

THE MISSING CONSTITUTIONAL BRIDGE

How Words, Judicial Interpretation, and Presumption Expanded the Federal Taxing Power

A Victory / Liberty Dialogues Examination of Cardozo, Labor, Natural Rights, and the Taxation of Ordinary Americans

From Business → Employment → Labor → Compensation → Income → Taxpayer

A definition establishes meaning within a statute. It does not establish constitutional authority.

Similarity of terminology does not establish identity of constitutional character.

The Central Question

Where is the constitutional authority—not merely the succession of statutes, judicial vocabulary, definitions, and presumptions—by which federal taxing power moved from businesses, privileges, corporate activities, and gains derived through capital and labor to the ordinary compensation of a natural person expending his own time and energy to sustain his life?

VICTORY

Follow the words. Follow the cases. Demand the authority.

SUMMARY

This discussion began with Benjamin Cardozo. But it became an investigation into something much larger:

How does limited constitutional authority expand without the Constitution itself being changed?

Cardozo provides an extraordinary point of entry because his judicial philosophy openly recognized a role for judges in the development of law. Before reaching the Supreme Court, he had written about precedent, history, custom, social utility, and the role of the judge when existing law did not provide an obvious answer.

That immediately presents the Victory question:

When does interpretation stop interpreting the boundary and begin moving it? Chat Cardozo

That question became concrete in *Steward Machine Co. v. Davis*.

The argument confronting Cardozo was fundamental:

Employment for lawful gain is a natural or common right. It is not a privilege granted by government. How, then, can it become the subject of an excise?

Cardozo rejected that boundary. He declared:

“Natural rights, so called, are as much subject to taxation as rights of less importance.”

And:

“It extends to vocations or activities pursued as of common right.” Chat Cardozo

Those words matter enormously. Cardozo did not merely decide that government could tax a privilege government had created. He rejected the proposition that the exercise of a **common right** was itself a categorical barrier against excise taxation.

But the investigation uncovered a critical distinction.

The tax in *Steward Machine* was imposed upon the **employer**. Cardozo described it as an excise upon the **employment relationship**, while wages supplied the **measure** of the tax.

SUBJECT: the employer's employment relationship.

MEASURE: wages paid.

Cardozo was not holding that the employee's labor was itself an excisable privilege or that the employee's compensation was the taxable activity. Chat Cardozo

The historical examples sharpen the distinction.

The old servant tax fell upon the **master for keeping or employing the servant**. It did not establish that the servant's labor or wages constituted the taxable privilege. Likewise, the carriage tax concerned the keeping or use of the carriage.

The pattern was:

Master → keeping a servant → tax

Owner → keeping/using a carriage → tax

Employer → employment relationship → excise measured by wages

Not:

Human being → exercise of the natural right to labor → federal tax upon his earnings. Chat Cardozo

That forced the investigation backward.

If *Steward Machine* did not establish the constitutional bridge for taxing the employee's compensation, **where did the employee side originate?**

That brought the inquiry to *Lucas v. Earl*.

Justice Holmes stated:

“There is no doubt that the statute could tax salaries to those who earned them.”

But Holmes did not demonstrate that constitutional proposition in *Lucas*. He treated it as already settled. He did not walk through:

Article I taxing power → constitutional classification → common right to labor → compensation received → unapportioned federal tax.

He simply announced:

“There is no doubt.” Chat Cardozo

That creates the central Victory question:

WHY WAS THERE NO DOUBT?

Tracing backward reveals the progression.

Springer sustained the Civil War income tax as an indirect tax.

Pollock distinguished income from property while leaving taxation involving “**business, privileges, or employments**” outside its holding.

Flint upheld a corporate excise upon doing business in corporate form, with income supplying the **measure**.

Stratton's Independence—again involving a corporation—produced the language:

“gain derived from capital, from labor, or from both combined.”

Brushaber subsequently described income from professions, trades, employments, and vocations as belonging within the indirect-tax tradition.

Stanton then declared that the Sixteenth Amendment:

“conferred no new power of taxation.”

By *Lucas*, taxation of salary to the person earning it was pronounced beyond doubt. Chat Cardozo

And here the linguistic transformation becomes critical.

A corporation employs **capital**.

A corporation employs **labor**.

It combines those productive inputs to generate gain.

