



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

How Three Words Spoken at the Convention of 1787 Led to the 16th Amendment

The State House in Philadelphia was buzzing this week in 1787. The men sent by the states to recommend amendments to the Articles of Confederation had created a new constitution, which in turn created a new government for the confederation of states, and they were going over the first draft clause by clause. And the divisions between those favoring a more powerful federal government and those seeking to protect the sovereignty of the states were creating constant conflict.



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In an [earlier article](#), I highlighted the fight over the definition of treason and whether a person could commit treason against a state without committing treason against the United States and vice versa. Today, the war of words moves to an old and familiar battlefield: direct taxation.

While under the Constitution known as the Articles of Confederation Congress was given authority to tax generally, there was one form of taxation that remained within the power of the states: direct taxation. And those delegates at the convention who fought to maintain state supremacy were not about to part with that power, chiefly manifest in property and poll taxes.

The delegates pushing for a more powerful central authority argued that any limitation on the federal government’s power to tax would weaken it and they’d soon be suffering under the new government the way they claimed they were suffering under the old one.

As was his habit, Elbridge Gerry jumped quickly to his feet, marking the line in the sand for the state sovereignty set. As recorded by James Madison in his [“Notes of Debates in the Federal Convention of 1787,”](#) Gerry said he

considered giving the power only, without adopting the obligation, as destroying the security now enjoyed by the public creditors of the United States. He enlarged on the merit of this class of citizens, and the solemn faith which had been pledged under the existing Confederation. If their situation should be changed, as here proposed, great opposition would be excited against the plan. He urged, also, that as the States had made different degrees of exertion to sink their respective debts, those who had done most would be alarmed, if they were now to be saddled with a share of the debts of States which had done least.

A powerful shot across the bow of the representatives seeking a stronger central government.



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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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