THE ORIGIN, PURPOSE AND EFFECT OF THE DIRECT-TAX CLAUSE OF THE FEDERAL CONSTITUTION. II.

V.

THIS study of the procedure of the federal convention has shown that there was manifested no general desire to limit the taxing powers of the new government. Patterson's plan, which would have restricted Congress to impost and stamp duties, received the support of only two states; while Randolph's propositions were reported to the convention by a vote of seven states to three, Maryland's delegates being equally divided.[1] But in a few directions limitations were finally imposed. When the power of regulating commerce was granted, the convention provided that duties, imposts and excises should be uniform throughout the United States. Then the institution of slavery required and secured protection in three provisions — namely, the limitation of the duties that could be imposed upon the importation of negroes, the prohibition of taxes on exports and the specific provision concerning capitation taxes. Finally, out of the controversy over representation for the slaves in the apportionment of members of the House of Representatives, there came the requirement that direct taxes and representatives should be apportioned according to the rule of numbers. Thus it seems that the constitutional requirement concerning direct taxes originated in the struggle to effect a compromise on the question of representation for the slaves. It had no basis in any rational scheme for regulating taxation, and could have had none. There is no reason for thinking that such a plan would have occurred to any one, had the convention not been at its wit's end for some method of effecting an adjustment of the question of representation. Historically, the provision must

[1] Elliot, I, 180; V, 211, 212.

be viewed as a relic of the great compromise upon the subject of slavery.

But different views have been advanced. Mr. George Ticknor Curtis argued, in 1866, that the direct-tax clause was an intentional limitation of the power of Congress. He held that, after the states gave up to the general government the exclusive right of levying customs duties, they refused to concede full powers of direct taxation concurrent with their own.[1] In the income-tax cases, in 1895, Chief Justice Fuller gave a somewhat similar explanation. "The men who formed and adopted that instrument," he said, "had just emerged from the struggle for independence, whose rallying cry had been that 'taxation and representation go together.'" This principle was incorporated in the constitution, so that whenever Congress should vote a tax, "it would fall proportionately upon the immediate constituents of those who imposed it." More than this, the states surrendered their power to tax imports. Therefore, in giving Congress "power to tax persons and property directly," they did so "in reliance on the protection afforded by restrictions on the grant of power." "If, in the changes of wealth and population in particular states, apportionment produced inequality, it was an inequality stipulated for, just as the equal representation of the states, however small, in the Senate, was stipulated for."[2]

Again, Mr. Justice Field, in his tirade against the legislators who passed the income-tax law, found time for a few remarks concerning the origin of this constitutional provision. He said that the convention was greatly embarrassed, first, by the disinclination of the importing states to give up their right to levy

[1] *Harper's Magazine*, XXXIII, 359. Mr. Curtis also advanced a second reason. He said that the people "had never been accustomed to have a direct tax imposed without apportionment among the local subdivisions of the state." Nothing could be further from the truth. In all states south of Delaware, "taxes were laid directly on persons or the property of individuals by the state." (R. T. Ely, Taxation in American States and Cities, 123. See Wolcott's report on direct taxes, State Papers, Finance, I.) In the states north of Delaware, taxes were apportioned among counties and towns, but according to assessed valuations, not according to the absurd and inequitable rule of numbers.

[2] 157 U. S. Reports, 556, 557; 158 U. S. Reports, 620, 621.

import duties and, second, by the fear on the part of the small states that the larger states might impose unequal burdens upon them, if the power to tax directly real and personal property should be surrendered to Congress. This embarrassment, he declared, was so great as to threaten the dissolution of the convention, and the direct-tax clause was finally formulated as a compromise on this important point.[1] Justice Field confined himself to generalities, and did not refer in detail to the proceedings of the convention. This was fortunate for the argument; for an examination of the debates shows that no member of the convention was inclined to question the propriety or expediency of giving Congress power to levy import duties; that the fears of the small states concerned the general influence of the large states in matters of legislation, not in taxation, as a principal source of danger; and that the direct-tax clause was introduced in the middle of a heated controversy over representation for slaves, and without any reference to questions of taxation. There is not one word in the proceedings of the convention to justify the claim that difficulties on the subject of taxation threatened to bring its efforts to naught.

Views similar to those of Justices Fuller and Field were advanced by the counsel in the income-tax cases. It was urged that the older and richer states had been jealous of the growing power of the West, and had inserted this clause in order to prevent a combination of Western states from imposing heavy burdens on the richer communities of the Atlantic coast; and even that this provision was "designed for the protection or advantage of some set of persons or some particular interest or interests," and that the rule "was manifestly designed for the protection and advantage of property holders, as a class."

[1] 157 U. S. Reports, 587. There is no doubt that Justice Field formed this opinion as a result of a correspondence with the late David A. Wells. The writer is informed by a friend, who holds the chair of political economy in a well-known university, that he saw one letter which Wells wrote to Field, and that this letter was incorporated almost literally in Field's opinion. In the *Popular Science Monthly* (LIII, 385, 386), Mr. Wells discusses the purpose of the direct-tax clause in language which is almost the same, word for word, as that used by Justice Field.

All these views may be fairly summarized in two theories of the origin and purpose of the direct-tax clause. The first is that it was a check upon the powers of Congress in direct taxation, devised for the purpose of compensating the states for conceding to the general government the right to levy customs duties. The second is that it was intended to prevent oppressive taxation of any one section of the country by a combination of representatives from other sections.[1]

In the proceedings of the convention there seems to be nothing to support either of these theories. The direct-tax clause was proposed at a time when the members were interested solely in the question of representation for the slaves. It was manifestly intended as an expedient for cooling the ardor of the South in insisting upon such representation or for reconciling the North to a concession of at least a part of what was demanded. For data with which to settle this question we are not dependent solely upon the votes and debates of the convention. We have the express testimony of the very man who proposed to proportion direct taxation to representation, and this is confirmed by the explicit statement of James Madison. On the twenty-fourth of July, just before the resolutions of the convention were referred to the committee of detail, Gouverneur Morris expressed the hope that

the committee would strike out the whole of the clause proportioning direct taxation to representation. He had only meant it as a bridge to assist us over a certain gulf: having passed the gulf, the bridge may be removed. He thought the principle laid down with so much strictness liable to strong objections.

[1] In this connection, allusion has been made to the jealousy of the growing power of the West; and it has been intimated that the direct-tax clause was intended to protect the property of the Eastern states from combinations of Western representatives. Nothing could be more incorrect. It has already been shown in this article that jealousy of the West was confined to a few members of the convention, who were promptly outvoted when they made a definite proposal to restrict the representation of new states. Moreover, the fears expressed with regard to the future power of the West concerned general matters of legislation, taxation never being mentioned in this connection. No one dreamed of crippling the government's powers of taxation in order to restrict the future power of the West.

