

THE PAINE PILL
The Prescription for a New America
AN ESSAY BY CHARLES A. MOSTER, ESQ.



**NEW CONSTITUTIONAL CONVENTION OF THE
UNITED STATES OF AMERICA
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Thomas Paine – 1737 to 1809

The Paine Pill – The Prescription for a New America – was inspired by Thomas Paine’s Advocacy Pamphlet, *Common Sense*, which motivated people in the Thirteen Colonies to declare and fight for their independence from England in the summer of 1776. True to the spirit of Thomas Paine’s writings, this work seeks to declare the independence of the 50 States of our Union from the Tyranny of the Federal Deficit and impending bankruptcy of our great nation.

Special thanks to Stacy Singleton for the cover illustration/artwork which envisions what a Constitutional Convention circa 2021 would actually look like.

I.

WELCOME ABOARD



Captain Edward J. Smith
RMS TITANIC

In the first hundred days of his new administration, Franklin Delano Roosevelt proposed and secured passage of massive legislation which fundamentally reconfigured the relationship between the Federal Government, states, and its citizens. The so-called alphabet soup of new programs and agencies changed the socio-political and economic landscape overnight and – unfortunately – has become the accepted architecture of government in 2015. Although the underpinning of the “New Deal” had noble intentions, it has passed on to future generation a legacy of unsustainable growth in government, reckless spending, and a debt which continues to expand exponentially. This doctrine of unaccountable spending is unsustainable and will ultimately render our society – the grand democratic experiment of our Founding Fathers – unsustainable as well.

It is my considered opinion that the metastatic growth of the Federal Government and its insatiable appetite for revenue is not the cause of our current dilemma but symptomatic of a major malfunction in our constitutional system which

traces its beginning to the passage of the 16th Amendment to the U.S. Constitution which authorized the creation of the Internal Revenue Service. Prior to passage of the 16th Amendment, the original Constitution of our Founding Fathers specifically prohibited the ability of the Federal Government to levy taxes unless it was directly tied to population via a census. The reason for this restriction relates back to the palpable fear that the new Federal Government could assume the unfair and dictatorial powers of the English Monarch so despised by the American colonists and the catalyst for the Boston Tea Party and ultimately the Revolutionary War. This rationale is firmly entrenched in the *Federalist Papers*, the extensive essays written by such luminaries as Alexander Hamilton and James Madison in support of the passage of the Constitution. It would surprise most readers that Alexander Hamilton, the advocate of a strong federal government and nemesis of the populist Thomas Jefferson, authored several essays in the *Federalist Papers* which made clear his support of restrictions on the ability of the Federal Government to assess taxes directly on the people. In fact, Hamilton's writing on the subject directly supports the language originally set forth in the Constitution which prohibited such direct assessment of taxes on the People of the United States.

For more than half of our existence as a nation, the country survived and fared quite well without the existence of the Internal Revenue Service. Up until the passage of the 16th Amendment and founding of the IRS, the country generated all of its revenue from the imposition of taxes on basic commodities such as tobacco and alcohol. Although there were spikes in government spending during discrete periods like the Civil War, there was no constitutional structure which legitimized the continuation of such spending once the particular crisis concluded.

The proposal to amend the Constitution by adding the 16th Amendment was little understood at the time of its ratification on February 3, 1913 and little understood today. What most people are unaware of is that this amendment literally struck out the language of the Founding Fathers in the original Constitution which would have prohibited the creation of the IRS. The 16th Amendment obliterated this restriction on government taxation power and laid the constitutional groundwork and architecture to allow for the continual growth and spending of the United States Government – an enormous debt and burden borne by all Americans. With the apparatus in place to institutionalize the levying of taxes directly on the American people, the spike in government spending necessarily required during World War I never abated – as was the case in prior wars. Although there was a decrease in government spending for a period thereafter, a system was in place to geometrically increase government spending whenever called upon. The Genie in the Bottle was encased for but a short time.

With the advent of the Great Depression, FDR faced a grave crisis wherein 1/3 of the American workplace was unemployed and people were literally starving as banks failed across the United States. With the very best of intentions, FDR and his so-called “Brain Trust” – marshalled all of their ideas and intellect to literally rewrite the relationship of the federal government, states, and its citizens in his first 100 days in office. For the first time in American history, huge government agencies were created to directly intervene in the daily affairs of the people in all critical areas including welfare, jobs creation, healthcare, banking, and securities regulation. Although prior Presidents notably Theodore Roosevelt had created some agencies and laws to centralize government operations, it was never close to the massive scale envisioned and actually implemented by FDR during his first 100 days in office.

