



Written by [Joe Wolverton, II, J.D.](#) on August 24, 2023

Luther Martin, another reliable defender of state sovereignty, rose next, declaring that in his opinion, “Direct taxation should not be used but in cases of absolute necessity; and then the States will be the best judges of the mode.”

He went on to propose the following addition to the article on taxation in the draft constitution they were debating:

And whenever the Legislature of the United States shall find it necessary that revenue should be raised by direct taxation, having apportioned the same according to the above rule on the several States, requisitions shall be made of the respective States to pay into the Continental Treasury their respective quotas, within a time in the said requisitions specified; and in case of any of the States failing to comply with such requisitions, then, and then only, to devise and pass acts directing the mode, and authorizing the collection of the same.

Remarkably, James Madison records that there was no debate on Martin’s motion (although it was seconded by James McHenry of Maryland) and that it was rejected by the convention by a vote of 1 to 8 (with Maryland divided).

Rufus King wasn’t content just to let such a weighty matter be treated so lightly.

“What is the precise meaning of ‘direct taxation’?” King asked the assembled delegates.

Laconically, James Madison records that “no one answered.”

Readers, this brief entry into the record of the debates may seem completely unremarkable, but it would prove to be an ominous omission.

Had there been any answer by the men gathered there at that convention, and had there been any reliable expression or explanation of their understanding of what constituted a “direct tax,” it is more than likely that the noted Income Tax Cases that so excited the country in 1895, and in which the U.S. Supreme Court held that an income tax was a direct tax, would never have occurred! Furthermore, the 16th Amendment might have been known to have been so completely contrary to the intent of the Founders that it would never had been proposed, much less ratified as an amendment to the Constitution!

As it was, in 1913 — and under very suspicious circumstances — the 16th Amendment was ratified and the income of Americans became subject to direct taxation.

Who would ever imagine that three words — “no one answered” — recorded by James Madison would be the breach through which so much oppression would attack the people of the United States.

Regardless of whether an income tax was direct taxation as conceived by the framers of the Constitution, the 16th Amendment repealed that part of the Constitution as ratified requiring an apportionment in case of a direct tax. There is no explanation of why and there was no reliable record of how the framers of the Constitution anticipated that the power to directly tax the people would be exercised by Congress.

That is to say, no reliable record of what was said at the Convention of 1787. The debates during the ratification conventions featured fervent speeches staking out the rhetorical and political limits of taxation observed by the men who had fought the War for Independence.

I’ll close with one sample statement made by Edmund Randolph at the Virginia Ratifying Convention



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regarding criticism leveled by Patrick Henry and others at the grant of power to Congress to impose direct taxation. Randolph's reasoning will at once illuminate the tyranny of the 16th Amendment's repeal of representation as a reliable regulator of direct taxation, as well as the rock-ribbed belief by most of the Founding Fathers that direct taxation detached from population was unjust, unfair, and undeniably despotic. Randolph defended direct taxation, explaining:

Congress is only to say on what subject the tax is to be laid. It is a matter of very little consequence how it will be imposed, since it must be clearly laid on the most productive article in each particular state.... Representatives and taxes go hand in hand. According to the one, will the other be regulated. The number of representatives is determined by the number of inhabitants; they have nothing to do but lay the taxes accordingly.... When any sum is necessary for the general government, every state will immediately know its exact proportion of it from the number of their people and representatives; nor can it be doubted that the tax will be laid on each state, in the manner that will best accommodate the people of such state, as thereby it will be raised with more facility; for an oppressive mode can never be so productive as the most easy for the people.



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