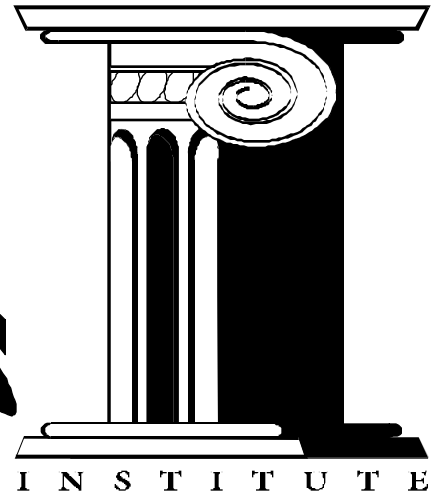


# LIMITS



*On Power and the Use of Power*

## No U.S. Governmental Agency Is More Conceited and Unlawful Than the IRS

By Shelley L. Davis

"Nowhere is governmental conceit expressed more destructively than in the workings and effect of our Internal Revenue Code." Those are fighting words. They come from the recently released report of the National Commission on Economic Growth and Tax Reform, headed by Jack Kemp, which recommended replacing our current confused tax system with a flat tax.

While I agree with the Commission's statement, I think it needs to go a step further. After more than seven years working inside the Internal Revenue Service (IRS), on Dec. 29, 1995, I resigned in protest against what I considered unethical and, in some cases, illegal activities of IRS employees in Washington, D.C. As a result of my experiences, I would add to the Kemp

report that nowhere is this government conceit carried out with more arrogance and abuse of power than in the work of the IRS.

Both the tax code and the collection agency are broken beyond repair. Any discussion about replacing our current income tax system must also address the issue of what to do with the most intrusive and abusive of all federal agencies -- the IRS. Merely supplanting the current income tax with a new, if flatter, tax on incomes would leave the IRS untouched. We must go further.

I was the first and only professional historian hired by the IRS. What I discovered inside the agency wasn't pretty. It was so distressing I felt forced to leave behind my career as a public servant. What I discovered is this: The IRS, which requires you to keep meticulous records of each and every financial

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transaction you make and other deeply personal activities, does not do the same with its own records.

More than simply not taking care of its records, the IRS destroys records that would document its policies, decisions, and activities for the American people. And the American people have a right to know about these things. The Federal Records Act says so, requiring federal agencies to save "evidence" of their work. This evidence will be available to the American people through the National Archives.

When I brought these issues to the attention of top level management, two IRS investigators were sent to discredit me. My faith in our federal system of government was shattered when this happened and I resigned in protest.

Many have asked me why the IRS is afraid of keeping its history -- what are they hiding? Is there some grand conspiracy afoot that we do not know anything about? Although it might be easy to develop a conspiracy theory, I do not think one exists. I think the answer lies in the pervasive arrogance that has come to characterize the IRS. The people have forgotten they serve the American people. This is a very, very dangerous thing.

We, as American taxpayers, have a right to know what is going on in the IRS. Ironically,

we know more about the inner workings of the CIA than we do of the IRS. The IRS, as an agency of the federal government, has a responsibility to preserve the records of its policies and decisions. What the IRS asks of each of us, it should do itself. If it cannot and will not, it may be time to scrap the IRS and start over again.

Never before in recent history has the call for tax reform been greater. There is a window of opportunity to bring dramatic changes to the way we raise revenue in this country. We must remain open minded to exploring a variety of alternatives. While many aspects of the flat tax are very appealing to American voters, we cannot forget the flat tax would leave the IRS in place. While flat tax proponents promise a decrease in the size of the IRS, that top management layer -- permeated with too much arrogance -- directing the dramatic abuse of power exercised by the agency -- will remain in place.

I think we owe it to ourselves to explore all options for a new tax system that will provide sufficient funds to pay for our government. **While it has yet to receive deserved attention, the national retail sales tax is worthy of serious consideration. One thing offered by a sales tax that does not come with a flat tax is the chance to do away with the IRS. The principal**

**administrative structure needed to implement a national retail sales tax could be based in each state, not in a behemoth bureaucracy in Washington, D.C.**

The culture of secrecy which has permeated the inner core of the IRS is so deep, we may never know what has really gone on inside this agency. **It is time for a new start, with a new system of taxation, and the removal of the IRS from our lives.** The Kemp Commission report compares our present tax system to an addictive drug, saying, "The history of our tax code...mirrors the course of most addictions, advancing dependence, diminished returns, and deteriorating health of the afflicted."