It is my central argument that the challenges of the Great Depression combined with the innovations of FDR and the passage of the 16th Amendment which allowed for the wholesale massive increase in taxation and government spending created the “perfect storm”. With the ability to levy taxes directly on the people in circumvention of the original restriction imposed by the Founding Fathers in the Constitution, FDR was able to utilize the IRS to literally reach into the pocket books of the American people. Once this avenue was pursued, the Genie left the Bottle for good and our life, liberty, and finances have never been the same. With the precedent of unbridled spending attending the New Deal initiatives of the first 100 Days – further crises simply added fuel and more taxes to the fire. World War II further increased government spending which was borne by the American people. Although there was a decrease in spending thereafter, the baseline for taxation steadily increased during the Truman, Eisenhower, Kennedy, and Johnson Administration. Whatever the rationale or crisis facing Democratic and Republican lawmakers, the result was always the same – levy more taxes on the American people and further erode their civil liberties. And always – it was the new constitutional architecture of the 16th Amendment and IRS which legitimized this unbridled expansion of federal power.

As discussed in this pamphlet, the existing lawmakers whether Democrats, Republicans, or Independents are systemically incapable of taking the extreme measures necessary to restore our civil liberties as was intended by the Founding Fathers who would literally turn over in their graves if they were aware of the magnitude of our National Debt. The Congress and President have proven themselves incapable of cauterizing let alone reversing course on the runaway spending spree which began in

FDR's first 100 days. The joint bills and saccharin compromises are as effective as the polishing of the ornamental fixtures on the deck of the Titanic. It really is that severe.

The analogy to the sinking of the Titanic and the state of our government spending is a solid and justified comparison. The damage wrought by the iceberg caused systemic and irreversible damage to the structure of the Titanic. As the sea poured in – the feeble pumps were no match for Mother Nature. So is the effort of our lawmakers to restrain the abuse of Federal Spending through impotent legislation. The existence of the 16th Amendment and the IRS are akin to the huge holes in the hull of the Titanic. It is **systemic** – embedded in the structure of the Federal Government – no pump however well-intentioned will forestall ultimate disaster.

Accordingly, this pamphlet calls for the Repeal of the 16th Amendment and the immediate termination of the IRS. Unlike some fringe groups which have suggested such an idea in the past, it is the purpose of this writing to set forth the sound constitutional and legal basis for doing so and the new trajectory which could be achieved NOW – if we have the insight, courage, and consensus to implement such changes in the spirit of FDR's first 100 Days – but in reverse.

We the People have successfully repealed amendments in the past. The Repeal of the Constitutional amendment outlawing the consumption of alcohol during Prohibition is a perfect example. We can do the same with the 16th Amendment and the IRS.

Now it is time to start. Welcome Aboard.

II.

A MORE PERFECT SHIP



THE USS CONSTITUTION

The aptly named U.S.S. Constitution, circa 1797, exemplified the sleek architectural excellence of the early American Navy. It was constructed from American live Oak which allowed it to withstand the elements of nature and the early American republic with unparalleled agility and excellence. Fast and sleek – it must have been beautiful to behold and maneuver.

Many Americans are unaware that the United States was formed by means of a document other than the Constitution. The first attempt to structure a relationship between the colonial states and national government was set forth in a document known as the “Articles of Confederation and Perpetual Union”. Drafted by Congress and adopted by the original colonies, it proclaimed in the very first sentence – “The style of this confederacy shall be, “The United States of America”. It was from this pronouncement forward that we began to refer to ourselves in the singular as “The United States of America”.

The premise of the Articles of Confederation was to enable the states to retain their sovereignty and independence from the federal government. The

structure of the contract created made clear that “each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United, in Congress assembled.” Although the Articles of Confederation delegated key functions to the new national government including the negotiation of treaties, declaration of war, and disputes between the states themselves, it did not provide for the ability of the federal government to levy taxes and support its operations. Funding of the new government was left entirely to the discretion of the states. Article VIII of the document provided that expenses for the “common defense or general welfare” be supplied from a common treasury – “the taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States, in Congress assembled.” Although well intentioned in theory, the Federal Government lacked the authority to require that the States actually pay the taxes so authorized to the national treasury. With this power of the purse firmly entrenched in the states, the funding of the new government could not be compelled. Consequently, the greatest design flaw in this first attempt at national unity was the ability of the federal government to require the states to do anything. Alas – the very first constitutional frigate never left the harbor.



PORTRAIT OF THOMAS PAINE

It was with the infirmities of the Articles of Confederation in mind that our Founding Fathers met in Congress in Philadelphia as majestically portrayed by the famous oil on canvas painting by Howard Chandler Christy.



**SIGNING OF THE U.S. CONSTITUTION
INDEPENDENCE HALL, PHILADELPHIA– SEPTEMBER 17, 1787**

The Constitution itself has less than 4,400 words (alas, 3,500 words shy of this pamphlet) and yet stood out then and now (although defanged in the 20th Century) as an ingenious work which provided architecture for the first large scale democracy since the advent of Ancient Greece. Rightly so, the brilliant minds of such luminaries as Thomas Jefferson, Benjamin Franklin, John Adams, and Alexander Hamilton – inspired and engendered this brilliant document which is still on display at the National Archives in Washington, D.C.

