the Act of July 1, 1862 (XII Stat. 432 @ 473) which replaced the tax with an income "duty".

Neither the income duty nor the initially-laid income tax were apportioned. Collections of income duties began in 1863 and lasted through 1871 under the Acts numbered 2-5 below:

Income Tax Acts of the 19th Century			
	Date of Enactment	U. S. Statutes at Large	Sections
1	August 5, 1861	XII Stat. 292 @ 309	49 — 51
2	July 1, 1862	XII Stat. 432 @ 473	89 — 93
3	June 30, 1864	XIII Stat. 223 @ 281	116 — 150
4	July 13, 1866	XIV Stat. 98 @ 137	(part of) 9
5	July 14, 1870	XVI Stat. 256 @ 257	6 — 20
6	August 27, 1894	XXVIII Stat. 509 @ 553	27 — 36

In *Pollock v. Farmers' Loan and Trust Company* (157 U. S. Reports 429, 1895), the supreme Court properly held unconstitutional the 1894 income tax Act which laid an income tax without apportionment.

16th Article in Amendment

In response to the supreme Court's ruling that an income tax must be apportioned, Congress formed an Amendment and sent it to the States for ratification. The **16th Amendment** was declared ratified by the States on February 3, 1913, reading:

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

1913 was the year the triple threat to liberty was unleashed. The *17th Amendment*, directing the election of Senators to be chosen by the people in each State (freeing Senators from effective oversight of the State Legislatures which initially elected them, as first prescribed by Art. I:3:1), was ratified on April 8th; the *Income Tax Act of 1913* (resting its authority on the topically-related *16th Amendment*) was enacted on October 3rd (38 Stat. 114 @ 166); and the *Federal Reserve Act* was enacted on December 23rd (38 Stat. 251).

As acknowledged by the supreme Court in 1895, the Constitutional requirement of apportionment of all direct Taxes meant that Taxes on income required apportionment. Thus was the reason for the Amendment — to provide Congress a means to collect revenue on income (under certain instances) without apportionment, simply by the rule of uniformity.

> Apportionment is "one of the bulwarks of private rights and private property".
>
> supreme Court Chief Justice Melville Fuller in *Pollock v. Farmers' Loan and Trust Company* 157 U. S. 429 @ 583, 1895.

Thomas Jefferson called judges, due to their persistent and improper habit to "grapple further hold for future advances of power", a "corps of sappers and miners" that worked steadily "to undermine the independent rights of the States, and to consolidate all power in the hands of that government".[15]

15. *The Writings of Thomas Jefferson* (Autobiographical section), 1821. Library Edition, Lipscomb & Bergh, Editors, Volume I, pp. 121-122.

If Jefferson's view reflects the Court's true leaning, as history could possibly readily attest, then action taken by the Justices to actually protect Citizens may be the conservative perspective. It should thus be safe to say that when the supreme Court held that an income tax which was not apportioned was neither constitutional, then it should be safe to take them at their word.

Thus, due solely to the 16th Amendment, does Congress have the ability to lay an income tax without apportionment. This is the importance of the Amendment, for Congress' current taxing power rests upon this Amendment which few people understand.

The first portion of the **16th Amendment** is quite simple and easy to follow:

> "The Congress shall have power to lay and collect taxes on incomes."

The last portion of the **16th Amendment** is also easy to understand, that taxes on incomes can be laid:

> "without apportionment among the several States, and without regard to any census or enumeration."

Due to the lack of familiarity with the middle portion ("from whatever source derived"), it is unfortunately often left out of the equation. Many people, unfamiliar with the middle portion but understanding the first and last, *behave as if* the Amendment reads:

> "The Congress shall have the power to lay and collect taxes on incomes without apportionment among the several States, and without regard to any census or enumeration."

Of course, if that was all that Congress meant and all that the States ratified, *then that would have been the extent of the Amendment*. The power given by the 16th Amendment has a qualifier which cannot be ignored, however, the wording "from whatever source derived". This unfamiliar middle portion provides the primary rule of the Amendment, allowing an instance where an income tax may be laid without apportionment.

The Amendment allowed Congress the ability to lay taxes on incomes without apportionment *under certain circumstances*. If those circumstances are not followed, then Congress CANNOT lay a tax on income without apportionment. Blanket authority to lay an income tax without apportionment was not given.

"From whatever source derived" must then be understood to be the primary words which changed the authority of Congress to lay an income tax without apportionment. Due to this importance, it is imperative that this wording be understood.

From and *derived* have much the same meaning. *Derivation* refers to *origin* (here of income). *From* also points back to *origin*. "From whatever source derived", in referencing a "source" of income, acknowledges that *income* and the *source* of income are one in the same *unless they are properly separated*.

When something is still whole, still united together, one does not speak of it being divided into separate parts (of *being* something and being *derived* from something). Once a thing is divided, *then one can compare its constituent parts*.

