

The Meaning Of 'Capitation' In The United States Constitution

"No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

[United States Constitution, Article 1, § 9, cl. 4](#)

ANY TAX ON (OR MEASURED BY) COMMON ECONOMIC ACTIVITY (or the proceeds therefrom) is a "capitation" as that term is meant in the United States Constitution. The United States Supreme Court declares the meaning of the Constitutional term "capitation" in its ruling in *Pollock v. Farmer's Loan & Trust*, 157 U.S. 429 (1895) – the most detailed analysis of federal taxing powers ever made by the court. The court does so by citing to, and endorsing, the observations as to the Framers' understanding and use of the term of Albert Gallatin, state and federal congressman and senator, U.S. Minister to England and France, and the longest-serving Secretary of the Treasury in U.S. history. As the Supremes say:

"..Albert Gallatin, in his Sketch of the Finances of the United States, published in November, 1796, said: 'The most generally received opinion, however, is that, by direct taxes in the constitution, those are meant which are raised on the capital or revenue of the people;...'

...

"He then quotes from Smith's Wealth of Nations, and continues: 'The remarkable coincidence of the clause of the constitution with this passage in using the word 'capitation' as a generic expression, including the different species of direct taxes-- an acceptance of the word peculiar, it is believed, to Dr. Smith-- leaves little doubt that the framers of the one had the other in view at the time, and that they, as well as he, by direct taxes, meant those paid directly from, and falling immediately on, the revenue;...'"

[Pollock v. Farmer's Loan & Trust, 157 U.S. 429 \(1895\)](#)

Capitations had long been in use throughout the Western World when the term was deployed in the Constitution. Adam Smith describes several forms of capitation in 'Wealth of Nations':

"The taxes which, it is intended, should fall indifferently upon every different species of revenue, are capitation taxes,"... "Capitation taxes, if it is attempted to proportion them to the fortune or revenue of each contributor, become altogether arbitrary. The state of a man's fortune varies from day to day, and without an inquisition more intolerable than any tax, and renewed at least once every year, can only be guessed at."..."Capitation taxes, so far as they are levied upon the lower ranks of people, are direct taxes upon the wages of labour, and are attended with all the inconveniences of such taxes."..." In the capitation which has been levied in France without any interruption since the beginning of the present century, the highest orders of people are rated according to their rank by an invariable tariff; the lower orders of people,

according to what is supposed to be their fortune, by an assessment which varies from year to year." ... "[I]n the first poll-tax [some] were assessed at three shillings in the pound of their supposed income,..."

[Adam Smith, 'An Inquiry into the Nature and Causes of the Wealth of Nations', Book V, Ch. II, Art. IV \(1776\)](#)

(Bear in mind that Smith is using the common word 'wages', not the [custom-defined legal term](#) of the same spelling found in the modern revenue laws.) Smith goes on to discuss the version of capitations imposed under the name of "poll taxes," as well, observing that in the first poll tax, for instance, many were taxed according to their supposed fortune, being "assessed at three shillings in the pound of their supposed income."

In the official law dictionary of Congress at the time the "income tax" began, the definition of "capitation" is given as:

"CAPITATION, A poll tax; an imposition which is yearly laid on each person according to his estate and ability."

[Bouvier's Law Dictionary, 6th Ed. \(1856\)](#)

J.J.S. Wharton, Esq., in his 1848 '*Law Lexicon or Dictionary of Jurisprudence*', put it this way:

CAPITATION: a tax or imposition raised on each person in consideration of his labour, industry, office, rank, etc. It is a very ancient kind of tribute, and answers to what the Latins called tributum, by which taxes on persons are distinguished from taxes on merchandize, called vectigalia.

[Wharton's Law Lexicon, \(1848\)](#)

CLEARLY, A GENERAL, INDISCRIMINATE TAX ON "ALL THAT COMES IN," or on "every species of revenue," or which is assessed as a percentage of earnings or receipts (as in "three shillings in the pound"), qualifies as a "capitation" as the term is used in the United States Constitution. Just as clearly, the "income" taxed by Congress since the inception of the unapportioned income tax can be none of these things, and the tax can be no such tax, capitations being subject to the rule of apportionment.

By the way, Smith's "peculiar acceptance" of the term "capitation," as Gallatin put it, was his recognition that any tax a man must himself pay is in fact a tax on the man--a capitation--even if nominally be laid on something else. Smith saw that just as a tax nominally laid on the man is a burden on his revenue (and a hindrance to his productivity), so a tax nominally

laid elsewhere but which must be paid out of a man's revenue is an imposition on the man directly (and a hindrance to the exercise of his rights).

Smith was blessed with this insight due to having an economist's perspective and applying it to the task of accurately identifying and accounting for the practical realities of the incidence of a tax and how it is paid – doubtless the first time anyone had done so. The Framers were devoted, respectful and voracious students of Smith's work, and adopted Smith's reasoning in this matter, just as Albert Gallatin said. This is clearly illustrated by the following consideration of the term "capitation" by the Constitutional Convention, as reported in James Madison's notes on that proceeding, in which "capitation" is originally deemed a suitable expression of ALL forms of direct taxation, but ends up supplemented with "another cast to the meaning" by the addition of "or other direct taxes" in order to ensure that no mistake to the contrary could be made:

"Art. I. Sect. 9. "no capitation tax shall be laid, unless &c"

Mr Read moved to insert after "capitation" the words. "or other direct tax" He was afraid that some liberty might otherwise be taken to saddle the States with a readjustment by this rule, of past Requisitions of Congs - and that his amendment by giving another cast to the meaning would take away the pretext. Mr Williamson 2ded. the motion, which was agreed to, On motion of Col: Mason "or enumeration" inserted after, as explanatory of "Census" (Con. & S. C. only. no.)"

[James Madison, Notes of the Constitutional Convention](#)

The Framers were intent on maximizing individual liberty, and sought to ensure strict, meaningful limitations to the permission to lay and collect taxes given to the federal government (a permission entirely withheld under the Articles of Confederation which the Constitutional Convention had met to revise).

For a complete discussion of capitations and the relevance of the term to the current American tax structure, please see <http://losthorizons.com/The16th.htm>.



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