



Liberty Tree

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TO BE OR NOT TO BE ...

Constitutional

Part V

By Dick Greb

This current series has been examining a false theory promoted throughout much of the Tax Honesty movement. The central tenet of that theory — which I’ve dubbed ‘technical constitutionality’ — 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 the first two installments, I showed why the theory is false, both from the logical and historical perspectives. In the next two installments, I laid out various ways that the theory negatively affects the movement. Primary among those effects is the diversion of focus away from the members of Congress, who are responsible for enacting the laws which do indeed levy income taxes on citizens, and towards the Internal Revenue Service, which applies those laws more or less as Congress intended (at least insofar as enforcing them against said citizens). Further, focusing on the IRS — part of the permanent bureaucracy, and thus not susceptible of being ousted by elections, helps to shelter Congress, who *can* be booted from office, from the negative attention they rightly deserve.

Lightening the load

Another important way this false theory damages the movement is that it makes it harder to recruit new patriots into the cause. The reason is this: since the whole premise of technical constitutionality of the tax laws (the “con” position)

depends on an understanding that an income tax on the world-wide income of citizens (which is exactly what the government claims) would be unconstitutional, that understanding must always be developed first. Only after that idea is accepted can the idea that Congress wrote the laws to exclude citizens be developed, because there would otherwise be no logical reason for them to do so. Finally, the method by which Congress accomplished technical constitutionality must be developed. And, it’s important to remember that this last proposition is where there is virtually **no agreement!** Each stage of this progression naturally requires additional effort to convince the previously unconvinced. The inevitable result is that it will also mean progressively fewer will become convinced of each new stage, thereby reducing the number of new people brought into the ranks.

So, considering that my position (which by default would be the “*uncon*” position) ends after the first stage, **2 out of 3 of the cons’ arguments never even need to be introduced!** Once you convince a person that the tax laws — as the government claims they operate — are unconstitutional, you’re done. Now, they’re on your side! No crazy legalese arguments or sneaky definitions to explain. No punctuation in your name or brackets around your zip code necessary. Just the recognition that Congress, like it has done so many other times, enacted an unconstitutional law.

In other words, there’s no need to spend the extra time to convince them of complicated (but most importantly, **wrong**) theories as to how Congress allegedly avoided constitutional infirmity, it is only necessary to convince them of the fundamental constitutional problems with the income tax (of which I will address later), and get them involved in working on solutions for getting rid of bad laws. Accepting this simple truth would

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go a long way in the Tax Honesty movement achieving their goal of unburdening citizens from the income tax. And conversely, rejecting this truth will always undermine that goal.

Con vs. uncon

What are the differences between the position that the laws are constitutional because they don't apply to citizens and the position that the laws are simply unconstitutional? ('Cons' and 'uncons') Ultimately, the two positions are really just flip sides of the same coin. The only essential difference is the *cons'* rather irrational idea that Congress (or to be more precise, the dozens of Congresses since 1913) sought to protect their rights — by skillfully crafting the laws to exclude the citizens — even while simultaneously plotting to defraud them — by leading them to believe just the opposite. Of course, this disregards the fact that any Congress evil enough to deceive the public into paying a tax they didn't by law actually owe, would be evil enough to simply write the law to tax them in the first place.

More specifically, according to the con position, Congress enacted an income tax which doesn't apply to the domestic income of citizens. That is, they recognized the unconstitutionality of such an application of the tax, and avoided it, largely by a rather devious use of legal terms and definitions. For some reason though, Congress is mostly ignored by the *cons* — essentially giving them free passes concerning their refusal to rein in the IRS, and especially, their fraudulent scheme to trick them into paying taxes by use of deceptive language. Rather, they seem to concentrate almost exclusively on the IRS, whom they accuse of refusing to adhere to the limitations established by Congress, and administering the law in ways not authorized by them. Unfortunately, this is the front most heavily protected, and it is not by accident.

