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JOHN TAYLOR

AN ARGUMENT RESPECTING the CONSTITUTIONALITY OF THE CARRIAGE TAX;

[MARRIED] On Saturday Evening Mr. SAMUEL PLEASANTS, Printer to MISS DEBORAH LOWNES, both of This City

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An ARGUMENT respecting the CONSTITUTIONALITY of the CARRIAGE TAX;
Which subject was discussed in the FEDERAL COURT; IN THIS CITY, IN MAY LAST
[BY JOHN TAYLOR]

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AN ARGUMENT

RESPECTING THE

CONSTITUTIONALITY

OF THE

CARRIAGE TAX;

WHICH SUBJECT WAS DISCUSSED AT RICHMOND,

IN VIRGINIA,

IN MAY, 1795

BY JOHN TAYLOR

RICHMOND: PRINTED BY AUGUSTINE DAVIS

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WHICH SUBJECT WAS DISCUSSED AT RICHMOND,
IN VIRGINIA, IN MAY 1795

John Taylor of Caroline County, VA.

This Edition Edited with introduction by
Mike Church

founding father films™
publishing

21489 Koop Rd., #2
Mandeville, LA 70471
www.mikechurch.com

An argument respecting the constitutionality of the carriage taxWHICH SUBJECT WAS DISCUSSED AT RICHMOND, IN VIRGINIA, IN MAY 1795 Edited with introduction by Mike Church is ©2013 Mike Church. All rights reserved. Printed in the United States of America.
For information, address BlackHat Publishing,
21489 Koop Rd., #2, Mandeville, LA 70471

www.mikechurch.com
ISBN 978-0-9894368-2-3
First U.S. Printing of this edition: May, 2013

The printing of the following argument appears to be proper, because it considers a question, not of private or individual, but of public and national concern, which cannot be too well understood; and because a repetition of it, which the division of the court would otherwise have made necessary, would be extremely irksome. A wish existed, to have subjoined at full length, the ingenious argument delivered by the counsel for the United States, but as this could not be effected, the definition upon which it was founded is considered, as alone essential to be answered, all the inferences from it fall to the ground. it was impossible exactly to recollect the reply delivered in court, nor was it so much an object, as more perspicuous reasoning. The variance however is neither considerable or important.

June 16, 1795

ARGUMENT

ON THE

CARRIAGE TAX, &c.

The doctrine of Constitutions, as restraints upon government, is of too recent invention to have attained perfection in practice. Though it may be well understood therefore theoretically, occasional discussions, and applications, can only maintain its impression, and bestow upon it real activity. The term "Constitution," until modern times, implied simply, "a form of government," at present it is understood in America to be "a code of laws designed to regulate the conduct of the government."

The government constitute the entire political nation upon which a Constitution can operate. If we were told, that a nation of men existed, who had an excellent code of laws to restrain and govern private individuals, but that no delinquency had happened from the enacting of this supposed code for a considerable number of years, would a single man arrived to the age of puberty credit the assertion? Is it not as unnatural that men should be sinless in their public, as in their private functions? What then results? That the discovery of the doctrine of Constitutions is rendered abortive, if it be not enforced.

And if the doctrine of passive obedience to legislative majorities is orthodox, then the principles of the Constitution never can be enforced, because it allows those designed to be restrained, exclusively to interpret these principles. Admitting this doctrine, America possesses only the effigy of a Constitution.

Although the peculiar dangers to which America will be exposed by the doctrine of majorities, will be frequently exhibited in the course of this discussion, yet the argument will acquire force, by selecting and stating one, from the numerous instances of its mischief, recorded in history.

The most memorable, though not the most familiar, happened in Denmark in the year 1660. Its chief magistrate was elective—its senate hereditary—and its third estate was composed of representatives of the people. Frederick the third the King of the day, had acted with great magnanimity in defending his country against the King of Sweden, and had increased his popularity [by] obtaining several privileges for the oppressed peasantry. His character was unexceptionable, his civil talents great, and his private life exemplary.

The diet or parliament assembled to provide for the expenditures of the war successfully terminated, divided in opinion as to the mode, and privately worked upon Frederick's Queen and partizans, not a majority only, but the representatives of the people, unanimously, surrendered to him the national rights without retaining even a solitary privilege. They annihilated representation—made the crown hereditary—exalted the King above every restraint except from God—and invested him with the sole power of making, abrogating, interpreting, and dispensing with laws. Frederick was apparently inactive, but passive. He accepted of despotism, probably relying upon his own great qualities for government. But with these were interred the spirit of a nation, famous for its prowess, whilst it retained its liberty. Abject, oppressed and miserable, instead of the admiration, it has since only excited the pity of the historian.