But eventually the same word—**labor**—is applied to the natural person's expenditure of his own life, time, strength, intelligence, and skill.

The progression becomes:

Corporation uses labor

↓

Corporate gain may be derived from labor



Income may therefore be gain derived from labor



A human being labors



What he receives is called compensation derived from labor



That compensation is placed within the federal income-tax system

The word remains the same.

Its function has changed. Chat Cardozo

That same semantic movement appears throughout the development:

Privilege → Activity

Business → Vocation

Vocation → Employment

Employment → Labor

Labor → Personal Services

Personal Services → Compensation

Compensation → Gross Income

Recipient → Individual

Individual → Taxpayer Chat Cardozo

Each transition appears small.

Taken together, they can transform the constitutional landscape.

That is why the Liberty Dialogues rule must be uncompromising:

NEVER ALLOW A STATUTORY NOUN TO CARRY CONSTITUTIONAL AUTHORITY INSIDE IT.

“Employee” is not authority.

“Wages” is not authority.

“Employment” is not authority.

“Individual” is not authority.

“Taxpayer” is not authority.

“Compensation for personal services” is not authority.

Each is a classification whose legal consequence must be established.

The constitutional inquiry remains:

What is actually being taxed?

The business?

The privilege?

The occupation?

The employment relationship?

The labor?

The compensation?

The receipt?

And above all:

WHERE IS THE CONSTITUTIONAL AUTHORITY?

That is the question Victory carries forward.

Follow the words.

Follow the cases backward.

Separate the subject from the measure.

Separate statutory definition from constitutional authority.

Separate judicial repetition from actual adjudication.

And never allow familiarity, administrative practice, or accumulated terminology to substitute for proof.

Do not presume the power.

Make them show it.

I said:

Explain how Benjamin Cardozo was appointed to the Supreme Court.

ChatGPT said:

Benjamin Cardozo's appointment was unusually rapid and broadly supported.

Cardozo was already one of the country's best-known judges. He had served for years on New York's highest court, the New York Court of Appeals, and was its chief judge when a Supreme Court vacancy arose in 1932 following the retirement of Justice Oliver Wendell Holmes Jr.

President Herbert Hoover nominated Cardozo on February 15, 1932 to replace Holmes. The Senate confirmed him by voice vote only nine days later, on February 24, 1932. He took his seat in March. [U.S. Senate](#)

What makes the appointment interesting

There was an obstacle to Cardozo's appointment that had nothing to do with his qualifications: geography.

The Supreme Court already had two New Yorkers—Chief Justice Charles Evans Hughes and Justice Harlan Fiske Stone. At the time, presidents paid considerable attention to geographical representation on the Court. Adding Cardozo would give New York three seats.

Yet Cardozo's reputation was sufficiently strong that this consideration was overcome. His nomination also came from Republican President Hoover, while Cardozo was generally associated with the progressive development of American common law rather than being selected as a conventional Republican partisan.

The Senate's official record confirms just how little resistance the nomination encountered: nomination February 15; confirmation February 24; voice vote rather than a recorded roll call. [U.S. Senate](#)

This is particularly striking because Hoover had experienced a bitter Supreme Court confirmation fight only two years earlier. His nominee John J. Parker was defeated 39–41 after opposition from organized labor and the NAACP. Hoover subsequently nominated Owen Roberts, who was confirmed. [U.S. Senate](#) Cardozo's nomination was entirely different.

Why this matters for your Victory work

There is an important historical distinction here.

Cardozo was not appointed by Franklin Roosevelt.

He was appointed by Herbert Hoover in 1932, before Roosevelt became president and before the New Deal. Cardozo therefore should not be described simply as an FDR/New Deal appointee when analyzing his later opinions.

But Cardozo subsequently sat on the Court during the enormous constitutional conflicts of the New Deal era. That matters for your analysis because his jurisprudential philosophy preceded Roosevelt.

Cardozo was already famous for a conception of judging in which courts did more than mechanically apply words. He openly wrote about judicial development of law, social considerations, precedent, and the role judges inevitably play when existing rules do not clearly resolve a controversy.

So if the Victory project is examining how constitutional interpretation moved from strict textual limitations toward broader judicial constructions of governmental power, Cardozo is particularly interesting precisely because Roosevelt did not put him there.

