Federal Taxation In The United States: A Biblical And Constitutional Perspective

GERALD R. THOMPSON

Version 3.0

Published by Lonang Institute
www.lonang.com

PREFACE

Taxation presupposes the lawful authority of public officials to exact payment and to punish those who fail to pay. So great a power is this, that its abuse has long been regarded as tyranny. Our nation's founders safeguarded against this kind of tyranny by requiring all federal taxation to be subject to the consent of the governed. The founders recognized that the power to tax is inherent in no one, but must be given by the people. The exclusive delegation of federal taxing authority by the people of the United States is expressed in the U.S. Constitution.

Yet, this grant of power is limited. Even the authority of the people to consent to taxation is limited. The Constitution is a civil covenant pursuant to the authority of the people to make covenants according to the biblical pattern. This authority comes from God, thus, cannot lawfully be used to erect a false sovereign such as a civil tyrant. In other words, the constitutional delegation of federal taxing authority cannot exceed the authority of the people to covenant according to the biblical law framework.

This biblical and constitutional perspective is the rightful legacy of the people of the United States. However, it has been somewhat obscured in the pages of history, which have, on occasion, been rewritten to cover-up the truth. The purpose of this paper is to reclaim, update, and restore this legacy in the area of federal taxation, to secure the blessings of liberty which our forefathers bestowed upon us and our posterity. That is, this analysis is an attempt to discover whether there are any principles of taxation which remain constant in spite of the ever changing tax policies and rules emanating from our nation's capital.

Before engaging in this formidable task, let me offer a few caveats. Although it is hoped this paper pulls together many ideas in a new way, no claim is made that the ideas themselves are new or original. Rather, it is my own discovery of what the rules of taxation, both biblically and constitutionally, are objectively. These rules were discovered long ago, but some people today have simply discarded them. Thus, whether I have succeeded in my purpose is not so much a question of whether my conclusions are fashionable, but whether the analysis is legally accurate.

Nor is this paper a presentation of what the laws of taxation ought to be according to some biblical or constitutional utopian ideal. I have no desire to foist my own view of perfection on society. By definition, every utopian ideal is an artificial construct not in keeping with reality. What I seek is the true reality of taxation, not a false realism. Thus, should we discover that modern tax policies have strayed from the foundational principles, we might well ask which is real, and whether present policies are artificial.

Finally, let me disclaim that this paper is intended to be dogmatic or extremist, even though some of my conclusions will vary considerably from conventional wisdom. This is merely my best effort so far to discover what the enduring principles of taxation in America are. Others who hold opinions contrary to my own are not less spiritual or less professional. While I am convinced of its basic soundness, this analysis is submitted in the spirit of free inquiry to all those who would join my pursuit. Perhaps by reading this paper, you may make some of the same discoveries I have. In any event, as you read this, prove all things, and hold fast to that which is good.

TABLE OF CONTENTS

Page

I.
Introduction

The preservation of a free government requires . . . that the metes and bounds . . . of power . . . [not] be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The people who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves. - James Madison, 1785.[1]

But natural rights, so called, are as much subject to taxation as rights of lesser importance. - U.S. Supreme Court, 1937.[2]

America's federal system of taxation presupposes a non-evolutionary world view based largely on biblical principles. However, this perspective has been lost, even perverted. Today, public officials have largely exchanged a world view based on creation for an evolutionary perspective. Whereas the world view of creation focuses on law and authority, the evolutionary view centers on power and politics. Consequently, nearly every aspect of modern federal tax policy has deviated from its original design. Federal taxation has become merely expedient, rather than constitutional. However, this does not mean the true legacy of federal taxation in the United States cannot be reclaimed.

The world view of creation embraces matters of taxation as well as it does matters of theology, and with an equally unique perspective. It comprehends the entire structure of federal taxation, and every particular of it. The source of this perspective is the truth of the Bible, God's written revelation to man. There is no aspect of law, government, or tax policy which biblical principles do not control. The result is a biblical law framework consistent not only with the realities of modern civil government, but with American history as well.

An historically accurate and legally correct understanding of the Constitution centers around such a world view. First, the Constitution has been framed in a legal context derived primarily from biblical principles, historically referred to as the law of nature. The authority of the people to constitute a new nation was based upon the model of the biblical covenants between God and men. Second, a study of the Bible itself compels an examination of our nation's civil covenant, the U.S. Constitution. Viewed as a covenant, the Constitution is not merely a point of political departure, but a fixed standard of law which is permanent (allowing for limited modifications pursuant to its terms). The meaning of the text of the Constitution does not vary with time, because it is modeled after the covenants of God, which cannot change.

---

1. James Madison, *Memorial and Remonstrance Against Religious Assessments, 1785*, quoted in Saul K. Padover, ed., THE COMPLETE MADISON. (New York: Harper & Brothers Publishers, 1953), 299 at 300.

2. *Charles C. Steward Machine Co. v. Davis*, 301 U.S. 573 (1937), at 580, 581.

The biblical and constitutional perspective can be applied to any question of federal taxing policy. Included here are a number of general applications of principle to illustrate the distinctiveness and comprehensiveness of this world view. These general applications will establish a framework within which detailed applications may be made in the future.

The overall approach of this paper is to inquire into the jurisdictional limits of federal taxing authority. The goal is to determine, by examining certain biblical and constitutional principles, what powers have been given to public officials, and what rights and powers have been retained by the people which cannot be taxed. After all, if nothing exists which cannot be taxed, then civil power is unlimited, and the concept of enforceable rights retained by the people is meaningless. The main thesis is that federal taxing authority in the United States is neither more nor less, but coextensive with, the purposes of general federal jurisdiction. The secondary thesis is that the non-evolutionary perspective of federal taxing authority is the only sure safeguard against the tyranny of unlawful taxation.

II.
Biblical Principles of Taxation

> *[T]he book of divine revelations . . . is the Magna Charta of all our natural and religious rights and liberties and the only solid basis of our civil constitution and privileges - in short, it supports, pervades and enlightens all the ways of man, to the noblest ends by the happiest means, when and wherever its precepts and instructions are observed and followed - the usages and customs of men and the decisions of the courts of justice serve to declare and illustrate the principles of this law.*[3]

THE LAW OF DELEGATED AUTHORITY

A biblical perspective of federal taxing authority must begin with a description of the nature of civil authority generally. All authority on earth is inherent only in the truly sovereign God, the uncreated Creator, by virtue of His having created the world.[4] No human authority is self-originating, or inherent, because man is the creation of God, and is entirely dependent upon his Maker.[5] As one of God's creatures, man is governed by the law of nature, that is, the will of God impressed upon all the creation.

> Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. . . . [A] state of dependence will inevitably oblige the inferior to take the will of him on whom he depends as the rule of his conduct . . . [a]nd, consequently, as man depends absolutely upon his Maker for every thing, it is necessary that he should in all points conform to his Maker's will.[6]

All human authority is derived from God, being delegated to man as God's image-bearer.[7] Consequently, no man may lawfully do anything except as God specifically authorizes him to act.[8]

God's delegation of authority to man is always by covenant, the terms of which delimit the authority

---

3. Jesse Root, *The Origin of Government and Laws in Connecticut, 1798*, quoted in Perry Miller, ed., THE LEGAL MIND IN AMERICA: FROM INDEPENDENCE TO THE CIVIL WAR. (Ithaca: Cornell University Press, 1962), 32 at 36.
4. Genesis 1:1; Isaiah 45:8-13; Jeremiah 18:1-11; Romans 9:6-24; Colossians 1:16-17.
5. Genesis 1:26-28; 2:7.
6. William Blackstone, COMMENTARIES ON THE LAW OF ENGLAND. (Oxford: Clarendon Press, 1765; reprint ed., Birmingham: The Legal Classics Library, 1983), 39.
7. Genesis 1:27; 5:1; 9:6.
8. *See, e.g.*, Matthew 28:18-20; Romans 13:1-2; 1 Timothy 1:8.

given.[9] The authority given to man is not his right, but in each case is a manifestation of God's grace to accomplish some divine purpose. To argue otherwise is to place man in authority over God. Since God created man, God is not obligated to give man anything, except as He pleases. It is the duty of man to fulfill God's purpose, and his authority is always a function of a duty owed to God either directly or indirectly.

The authority given to one man to rule over another man, such as the authority of public officials, is no exception. All civil authority is delegated and established by God.[10] Every public official is a minister and servant of God to do His will.[11] Every public official is therefore under the law of God, not above it. This is evident from God's dealings with the nation of Israel, as an example to all the nations.[12]

However, God has seen fit to allow man to participate in the establishment of civil government. When God appointed Saul as king over Israel, it was only in response to the demand of the people for a king.[13] Further, Saul did not actually take office until after he was assented to by the people.[14] Similarly, David was appointed to be Israel's next king by God,[15] but he did not take office until confirmed by the people.[16] Hence, God has given limited authority to the governed to confirm their public officials, and by implication, to consent to the form of civil government.

Man reflects the image of God by giving his consent to government in the form of a civil covenant. God did not ordain, through the example of ancient Israel, that a monarchy was to be the only legitimate form of civil government. "They have rejected Me as king"[17] suggests that God never intended to establish Israel as a monarchy, although God would not have sanctioned it unless it were lawful. Man is at liberty to establish the form of civil government he chooses, consistent with the law of God. Accordingly, it is man's civil covenant, understood in the light of the Bible, which is the primary conferral of civil authority in nations today. In this respect, the law of delegated authority compels each nation to examine the terms of its civil covenant to know exactly what authority has been given to its government.

The law of delegated authority also prohibits any public official from becoming a tyrant. A tyrant

---

9. *See, e.g.*, Genesis 9:1-17, the Noahic covenant, which bestowed man with the authority to administer capital punishment.
10. Romans 13:1-2.
11. Romans 13:4-6.
12. Deuteronomy 17:14-20.
13. 1 Samuel 8:1-22.
14. 1 Samuel 10:17-24.
15. 1 Samuel 16:1-13.
16. 2 Samuel 2:4-7; 5:1-5.
17. 1 Samuel 8:7.

acknowledges no limits to his authority, only his power, and rules in derogation of the limited grants of his authority from God and man. However, no one has the authority to consent to being ruled by a tyrant. People have not been given the authority to usurp God's law by delegating duties to civil government which God requires someone else to perform. Therefore, consensual tyranny through taxation indicates that the people have abdicated their lawful duties owed to God.

THE LAW OF CONCURRENT JURISDICTION

God has not given all human authority to any one individual or group of people, nor has He covenanted with men only once. Rather, He has covenanted with different people throughout history, distributing authority among them severally as He wills, so that human authority is diffuse and disparate.[18] Therefore, all men have multiple duties to discharge concurrently, each with its own limited jurisdiction. There are four basic concurrent jurisdictions, each with its own covenantal grant of authority: self-government,[19] family government,[20] church government,[21] and civil government.[22]

This rule is summarized in the statement, "render to Caesar the things that are Caesar's, and to God the things that are God's."[23] This statement by Jesus does not mean that there are only two jurisdictions, or kingdoms, in the world. Rather, the distinction he drew relates to enforcement of the law. Duties owed to government are *civil* duties which public officials should enforce. Duties owed in connection with individuals, families and the church are owed to God. Hence, these are *moral* duties which public officials should not enforce - God alone holds people accountable for them. Moral duties are no less legally based than civil duties, but public officials cannot enforce *all* of God's law. Only the part of God's law which is within the civil jurisdiction can be enforced by public officials.

These concurrent jurisdictions are non-hierarchical, for God never delegated authority under one covenant to enforce the provisions of another covenant.[24] In other words, there is no priority or hierarchy among the basic jurisdictions. Man's duties under each jurisdiction are owed directly to God, and no jurisdiction oversees any of the others. Thus, public officials can not lawfully interfere

---

18. *See, e.g.*, Genesis 9:1-17 (Noahic covenant), Genesis 17:1-14 (Abrahamic covenant), Exodus 20:1-17; 24:1-8 (Mosaic covenant), and Hebrews 8:6-13 (Church covenant).

19. *See, e.g.*, Genesis 2:15-17; Luke 10:25-37; Romans 8:12-13; 12:1-2; Galatians 5:16-21. All of these scriptures reflect man's individual responsibility before God, and his willingness, as a free agent, "to choose obedience for the sake of obedience alone." O. Palmer Robertson, THE CHRIST OF THE COVENANTS (Phillipsburg: Presbyterian and Reformed Publishing Co., 1980), at 84.

20. Genesis 1:26-30; 2:18-24.

21. Matthew 28:18-20; Hebrews 8:6-13.

22. Romans 13:1-2. *See also*, Genesis 9:6.

23. Luke 20:25. *See also*, Matthew 22:15-22; Mark 12:13-17; Luke 20:20-26.

24. *See*, 1 Corinthians 14:33.

with the performance of moral duties. Rather, one of the purposes of public officials is to preserve the liberty of the people to freely perform their moral duties owed to God.[25] Civil government is not for this reason superior to other governments, however.

