



Liberty Tree

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TO BE OR NOT TO BE ...

Constitutional

Part II

By Dick Greb

In this current series I'm looking into the widely held position within the Tax Honesty movement that I've dubbed 'technical constitutionality.' The central tenet of that position is that the income tax laws are constitutional because Congress wrote them such that citizens are not made subject to the tax except in special circumstances, but at the same time, they concealed that fact behind any number of technicalities which various patriots have claimed to uncover over the decades. However, it must be noted that there is very little agreement between said patriots on what this hidden mechanism for citizen non-taxability actually is, and in fact, many of their theories on the issue are mutually exclusive. About the only thing that those who believe in the constitutionality of the tax laws (who I will call the "cons") can agree on is that they are constitutional *only because* they exclude the citizen. That is, if citizens were taxed the way the government tries to convince the public that they are, then most *cons* would wholeheartedly agree that the laws were unconstitutional.

In the first installment, we looked at the viability of technical constitutionality as an incentive for Congress to exclude the citizens from the income tax. And we found that it provides no rational basis for such exclusion, since there is no circumstance in which it could benefit the government. *Without* the

collusion of the courts, technical constitutionality would not prevail against a citizen's challenge to the enforcement of the tax against himself. Indeed, the government even arguing it in response to such a challenge would be counterproductive to continuation of the fraud — which is what it most certainly would be. On the other hand, *with* the collusion of the courts, technical constitutionality becomes totally unnecessary, because if the Supreme Court says a tax on citizens is constitutional, then that's the only support Congress needs. So, with or without the collaboration of the courts, technical constitutionality serves no useful purpose.

Of course, all of this presumes that Congress understood that a tax on the income of citizens would be unconstitutional, because otherwise nobody could honestly believe that they would ever **not** tax them. So, in this installment, we will continue to investigate whether or not that presumption is true. We left off last time discussing a bill proposed in 1912 by House Democrats (H.R. 21214), the purpose of which was to extend the 1909 excise tax imposed on the business of corporations¹ to include individuals. Although this bill was passed by both House and Senate, the 16th Amendment was declared ratified before it could make its way through the conference committee.² Much of the bill was ultimately remade into the income tax enacted as part of the 1913 Tariff Act,³ so the arguments presented in the debates on H.R. 21214 are a good reference to the mind set of Congressmen of the time.

Democrats' golden rule

We'll concentrate mostly on Tennessee Representative Cordell Hull, who, according to House Majority Leader Oscar Underwood, "introduced the first draft of this bill and is entitled to much and most of the credit for its authorship."⁴ After a brief reproach of those who opposed it, Hull

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1. 36 Stat. 11, 112, Ch. 6, § 38 (August 5, 1909).
2. A conference committee irons out the differences between versions of a bill passed by the House and Senate, and combines them into one which both houses must then repass to get the final version.
3. 38 Stat. 114, 166, Ch. 16, § II (October 3, 1913).
4. Congressional Record — March 16, 1912, page 3498.

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begins his initial hour-long discussion of his bill:

Mr. Chairman, in addition to revenue the prime purpose of the pending measure is to secure justice in taxation. I therefore favor the excise tax [on individuals engaged in business] proposed as a bona fide means of raising adequate revenue and equalizing existing tax burdens. *There is no sounder rule than to require the citizen annually to pay a tax, measured by a fair and just proportion of his net gains. This golden rule of taxation has been written as nearly as possible in the measure now under consideration. This bill assumes that every American citizen is honest enough and patriotic enough to willingly bear his fair share of the tax burdens. It is expected, therefore, that this measure will encounter the opposition of those who, claiming and enjoying all the benefits of government, would shirk its burdens. The blessings and burdens of government go hand in hand. No good citizen will invoke the one and evade the other.*⁵