Congress understands that the citizen is most likely to direct his anger at the person(s) closest to the actual taking of his property, and so they created the framework by which the collection process would be accomplished, in a way which minimizes the exposure of that process to disruption. The Anti-Injunction Act (IRC § 7421) is one of many parts of that framework of sovereign immunity. The IRS is also protected by not having to stand before the people for election. Congress enjoys no such protection; this is certainly one reason why Congress might want to deflect citizens' anger away from themselves and towards the IRS.

Another protection is the very structure of administrative bureaucracies — faceless employees of compartmentalized functions, one hand not knowing what the other hand is doing. All of these protections make frontal attacks on the IRS rather fruitless. Neither the administrative hoops nor the judicial crap-shoot offer much hope of justice. When citizens challenge the misadministration of the laws, the courts rule against them, claiming their arguments are frivolous, and uphold the actions of the IRS.

On the other hand, according to the *uncon* position, Congress enacted an income tax which applies to all income of citizens, whether foreign or domestic, whether earned or unearned. That is, Congress relies on previous flawed rulings of the Supreme Court to rationalize their position that the Constitution allows for just such an income tax on citizens. In other words, Congress feels entirely justified in taxing the citizenry. At the same time, the IRS is charged with enforcing the laws that Congress enacted. They understand that Congress intended (and expressed that intention in the law), to tax the citizens on their world-wide income. Therefore, they also feel entirely justified in enforcing the law according to that understanding. The judiciary, for their part, rely on the doctrine of *stare decisis* to justify their refusal to consider the rare constitutional challenge to the income tax; meanwhile, they are much more often confronted by cases premised on the constructions of the tax laws according to the *cons* theory, which are invariably rejected, and rightly so.

To really appreciate the irony of the situation, consider that the outward manifestations of the two scenarios above (the *con* and the *uncon*) are almost exactly the same. In both, the executive branch enforces the income tax against citizens on their domestic income. In both, the judicial branch gives such enforcement its blessing. In both, the legislative branch remains mostly quiet. However, in the development of a strategy to combat income taxes, it is important to know which of the two scenarios is true.

Who knows?

Up to this point, since it was irrelevant in determining that technical constitutionality is a false theory, the underlying bases for unconstitutionality has not been discussed — neither the *cons'* nor the *uncons'* position. But, now it's time to give some consideration to that issue. And while there are various theories to explain the

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unconstitutionality of taxing citizens on their income (some of which are as insupportable as technical constitutionality itself), I won't be spending any time here showing the error of those ways. Rather, I will just present my own version of what makes income taxes unconstitutional.

In my series on the *Brushaber* decision, I discussed the meaning of the term 'income' as it was understood in the time leading up to the 16th Amendment. For a fuller understanding, it would be beneficial to review that discussion at the link below.¹ But the short explanation is that 'income' means 'profit.' And in order to determine one's profits, one must subtract from one's receipts all the expenses incurred in the production of those receipts. In other words, *receipts* minus *expenses* equals *profits* (that is, *income*). This necessary calculation makes income a peculiar species of personal property (but it is indeed personal property).

The peculiarity arises from the fact that the elements necessary for the calculation, and likewise, the result of that calculation — that is, the *income* — are known only to the individual. An outside observer (such as the government) simply lacks the necessary knowledge to arrive at the *true and correct* result. Even if there existed some entity which could testify as to the amounts paid to any particular individual² — that is, the amount of *receipts*, nobody but the individual himself can know what *expenses* were incurred in the production of such receipts. Which means, of course, that the only way for the government to discover the true amount of said *expenses* — and in turn, the true amount of *income* — is to obtain that information from the individual. Unfortunately for the government, the 5th Amendment of the Constitution guarantees that:

No person ... shall be compelled in any criminal case to be a witness against himself.