Everyone, without exception, is under the authority of others to some extent. Men who rule over others for one purpose may be ruled by others for another purpose. The operation of this rule avoids any conflict between the various concurrent jurisdictions. For example, a man may be a husband and father, an employee, a church elder, and a public official. He is at the same time authorized to rule over others for some purposes, and subject to the authority of others for different purposes.[26] The reason this causes no conflict is that each jurisdiction is defined not by which persons must obey it, but by the nature of the purposes it serves.

That is, an individual's authority depends not on who he is (a person approach), but the purpose for which the authority is given to him (a purpose approach). A man may be a father, a church elder and a public official, but he cannot exercise his authority as a father or church elder in his capacity as a public official. Nor can he exercise civil authority in the home or in the church, etc. In the eyes of the law, a man is not exclusively a father, church elder or public official, because he is all of them, at the same time, for different purposes. The authority he has at any given moment depends not on who he is, but the purpose he intends to accomplish.

On the other hand, a man does not become free from his obligations as an employee, merely because he is also a church elder or city councilman. A family is not immune from police regulation merely because the family is a concurrent and coequal institution with civil government. Similarly, the jurisdictions of church officials and public officials extend over some of the same people. The law of concurrent jurisdictions does not divide a nation into mutually exclusive jurisdictional units, where some people are the family, some are the church, and others are the state. Each jurisdiction is defined by the nature of the duties assigned to it, and none has an exclusive claim on any individual. That's what makes the jurisdictions concurrent, rather than discrete.

One example of a moral duty owed to God is the right of the family to own, use and control property. "And God blessed them; and God said to them, 'Be fruitful and multiply, and fill the earth, and subdue it; and rule over . . . the earth.'"[27] This duty of earthly dominion has not been given to civil government, or to the church, but solely to the family unit.

> God made unmistakably clear that dominion authority was to be exercised by the family. Only a husband and wife were able and authorized to have children. By coupling His command to have children with his grant of dominion authority, God specified the institution through which dominion was to be exercised.[28]

---

25. Romans 13:3-4.

26. *See*, 1 Peter 2:13-17.

27. Genesis 1:28.

28. Herbert W. Titus, "The Dominion Mandate: The Family, Private Property and Inheritance" (Virginia Beach:

It is true, but irrelevant, that every public official is a member of some family, and has been granted some dominion authority. No public official can, in his capacity as such, exercise dominion, for to do so usurps the jurisdiction of family members to exercise dominion in that capacity. Each person has several authority "hats," but he wears them only one at a time.

THE LAW OF LOVE

Another moral duty owed to God is the duty every person has to love his neighbor as himself.[29] Because man's duty to love his neighbor is owed directly to God, and only indirectly to his neighbor, love is undeserved. A duty under the law of love, though morally binding, is not enforceable. Therefore, love cannot be compelled, nor can the failure to love be punished by men. Government cannot compel a person to do what by definition must be voluntary. Neither can government determine which people deserve to receive something which is undeserved. An act of love must be voluntary and undeserved, or it is not love at all.[30]

Although in a sense love supports the whole law of God,[31] the law of love governs some acts exclusively, and over these public officials have no jurisdiction. For example, the duties to help a person in distress, to employ a person in need of income, to care for widows and orphans, and to otherwise be charitable, are governed exclusively by the law of love.[32] Accordingly, every gift is governed exclusively by the law of love. "Let each one do just as he has purposed in his heart; not grudgingly or under compulsion; for God loves a cheerful giver."[33]

Because every gift is voluntary and undeserved, it can never involve a mutual exchange for value, or a *quid pro quo*. Thus, a gift is the legal opposite of a sales contract. Generally, every gift is outside the jurisdiction of government, and every sale is outside the jurisdiction of the law of love. Government has the authority to enter into and enforce contracts, but whether it can make public gifts or regulate private charitable gifts depends on whether it has jurisdiction over the law of love. One consequence of the law of love is that every taxable transaction must at least involve a sale of some kind.

Government lacks authority to love or be charitable because it has not been given to that institution. Public officials have the authority to encourage good among the people, but not to actually perform charity as a public service.[34] Further, every resource government has available to it has been

---

Regent University, 1985), 9.

29. Leviticus 19:18; Luke 10:27.

30. *See, e.g.*, Ephesians 2:8-9, which supports the proposition that a gift is unmerited.

31. Matthew 22:37-40; Romans 13:8-10.

32. *See, e.g.*, Matthew 25:34-46, which indicates that charity is an attribute of individual righteousness, not civil obligation.

33. 2 Corinthians 9:7.

34. *See*, Romans 13:1-7.

conscripted from people involuntarily. If any of these resources are given away, the people have effectively been compelled to be charitable, which is a legal contradiction. Of course, public officials can recognize that a completed gift has been made between individuals for some purposes, such as identifying the rightful owner of disputed property, but this is not the same as government acting out of love or being charitable with its own resources.

The passing of an estate or inheritance from one person to another is a gift, not a sale or a contract, and is therefore governed exclusively by the law of love. There is no *quid pro quo* which can compensate the testator for the passing of his estate, and the testator is free to bestow his estate upon the beneficiaries of his choice as an act of love. The transfer of an estate may serve the testator's purpose, but it does not take effect until after he dies. So, he gains nothing, and the beneficiaries give nothing to receive their bequests.

> There is one point . . . we must insist on granting: the heir's money is unearned. . . . In a world of grace, we are all heirs: we have received unearned wealth without any work or works on our part. Heirship imposes upon us a major task of stewardship. The whole of the law gives us the pattern of stewardship for the heirs of grace. Our Lord sums it up in six words: 'freely ye have received, freely give.'(Matt. 10:8).[35]

THE LAW OF SERVICE DEBT

When a man becomes indebted to another, he may have to pay the debt by rendering personal service, regardless of how the debt originated.[36] Conversely, when a man renders personal service to another, it may result in a debt being imputed to the recipient.[37] Similary, when government renders the services required to discharge its civil duties, which only it may perform, it confers a benefit upon the people. Since government has no authority to be charitable, the benefit it confers is in the nature of a debt, not a gift. This debt is paid by the collection of taxes.

> For because of this you also pay taxes, for rulers are servants of God, devoting themselves to this very thing. Render to all what is due them: tax to whom tax is due; custom to whom custom; fear to whom fear; honor to whom honor.[38]

The legal justification of taxation is therefore based on service debt, not the civil creation or ownership of wealth. God is the ultimate Creator of all wealth, and He has placed its use, control,

---

35. Rousas John Rushdoony, WEALTH AND HEIRSHIP (Chalcedon Position Paper No. 27). *Accord*, Gary DeMar, GOD AND GOVERNMENT. ISSUES IN BIBLICAL PERSPECTIVE (Atlanta: American Vision Press, 1984), 96. "Inheritance is a type of gift. The one receiving an inheritance has not earned it through labor." *Id*.

36. *See, e.g.*, Leviticus 25:39-43; Proverbs 22:7.

37. *See*, Genesis 14:14-24. When Abram rescued the people of Sodom, the king of Sodom was obligated to compensate Abram, though he refused it.

38. Romans 13:6-7.

and ownership in the hands of the family, not civil government.[39] Public officials have no first claim to the wealth of the family, or of the nation. As a result, the law of service debt places limitations on the authority to tax.

That is, all lawful taxes must relate to a service which public officials are authorized to confer. First, a valid tax levy must raise revenue solely for the purpose of paying for civil services rendered.[40] If the purpose of any tax is not to pay for civil services rendered, but is for some other purpose, such as the redistribution of wealth, the tax violates the law of service debt.

Second, no tax revenues may be expended except to pay for services which public officials may lawfully render.[41] If the purpose of any tax is to permit government to fund religious or charitable services, for example, the tax violates the law of service debt. However, any service which public officials may lawfully render is an appropriate object for compensation by taxation.

THE LAW OF EXACTION

A peculiar attribute of all taxation is that its payment may be compelled by forcible means. The payment of a tax is an exaction, not a gift. Once a civil government has been constituted, it is obligated to render civil services, triggering application of the law of service debt. The people do not choose to pay for these services - they must pay, or else suffer the wrath of public officials as avengers of God.[42] Thus, all taxing authority is uniquely a civil power, for only civil government has been given the authority to use force against evildoers.[43]

Other types of relationships give rise to self-enforcible payment obligations, but none of these would be properly termed a tax. The family has right to use corporal punishment, but no right to use lethal force.[44] The church has no right to use any kind of physical force against anyone.[45] Private contracts can be self-enforced, but forcible means can be used only by public officials after a judicial proceeding.[46] Thus, the only payment obligation which is truly a tax is one which may be forcibly exacted by public officials as compensation for their services.

---

39. Genesis 1:26-28.

40. *See*, Romans 13:1-7, which describes generally the lawful scope of civil services.

41. Obviously, the civil ruler cannot compel the people to fund unlawful activities.

42. Romans 13:4.

43. *Id. See also*, Genesis 9:6, which applies solely to civil rulers.

44. *See*, Deuteronomy 21:18-21.

45. *See*, Matthew 5:38-48. The only form of correction administered by the church is excommunication. *See*, 1 Corinthians 5:9-13.

46. Romans 12:19.

THE LAW OF EXEMPTION

The compulsory nature of taxation does not eliminate the existence of tax-exemption, however. The law of exemption is revealed in Jesus' statements concerning the two-drachma temple tax, also known as the half-shekel head tax.[47]

> And when they had come to Capernaum, those who collected the two-drachma tax came to Peter and said, "Does your teacher not pay the two-drachma tax?" He said, "Yes." And when he came into the house, Jesus spoke to him first, saying, "What do you think, Simon? From whom do the kings of the earth collect customs or poll-tax, from their sons or from strangers?" And upon his saying, "From strangers," Jesus said to him, "Consequently the sons are exempt."[48]

Government collects taxes only from those not of its own "household." The members of the civil household are exempt because they are the ones whose service is compensated through the payment of taxes: they are the beneficiaries of the tax, not the beneficiaries of the service. Thus, a civil government never taxes its own receipts.[49] Similarly, a national government rarely desires to tax one of its political subdivisions, for these governmental units are of the same household as the nation. A tax levied on a political subdivision is equivalent to the civil government taxing itself.

The law of exemption is the exclusive rule by which anyone can be considered immune from tax, merely because of who they are. This law, together with the law of concurrent jurisdiction, negates the concept of civil tax immunity with respect to anyone other than the civil government or its political subdivisions. Under the law of concurrent jurisdiction, taxation is a function of the purpose of a transaction (object analysis), not the status of a person (subject analysis). Thus, all other exemptions from taxation granted by public officials are a matter of grace, not legal obligation.[50] No church government can be tax immune as a matter of law unless it is of the same household as the civil government.

This has been a matter of considerable confusion. The concept of church immunity is usually based on the principle that the church owes its duty solely to God, not civil government, because Jesus is

---

47. *Infra*, note 86.

48. Matthew 17:24-26.

49. The law of exemption does not imply that a civil employee is exempt from taxation on his wage income. No civil employee is the personal recipient of tax revenues. Rather, his compensation is exchange for services rendered to the civil government, the nature of which are no different than services rendered to a private employer. The income of an individual civil employee is not a revenue of the civil government, but a revenue of the employee's family government.

50. This does not mean that the church is necessarily subject to every kind of taxation. Its taxation depends upon the operation of other biblical principles, but at least the church is not generally immune from all taxation merely because of its status.

the King of the church.[51] But the same is true for the family, which owes all of its duties to God, not government. Yet, the family is not immune from all civil taxation. In fact, every individual owes certain duties to God under the laws of self-government. If the church immunity argument is correct, no individual can be taxed at all, since every person is a coequal self-government with the civil government before God. This can only result in anarchy.

The root problem of the church immunity argument is that it fails to account for the concurrent nature of all jurisdictions, each of which is defined on the basis of its purpose, not personal status. If the purpose of an activity is religious, it is beyond the civil jurisdiction, no matter who is doing it. Organized church worship is no more or less religious than the individual or family worship of God. But, if the purpose of an activity is commercial, it is subject to the same civil regulation no matter who is doing it. A church-owned business is no less commercial than an individually or family owned business. Immunity from civil regulation is a function of the purpose of an activity, not the personal status of the actor. Except for government's own household, there is no such thing as an immune person; there are only immune transactions.