Remember now that this is not just some random Congressman. Hull is the main author of the bill under discussion — the bill that will eventually evolve into the income tax portion of the 1913 tariff act. So, he's not guessing at what it deals with; **he knows** what he intended the bill to do! And his stated intention was that “*every American citizen ... bear his fair share of the tax burdens.*” That being said, however, Hull's *fair share* proposition wasn't to be accomplished solely by this new extension to individuals of the tax on business, since the \$5,000 minimum income level before the tax kicked in prevented it from applying to the majority of citizens. As we will see a little later, Hull argued that said majority, consisting of the lower and middle income earners, was already paying the bulk of the tax burden, through the mechanism of high tariffs (favored by the Republicans) raising the prices of all the goods they purchased. So his proposition included the lowering of the tariff rates in conjunction with the new tax on individuals engaged in business, which would purportedly shift some of the tax burden to the higher economic classes. He continues:

Mr. Chairman, the gross inequality of our present system of taxation constitutes a severe

reflection on the intelligence and the fairness of the American people. That system, unequal as it is indefensible, is the mightiest engine of oppression imposed upon an honest yeomanry since the feudal ages. *The chief burden of all tariff and local taxes now falls upon the middle and poorer classes. Only those more able to pay escape it. The people of small annual earnings, not exceeding \$1,500 to \$2,000, including the small landowner, pay the great bulk of our local and customhouse taxation. ... Most large owners of real estate and concealed personalty pay nominal taxes in proportion to their ability.*⁶



Cordell Hull, the progressive Tennessee Representative credited with primary authorship of the first income tax bill after the 16th Amendment was declared ratified. Hull loved taxing everyone as much as he loved globalist government. He helped create the UN, and was called “the Father of the United Nations” by Franklin D. Roosevelt .

Notice he mentions that the rich folks don't contribute to the tax burden in proportion to their *ability to pay*. Of course, this goes back to his comment above that *good* citizens will willingly consent to paying an annual tax “measured by a fair and *just proportion of his net gains.*” In other words, Hull (and the Democrats in general, as well as the ‘progressive’ Republicans) believe it is a *sound* rule that the government has a right to some percentage — to be determined by them, of course — of all gains of all citizens all the time. You may also have noticed the striking similarity between Hull's golden rule of taxation and the communist credo “To each according to his needs and from each according to his ability.”

Giving you the ‘business’

Rep in mind that the only factor that prevents *K*all individuals from the burden of this tax on ‘doing business’ is the \$5,000 threshold. If not for that, nearly everybody would be paying it. Naturally, this threshold encourages acceptance by the short-sighted majority for this tax-the-rich

5. *Ibid.*

6. *Ibid.*

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scheme, while insuring that Congress can, anytime it desires, simply lower the threshold to include more and more citizens in the tax. And what is their definition of ‘doing business’? Hull explains:

Mr. Chairman, the scope of the application of the proposed tax must necessarily be determined by the comprehensiveness of the term “business” as defined in the act. The Supreme Court has laid down its tax-meaning definition as follows:

Everything about which a person can be employed; all activities which occupy the time, attention, and labor of persons for the purpose of a livelihood or profit.

How could this definition be more comprehensive? *The Supreme Court thus wrote into the Flint decision the broadest meaning of the term “business” for the purpose of making it the subject of an excise tax. No definition of business given in any other sense is so wide in its scope.* First, it embraces “everything about which a person can be employed”; second, it embraces all activities engaged in by a person “for the purpose of a livelihood or profit.” *All the court decisions and textbook writers say that the term “business,” as correctly defined in this bill “in its broadest sense includes nearly all the affairs in which either an individual or a corporation can be actors.”*

In ascertaining whether the proposed tax applies to a person the only inquiry is whether that person is engaged in such activities as come within the phrase “carrying on or doing business.” If so, he is liable for the tax whether such activities are few or many, frequent or infrequent, narrow or broad, or relate to real estate or invested personalty which can not be taxed in itself or as to its income. Whether a person is “doing business” must depend on the special facts of each case. I agree that the

mere ownership of property unaccompanied by any activities in the sense above defined would not bring such owner within the application of the proposed law. *However, the most casual reflection must convince one that the number or class of persons who would escape taxation would be remote.*⁷

Clearly, this bill meant to tax individuals engaged in business. And not just specific businesses — such as privileged or government-controlled businesses or occupations, but any and all businesses “in which an individual or corporation can be actors.” As he makes clear, the application of the tax was as comprehensive as was possible.