The Constitution was proposed as the successor to the Articles of Confederation which was universally considered to be a failure. The new document was intended to correct the balance of power previously aligned in favor of the states to form a new equilibrium that would both recognize and preserve the integrity of the states vis-à-vis the federal government. A more perfect ship was proposed – advocated – an ultimately adopted by the states in 1787.

The Federal Government was granted more expansive rights under the Constitution. However, the most significant change over the Articles of Confederation was the power of the Federal Government to levy and collect taxes and thus support its operations. This new power was the deciding factor which distinguished the two documents and corrected the systemic defect embedded in the Articles of Confederation. The ability to impose and enforce the collection of taxes made for a more perfect ship indeed. With the Constitution and its new taxing power proudly unfurled, the American nation could at last set sail.

The express power of the Congress to levy taxes is detailed in Article I, Section 8 of the Constitution which provides that “The Congress shall have Power to lay and collect Taxes, Duties, Imposts, and Excises, and to pay the Debts and provide for the common defense and general welfare of the United States, but all Duties, Imposts and Excises shall be uniform throughout the United States”. Further language made clear that “No capitation, or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken”.

Although the above language can be quickly discounted as legalese – it is certainly not. It was the central doctrine of our Founding Fathers as set forth in the above language that the Federal Government NOT be given the power to tax the people directly unless in accordance with a census. Such was deemed to be a restraint on the power of the Federal Government to usurp the right of the states and people themselves by exercising tyrant like “English Monarchical” powers to levy oppressive taxes. Such rationale is set forth directly in *Federalist Paper No. XXXVI* by none other than “Mr. Central Government himself” – Alexander Hamilton.

“Let it be recollected that the proportion of these taxes is not to be left to the direction of the National Legislature, but to be determined by the numbers of each State, as described in the second section of the first article. An actual census or enumeration of the people must furnish the rule; a **circumstance which effectively shut the door to partiality and oppression**. The abuse of this power of taxation seems to have been provided against with guarded circumspection.”

Thus, the Constitution laid out the new power of the federal government to levy and collect taxes and yet imposed a severe restraint on the exercise thereof. The above essay of Alexander Hamilton and others in the revered *Federalist Papers* attempted to explain the need for the new power of taxation and the use of language intended to “shut the door to partiality and oppression”. The American people through their legislatures were so convinced and the Constitution was officially adopted on September 17, 1787.

At last – the U.S. Constitution - a more perfect ship, left the harbor in Philadelphia and set sail among the nations of the world.



Thomas Paine
1759-1804

III.

RELATIVELY CLEAR SAILING



USS CONSTITUTION AT SEA

As stated in Chapter I, prior to the 16th Amendment and advent of the IRS, it was relatively smooth sailing for the U.S. Constitution, so to speak. Although there were spikes in government spending based on external or internal events, such occasions were followed by reduced spending and surpluses. The debt of the Federal Government on January 1, 1791, was \$75,463,476.52 of which about \$40 Million was domestic debt. To reduce the debt from 1796 to 1812 there were 14 budget surpluses and 2 deficits. There was a sharp increase in debt as a result of the War of 1812 followed by a period of surpluses and government spending plummeted to prior levels. All debt was actually paid off in 1835. The Civil War sharply increased the debt from \$65 Million in 1860 to \$1 Billion 1863. The total debt reached \$2.7 Billion by the end of the war. Upon the conclusion of the war, government spending again reduced to prior levels followed by repeated surpluses until the commencement of World War I where total debt increased to \$25.5 Billion by the end of hostilities. Once again, surpluses returned until the

advent of the Great Depression, the election of FDR, and the New Deal embraced in his first 100 days.

As will be discussed, the gargantuan increase in spending sparked by the New Deal and World War II was not unprecedented based on prior history. What made it different was that once increased, the debt and tax levels never decreased fundamentally to prior levels as in previous situations. Once the taxes and government spending spiked as a result of internal and external events – it just stayed there **as a new base line** and kept increasing and increasing to this day.

So what resulted in this new dynamic and change for the worse? It was a perfect storm.



IV.

A PERFECT STORM



The 16th Amendment to the Constitution which was adopted in 1913 allowed Congress to levy an income tax without apportioning it among the states or basing it on a census as initially provided in the Constitution. As discussed in detail above, the apportionment requirement imposed a severe restraint on the Federal Government intended to prevent over taxation and oppression as reiterated by Alexander Hamilton in the *Federalist Papers*. With this restraint eliminated, there was no limitation placed on the Federal Government to tax the American people – which well it did.

The 16th Amendment provided as follows: “The Congress shall have the power to lay and collect taxes on incomes, from whatever derived, without apportionment among the several states, and without regard to any census or enumeration.” This obviously directly contradicts and replaces the initial language in the Constitution which prevented such unbridled power by the Federal Government.

