

Appendix W

Memos on Downes v. Bidwell

Reader's Notes:

MEMO

TO: Edward A. Ellison, Jr., J.D.  
John William Kurowski

FROM: Paul Andrew Mitchell, B.A., M.S.

DATE: March 24, 1992

SUBJECT: "Direct Taxation and the 1990 Census"  
your essay in Reasonable Action newsletter,  
Save-A-Patriot Fellowship, July/August 1991

I was very gratified to see such a thorough and authoritative treatment of "direct taxation" in the July/August 1991 issue of the Reasonable Action newsletter. My research continues to convince me of the extreme constitutional importance of the apportionment rule for direct taxes levied by Congress within the 50 States of the Union. I am writing this memo to share with you some of my thoughts on the subject, and to offer my challenge to a few points which are not necessarily beyond dispute. Please understand that I am in general agreement with most, but not all of your essay. Permit me to play "devil's advocate" as I focus on some issues which deserve greater elaboration and substantiation.

The so-called 16th Amendment remains highly relevant to this subject, for a number of important reasons. First of all, since 1913, several federal courts have attempted to isolate the precise effects of a ratified 16th Amendment. Unfortunately for us, when all of these cases are assembled side-by-side, the rulings are not consistent. We are forced to admit the existence of separate groups of court decisions that flatly contradict each other. One group puts income taxes into the class of indirect, excise taxes. Another group puts income taxes into the class of direct taxes. One group argues that a ratified 16th Amendment did not change or repeal any other clause of the Constitution. Another group argues that a ratified 16th Amendment relieved income taxes from the apportionment rule. Even experts disagree. To illustrate the range of disagreement on such fundamental constitutional issues, consider the conclusion of legal scholar Vern Holland:

... [T]he Sixteenth Amendment did not amend the Constitution. The United States Supreme Court by unanimous decisions determined that the amendment did not grant any new powers of taxation; that a direct tax cannot be relieved from the constitutional mandate of apportionment; and **the only effect of the amendment was to overturn the theory advanced in the Pollock case** which held that a tax on income, was in legal effect, a tax on the sources of the income.

[The Law That Always, page 220]

Now consider the opposing view of another competent scholar. After much research and much litigation, author and attorney Jeffrey A. Dickstein offers the following concise clarification:

A tax imposed on all of a person's annual gross receipts is a direct tax on personal property that must be apportioned. A tax imposed on the "income" derived from those gross receipts is also a direct tax on property, **but as a result of the Sixteenth Amendment, Congress no longer has to enact legislation calling for the apportionment of a tax on that income.**

[Judicial Income and Your Income Tax, pages 60-61]

The following Appellate ruling is unique among all the relevant federal cases for its clarity and conciseness on this question:

**The constitutional limitation upon direct taxation was modified by the Sixteenth Amendment insofar as taxation of income was concerned**, but the amendment was restricted to income, leaving in effect the limitation upon direct taxation of principal.

[Richardson v. United States, 294 F.2d 593 (1961)]  
[emphasis added]

Granted, this is not a decision by the Supreme Court, but the decision is useful because it is so clear and concise, and also because it is very representative of that group of rulings which found that a ratified 16th Amendment relieved income taxes from the apportionment rule. By inference, if income taxes were controlled by the apportionment rule *prior* to the 16th Amendment, then they must be direct taxes (according to one group of rulings).

Recall now that 17,000 State-certified documents have been assembled to prove that the 16th Amendment was never ratified. Congress has already been served with several official complaints documenting the evidence against the 16th Amendment, pursuant to the First Amendment guarantee for redress of grievances. Congress has now fallen silent. I am the author of one of these complaints (see The Federal Zone, Appendix J). Relying on one group of rulings, the Pollock, Peck, Eisner and Shaffer decisions leave absolutely no doubt about the consequences of the failed ratification: the necessity **still** exists for an apportionment among the 50 States of *all* direct taxes, and income taxes are direct taxes.

Federal courts did not hesitate to identify the effects of a ratified 16th Amendment. Now that the evidence against its ratification is so overwhelming and incontrovertible, the federal courts are unwilling to identify the effects of the failed ratification. These courts have opted to call it a "political" question, even though it wasn't a "political" question in the years immediately after Philander C. Knox declared it ratified. I personally find it hard to believe that the federal courts are incapable of exercising the logic required to isolate the legal effects of the failed ratification. Quite simply, if a ratified 16th Amendment had effect X, then a failed ratification proves that X did not happen. What is X? Their "political" unwillingness to exercise basic logic means that the federal courts have abdicated their main responsibility -- to uphold the constitution -- and that we must now do it for them instead. That is just one of the many reasons why I wrote and published The Federal Zone in the first place. I believe I have succeeded in accurately situating the issue of the 16th Amendment inside a much broader context. What is that much broader context?