This was sufficiently explicit, but Madison, in his report of the debates, added an explanatory note at this point.[1] He wrote:

> The object was to lessen the eagerness on one side for, and the opposition on the other to, the share of representation claimed by the Southern States on account of the negroes.

The obvious interpretation suggested by the proceedings of the convention is, therefore, corroborated by the testimony of the men who were in the best position to know the exact reason for the introduction of the direct-tax clause. The most careful reading of the journal of the convention and of Madison's report of the debates fails to show anything that contradicts this explanation or lends support to any other. We have but one other account of the proceedings of the convention at the time when the direct-tax proposition was brought forward. This is contained in the papers of Rufus King.[2] It is not satisfactory in many respects, but it deserves mention at this point. King gives an account of the famous controversy over representation for the slaves, and says:

> The Representation was twice recommitted altho' not to the same Committee; finally it was agreed yt Taxation of the direct sort & Representation shd. be in direct proportion with each other. . . .

This makes it clear that, in the mind of King, the provision concerning direct taxation was connected with the compromise over the representation for the slaves.

The proceedings of the convention, therefore, as interpreted by Morris, Madison and King, should leave no room for doubt concerning the origin and purpose of the direct-tax clause. If, however, the subsequent discussions concerning the constitu-

[1] Elliot, V, 363; Gilpin, 1197. This note was clearly in the original minutes taken by Madison. The writer examined the original manuscript to determine this point, and found that the color of the ink, the writing and the position of the note leave no doubt that it was a part of the original minutes. See Madison Papers, III, 75, in State Department Library.

[2] The Life and Correspondence of Rufus King, I, 615 (New York, 1894). The minutes kept by Robert Yates cover only the period from May twenty-fifth to July fifth. (Elliot, I, 389–479.) The notes taken by William Pierce cover only a small portion of the debates in June. — *American Historical Review*, III, 317–324.

tion are examined, the case is not, at first sight, so perfectly clear. Statements were made concerning the probable effects, if not the original purpose, of the clause, which seem to lend support to other views. Some of these facts are perhaps the basis for the theories advanced by Mr. Curtis and by Justices Fuller and Field.

We may consider first the theory that the states were unwilling to give the general government the right to levy customs duties, without having the powers of Congress narrowly restricted in matters of direct taxation. This theory seems to be entirely unsupported by any explicit statements of the men who framed and adopted the constitution. It is based upon inferences from certain well-established facts, and its truth or falsity depends upon the correctness with which the inferences have been drawn.

In its support it is pointed out that, when the constitution was before the people, much criticism was directed against the power of direct taxation ;[1] that fears were expressed lest the new government would seize upon all sources of revenue, leaving the states with no means of support ;[2] and that the friends of the constitution often declared that direct taxes would probably be a last resort of Congress, and would be used only in case of some great emergency.[3] But, on the other hand, it may be answered conclusively that the leaders in the fight for a national government unfalteringly insisted that the United States ought to possess complete powers of taxation, and that they carried the day against the timid conservatives and the paper-money repudiators who desired to deprive the new government of all adequate means of support. He who reads the ringing words of Hamilton, Jay, Ellsworth, McKean, Randolph,

[1] Elliot, I, 369 ; II, 71, 160, 332, 333, 374; III, 29, 56, 57, 166, 167, 214, 280, 320; IV, 75; Ford, Essays on the Constitution, 53; Ford, Pamphlets on the Constitution (Brooklyn, 1888), 102, 304.

[2] For example, see a report of a committee of the Massachusetts legislature in 1790. Published in *American Historical Review*, II, 104.

[3] Elliot, II, 42, 57, 60, 61, 64, 76, 106, 132, 191, 192, 211, 243, 333, 343, 501 ; III, 40, 95, 109, 300; IV, 77, 78, 189, 190, 220, 260 ; V, 373, 417, 433, 455; Ford, Pamphlets, 160, 253; Ford, Essays, 239, 404; Lodge, Works of Hamilton (New York, 1885–1886), IX, 69, 123, 125, 183.

Wilson and a host of others cannot doubt that the constitution was intended to confer upon Congress complete powers of taxation.[1] Ellsworth, for instance, argued:

> It is necessary that the power of the general legislature should extend to all the objects of taxation, that government should be able to command all the resources of the country; because no man can tell what our exigencies may be. . . . A government which can command but half its resources is like a man with but one arm to defend himself.

More than this, the opponents of the constitution explicitly stated that its adoption would confer upon Congress the most complete powers of taxation. These men never doubted the intention of the new instrument on this point.[2] William Patterson, the man who proposed in the federal convention the plan of government that sought to limit Congress to impost and stamp duties,[3] has left us a judicial opinion upon this very subject. In 1796 he declared: "It was, however, obviously the intention of the framers of the constitution, that Congress should possess full power over every species of taxable property, except exports." And in this opinion all of Patterson's associates upon the supreme bench concurred.[4] Upon other questions the framers of the constitution were sometimes obliged to resort to compromises, but in the matter of taxation this was not the case. The men who were willing to have Congress incur debts, but unwilling to provide adequate means for their honest payment, were squarely met and totally defeated. Except in the case of exports, it is clear that the constitution was intended to give to the general government full power to command the resources of the country in its exercise of the right of taxation.

But it has been argued that a number of states proposed amendments by which it was to be provided that Congress should not levy direct taxes until it should first make requisitions upon the states for the quotas of money due according to

[1] See especially Elliot, II, 190, 191, 367, 380, 466, 535; III, 127.

[2] Elliot, II, 71, 330–332, 378; III, 29, 57, 263; IV, 75; Ford, Pamphlets, 102, 304; Ford, Essays, 53.

[3] Elliot, I, 175; V, 191.

[4] 3 Dallas, 173, 176, 181.

the rule of apportionment, and should fail to secure a compliance with its demands.[1] Furthermore, it may be said that friends of the constitution recognized the strength of the opposition to direct taxation, when they intimated that the states would probably be given an opportunity to collect, in the manner most convenient, their quotas of direct taxes, before Congress would proceed to exercise the right of taxing citizens directly.[2] But these facts do not prove the theory that the states insisted upon the direct-tax provision, as a necessary protection for their own revenue powers after import duties were conceded to the national legislature. These proposals do indicate an opposition to direct taxation by the federal government, and part of this opposition did certainly come from jealousy concerning the safety of state revenues. But these proposals were opposed in the state conventions by the leading friends of the new plan of government;[3] the constitution was actually adopted without the suggested alterations; and when an amendment to secure them was introduced in the first House of Representatives, it was rejected by a vote of 39 to 9.[4] It is submitted that the failure of the attempt to oblige Congress to resort to requisitions does not support the theory that the direct-tax clause was intended as a safeguard of the revenues of the states.