Interestingly, the initial motivation for proposing the 16th Amendment was relatively benign and motivated by the populist sentiment at the time. With the election of Theodore Roosevelt and his new administration in 1901, there was much attention directed to America's own aristocracy – the so-called “Robber Barons” who owned the vast majority of businesses and enterprises, operated monopolies where they exercised unrestrained power, and lived in mansions which rivaled the great estates of Europe. Teddy Roosevelt responded with legislation to “bust the monopolies”. President Taft followed with additional reforms and a populist tax movement emerged during the tenure of President Woodrow Wilson in 1912. All of this culminated in the proposal and ratification of the 16th Amendment in 1913 which was viewed by many as requiring America's rich to pay its fair share. So much for good intentions. We know how the rest of the adage goes.

In the first year of ratification of the 16th Amendment, no taxes were collected or paid – although the newly created Internal Revenue Service required taxpayers to complete the first IRS form 1040. Once established, the IRS workload and staff increased ten-fold. The bureaucracy we all know well was off to the races.

When FDR assumed the office of the Presidency on March 4, 1933, he was deeply concerned that without massive reforms to confront the nation's horrific unemployment and bank failures that he might very well be – our *last* President. He responded to the internal crises with a bevy of national programs during his first 100 Days. The reforms and attendant increase in government spending were unparalleled in American History. The major initiatives included the Federal Emergency Relief Administration which supplied states and localities with federal funds for jobless relief and the Civil Works Administration which created government funded jobs during FDR's initial term. The

CWA was replaced by the Works Progress Administration (WPA) which created massive government funded jobs on a scale never witnessed in the United States.

Of course, the flip side of these new initiatives was the growth of the American bureaucracy in Washington and the huge dollars required to sustain its metastatic expansion. During the Civil War, the federal government employed 36,000 people which was considered to be a huge number at that time. With the advent of the New Deal programs launched during FDR's first 100 days, the number of federal workers increased dramatically and then kept on growing. Along with the increase in employees came the rush of new construction in Washington, D.C and the massive influx of marble and Roman era federal buildings we know well from the Pentagon (built in 1943), the U.S. Department of Commerce (1932), and the plethora of monuments celebrating all of that colossal spending – the Lincoln Memorial (1922) and Jefferson Memorial (1943).

The gravest consequence of all these initiatives was the increase in government spending which was truly paradigmatic in scope. The Great Depression had increased the national debt which was \$20 Billion when FDR took office in 1933. The FDR programs substantially increased the debt level which increased to \$33.7 Billion in 1937 or approximately 40% of GDP. By 1939, the debt increased to \$39.65 Billion. Entry into the Second World War was a game changer and the debt levels experienced a massive increase of 100% with public debt at over \$251 Billion or 112% of GDP by 1945.

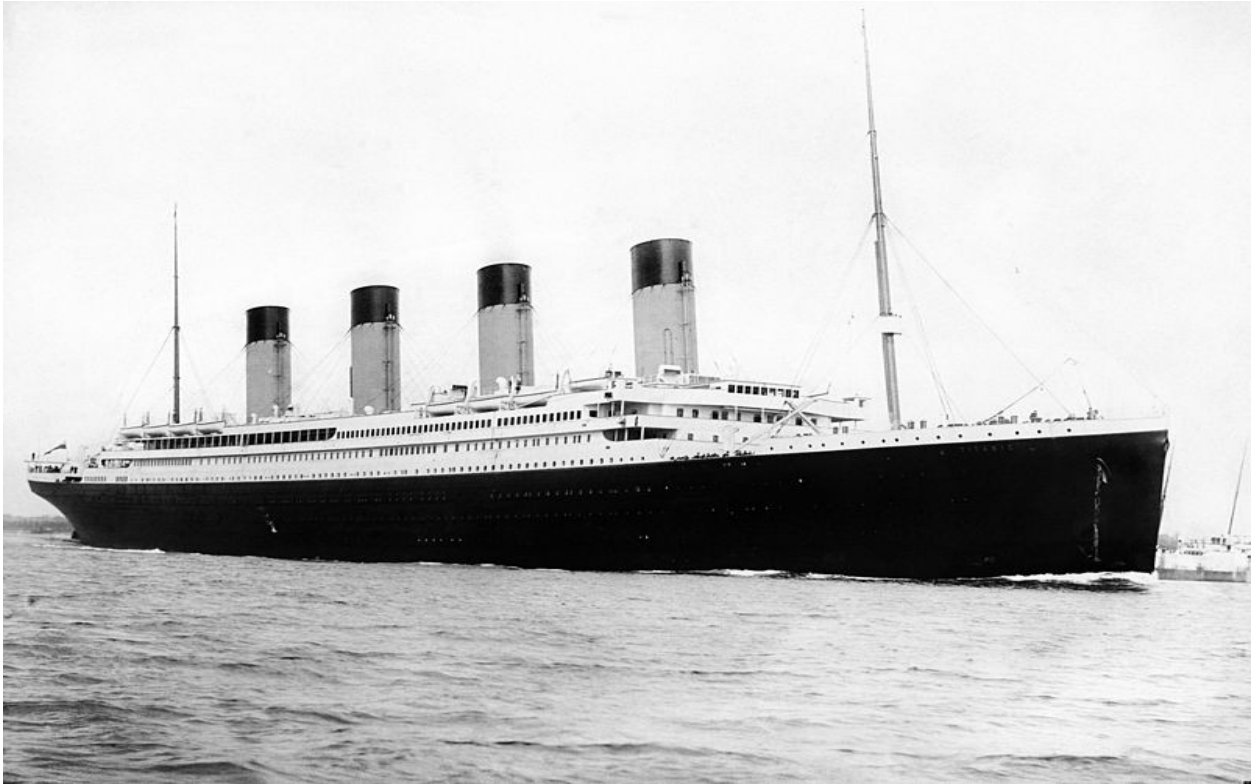
It was the confluence of the internal challenge of the Great Depression, external challenge of WW II, and the passage of the 16th Amendment and IRS which created the conditions leading to the “Perfect Storm” geometrically increasing the level of spending while taxing the American people “directly” – in violation of the express restrictions of the Constitution as originally drafted by the Founding Fathers. Unlike prior periods