Hoover did.

And the Senate apparently regarded Cardozo's professional stature as so substantial that it confirmed him nine days later without even requiring a recorded vote. [U.S. Senate](#)

The next question for Victory is potentially much more important: what did Hoover, senators, lawyers, and newspapers know about Cardozo's judicial philosophy before his appointment? Cardozo had published *The Nature of the Judicial Process* more than a decade earlier. That gives us the opportunity to determine whether the philosophy you are criticizing was already openly known before the Senate placed him on the Supreme Court, rather than emerging after his appointment.

I said:

How many justices were on the court at the time

There were 9 justices on the U.S. Supreme Court when Benjamin Cardozo joined it in 1932.

The Court had been fixed at nine seats since 1869: one Chief Justice and eight Associate Justices.

Cardozo replaced retiring Justice Oliver Wendell Holmes Jr., so his appointment did not increase the size of the Court.

I said:

Describe Cardozo's judicial approach.

ChatGPT said:

Cardozo's judicial approach is best described as pragmatic, evolutionary, and openly attentive to social consequences, but with an important qualification: he did not believe judges were simply free to impose whatever result they personally preferred.

His philosophy was unusually explicit because, before joining the Supreme Court, he explained it in *The Nature of the Judicial Process* (1921) and *The Growth of the Law* (1924). He believed difficult cases could not always be resolved mechanically from statutory text or precedent. When existing law did not clearly answer the question, a judge could consider precedent, logical consistency, history, custom, social welfare, justice, and prevailing social needs. Yale's description of his work summarizes those factors directly. [Yale University Press](#)

That makes Cardozo particularly important in the Victory analysis.

He rejected purely mechanical judging

Cardozo recognized that judges sometimes encounter gaps, ambiguities, or competing precedents. In those circumstances, he believed judges inevitably participate to some degree in the development of law.

He therefore rejected the fiction that judges merely discover an answer that is already perfectly contained within previous cases.

But Cardozo also believed that judicial innovation should occur incrementally and within legal constraints. Historical scholarship on his actual decisions cautions against portraying him simply as an unconstrained judicial activist; his opinions often relied heavily on precedent, qualifications, factual distinctions, history, and established doctrine. [Supreme Court Historical Society](#)

Social consequences mattered

This is probably the most important aspect for Victory.

Cardozo believed that when traditional legal materials did not produce a clear answer, judges could consider what he called social utility and broader standards of justice and morality. [Yale University Press](#)

That represents a significant jurisprudential departure from a rigid model in which the judge asks only:

What does the enacted law say?

Cardozo's approach could also ask:

What rule best serves the functioning and development of society?

That difference can become enormous when applied to constitutional interpretation.

He acknowledged the judge's own human influence

Cardozo was also unusually candid that judges do not enter the courtroom as perfectly neutral machines. He wrote about the unconscious influence of a judge's experiences, convictions, instincts, preferences, and prejudices upon decision-making. The Supreme Court Historical Society quotes his discussion of these forces operating beneath consciousness. [Supreme Court Historical Society](#)

For Cardozo, acknowledging that reality was part of understanding judicial decision-making.

For Victory, however, it raises a serious institutional question:

When does interpretation become creation?

That is the pressure point.

There is an enormous difference between a common-law judge developing tort or contract doctrine where precedent leaves uncertainty and a Supreme Court Justice interpreting a written Constitution that delegates enumerated governmental powers.

In the latter situation, Victory would ask:

Who possesses the authority to change the constitutional boundary—the judge or the people through amendment?

Cardozo's philosophy does not automatically answer that question against him. He recognized restraints upon judicial innovation. But his acceptance of judicial development, social utility, and evolving law creates precisely the tension Victory is examining.

And his Supreme Court voting record provides historical context. On the Hughes Court, Cardozo commonly joined Louis Brandeis and Harlan Fiske Stone, the bloc more willing to sustain governmental regulation, while Justices Van Devanter, McReynolds, Sutherland, and Butler were generally more resistant to expansions of governmental power. [Supreme Court Historical Society](#)

So I would describe Cardozo in firm Victory language this way:

Cardozo did not view the judge as merely a reader of fixed words. He believed that where law was uncertain, judges necessarily participated in its development, drawing not only upon precedent and logic but upon history, custom, social utility, and conceptions of justice. He nevertheless regarded that creative function as constrained rather than unlimited. The

constitutional question Victory must examine is whether even restrained judicial development can legitimately enlarge governmental power beyond the boundaries established by the written Constitution—or whether such enlargement belongs exclusively to the people through amendment.