According to the second theory, the rule for apportioning taxes was intended to prevent oppressive taxation of any state or section by a combination of other states or sections. Various passages from the speeches of such men as Madison, Randolph, Hamilton, Nicholas, Pendleton and Williamson may be cited in support of such a view. We may begin with extracts from the *Federalist*. Hamilton, after discussing the difficulties of securing accurate assessments for the apportionment of direct taxes, wrote:

[1] Elliot, I, 322, 323, 325, 326, 329, 335; III, 31; V, 453.

[2] Elliot, I, 492; V, 316; Pierce, Debates in the Convention in Massachusetts, 304, 311; Ford, Essays, 235, 236; Ford, Pamphlets, 49.

[3] Elliot, II, 59, 60, 342, 343, 367, 368, 380, 381, 536; III, 40, 41, 100, 101, 118, 119, 122, 181, 228, 229, 245, 250–252, 328, 329; IV, 77, 78, 82, 85, 92.

[4] Annals of Congress, First Congress, 807.

In a branch of taxation where no limits to the discretion of the government are to be found in the nature of things, the establishment of a fixed rule, not incompatible with the end, may be attended with fewer inconveniences than to leave the discretion altogether at large.[1]

This was intended as a defense of the rule of apportionment according to numbers. It will be noted that Hamilton considered that rule not incompatible with the end of giving the government complete powers of taxation. He did not consider the adequacy of direct taxation for purposes of revenue to be limited by the constitutional requirement, but simply thought that abuse of the power might be prevented by the apportionment rule. Elsewhere he wrote that this provision "effectually shuts the door to partiality or oppression."[2] Similar ideas were advanced in the Virginia convention, where Patrick Henry, George Mason and others attacked vigorously the proposal to give Congress the right to levy direct taxes. In reply to such objections, Madison said:

Our state is secured on this foundation. Its proportion will be commensurate to its population. This is a constitutional scale, which is an insuperable bar against disproportion, and ought to satisfy all reasonable minds.

Randolph and George Nicholas also urged strongly that the provision fixed the amount which could be drawn from Virginia by direct taxation.[3]

These statements, if they stood by themselves, would seem to support strongly the theory under discussion. But they need to be considered carefully, with reference to the circumstances under which they were made. Hamilton, Madison, Randolph and Nicholas were in the midst of a controversy, and were defending the power of direct taxation from the criticisms that were raised against it. It will be noticed that none of these statements are *express explanations of the purpose of the clause relating to apportionment*. They may be considered

[1] Lodge, Works of Hamilton, IX, 125.
[2] *Ibid.*, IX, 210. [3] Elliot, III, 307; *cf.* 121, 244.

merely as declarations concerning its incidental effects upon the position of the states in the matter of direct taxation. In the case of Madison, it will be remembered, we have his express statement, made in his minutes of the debates of the convention, that Morris offered his proposals concerning the apportioning of taxes in order to hasten a settlement of a dispute over representation for the slaves. Special pleading in the course of a heated controversy cannot stand against the deliberate records which are found in the proceedings of the convention.

Upon later occasions we find two express statements that the object of the direct-tax clause was to safeguard a state or section against oppressive taxation. Hugh Williamson said in Congress, in 1792, that this clause was intended to prevent the imposition of unequal burdens.[1] Four years later Edmund Pendleton advanced a similar argument.[2] Such evidence is of importance, especially when added to that furnished by the words of the statesmen previously quoted. But it needs to be weighed against the express statements of Morris, Madison and King, made in the accounts of the debates of the federal convention, and against all the other materials that can be drawn from the discussions of the period when the constitution was being ratified. It will be shown in subsequent paragraphs that the explanation which Morris, Madison and King made concerning the purpose of the direct-tax clause is confirmed by evidence drawn from later sources.

Besides the two theories already presented, there was suggested a third explanation of the purpose of the apportionment clause. In support of this third theory, James Madison may be quoted. In the Virginia convention he urged that, "from the modes of representation and taxation, Congress cannot lay such a tax on slaves as will amount to manumission."[3] In North Carolina it was argued by Spaight, who had been a member of the federal convention, that the apportionment rule was "meant for the salvation and benefit of the Southern

[1] Elliot, IV, 427.

[2] In Bache's *Aurora General Advertiser* for February 11, 1796.

[3] Elliot, III, 453.

States."[1] Without this provision the South might be oppressed, since "an acre of land in the Northern States is worth many acres in the Southern States." In the Hylton case, in 1796, Judge Patterson advanced the same explanation.[2] He held that the constitutional rule was made in the interest of the South. This section had many slaves and large tracts of land thinly settled. The other states had few slaves, and their territory was limited and well settled. Without this constitutional requirement, Congress might have taxed slaves arbitrarily, and might have taxed land in all parts of the country at a uniform rate. This would have been highly oppressive to the South.

Madison's words are not an express statement of the purpose of the constitution, and may be merely an opinion concerning its incidental effects. But Spaight and Patterson clearly advanced explanations of the object of the direct-tax clause. Two things may be said concerning the theory here presented. First, it ought not to stand against the evidence found in the debates of the federal convention, supported, as we shall find it to be, by later testimony. Second, it seems certain that Patterson and Spaight were misled by what they undoubtedly remembered concerning the provision that no "capitation or other direct-tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken." We have seen that so much of this clause as refers to a capitation tax was introduced for the sole purpose of protecting slave owners from an arbitrary tax upon the blacks. Knowledge of this fact might easily lead to the conclusion that the original apportionment rule was likewise intended for the benefit of the South.

Having considered all the evidence in favor of these three divergent theories, we may now inquire what facts can be drawn from subsequent discussions to support the theory which seems to be the only one justified by the proceedings of the federal convention, as explained by Morris, Madison and King. In the New York convention Hamilton referred to the direct-

[1] Elliot, IV, 209, 210. [2] 3 Dallas, 177.

tax clause in a manner that corroborates the view that this provision was intended to reconcile both the North and the South to representation for three-fifths of the slaves. Hamilton was called upon to meet the contention that it was unfair to allow the South any representation whatever for men who were held as property, with no political rights and no "will of their own." He argued:

> But representation and taxation go together, and one uniform rule ought to apply to both. Would it be just to compute these slaves in the assessment of taxes, and discard them from the estimate in the apportionment of representatives?[1]

In the same state, George Clinton objected to the rule for apportioning direct taxes according to numbers. He held that property should be the basis for the assessment of public burdens, and said: "You are told to look for the reason for these things in accommodation."[2] Hamilton's argument and Clinton's objection alike make it clear that in New York the requirement of direct taxation for three-fifths of the slaves was used, as Morris had intended, for the purpose of reconciling the people of the North to the concession of a three-fifths representation.