which ultimately led to an ongoing decrease in government spending, the massive bureaucracy put in place in law and marble continued to require increased government spending. With the blessing of the 16th Amendment, the IRS was free to tax the American people at ever increasing amounts to maintain and fuel the expansion of the federal government and its agencies. The sea level of government debt rose and would never permanently drop again.

Although there was a drop in public debt following WW II, government spending substantially increased during the Johnson Administration which sought to engender its own New Deal a/k/a the “Great Society” and the Vietnam War. Although Republicans are known for decreasing government spending, the trend continued upward in the Nixon administration which continued the growth of new government agencies including the EPA and NIH, among others. Notably, public debt increased substantially during the Reagan era, contrary to popular belief. Debt as a share of GDP increased from 26.2% when Reagan took office in 1980 to 40.9% in 1988. The trend was up again with George W. Bush with debt reaching 48.3% of GDP in 1992. With the election of President Obama in 2008, the growth of government spending has been nothing less than supersonic. By 2009, total spending as a percentage of GDP was the highest in 40 years. The total federal debt has now increased more than \$7 Trillion during the Obama administration which is more than the public debt increased under all U.S. Presidents from George Washington to Bill Clinton, and more debt than was accumulated in the first 227 years of our nation’s existence from 1776 to 2003.

V.

WELCOME ABOARD THE TITANIC



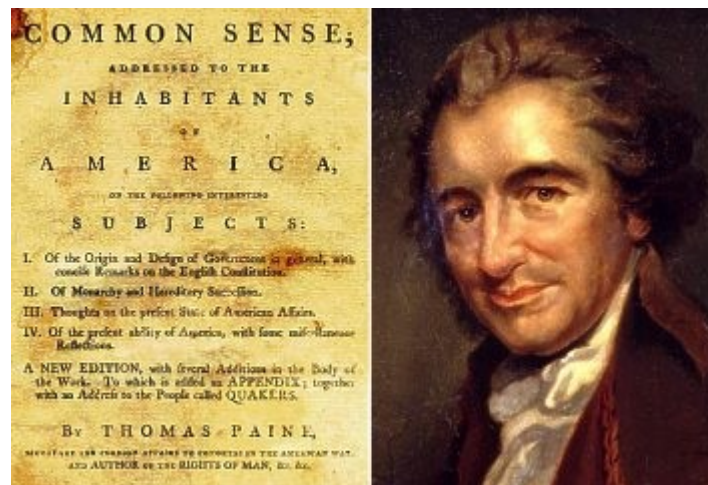
The Titanic was deemed “unsinkable” and designed by renowned architect Thomas Andrews. At the date of its launch on April 12, 1912, many of the world’s wealthiest and influential leaders were listed among its passengers including industrialist John Jacob Astor and Isidor Straus – the founder of Macy’s Department Store. The jubilation of this maiden voyage came to an abrupt end in the early morning hours of April 15, 1912 after colliding with an iceberg. By 2:20 AM – the mighty unsinkable Titanic had already broken apart and was rapidly descending into the frigid sea. Within two hours, the RMS Carpathia arrived on the scene to attend to the remaining 705 survivors. 1,500 people lost their lives in this calamity.

I invoke the image of the Titanic not to demean the memory of the wonderful people who lost their lives on this journey, but to posit a metaphor which is as accurate as is it is crude. The “unsinkable” Titanic sank because its structure sustained damage from which it could not recover. The iceberg created a horizontal gash which led to the wholesale failure of the ship’s structure. Simply stated, the gash exceeded the ability of the pumps to withdraw the invading sea. It was a combination of the external event (the iceberg) and the failure of the ship itself (the “systemic defect”) – which brought the great ship down.

Our proud American frigate, the U.S. Constitution – has devolved into the Titanic. We have created the largest government ever constructed propelled by the greatest economic fuel ever combusted. Our iceberg is the ever burgeoning growth of the National Debt now over \$7 Trillion and increasing geometrically. The systemic defect is a flaw in the very structure of our present constitution – the 16th Amendment – which gives the Federal Government the power to tax its citizens directly and abusively. **As long as the government can continue to extract its pounds and pounds of flesh from the American taxpayer – it will continue to do so.** Such a consequence is as certain as gravity.