The law of exemption applies to the church in its sphere as much as it applies to government in the civil sphere. God is no more willing to tax Himself than any earthly king. Therefore, it is impossible for the church to tax its members. Not only does the church lack the power to physically enforce any tax (by virtue of the law of exaction), the only people it might tax (*i.e.*, church members) are all exempt. Jesus, the Son of God, was exempt from the temple tax because He was of the household of the King in whose name the tax was levied. Although Jesus paid the temple tax, He did so not out of obligation, but merely to avoid giving offense.[52] Similarly, every Christian, as a member of God's household of faith and a joint heir with Christ,[53] is exempt from any so-called tax levied in God's name or the name of the church.

THE LAW OF EQUALITY

No tax levy is truly just unless it is equally applied to all taxpayers. The law of equality is rooted in the way man is treated by God, for God is no respecter of persons, and He judges each man

---

51. Gary North, "The Churches as 'Social Overhead Capital'." TENTMAKERS, Vol VI, No. 6 (November/December, 1983). "The church is not to be taxed, because of its sovereignty. Before God, it is **tax-immune**." (Emphasis in original.) *Id.* He also refers to "the common-law principle of the immunity of the church from the State . . .." *Id.* Rousas John Rushdoony, POLITICS OF GUILT AND PITY (Fairfax: Thoburn Press, 1978), 333. "The church, directly under God, cannot submit itself to any government other than that of Jesus Christ. . . . The church is an independent sphere and kingdom, and although residing within a state, is not part of that state: it has extra-territorial status. It is comparable to a foreign embassy: the law of the church alone is applicable on that soil." *Id. See also*, DeMar, *supra* note 35, at 139-140. "Jesus Christ is the head of the church; therefore, the church's domain is outside the state's jurisdiction and taxing authority. . . . Churches are not exempt from taxes but immune and therefore do not need to be declared exempt by the state." *Id.*

52. Matthew 17:27.

53. Romans 8:16-17.

without partiality.[54] As the bearer of God's image, man is to judge his fellow man, when he has authority to do so, according to the same standard.[55] The impartiality of righteous judgment plays no favorites: specifically prohibited is favoring either the rich or the poor over the other.[56] The equal application of the law to all persons is necessary to avoid the perversion of justice which otherwise would result.[57] In each case, the command is to judge according to what a person does (a purpose approach), not who they are (a person approach). Each person has the equal opportunity to prove his innocence, and the equal opportunity to pay the penalty for his misdeeds.

The biblical standard of equality is one of legal opportunity, not economic position.[58] This standard of legal equality results in a rule of proportionality. That is, everyone has the same legal opportunity to enjoy the fruit of their own labor, so that the more one labors, the greater his enjoyment (or wealth accumulation) is. Only by applying the rule of proportionality or opportunity can the law of equality be satisfied. God has not given people the right to equalize human economic status. Accordingly, taxation may not be used for the purpose of redistributing or equalizing wealth.[59]

The biblical standard of equality undergirds all English and American law, as embodied in the concept of common law. "Inherent in the word, common, as it is used in the common law is an endorsement of the principle of legal equality."[60] The principle that all men are created equal before the law was acknowledged as a self-evident truth in the Declaration of Independence.[61] The Declaration thus affirmed "that the common good could be achieved only through a faithful adherence to the principle of equality for all men."[62] Further, the Declaration declares only that the pursuit of happiness is an unalienable right, not the achievement of happiness. Thus, the perspective of the Founders was one disposed towards equal legal opportunity for happiness, not its equal factual attainment.

Federal taxation in the United States is governed by this same law of equality. This conclusion rests upon the fact that the Constitution created neither the legal context of the nation nor the nation itself. Our Constitution presupposes both the legal context of "the Laws of Nature and of Nature's God" set forth in the Declaration, and also that the nation was formed by the Declaration. To maintain that

---

54. Deuteronomy 10:17.

55. Deuteronomy 1:17; 16:18-19.

56. Leviticus 19:15.

57. *Id. See*, Leviticus 19:33-34.

58. This may be inferred from the mandate to treat rich and poor alike, without any corresponding mandate to make the rich less rich, or the poor less poor. *See*, Colossians 3:22-25; James 2:1-9.

59. All "redistributed" wealth is unearned by the recipient, *i.e.*, there is no *quid pro quo*. Thus, all civil charity violates the law of equality, as well as the law of love, because it substitutes equality of status for equality of opportunity.

60. Herbert W. Titus, GOD, MAN, AND LAW: THE BIBLICAL PRINCIPLES (Virginia Beach: Regent University, 1984), at 168.

61. THE DECLARATION OF INDEPENDENCE, July 4, 1776.

62. Titus, THE BIBLICAL PRINCIPLES, *supra* note 60.

an unequal exercise of the taxing power is constitutional is to hold that the Constitution may contradict the Declaration. Such a position denies that the Declaration is legally relevant to the founding of America and its legal context, as well as denying the Declaration's understanding of quality.

The preceding discussion of biblical principles does not exhaustively describe the rules of biblical law affecting taxation, but includes those rules of primary significance for the applications made herein. Before proceeding with a discussion of the primary constitutional principles of taxation, it may be helpful to discuss the relation of biblical principles to taxation in ancient Israel as a means of exploring whether the latter adds anything to the application of biblical principles today.

III.
Biblical Models of Taxation

The example of ancient Israel illustrates the application of the law of God to matters of taxation in a specific polity. However, the use of Israel as a model for modern taxation must be made with great caution, because the law of Israel only partially applies to all nations. That is, Israel's law was derived from two sources, the first of which was the law of nature, *i.e.*, God's law for all nations. The second source was the covenantal law of the Mosaic code, expressed in the form of an agreement between God and the people of Israel.

To the extent Israel's covenant verbalizes the law of nature, of course, it applies to everyone - not because the covenant makes it applicable, but because it would be applicable even without the covenant. However, not all of Israel's covenant verbalizes the law of nature. Many of its provisions apply only to Israel.[63] Just because a covenant is of divine origin does not mean that it applies to everyone, all the time, everywhere in the world. God is not constrained to relate to every nation the way He related to ancient Israel via a divine covenant.

Nonetheless, Israel's law does, in part, exemplify the biblical principles of taxation previously discussed. For example, Israel's law did not provide for any property taxation.[64] The family government had primary jurisdiction over all property.[65] Real property could not be permanently sold, thereby passing by descent to the permanent owner's heirs without possibility of reversion or escheat to civil government.[66] In this way, Israel's law complied with the law of concurrent jurisdiction by acknowledging the rightful jurisdiction of the family institution as against the civil government.[67]

---

63. The applicability of any covenant, whether of divine or human origin, is defined by the law of nature. A covenant is a kind of agreement where two or more persons each consent to be bound by certain terms and conditions. Because God has endowed every person with freedom of choice, no one has the right to agree to a covenant on behalf of someone else then living without their consent. The people of Israel could not agree to a covenant with God on behalf of the Gentile nations any more than a parent can become a Christian for his child. Each person, or nation, must make their own choice.

64. Howard B. Rand, DIGEST OF THE DIVINE LAW (Merrimac: Destiny Publishers, 1943), 93. "[T]here were no tax levies made against property, either real or personal" in Israel. *Id. See also*, 2 Kings 23:33-37 and 2 Chronicles 36:3, which describe an instance in which Jehoiakim "taxed the land" to pay a fine levied by the Egyptian Pharaoh Neco. However, the fine was exacted from the Israelites according to their individual valuations. In other words, the levy was a capitation tax on the people of the land, not a property tax on the land itself.

65. Genesis 1:26-28. *See also, supra*, note 28.

66. Leviticus 25:10,13,23; Numbers 36:1-13.

67. This endorsement of Israel's law as a model is strictly limited to the fact that the law did not provide for property taxation. The inability to sell real property permanently is expressly disclaimed as a model for the laws of modern nations.

Commonly suggested models of taxation from the law of Israel are the head tax and the Levitical tithe.[68] The key attribute of these models is a reasonably low flat amount or flat rate of taxation allowing for few deductions or exemptions.[69] The claimed benefits of basing modern taxation on these models range from making the tax burden more equitably distributed to constraining the size of civil government by limiting its revenues.[70] Yet, in spite of these desirable features, the application of these models in all of their particulars to nations today is not as appealing as it might first appear.

The Levitical tithe was not merely the payment of a tenth of one's income to God in accordance with the precepts of the law of nature. Rather, the Levitical tithe is a creature of the covenantal law of Israel which, although rooted in the law of nature, has certain attributes which are unique to that nation.[71] After God delivered Israel from Egypt, he set apart the entire tribe of Levi for priestly service to the nation.[72] When God apportioned the promised land among the Israelites, the tribe of Levi had no share of the land but received one-tenth of all the produce of the land from the other tribes instead.[73] The Israelite law of the tithe applied exclusively to the Levites.[74] The Levitical tithe was a binding obligation to set apart a tenth of one's total increase for the benefit of a civilly recognized priesthood, that is, a state established religion.

Still, the Levitical tithe did conform to some of the biblical principles of taxation. The collection of tithes was pursuant to a lawful delegation of authority in Israel.[75] The flat rate of the levy

---

68. Joseph R. McAulliffe, "Tax Tyranny," DOMINION WORK, No. 2 (December, 1985). "The Scriptures provide us with a distinctive model for civil taxation with the nation of Israel. There were primarily two kinds of taxes in Israel: the poll tax (Exo. 30:11-16) and the tithe (Lev. 17:32)." *Id.* There are also a variety of other taxes mentioned in the Bible, such as the tax of King Darius the Mede, from which the Levites were exempt (Ezra 6:8; 7:24), the "famine tax" of Pharaoh in the time of Joseph (Genesis 41:34), and the war (booty) tax (Num 31:28-41). However, I am not aware that any of these taxes have been claimed as a model for modern taxation by any biblical expositor.

69. *See*, Rushdoony, POLITICS, *supra* note 51, at 334. "The tithe was the original pattern of all taxation. . . . The words tithe and tax were once equivalent: they referred also to the same thing, a tax on increase." *Id. See also*, Rand, *supra* note 64, at 91, 127. "God has decreed how tax levies shall be made and the method of collection as well as the amount each citizen shall pay. . . . Governments must have revenue and in conformity with the Divine law it is required that the tithe be collected from all the people for this purpose." *Id*.

70. McAulliffe, *supra* note 68. "The fixed rate system of taxation had several other advantages, not the least being that it was a constraint on the size of government." *Id. See also*, DeMar, *supra* note 35, at 103. "The tithe also diversifies power and authority." *Id.*

71. A separate consideration of the so-called "Melchizedekal tithe" (Genesis 14:18-20), or the law of the nature of tithing, is unnecessary for the present discussion. Melchizedek was not a civil ruler, nor was his tithe recognized by any civil law. Consequently, the "Melchizedekal tithe" has not, to my knowledge, been suggested as a model for modern taxation.

72. Exodus 28:1; 29:9; Numbers 3:39-51; 18:2,15.

73. Numbers 18:21-24.

74. Numbers 18:21.

75. But this same authority has not been delegated to any other civil ruler. *See, supra* note 63.

conformed to the law of equality. Since the Levites were not required to contribute to their own support, the tithe also conformed to the law of exemption. The tithe compensated the Levites for rendering a unique service to the nation which the people could not render themselves, following the law of service debt to that extent. However, the service rendered served a religious purpose, not a civil purpose, and cannot be used as a model for modern taxation in that sense.

But, this is the limit of the tithe's conformity with the law of taxation applicable to all nations. For example, the Levitical tithe did not conform to the law of exaction at all. No one in Israel was authorized to enforce the payment of tithes.[76] The obligation to tithe was not any less mandatory because of its lack of human enforcement, but the obligation was *moral*, not *civil*. Thus, the tithe cannot properly be regarded as a tax, because all taxes require civil enforcement.

The likely reason no one was authorized to enforce the Levitical tithe is that it did not conform to the law of love, either. The Levitical tithe was imposed on all agricultural produce, as well as increases in livestock and other sources of production.[77] Every fruit of personal labor, whether sold or consumed, was subject to tithes. Thus, the Levitical tithe was not limited to the proceeds from sales transactions, or income, but extended to the broader concept of any tangible increase. Since God enforced the Levitical tithe himself, it could extend to every form of increase which came from Him. But the civil jurisdiction does not extend to increase which is withheld from sale, for such increase is governed exclusively by the law of love. Accordingly, the Israelites had no right to enforce the Levitical tithe.

Further, Israel's tithe was levied primarily for the benefit of an established clergy. Even when tithes were distributed to non-Levites, they were administered by the Levites.[78] But this was possible in Israel only because God, as the civil head of the nation, could legislate the establishment of the Levitical priesthood.[79] In other words, the whole purpose of the tithe centered around the theocratic nature of Israel's civil polity.