In the Massachusetts convention, when the provision for apportioning direct taxes was under discussion, the record states[3] that "Messrs. King, Gore, Parsons, and Jones, of Boston, spoke of the advantage to the Northern States the rule of apportionment in the third paragraph (still under debate) gave to them." Unfortunately these speeches are not reported; but the drift of the argument is, nevertheless, sufficiently plain. Better still is the reply which James Warren made to the plea that the taxation for the three-fifths of the slaves compensated the North for the concession of a three-fifths representation. Warren asked whether Massachusetts ought to give up her right of equal representation for her white inhabitants "to any State that would pay our whole proportion of direct and

[1] Elliot, II, 237. [2] Ford, Essays, 273.
[3] Elliot, II, 42.

indirect taxes."[1] He declared that no financial consideration could compensate for a concession of unequal representation. Moreover, he thought that the burdens avoided by Massachusetts would be merely nominal, because the South, enjoying slave representation, could prevent the imposition of direct taxes and confine the federal government to indirect taxation. Here again both the argument and the reply show that the direct-tax clause was actually used in precisely the manner contemplated by Morris and explained by Madison.

We find, therefore, four conflicting views of the purpose of the constitutional provision for apportioning direct taxes. The proceedings of the constitutional convention, interpreted fairly and explained by Morris, Madison and King, give countenance to only one theory — that the apportionment rule was merely a bait for extremists in the North and in the South, thrown out in order to secure the adoption of the compromise over representation for the slaves. This consideration should be of decisive weight. Three other theories find more or less support in the discussions of the period that witnessed the adoption of the constitution. But the theory based upon the proceedings of the federal convention finds important corroborating testimony. Can there be any doubt as to which explanation has the weight of evidence on its side?

This particular question has not attracted much notice from the writers upon American constitutional law and history. But it will be well to consider the views of the few authorities who have in any way referred to the subject. Joseph Story has treated at length the great controversy over the concession of representation for three-fifths of the slaves. After explaining the real nature of the compromise between the free and the slave states[2] upon this point, he shows that, in order to reconcile the non-slaveholding states to this provision concerning representation, another clause was inserted, requiring that direct taxes should be apportioned in the same manner as represent-

[1] Letters of a Republican Federalist, quoted by S. B. Harding, The Contest over the Ratification of the Federal Constitution in Massachusetts (New York, 1896), 157, 158.

[2] Commentaries, § 642.

atives. Thus the weight of his authority can be invoked in support of the theory clearly indicated by the proceedings and debates of the federal convention. James Kent treated of this subject very briefly.[1] He considered the objections that could be advanced against allowing representation for the slaves and the reasons for such a concession. Then he pointed out that these same slaves served to increase the burdens of direct taxation — a fact which he regarded in the light of a compensation to the non-slaveholding states. W. A. Duer noted that the apportionment of direct taxes upon the same basis as representatives increased the burdens of direct taxation to be borne by the South.[2] Mr. Justice Swayne, in a decision delivered in 1880,[3] called attention to the origin of the direct-tax clause in the compromise over representation for slaves. Mr. George Ticknor Curtis, who advanced in 1866 a different theory of the purpose of the apportionment rule, presented in his *Constitutional History*[4] an account of the genesis of this provision that is identical with that offered in the present essay. Finally, George Bancroft has given us a history of the proceedings of the convention, in which he explains most clearly that the provision concerning direct taxes originated in the attempt of Gouverneur Morris to effect a compromise of the dispute over representation for the slaves.[5] With the exception of George Ticknor Curtis, in his article of 1866, it is believed that no writer can be quoted in support of the views advanced by Justices Fuller and Field in 1895. It thus appears that the weight of authority has always been on the side of that theory which alone finds justification in the records of the constitutional convention.

VI.

It remains for us to consider the character and the effect of this constitutional rule, which had its origin, as has been shown,

[1] Commentaries on American Law (fourteenth edition, Boston, 1896), I, 231.

[2] Constitutional Jurisprudence of the United States (second edition, Boston, 1856), p. 56.

[3] 102 U. S. Reports, 596.

[4] Constitutional History, I, 408–414.

[5] History of the United States, VI, 265, 266.

in an attempt to compromise differences of opinion concerning the justice of allowing representation for the slaves.

This clause of the constitution requires that direct taxes shall be divided among the states according to their respective numbers, and provides for what Bancroft would have called a "collective poll tax."[1] Such a rule of apportioning public burdens is repugnant to every principle of just taxation. It is open to the further objection that direct taxes assessed upon this basis must prove almost valueless as a source of revenue. When public burdens are apportioned in such a manner that the weakest communities must bear as great a burden as the strongest, the fruitfulness of any tax is measured by the ability of the weakest state to contribute to the support of the general government.[2] Both the injustice and the unproductiveness of such imposts ought to be so clear as to require no further discussion. But in the income-tax cases it was argued by counsel, and explicitly stated by the court, that there is no real difficulty in apportioning taxes, even upon income, according to the rule prescribed by the constitution. The Chief Justice gravely raised the question:

> Cannot Congress, if the necessity exists of raising thirty, forty, or any other number of million dollars for the support of the government, in addition to the revenue from duties, imposts, and excises, apportion the quota of each State upon the basis of the census?[3]

Elsewhere, he seemed to admit the possibility of inequalities arising from the operation of the apportionment requirement; but he claimed, nevertheless, that the clause conferred upon Congress "a power just as efficacious" as any form of taxation "to serve the needs of the general government."[4] These

[1] History of the United States (fifth edition, Boston, 1863), VIII, 58.

[2] This was well stated by George Nicholas in the Virginia convention: "If we be wealthier, in proportion, than other states, it will fall lighter upon us than upon poorer states. They must fix the taxes so that the poorest states can pay; and Virginia, being richer, will bear it easier." (Elliot, III, 243.) Nicholas urged this fact as an argument in favor of the constitution. Such a consideration would have made no friends for the constitution in the poorer states.

[3] 158 U. S. Reports, 632, 633.

[4] *Ibid.*, 621.

statements may perhaps warrant a historical and statistical investigation of the justice and efficacy of taxes apportioned according to the constitutional rule.

1. *Opinions of the framers of the constitution.* — It must be said that most of these men had no idea that the direct-tax clause would seriously impair the power of the government to draw forth the resources of the country. Such men as Hamilton, who desired Congress to possess all necessary authority, considered the provision "not incompatible with the end" of conferring upon the United States a general revenue power.[1] The clause was not accepted in the constitutional convention, until it had been amended so as to appear incapable of causing injury to the financial powers of Congress.[2] Sufficient other evidence has already been offered to support the conclusion that all, or nearly all, of the friends of the constitution held the same views as Hamilton. But one important consideration should not be overlooked. It is probable that the inequalities in the comparative wealth of the different states were not so marked in 1787 as they are to-day. At that time, the ability of the weakest state to contribute may not have fallen so far short of the ability of the richest as to make an apportioned tax so ineffective for revenue purposes as it would be at the present time.