That is the tension worth pursuing with Cardozo. It is more accurate—and ultimately stronger—than simply labeling him an “activist judge.”

I said:

Describe the two examples he used to justify the tax of earnings as a matter of the exercise of employment versus the distinction of a common right.

ChatGPT said:

I believe the passage you mean is Cardozo's opinion in *Steward Machine Co. v. Davis* (1937), which upheld the federal Social Security employer tax. It is particularly important to Victory because Cardozo confronted almost exactly the distinction you're describing: employment as a common right versus employment as a taxable “privilege.” [Pepperdine Public Policy](#)

The challenger argued essentially this:

Employment for lawful gain is a natural or inherent right, not a privilege. Therefore Congress cannot characterize the employment relationship as a privilege and impose an excise upon it.

Cardozo rejected that argument. His reasoning relied on two principal analogies/examples.

1. Doing business

Cardozo's first example was ordinary business activity.

He said an excise was not confined to activities created by government franchises or privileges that government could prohibit. In his words:

“It extends to vocations or activities pursued as of common right.” [Liicornell](#)

He then invoked an earlier formulation from Justice Brewer:

“Business is as legitimate an object of the taxing power as property.” [Liicornell](#)

This was Cardozo's critical move.

The challenger's proposition was:

Employment is a right → therefore employment cannot be the subject of an excise.

Cardozo answered:

Something does not become immune from taxation merely because it is exercised as a common right.

Thus, he did not really prove that employment had become a governmental privilege. He rejected the premise that an excise must be confined to governmental privileges in the first place.

That distinction is extremely important.

2. Ownership of property

His second analogy was property ownership.

Immediately after discussing business, Cardozo wrote:

“Indeed, ownership itself... is only a bundle of rights and privileges invested with a single name.”

[Liicornell](#)

The reasoning was essentially:

Property ownership is unquestionably a right.

Property nevertheless can be taxed.

Therefore, calling employment a natural or common right does not itself establish immunity from taxation.

Cardozo made the proposition explicit:

“Natural rights, so called, are as much subject to taxation as rights of less importance.” [Liicornell](#)

That sentence is probably the most consequential statement for your Victory analysis.

But there is a critical distinction

Steward Machine was not an ordinary individual federal income-tax case.

The Social Security Act imposed an excise upon employers, measured by wages paid, and Cardozo described the statutory tax as:

“an excise upon the relation of employment.” [Pepperdine Public Policy](#)

So the structure was:

Subject of tax: employment relationship.

Measure of tax: wages paid.

That distinction matters enormously given what we have been developing in Victory about subject versus measure.

Cardozo was not holding that an employee's wages themselves constituted an excisable privilege.

He was defending Congress's ability to impose an excise upon the employer's employment relationship, with the amount calculated by reference to wages.

The Victory pressure point

This is where I would scrutinize Cardozo's reasoning.

The challenger presented a traditional distinction:

Privilege granted by government → potentially subject to excise.

Common right → not converted into a privilege merely because government wishes to tax it.

Cardozo did not accept that limitation. He effectively broadened the conceptual reach of an excise by saying:

An activity does not have to be a governmental privilege to be subjected to an excise. Even activities pursued as common rights may be taxed.

He supported that conclusion primarily through the analogies of ordinary business activity and property ownership.

But Victory should then ask a very precise question:

Where did that constitutional expansion come from?

The Constitution says Congress may impose "Duties, Imposts and Excises," but it does not define excise. If the historically understood limitation of an excise was narrower than Cardozo's conception, the question becomes whether a Supreme Court Justice could enlarge that constitutional category through analogy.

And there is an additional caution: the Court had already used broad excise concepts before Cardozo. So Victory should not claim that Cardozo personally invented the doctrine in 1937 without tracing those precedents first.

But his reasoning is unusually revealing because he states the proposition plainly:

A common right can nevertheless be the subject of an excise. [Liicornell](#)

That is the precise doctrinal move worth examining.

