

Constitution Class Handout
Instructor: Douglas V. Gibbs
douglasvgibbs@reagan.com

www.politicalpistachio.com
www.douglasvgibbs.com
www.constitutionassociation.com

Lesson 19

Progressive Era Amendments

16th Amendment: Income Tax

Income Tax is a direct tax. The Founding Fathers prohibited direct taxes in Article I, Section 9, Clause 4 of the United States Constitution.

The concept of an income tax emerged during the American Civil War as a means of assisting in paying for the Union war effort. In 1861, Congress drew up a bill to tax personal and corporate incomes. This first income tax measure in the United States called for a 3% tax on incomes over \$800. The bill quickly passed in both the House and the Senate, but it was never put into operation.

In 1862, Abraham Lincoln signed a bill that imposed a 3% tax on incomes between \$600 and \$10,000 and a 5% tax on higher incomes. The bill was amended in 1864 to levy heavier taxation on higher incomes. The 1862 income tax law was repealed in 1872 and was declared to be unconstitutional, in violation of Article I, Section 9, Clause 4 of the United States Constitution.

Progressivism was on the rise in the United States around the turn of the 20th Century. Americans were concerned about the large national debt that remained with the United States as a result of the Spanish-American War, and the growing social inequality between the rich and the poor. The idea that there should be a tax that “soaks the rich” began to take root among progressives of both major parties. The Democrats took to progressivism more than the Republican Party, and the progressives of the Democrat Party were looking for a way to embarrass the conservative arm of the GOP so that they could gain some traction in the next election.

With social unrest rising among the population, a Democrat proposed the **Bailey Bill** with the express hope the Republicans would reject it. The theory was that after the Republicans rejected the bill, the Democrats could then point a finger at the Republicans, claiming for political purposes that the Republicans were in cahoots with the corrupt wealthy corporate types. A Republican rejection of the Bailey Bill, which would have imposed an income tax on the rich, would serve as proof of such an alignment between the Republicans and the wealthy. The slogan used by proponents of the Bailey Bill was “soak the rich,” a direct call to tax people they considered to be **profiteers**, a class of **plutocrats** they claimed were in collusion with the Republicans.

The conservative Republicans knew what the progressives of the Democrat Party were up to, and launched a counter move. They proposed a constitutional amendment that would impose an income tax on the rich, and when the States refused to ratify the amendment, the Republicans would use that failure to ratify the amendment as proof that the people, through their State legislatures, were against the idea of a new income tax. In turn, that would defeat the Bailey Bill, for how could Congress approve an income tax against the rich through the Bailey Bill after the people and States rejected a constitutional amendment that would have done the very same thing?

The proponents of the 16th Amendment promised that if it were to be ratified (remember, it was fully expected not to be ratified) the income tax would only be imposed on the top 5% wage earners, it would be voluntary, and it would be temporary.

The progressives of the Republican Party, however, rallied behind the proposed amendment, and the Secretary of State announced the amendment was ratified on February 12, 1913.

Progressives, satisfied the 16th Amendment was ratified, hoped to use it to tax the rich. In the beginning, only 5% of the people were required to submit tax returns. Many of the rich, however, avoided the tax with charitable deductions, and other creative strategies.

During World War II Franklin Delano Roosevelt saw the income tax as a way to vastly increase revenue, and initiated a policy of withholding from “all” wages and salaries, not just the highest incomes enjoyed by the rich. Rather than the rich paying the tax at the end of the year, the tax was collected at the payroll window before it was even due to be paid by the taxpayer. This style of collection shifted the tax from its original design as a tax on the wealthy to a tax on the masses, mostly on the middle class.

In addition to violating the original intent of Article I, Section 9 prohibiting **direct taxation**, the income tax also opposes the 4th Amendment which requires that a citizen’s privacy be protected. An income tax enforced by the Internal Revenue Service violates the privacy of the home, business, personal papers and personal affairs of the private citizen. Since the tax is based on income, the IRS has the task of making sure everyone pays his fair share. This task is physically impossible without prying into the private papers, private business and personal affairs of the individual citizens.