Concerning the justice of the apportionment rule, opinions were divided. It will be well to consider first the arguments advanced in favor of numbers as a basis for apportioning direct taxes. Perhaps a majority of those who defended the provision did so because they believed it impossible to secure an equal and uniform assessment of property in all the states and preferred numbers as a "more practicable" rule, possessing greater "simplicity and certainty."[3] Thus, in the *Federalist*,[4] it is stated that numbers are not "a precise measure" of wealth and ordinarily are "a very unfit one"; but the consti-

[1] Lodge, Works of Hamilton, IX, 125.
[2] Elliot, Debates, V, 302.
[3] See Works of Hamilton, IX, 125; Elliot, I, 70, 71; II, 42; V, 295.
[4] Works of Hamilton, IX, 339.

tutional provision is called the "least objectionable among the practicable rules." Other leaders seemed to endorse more fully the principle of the apportionment clause.[1] But when reasons were advanced for such an opinion, nothing better was offered than a statement that "population, industry, arts, and the value of labor, would constantly tend to equalize themselves," or some other equally vague explanation.[2]

On the other hand, many statesmen believed that the requirement was unjust. Opponents of the constitution naturally did not neglect such an opportunity as this clause offered, and insisted, with George Clinton, that property should be the basis of taxation.[3] But King and Morris also expressed their hostility to selecting numbers as a measure of wealth.[4] Moreover, Wilson and Hamilton can be quoted in opposition to the proposition that numbers are a fair rule for taxation.[5] Hugh Williamson asserted: "It is impossible to tax according to numbers. Can a man over the mountain, where produce is a drug, pay equal with one near the shore?"[6] Gouverneur Morris, as we have seen, declared, before the convention closed, that the provision was "liable to strong objections." In 1789 he wrote that the difficulties caused by the direct-tax clause would probably "force Congress into requisitions."[7] In 1796 Justice Patterson declared that "numbers do not afford a just estimate or rule of wealth," and that the apportionment clause was "radically wrong."[8] In 1797 it was argued in Congress that a direct tax would be inexpedient, because its distribution among the states would, of necessity, be extremely unequal and unjust.[9] In 1807, and again in 1812, Gallatin urged the same considerations.[10]

[1] Elliot, I, 72; IV, 210; V, 281, 299, 303, 309; Pelatiah Webster, Political Essays (Philadelphia, 1791), 55; Ford, Essays, 193.

[2] Elliot, V, 299. *Cf.* Works of Hamilton, IX, 125.

[3] Ford, Essays, 272, 273.

[4] Elliot, V, 297, 304.

[5] Elliot, I, 77; V, 25; Works of Hamilton, IX, 122–124.

[6] Elliot, I, 459.

[7] Sparks, Life of Morris (Boston, 1832), III, 471.

[8] 3 Dallas, 178.

[9] Annals of Congress, 4th Congress, II, 1866, 1906, 2196.

[10] State Papers, Finance, II, 249; Writings of Gallatin (Philadelphia, 1879), II, 506.

In proof of the assertion that the constitutional rule of apportionment was considered entirely just and satisfactory, it is pointed out that eleven or twelve states had voted to amend the Articles of Confederation in such a way as to permit the quotas of the requisitions to be determined by a similar rule. But this was not done until all attempts to assess the requisitions upon the basis of the value of real property had failed. So far as the old Confederation was concerned, there can be no doubt of the absolute impracticability of any other rule of apportionment than that of numbers. But when a new government was formed and endowed with a general power of taxation, there was no longer any necessity for apportioning requisitions among the states, and there was no justice in selecting numbers as the basis of direct taxation. The direct-tax clause was accepted by most of the friends of the constitution with the best grace possible, and was defended as well as its manifest injustice allowed. But it prescribed a rule of taxation that would have secured the assent of few, if any, of the framers of the constitution, under circumstances of less dire necessity.

Many of the expressions that can be quoted in favor of the apportionment rule are labored arguments in support of a compromise measure that could be neither rejected nor defended. In justification it was often said that "taxation ought to be in proportion to representation," or that "taxation and representation ought to go together." These phrases were on the surface akin to the watchword of the Revolution, "no taxation without representation"; but in essence they were, of course, totally dissimilar. That taxpayers should have a voice, through their representatives, in the imposition of taxes, is one principle: that every man should be taxed in proportion to the representation that he enjoys, is a very different proposition. The last principle would lead to a uniform poll tax as the sole source of public revenue, whenever citizens have an equal voice in the choice of representatives. Such a rule of taxation would have been universally repudiated in state affairs, where the poll tax had either been abandoned or had been supplemented by taxes upon property. In all quarters the very suggestion of a

poll tax aroused bitter opposition,[1] and no one defended such an impost as a principal source of revenue, except in cases of direst emergency. The Maryland constitution of 1776 had condemned "levying taxes by the poll" as "grievous and oppressive."[2] Two states proposed to amend the federal constitution so as to prohibit Congress from ever levying a poll tax.[3] It is difficult to believe that the fathers would have chosen freely to limit the government's powers of direct taxation to what is practically a collective poll tax.

Finally, the constitution did not provide for equality of representation; for the whites of the South were given representation for three-fifths of their slaves. When the expression "taxation according to representation" is interpreted in the light of this fact, it may be taken to mean that the South should bear an additional share of direct taxation, to compensate for the increased representation that its white population was to enjoy. This brings us back to the true explanation of the purpose of the direct-tax clause. In view of the representation conceded for three-fifths of the slaves, it may have seemed a fair compromise that the South's quota of direct taxation should be proportioned to its share of representation.

2. *The experience of the federal government.* — Five years after the new government was established under the constitution, the necessary expenditures of the United States had increased to such an extent that it was perceived by the best financiers that indirect taxation ought to be supplemented by other revenues. A direct tax was proposed in 1794 and in 1796,[4] but Congress did not come to a decision until 1798. One of the reasons assigned for the reluctance to pass such a measure was the inequality and injustice of the constitutional requirement. The act of 1798 apportioned among the states a direct tax of $2,000,000.[5] This was assessed upon dwelling-

[1] Elliot, II, 43, 105, 106, 135, 340, 391, 502; III, 364; Ford, Essays, 272, 273; Works of Hamilton, IX, 213, 214.

[2] Poore, Federal and State Constitutions, I, 819.

[3] Elliot, I, 330, 336. [4] State Papers, Finance, I, 276, 409, 414–441.