This unequalled instance evinces that legislative majorities are not to be unexceptionably relied upon, and that the power of the nation either cannot, or will not always exert them [itself], though assaulted by the most treacherous attack upon human liberty.

Hence the Constitution of America was designed to preserve certain rights against the aggression of such majorities, and hence too it provided a mode of enforcing that Constitution without relying upon insurrection, which is as inefficacious, as it is mischievous.

It interposes the judiciary between the government and the individual. It provides for its independency upon either—and it opens the door of justice to both. Undue influence from the former, or actual bribery from the latter, would be equally informative [subversive] of its intent, and both are guarded against.

If the remedy remains this obvious [in oblivion], America possesses only an Utopian Constitution. If the dispute is of long continuance, the remedy will be controverted, or a resort to it will from its novelty be dangerous. It can only become effective to preserve liberty and public tranquility, by deciding constitutional questions, like other judicial cases—independently of political influence, upon free discussion, and without a risque of any disagreeable consequence to the party propounding them. If his motives are pure, he deserves well of the nation.

The law of the Constitution is superior to the law of any legislative majority. If their [these] laws clash, it is the duty of every good citizen to cling to the superior law. He owes obedience to congressional, and also to state majorities, whilst legislating within the pale of the Constitution. The former overleaping this pale, have no controul over the latter, and as obedience is due to both whilst acting within it, so a recurrence to the judiciary becomes necessary to ascertain limits, a strict observance of which can only prevent a conflict between these majorities, and preserve the union.

These preliminary observations, do in some nature [measure] exhibit the propriety and importance of the question, to which they have conducted us.

It is this. Have Congress a power to impose the tax upon carriages kept by a citizen for his own use? They have power "to lay and collect taxes, duties, imposts and excises."

In all the glossaries, legal, scientific or general to which I have referred, the term excise is expounded to mean tribute, and tribute is a tax.

"Excise" that is as much a general expression as "tax," and a repetition of the same idea, so common in laws, was only designed to shew that insofar [so far], the right of taxation, with which congress is invested, was to be considered as general.

Supposing however that "duties, imposts and excises" are all specifical, the argument will only require that the term "tax" be allowed to be generical. For it will hardly be asserted, that an excise, or a duty, is not a tax.

Immediately following the powers bestowed upon Congress, the limitations upon those powers present themselves.

Among these is the following.

"No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken."

The spirit of justice and equity breathes through every word of this inhibition. It is the most important stipulation of the whole compact. It is the strongest band of the union.

Words, more comprehensive than "other direct tax" could not have been formed [furnished] by our language. "Tax," the genus including all governmental impositions. Expounded by the accurate Mr. Johnson to mean "an impost—a tribute—an excise.

Hence it is also impossible to maintain, that "a direct duty, or a direct excise," does not fall within the express words of the inhibition. As to the intention of the Constitution, it will be shewn throughout the argument, that such a doctrine would entirely undermine the design of the restriction. It will appear to be an evasion, which would leave Congress unrestrained upon the subject of taxation, in violation of the plainest words. They would only have to denominate every tax "an excise or a duty," to invest themselves with, an unlimited power of taxation, over every article of human necessity.

But the law in question throughout avoids the terms "tax and excise," and is strictly confined to "duties and rates." Yet it is necessary to consider the former expressions, because in England carriages are excised; and to embrace the whole subject, substantially, it is proper to shew, that no difference would have been [arisen], had the law been differently worded.

The preceding observations apply as forcibly to the term "duty" as to "excise." Johnson defines it to be—a tax—impost—custom—toll. Technically explained, its meaning is extended on "an excise or stamp tax." When the Constitution was formed, it was probably understood to mean "duties on imported articles," without an idea of applying it to every article of internal property—yet the law has endowed the term with its most copi-

ous signification; and so let it be understood—at least its right in this instance to that of "a tax" will not be denied, and if so, a direct duty is a direct tax.

The thread of these verbal criticisms upon the Constitution have [hath] now conducted us to the important word "direct," it is the pivot upon which the point turns.

Assuming the position that this duty upon carriages is a tax, it now occurs to enquire whether or not, it is a direct tax. If it is, it violates the Constitution, in not having been apportioned among the states in proportion to the census; and if the law violates the Constitution, the law is void.

The term "direct" does not seem to be of technical etymology. Hence Johnson's aid is once more necessary, and he expounds it to mean "straight—not crooked—not oblique."