Since the ratification of the 16th Amendment, there have been questions about whether the proper number of State ratification votes were ever achieved. Despite the argument by some researchers that the 16th Amendment was never properly ratified by the requisite three-fourths of the states, and that politicians of the day were aware of the discrepancy, Secretary of State Philander Knox fraudulently declared ratification. Some may suggest that he did so under the urgings of wealthy bankers like J.P. Morgan.

Terms:

Bailey Bill - Income Tax introduced in April 1909 by Senator Joseph W. Bailey, a Democrat from Texas, designed to embarrass conservative Republicans when they voted against it. The introduction of the bill was one of the factors that led to the proposal of the 16th Amendment.

Direct Taxation - A government levy on the income, property, or wealth of people or companies. A direct tax is borne entirely by the entity that pays it, and cannot be passed on to another entity.

Plutocrat – A person whose power derives from their wealth.

Profiteer - A person who seeks exorbitant profits.

Progressivism - Philosophy that views progress as seeking change in approaches to solving economic, social, and other problems, often through government sponsored programs.

Questions for Discussion:

1. Why did the Founding Fathers not allow direct taxation by the Federal Government?
2. What lesson can be learned from the story of the Bailey Bill and the passing of the 16th Amendment?
3. Why didn’t “soaking the rich” work as hoped?
4. Why did President Roosevelt extend the income tax to include all wages and earnings?

Resources:

Bill Benson, *The Law That Never Was*:

<http://www.thelawthatneverwas.com/>

Ethan Pope, *America's Financial Demise: Approaching the Point of No Return*; Dallas, TX: Intersect Press (2010)

W. Cleon Skousen, *History of the 16th Amendment, National Retail Sales Tax Alliance*: http://www.salestax.org/library/skousen_16history.html

Federal Reserve

The same year the 16th Amendment created the income tax, the **Federal Reserve** was also created. The Federal Reserve is not a federal agency, and is actually a privately owned corporation owned by a secret group of international bankers. The Federal Reserve holds a monopoly on the creation of money in the United States. Whenever the U.S. Government needs money it borrows the money from the Federal Reserve. The Federal Reserve gladly loans that money because doing so results in a good profit for the bankers.

The Federal Reserve is not the first central bank, but it is the longest lasting. The First Bank of the United States in 1791, created by Alexander Hamilton, became a system of control over the American economy, and was, as described by Jefferson and Madison, “an engine for speculation, financial manipulation, and corruption.”

In order to properly function, a central bank needs a collection of large sums of money from the people to pay off the interest on the money the government borrows. The creation of the income tax provided that opportunity.

The Federal Reserve Act surrendered control of the monetary system to the international banking cartel and guaranteed the eventual abandonment of the gold standard. The Federal Reserve's debt-based money guaranteed the enslavement of every American under a crushing debt burden. The Federal Reserve guaranteed the ability of the international banking cartel to confiscate wealth through artificially created boom/bust cycles.

The result is that the U.S. Government, and the bankers in charge of the Federal Reserve, can manipulate the economy simply by the amount of money they decide to pump into the system. The more currency is pumped into the system, the greater the rise of **inflation** rates. A reduction of the printing of money then results in a recovering economy. Government spending, in relation to the national debt, has a direct impact on the economic cycles we experience. The more the government borrows, the more **fiat money** is pumped into the system. The result is increased inflation, and a stalled economy. Cutting spending results in less money being borrowed, which then returns value to the dollar, and in turn reduces the level of inflation while encouraging **capitalism** to thrive.

The welfare system was created to compensate for the damage caused by the Federal Reserve and the income tax.

The 16th Amendment allows for the taxation on income from whatever source derived, which gives Congress, for the most part, **carte blanche** to tax at will, while giving the IRS the power to do all of the things the founders specifically disallowed the federal government from doing. This invasion of privacy, without due process, will continue as long as the 16th Amendment remains in force.

The income tax is in line with the Marxist philosophy of destroying a capitalist society by steeply graduating taxes on income and applying heavy levies upon the estates of people when they die.

Terms:

Capitalism - An economic system characterized by private or corporate ownership of capital goods, by investments that are determined by private decision, and by prices, production, and the distribution of goods that are determined mainly by competition in a free market.

Carte Blanche - Unrestricted power to act at one's own discretion; unconditional authority; derived from "blank cheque."

Federal Reserve - A privately owned corporation owned by a secret group of international bankers. The federal reserve holds a monopoly on the creation of money in the United States. Whenever the U.S. Government needs money it borrows the money from the Federal Reserve, thus creating a national debt.

