

DIRECT TAXES IN 1787-94.

It is singularly unfortunate that the moot question concerning the meaning of the "direct taxes" of the National Constitution has been left for discussion to lawyers and Judges by the historical writers of America. It is even more unfortunate that this purely historical question should become the battle ground of party passion and sectional strife. As logical results of these two conditions, we have the Hylton and Springer decisions, together with the more recent indecision, which is, if anything, more humiliating to the American bench and people than the erroneous but consistent prior decisions. In explanation, we are told that economists disagree as to what constitutes a direct tax, and that the framers of the Constitution used the words without attaching any clear meaning to them.

As to the economists, since they are still quarreling over the meaning of the words "wealth" and "value," it is idle to waste time on their definitions. But the framers of the Constitution were practical men, and that they used the words with definite meaning can be demonstrated by citing their own evidence.

The eight section of the Constitution declared that "Congress shall have power to lay and collect taxes, duties, imposts, and excises * * * but all duties, imposts, and excises shall be uniform throughout the United States."

In this section, then, four words were used to cover the whole taxing power of the new Government, and three of these were to be "uniform." The nature of these latter was clearly understood. "Imposts" were the equivalent of our customs duties, and were well settled in definition by public discussion. "Excises" were held to be taxes on "consumption," such as on wines, and on manufactured goods of any kind. "Duties" we have clearly explained to us by a member of the convention, (Luther Martin,) who wrote: "The members of the committee were requested to inform us what they meant by the word 'duties' in this section, since the word 'imposts' extended to duties on goods imported, and by another part of the system no duties on exports were to be laid. In answer to this inquiry we were informed that it was meant to give the General Government the power of laying stamp duties on paper, parchment, and vellum." ["Genuine Information Delivered to the Legislature of Maryland. Philadelphia, 1788." Page 45.] Thus it is evident that the words have been most carefully considered and chosen, and that the word "taxes" was the general term employed in this section to cover all assessments of a direct character, clearly showing what the convention meant to include when in Section 2 of the Constitution it employed the term "direct taxes." In corroboration, Gouverneur Morris, in the convention, in proposing the insertion of the word "direct" in this section, distinctly drew the same line by referring to "indirect taxes on exports, imports, and on consumption," to which

the rule would be inapplicable. ["Madison Papers," Page 1,080.] Unfortunately, the records of discussion are so fragmentary and meagre that no further evidence of the actual opinions of the framers in convention is extant.

Other evidence of almost equal value is, however, plentiful in the discussion over the adoption of the Constitution, and from a careful study of the whole literature of this epoch, it is not merely evident that the distinctions above noted were well understood, but that furthermore there was practically no confusion of the terms.

The most important of this evidence to study is to be found in the debate in the various conventions which discussed and voted on the adoption of the Constitution. In that of New-York, Hamilton, (a member of the Federal Convention,) after alluding to direct taxes, outlined as indirect taxes the impost and excises, discussing at length excises "on articles of the growth and manufacturer of the United States." ["Debates of the Convention of New-York," Page 118.] Even more specific was John Jay, who cited as direct "a tax of twenty shillings on all coaches." [Ibid, 126.] In the Virginia Convention, George Mason ["Debates in Convention of Virginia," (Elliott,) Page 265,] (a member of the Federal Convention) held land and poll taxes to be direct. Grayson [Ibid, 285,] argued that so, too, would be one on slaves, and Madison [Ibid, 307,] (a member of the Federal Convention) held

that that latter tax was no menace to Virginia, because, being direct, it must be apportioned by population, Mason [Ibid, 459,] agreeing with him as to the nature of the tax, but disagreeing as to its possible equalization. In the Convention of North Carolina, Spencer defined a direct tax as "a poll tax, assessment on land or other property." ["Debates in Convention of North Carolina," Page 77.] Luther Martin (a member of the Federal Convention) reported to the Maryland Legislature that the new Government "may proceed to direct taxation on every individual, ether by a capitation tax on their heads or an assessment on their property." ["Genuine Information," Page 47.] Finally, the address of the dissenting minority of the Convention of Pennsylvania argued that, under the direct tax clause, Congress may tax "land, cattle, trades, occupation, &c." ["Pennsylvania and the Federal Constitution," Page 479.]

Scarcely less important is the controversial literature. In The Federalist [No. xxxvi.] Hamilton divided internal taxes into direct and indirect, and the former into "duties" and "excises on consumption," and argued on the objections to these latter. He then discussed the direct tax, classing in this "real property, houses, and lands, and, in another part of the work, "polls." In the chief anti-Federal publication, The Federal Farmer, [Page 79,] Richard Henry Lee pointed out the danger of direct taxes, including in them taxes on "polls, lands, houses, labor, &c.," and with true

prescience urged that they would be employed "unduly to ease some descriptions of men and unduly burden others." Another great anti-Federalist, as also an able jurist, Robert Yates, (a member of the Federal Convention,) distinguished under this head "a poll tax, a land tax, a tax on houses and buildings, on windows and fireplaces, on cattle and all personal property," at the same time carefully classing under the words "duties, imposts, and excises" the several articles to which those could be extended. ["Letters of Brutus," No. V.] John Winthrop advised the passing of an amendment to the Constitution, forbidding to Congress the right to "levy any direct tax on polls or estates." ["Letters of Agrippa." Noah Webster, already more of a philologist than politician, adopted the distinction of the four words intended by the convention. ["Examination of the Leading Principles of the Federal Constitution, Philadelphia, 1787," Page 32.] George Clinton argued that under direct taxes there "will be a capitation or poll tax, window lights, &c.," as the great landlords would successfully prevent a direct tax on land. ["Letters of Cato," No. VI.] While the Harrisburg Convention, guided by Albert Gallatin, suggested an amendment dealing with "direct taxes," granting to Congress the power "to assess, levy, and collect the quota" of each State "upon the inhabitants and estates therein, in such manner as they shall by law direct, provided that no poll tax be imposed." [Ford's "Harrisburg Convention of 1788," Page 37.]

So much for contemporary opinion on the meaning of the words "direct taxes" in the Constitution, at the time of its framing. Only seven years later (1794) the first attempt to pass such a tax was made in Congress. Theodore Sedgwick held that "a capitation tax and taxes on land and on property and income generally were a direct charge." ["Annals of Congress," Page 644.] John Nicholas defined direct taxes as such as "are paid by citizens without being recompensed by the consumer." [Ibid, 646.] Madison protested against a carriage tax being considered as anything but a direct tax, and urged that it was a blow at the Constitution to make it anything else. ["Madison Correspondence," II,. 14.]

Such were the opinions of the men who framed, discussed, and established the Constitution. Opposed to their views, as here given, no contemporary opinion has been found in rebuttal. It is therefore both unfair and inaccurate to fasten upon the statesmen of that time the confusion of the economists and jurists of to-day.

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