[5] 1 Statutes at Large, 580, 597. See also C. F. Dunbar, in *Quarterly Journal of Economics*, III, 441, 442; Bolles, Financial History of the United States, II,

houses, lands and slaves, and was collected by federal officers, without reference to state authorities. The tax was to be paid in 1800, but only $734,000 was raised in that year. In 1801 the collections amounted to $534,000, and in 1803 $207,000 was paid in.[1] Thus, less than three-quarters of the tax was raised in three years. Small payments dribbled into the treasury until 1813, when $238,000 still remained uncollected. The amount of the tax had been extremely small, when compared with the apparent needs of the government in 1798, but the difficulties of collection rendered it still more insignificant as a source of revenue. It will be seen that, if other imposts had been equally "efficacious to serve the needs of the general government," the United States would have been reduced to practical bankruptcy.

Congress did not attempt to levy another direct tax until the country became involved in the second war with Great Britain. Then the blockade of our ports caused the revenue from customs duties to fall off so heavily that internal taxes became absolutely necessary. So in 1813, Congress imposed, among other taxes, a direct levy of $3,000,000 upon the states.[2] This was assessed upon lands, houses and slaves, but the states were allowed to assume their quotas and collect the money for the United States by means of their own taxes. Seven states[3] availed themselves of this privilege, and in the other eleven the tax was collected by the federal government. This was a most favorable opportunity for proving the efficacy of direct taxes apportioned in the constitutional manner. The emergency was alarming, the necessities of the federal treasury were perfectly clear, and no one could deny the propriety of attempting to collect the small amount of money called for under the law. The result was a deficiency of nearly $800,000 out of the total

116–122 (New York, 1879–1886); Howe, Taxation in the United States, 30–34 (New York, 1896).

[1] These figures may be found in Scribner's Statistical Atlas, plate 81. (New York, 1883.) The amounts are stated in the nearest thousands of dollars.

[2] 3 Statutes at Large, 22, 53; *Quarterly Journal of Economics*, III, 442, 443; Bolles, II, 254, 259; Howe, 41–49.

[3] State Papers, Finance, II, 860, 861.

levy of $3,000,000 for the year 1814. Congress felt obliged to establish, in 1815, an annual direct tax of $6,000,000. But this measure was repealed in 1816, when, however, a tax of $3,000,000 was required for that year.[1] These later acts differed in no essential feature from the law of 1813. The amounts required had been as follows: $3,000,000 by the act of 1813, $6,000,000 by the act of 1815 and $3,000,000 by the act of 1816. By the close of the fiscal year 1817, the payments had amounted to $10,470,000. Small collections continued until the year 1839, when the total receipts had risen to $10,984,000. The efficacy of this power of apportioned taxes can be judged from the fact that, during the years 1814, 1815, 1816 and 1817, when the returns were largest, direct taxes upon property had yielded only $10,470,000 out of a total of $100,486,000 which the government had drawn from the people by taxation.[2] Worse even than the failure of these direct taxes for purposes of revenue were the hardships caused by their unequal assessment.

Congress made no further attempts to use this efficacious power until the nation was convulsed in the throes of a life and death struggle with domestic insurrection. In the first war revenue act of 1861, there was a provision for an annual direct tax of $20,000,000.[3] This followed closely the lines laid down by the laws of 1813 and 1815. It was assessed upon lands and dwelling-houses, and the states were allowed to assume their quotas, if they should prefer to do so. The seceding states were included in the apportionment, so that the loyal states were asked for only $15,000,000. This was a very small amount, when compared with the resources of the country and the needs of the federal government. All the loyal states but two assumed their quotas. The payments made, however, consisted largely of the settlement of accounts which the states

[1] 3 Statutes at Large, 164, 255; *Quarterly Journal of Economics*, III, 444.

[2] These figures may be found in Scribner's Statistical Atlas. The results are stated in the nearest thousands.

[3] 12 Statutes at large, 294; *Quarterly Journal of Economics*, III, 445 *et seq.*; Bolles, III, 17, 18, 160, 161; Howe, 81–90. See also House Report, No. 552, 50th Congress, first session, February 21, 1888.

held against the federal treasury for their expenses in equipping troops. By an act of 1862[1] the duration of the tax was limited to a single year and all further assessments were suspended until 1865; and in 1864 the tax was practically repealed.[2] Thus, $20,000,000 represents the total amount which Congress attempted to draw from the country by means of apportioned taxes during a struggle which required an increase of all other taxation to an extent that would have seemed absolutely impossible at the opening of the war. It will be instructive to present in a single table the payments made under the law of 1861 during the years when they were largest, and to contrast them with the receipts of the federal government from other taxes. The results, stated in the nearest thousands of dollars, are as follows[3]:

Years.	All Other Taxes.	Direct Tax.
1861	$39,582	
1862	49,056	$1,795
1863	106,701	1,485
1864	212,057	476
1865	294,392	1,201
1866	488,274	1,975
1867	442,446	4,200
1868	355,553	1,788
Totals	$1,988,061	$12,920

Long after the close of the war, small payments kept dribbling into the treasury, the last being credited in 1888. The total amount paid or credited up to February 18, 1888, is stated at $15,360,000.[4] After allowing $2,125,000 for the cost of collecting the tax in the states where the quotas had been assumed, there remained an unpaid balance amounting to $2,554,000. The tax had been but partially collected in the seceding states; and this circumstance, with others, led Congress in 1891[5] to vote to return to the states the amounts that had been paid

[1] 12 Statutes at Large, 489.
[2] 13 Statutes at Large, 304.
[3] Scribner's Statistical Atlas, plate 81.
[4] House Report, No. 552, 50th Congress, first session, 45.
[5] 26 Statutes at Large, 822.

and to remit the quotas that still remained due. Under this law, about $14,222,000 had been returned to the states by the close of the fiscal year 1895.

The direct tax of the Civil War, then, did not prove a more brilliant success than its predecessors. An exhibit of the net results to the United States from the exercise of the power of levying apportioned taxes may not prove uninstructive. The five direct taxes levied in 1798, 1813, 1815, 1816 and 1861 called for a total of $34,000,000. Of this amount, the government succeeded in collecting, within periods varying from thirteen to twenty-six years, the surprising sum of $28,100,000. From this, however, we must deduct the $14,222,000 returned to the states under the law of 1891. When this is done, it will be seen that, in the course of the one hundred and nine years that have elapsed since the federal government has possessed this valuable power, Congress has been able to collect the net sum of $13,880,000 from these apportioned taxes. Upon a liberal estimate, this is much less than one-tenth of one per cent of the total ordinary revenues of the United States since 1789, exclusive of the postal receipts.