Fiat Money - Money that derives its value from government regulation or law, but is not backed by any tangible collateral; money that lacks any intrinsic value.

Inflation - A sustained, rapid increase in prices, over months or years, and mirrored in the correspondingly decreasing purchasing power of the currency.

Questions for Discussion:

1. What are the similarities between Alexander Hamilton's National Bank, and the Federal Reserve?
2. How does the existence of Federal Reserve adversely influence our economic system?

Resources:

Abolish the Federal Reserve dot org: <http://abolishthefederalreserve.org/>

G. Edward Griffin, *The Creature from Jekyll Island : A Second Look at the Federal Reserve*; Appleton, WI: American Opinion Publishing (1994)

17th Amendment: State Representation in the Senate

To comprehend the 17th Amendment, we need to go back in history to understand how our political system was originally established. The Founding Fathers included a number of **checks and balances** during the creation of the federal government in the hopes of providing enough safeguards to protect the people from an ever expansive, tyrannical, consolidated central government. The **separation of powers** between the three branches of government, and between the federal government and the States, were an integral part of these protections against tyranny. However, not all of the checks and balances put in place were obvious, nor are all of the checks and balances taught to us during our school years.

The dynamics of the federal government were set up to prevent any part of government from having access to too much power. Too much power in any one part of the system could be dangerous, and this includes too much power in the hands of the people.

The general population, just like the government, cannot be fully trusted with absolute power. To prevent the danger of too much power residing in any part of government, power needed to be divided as much as possible so as to keep it under control. Too much power in the hands of anybody has the potential of being a dangerous proposition, including in the hands of the voting public.

The United States is not a **democracy**. All of the voting power was not given directly to the people. The voting power was divided to ensure the **Republic** was protected from the **mob-rule** mentality of democracy.

The vote of the people, or the people's full and unquestioned voice in government, was, and still is, manifested in the U.S. House of Representatives. Then, as now, the representatives were voted into office directly by the people. Each Representative represents a district. The members of the United States Senate were not voted in directly by the people during the time period immediately following the ratification of the United States Constitution. U.S. Senators were voted in by an **indirect vote** of the people.

The Senators were appointed by their State legislatures. The State legislators are voted into office by the people of the State. Therefore, during the early years of this nation, the Senators attained office by an indirect vote of the people through their State legislatures.

The people are represented indirectly by the States in the U.S. Senate, and by the States appointing the Senators, the method of appointment allowed State's interests to be represented in the U.S. Congress.

Since they were appointed by the State legislatures, the Senators looked at the political atmosphere in a different manner than the members of the House of Representatives. Members of the House of Representatives are directly voted into office by the people, so their concerns are more in line with the immediate concerns of the people, no matter how whimsical those concerns may be.

The Senate functioned in a very different manner because when the Senators were appointed they were expected to abide by the wishes of the State legislatures. The Senators were expected to be representative of what was best for their States; State's Rights, State Sovereignty, protecting the States not only from a foreign enemy, but from a domestic enemy, should the federal government become the potential tyranny that the Founding Fathers, and especially the Anti-federalists, feared a central government could become.

The federal government exists because the States allow it to. The powers derived by the federal government were granted to it by the States, so in a way the States birthed the federal government, making the States the parents of the government in Washington, D.C. The federal government is not supposed to be able to do much of anything without the permission of the several States. The Senate was the representation of the States so that the States could ensure the federal government remained within its authorities.

The States having representation in the federal government through the U.S. Senate was also another way that checks and balances were applied to the system. The House of Representatives represented *the people*, and the Senate represented *the States*. Through this arrangement, it gave the people the ability to check the States, and the States the ability to check the people, and together they checked the Executive. The dynamics of our government through this arrangement were a built in check and balance.

The States could not get too far without the people approving of a senatorial proposal. The people could not get much done without The States agreeing with a proposal that originated in the House of Representatives. The executive branch could get little done without both the people and the States approving of it. However, if the President did not like what the people and the States were trying to accomplish, he could veto the bill. If the people and the States felt the legislation was important enough, they could override that veto with two-thirds of a vote in both Houses.