Taxing the right to work

Hull even addressed the complaint — made by a Representative on a separate bill to reduce sugar tariffs — that this tax on business would ultimately be a tax on the right to work:

Mr. HULL. ... The gentleman from Massachusetts [Mr. McCall] in his report on the sugar bill makes the following statement concerning the proposed bill:

It would treat the right to work and its necessity as a franchise, the exercise of which should be taxed.

... Let us compare for a moment the proposed tax with the present unspeakable Republican high-tariff tax. *Our Republican tariff tax, for the benefit of the Sugar Trust, the Steel Trust, the Beef Trust, the Woolen Trust, and hundreds of other favored and fattened creatures of privilege, ruthlessly exacts of every citizen, including the millions who are in a state of poverty and hunger, a tax upon every bite of food he eats and upon every garment of clothing he wears. According to the logic of the gentleman from Massachusetts, the Republican high-tariff tax treats the right to “eat” and to “wear clothes” as a franchise and places a heavy tax on its exercise, thereby creating the present high cost of living. [Applause on the Democratic side.]*

Notice that Hull didn’t deny that the tax was in effect a tax on the right to work, but took the position that it was an acceptable application of the taxing powers of Congress. Now, I don’t see how anyone can read these comments and still honestly

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think that Congress believed they could not tax citizens. And that's really the point of examining these recorded debates. We need to recognize that the members of Congress who enacted the income tax believed that plundering a percentage of all the profits generated by citizens was a legitimate exercise of their power. It doesn't even matter whether they were right or wrong in that belief. It only matters that they did indeed believe it, and acted on that belief.⁸

Ultimately, this bill passed the House by a vote of 253 ayes, 40 nays, with 103 not voting.⁹ However, in that last category, 84 of those were "paired," which from what I've been able to determine, is a process by which two members agree not to cast a vote without the other also voting. It can be used as a way to accommodate members who may expect to be absent for a vote, by pairing with one who would be voting the opposite way. The point is that had these pairs voted, they would have been equally distributed between the ayes and nays, leaving only 19 otherwise not voting. That's three out of every four Representatives voting to tax citizens for engaging in any activity "for the purpose of a livelihood or profit."

Technical constitutionality Is just an illusion

In this second installment, I've presented evidence from the historic record to demonstrate that Congress did not believe the Constitution prohibited an income tax on citizens, as long as it was contrived to be on "doing business," and income was simply claimed to be the measure of the amount of tax. In reality of course, if "doing business" includes everything a man might do to generate a profit, then there is no difference between such a tax and a tax on the actual profit itself. But Congress was willing to engage in such hairsplitting in order to get the tax enacted. And although the nine black-robed liberty thieves never had to give an opinion on such nitpicking distinctions, they predictably approved the latter tax when they got the chance in the *Brushaber* case.

Does anyone honestly believe that Congress

would not include citizens in the income tax if they could? Well, I've shown above that Congress believed they could. In addition, I've shown that Congress had every confidence that the Supremes would endorse their legislation. And so, there is absolutely no purpose nor incentive for them to engage in technical constitutionality. It is nothing more than a popular — but unfortunately, a self-destructive — myth of the Tax Honesty movement.

In the next installment, we'll look into how this specious myth has affected the Tax Honesty movement. Don't miss it!



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8. Although we looked only at Hull's comments, I've posted the entire 42 pages of House debate so those interested can read it in its entirety. See <https://tinyurl.com/bdd2xmdu>.

9. Congressional Record — March 19, 1912, page 3637.