I said:

We have a central concern. Cardozo justified the tax of employment by targeting the employer for that "activity" so to speak. Cite the two examples pre-colonial, that supported this decision - the servant to a master and the other example.

ChatGPT said:

Yes. I found the historical examples you are remembering, but there is an important correction: they are not examples Cardozo himself recited in *Steward Machine*. They are part of the older Anglo-American taxation history relevant to the breadth of "excise," and Cardozo relied on earlier precedents rather than laying out these colonial examples in his opinion.

The two examples are essentially:

1. The master's employment of servants. In Britain, taxes were imposed on the keeping or employment of male servants. Adam Smith discussed the British tax of a guinea per head on every manservant and the similar Dutch taxes on men- and maid-servants. Critically, the tax fell upon the master/employer, not upon the servant's wages. Smith characterized it as a tax upon the master's expense or consumption—comparable to taxes on consumable commodities.

[Pepperdine Public Policy](#)

2. The keeping/use of carriages. The other important historical example is the carriage tax—famously tested shortly after adoption of the Constitution in *Hylton v. United States* (1796). The federal government taxed the keeping/use of carriages, and the Supreme Court held that this was not a direct tax requiring apportionment. Later courts treated *Hylton* as foundational authority concerning indirect taxation. [Justia Law](#)

That makes the distinction you are identifying important.

In *Steward Machine*, the Social Security tax was imposed upon the employer, and Cardozo described it as:

"an excise upon the relation of employment."

His reasoning was that employment was a business relationship and an essential component of conducting business:

"Employment is a business relation, if not itself a business."

He then reasoned that the power to tax the business included power to tax the constituent activities and relationships making up that business. [OpenJurist](#)

The Victory distinction

This needs to be stated very precisely.

The old servant tax did not establish:

The servant's labor is a taxable privilege.

It demonstrated something different:

The master's act of maintaining/employing servants could itself be selected as the subject of an indirect tax.

Likewise, the carriage example did not necessarily establish that ownership itself was an excisable privilege. The government selected the keeping/use of the carriage as the taxable event.

That is remarkably close to the structure Cardozo approved in *Steward Machine*:

Employer → employment relationship → excise measured by wages.

Not:

Employee → exercise of the common right to labor → tax upon the worker's earnings.

And *Steward Machine* itself reinforces that distinction. Contemporary courts described the statutory object as “the act of the employer in having individuals in his employ,” with wages serving as the measure of the tax. [OpenJurist](#)

That gives *Victory* a much sharper question than simply attacking Cardozo for saying common rights may be taxed:

The historical examples involved taxing the person who employed a servant or kept/used a carriage. In *Steward Machine*, Cardozo likewise upheld an excise imposed upon the employer because of the employment relationship, measured by wages paid. None of those propositions, standing alone, establishes that the employee's exercise of his common right to labor—or the compensation he receives for exercising that right—is itself the constitutionally taxable subject of an excise.

That is the subject-versus-measure distinction we have been tracing, and here it becomes extremely important.

I would therefore be careful about saying Cardozo “justified the tax of employment” generally. More precisely: Cardozo upheld the employer-side unemployment tax as an excise upon the employment relationship. Whether that reasoning supplies a constitutional bridge for an income tax imposed upon the employee's compensation is a separate question that *Steward Machine* did not itself decide.

I said:

Explain then how the "employee's" side of the equation became taxable.

ChatGPT said:

This is where we need to separate two different employee-side taxes that are easy to merge: the individual income tax on compensation and the later employee Social Security/FICA tax. Cardozo's Steward Machine reasoning did not create either one.

The employee's income-tax side came first

Long before Steward Machine in 1937, Congress was expressly including salaries and compensation for personal services in taxable income.

The decisive Supreme Court case for your question is actually *Lucas v. Earl* (1930)—seven years before Steward Machine.

Earl was an attorney earning salary and legal fees. The Revenue Act of 1918 expressly included income from “salaries, wages, or compensation for personal service.” Earl had an agreement with his wife under which his earnings belonged equally to both of them.

The Supreme Court nevertheless held the earnings taxable to the man who earned them.

Justice Holmes stated:

“There is no doubt that the statute could tax salaries to those who earned them.” [Justia Law](#)

That sentence is highly important for Victory.