By using this example, the Kemp Commission urges the adoption of a flat tax. But what good does it do to recognize the source of the addiction (the tax code) if you do not go after the dealers and suppliers as well? In this case, the IRS serves as the dealer, making sure each of us is supplied with the means and ability to continue our addictive affliction in American society. They must go after the IRS as well. □

*Reprinted with permission of Shelley Davis, the first, and possibly last, historian to work for the IRS. She resigned in protest over the agency's corrupt practices. Ms. Davis is currently working on a book for Harper Collins, coming out later this year, that will provide an insider's account of the IRS.*

## High Court Gives Major Boost to Federalism

By Human Events staff

Giving a major boost to states' rights in accord with the limits placed on the federal government by the U.S. Constitution, the Supreme Court last week, by a 5-to-4 majority, sharply curbed the power of Congress to subject the states to lawsuits in federal court.

The ruling, in *Seminole Tribe v. Florida*, struck down part of a 1988 federal law permitting Indian tribes to sue states in federal court for failing to negotiate in good faith with Indian tribes concerning operation of gambling casinos on tribal land. In its opinion, penned by Chief Justice William Rehnquist, the High Court declared that Congress has no authority to abrogate the immunity — that is, of the states from lawsuits — that is recognized in the 11th Amendment.

The 11th Amendment bars jurisdiction in the federal courts to hear suits against a state by citizens of another state or a foreign country. An 1890 Supreme Court decision, *Hans v. Louisiana*, interpreted the Amendment as generally barring federal court suits against the states without their consent, whether by their own residents or by residents of other jurisdictions. The *Hans* interpretation explicitly recognized the sovereignty of the several states and the traditional immunity of sovereigns from suits by private parties.

The only exception to the

states' immunity from suits, the Court made clear, is in cases arising from the 14th Amendment. Rehnquist explained that the 14th Amendment, ratified long after the 11th Amendment, "by expanding federal power at the expense of state autonomy, had fundamentally altered the balance of state and federal power struck by the Constitution."

The Chief Justice noted that the 14th Amendment "...contained prohibitions expressly directed at the States and that ... [it] expressly provided that, 'The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.'"

Hence, said Rehnquist, the Court had correctly recognized in *Fitzpatrick v. Bitzer* (1976) that "through the 14th Amendment, federal power extended to intrude upon the province of the 11th Amendment and ... allowed Congress to abrogate the immunity from suit guaranteed by that Amendment."

Rehnquist noted that in only one other case, *Pennsylvania v. Union Gas Co.* (1989), had congressional abrogation of the states' sovereign immunity from suits been upheld. In that case a plurality of the High Court had ruled that Congress' power to regulate interstate commerce would be "...incomplete without the authority to render States liable in damages."

However, in last week's

decision, the High Court explicitly overturned the 1989 decision, saying the plurality had been wrong in that case to justify an abrogation of the right guaranteed to the states by the 11th Amendment by appeal to a constitutional provision, i.e., the interstate commerce clause, that existed before the 11th Amendment was ratified.

Since the 11th Amendment came after the interstate commerce clause, Rehnquist suggested, the Amendment's limitation on congressional power over the states that might have been implied by Congress' authority to regulate interstate commerce clearly took precedence.

Ironically, last week's ruling may have little ultimate impact on the dispute between the Seminoles and the state of Florida, since a separate provision of the 1988 Indian Gaming Regulatory Act, which was not challenged, gives ultimate authority to regulate gaming on tribal lands to the Secretary of the Interior.