3. *The inequalities caused by the constitutional rule.* — The direct tax of 1861 was assessed upon lands and dwelling-houses; but, since all the loyal states except two assumed their quotas, it became practically a general property tax. The federal census gives the assessed value of property in each state in 1860, as well as the *per capita* assessed valuation.[1] In order to show the inequality of assessment, Massachusetts, Rhode Island and Connecticut are compared with Michigan, Kansas and Minnesota. The results are embodied in the table on the opposite page, in which the *per capita* assessed valuation of all property is stated in the nearest number of dollars.

Thus it appears that a hundred dollars' worth of property was taxed in Minnesota nearly four times as much as in Connecticut; while the three Western states, in general, paid at three and one-half times the rate that was imposed upon the three Eastern states.

[1] Eleventh Census: Report on Wealth, Debt and Taxation, II, 59.

States.	Quotas of Tax.	Amount of Tax *per capita.*	Value of all Property *per capita.*	Amount of Tax per Hundred Dollars of Property.
Mass. . .	$825,000	$0.67	$631	$0.106
R. I. . .	117,000	.67	716	.093
Conn. . .	308,000	.67	742	.090
Minn. . .	109,000	.63	186	.338
Kan. . .	72,000	.67	210	.318
Mich. . .	502,000	.67	218	.307

We may next compute the largest possible yield of a direct tax in the United States at the present time, and the inequalities that would be caused by the attempt to levy such an impost. The census of 1890 showed the smallest *per capita* valuation of assessed property to be in North Carolina.[1] The amount that could be collected by a direct tax must be gauged by the ability of this state to contribute to the support of the general government. In order to make the estimate of the yield of the tax as large as it could possibly be, under any circumstances, let us assume that the United States decides to ask from North Carolina an amount equal to all the taxes, state and local, which the property of the state was compelled to bear in 1890. As a matter of fact, to double the direct taxes, state and local, which property is now compelled to bear, would be a political impossibility in any section of the country; but we will suppose this to be done in North Carolina. In 1890 that state raised, for state and local purposes, the sum of $2,151,835 by *ad valorem* taxes on real and personal property.[2] This amounted to $1.33 for each person in the state. This figure sets the limit which Congress could not exceed in imposing the collective poll taxes which the constitution calls direct taxes. In 1890, such an apportioned tax of $1.33 would have yielded $83,287,000. If we assume a population of 70,000,000 at the present moment, we should get about $93,000,000 as the largest conceivable amount of a direct tax.

This estimate is probably two or three times as large as any tax that Congress would dare to ask for. It would impose upon the poorer states a crushing burden, and would cause an

[1] Eleventh Census: Wealth, Debt and Taxation, II, 59. [2] *Ibid.*, p. 412.

amount of injustice that cannot be readily described. Moreover, it could never be collected, even in times of direst need, as the history of previous direct taxes has shown. If the tax should be needed for more than a single year, Congress would not venture to impose upon the poorer states more than one-third or one-fourth of the amount of their present property taxes. Thus, if we suppose a war, lasting four years, to call for all the resources of the country, Congress might hope to raise from twenty to thirty million dollars annually by means of this efficacious power conferred by the constitution. This, it will be remembered, presupposes that enormous inequalities would be tolerated and that a crushing burden would be imposed upon the poorer states. It also assumes, contrary to all previous experience, that such an unjust tax could be promptly collected.

The inefficacy of the power of apportioned taxation may be further shown by another comparison. In 1890 the state and local governments raised $443,096,574 by *ad valorem* taxes upon real and personal property. If Congress could reach this property uniformly with a tax only one-third as large as that imposed by state and local authorities, it could raise $147,697,000 by this means. If, on the other hand, the property of the poorest states should be taxed at one-third the rate imposed for local purposes and the other states should be taxed the same *per capita* amount, as required by the constitution, the yield would be but $31,000,000.

We may conclude this subject by examining the extent of the inequalities that would be perpetrated, if Congress should attempt to raise $93,000,000 by an extraordinary levy of $1.33 for each person in every state. For this purpose we may use the census figures of the *per capita* amounts of property assessed for taxation. At this point it may be objected that the assessed value of property is not, for all the states, a uniform proportion of the true valuation. It would be better to use figures of the true valuation of all property, if any such could be found that were anything more than the most conjectural estimates. As it is, we have only the statistics of assessed

valuation available for scientific purposes. But these are sufficient in this case, because a comparison is to be made of the richer Eastern states and the poorer states of the West and South. Now it may happen, although nothing definite can be said upon the subject, that real property, in the poorer states selected for our table, is assessed at a smaller per cent of its true value than is the case in the richer states selected. For the sake of argument, this may be conceded. But it is perfectly certain that the amount of personal property that escapes the assessor in the richer states is far greater than in the poorer states. In Kansas, Nebraska, North Carolina and South Carolina, a far larger proportion of personal property consists of farm stock and household goods, which are readily found for the purpose of assessment. The intangible forms of personalty, which escape taxation almost wholly, are far more common in the richer states.[1] These forms of intangible wealth have probably escaped taxation in an increasing degree; for the census shows that the *per capita* amount of personal property assessed in Massachusetts had increased by only two dollars between 1860 and 1890. In Rhode Island the *per capita* assessment of personalty had decreased by nine dollars during the same period, and in New York it had decreased by eighteen dollars. We are safe in concluding that the census tables of property assessed for taxation cannot exaggerate the differences in wealth between such states as are chosen for our table. The probability is that such differences are even greater than are shown by the figures of the census; so that our results will underestimate, rather than overestimate, the extent of the inequalities.

The subjoined table shows the *per capita* amount of assessed

[1] "The taxation of personal property is in inverse ratio to its quantity: the more it increases, the less it pays." (Seligman, Essays in Taxation [New York, 1895], p. 27.) See the statistics presented by Professor Seligman, pp. 27–30. A single fact may be cited here. From 1860 to 1890 the assessed value of real estate increased from $6,973,000,000 to $18,957,000,000. During the same period the assessed value of personal property increased only from $5,112,000,000 to $6,516,000,000. — Eleventh Census: Report on Wealth, Debt and Taxation, II, 59, 60.

property in each state selected for comparison, the figures being stated in the nearest number of dollars. It also shows the amount of the tax that must be assessed upon each hundred dollars of property, in order to raise each state's quota, estimated upon the basis of $1.33 *per capita*.

STATES.	AMOUNT OF TAX *per capita*.	VALUE OF ASSESSED PROPERTY *per capita*.	AMOUNT OF TAX *per* HUNDRED DOLLARS OF PROPERTY.
Mass.	$1.33	$962	$0.138
R. I.	1.33	931	.142
Kan.	1.33	244	.545
Neb.	1.33	174	.764
N. Car. . . .	1.33	145	.917
S. Car. . . .	1.33	146	.910

Thus the rate of taxation in Nebraska would be more than five times the rate in Rhode Island; while property in the Carolinas would bear about seven times the burden imposed in Massachusetts. It is not likely that Congress will ever attempt to perpetrate such an injustice, which would be not taxation, but robbery — a robbery of the weakest for the benefit of the strong; a robbery none the less because sanctioned by a constitutional rule begotten of the old strife over slavery.

