

## TAXATION AND THE CONSTITUTION

*Bruce Ackerman\**

*Recent years have seen the introduction of fundamental tax reform proposals that call into question the meaning of Article I's "direct tax" clauses: "direct Taxes shall be apportioned among the several states" and "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census." Professor Ackerman argues that these clauses should be narrowly construed, and should not serve as constitutional bars to any of the wide range of reform proposals now under discussion.*

*His essay emphasizes the tainted origins of the direct tax clauses. At the Founding, they served as an essential component of the larger compromise over slavery that was the price paid for the formation of our "more perfect Union." In recognition of this fact, the clauses were narrowly interpreted by a series of Supreme Court opinions handed down during the first century of the Republic. But in 1895, the Court broke with this tradition of restraint in *Pollock v. Farmers' Loan & Trust Co.*, holding that an income tax statute violated the direct tax clauses.*

*Professor Ackerman traces the Court's gradual return to the pre-Pollock tradition of restraint during the course of the twentieth century after the enactment of the Sixteenth Amendment. On the basis of this historical review, he urges the rejection of recent academic calls to revive and broaden the scope of the direct tax clauses. Americans should be focusing on the future of tax reform without supposing that past constitutional texts and court decisions profoundly constrain their on-going pursuit of social justice.*

### INTRODUCTION

A new century, a new era of taxation? The signs of unrest are everywhere. The air is heavy with talk of flat taxes, consumption taxes, pollution taxes, wealth taxes . . . . Where there is so much smoke, surely something will emerge that fires the collective imagination of the American People? And yet, when the smoke clears, we will still be operating under the old Constitution—requiring us to ask and answer a basic question: Is the new tax constitutional?

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