



# Liberty Tree

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## TO BE OR NOT TO BE ...

## Constitutional

### Part IV

By Dick Greb

In this current series I've been looking into the widely held erroneous position promoted throughout 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 concealed that fact behind any number of technicalities which various patriots have claimed to uncover over the decades.

In part one, we found that technical constitutionality provides no rational basis as an incentive for Congress to exclude the citizens from the income tax, because there is no circumstance in which it could benefit the government. As long as Congress can count on the collusion of the courts (and it usually can) to uphold the enactment of a tax on the citizenry — whether it be constitutional or not — then technical constitutionality becomes totally unnecessary, and actually counter-productive.

In part two of this series we looked at the debates in the House of Representatives for a proposed 1912 bill (H.R. 21214) to extend the tax on "doing business" as a corporation to individual citizens. We saw that Representative Cordell Hull, the author of the bill, declared that his 'golden rule' of taxation was to "require [every American citizen] annually to pay a tax, measured by a fair and just proportion of his net gains."<sup>1</sup> This bill, the immediate forerunner of the income tax enacted October 3, 1913 (which was also enacted by these same Representatives), explicitly applied to citizens and was passed by three out of

every four Representatives, demonstrating that Congress did not subscribe to the belief that such taxes on citizens were unconstitutional. And that being so, there's no reason to believe they would exclude citizens from the tax.

In the last installment, I began laying out some of the ways 'technical constitutionality' damages the tax movement, especially the wasting of resources which are a direct result of that false theory. The 'hidden' nature of the technicalities which remove or otherwise exempt citizens from the tax creates many opposing camps, who, although they all ultimately desire the same result — no income tax on Americans — work at cross-purposes to each other. The end result is a decrease in effectiveness for all. But that's not the worst part. So, in this installment, I will begin to look at the most destructive aspect of the theory.

### Who's fighting whom?

The underlying tenets of technical constitutionality are that the laws are constitutional, and that citizens are not subject to the tax. Naturally, the first tenet presupposes the latter. That is, the laws are constitutional *because* the citizens are not subject to the tax. The how or why of the latter tenet doesn't matter for the current discussion. It's enough to simply recognize that it is part and parcel of the theory.

So, what are the consequences of these tenets in action? First, if the law excludes citizens from the operation of the tax, then *anyone who includes them must therefore be violating the law*. And the very nature of the technicalities that make the laws constitutional are obscure enough that even those who spend a lot of time investigating them — that is, for the most part, people in the tax movement — rarely agree on the mechanism by which citizens are excluded. The end result of this situation is that there are very few people who believe that the income tax doesn't apply to citizens. So, for all practical purposes, ***that makes nearly everyone an***

(Continued on page 2)

1. Congressional Record — March 16, 1912, page 3498. Emphases added and internal citations omitted throughout.

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(Continued from page 1)

**adversary!** To say the least, this is far from an ideal situation.

### On the job

Let's begin by looking at how that manifests in the context of earning a living. For a majority of people, that entails working for someone else. The person — be it an individual, private company or a corporation — for whom one works will most likely not agree with the *technical constitutionality* position. In fact, they might even be quite hostile to the idea. Not because they are necessarily averse to it in principle, but because they will rightly recognize that your demands — for no withholding or reporting, for example — will have a serious impact on their business. Certainly it would increase the chances that the IRS will take more interest in their affairs, which is rarely beneficial. Therefore, they would most likely insist on the withholding and reporting that the government demands, and by so doing, become *the enemy*.

In the case of trying to get a job, the likely result is simply not being offered the position. But when the situation arises with a job already held, the resulting tension will make for an uncomfortable work environment for sure. When carried to extremes, it may even result in legal action, such as suits against employers for *conversion* — that is, the misappropriation of one's money. The animosity such actions generate would make the chances for continued employment a whole lot slimmer. After all, what business is going to put up with having to pay to defend themselves against such claims? I would think very few indeed.