However, the ruling will have a great deal of significance on issues extending far beyond the context of the present case, raising questions about whether individuals and special-interest pressure groups can use the courts to compel states to abide by a wide variety of federal laws. For conservatives, this could be a great boon, since well-heeled

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*Reprinted with permission of House Speaker Ron Corbett, who is demonstrating the complexity of Iowa's property tax system. The Speaker noted that Legislators will be informing constituents of the need to reconstruct the system.*

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environmental groups and other liberal organizations, working in tandem with liberal judges, have routinely used such cases to expand the intrusiveness of many federal laws far beyond what was indicated by the wording of the statutes themselves.

An indication of the importance of the case was the sharp language on both sides of the issue. Joining Rehnquist's majority opinion were Justices Sandra Day O'Connor, Anthony M. Kennedy, Antonin Scalia, and Clarence Thomas. Writing dissenting opinions were Justices John Paul

Stevens and David H. Souter. Souter's 92-page dissent, nearly three times as long as Rehnquist's majority opinion, was signed by Clinton appointees Ruth Bader Ginsburg and Stephen G. Breyer.

Stevens — casting a blind eye toward the superiority of the states over the federal government in all matters not explicitly delegated to the federal government or expressly prohibited to the states — denounced the “shocking character of the majority's affront to a co-equal branch of our government,” i.e., Congress.

Souter similarly blasted the majority opinion, saying it gives constitutional status to a notion of state sovereignty that is incompatible with the federal government established by the Constitution.

Rehnquist, who said the majority opinion merely restored a long-dominant view of federalism, dismissed Souter's expansive reading of federal power, saying it “...disregards our case law in favor of a theory cobbled together from law review articles and its own version of historical events.” ○

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## Government Getting Overzealous Confiscating Property

By Robyn E. Blumner

In a police state, law enforcement officers may systematically stop people at roadblocks, question them, and search their vehicles looking for potential lawbreakers.

In a society without regard for individual rights, private property can be confiscated without cause.

Welcome to Amerika!

This is precisely the situation in the United States today. Federal courts recently have given police the green light to target a new group of citizens -- the law-abiding.

Within the last few weeks both the U.S. Supreme Court and a federal appellate court have approved schemes that undermine our due process and Fourth Amendment rights to be free from unreasonable

search and seizure. Those rights used to protect us from capricious police actions -- like having our property or ourselves searched or taken into police custody without evidence of criminal wrongdoing. But no more. We stand today with a Bill of Rights that increasingly resembles the "parchment barrier" James Madison so feared.

Tina Bennis knows all too well. Bennis did not even know that her husband had driven the family's 1977 Pontiac, which she co-owned, and used it to commit an illegal sex act with a prostitute in the front seat. Nonetheless, the Supreme Court found nothing wrong with the government keeping Tina Bennis' share of the proceeds from the sale of

the car after it was confiscated under a Michigan law that targets the cars of johns. Despite the fact that, if anything, Bennis was a victim of her husband's actions, not a collaborator, her property was forfeited because it was used during the commission of a crime.

The potential sweep of the Bennis decision is breathtaking. Even the four dissenting justices were shocked by its possible implications for owners of airlines, hotels, and other large businesses.

"Some airline passengers have marijuana cigarettes in their luggage; some hotel guests are thieves; some spectators at professional sports events carry concealed

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weapons; and some hitchhikers are prostitutes," wrote Justice John Paul Stevens in a passionate dissent. "Neither logic nor history supports the Court's apparent assumption that (the business owners') innocence imposes no constitutional impediment to the seizure of their property simply because it provided the locus for a criminal transaction."

Concern over law enforcement misuse of property seizure is not academic. Since seizure laws in general allow police to keep the proceeds, there is great incentive to seize at every opportunity.

In Volusia County, FL, a woman had \$19,000 confiscated by sheriff's deputies when they stopped her for a traffic infraction and searched her car. They found no drugs, charged her with no crime, but kept the money, alleging it was illegal drug money.

She had proof that it came from an insurance settlement, but the sheriff wouldn't give the money back until she sued. Her case is not an aberration. An overwhelming majority of seizure cases involve property taken from an owner who is not charged with a crime.

But the nightmare does not end there. In a case recently decided by the 11th Circuit Court of Appeals, police roadblocks for random drug searches were approved. Now not only can police take property from law-abiders, they can set up roadblocks to catch them.