The human body is whole; one cannot even speak about the *arms* and *legs* until one has figuratively separated the body into separate pieces (at least in one's mind). Some parts of the body are so important that the body cannot exist without them. In law, there are similar "vital organs" which cannot be separated from the principle without devastating that principle. "From whatever source derived" is the "vital organ" of the 16th Amendment.

To speak of income "from whatever source derived", it is therefore obvious that income must be separated from its original source to be taxed without apportionment. To hold income capable of being taxed without apportionment, it must first be separated from its source.

If the income has not been separated from its source, then any Tax would still be *on* the source of income. A Tax *on* the source of income — a person or his property — cannot be taxed without apportionment under any circumstance, even after the Amendment. Had this not been the express position of the Amendment, the amendment would have not included the middle portion (the qualifier — "from whatever source derived").

To hold income capable of being taxed without apportionment, it must first be separated from its source.

For example, if a farmer owned a field of alfalfa, then any Tax on the property or on the alfalfa (while growing on the property) would require apportionment, both before and after the Amendment.

However, if the farmer mowed, raked and baled the hay and loaded it on a truck and sold the hay to a neighbor, then these actions separated the hay from the land. The gain on the hay sold to a neighbor could then be taxed uniformly due to the 16th Amendment, since the tax was not "on" the property.[16]

Just as the *use* of property was a intricate legal maneuver to hold property indirectly subject to uniform Excises, so to was *separating income from its source*. Both concepts (*use* and *source*) are legal maneuvers designed to bypass the requirement of apportionment.

In the first era of government, *use* was a concept which added less than one and a half million dollars to the government coffers over one decade (out of seven).

Source of income is a legal concept which has brought, day in and day out without abatement for nine decades, trillions of dollars to the U.S. government giving it an economic power unprecedented in history.

For the first time under the Constitution, the 16th Amendment would provide for an actual "indirect tax" (though it would otherwise resemble an Excise) since the Amendment specifies laying a "tax" without apportionment.

Given that direct Taxes are specifically denominated as such, then it should hold that revenue specifically labeled as a *tax* which is exempt from apportionment should be called an "indirect tax".

The 16th Amendment, ironically enough for all its controversy, provides a model for proper growth of government power.

Congress, without adequate authority, had laid income taxes (and income duties) without apportionment in the 19th century. The supreme Court properly ruled that such ability was beyond the scope of Congress and that such actions contravened the Constitution for lack of apportionment.

Congress then proposed an Amendment seeking additional authority and sent it to the State Legislatures for ratification. Though controversy exists regarding proper ratification, the manner of seeking an Amendment is precisely the mechanism provided for by the Constitution to enlarge the powers of government. That all growth of government power would rest on the Fifth Article of the Constitution would be a welcome change.

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16. Of course, the farmer's alfalfa hay would also be the farmer's (personal) property, so if he stored it in his barn, this hay could not yet be taxed without apportionment (as apportionment also protects *personal* property). Not until the farmer sold the hay for money could income from the hay be taxed uniformly. If the farmer fed the hay to his cows, never would the hay be subject to a uniform income tax (though if he sold his cows or their milk, the internal profit on the hay would, in one way or another, be reflected there).

The actual workings of the 16th Amendment merely provided a second definition for the words *Tax* and *income*. The primary definition of *Tax* was unchanged and referred to revenue sought from persons or property; the second definition consisted of revenue sought on income separated from persons or property. The first is apportioned; the second uniform.

A Tax on the income of persons or property must be apportioned; a tax on income separated from these sources only needs to be uniform.[17]

The inherent legal fallacy of the 16th Amendment stems from the common misunderstanding of cash money being an alternative to property, rather than merely its most liquid form. The Amendment acts as if the trading of one form of property to another (more-easily traded property) results in a gain (of property). While this can happen with skilled negotiation, more frequent is a loss of property in the conversion process.

The fallacy is less likely to occur when one thinks of constitutionally-ordained money, gold or silver coin (more easily viewed simply as another commodity).

Because a farmer trades some hay for money does not naturally mean that he increases his wealth (property) any more than when he trades some hay for grain. All add together to form the farmer's assets.

An Accountant's balance sheet relates all forms of property back to *monetary value*. How those assets are distributed between money and other forms of property merely determine his *liquidity*, not overall wealth (questions of income-producing ability aside).

Money certainly makes trade infinitely easier, yet barter without using a (single) medium of exchange is not unfit for trade. The concept of money certainly makes the intricate economy workable, *but it does not materially change the nature of taxation by removing items otherwise requiring apportionment from that requirement*.

Further discussion regarding taxation will be deferred for quite some time, as it is time to look into the Constitutional authority of Congress *to borrow Money*.

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17. The supreme Court held in 1895 that a Tax on the income of property must be apportioned. Ratification of the 16th Amendment, as worded, would not *invalidate* the Court's opinion, it would only *limit* it. To invalidate the earlier opinion, it would have been necessary to omit the words which qualified the scope of the Amendment ("from whatever source derived").

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