The problem with using the tithe as a model for modern taxation is that no nation is, or can be, theocratic in the same sense ancient Israel was. After all, God has not covenanted to be the civil head of any nation other than ancient Israel, at least, not as recorded in the Bible. In addition, the law of concurrent jurisdiction prohibits any civil ruler from exercising authority over moral duties owed solely to God, such as the duty of religion. The law of service debt requires legitimate

---

76. DeMar, *supra* note 35, at 116-117. "The Word of God does not give any human agency the power to force compliance to God's laws of taxation, because whoever claims such power is virtually claiming to be as God on earth. . . . This does not mean, however, that the tithe is not enforced. God is the enforcing agent when His tithe is not paid." *Id.*

77. Leviticus 27:30; Deuteronomy 12:17; 14:22-23.

78. Deuteronomy 14:28-29.

79. *See*, 1 Sam 8:7. Only if God were the civil head of Israel could He say, "they have rejected Me from being King over them." *Id.* God's civil rule is demonstrated, among other things, by the intermixing of civil and religious national authority. Only in a theocracy could national law prescribe the manner of religious ceremony and regulation, or establish an official priesthood.

taxation to fund only non-religious public services. Further, the law of nature prohibits civilly established religions in all non-theocratic nations. Thus, to the extent the Levitical tithe reflects the nature of a theocratic form of civil government, it cannot serve as a model for taxation today.

Similarly, the claim that the tithe constrains any civil government to taxing no more than 10% of income because it is prohibited from taxing people at a higher rate than God taxes them is without merit.[80] First, the law of the Levitical tithe applied only to ancient Israel. The Levitical tithe was instituted as part of Israel's civil covenant, and is binding only upon the people of ancient Israel and their descendants. Ancient Israel could no more have bound the United States to its national covenant than the United States could bind Israel to the U.S. Constitution.[81]

Further, the law of the Levitical tithe has been made obsolete through a modification of Israel's covenant by Jesus Christ. Jesus stated that He did not come to abolish the law, but to fulfill it.[82] In so doing, Jesus affirmed the perpetual nature of Israel's covenant. Yet, by claiming to fulfill the law, He indicated that some aspects of it would be modified. Since Jesus obviously modified the means of salvation made available to men, and just as obviously did not recreate the physical universe, we can understand his statement to mean that He would modify the means of salvation provided in Israel's covenant, but not any part of the law of nature.

The book of Hebrews is devoted primarily to describing for the Israelites how the means of salvation had been changed by Christ. According to that book, the "old covenant" (*i.e.*, the ceremonial law) had been made obsolete.[83] In short, what Jesus did was to abolish the entire institution of the Levitical priesthood. This is confirmed in the statement: "For when there is a change of the priesthood, there must also be a change of the law."[84]

Not surprisingly, the Levitical tithe, which was created for the sole purpose of supporting the Levitical priesthood, was abolished when the priesthood was abolished. After all, the abolition of the Aaronic priesthood would also abolish the need for the Levites to be set apart. Further, had the Levites not been set apart, the Levitical tithe would not have been instituted, for there would have been no one designated to receive tithes under Israel's covenant. Therefore, upon the abolition of the Aaronic priesthood, the Levitical tithe would be pointless.[85]

---

80. *See, e.g.*, DeMar, *supra* note 35, at 108. "For the state to tax citizens more than God taxes His children is to say that the state has a prior and greater claim over us." *Id*.

81. *See, supra* note 63. The fact that Christians are the spiritual descendants of Abraham (Romans 2:28-29) does not make Gentile nations parties to the Mosaic covenant. No national entity can become a Christian, and thus an individual spiritual heir of some other nation. It is addititonally absurd to argue that Christians partake of a new covenant which obsoleted the old, only to be bound by the terms of the old covenant. *See also*, Hebrews 8:13.

82. Matthew 5:17.

83. Hebrews 8:13.

84. Hebrews 7:12.

85. The abolition of the Levitical tithe in no way affects tithing pursuant to the law of nature. It is only the covenantal form of the tithe which has been abolished, not the nature of creation. *See generally*, Gerald R. Thompson, "The

Finally, to the extent tithing is based upon the law of nature applicable to all nations today, its operation cannot constrain public officials. Tithing based upon the law of nature cannot constrain civil taxation in any nation today because its obligation is entirely moral, not civil. In other words, tithing is governed by the law of love, not the law of exaction. Further, the purpose of tithing is to fund religious, educational and charitable services, not civil or public services. Accordingly, there is no jurisdictional overlap between tithing and taxation.

Just as public officials cannot enforce the law of tithing because it is moral rather than civil, so the law of tithing cannot limit civil power for the same reason. God did not preclude Gentile nations from taxing their people more than ten percent for civil purposes simply because He "taxed" Israel exactly ten percent for non-civil purposes. It may be desirable to keep income taxes below ten percent, but there is no law prohibiting public officials from taxing at a higher rate, so long as the biblical principles of taxation are otherwise followed.

Much of the preceding analysis also applies to the Israelite head tax.[86] The head tax was levied on every male in Israel who had reached age 20. Each man paid the same amount of tax (a half shekel), whether rich or poor. However, the head tax was reckoned as paid to the Lord, was regarded as an offering, and was collected for the purpose of individual redemption and the atonement for sin.[87] The revenue raised was given "for the service of the tent of meeting," to be a continual reminder for the people before God.[88] Like the Levitical tithe, the head tax was not compulsory because it was moral in nature, not civil.

Hence, the head tax was imposed primarily for a religious purpose and was closely linked to the theocratic nature of the polity of ancient Israel. For a civil government today to levy a head tax after the pattern of Israel would be to establish itself as the God of the people. For this reason, the head tax is not a proper model for modern taxation.

Tithe Revisited," unpublished essay, 1989.

86. Exodus 30:12-16. Biblically, this head tax was also known as the half shekel or two-drachma tax. *See*, Matthew 17:24-27. Historically, any head tax may also be referred to as a capitation tax.

87. *Id*.

88. Exodus 30:16.

IV.
Constitutional Principles of Taxation

"The good sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from breaking down recognized standards."[89]

THE LAW OF CONSTITUTIONS

A first step in understanding a constitutional view of federal taxation is to discover what a constitution is. If there are any fixed principles of federal taxation, it would be prudent for the document creating the federal government to be conducive to securing those principles. In other words, it would seem to be necessary for any constitution to itself be of a permanent nature. However, the permanence of a constitution cannot be derived merely from its own terms, but must be derived as well from the legal context within which it is framed.

A constitution provides the framework within which a nation's law is administered. Yet, the law itself is derived from the legal context which is acknowledged, not created, by the constitution's framers. The purpose of a constitution is not to specify every particular of the law, but rather to mark its great outlines and designate its important purposes, from which the particulars can be deduced.[90] Thus, the U.S. Constitution cannot be divorced from the legal context within which it was framed. Only when its legal context is recognized can it be truly said, that "[t]he government of the United States has been emphatically termed a government of laws, and not of men."[91] Even when a constitution is modified, it does not alter the fundamental principles of law upon which it is based, because the nature of all fundamental law is fixed: it does not change with time.[92]

In the United States, the legal context in which the Constitution was framed was established by the Declaration of Independence, the great charter of America. The Declaration explicitly acknowledges this legal context as being "the Laws of Nature and of Nature's God."[93] It is in this context that the Declaration states,

---

89. *Bailey v. Drexel Furniture Company*, 259 U.S. 20 (1922), at 37.

90. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), at 407.

91. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), at 163. *See also*, CONSTITUTION OF MASSACHUSSETTS, October 25, 1780, Art. XXX.

92. *See*, DECLARATION AND RESOLVES OF THE FIRST CONTINENTAL CONGRESS, October 14, 1774, which refer to the "immutable laws of nature."

93. THE DECLARATION OF INDEPENDENCE, July 4, 1776.

> that all men . . . are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.[94]

These unalienable rights are part of the fundamental laws of nature and of nature's God, which are immutable. Since a central purpose of government, and therefore the Constitution, is to secure the unalienable rights of the people, it makes little sense for that instrument to be adopted unless it is also of a permanent nature.

A written constitution is especially well suited for permanence because it is a form of civil covenant which by nature is designed to be perpetual. A constitution is by nature irrevocably binding on the parties, which in the United States, are the people,[95] until all the parties agree to abolish the constitution. As it has been said, the Constitution was "intended to endure for ages to come."[96]

> The exercise of this original right [to establish a government] is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established . . . are designed to be permanent."[97]

The government so constituted by the people cannot be altered or abolished by anyone other than the people. Even the right of the people to alter or abolish the Constitution is limited to constitutional means of amendment and the establishment of a new constitution.[98] Further, the Constitution, as properly modified, is binding not only on the people alive when it was adopted or modified, but also on their descendants.[99] Accordingly, no judicial or legislative body is authorized to alter or expand the terms of the covenant, and a court opinion or statute to the contrary is not law.[100]

> It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act. . . . Between these alternatives there is no middle ground. The constitution is either a

---

94. *Id*.

95. *McCulloch, supra* note 90, 17 U.S. at 404, 405. "The government proceeds directly from the people; is 'ordained and established' in the name of the people. . . . The government of the Union, then . . . is, emphatically, and truly a government of the people. In form and substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit." *Id*.

96. *McCulloch, supra* note 90, 17 U.S. at 415.

97. *Marbury, supra* note 91, 1 Cranch at 176.

98. *See*, U.S. CONSTITUTION, Art. V. *See also*, Stephen Junius Brutus, *A Defense of Liberty Against Tyrants* ("Vindiciae Contra Tyrannos"), 1579.

99. *See*, U.S. CONSTITUTION, Preamble, which uses the phrase, "to ourselves and our posterity."

100. *See*, U.S. CONSTITUTION, Art. VI, Cl. 2.

> superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts. . . . [I]f the latter be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable. . . . [I]t is [also] apparent, that the framers of the constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.[101]

In order for a constitution to be permanent, therefore, the meaning of its text cannot change with social conditions or every perceived necessity. The changing facts and circumstances of life may require new applications of constitutional provisions, but the rules of fundamental law do not evolve. "We must never forget, that it is *a constitution* we are expounding."[102]

> The powers of the [government] are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if the acts prohibited and acts allowed, are of equal obligation.[103]

THE LAW OF ENUMERATED POWERS

Another way the Constitution secures the unalienable rights of the people is by granting only those powers to the federal government which it alone enumerates. The federal government is a creature of the people acting through the Constitution, apart from which the federal government has no existence. "That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected."[104]

Federal authority exists only to the extent it has been given by the people pursuant to the terms of the Constitution. "This government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it, would seem too apparent . . .."[105] Accordingly, the clauses of the Constitution pertaining to taxation necessarily circumscribe the federal taxing authority.[106] "We know of no rule for construing the extent of such powers, other than

---

101. *Marbury, supra* note 91, 1 Cranch at 177.

102. *McCulloch, supra* note 90, 17 U.S. at 407.

103. *Marbury, supra* note 91, 1 Cranch at 176, 177.

104. *Marbury, supra* note 91, 1 Cranch at 176.

105. *McCulloch, supra* note 90, 17 U.S. at 405.

106. The principal tax clauses of the Constitution are as follows:

> Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective number . . . . (Art. I, Sec. 2, Cl. 3.)

is given by language of the instrument which confers them, taken in connection with the purposes for which they were conferred."[107]

> There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is executed, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.[108]

This principle is obvious from the legal context of the framing of the Constitution, but to avoid mistake, the framers expressly acknowledged the law of enumerated powers in the Ninth and Tenth Amendments to the Constitution.

> The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.
>
> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Consequently, there must be rights (*i.e.*, authority) of the people which have not been numbered among the powers of the federal government. These rights include every unalienable right of the people, which by definition can not be given. Therefore, the federal government cannot exercise authority over those rights which have been reserved to private persons and institutions.

The law of enumerated powers is not modified or supplanted by the doctrine of plenary powers, when it is recognized that all authority of the federal government is defined in terms of the purposes,

---

> All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills. (Art. I, Sec. 7, Cl. 1.)
>
> The Congress shall have the power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States. (Art. I, Sec. 8, Cl. 1.)
>
> No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken. (Art. I, Sec. 9, Cl. 4.)
>
> No tax or duty shall be laid on articles exported from any state. (Art. I, Sec. 9, Cl. 5.)
>
> The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration. (Amend. XVI.)

107. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824), at 189.

108. Alexander Hamilton, THE FEDERALIST PAPERS, #78 (New York: The New American Library, Inc., 1961).

or objects, entrusted to it. Those purposes numbered within the federal jurisdiction are exclusively federal powers, and those purposes reserved to other institutions or governments are beyond federal jurisdiction. Federal jurisdiction is not determined by the status of persons (a subject approach), because every person is subject to more than one government.