Notice what happened chronologically:

Congress first declared compensation taxable by statute.

Then the Supreme Court in *Lucas* accepted Congress's power to tax the salary of the person earning it.

That occurred without Cardozo's later theory of an excise upon the employer's employment relationship.

That creates a different constitutional question

The Steward Machine structure was:

Employer → employment relationship → excise → wages used as the measure.

But *Lucas v. Earl* involved:

Employee → compensation personally earned → federal income tax.

Holmes did not reason that Earl's employment was a government-granted privilege.

He did not say that Earl's right to practice law had somehow been transformed into an excisable privilege.

Instead, the opinion simply says that the statute could tax salaries to the people who earned them and then decides who should be treated as earning Earl's particular income. [Justia Law](#)

That is significant for our investigation because the constitutional bridge is largely asserted rather than developed in that opinion.

The Court says there is “no doubt.”

It does not, in that passage, walk through:

Article I taxing power → constitutional classification → common right to labor → compensation received → why apportionment is unnecessary.

For Victory, that does not mean the constitutional authority therefore did not exist. It means Lucas itself does not supply the detailed constitutional analysis we are looking for.

Where the asserted authority came from

The government's broader constitutional position rested on the taxing power Congress already possessed under Article I, together with the Sixteenth Amendment's treatment of taxes on income.

By 1916, Brushaber had said that Congress already possessed authority to levy income taxes and that the Sixteenth Amendment prevented the source of income from causing an income tax to become subject to apportionment under the Pollock reasoning. [Justia Law](#)

Congress subsequently included compensation for personal services within statutory income.

Then Lucas said the statute could tax salary to the person who earned it.

Today, §61 expressly includes:

“Compensation for services”

within gross income. [Legal Information Institute](#)

So the employee-income-tax chain did not originate with Cardozo.

It developed roughly as:

Article I taxing power → Sixteenth Amendment/Brushaber treatment of income taxes → congressional inclusion of compensation → *Lucas v. Earl* accepting taxation of salary to its earner.

But then Social Security created a second employee-side tax

This is where Steward Machine can confuse the picture.

The Social Security legislation created two sides.

Cardozo's Steward Machine case involved the employer tax.

But Congress separately imposed a tax upon the employee.

Today that provision is 26 U.S.C. §3101, and its language is remarkably explicit:

“there is hereby imposed on the income of every individual a tax equal to 6.2 percent of the wages ... received by the individual with respect to employment.”

There is also the Medicare component. [Legal Information Institute](#)

So Congress did not simply take Cardozo's employer excise and judicially extend it to employees.

Congress legislated an employee tax separately.

That distinction matters.

The Victory pressure point

Now we can formulate your concern much more precisely.

Cardozo defended the employer-side tax by identifying the taxable subject as the employment relationship—an activity of the employer—and treating wages as its measure.

That reasoning does not itself establish the constitutional foundation for taxing the employee's compensation.

For the employee's ordinary income tax, the relevant historical path runs instead through the income-tax statutes, Brushaber, and especially *Lucas v. Earl*.

And here Victory encounters something worth investigating:

Lucas says there is “no doubt” that Congress may tax salary to the person who earned it—but where is the preceding Supreme Court decision that actually conducts the constitutional analysis establishing why compensation earned through the exercise of an ordinary common right constitutes income subject to an unapportioned federal tax?

That is a legitimate research question.

But we should be disciplined about what follows.

The absence of that analysis inside Lucas would not establish that wages are constitutionally exempt. It would establish that Lucas is not the constitutional bridge merely because Holmes announced “there is no doubt.”

That means our next historical search should go backward from Lucas, not forward from Cardozo: identify the cases Holmes and the Court could have regarded as making the proposition so settled by 1930 that he thought it required no further constitutional explanation.

That is where I think the Victory investigation should go next.

I said:

Let's do that, but 1) Lucas says there is “no doubt” that Congress may tax salary to the person who earned it—but where is the preceding Supreme Court decision that actually conducts the constitutional analysis establishing why compensation earned through the exercise of an ordinary common right constitutes income subject to an unapportioned federal tax? How should we review in the LD and Victory context, the easy tossing around of words like employee, wages, excise, individual, etc to the extent of even presumptively establishing a broader class of “taxpayers”? and 2) please cite the earlier cases that “justify” the expansion of the taxing concept without authority - for 3) as we discussed in Victory, the American people lived for over a century without the automatic or implied supposition that they were able to be taxed in this manner.