Looking at it in another way, a bill would be approved by both the people and the States before it went to the President to become law. This gave the Executive and both parts of the legislative branch the opportunity to approve or disapprove potential laws.

In 1913, the Seventeenth Amendment changed the originally intended dynamics of the American form of government. The amendment removed the States' representation from U.S. Government proceedings. The Seventeenth Amendment changed the appointment of the Senators from that of the State legislatures to that of the **direct vote** of the people. As a result, the protection of State Sovereignty was removed, and in its place was inserted **ideology**, and the willingness of Senators to buy the votes of individual voters through gifts from the treasury in a manner that was already emerging from the House of Representatives.

Vacancies in the Senate

The Seventeenth Amendment also provides for appointments should a seat in the U.S. Senate be left vacant for any reason. The governors of the States, should the legislatures allow such, may make temporary appointments until a special election takes place. The State legislatures may change these rules as they deem necessary, such as requiring an immediate special election instead of allowing the governor to temporarily appoint a replacement. This leaves most of the power regarding filling vacancies in the hands of the State legislatures.

Massachusetts, during the reign of Democrat governors, used the rule that if there was a vacancy in the U.S. Senate, the governor could appoint the new Senator to complete that term of office. When Mitt Romney, who was a Republican, was governor, the Democrat dominated legislature feared a Republican appointment should one of the Massachusetts Senators die, so they changed the rule to require

an immediate special election, fully confident the people would put another Democrat into office should one of the seats be vacated. The Massachusetts legislature even overrode a veto by Governor Mitt Romney to accomplish their rule change.

Romney did not run for reelection in 2006, and his gubernatorial term in Massachusetts ended January 4, 2007.

The new governor of Massachusetts in 2007 was Deval Patrick, a Democrat. When Senator Edward “Ted” Kennedy passed away August 25, 2009, since the State of Massachusetts had a Democrat governor, the Democrat-led legislature hurriedly changed the rule to enable the governor to appoint the new Senator as had been allowed before Mitt Romney was governor, just in case the people could not be trusted.

The appointed Democrat Party senator held the seat until a special election in January of 2010 that pitted Republican Scott Brown against Democrat Martha Coakley. To the surprise of the entire nation, Scott Brown won the election, sending tremors through the political establishment, which included the Democrats losing a filibuster-proof majority in the U.S. Senate. Brown was defeated in 2012 by Democrat Elizabeth Warren, returning the Senate Seat back to the Democrats when she took office on January 3, 2013.

More like a Democracy

In the end, the real damage caused by the ratification of the 17th Amendment was that State representation in the Congress was removed. Senators, after the ratification of the 17th Amendment, would be voted into office by the vote of the people, making the U.S. Senate more like the House of Representatives, eliminating a very important check and balance, and making the United States more like a democracy and less like the Republic the Founders originally intended.

The people, fooled by a relenting rallying cry of “The will of the people,” and a common belief that the leaders of the States could not be trusted, demanded that the federal government be changed into something more like a democracy. As the progressives desired, and planned, the American form of government moved closer to a democracy with the 17th Amendment.

Karl Marx once stated that “Democracy is the road to socialism.”

Progressivism was on the rise in the United States during those early years of the 20th Century, and the statist knew that one of their main obstacles to consolidating government power into the grasp of the central authority in Washington was the independent and sovereign voice of the States. The 17th Amendment was one of the vehicles the statist used to begin the process of silencing the States, with the ultimate goal of making them irrelevant in regards to the running of the federal government.

The **statists** did not reveal their true intentions. If they had proclaimed that they desired the ratification of the 17th Amendment so that they could proceed in their quest to change the United States into a socialist system, the people would have rejected it. Instead, they used a populist argument. “It is for the will of the people. You deserve a Senate voted into office by the democratic will of the people. If you directly vote for the Senators, they will be more apt to act in line with the will of the people. After all, the States are corrupt, and they can’t be trusted. You, the voting public, in the interest of democracy, deserve to be able to directly vote for the Senators yourselves.”

As a result, the whole American political system has been turned on its head. The entire dynamic of our government system as it was originally intended to function has changed.

The damage to the American form of government reached deeper into the dynamics of our **Constitutional Republic** than immediately meets the eye.

The Founding Fathers made the House of Representatives and the U.S. Senate different from each other for a reason.