Thus, when it is said, "that the government of the Union, though limited in its powers, is supreme within its sphere of action,"[109] such supremacy is limited solely to the purposes for which the federal powers are granted. This is evident from the following:

> This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution. . . . [T]he sovereignty of the congress, though limited to specified objects, is plenary as to those objects.[110]

In other words, federal power is plenary (or, complete) as to the purposes entrusted to it, but not every purpose has been entrusted to it, and those which have not are beyond federal jurisdiction. Federal taxing power is plenary as to the purposes specified for taxation in the Constitution, but Congress does not have unlimited taxing power. Either the taxation of persons and property for anything other than an enumerated constitutional purpose is unconstitutional, or the law of enumerated powers is a lie.

> [T]he power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may choose to carry it. . . . All subjects over which the sovereign power of a State extends, are objects of taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident.[111]

THE LAW OF FEDERALISM

The federal taxing power is concurrent with state taxing power, but not co-extensive, because the people of the United States have not given all civil authority to any single civil government. That is, federal and state authorities operate on the same people at the same time, but in different ways and for different purposes. Because the people have covenanted with federal and state governments

---

109. *McCulloch, supra* note 90, 17 U.S. at 405.

110. *Gibbons, supra* note 107, 22 U.S. at 196, 197.

111. *McCulloch, supra* note 90, 17 U.S. at 428, 429. *But See, Steward Machine Co., supra* note 2. "But natural rights, so called, are as much subject to taxation as rights of lesser importance. Indeed, [property] ownership itself . . . is only a bundle of rights and privileges invested with a single name. . . . The subject matter of taxation open to the power of the Congress is as comprehensive as that open to the power of the states . . .." Id. This is an example not only of a rejection of the law of enumerated powers, but also a rejection of an object analysis in favor of a subject analysis, and a failure to recognize property ownership as a right, not a privilege at all.

at different times and places, civil authority is diffuse and disparate.[112] For this reason, the law of enumerated powers is the underlying basis for the law of federalism. When the federal government refuses to be limited by its own enumerated powers, the inevitable result is a violation of the law of federalism.

Each citizen of the United States is concurrently a citizen of the state in which he resides,[113] but there is no blending of citizenship: each is distinct from the other. A citizen's duties to each government are owed directly to the respective civil jurisdiction, apart from the superintendence of either one of them over the other. Thus, a citizen owes different civil duties to each government, the jurisdictions of which are determined by the purposes entrusted to each. There is therefore no conflict among the state and federal jurisdictions, for the people have not given the same duty to two different civil governments.[114]

> In America, the powers of sovereignty are divided between the government of the Union, and those of the States. They are each sovereign, with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other.[115]

That the power of taxation is to be concurrently exercised by federal and state governments according to the law of federalism is a truth which "has never been denied."[116]

> The power of taxation is . . . a power which, in its own nature, is capable of residing in, and being exercised by, different authorities, at the same time. We are accustomed to see it placed, for different purposes, in different hands. . . . [A] power in one to take what is necessary for certain purposes, is not, in its nature, incompatible with a power in another to take what is necessary for other purposes. . . . In imposing taxes for state purposes, they are not doing what congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the states. When, then, each government exercises the power of taxation, neither is exercising the power of the other.[117]

---

112. Thus, there is no civil power which is truly "shared" between the federal and state governments. Both governments have jurisdiction over commerce, but federal jurisdiction is limited to commerce among the states and with foreign nations, while state jurisdiction is limited to other kinds of commerce. Both governments may use lethal force, but the federal government's use of force is limited to matters of national defense, whereas state governments have jurisdiction only over internal police matters. The powers are similar, but they are not identical.

113. U.S. CONSTITUTION, Amend. XIV, Sec. 1.

114. *McCulloch, supra* note 90, 17 U.S. at 430. "We have a principle which is safe for the States, and safe for the Union. We are relieved, as we ought to be, from clashing sovereignty . . .." *Id.*

115. *McCulloch, supra* note 90, 17 U.S. at 410.

116. *McCulloch, supra* note 90, 17 U.S. at 425. "That the power of taxation is one of vital importance; that it is retained by the States; that it is not abridged by the grant of a similar power to the government of the Union; that it is to be concurrently exercised by the two governments: are truths which have never been denied." *Id.*

117. *Gibbons, supra* note 107, 22 U.S. at 199.

THE LAW OF SPENDING AUTHORITY

It follows from the law of federalism and the law of enumerated powers that only certain purposes are appropriate purposes of federal taxation: these are specified by the law of spending authority. The law of spending authority is stated in the first clause of Article I, Section 8, Paragraph 1 of the Constitution:

> The Congress shall have the power to lay and collect taxes . . . to pay the debts and provide for the common defence and general welfare of the United States.

The law of spending authority has two parts. First, Congress is authorized to raise revenues solely for the purpose of spending. If the purpose of any tax is not primarily to fund federal services, but is designed to penalize or regulate activities which the Constitution leaves to be regulated by another government, the tax violates the law of spending authority. The test is not whether any tax incidentally affects the conduct of activities outside of the regulatory authority of Congress, but whether the purpose of the levy is within the purposes entrusted to Congress.

> "It is the high duty and function of this court . . . to decline to recognize or enforce seeming laws of Congress, dealing with subjects not intrusted to Congress, but left or committed by the supreme law of the land to the control of the states. . . . The difference between a tax and a penalty is sometimes difficult to define, and yet the consequences of the distinction . . . often are important. Where the sovereign enacting the law has power to impose both tax and penalty, the difference . . . may be immaterial; but not so when one sovereign can impose a tax only, and the power of regulation rests in another."[118]

Thus, a federal plan to regulate matters reserved to the states is "but [a] means to an unconstitutional end."[119]

> [T]he Court cannot shut its eyes to what is obviously, because designedly, an attempt to control conduct which the Constitution left to the responsibility of the States, merely because Congress wrapped the legislation in the verbal cellophane of a revenue measure.[120]

The second part of the law of spending authority is that tax revenues can be expended only to pay for services which the federal government may lawfully render. Much of the discussion of this proposition has historically centered around the meaning of the phrase, "provide for the . . . general welfare."[121] The modern view of Congressional spending authority can be summarized as follows:

---

118. *Bailey, supra* note 89, 259 U.S. at 37, 38.

119. *U.S. v. Butler*, 297 U.S. 1 (1936), at 68.

120. *U.S. v. Kahriger*, 345 U.S. 22 (1953), at 38, Frankfurter, J., dissenting.

121. U.S. CONSTITUTION, Art I, Sec 8, Cl. 1.

> It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use of any purpose narrower than the promotion of the general welfare."[122]

In other words, the modern view bases the power of Congress on *promotion* of the general welfare. However, despite its appearance, this view is based neither on the text nor the context of the Constitution which relates to leglislative power. The phrase "promote the general welfare" appears only in the preamble to the Constitution, which grants no powers.[123] The actual grant of Congressional authority is limited to providing for the general welfare, and the difference between "provide" and "promote" is all important. The perceived power to promote the general welfare is limited only by public officials' perception of the need of the moment. The power to provide, however, is limited by the actually enumerated powers in Article I of the Constitution. Consitutionally, Congress cannot appropriate funds for every purpose which meets a demonstrated need, for Congress is restricted to those purposes which have been given to it, no matter what the need.

> It does not help to declare that local conditions throughout the nation have created a situation of national concern; for this is but to say that whenever there is a widespread similarity of local conditions, Congress may ignore constitutional limitations upon its own powers and usurp those reserved to the states. If, in lieu of compulsory regulation of subjects within the states' reserved jurisdiction, which is prohibited, the Congress could invoke the taxing and spending power as a means to accomplish the same end, clause 1 of Sec. 8 of Article I would become the instrument for total subversion of the governmental powers reserved to the individual states.[124]

As explained earlier, the law of love is beyond the jurisdiction of civil government. Thus, making charitable donations is one of the more easily identifiable purposes beyond the authority of Congress to spend monies on. According to Franklin Pierce, when vetoing a bill with a charitable purpose, the matter was settled by the first clause of Article I, Section 8, Paragraph 1:

> I take the received and just construction of that article, as if written to lay and collect taxes, duties, imposts, and excises <u>in order</u> to pay the debts and <u>in order</u> to provide for the common defense and general welfare. It is not a substantive general power to provide for the welfare of the United States, but is a limitation on the grant of power to raise money by taxes, duties and imposts. If it were otherwise, all the rest of the Constitution, consisting of carefully enumerated and cautiously guarded grants of specific powers,

---

122. *Steward Machine Co., supra* note 2, 301 U.S. at 586, 587.

123. The preamble to the U.S. CONSTITUTION reads, "We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

124. *Butler, supra* note 119, 297 U.S. at 74, 75.

would have been useless, if not delusive.[125]

THE LAW OF NO TAXATION WITHOUT REPRESENTATION

Because of historical abuses of taxing power, particularly the taxation of American colonies by England, our nation's founders required all federal taxation to be subject to the consent of the governed. The law of no taxation without representation has a long constitutional history, the roots of which trace back to the Rights of Englishmen in the Magna Carta,[126] the Confirmatio Cartarum,[127] and the English Bill of Rights.[128] This law was also embodied in many of the important documents of the revolutionary period, including the Declaration of Independence.

> That it is inseparably essential to the freedom of a people . . . that no taxes should be imposed on them, but with their own consent, given personally, or by their representatives."[129]

> "That the foundation . . . of all free government, is a right in the people to participate in the legislative council . . . in all cases of taxation . . .."[130]
> [G]overnments are instituted among men, deriving their just powers from the consent of the governed.[131]

This fundamental law of our republic is secured by several clauses of the U.S. Constitution. Article I, Section 7, Paragraph 1 provides that "All bills for raising revenue shall originate in the House of Representatives." As Congress was originally designed, the Senate represented the various state legislatures, and the House of Representatives represented the people of the United States.[132] Thus, this provision guarantees that it will always be the representatives of the people, rather than the representatives of state government, whose consent must precede the imposition of any federal tax.

Article I, Section 8, Paragraph 1 provides that "all duties, imposts and excises shall be uniform

---

125. *Steward Machine Co., supra* note 2, 301 U.S. at 605, McReynolds, J., dissenting, quoting a veto message of Franklin Pierce given on May 3, 1854.

126. MAGNA CARTA, June 15, 1215. "No scutage or aid [i.e., a tax] shall be imposed in our kingdom except by the common council of our kingdom . . ." *Id*., at par. 12.

127. CONFIRMATIO CARTARUM, November 5, 1297. "Moreover we have granted for us and our heirs . . . that for no business from henceforth we shall take such manner of aids, tasks, nor prises, but by the common assent of the realm . . ." *Id*., at par. 6.

128. ENGLISH BILL OF RIGHTS, December 16, 1689. "That levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal." *Id*.

129. RESOLUTIONS OF THE STAMP ACT CONGRESS, October 19, 1765, at par. 3.

130. DECLARATION AND RESOLVES OF THE FIRST CONTINENTAL CONGRESS, October 14, 1774, 4th Resolution.

131. DECLARATION OF INDEPENDENCE, *supra* note 101.

132. U.S. CONSTITUTION, Art I, Sec 3, Cl. 1, and Art. I, Sec. 2, Cl. 1.

throughout the United States." The relation of this provision to the law of no taxation without representation is that the people of the United States must be regarded as an indivisible whole. If the representatives and Senators of more poplulous states could form a coalition and pass revenue measures levied against the people only in less populous states, it would have the effect of imposing a tax on some of the people without their consent. The representative nature of Congress would become a mockery if it could raise revenue from other than the whole people.

Article I, Section 9, Paragraph 4 provides that "No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration before directed to be taken." This provision guarantees that the burden of direct taxation will be spread among the states in proportion to their populations. The method of revenue collection may vary from state to state, but each state's overall share is indexed according to the representation of its people in the House. Thus, the imposition of any direct tax is in essence taxation proportionate to representation, as well as being authorized through representation.

THE LAW OF DIRECT AND INDIRECT TAXATION

As the previous discussion indicates, the law of no taxation without representation recognizes two basic kinds of taxation under the Constitution.

> In the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: The rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises.[133]

The term "indirect taxes" is not used in the Constitution. It is merely a label for all duties, imposts and excises taken as a group, and is commonly understood as referring to any tax which is not direct.[134] Although it has often been argued that a uniform tax is one which exhibits intrinsic equality,[135] this argument has repeatedly been rejected by the Supreme Court.[136] It is quite possible that the whole purpose of requiring indirect taxes to be uniform is to secure the law of no taxation without representation. In other words, uniformity is merely geographic, not intrinsic. This does not mean that intrinsic equality is not required by the law of equality, however. It only means that the law of equality is not the subject of the uniformity clause of Article I, Section 8, Par. 1.

---

133. *Pollock v. The Farmer's Loan & Trust Co.*, (hereinafter "*Pollock I*"), 157 U.S 429, at 557, 39 L.Ed 759, at 811 (1895).