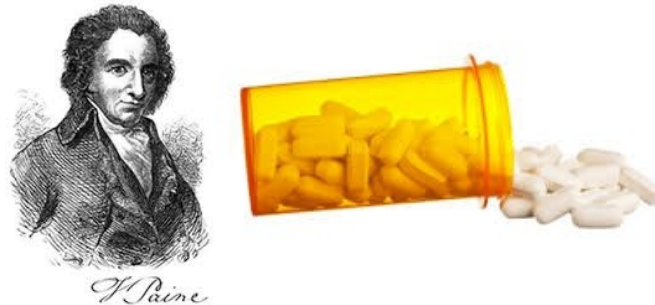
We all know the old tale that as “Nero fiddled – Rome burned”. Such is the situation in Congress. A more apt analogy given the above would be to transport the entire Congress back in time to the deck of the Titanic post-iceberg. Presumably the members of Congress, Democrats and Republicans, would be debating a bill to pump the water out of the hull of the Titanic and save the day. My guess is that many of our fearless leaders would be first to man or woman the lifeboats. The bottom line is that no legislation can repair the systemic defect in our governmental system wrought by the

16th Amendment and the IRS. There is only one rapid and workable solution – **the 16th Amendment must be repealed and IRS abolished.** Once this occurs, all government funding and projects would grind to a halt. We would then face a Constitutional crisis with only one viable path to resolve the debacle – A New Constitutional Convention.



VI.

THE PAINE PILL



It's extremely odd, but I feel that Thomas Paine, the great Revolutionary theorist and proponent of Freedom, is sitting behind my shoulder and whispering in my ear. Time to provide a brief introduction of this great American hero.

Thomas Paine was an English American writer who arrived at the colonies when the conflict leading to the Revolutionary War had reached its peak level. He advocated for the total break of the colonies with England and the declaration of American Independence. His contribution to this effort was to write and distribute thousands of copies of a pamphlet entitled "Common Sense" which made the case for American separation from England and the establishment of its own state. It was written for the common person – although many current readers might find the commentary to be written at a very high level given contemporary degraded standards. *Common Sense* was simply – incendiary. It lit the fire which launched the Revolutionary War and propelled the newly liberated colonies to create "a more perfect union".

What I admire most about Thomas Paine was his boldness. This guy did not beat around the bush. If you are facing a seemingly insurmountable problem – be honest about it – confront the threat directly in a battle in which only one side will prevail –

and have faith and prayer in the indomitable American spirit, ingenuity, and nerve – to carry the day. With this in mind, I now introduce the reader to another metaphor which would be no less incendiary than Thomas Paine’s *Common Sense* and aptly named – the “Paine Pill”.

It is my premise that no amount of Congressional debate – be it Republican – Democratic – or Libertarian – will confront and correct the systemic defect which has submerged our country below sea level. To stop the bleeding and endless taxation and endless growth of government – severe pain must be administered to the body politic – a “Paine” Pill if you would like. To which, I ask this question: If Thomas Paine were alive today – what solution would he advocate to our National Debt, endless government growth, and loss of liberty? Simple Answer – Repeal the 16th Amendment and do it rapidly. Such remedy would administer horrific “pain” to the body politic as there would no longer be a constitutional basis to levy direct taxes. In the stroke of a pen – the IRS would cease to exist and Federal Income Taxes would be as illegal as – well – selling illicit drugs. Of course, the pain wrought would be devastating and potentially fatal. Overnight, all Federal programs would cease to be funded from Social Security to the EPA to the endless government contracts and pork projects which have blood let the American people. This pain would throw the government into a cardiac arrest of sorts and without further action – would ultimately throw the baby out with the bath water. Accordingly, this pamphlet also proposes an antidote to the Paine Pill. But first – let’s get specific about how the Paine Pill would be administered. It is easier than one would think.

Our Founding Fathers – ever insightful – provided a mechanism for amending or revising the Constitution subject to a bill adopted by 2/3’s of both houses

and ratified by ¾'s of the legislatures of all states. The Constitution provides two mechanisms for amending its provisions. The first – which has been successfully implemented 17 times since 1791, is for an amendment to be proposed which is approved by Congress and then ratified by ¾'s of the states. The second option is more mysterious and has never been utilized in the amendment process – the calling for a New Constitutional Convention. This concept is suggested as the “Paine Pill Antidote” and will be discussed shortly. The “Paine Pill Amendment” – which I would seek to propose –would provide for the Repeal of the 16th and all implementing agencies including but not limited to the IRS. The proposed amendment is exceedingly straight forward and includes the following language:

28th AMENDMENT

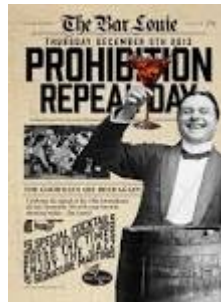
Repeal of the 16th Amendment.

