

THE WISDOM OF MAN

By

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“The wisdom of man never yet contrived a system of taxation that would operate with perfect equality.” President Andrew Jackson (Proclamation Regarding Nullification, Dec. 10, 1832)

While President Jackson believed and wrote those words with the information he had at the time, he died (1845) twenty-three years before the 14th Amendment was ratified (1868), sixty-eight years before the 16th Amendment was ratified (1913), and one hundred-seventeen years before Milton Friedman wrote *Capitalism and Freedom* (1962). With tax policy and the Federal budget debated on a daily basis, it is a crucial time to present the argument that there really is “a system of taxation that would operate with perfect equality:” it is called the flat tax, and the U.S. Constitution, through the 14th Amendment, states in very clear language (“equal protection of the laws”) that a flat tax is the only legally permissible tax system for citizens of the United States.

The Fourteenth Amendment to the U.S. Constitution (as well as the Thirteenth and Fifteenth Amendments) defined for all time the responsibility of government to respect and protect the rights of all of its citizens: “Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Countless cases and legal analyses have discussed and defined the terms: “United States,” “citizens,” “due process,” and “equal protection,” as used in the Fourteenth Amendment. It is not my purpose here to regurgitate these legal arguments, nor to create new legal theories to prove my point: that the Fourteenth Amendment not only allows for a flat tax (a tax system with a constant marginal tax rate), but actually demands it as the only Constitutional tax system for citizens of the United States. Economic analyses and political arguments, both pro and con, as well as arguments based upon the 16th Amendment, are irrelevant for this discussion because the only concepts of importance are the matters of “equality” and “fairness,” which are the essence of the U.S. Constitution and of America itself.

While economic analyses may be beyond the scope of this argument, some background on the flat tax concept may be helpful. Milton Friedman, the Nobel laureate economist (1976), introduced the flat tax to the world in 1962: “An income tax initially enacted at low rates and later seized upon as a means to redistribute income in favor of the lower classes has become a façade, covering loopholes and special provisions that render rates that are highly graduated on paper largely ineffective. A flat rate of 23½ per cent on presently taxable income would yield as much revenue as the present rates graduated from 20 to 91 per cent. An income tax intended to reduce inequality and promote the diffusion of wealth has in practice fostered reinvestment of corporate earnings, thereby favoring the growth of large corporations, inhibiting the operation of the capital market, and discouraging the establishment of new enterprises.”¹

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In addition to the pure equality and fairness of the flat tax, its single tax rate with no deductions or exemptions is so rational and simple that it is completely understandable by all taxpayers

regardless of their level of income. The same U.S. Constitution that demands the equality of the flat tax also confers the power to tax as well as the power to spend on the U.S. Congress (Article I, Section 8). In the exercise of those powers, the Congress should continue the simplicity of the flat tax-generated revenue side of the equation into the expenditure side. For example, the revenue generated by a 23½ per cent flat tax rate might be divided as follows: 5% for defense, 5% for administration of the Federal government, 5% for Social Security and Medicare, 5% for the states, and 3½ % for deficit reduction. In reality, the flat tax rate at any given time is not as critical as the Federal government's commitment to the mandate of the 14th Amendment for the equality of the flat tax concept itself. The percentages used for the division of revenues will change over time as the nation's priorities change.

A progressive tax (a tax system in which the tax rate increases as the taxable base amount increases) is inherently unfair and inequitable because it discriminates against citizens based solely upon their income and wealth. This type of unfair treatment is no different than discrimination based solely upon race or gender. The 14th Amendment unequivocally prohibits such discrimination because it requires that all federal and state laws and regulations provide "equal protection of the laws" to all citizens of the United States. A flat tax system, wherein all citizens pay the same tax rate on all income from whatever source, without any exemptions or deductions, provides that "equal protection" to all citizens. While the term "fairness" does not appear in the 14th Amendment, or anywhere else in the U.S. Constitution, the concept of fairness is understood by every citizen. A truly fair tax system supports the proposition that it is a privilege to live in the United States, and that all citizens, regardless of their level of success or wealth, owe an incalculable and indivisible debt for the equality, freedom, and justice that we all enjoy. To provide "equal protection," such a tax system must treat every citizen exactly the same. A flat tax system does just that, and to use a current metaphor, requires every citizen to "have some skin in the game." This shared sacrifice will bring our nation together as nothing else can.

The U.S. Constitution and the Amendments added over the years (especially the 14th Amendment) set out a brilliant plan for the organization of our government, the rules necessary to operate it effectively and fairly, and the rights, privileges and responsibilities of citizenship. A flat tax system is essential to give true equality and fairness to that plan, those rules, and the citizenship that is the envy of the entire world. As America becomes more and more diverse in national origin, culture, race, religion, political philosophy, and yes, levels of income and wealth, one constant that we all have in common are the U.S. Constitution, and the notion of fairness. The American dream has different meaning for each individual, but without the true belief that the United States is a place where "equal protection of the laws" and fairness prevail, those dreams would be impossible. A flat tax transcends tax policy, the economy, and politics to give the American people the assurance that the promise of the 14th Amendment will be kept, and that "equal protection of the laws" and fairness are basic elements of our democracy.

¹Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962) p. 198