134. *Id*.

135. *Pollock I, supra* note 133, 39 L.Ed at 787. Mr. Edmunds, arguing on behalf of Pollock, said, "When it [the Constitution] speaks of uniformity throughout the United States it means, I submit, literally and grammatically, not merely that it shall be everywhere the same, but, first, that it shall be uniform per se, and after being uniform per se, that the uniformity shall be universal as to places." *Id*.

136. *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1, at 24, citing a number of cases.

Those taxes which are direct need not be uniform, but only apportioned. That is, a direct tax presumes Congress fixes an amount of revenue it wants to raise, and then levies the people of each state with their proportionate share of the amount. A direct tax may be collected either by assessments made by federal officials, or by the states on behalf of their people, which the states can then assess and collect in any way they choose.[137] In fact, there have been only four direct taxes assessed by Congress in the history of the Constitution, the last of which terminated near the end of the Civil War.[138]

Historically, the great legal issue concerning direct and indirect taxes has been to formulate a definition of the terms. Because direct taxes may affect people in different states in diverse ways, direct taxes have long been considered unpopular, and politically risky.[139] Thus, many kinds of federal taxes have been attacked as being unapportioned direct taxes, and therefore unconstitutional.[140]

This argument has been strenuously advanced against the federal income tax. In 1895, the Supreme Court held that,

> A tax upon one's whole income is a tax upon the annual receipts from his whole property . . . and is a direct tax, in the meaning of the Constitution. . . . In England, we do not understand that an income tax has ever been regarded as other than a direct tax.[141]

This ruling of the Court was made in spite of the argument made at the bar, that

> a direct tax is a tax upon every kind of property and upon every kind of person in respect of himself, or in respect of his property, either in existence or acquired, or to be acquired, and not in respect to his voluntary calling, pursuits or acts . . .. [I]ndirect taxes are levied upon consumption as it is called, always takes the thing in movement - transactions among men, in respect to which they are the masters of their own conduct . . ..[142]

The Court later realized its mistake, declaring that an income tax "was direct merely on income and

---

137. Philip B. Kurland and Gerhard Casper, ed., LANDMARK BRIEFS AND ARGUMENTS OF THE SUPREME COURT OF THE UNITED STATES: CONSTITUTIONAL LAW, Vol. 34. (Arlington: University Publications of America, Inc., 1975), at 419.

138. *See*, 1 Stat. 597 (1798), 3 Stat. 53 (1813), 3 Stat. 164 (1815), and 12 Stat. 293 (1861).

139. Dall W. Forsythe, TAXATION AND POLITICAL CHANGE IN THE YOUNG NATION 1781-1833 (New York: Columbia University Press, 1977), at 51-55.

140. *See, e.g., Scholey v. Rew*, 90 U.S. 331 (1875). *See also, Bromley v. McCaughn*, 280 U.S. 124 (1929).

141. *Pollock v. The Farmer's Loan & Trust Co.* (hereinafter "*Pollock II*"), 158 U.S. 601, at 625, 630, 39 L.Ed. 1108, at 1121 (1895).

142. *Pollock I, supra* note 133, 39 L.Ed at 786. Mr. Edmunds, on behalf of Pollock.

only indirect on property."[143] This later holding agreed with Hamilton's view of the subject:

> The following are presumed to be the only direct taxes. Capitation or poll taxes. Taxes on lands and buildings. General assessments, whether on the whole property of individuals, or on their whole real or personal estate; all else must of necessity be considered as indirect taxes.[144]

Thus, a direct tax is an assessment made on persons or property, merely by virtue of their status of being, whereas an indirect tax is an assessment made upon the occurrence of a voluntary transaction, such as a sale. In other words, a direct tax assesses "being," an indirect tax assesses "doing."

THE LAW OF RELIGIOUS LIBERTY

The First Amendment to the U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These religion clauses are generally acknowledged to have adopted the same understanding of religious liberty as the understanding embraced in Virginia.[145] Thus, religion in this federal context is best understood as "the duty . . . we owe to our creator, and the manner of discharging it, [which] can be directed only by reason and conviction, not by force or violence."[146]

There are two main points regarding the law of religious liberty. The first is that Congress has no jurisdiction over religion, either to regulate it or sanction it. Congress cannot compel anyone to perform his moral duty to God, for this would redefine the duty as one owed to the federal government instead of God. An established religion is, in essence, the civil enforcement of religious moral duty. Neither can Congress deny anyone the liberty to perform his moral duty to God, for this would deny the concurrent jurisdiction of individual self-government. In other words, when public officials restrain the exercise of individual moral duties, they have prohibited the free exercise of religion.

> The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right . . . because what is here a right towards men, is a duty towards the Creator. . . . This duty is precedent both in order of time and degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe. . . . [E]very man who becomes a member of any particular Civil Society [must] do it with

---

143. *Brushaber, supra* note 136, 240 U.S. 1, at 16.

144. Hamilton, *supra* note 108, #30.

145. *Everson v. Board of Education*, 330 U.S. 1 (1947).

146. VIRGINIA CONSTITUTION DECLARATION OF RIGHTS, June 12, 1776, Art. XVI.

> a saving of his allegiance to the Universal Sovereign.[147]

The second point is that religion embraces so much more than mere church government and public worship. It includes every manner of thought and belief, or freedom of the mind, and the means required to effectuate that object.[148] Thus, religion necessarily includes all education. All education necessarily involves the transmission of truth from one person to another, whether the truth concerns the nature of God, or the nature of His creation. Every course of study, whether mathematical, physical, philosophical, historical or otherwise, is necessarily religious.

According to Madison, the civil magistrate (*e.g.*, a state tax supported teacher) has no authority to judge the truth because that would be "an arrogant pretension falsified by the contradictory opinions of Rulers in all ages."[149] Jefferson agreed:

> Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishment, or burthens, or by civil incapacitations, . . . are a departure from the plan of the Holy Author of our religion . . . that the impious presumption of legislators and rulers, . . . who, . . . have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, have established and maintained false religions . . . [and] that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical. . . ."[150]

It is axiomatic, therefore, that religion can never serve as a legitimate purpose of federal taxation. In this way, the U.S. Constitution is consistent with the law of love, dictated by the laws of nature, and embraced by the Declaration of Independence.

---

147. Madison, *supra* note 1, at 299, 300.

148. *An Act for Religious Freedom*, adopted by the Virginia General Assembly on January 16, 1786, recited in Code of Virginia, Sec. 57-1 (1950).

149. Madison, *supra* note 1, at 302.

150. *Supra*, note 148.

V.
Applications of Principle

The fourteen principles of biblical and constitutional law just stated are not to be considered exhaustive, but rudimentary. There are many other rules and corollaries of biblical and constitutional law which relate to federal taxation, but few as fundamental or germane as those stated here. Thus, what has been stated is sufficient for the purpose of laying a firm foundation upon which particular rules of federal tax policy may be built.

The next task is to construct the framework of a federal tax policy structure, that is, to outline the primary applications of these fundamental principles which give shape to the whole structure. Of necessity, many other applications which could be derived from these principles must be left to another time. Nor does space permit a detailed application of principles to any topic. The applications selected are intended merely to establish the primary pillars of a framework derived from a faithful adherence to biblical and constitutional principles.

INCOME TAXATION

In spite of continual protests against it, a federal income tax is neither unbiblical nor unconstitutional *per se*. Constitutionally, Congress has the enumerated power to levy income taxes both under Article I, Section 8 and the 16th Amendment. Regardless of whether it is direct or indirect, an income tax is at least capable of being levied in some fashion based solely upon the Article I power.

> That the authority conferred upon Congress by Sec. 8 of article 1 . . . embraces every conceivable power of taxation has never been questioned, . . . [a]nd it has also never been questioned from the foundation, without stopping presently to determine under which of the separate headings the power was properly to be classed, that there was authority given, as the part was included in the whole, to lay and collect income taxes.[151]

It is also clear that an income tax is an indirect tax, because it attaches to sales transactions rather than to the mere status of being. The only way an income tax could be considered a direct tax would be to view all income as an attribute of property ownership. This would push the view of John Locke that personal labor is a man's property to an extreme. More in keeping with constitutional principles is the view that income derived from personal labor is a sale of services, not a valuation of property. Therefore, under the law of direct and indirect taxation, an income tax is indirect and need only be uniform, not apportioned.

A contrary view would be very troublesome. If an income tax were really a direct tax, but did not need to be apportioned (as provided by the Sixteenth Amendment), it would destroy the two great

151. *Brushaber, supra* note 136, 240 U.S. 1, at 12, 13.

classes of taxes established in the Constitution. Under this view, the income tax would fit into neither class, and be constrained neither by uniformity nor by apportionment.[152] Accordingly, such an income tax would violate the law of direct and indirect taxation.

Whether the 16th Amendment was improperly ratified, or is in some other way defective, would seem to be irrelevant. The adoption of the 16th Amendment did not provide for a previously unknown substantive power of taxation.[153] It merely negated the effect of a prior ruling of the Supreme Court which was contrary to the law of direct and indirect taxation. "There is no escape from the conclusion that the Amendment was drawn for the purpose of doing away for the future with the principle upon which the *Pollock* Case was decided."[154]

As presently enacted, however, federal income tax laws run afoul of some fundamental principles of taxation, such as the law of spending authority. Although the federal income tax is not assessed for any single purpose, portions of the revenue raised thereby are appropriated and spent for impermissible purposes, such as education (contrary to the law of religious liberty) and charity (contrary to the law of love). This does not invalidate the income tax *per se*, but undoubtedly affects the rates at which income taxes are imposed to finance these impermissible purposes. That is, if Congress kept within its constitutional limitations on spending, income tax rates would drop.

Still, this does not vest each individual taxpayer with the right to protest Congressional spending by refusing to pay income taxes. Public officials have been given the authority to tax to pay their lawful debts. Due to the law of exaction, the claim that the income tax is voluntary[155] is without merit, since every tax is compulsory by definition. The right way to protest as a taxpayer is to exercise the freedoms to vote, to lobby, and to run for public office. Tax cheating is not a lawful option.

As mentioned earlier, there is no express constitutional prohibition of a graduated income tax (the rule of uniformity is geographical only, not intrinsic). Nonetheless, a graduated rate structure arguably violates the Constitution, since the law of equality undergirds the common law system upon which the Constitution is based. A tax structure in which the rate of taxation varies with the level of income treats the poor differently than the rich, because all taxpayers do not have the legal opportunity to keep for themselves the same proportion of income after taxes as other taxpayers. Thus, progressive and regressive rate structures violate the rule of proportionality required by the law of equality.

Further, a direct result of the existence of a graduated rate structure is the division of taxpayers into classes (*i.e.*, single, head of household, married filing jointly, and married filing separately) for the express purpose of treating them unequally. Were income taxed at a flat rate applicable to all

---

152. *Id.*, at 11, 12.

153. *Brushaber, supra* note 136, 240 U.S. 1, at 11.

154. *Brushaber, supra* note 136, 240 U.S. 1, at 18.

155. Irwin Schiff, HOW ANYONE CAN STOP PAYING INCOME TAXES. (Hamden: Freedom Books, 1982).

taxpayers, these classifications and the disparate treatment of each would not be necessary. Accordingly, graduated rates produce inequality not only between the rich and the poor, but also between different kinds of taxpayers at the same income level. The existence of a graduated rate structure therefore implies that Congress has rejected "all men are created equal" as a legal rule binding on that body.

PROPERTY TAXATION

As indicated by the law of concurrent jurisdiction, the authority to own, use and control property has been given to the family governmental unit. Since this authority came from God, not public officials, the duty of stewardship which attaches to property ownership is moral only, and is not enforceable by civil government. Neither God nor the people have ever given public officials the right to superintend the family's exercise of its authority. Yet, the imposition of a tax on the mere ownership of property unavoidably impairs the family's rights before God to hold its property. In essence, every property tax presumes that the civil authority over property takes priority over the family's authority, rather than viewing these jurisdictions as concurrent and coequal.[156]

All private property is the gift of God, not a creature of society,[157] yet property taxation necessarily implies that a person can never truly own what God gave him. After all, taxable property can never be freed from the civil claim upon it. That is, the tax on specific property can never be fully satisfied. Property which is taxed is merely rented in perpetuity. This is particularly true whenever specific property is subject to forfeiture when the tax levied on it remains unpaid. When property forfeiture for unpaid taxes vests title in civil government, it is equivalent to an assertion that the only ultimate and true property owner is society. In other words, property ownership is viewed as a social privilege, not a private right. Accordingly, all property taxation is anti-private property, and is more suited to socialism than liberty.