### On the homefront

The end result is not hard to imagine — fewer employment opportunities. Obviously, this will make things that much more difficult for the patriot involved. This is especially true if they are married with families. Not only does having a family increase their overall expenses (and thus the pressure they will be under), but it may also increase the level of hostility and resentment in the home. One's spouse will no doubt be less supportive when financial instability is constantly overshadowing their lives. This kind of strain can, and many times does, lead to the breakup of families, thereby piling hardship upon hardship. These are horrible consequences at the personal level for someone to accept, and I suspect many patriots facing such prospects have instead abandoned the movement.

This situation has adverse consequences for the movement as a whole as well. A person struggling to make ends meet will also be unlikely to have the

resources to contribute to furthering the goals of the movement. People facing the breakup of their families will be less enthusiastic about pressing forward with the processes that led them into their tribulation. In other words, the continuing participation of such people will become increasingly unlikely. What I want you to see is that these repercussions, while not necessarily inevitable, are certainly a natural result of making an adversary of the person by means of whom you make your living. And making that person your adversary is in turn a natural result of a belief in *technical constitutionality*.

The fact of the matter is that rather than your adversary, these people are actually fellow victims of the same oppressive scheme of taxation as you are. Even more of a victim in some respects, because they are also forced into the involuntary servitude of being an unpaid tax collector for the government. They would undoubtedly prefer to be out from under the scheme just like you would, but wishful fantasies of benevolent Congresses who thoughtfully adhere to the Constitution even as they purposely defraud the citizenry, will not bring about the desired result.

And keep in mind that at some point the patriot will also likely come under increased scrutiny by the IRS, resulting in even more costs, including penalties, interest, late fees — often enforced by levies and liens, and in the worst cases, legal expenses and even incarceration. Not only will these extra expenses and ordeals further erode tranquillity in the home, they will also necessarily cut into the funds which might otherwise be made available to help fund the movement. Indeed, as the costs of participation increases, participation itself will decrease, and the movement will instead suffer as a result.

### The infernal Internal Revenue Service

This brings us to the most important aspect of the consequences of the false theory of technical constitutionality — how it affects the movement's struggle against the government. Returning to the premise established above — that being, if the law excludes citizens from the operation of the tax, then *anyone who includes them must therefore be violating the law* — who would be the adversary? Naturally, the IRS would top that list. They are, after all, the most prominent proponent of income taxes being applicable to citizens. They are right there on the front lines, grabbing property right and left, imposing fines and penalties, and prosecuting those who refuse to go along with their schemes. And since they have no qualms about taking such actions against citizens, according to our premise, **they**

(Continued on page 3)

(Continued from page 2)

*must be violating the law!* Therefore, the fight must rightly begin with them.

**I**n the June 2010 *Liberty Tree*,<sup>2</sup> I wrote about the position of the IRS in the scheme of things. I suggest going back and reading the whole article, but here is an excerpt:

[T]he IRS began as the Office of the Commissioner of Internal Revenue way back on July 1, 1862. The office was established as the executive branch's arm for assessing and collecting internal taxes, and so Congress gave it all the powers deemed necessary to carry those responsibilities into effect. Not only does this include such enforcement powers as assessing penalties and interest for violations of tax provisions, but also the power of distraint (i.e., levy and seizure) to get the money it claims is owed. For purposes of this discussion, the extent of these powers — that is, whether they can be used against citizens or anyone else — is irrelevant. My point here is only that Congress created the IRS for those purposes, and the IRS operates under the authority thus granted.

Another aspect built into the operation of the IRS is that all of your so-called due process with respect to their claims against you is channeled into specific and narrow paths.

For purposes of that article, I disregarded whether or not the powers of the IRS extended to citizens, but in the present discussion, it is a central point. After all, it's a deciding factor in whether or not they are violating the law, and therefore whether they should be the primary focus of the tax movement's efforts. That is, if the law is written so as to *exclude* citizens, then the IRS is violating the law when they enforce it against citizens; conversely, if the law was written to *include* citizens, then the IRS is *not* violating the law when they do so. That is why the issue of *technical constitutionality* is so important, and why recognizing that it is a fallacy is critical to the health of the tax movement.