4. *Opinions of various writers.* — Judge Story, writing long before the abolition of slavery, expressed the belief that the direct-tax clause was unjust. In view of the existence of slavery, however, he thought that "some artificial rule of apportionment" might be "indispensable to the public repose."[1] George Bancroft, after explaining the manner in which the direct-tax provision was introduced by Morris, said: "In this short interlude, by the temerity of one man, the United States were precluded from deriving an equitable revenue from real property."[2] Francis Bowen, in his discussion of the finances of the Civil War,[3] called the article obsolete, and held that it should be repealed. He wrote:

This article was adopted only as part of a compromise, being intended as compensation for the rule which ascertains the representa-

[1] Commentaries, §§ 993-997. [2] History, VI, 266.
[3] American Political Economy, p. 438 (New York, 1870).

tive population, by adding to the whole number of whites three-fifths of the slaves. As there are no slaves now, this rule for apportioning the number of Representatives in Congress is obsolete, and ought to be abrogated, together with its appendage and offset, the rule for the apportionment of direct taxation.

More recently, three other writers have considered the subject. Professor C. F. Dunbar, discussing the experience of 1861, has written[1]:

The direct tax had, in fact, far less to recommend it in 1861 than at the beginning of the century. The inequality of apportionment according to population, serious enough at first, had been increased by the concentration of wealth in the commercial and manufacturing States.

Then he narrates the miserable failure of the tax levied as a war measure, and concludes as follows[2]:

The direct tax provided for by the constitution has at last been effectually discredited as a source of revenue, and it has also been too prolific of misconception and confusion to have any interest henceforth as a practical measure of finance.

Dr. Howe, after reviewing the history of apportioned taxes, wrote[3]:

Even admitting that the tax conformed roughly to justice a hundred years ago, when population was a rough criterion of the ability of the states to pay, it must be apparent that the unequal territorial distribution of wealth at the present time renders even an approximation to justice impossible.

Finally, Francis A. Walker discussed the subject in one of his last books. He said:

The provisions of the constitution regarding direct taxes, again, are such that it might just about as well have declared that such taxes should not be imposed at all.

And then he explains:

If the amount of the tax were to be made large enough really to bring out the resources of the older and richer states, the newer and

[1] *Quarterly Journal of Economics*, III, 445. [2] *Ibid.*, 461.
[3] Taxation in the United States, p. 84.

poorer states could not pay their share. If, on the other hand, the amount is kept so low as to be within the means of the frontier states, the proceeds for the whole country will be insignificant.

Mr. Walker's conclusion is as follows:

> Three times has the general government undertaken to levy such a tax; but in each case the amount raised was small in proportion to receipts from other sources. In each case the collection of the tax excited bitter opposition. In each case large portions of the tax were left uncollected, after the lapse of years. It would not be a very hazardous prediction that the United States government will never again resort to this mode of raising revenue.[1]

Against the opinion of Chief Justice Fuller may be placed that of one of the dissenting judges in the income-tax cases. Mr. Justice White declared[2] that the rule of apportionment, especially as interpreted in 1895, prescribes "the most flagrantly unjust, unequal, and wrongful system of taxation known to any civilized government." In the light of all our experience of the operation of the direct-tax clause, the reader will have no difficulty in deciding between the opinions of Justices Fuller and White.

The writer is unable to dismiss this subject without referring to the experience of the Confederate States in trying to secure revenue by apportioned direct taxation. Fortunately for the cause of the Union, the constitution of the Confederacy borrowed from that of the United States the provision that direct taxes should be apportioned according to the rule of numbers. The result was what reason and experience could have foretold. On account of the blockade of its ports, the Confederacy was obliged to depend very largely upon internal taxation as a support for its loans and paper money. A direct war tax was apportioned among the states, which were given the privilege of assuming its payment. Some of the states then issued bonds, in order to secure the means for paying their quotas. In these cases the tax was converted into a loan, at a time when

[1] The Making of the Nation, pp. 145, 146 (New York, 1895).
[2] 158 U. S. Reports, 713.

the public credit was beginning to be strained to a perilous point. Elsewhere the tax was only partially collected. The net result was that direct taxes furnished only one-third of one per cent of the total revenue of the Confederacy in one year, and two-thirds of one per cent in another.[1] Jefferson Davis has left us a melancholy record of the failure of the Confederate States to reach their principal sources of wealth, land and slaves, by means of apportioned taxes.[2] It need not surprise us, therefore, to find the direct-tax clause of its constitution assigned as an important cause of the downfall of the Confederacy.[3] Yet this was the exact provision whose application has been so widely extended by the recent decision of our Supreme Court that, apart from customs, excise and some other duties, the United States has no clear power to reach the wealth or income of its citizens, save by taxes apportioned according to the rule of numbers.

CHARLES J. BULLOCK.

WILLIAMS COLLEGE.

[1] See J. C. Schwab, "The Finances of the Confederacy," POLITICAL SCIENCE QUARTERLY, VII, 38–56 (March, 1892).

[2] Rise and Fall of the Confederate Government, I, 495, 496 (New York, 1881).

[3] See the *Century*, LIII, 38.

THE CURRENCY ACT OF MARCH 14, 1900.

SINCE the resumption of specie payments in 1879, the monetary system of the United States has been weak in three respects: (1) The United States Treasury, although responsible for the convertibility of a large mass of credit money, has had inadequate control of its resources and only an artificial connection with the money market; (2) there has been no definite legal provision for the maintenance of the gold standard; (3) the bank-note currency, instead of responding to the needs of the money market and thus lightening the Treasury's burden of redemption, has failed to be of any service, either in normal or in critical periods.

In this paper it is my purpose to consider the general effect upon the situation of the Currency Law of March 14, 1900. Does it break the "endless chain"? Does it render easy the maintenance of the gold standard? Does it make impossible the recurrence of the critical times of 1894, 1895 and 1896? Are the amendments to the National Bank Act an improvement or the opposite? Questions of this character I propose to discuss: I will not stop to analyze or criticise the act in detail.

I.

It should be noted, first, with respect to the act, that the gold standard is no more than a statutory declaration of an existing fact. Since 1873 gold has been the standard money of the United States, and no alternative has been possible. The law of 1878 authorizing the coinage of silver dollars, although it called them standard dollars and made them full legal tender, was not, as is often assumed, a step toward bimetallism. The silver dollar was between 1878 and 1890 a piece of fiat money. The real dollar of the United States was 25.8 grains of standard gold, and its purchasing