Property taxation also violates the law of love, for mere ownership is neither a sale nor a contract. Accordingly, mere ownership involves no action which can be taxed. Further, property taxes at the state level are also generally levied for an impermissible purpose - the funding of state (public) education - which violates the law of service debt. Since the authority to educate children has also been given to the family,[158] and public officials are precluded from teaching truth pursuant to the law of religious liberty, no government may lawfully support or establish the institutions known as public schools.

---

156. DeMar, *supra* note 35, at 137-138. "No governmental agency is given biblical directives to tax the land because the state possesses no land to tax. . . . A tax on property (land) is a sign of oppression and tyranny." *Id. Accord,* Rushdoony, POLITICS, *supra* note 51, at 334-335. "[A] land tax destroys the independence of every sphere of government and makes each and every sphere subordinate to the state. . . . A tax on the land therefore is a tax against God."

157. *See*, Genesis 1:26-28. *See also*, James Kent, COMMENTARIES ON AMERICAN LAW (New York: O. Halsted, 1827; reprint ed., Baton Rouge: Claitor's Publishing Division, 1827), II:318-320.

158. Deuteronomy 4:9-10; 6:6-9; Psalm 78:5-6.

Historically, private property was regarded as among the unalienable rights of the people, particularly included in the phrase, "the pursuit of Happiness" in the Declaration of Independence. As stated by Chancellor James Kent, "The sense of property is inherent in the human breast . . .. Man was fitted and intended by the Author of his being . . . for the acquisition and enjoyment of property. It is, to speak correctly, the law of his nature."[159] Constitutionally, private property is among the unalienable rights secured by the law of constitutions, and is among the rights reserved to the people under the law of enumerated powers.[160]

> All subjects over which the sovereign power of a State extends, are objects of taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation. . . . The sovereignty of a State extends to everything which exists by its own authority or is introduced by its permission."[161]

Although this quotation from Chief Justice Marshall was in the context of examining a state's power to tax a federal bank, it states a principle of broader scope. The principle is that a civil government cannot tax that which exists prior to, and apart from, civil society. It would be difficult to deny, therefore, that property taxation is anything other than the claim that private property is the creature of civil government put into practice.

A curious effect of the law of direct and indirect taxation is that actual property taxation under the Constitution is permitted, but strongly disfavored. Obviously, a tax on property ownership is a direct tax, because it attaches to a mere status of being, not an action. By design, an apportioned tax on all the property of the United States will result in the people of each state paying a different rate of tax compared to people in other states, because each state's share of the total tax is apportioned on the basis of population, not property value. Consequently, any apportioned tax will be opposed by the states in which the rate will be highest, and difficult to pass through Congress.[162] Historically, the unpopularity of direct taxation may be inferred from its negligible use.

Additionally, every direct tax levied subsequent to 1798 permitted each state to pay its apportioned share of the total tax on behalf of its people and collect the revenue in its own way.[163] In such cases, the collection of property assessments by federal officials is abated. Thus, a constitutional mechanism has been allowed which permits the states to avoid all actual direct federal taxation of property. Surely this mechanism was part of the design of the Constitution to limit the ability of Congress to tax property in the United States.

Indeed, the only other form of direct tax (a capitation tax) has been so strongly disfavored in

---

159. Kent, *supra* note 157, at II:317-318.

160. *See*, U.S. CONSTITUTION, Amend. V.

161. *McCulloch*, *supra* note 90, 17 U.S. at 429.

162. *See*, *supra* note 139.

163. *Supra* note 138.

America that, to my knowledge, none has ever been enacted at the federal level. Unless one assumes the constitutional framers missed the obvious impact of what they wrote, it might be reasonable to assume that they knew direct taxes would be politically difficult, if not impossible, to assess. Perhaps they even intended to accomplish this result out of reverence for the law of nature.

ESTATE AND INHERITANCE TAXATION

When the federal estate tax was challenged before the U.S. Supreme Court in 1875,[164] the issue at bar was whether an estate tax was a direct or indirect tax. The Court ruled that an estate tax was imposed upon the transfer of property rather than its mere ownership, and therefore was an indirect tax.[165] This holding was justified on the basis that "the tax on income . . . cannot be distinguished in principle from a succession tax."[166] Having disposed of the direct tax question, the Court concluded that a federal estate tax was constitutional. This opinion was affirmed 46 years later, when Justice Holmes stated, "It is admitted, as . . . it has to be, that the United States has the power to tax legacies . . .."[167]

But, the Supreme Court missed an important point. Just because a tax is found to be indirect does not make it automatically constitutional. The Court failed to recognize that, although estate and income taxes are both indirect, there is a fundamental distinction between the two. Income receipt by definition involves a sale, but the transfer of an estate, though having an economic effect, does not. As explained earlier under the law of love, the transfer of an estate is a gift, not a sale. Therefore, civil government lacks jurisdiction over the transfer of an estate or inheritance - there is no transaction which it can tax. Simply put, an estate tax violates the law of love.[168]

An estate tax also violates the law of concurrent jurisdiction because it impairs the family's moral duty to pass property to the next generation, a duty enforceable, regulable, and taxable solely by God.[169] As Chancellor James Kent has said, "The right to transmit property by descent, to one's own offspring is dictated by the voice of nature."[170]

> The affection of parents towards their children is the most powerful and universal

---

164. *Scholey, supra* note 140.

165. *Id*. The estate tax was held to be a levy upon "the right to become the successor of real estate upon the death of the predecessor." *Id*., at 347.

166. *Id*., at 347, 348.

167. *New York Trust Co., v. Eisner*, 256 U.S. 345 (1921), at 348.

168. This analysis also holds true for state inheritance taxes. It makes no difference whether the tax is imposed upon the testator's right to devise property or the heir's right to inherit property. The character of the transaction remains the same.

169. Numbers 26:53-56; Proverbs 13:22; 19:14.

170. Kent, *supra* note 157, at II:263. *See also*, John Locke, TWO TREATISES OF GOVERNMENT (New York: The New American Library, Inc., 1965), II:Sec. 190. "Every Man is born with . . . A Right, before any other Man, to inherit, with his Brethren, his Father's Goods." *Id*.

> principle which nature has planted in the human breast; and it cannot be conceived, even in the most savage state, that anyone is so destitute of that affection and of reason, who would not revolt at the position, that a stranger has as good a right as his children to the property of a deceased parent.[171]

It would seem apparent that the imposition of an estate or inheritance tax contradicts the law of nature. It presupposes that the authority to pass an estate or inheritance, in the words of Chief Justice Marshall, exists by the government's own authority or is introduced by its permission. Thus, it is no surprise that many of those judges who have upheld the validity of estate or inheritance taxes have done so, expressly or impliedly, on the basis that estate transfers are a creature of society, and not a God-given right, to wit:

> The right to take property by devise or descent is the creature of the [civil] law and secured and protected by its authority. The legislature . . . may tomorrow, if it pleases, absolutely repeal the statute of wills and that of descents and distributions and declare that upon the death of a party, his property shall be applied to the payment of his debts and the residue appropriated to public uses.[172]

Accordingly, conventional wisdom no longer views the family's authority to pass estates unimpaired by civil constraint as part of "the laws of nature and of nature's God," among the unalienable rights of the people secured by the law of constitutions and reserved to the people under the law of enumerated powers.

GIFT TAXATION

Obviously, the preceding analysis of estate and inheritance taxation applies to gift taxation. If inheritances and estates are beyond federal taxing authority because they are gifts, then all other forms of giving should receive the same legal treatment. Conversely, if inheritances and estates are taxable, then arguably at least some other gift transactions can also be taxed.

Historically, estates have been taxed in England and America for hundreds of years, yet no gift tax existed in either country until 1924. With the introduction of the federal gift tax by Congress, the perceived power to tax legacies was extended to its logical conclusion. In fact, the primary reason a gift tax was proposed was to prevent the circumvention of estate taxes by people who gave away their property before dying. This logical link between estate and gift taxes is still reflected today in the unified estate and gift tax credit under federal law.

When the gift tax was first challenged in the Supreme Court, the Court concluded that a tax levied on the donor of an inter-vivos gift was an indirect tax, thereby meeting all constitutional

---

171. St. George Tucker, BLACKSTONE'S COMMENTARIES (Philadelphia: William Birch & Abraham Small, 1803; reprint ed., Buffalo, N.Y.: Dennis and Co., 1965), III:10 fn. 3.

172. *Eyre v. Jacob*, 55 Va. (14 Gratt.) 422 (1858), at 430.

requirements.[173] However, the Court did not acknowledge the unalienable right of people to transact gifts, stating that:

> So far as the constitutional power to tax is concerned, it would be difficult to state any intelligible distinction, founded either in reason or upon practical considerations of weight, between a tax upon the exercise of the power to give property inter vivos and the disposition of it by legacy.[174]

It is ironic that the Court correctly stated this principle, yet came to a seemingly erroneous conclusion. The legal principles which make estate transfers immune from taxation also make all other gifts immune from taxation. It is true that there is no legal distinction between the validity of a gift tax and an estate tax. However, this correlation mitigates against the validity of either tax, not in favor of it.

In keeping with its nature, the gift tax is imposed upon the donor, not the donee, as a tax on the privilege of distributing wealth by gift.[175] Yet, an interesting aspect of federal taxation overall is its inconsistent treatment of donors and donees. Gift receipts have historically been immune to income taxation because of the nearly universal recognition that the receipt of a gift is not income.[176] However, a gift transaction cannot be the exercise of an unalienable right by the donee and at the same time the exercise of a mere privilege by the donor. Thus, one would expect the rule of law to require that gifts would be either taxable or tax-immune to donor and donee alike. If there is a rule of law which demands, or even permits, such disparity between donors and donees, I am unaware of it.

Consequently, gift transactions are regarded as taxable for gift tax purposes, but as non-taxable for income tax purposes. It may be argued that this disparate treatment is justified because the purposes of gift taxation and income taxation are different. Yet, even so, it is questionable whether any legal rationale remains under current federal law for exempting gift receipts from income taxation. After all, if gift transactions are taxable to any extent, then the exemption of gifts from income taxation is a mere privilege which Congress can remove whenever it wishes. However, if gifts are immune from income taxation as a matter of legal right, then no gift tax ought to be suffered which impairs this legal right. The crucial question is whether the taxability of gifts is to be determined on the basis of public policy (a mere privilege) or the rule of law (a legal right).

TAX EXEMPTION

The inconsistent taxation of the donors and donees of gifts has not gone completely unnoticed. Some legal commentators have questioned whether there is any rational basis for exempting

---

173. *Bromley*, *supra* note 140.

174. *Bromley*, *supra* note 140, 280 U.S. 124 (1929), at 137.

175. 26 U.S.C. Sec. 2502(d).

176. 26 U.S.C. Sec. 102.

charitable organizations from the federal income tax.[177] The reason for this questioning is the apparent lack of any economic difference between contribution receipts and sales receipts.[178] But, this reasoning ignores the legal differences involved.

As the previous discussion indicates, the tax-immunity of gift receipts is a function of the nature of the transaction, not a function of who the donee is. Charitable organizations are exempt from income taxation on their contribution receipts not because they have been granted any special immunity by God or exemption by public officials, but because of the legal character of gift transactions. To tax the gift receipts of a charitable organization for any reason whatsoever, regardless of whether its activities comport with public policy, exceeds the lawful jurisdiction of government.

However, modern federal tax exemption laws have significantly departed from this simple model. First, exempt status permits charities to treat some business income the same as contribution receipts for income tax purposes. That is, business income which is related to an organization's exempt purposes is not taxed, even though income from the same kind of activity would be taxable to non-exempt organizations.[179] Second, federal law grants or recognizes exempt status only with respect to certain qualified organizations.[180] The reason why these special exemptions have persisted seems to be that tax exempt status is not really based on law at all, but is derived from strictly political concerns which are promoted by special interest groups and lobbyists.

Contrary to the claims of some biblical expositors,[181] the law of concurrent jurisdiction does not require that churches or other charitable organizations deserve special tax immunity or exemption. In other words, the fact that churches are governed directly by God rather than public officials does not support the claim for church immunity from taxation. If churches were exempt from taxation merely because they are governed exclusively by God, every individual and family could make the same claim, rendering every form of taxation void. Remember, there are four basic jurisdictions in society, not just two. Consequently, individuals, churches and families are each governed directly by God.

Further, individuals, churches and families are coequal. Just as none of them is ruled by civil government, so none is more or less an independent jurisdiction than the others. After all, it is the family, not the church, which has original dominion authority (the basis for all income production). Therefore, the best claim to tax exemption among the basic institutions can be made by the family, not the church. However, as required by the law of exemption, even the family's claim to exempt

---

177. *See, e.g.*, Henry Hansmann, "The Rationale for Exempting Nonprofit Organizations from Corporate Income Taxation." YALE LAW JOURNAL 91 (1981): 54.