Suppose a pecuniary duty to be discharged by an immediate payment from the payer to the payee; on the contrary, suppose a third person to be interposed between the real payer and the payee, advancing the money to the latter, and trusting for reimbursement to the former. Is not the first transaction straight or direct, and the latter circuitous or indirect?

Although these previous definitions were indispensable, yet it is time to quit so literal a tract, because, as perspicuous as it is, it straitens the argument. Let us now range into the wider field of intention.

A certain politician boasted, that by the science of construction, he could interpret a fragment [single line] of any man's writing, upon any subject, into treason, and so take away his life. God forbid that this science should attain already in America so wicked a degree of perfection, as to annihilate that spirit, which alone could [can] sustain our political life.

Let this species of construction then be banished from this discussion, and let common sense—and common opinion when the contract was formed, be substituted in its place. A proposition which ought to be acceded to, if it be recollected, that it is fraudulent to continue[construe] contracts, differently from the ideas impressed upon the parties whilst contracting—and that it infringes a legal maxim, so to continue[construe] as to defeat them.

And then let the following questions be propounded.

Did the mind of America conceive, that Congress were to be restrained in the article of taxation?

Did her imagination ever wander to the idea, that though a restriction was expressed, it was not real, but nominal and illusory?

If this precedent is allowed to stand, then the former interrogatory must be answered in the negative, and the latter in the affirmative.

For if, without any apportionment[appointment] among the states, by the rule of the census, Congress can tax the drink, the food—the cloathing—and all the necessities[nec-

essaries], raised or kept by individuals for their own care[ease] and subsistence, without limitation, is there any real restriction on[of] their power of taxation?

Suppose a people and a government were in treaty on the subject of taxation, the former designing to concede, and the latter asking only a limited power; and that in the course of the negociation the government should propose to be invested with a power either of imposing a land and a capitation tax, without restriction, or of taxing every thing necessary to sustain human life in a like manner. Would not the people laugh at such an alternative, as a puerile fraud—as a meer cross I win, pole[pile] you lose trick. And can it be proved that such is our boasted Constitution? Have the Americans, so well lectured at so much cost, upon the principles of liberty, been thus grossly, nay childishly cajoled out of the great principle of representation and taxation? In one way it is saved—in another, wholly lost. Each state has a philtre against sudden death, whilst it may drip away by a consumption. The government is a double barreled gun—a spiel [spell] is laid upon one caliber, whilst the other is inevitable.

That this was not intended to be the case is easily deducible from the relative situation of the states, and the nature of their union. A consideration of which, by leading us to the true reasons of the distinction between direct and indirect taxes, will present an unerring rule of construction.

Such an intimate, and complicated relation, as exists between individuals, inhabiting a country of moderate extent, will be fought [sought] for in vain among the citizens of the United States, or among the states, considered as individuals.

The first is a case, effectually counteracting a legislative partiality in the imposition of taxes; the latter, one requiring a provision against this mischief.

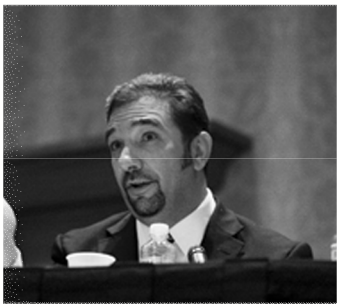
Where the territory is of moderate extent, great dissimilarity in climate, soil, and productions, do not set up geographical beacons, pointing out to this partiality, how far to proceed and where to stop.

In the United States, not only such natural and immoveable beacons are notorious, but there are also actual marked lines, separating state from state, producing local interest, and nurturing local attachment. It is not in human nature to possess equal affection for a distant country, as for that of its nativity and abode.

Still more food for this spirit of local interest and partiality, is supplied by the separate and dissimilar state governments.

It is no compliment to the sagacity of those who framed the constitution, that this difference of soil, climate, and productions—that these geographical and marked boundaries—that the dissimilar and distinct state governments, should have been foreseen to afford but too large a scope for indulging those unhappy human inclinations. Nor do their

About the Editor



Mike Church

Has been host of the nationally heard “Mike Church Show” since 1992. He has produced 7, feature length documentaries on the American Founding including “The Spirit of ‘76” & “What Lincoln Killed-EPISODE I”. Mike has been a featured speaker across the country on the Founders. Mike lives in Madisonville, LA with his wife and 3 children.

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ISBN 978-0-9894368-2-3
51499>
9 780989 436823