Section 1. The 16th Article of the amendment to the Constitution of the United States is hereby repealed.

Section 2. This article shall be inoperative unless it shall have been ratified as an Amendment to the Constitution by the several states as provided in the Constitution within eight years after submission of same.

The Amendment thus simply provides for the repeal of the 16th Amendment. That will absolutely achieve the constitutional task proposed in this essay. Moreover, this very strategy and actual suggested language in the amendment were successfully utilized before during the so-called Prohibition Era. Most readers will recall that the

purchase and distribution of alcohol in the United States was once illegal as per the 18th Amendment to the Constitution which prohibited such sale. As in the case of the 16th Amendment, the 18th Amendment garnered much support at its passage. However, the American people soon despised this Amendment to the Constitution which restricted their civil liberties regarding the purchase of a basic commodity – alcoholic products. Wide scale opposition gained traction and even lifelong nondrinkers like John D. Rockefeller, Jr. advocated for the repeal of the 18th Amendment as it was leading to wide scale civil disobedience and crime. As a result of this opposition, the 21st Amendment was proposed by Congress which provided for the repeal of the 18th Amendment. This amendment was ratified by 3/4's of the states and the 18th Amendment to the Constitution was officially repealed.



HAPPY REPEAL DAY!

Consequently, what the author is proposing here has been accomplished before. The question is whether we can find the support of 2/3's of Congress to pass the Paine Pill Amendment and send it to the states for ratification. Given the intractable vested financial interests and lobbyists who would lose access to the endless supply our pork – this will be a major challenge. However, with the support of the American people we can overcome this challenge. Let us make passage of the Paine Pill Amendment a rallying call across the nation and the prerequisite for supporting any candidate's

election whether Democrat – Republican – Independent – or Libertarian. With organized support and use of the social media, this can be achieved. Just think how pleased the Founder of this New Feast – Thomas Paine – would be. I also believe that every one of our Founding Fathers including Alexander Hamilton would wholeheartedly support the Paine Pill Amendment.

VII. **THE ANTIDOTE**



The antidote to the Paine Pill is also set forth in the Constitution which allows for the proposal of Amendments at a formal Constitutional Convention. This provision has never been invoked since the very first Continental Congress when our Founding Fathers created the “Real McCoy” in 1787. However, the option is available under the original document, although there are no provisions which govern how such proceeding would advance and be conducted. Article 5 of the Constitution sets forth the process for calling a constitutional convention as follows: ...”on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid for all intents and Purposes...”

This first step would be to officially convene a Constitutional Convention which I will hereafter refer to the “New Constitutional Convention” to distinguish it from the first gathering in Philadelphia. Accordingly, the 29th Amendment to the Constitution to be introduced on Application of any of the 50 states, would be proposed as follows:

29th AMENDMENT

CONVENING OF DELEGATES TO ATTEND

THE NEW CONSTITUTIONAL CONVENTION OF THE UNITED STATES OF AMERICA

Section 1. A convention of all states hereafter referred to as the “New Constitutional Convention of the United States of America” shall be convened for proposing amendments which shall be valid for all intents and purposes.

Section 2. This article shall be inoperative unless it shall have been ratified as an Amendment to the Constitution by the several States within eight years of submission of same.

The timing for the passage of this amendment is intended to dovetail with the intended passage of the Paine Pill Amendment. By its terms, the Paine Pill Amendment could become effective within eight years after submission to the states. Therefore, if it is ratified, the clock on potential cardiac arrest of the existing system would start to run. During this eight year span which encompasses a two term Presidential office, the People, through their State Legislatures, would be compelled to call for a New Constitutional Convention or confront the total melt down of the American socio-political-economic system. Given the dire consequences, the people would demand that their representatives support the above 29th Amendment. Upon application of the 29th Amendment by 2/3's of the States, the New Constitutional Convention would be conducted. Given the success of the first go around, I would recommend that Philadelphia be selected again with the identical chambers in use. The only difference would be to pump in heat or air conditioning which was not available to our Founding Fathers – much to their dismay and discomfort. The cover page of this essay is an artistic rendition of what such a convention might look like circa 2021. This time around women and minorities would obviously participate in the process. Laptops, PC's, and Tablets would be substituted for the prior quills, ink, and sealing wax.

As to how the New Constitutional Convention would proceed – the only precedent would be to replicate the very first gathering in 1787. Each state would send two delegates who would then propose and vote on proposed amendments to the “entire” Constitution. And that is the mystery of a new convention – would it have the ability to revise the entire document or just sections thereof? I will leave this to

historians and scholars to debate, but my sense is that everything would be up for grabs. And well it should.

The central issue to be confronted is the abject failure of our federal government to be accountable to the people. I would advocate for the reinstatement of the original restrictions on direct taxes and abolish the IRS. Funding of key social programs could then be debated as to their viability, continuation, and source of funding. Assuming that taxpayers are relieved from the burden of federal income tax, states would be free to pick up the ball and assess taxes based on the collective will of their residents. Critical national programs could be derived from the imposition of a representative tax on the states themselves based on the census as set forth in the Constitution as originally drafted. Additionally, income could be derived directly from taxes on commodities as was achieved in the early days of the republic.

