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Statement On The Packwood Family Limitation Proposal

Robert J. Dwyer
Archbishop of Portland in Oregon

"The power to tax is the power to destroy," is John Marshall's famous dictum to find a fresh application in an attempt to employ the taxing power to undermine the morality of our people and destroy the integrity of the family? There is reason to fear that this is the thrust of a radical proposal for population management and control, prominently sponsored by Oregon's Senator Robert Packwood, which is making rather a strong bid for popular support. It would use the power to tax as a threat and deterrent to any American family which would presume to exceed a given norm of population limitation.

Marshall's phrase, found in his judgment striking down the effort of the State of Maryland to impose a tax upon the United States Bank, back in 1819, echoes as a refrain through the decades of American constitutional history. The Federalist Chief Justice was perfectly clear in his mind that if any State, motivated by whatever high theory of republicanism, were to be overruled the right to levy taxes on the Federal government or its agencies, ultimately no limit could be assigned to the extension of that right, and the end of the national compact would be in sight.

The lapidary dictum as been transposed, during the subsequent century and a half, to serve in dozens of contexts, some of which would be hard to reconcile with its original framework. It has been used as a bludgeon to cobble the national government itself, when the case was argued that Federal taxation was in fact destroying the several States or at least reducing them to practical impotency. It has been cited (with full conviction or with tongue in cheek) by all manner of business men and industrialists, some of them honest men striving to wrest a living in a highly competitive world, some of them the "malefactors of great wealth" who were the objects of Teddy Roosevelt's unmitigated wrath. It has been thus used in protest against taxation from any source, Federal, State, or local, which they saw as threatening the confiscation of their goods, or the cramping of their style of life, or the curtailment of their profits.

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But the destruction envisioned thus far by the prophets of doom has been either economic or political. If taxation is confiscatory it destroys the compact, changing the unity and state sovereignty, then it destroys the compact, changing the nation either into a congeries of quarreling entities or into a species of federalist tyranny, spelling an end to our political liberty. It has hardly occurred to any responsible American prior to our day that taxation might also be used to tamper with the moral structure of the American people.

As currently proposed by Senator Packwood, legislation would be enacted imposing tax penalties on those families bearing more than two children. Hence, on the unfortunate birth of a third child, Mr and Mrs Jones would automatically be directed principally at Nazism, ... to nem reed, in our own...