In the first two installments of this series I've shown that there is neither logical reason nor historical evidence to support the notion of



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*technical constitutionality*. Congress explicitly claimed to have the power and the desire to tax citizens, and if you examine the statutes they've enacted, you will clearly see that is exactly what they've done. Here's the relevant portion of the first income tax after the purported ratification of the 16<sup>th</sup> Amendment:

That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year **to every citizen of the United States, whether residing at home or abroad**, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.<sup>3</sup>

Can you read that passage and honestly believe that Congress did not levy the income tax on citizens? And if Congress imposed the tax on citizens, then the IRS is not violating that law when they enforce it against said citizens.<sup>4</sup> So, who's really your adversary here?

### **Let's you and him fight**

**C**ongress levied the income tax on citizens, and so they should rightly be the targets of opposition. Not only are they the ones who oppress the citizens with the tax, but they are also the ones who erected the IRS as their 'champion' in any confrontations with said citizens. Quoting again from "Belly of the Beast:"

A good way to visualize this framework that Congress has created to do its dirty work for them is a dragon. Not only does it have offensive fire breath, but it also has defensive armor-like scales that protect its body from attack. You can whack at those scales from dawn to dusk, day

2. See "The Belly of the Beast" in the June 2010 *Liberty Tree*: <https://tinyurl.com/a5z65szf>.

3. Tariff Act of October 3, 1913 [38 Stat. 114, 166; Chap. 16, Section II, Subsection A, Subdivision 1 (H.R. 3321)] "An Act To reduce tariff duties and to provide revenue for the Government, and for other purposes."

4. This is not to say that the IRS doesn't violate the laws and regulations in innumerable other ways, and for those violations, they should be held accountable. As mentioned in part 3 of this series, redress from procedural violations has been obtained in the courts, especially when not mixed in with issues of technical constitutionality, which too often contaminate the whole affair.

(Continued from page 3)

after day, but you won't get through them and you won't wear them out. That's precisely why Congress puts that IRS dragon out there in the front line of its battle to take your property; because it was specifically designed to withstand the challenges that can be brought against it.

There is an additional aspect to this scheme, beneficial to the government's cause; the very presence of the dragon and its offensive actions draw the opposition to itself. In other words, since the IRS is the force which wreaks havoc on the citizenry, they are also the likely target of retaliation. And this provides excellent cover for those who really deserve the condemnation – Congress!

Congress is the soft underbelly of the dragon, where the scales don't cover. They are the weakest link, so to speak. Congress hopes they can keep you flailing at the armor, and fleeing from the fire breath, so that you don't realize that the belly of the beast is vulnerable. It is Congress that must stand for election every few years; they must come before the people and try to justify being returned to their cushy job legislating away your freedoms. Of course, that's not quite the way they'll be putting it, but we need to recognize that's all it really is, since most of what Congress busies themselves with on a daily basis is outside their Constitutionally granted authority, and so is illegal.

Every two years, every member of the House of Representatives must stand for re-election. That means that in just one election cycle, the whole seditious bunch of them could be out on

their ears. Senators, on the other hand, have six-year terms, but they're staggered so that a third of them expire every two years. That means it would take three election cycles to completely clean house there, but I'll bet that with so many of their partners-in-crime getting their walking papers, the remaining ones would probably be a little more responsive to the will of the people for whatever time they have left.

Are you getting the picture here? Congress is the group responsible for you being saddled with an income tax, not the IRS. Not only did Congress impose the tax upon you, it also created the organization you must deal with when problems occur – that is, the IRS – and the process by which you must address them. Congress enacted the anti-injunction act that forces you to pay before you can challenge the tax. It gave the IRS the power to seize your property, and gave the courts the authority to throw you in jail.

And yet, the false theory of technical constitutionality gives them a free ride. It pretends that Congress is your friend, and that those who are merely following their edicts are the ones who are oppressing you. In other words, it misdirects the efforts and resources of the tax movement away from Congress and into unproductive channels. Is it any wonder then that there has been so little progress after so much time? And something else to think about: is it possible that this state of affairs didn't happen by accident? We'll pick this thread back up in the next installment.



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