Let me begin my answer to that question by first quoting from your essay, in the section entitled "Documenting the Truth":

The Constitution still grants to the Congress the power of laying an "apportioned" direct tax but notwithstanding the advent of the 16th Amendment all "direct" taxes must be apportioned. **There is no exception to this rule.**

[emphasis added]

In a strictly *normative* sense, I would certainly agree that this is the way it *should* be. But, in a practical and empirical sense, is this really the way it is? I say no. In exercising its exclusive authority over the federal zone, Congress is not subject to the same constitutional limitations that exist *inside* the 50 States. For this reason, the areas that are inside and outside the federal zone are heterogeneous with respect to each other. This difference results in a principle of territorial heterogeneity: the areas within (or inside) the federal zone are subject to one set of rules; the areas without (or outside) the federal zone are subject to a different set of rules. The Constitution rules outside the zone and inside the 50 States. The Congress rules inside the zone and outside the 50 States. The 50 States are, therefore, in one general class, because *all* constitutional restraints upon Congress are in force throughout the 50 States, without prejudice to any one State. The areas within the federal zone are in a different general class, because these same constitutional restraints simply do not limit Congress inside that zone (see The Federal Zone, chapters 12 and 13).

I would never ask you to accept this principle of territorial heterogeneity simply on faith. There is solid case law to substantiate it. You may recall, it is the Hooven case which officially defined the three separate and distinct meanings of the term "United States". This same definition can also be found in Black's Law Dictionary, Sixth Edition. The Supreme Court ruled that this case would be the last time it would address official definitions of the term "United States". Therefore, this ruling must be judicially noticed by the *entire* American legal (and paralegal) community. In my opinion, the *most significant* holding in Hooven has to do with territorial heterogeneity, as follows:

... [T]he United States\*\* may acquire territory by conquest or by treaty, and may govern it through the exercise of the power of Congress conferred by Section 3 of Article IV of the Constitution ....

In exercising this power, **Congress is not subject to the same constitutional limitations, as when it is legislating for the United States\*\*\*.** ... And in general **the guaranties** [sic] **of the Constitution,** save as they are limitations upon the exercise of executive and legislative power when exerted for or over our insular possessions, **extend to them only as Congress,** in the exercise of its legislative power over territory belonging to the United States\*\*, **has made those guarantees applicable.**

[Hooven & Allison Co. v. Evatt, 324 U.S. 652 (1945)]

[emphasis added]

I have taken the liberty of adding asterisks ("\*\*", "\*\*\*\*") to the above, in order to identify which meaning of "United States" is being used in each occurrence of the term. Computer users prefer the term "stars" over "asterisks" because it has fewer syllables.

Return now to your statement that "there is no exception to this rule" that all direct taxes must be apportioned. Using the Hooven case and others as our guide, it is more accurate to say that all direct taxes must be apportioned whenever they are levied inside the 50 States of the Union. On the other hand, direct taxes need NOT be apportioned whenever they are levied outside the 50 States of the Union, and inside the areas of land over which Congress has exclusive legislative jurisdiction. The authorities for this exclusive legislative jurisdiction are 1:8:17 and 4:3:2 in the U.S. Constitution. You may disagree with this interpretation of the term "exclusive", and that is your right, but in doing so you are disagreeing with the Supreme Court. Evidently, this was not the first, nor the last time the high Court has differed with the Framers of the Constitution.

As it turns out, the pivotal case law on this question predates Hooven by 44 years, and predates the so-called 16th Amendment by 12 years. In Downes v. Bidwell, 182 U.S. 244 (1901), the issue was a discriminatory tariff which Congress had levied on goods imported from Puerto Rico (or "Porto Rico" as it was spelled then). Congress had recently obtained exclusive legislative jurisdiction over this territory by virtue of the treaty of peace with Spain. The import duty was obviously not uniform, as required by 1:8:1 in the U.S. Constitution, since it was levied specifically against goods originating in Puerto Rico. In a 5-to-4 decision, the Supreme Court upheld the import duty, even though it was not uniform, on the principle that the uniformity rule applied **only** to the 48 States and **not** to the areas of land, i.e., enclaves, territories and possessions, over which Congress has **exclusive** legislative authority.