In other words, there is no way for the government to independently determine the true amount of any person's *income* without violating the limitation placed upon it by the Constitution, which is the sole source of its legitimate powers. Naturally, this situation would create somewhat of a quandary for them, if not for their ever-present opposition to Constitutional restraints. And so, Congress does what it always does when faced with restrictions on their power — they simply disregard it, and do whatever they want, and the Constitution be damned! And invariably, the black-robed liberty thieves give such usurpations their stamp of approval.

Compelling violations of your rights

It really is as simple as that. Of all the possible subjects of a tax, Congress chose one for which they have no legitimate means to ascertain its value. But apparently they were so zealous to impose an income tax that they were willing to use illegitimate means in order to make it happen. That is, they enacted a law requiring returns to be filed.

§ 6012. Persons required to make returns of income

(a) General rule.

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual ... [whose gross income is less than the exemption amount plus the basic standard deduction applicable to such individual].

As everyone knows, the returns demanded by the IRS call for all sorts of details of ones personal affairs and finances. And, according to §6065, those returns must be signed under penalties of perjury:

§ 6065. Verification of returns

Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

1. <https://tinyurl.com/ycn84eup>. See especially Parts 6 and 7.

2. Of course, this is also problematic since the information regarding monies paid out to others is also testimony concerning the one paying it, which can in turn be used as evidence against such payer.

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Thus, these returns are unquestionably the *sworn testimony* of the person who filed them. And a person who provides sworn testimony is a witness. Indeed, providing testimony is really the sole function of witnesses. The testimony of witnesses builds the foundation of evidence from which the facts of a case are determined. The Fourth Circuit Court of Appeals recognized fairly early on the truth of the matter:

There can be no question that one who files a return under oath is a witness within the meaning of the Amendment.

The Supreme Court has held in *Boyd v. United States*, that a defendant or claimant in a proceeding by the United States to establish a forfeiture of goods for fraud upon the customs revenues, cannot be required by a court of the United States to produce his private papers and invoices for use in evidence against him.

... It is far more clear that the written statements under oath in the return of the taxpayer in answer to questions propounded on forms issued by the Commissioner of Internal Revenue, are the testimony of a witness and amount to self-incrimination if they disclose the commission of a crime.³

Notice that although the court didn't really expand on the idea, it still distinguished between mere testimony and self-incrimination. That is, the court recognized that *any statements made under oath* are the testimony of a witness, even when those statements don't disclose the

commission of a crime. And the Fifth Amendment prohibits compelling a person *to be a witness* against himself. So, he can't be compelled to provide any testimony — that is, any statements made under oath — whatsoever, whether such testimony incriminates him in a crime or not. The phrase “against himself” is in relation to the witness, not to the testimony said witness provides. I wrote about this in greater detail in issue #245 of our *Reasonable Action* newsletter back in 2004 :

In a criminal case, there are two parties — the prosecutor, and the defendant. The two rights enumerated [in the 5th & 6th Amendments] frame two distinct classes of witnesses with respect to an accused defendant — those whom he has the right to obtain, by compulsory process, to testify for him, in his defense; and those whom the prosecution has the authority to obtain, by compulsory process, to testify against him. Or, more simply, witnesses *for*, and witnesses *against*, the defendant.⁴

This prohibition against forcing an accused to be a prosecution witness is made abundantly clear in the context of a criminal trial, and is universally accepted and followed. Everybody knows that the defendant can't be forced to take the stand, no matter how convenient that might make it for the prosecution. That choice is solely in the hands of the accused. And yet, when it comes to income tax returns, that whole principle gets thrown under the bus.

We'll pick up on this thread in the next installment, as we look at some of the rationalizations given by the Supremes to permit this violation of our rights. So stay tuned!

3. *Sullivan v. United States*, 15 F.2d 809, 812 (4th Cir. 1926) .

4. You can read the entire article, “Compelled Evidence (or, Why don't we just bring back the Inquisition?),” at <https://tinyurl.com/jzyjhwtp> .



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