If a President of the United States signs a treaty, before that treaty goes into force, it must be ratified by the U.S. Senate, which back then was the voice of the States. It was the Framers’ way of making sure the States could act as a protective mechanism against a President who might make treaties that were dangerous to State Sovereignty. However, now the Senate no longer represents the States, so that important safeguard is no longer in place. Senators more apt to defend an ideology, rather than the best interest of their State, are in office now. The ratification of treaties has totally changed in a way that could place State Sovereignty in jeopardy. The States no longer have a voice in that part of the governing

process anymore, and as a result it has become easier for the federal government to enter into treaties that compromise State interests, or local issues over which the federal government would normally not have any authority.

Another point to examine in regards to the Senate ratification of treaties, is since the people, through their States, are the final arbiters of the Constitution, the Founders felt no worry about unconstitutional treaties being ratified. After all, the final arbiters of the Constitution, the States, were the ones in charge of the ratification of all treaties. Now, since ideology now takes precedence over States' Rights in the Senate, we are faced by a number of draconian treaties . . . and there is nothing the States can do about it.

The appointment of judges, such as Supreme Court Justices, has also been altered by the passage of the 17th Amendment. Imagine how different the hearings regarding the appointment of Supreme Court Justices would be if the Senators were appointed by the State legislatures?

Do you think it would be as easy for an **activist judge** to be appointed?

Do you think the nominees would be asked questions geared towards the Constitution, and protecting State Sovereignty?

The people were told that the States could no longer be trusted in their appointment of the Senators, and the States got lazy and didn't wish to participate in that manner anymore. As a result, the 17th Amendment was ratified, and look at the mess it has caused.

Let's return to the concept of "dividing power" for a moment. The Founding Fathers divided the voting power. By the States appointing the Senators, it divided the people's voting power.

During the early years of this nation the State legislatures also appointed the Electors for president.

The people only directly voted into office the Representatives of the U.S. House of Representatives.

This division of voting power was put into place because the Founding Fathers knew that should the people be fooled while they completely controlled the vote, a tyranny could ensure that it was voted into the three primary parts of government: the Executive, the House of Representatives, and the U.S. Senate. Once tyranny had control of those three parts of government, the judicial branch would be sure to follow, if not already in **collusion** with the other two branches.

The Founders knew that should the uninformed electorate vote in a tyranny, while caught up in some kind of cult of personality, it would spell the beginning of the end of the United States as we know it.

The Founding Fathers knew that democracy of that kind would destroy the system, so they divided the power of the vote. The voting power was divided so as to protect us from the excesses of democracy.

Looking back on 2006, 2008, and 2012 we see an example of exactly what the Founding Fathers warned us about. A single ideology, one that is hostile towards the U.S. Constitution, and hostile to the American System, fooled the people, and took control of some of the most vital parts of government. The destructive reasoning by the statist of the Progressive Era for the passage of the 17th Amendment was fulfilled.

The 17th Amendment, combined with the creation of the Federal Reserve, and the implementation of an income tax, was all a part of a scheme to change the American System into a model of socialism through the guise of democracy.

We are not a democracy, and we were never meant to be a democracy. The 17th Amendment moved us in that direction. The Founding Fathers continuously spoke out against the dangers of democracy. They knew that democracies lead to mob-rule. As much as the government couldn't be trusted with too much power, neither could the voting public.

The Constitution is filled with checks and balances. Yet, the people of that time period were fooled so easily by the statist. James Madison five times in his Federalist Papers writings wrote, "We are a Republic, by which I mean. . ." and then he would explain what a republic is. He felt the need to do so because those who opposed the Constitution because they believed the political system should be one of **nationalism** argued that democracy and **republicanism** were the same.

Thomas Jefferson said, "Democracy will cease to exist when you take away from those that are willing to work and give to those who would not."

John Adams said, "While it lasts, Democracy becomes more bloody than either an aristocracy or a monarchy. Democracy never lasts long; it soon wastes, exhausts, and murders itself. There is never a democracy that did not commit suicide."

Thomas Jefferson said, "A democracy is nothing more than mob-rule, where 51% of the people may take away the rights of the other 49%."

James Bovard said, "Democracy is two wolves and a sheep voting on what to have for dinner."

