

# The Washington Post

## Trevor Burrus: The Origination Clause is no mere technicality

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Over on Forbes.com, the Cato Institute's Trevor Burrus has a nice response to the New York Times's derisive treatment ("[More Specious Attacks on Reform](#)") of the Origination Clause challenges now pending in the DC and Fifth Circuits. In [No Taxation Without Representation: How A Fundamental American Principle Is A Technicality To The New York Times](#), he takes on the claim that the Origination Clause is a meaningless "technicality":

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.

Of course, the Senate is now directly elected by the electorate of each state. So some today respond that, because the original *purpose* of the Origination Clause is allegedly defunct, the original *meaning* of the text should be overridden by the courts. Yet, progressives these days never tire of telling us how unrepresentative and [undemocratic](#) is the Senate. But that's apparently an objection better overlooked on the day we discuss whether it is constitutional to circumvent the Origination Clause by using the "gut and replace" shell bill maneuver that gave us the Patient Protection and Affordable Care Act of 2010.