178. *Id.*

179. 26 U.S.C. Sec. 501(a), Sec. 511 *et seq.*

180. 26 U.S.C. Sec. 501(c).

181. *Supra* note 51.

status is invalid, since it is not a member of the civil household. Thus, the argument in favor of church immunity contradicts the law of concurrent jurisdiction, rather than affirming it.

Similarly, the law of equality requires that charitable organizations be treated the same as all other taxpayers. The basis upon which exempt organizations are selected for special tax status makes the federal government a respecter of persons. That is, exempt status is a function of who the taxpayer is (a person approach) rather than the nature of the activity involved (a purpose approach). Public policy, in this context, disfavors individuals compared to entities,[182] and any group with an undesirable program or policy.[183] Yet, there is no legal basis (apart from the whim of public officials) for treating individuals and charities differently with respect to either their income or contribution receipts.

The law of exemption provides that only members of the civil household are truly immune from taxation because of who they are. Most organizations exempt under federal tax laws, including private religious, charitable and educational organizations, are not of this description. Thus, the granting of exempt status to charities treats them as though they were part of the civil household, when their state charters regard them as private, not public, organizations. Yet, the law of tax exemption is self-enforcing in its own way.

A real cost of obtaining exempt status is that public officials can tell an exempt organization how to conduct its affairs and structure its government.[184] This is to be expected, since that is the way all political subdivisions are governed. In other words, federal tax-exempt status is an acceptance by the charity of federal jurisdiction over some aspects of its own self-government. It is ironic that the people who most forcefully argue for the special status of churches on the basis of a claimed immunity in reality submit their churches to increased government intrusion whenever they promote the recognition of their special exempt status.

Hence, a charity which receives any business income, whether related or unrelated, has no claim to exemption from paying taxes on such income as a matter of legal right. In other words, the granting of tax exemption to qualified charities as to their related business income is a matter of legislative grace, which can legitimately be terminated at any time.

However, such legislative grace does a disservice to the law of love. Tax exemption is often defended on the basis that charities contribute services to society which other organizations are unable or unwilling to provide. Supposedly, exempt status compensates them for this activity. Yet, what charities give must be from love, not for a *quid pro quo*. Accordingly, exempt status negates, in part, the special nature of nonprofit activities as a form of public *ministry* (*i.e.*, charity which

---

182. 26 U.S.C. Sec. 501.

183. *Bob Jones University v. U.S.*, 461 U.S. 574 (1983), at 275. "[E]ntitlement to tax exemption depends on meeting certain common-law standards of charity - namely, that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy." Id.

184. 26 U.S.C. Sec. 501. *See, e.g.*, Regs. Sec. 1.501(c)(3)-1.

expects nothing in return). Further, how can Congress decide to be gracious to charities, when that grace itself violates the fundamental laws of equality, jurisdiction and exemption?

A related question concerning tax-exemption is whether the donor of a charitable contribution is entitled (as a matter of right) to a deduction from income on account of the contribution. The key to this analysis is to realize that disallowing a charitable deduction is not the same as taxing the gift. The failure to grant a charitable deduction is not a tax on the giving of the gift, but merely a tax on the full income receipts of the donor, which is lawful.

All income received is income at the point of receipt, which is when the taxable event occurs. What a person does with his income after it is received is a matter of expenditure, not income. In other words, an income tax is essentially a tax on gross income receipts, not a tax on net income after personal expenses. If public officials were obliged to grant a deduction from income for every expenditure governed exclusively by the law of love, little income would remain to be taxed.[185] Thus, a charitable deduction from income is also a matter of legislative grace.

The question is whether public officials have the authority to be gracious in this way. Necessarily, Congress must restrict deductions to only certain kinds of gifts. Otherwise, gifts to spouses and children would virtually eliminate all individual taxable income. Hence, deductions are allowed only for gifts made to qualified charities. However, as discussed earlier, the distinction between gifts made to organizations and individuals is based on politics, not law. Gifts to individuals, which follow the biblical model for giving,[186] end up being treated unequally.

EMPLOYMENT TAXATION

Employment taxes (including self-employment taxes) are not unlawful *per se*, at least to the extent they are measured by wage income derived from the sale of personal services. Contrary to the claims of some income tax protestors, taxes measured by wage income do not constitute a levy on the mere exercise of labor. Not all labor services produce wage income. To the extent a person sells his labor services for money, his compensation is taxable. Wages represent only the commercial value of personal services as determined by the laborer and his hirer, not the intrinsic value of labor.

Although the manner in which employment taxes are imposed is lawful in theory, it must be recognized that in America they are expended strictly for non-civil purposes, *i.e.*, old age, survivors and disability insurance, commonly called social security (FICA and SECA)[187] and unemployment

185. For example, a working husband may give substantially all of his income to his homemaker wife to buy household necessities. Such a gift is governed exclusively by the law of love, yet it cannot be seriously argued that the gift negates the taxability of the husband's income.

186. *See*, Matthew 25:34-46. Jesus said, in essence, "To the extent you give to the least of these my brothers, you give to me." He did not say, "To the extent you give to a nonprofit tax exempt charitable organization, you give to me." Giving to a recognized charity is not a precondition to giving to the Lord's work.

187. 26 U.S.C. Sec. 3101, et seq.

compensation (FUTA).[188] On the one hand, these purposes may be viewed as purely charitable. Social security and unemployment benefits are not paid by reason of any *quid pro quo* the recipients furnish to the government, but because of the perceived need for public officials to promote the general welfare of the nation. This, of course, runs afoul of the law of spending authority. On the other hand, it may be argued that recipients of such benefits have a contractual right, based on prior taxes paid, to receive such benefits. However, no such contract really exists. There is no direct relationship between benefits eligibility and prior taxes paid. Further, Congress is at complete liberty to modify the benefits levels and eligibility requirements. However, even if such a contract existed, it would merely make the government an insurance carrier, which serves no arguable constitutional purpose pursuant to any enumerated power.

In addition, the Federal Unemployment Tax Act provides for a credit against the unemployment tax based upon contributions to state unemployment funds, which funds are established pursuant to state laws approved by the federal Secretary of Labor.[189] In this way, the federal government sits as a judge over state legislation in violation of the law of federalism.

> Nor do I doubt the authority of the federal government and state government to cooperate to a common end, providing each of them is authorized to reach it. But such cooperation must be effectuated by an exercise of the powers which they severally possess, and not by an exercise, through invasion or surrender, by one of them of the governmental power of the other. . . . [Under the unemployment tax act] the federal government . . . sits . . . as lord paramount, to determine whether the state is faithfully executing its own law - as though the state were a dependency under pupilage and not to be trusted.[190]

VALUE ADDED TAXATION (VAT)

The value added tax, or "VAT," enacted in Great Britain and other European nations,[191] has been proposed for adoption in the U. S. in order to partially replace income and payroll taxes,[192] and is sometimes likened to a federal sales tax. This characterization would be fine if it were accurate, for there is no prohibition against a federal sales, or excise, tax on interstate commerce. Excises are among the indirect taxes which Congress is authorized to "lay and collect." But, a VAT is of a substantially different nature.

> The VAT is a tax paid by a business on the increase in the market value of its products or services resulting from the business' production activities. This increase in market value

---

188. 26 U.S.C. Sec. 3301, et seq.

189. 26 U.S.C. Sec. 3302-3304.

190. *Steward Machine Co., supra* note 2, 301 U.S. at 611-613, Sutherland, J., dissenting.

191. *See*, A. R. Prest, VALUE ADDED TAXATION. THE EXPERIENCE OF THE UNITED KINGDOM (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1980). *See also*, Eric Schiff, VALUE-ADDED TAXATION IN EUROPE (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1973).

192. Norman B. Ture, THE VALUE ADDED TAX. FACTS AND FANCIES (The Heritage Foundation, 1979).

> - value added - is equal to the costs the company incurs for the labor and capital it uses. The base of the VAT - the amount on which the tax rate is applied - is the firm's gross payroll plus its gross profits.[193]

In other words, a VAT is imposed on the costs incurred by an enterprise, not its income. The economic theory underlying a VAT is that these costs represent a burden imposed on the economy for the use of some of society's resources which "are not simultaneously available for any other use by anyone else."[194]

One major component of taxable costs is the cost of labor, as measured by gross payroll. This aspect of a VAT is structured similarly to the employer's portion of current federal employment taxes. However, the VAT is not an employment tax. That is, the actual incidence, or reason, for the tax is not the income value of personal services (*i.e.*, wages). Rather, the tax incidence is an economic burden said to be imposed on the economy. Gross payroll just happens to be the barometer for measuring this economic burden.

However, this poses some problems. First, the economic burden is imaginary, not real. The fact that one enterprise ties up certain resources does not mean that any other business could, would, or should use those same resources. Second, and more fundamentally, the economic theory runs contrary to the laws of private property and family dominion. Since when does society have a legal claim to the business use of private property or employment relations? Thus, although taxes may be levied against gross wages in some circumstances, in the case of a VAT, it is unrelated to the reason the tax is imposed in the first place.

The problem is compounded with respect to the computation of capital costs incurred for purposes of the VAT. The so-called labor burden on the economy is at least measured by the cost of actual payroll, but the cost of capital is not measured by any actual cost at all. Instead, a firm's gross profits (a private asset) are viewed as a cost to the economy (a social liability). Further, it is the latter which is being taxed, not the former.

A VAT on this purported cost suffers some of the same defects as the VAT on gross payroll. First, a firm need not actually expend its gross profits on capital, to have those profits added to the VAT base. Gross profits are simply deemed to be available for paying capital costs, even if actually used to pay interest on debts, dividends or even charitable contributions. Consequently, the capital cost is merely imputed, not actual. Second, it is difficult to imagine how any valid principle of law would regard a private asset as a social cost cognizable by public officials. Whatever happened to the laws of concurrent jurisdictions and enumerated powers?

Consequently, a VAT imposes an individual tax to pay for a systemic burden, the actual value of which is imaginary, not real, and which is unrelated to the results obtained by the computational

---

193. Ture, *supra* note 192, at viii.

194. *Id.*, at 11.

methods employed. Further, a VAT on capital costs is measured at least in part by transactions which involve no sale, such as contributions. Thus, a VAT violates the law of love.

It is this last point which spells danger for all charitable organizations. Since the VAT is applied to a tax base which need not either be derived from sales nor expended for purchases, it applies equally well to charitable organizations as it does to profit seeking businesses.[195] In other words, to the extent any charity has contribution receipts which exceed applicable costs, the charity is viewed as having gross profits subject to the VAT. Under this perverted view of economics, it is irrelevant how an organization derives its revenues, whether by sale or gift, since the social burden is the same for both. In essence, a VAT applied to charities is no different than a tax on contribution receipts, and it is for this reason most dangerous. In short, biblically and constitutionally, a VAT has little to commend itself.

195. *Id.*

VI.
Conclusion

A biblical and constitutional perspective of federal taxation in the United States comprehends a single world view of taxing authority. The biblical law of delegated authority is mirrored in the constitutional law of enumerated powers. The law of federalism is analogous to the law of concurrent jurisdiction. Similar parallels exist between the laws of service debt and spending authority, and the laws of love and religious liberty. The law of no taxation without representation is the counterpart to the law of exaction. And, the law of constitutions secures the law of nature's God, the law of the Bible.

The biblical and constitutional principles of law work together to carefully define the jurisdictional limits of federal authority, both in a positive and a negative sense. On the one hand, federal jurisdiction extends to sales and the power to use force against wrongdoers. On the other hand, federal jurisdiction does not extend to unalienable rights and other duties owed exclusively to God by the people. The failure to consider federal authority in the context of the multiple governments instituted among men (self-government, family government, church government, and civil government) inevitably leads to a loss of liberty for the people.

The basis of each of these governments is rooted in accountability to God. If America's government were one of men, and not of laws, there could be no objective legal standard to which all are held accountable, and therefore no guarantee of liberty. Thus, to deny the authority of the Bible as the revelation of a legal framework upon which our nation is founded, is to deny our rights as freemen.

Other publications by this author:

Politics & Prophecy: A Lawyer's View of the End Times

Legal Foundations: The Framework of Law

Studies in the Laws of Nature's God

The Right To Alter or Abolish the Government

The Great Commission and God's Law

Tithing & The Law of God

Biblical Genealogies and the Law of Inheritance

Five Biblical Principles of Church Government (that you have never ever in your entire life heard preached from a pulpit)

A Call For Reclaiming Church Government

The Unalienable Right of Property: Examining the 4th and 5th Amendments

Sex, Crimes & Punishment

Federal Taxation In the U.S.: A Biblical and Constitutional Perspective

Legal Equality: No Respecter of Persons

All these publications and more are available for free download at www.lonang.com/downloads/