A friend of mine, the late Tim "Loki" Kerlin, added that a republic is "two wolves, and a well-armed sheep contesting the vote."

Benjamin Franklin, after asked what the Founders created in the Constitutional Convention, replied, "A republic, if you can keep it."

With freedom comes responsibility. It is up to us to repeal the 17th Amendment.

Terms:

Activist Judge - A public officer charged with applying the law in order to administer justice, but also interprets the law, and modifies the law according to his opinion; a judge who legislates from the bench.

Checks and Balances - An internal system in government where each part of government can counter the actions or decisions of the other parts. This arrangement ensures transparency, and prevents domination of the government by any part.

Collusion - Conspire together.

Constitutional Republic - Government that adheres to the rule or authority of the principles of a constitution. A representative government that operates under the rule of law.

Democracy - A form of government in which all citizens have an equal say in the decisions that affect their lives. Such a system includes equal participation in the proposal, development and passage of legislation into law.

Direct Vote - Citizens vote themselves; popular vote.

Ideology - A set of political or economic ideas that forms the basis of economic or political theory and policy.

Indirect Vote - Representatives of Electors vote instead of the citizens. The indirect vote may be based on criteria that includes the will, or portions of the will, of the citizens; before the 17th Amendment, United States Senators were chosen by an indirect vote of the people, in which State representatives who attained their office by a direct vote of the people appointed U.S. Senators to represent their State in Congress; the President is elected by an indirect vote of the people through electors who traditionally follow the popular vote of their State, but have the choice to change that vote if believed to be necessary, and a President may be elected based on an Electoral majority that does not reflect the national popular vote.

Mob-Rule - A government ruled by a mob or a mass of people; the intimidation of legitimate authorities; the tyranny of the majority; pure democracy without due process.

Nationalism - Political ideology which involves a strong identification of a group of individuals with a political entity defined in national terms. There are various strands of nationalism. The ideology may dictate that citizenship in a state should be limited to one ethnic, cultural or identity group. Nationalism may also include the belief that the state is of primary importance, which becomes the unhealthy love of one's government, accompanied by the aggressive desire to build that governmental system to a point that it is above all else, and becomes the ultimate provider for the public good.

Republic - Form of government that uses the rule of law through a government system led by representatives and officials voted in by a democratic process. The United States enjoys a Constitutional Republic.

Republicanism - Rule by law through a government system led by representatives and officials voted in by a democratic process. The United States enjoys a Constitutional Republic.

Separation of Powers - A division of governmental authority into three branches: legislative, executive, and judicial; division of powers between the States and federal government.

Statists - Individuals that hold that government should control the economic and social policies of the system it serves.

Questions for Discussion:

1. Why are the originally intended checks and balances so important to safeguarding freedom?
2. What was the concept of the separation of powers designed to protect against?
3. How does the Seventeenth Amendment add to the withering away of State Sovereignty?
4. How is socialism and democracy related?
5. Why would dividing powers include dividing the voting power of the people?

Resources:

Allison, Maxfield, Cook, Skousen, *The Real Thomas Jefferson*; New York: National Center for Constitutional Studies (1983).

David McCullough, *John Adams*; New York: Simon and Schuster (2001)

Devvy, 36 States Did Not Ratify The 17th Amendment: What Will States Do?; *rense.com*, http://www.rense.com/general95/36_dev.htm

Earl Taylor, Jr., The Seventeenth Amendment and the Destruction of Federalism; National Center for Constitutional Studies, <http://www.nccs.net/2013-03-seventeenth-amendment-and-the-destruction-of-federalism.php>

James Madison, Federalist Paper No. 45, http://avalon.law.yale.edu/18th_century/fed45.asp

Jon Wolverson, II, J.D., 17th Amendment Mudslinging; *The New American* (November, 2010) <http://www.thenewamerican.com/usnews/constitution/item/7826-17th-amendment-mudslinging>

Joseph Andrews, *A Guide for Learning and Teaching The Declaration of Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders*; San Marcos: The Center for Teaching the Constitution (2010)

Larry Schweikart and Michael Allen, *A Patriot's History of the United States*; New York: Sentinel (2004).

Richard Aynes, On Misreading John Bingham and the Fourteenth Amendment; *Yale Law Journal* (October, 1993) http://www.constitution.org/lrev/aynes_14th.htm