The roadblock case was based in Florida. When the Florida Highway Patrol erected roadblocks along four highways near the Georgia border in 1984, the stated purpose was the interdiction of drugs. By that measure, the operation was an abysmal failure. During the two days of roadblocks, police stopped a total of 1,300 cars. Drug dogs alerted to the presence of drugs in 28 vehicles, yet only one person actually had drugs and was arrested for possession of illegal narcotics.

The dogs also damaged and scratched a number of vehicles and bit a driver. The roadblocks caused delays of up to 45 minutes during rush hour. If drivers tried to avoid them by turning around, they were apprehended by a strategically placed police chase car.

A group of drivers sued law enforcement for violating their right to be free from police stops and interrogations without some evidence of criminal activity. After all, they said, a dragnet that assumes every citizen is a suspect is unconstitutional. It is just the kind of abuse of power the Constitution's founders -- fresh from their experience with unjustified searches conducted by British customs agents -- hoped to prevent with the Bill of Rights.

But the appellate court forgot its history lesson and approved the roadblocks as only a minor intrusion on individual motorists.

Some would say that being stopped at a police roadblock is a trivial inconvenience. They posit that without something to hide people shouldn't fear being questioned by the police.

But such arguments reveal little understanding of the fragility of freedom. Whenever a police officer can force you to stop and talk to him, he is effectively taking you into custody. No matter how benign the interaction, the point is that you have no choice but to participate. When there is no justification for this temporary imprisonment, no suspicion that you violated the law, the state has simply taken possession of you -- violating your personal liberty.

This is not something to brush off as insignificant. It was deeply significant to our Constitution's authors and remains so to those of us who understand that this nation's historic constraints on its police force have made it a model of human rights for the world.

The judges of some of our highest courts may not care about giving police broad discretion to hold an innocent citizen in custody or take his or her property; chances are they won't ever be so victimized. But for those of us in the bleachers of life, without much political influence, our world just got a little more fascist. ○

*Robyn Blumner is a columnist, lawyer, and director of the Florida ACLU. The opinions she expresses are not necessarily those of the ACLU.*

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**Executive Director**

Dr. Don Racheter

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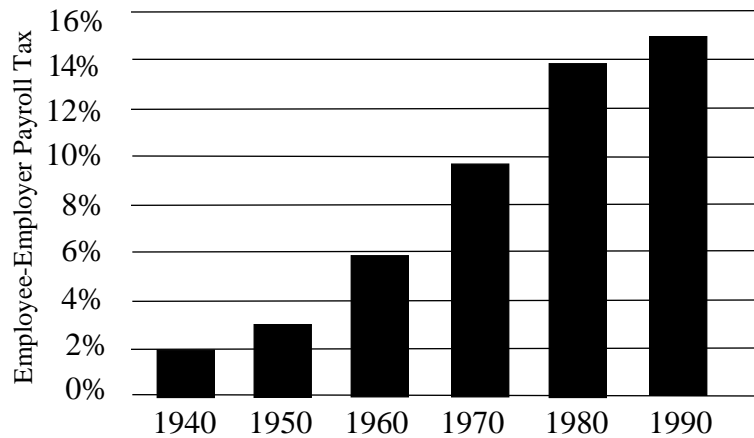
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## Facts on the Growth of Government Social Security Tax Rate, 1940 - 1990



As the chart shows, Congress has raised the payroll taxes that fund Social Security every decade since its inception. Today, *most Americans pay more in payroll taxes than they pay in income taxes\**.

Even with this constantly growing payroll tax burden, the Social Security trustees tell us that the trust fund will run completely out of money in 2029, just 33 years from now. And at our current slow level of economic growth, when the trustees release their next report this May, the bankruptcy date will likely have moved even closer.

Perhaps this is why *though almost half of people between ages 18 and 34 believe in UFOs, only one fourth believe Social Security will exist when they retire.*

\*Counting only the employee portion of payroll taxes, 30% of Americans pay more in payroll taxes than income taxes. Counting both employee and employer portions, 60% of Americans pay more in payroll taxes than in income taxes.

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