The controversy that surrounded Downes v. Bidwell was intense, as evidenced by the flurry of articles that were published in the Harvard Law Review on the subject of "The Insular Cases" as they were called. Perhaps the most lucid criticism of the Downes majority can be found in Justice Harlan's dissent:

The idea prevails with some -- indeed, it found expression in arguments at the bar -- that **we have in this country substantially or practically two national governments**; one, to be maintained under the Constitution, with all its restrictions; **the other to be maintained by Congress outside and independently of that instrument, by exercising such powers as other nations of the earth are accustomed to exercise.**

[Downes v. Bidwell, 182 U.S. 244 (1901)]  
[emphasis added]

To appreciate how alarmed Justice Harlan had become as a result of this new "theory", consider the following from his dissent:

I take leave to say that if the principles thus announced should ever receive the sanction of a majority of this court, a radical and mischievous change in our system of government will be the result. **We will, in that event, pass from the era of constitutional liberty guarded and protected by a written constitution into an era of legislative absolutism. ...**

It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence. **No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution.**

[Downes v. Bidwell, 182 U.S. 244 (1901)]  
[emphasis added]

This theory has been documented by patriot John Knox as follows:

This theory of a government operating outside the Constitution over its own territory with citizens of the United States belonging thereto under Article 4, Section 3, Clause 2 of the Constitution was further confirmed in 1922 by the Supreme Court in Balzac v. Porto Rico, 258 U.S. 300 (EXHIBIT #4) where that Court affirmed that the Constitution does not apply outside the limits of the 50 States of the Union at page 305 quoting Downes, supra and De Lima, supra. That under Article IV, section 3 the "United States" was given exclusive power over the territories and their citizens of the "United States" residing therein.

This quote is from an unpublished brief entitled "Memorandum in Support of Request for the District Court to Consider the T.R.O. and Injunction by the Magistrate" by John Knox, Knox v. U.S., United States District Court for the Western District of Texas, San Antonio, Texas, Case #SA-89-CA-1308 (see Appendix A *supra*).

People will not fully appreciate a central thesis of The Federal Zone if they believe that I **agree** with the minimal majority by which Downes was decided. I don't agree with the majority; I agree with Harlan. I have simply tried to describe, in lucid language, how Congress is now able to pass legislation which is not restrained by the U.S. Constitution as we know it. **This type of legislation is also known as "municipal" law, because Congress is the municipal authority inside the federal zone.** When I visited the District of Columbia during my senior year at UCLA as a summer intern in political science, I asked a Capitol guard where I could find city hall. We were standing on the Capitol lawn when he pointed to the Capitol Building and said, "That is City Hall!"

The Downes decision sent many shock waves through the American legal community, as evidenced by the deep concern that is expressed by author Littlefield in "The Insular Cases", 15 Harvard Law Review 169, 281. He points out how the dissenting minority were of a single mind, while the assenting majority exploited a multiplicity of conflicting and mutually incompatible themes. Just one vote turned the tide. Littlefield's words jump off the page like grease popping off a sizzling griddle.

Accordingly, I now believe that we must go back further than 1913 to isolate the major turn in the tide of American constitutional integrity and continuity. Medina in The Silver Bulletin traces the fork to the tragic American Civil War -- the counter revolution -- when Lincoln was murdered by a Rothschild agent, clearing the stage for resurrecting the federalists' heartthrob -- a central bank. For example, in the context of everything we now know about territorial heterogeneity, to the extent that it was a "municipal" statute for the federal zone, the Federal Reserve Act was constitutional under the rubric of the Downes doctrine.

The consequences of this doctrine have been profound and far-reaching, just as Harlan predicted. One of Lyndon Johnson's first official acts was to rescind JFK's executive order authorizing the circulation of \$4.5 billion in interest-free "United States Notes" instead of interest-bearing "Federal Reserve Notes". It is a shame that Oliver Stone did not cover this motive in his movie JFK. All we need to do is connect the dots, and the picture will emerge, clear as day.

Specifically, Title 26 is a municipal statute and, as such, it is not subject to the apportionment rule. The territorial scope of Title 26 is the federal zone; the political scope of Title 26 is the set of "persons" who are either citizens and/or residents of that zone: "U.S.\*\* citizens" and "U.S.\*\* residents". The term "U.S.\*\*" in this context refers to the second of the three Hooven definitions, namely, the territory over which the sovereignty of Congress extends, i.e., the federal zone. Incidentally, the flat tax provisions in Title 26 do conform to the uniformity rule because the tax rate is uniform across the 50 States (see A Ticket To Liberty, by Lori Jacques).