Fundamentally, there will be a new dialogue about civil liberty and the balance of power between the national government, states, and the People. It will be the identical questions posed by our Founding Fathers attending the First and only Constitutional Convention in our history. Critically, the delegates to the New Constitutional Convention would face the identical challenges of the first – garnering enough votes from the legislatures of the several states to ratify the amendments passed at the convention. Article V requires that $\frac{3}{4}$'s of the state legislatures ratify the ultimate product of the New Constitutional Convention.

I believe in the genius of the American people and their pragmatism. When called upon to achieve a difficult task – we do so without hesitation. We will find the great and decent minds to correct the systemic defect of our failing system. The Paine Pill will find its antidote. In the same manner Thomas Paine rallied the people to the

noble cause of independence and self-government, the same call to action will reverberate anew. There is a new prescription for America. And the time for its administration is **Now**.

That's only Common Sense.





POSTSCRIPT

I have been thinking about the subject matter of this essay for a long time. Given my origins as a product of FDR “New Deal” parents – the prescription recommended herein is likely shocking to many of my colleagues on the East Coast and most reassuring and comforting to my family and friends in West Texas.

I have always had great admiration – reverence is a better word – for this experiment which has come to be known at the United States. I studied Political Science at Georgetown University and had the unique vantage point of gazing out my dorm window circa 1976 upon the very patio where George Washington delivered remarks to the new nation after completing his term of office. I went on to obtain my Masters in Political Science at San Diego State University in 1979 and a law degree from Temple University at the very epicenter of the creation of the United States – Philadelphia, Pennsylvania.

My first legal job was as an attorney for the U.S. Department of Commerce in Washington, D.C. I will always remember the enormous pride I felt as a young attorney and American as I entered the huge marble hall beneath an enormous flag and proceeded up several flights of stairs to a

beautiful office overlooking the Washington Monument. Truth is that I lucked out with this first office and given my lowly status in 1986, I should have been assigned to a closet.

My boss of bosses was none other than Ronald Reagan himself, although I never had an opportunity to meet him in person. As a new recruit in his administration, I was expecting to implement a policy of austerity and budget cutting. Not so. Instead, I was actively involved in paying off government guaranties. The government program was initially intended to create employment in the troubled steel industry by offering massive government backed guaranties to corporations thus encouraging them to construct new facilities which required the hiring of new employees. That was the theory behind the legislation known as the Public Works Economic Development Act. Unfortunately, the initial goal to generate employment degraded to a wholesale liquidation process when the huge loans failed and the government was required to kick in hundreds of millions to pay back the banks on the defunct loans. The process had a “mad hatter” quality about it and I began to question whether the Federal government was a good steward of our resources.

I left the Government shortly thereafter and joined a law firm in downtown D.C. specializing in the area of commercial litigation. In 1996 I relocated to Austin and co-founded a law firm which catered to entrepreneurs and startups. After a decade or so of fostering the growth

of my own enterprise, I moved to Lubbock, Texas where I currently reside and own a solo practice – the Moster Law Firm.

I dare say that as a business attorney I have started, represented, prosecuted, and defended hundreds of businesses in my career. Mostly, I have represented small businesses which generate most of the revenue and pay the most taxes in this country. I have watched many of these businesses fail because of government red tape and the enormous burden of taxes owed to the IRS. Many of my clients ultimately discover that regardless of their ingenuity – stamina – and that old American know how, the enormous gravity of taxation and regulation will ultimately bring them down.

To observe this scenario and outcome over and over again over the span of 29 years has changed my perspective. A once proud proponent of New Deal solutions to problems, I have come to realize that FDR's cure administered so widely in the 1930's and 40's is – **deadly** in the 21st Century. It goes without saying that our nation is drowning in a sea of government spending and debt. It also goes without saying that it is literally breaking the backs of my clients and the people of the United States. Our system and way of life is unsustainable even over a short term. Without the paradigmatic changes suggested in my essay, our country will be bankrupt and the great social programs which sustain millions of American like Social Security will default. We are sinking as rapidly as the Titanic.

This Paine Pill is intended to propose a viable option to radically alter the course of events. I absolutely believe that the concepts are sound and that it will provide a solution to our grave problems as a society and

nation. Fundamentally, I still believe in the courage and ingenuity of the American people. We should keep in mind that our Founding Fathers not only faced the loss of property and insolvency, but literally hanging from the end of a hangman's noose. Those cherished of all Americans who stormed the beaches of Normandy on D-Day or served with distinction in Korea, Vietnam, Desert Storm, and destinations across the globe, know what true devotion is all about. Those who paid the ultimate sacrifice and their families and friends understand what courage and determination are all about.

Let us recall all who came before us and our responsibility to the generations ahead to complete the great American experiment. I am absolutely certain we will prevail because (after all is said and done) we are Americans.

**Charles Moster
Lubbock, Texas**

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