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No Taxation Without Representation: How A Fundamental American Principle Is A Technicality To The New York Times

By Trevor Burrus

May 21, 2014

The *New York Times* has a predictably dismissive [editorial](#) about the latest challenges to Obamacare being argued in federal courts. One of those challenges is based on the Constitution's Origination Clause, which requires that "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." Since the Affordable Care Act was entirely written in the Senate, the argument goes, the revenue raising provisions violate the Origination Clause, including Chief Justice John Roberts's "tax" for not purchasing insurance.

As Randy Barnett [writes](#) over at the Volokh Conspiracy, everyone knows that the Affordable Care Act was passed via a sneaky subterfuge designed to get around the requirements of the Origination Clause. The Senate took a House bill giving tax credits to first-time home buyers, "amended" it to empty it of all content except for the bill number, and then filled it back up with the 2700 pages that would become the Affordable Care Act. By doing this the Senate purportedly "complied" with the Origination Clause.

The Origination Clause was included in the Constitution to ensure that the body that taxed the people, the House of Representatives, was also the most accountable to the people. It was so important to the Convention that its exclusion would have "unhinged the compromise," in the words of George Mason of Virginia. It was also included because the Founders firmly believed that taxation was illegitimate unless it came from the people's direct representatives.

Remember "no taxation without representation?"

The Clause may seem like a mere technicality, but for the Founders that "technicality" embodied principles that were important enough to fight a revolution against the most powerful army in the world. Given that New York was always an enclave of British sympathizers, it's not surprising that the *Times* has sided with the Tories.

During the Constitutional Convention, all or part of seven days, or 8 percent of the 89 total session days, were devoted to the Origination Clause. In James Madison's [notes](#) on the Convention, which are famously incomplete, he devoted nearly 8000 words to debates over the Origination Clause.

The phrase "no taxation without representation" is often repeated but rarely understood. But when Parliament passed the Stamp Act in 1765, it was well understood by commoners and gentlemen alike that the British had crossed a line. Mobs burned tax collectors in effigy and tore down the houses of those thought complicit in the Act. In October, 1765, the Stamp Act Congress [passed](#) a resolution that "no taxes ever have been, or can be constitutionally imposed on [the colonies], but by their respective legislatures."

By November, 12 colonial stamp distributors had resigned out of fear of the rampaging mobs. It became 13 when Georgia's stamp distributor made resignation his first and only official act.

It is difficult for our over-taxed and under-represented modern sensibilities to understand how a mere stamp tax could ignite such ardor in the colonies. Perhaps the only way we can understand why the colonists were so upset is to draw an analogy to today: Imagine that the United Nations passes an Internet tax on Americans.

The backlash would be extreme, and the arguments would be the same: The people of the United States have no direct representation in the United Nations. All of our "virtual" representation is mediated through ambassadors and other appointed figures. But none of that gives the UN the power to pierce the sovereignty of the United States and levy a direct tax on the people. No taxation without representation!

Even the Tories at the *New York Times* would understand the intuitive simplicity of this argument. Unless and until the people of the United States have direct representation in the United Nations, no tax can be levied on the people. And even if the people one day have direct representation in the UN, any tax on them must begin in the house that embodies that direct representation.

Seen in this light, rather than being an obscure constitutional principle that the Senate can blithely brush aside with a blatant slight-of-hand maneuver, the Origination Clause becomes inexorably intertwined with the power to tax in the first place. The Articles of Confederation, after all, gave the federal government no power to tax because the people had no direct representation in the Confederation Congress.

Due to certain other constitutional difficulties, I agree with the *Times* that the Origination Clause argument has little chance of succeeding. But that does not warrant the level of derision exhibited by the paper. Perhaps the *Times* has a lingering case of Stockholm Syndrome from the British occupation of the city during the Revolution. Whatever the case, the "paper of record" should be better at remembering history.

Trevor Burrus is a research fellow at the Cato Institute's Center for Constitutional Studies. His research interests include constitutional law, civil and criminal law, legal and political philosophy, and legal

history. His academic work has appeared in journals such as the Harvard Journal of Law and Public Policy, the Albany Government Law Review, and the Syracuse Law Review, and his popular writing has appeared Forbes, USA Today, the Huffington Post, the New York Daily News, and others. He is the editor of A Conspiracy Against Obamacare (Palgrave Macmillan, 2013). He holds a BA in Philosophy from the University of Colorado at Boulder and a JD from the University of Denver Sturm College of Law.