Since involuntary servitude is now forbidden *everywhere* in this land, it is possible under law to acquire citizenship in the federal zone at will via naturalization, **even if** one is a natural born Sovereign State Citizen by birth. It is also possible to abandon citizenship in the federal zone at will, via expatriation. In this context, it is revealing that the Internal Revenue Code has provisions for dealing with "U.S.\*\* citizens" who expatriate to avoid the tax. Similarly, Americans are free to reside wherever they want, under the law. If you choose to *reside* in the federal zone, you are liable for the income tax, by definition (see 26 U.S.C. 7701(b)(1)(A) and 26 C.F.R. 1.1-1(b)). Finally, if you are a "nonresident alien" *with respect to* the "United States\*\*" as those terms are defined in Title 26 and in Title 42, you are only liable for taxes on income which is effectively connected with a U.S.\*\* trade or business, and on income which derives from U.S.\*\* sources. All other income for nonresident aliens is excluded from the computation of "gross income" as defined (see 26 U.S.C. 872(a)).

I hope this discussion has provided you with some valuable feedback concerning the 16th Amendment, direct taxes, the apportionment rule, Title 26 and The Federal Zone. You have, no doubt, heard several references to the "secret jurisdiction" under which the IRS has been operating. I now believe that this jurisdiction is no longer totally a secret; it issues from 1:8:17 and 4:3:2 in the Constitution. Contrary to the statement quoted above from your essay, there are exceptions to the apportionment rule for direct taxes, and there are exceptions to the uniformity rule for indirect taxes. Inside the federal zone, Congress is free to do pretty much whatever it wants, per

the Downes doctrine. Inside the federal zone, it is a legislative democracy, with majority rule.

If you want to change the rules, then change the majority. Our best hope for changing those rules rests, therefore, in changing the membership in the House and Senate. As a Sovereign State Citizen, however, I am not *subject* to those rules, primarily and most importantly because the Constitution created the legislature and We Sovereigns created the Constitution. A Sovereign is never subject to his own creation, unless he volunteers himself into that status, for whatever reason (e.g., the security of socialism a/k/a Social Security).

For your edification, the following is a list of Harvard Law Review articles which discuss the insular cases in some detail:

Langdell, "The Status of Our New Territories"  
12 Harvard Law Review, 365, 371

Thayer, "Our New Possessions"  
12 Harvard Law Review, 464

Thayer, "The Insular Tariff Cases in the Supreme Court"  
15 Harvard Law Review 164

Littlefield, "The Insular Cases"  
15 Harvard Law Review, 169, 281

MEMO

TO: Godfrey Lehman  
FROM: Paul Andrew Mitchell, B.A., M.S.  
DATE: March 2, 1992  
SUBJECT: Downes v. Bidwell

Thank you for the materials on 1:8:17. That was then. This is now:

1. The issue as to whether there are different meanings to the term "United States," and whether there are three different "United States" operating within the same geographical area, and one "United States" operating outside the Constitution over its own territory, in which it has citizens belonging to said "United States," was settled in 1900 by the Supreme Court in De Lima v. Bidwell, 182 U.S. 1, and in Downes v. Bidwell, 182 U.S. 244. In Downes supra, Justice Harlan dissenting stated as follows:

The idea prevails with some -- indeed, it found expression in arguments at the bar -- that **we have in this country substantially or practically two national governments; one, to be maintained under the Constitution, with all its restrictions; the other to be maintained by Congress outside and independently of that instrument, by exercising such powers as other nations of the earth are accustomed to exercise.**

He went on to say on page 823:

It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence. **No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution.**

[Downes v. Bidwell, 182 U.S. 244, emphasis added]

2. This theory of a government operating outside the Constitution over its own territory with citizens of the United States belonging thereto under Article 4, Section 3, Clause 2 of the Constitution was further confirmed in 1922 by the Supreme Court in Balzac v. Porto Rico, 258 U.S. 300 (EXHIBIT #4) where that Court affirmed that the Constitution does not apply outside the limits of the 50 States of the Union at page 305 quoting Downes, supra and De Lima, supra. That under Article IV, section 3 the "United States" was given exclusive power over the territories and their citizens of the "United States" residing therein.

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The consequences were profound. One of Lyndon Johnson's first official acts was to rescind JFK's executive order authorizing the circulation of \$4.5 billion in interest-free "United States Notes" instead of interest-bearing "Federal Reserve Notes". All we need to do is connect the dots, and the picture will emerge, clear as day.

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