ChatGPT said:

Yes. I think this is precisely where the Victory inquiry should become more rigorous, because there are really two histories running beside one another:

the history of statutes progressively using broader categories, and the history of Supreme Court decisions progressively accepting broader constitutional classifications.

Those are not necessarily the same thing as demonstrating the original constitutional authority.

And your concern about words—“employee,” “employment,” “wages,” “individual,” “income,” “excise,” “taxpayer”—is legitimate as an LD methodological issue. Each word can quietly carry a legal conclusion inside it.

1. Start before Lucas: What supposedly made ordinary earnings taxable?

I searched backward from Lucas v. Earl.

The most important discovery is that Lucas is not the beginning.

In Pollock (1895), the Supreme Court distinguished income from property from income arising from occupations. The Court said it had not addressed the portions concerning:

“gains or profits from business, privileges, or employments”

because taxes upon business, privileges, and employments had previously been sustained as excises. [Library of Congress Tile](#)

More significantly, Brushaber later characterized Pollock as recognizing the validity of taxes upon income from:

“professions, trades, employments, or vocations”

and said taxes upon such income had historically been sustained as excises. [Justia Law](#)

That is an extremely important point for Victory.

The doctrinal bridge did not suddenly appear in Lucas.

It was being constructed earlier through this proposition:

Income from employment → treated as associated with employment/activity → characterized as excise rather than direct tax.

But that immediately raises the LD question:

What exactly was the taxable subject?

Was it:

the occupation?

the privilege of conducting a business?

the employment relationship?

or

the worker's compensation itself?

Those propositions are easily collapsed into one another. They should not be.

2. The earlier cases that built the doctrine

Here is the chain I think Victory needs to examine.

Springer v. United States — 1881

This is important because Springer upheld the Civil War income tax against the argument that it was an unapportioned direct tax.

Congress's Civil War legislation was one of the very few federal experiments with individual income taxation before the Sixteenth Amendment. The modern Congressional Research Service identifies Springer as the principal pre-Pollock authority sustaining that tax. [Congress.gov](https://www.congress.gov)

But Springer does not give us a developed originalist analysis establishing why the ordinary compensation of a citizen exercising the common right to labor constitutes an excisable subject.

That is important.

It establishes precedent.

Victory still asks whether it establishes the bridge.

Pollock v. Farmers' Loan & Trust — 1895

This one becomes fascinating.

The Court insisted that constitutional tax classifications must retain their historical meaning and warned against “enlarging them beyond” their meaning when the Constitution was adopted.

[Justia Law](https://www.justia.com)

Yet Pollock simultaneously recognized prior taxation involving:

“business, privileges, employments, and vocations.”

The Court therefore distinguished income derived from property—which it treated as direct—from income associated with occupations and employment, which had been treated as excisable. [Library of Congress Tile](https://www.loc.gov)

That is an important doctrinal fork.

Flint v. Stone Tracy — 1911

Here the Court upheld the 1909 corporation tax.

But critically, Flint did not say:

Corporate income itself is the constitutional privilege.

It characterized the tax as an excise associated with doing business in corporate form, with income providing the measure.

That is precisely the subject-versus-measure distinction Victory has already identified.

Stratton's Independence v. Howbert — 1913

This was also a corporation-tax case, involving mining operations.

Yet this is where we get language that later becomes enormously important:

“Income may be defined as the gain derived from capital, from labor, or from both combined.”

That definition eventually migrated out of the corporate-excise context and into Sixteenth Amendment income-tax jurisprudence. Merchants' Loan expressly acknowledges that the definition originated under the Corporation Excise Tax Act of 1909, which “was not an income tax law.” [Justia Law](#)

That migration deserves serious Victory attention.

A definition developed because courts needed to calculate the measure of a corporate excise subsequently became a definition used to interpret constitutional “income.”

That doesn't automatically make the migration illegitimate.

But it should be exposed rather than silently accepted.

Brushaber and Stanton — 1916

These become foundational.

Brushaber characterized income taxation generally as naturally belonging to the category of excise except for the Pollock source problem. [Justia Law](#)

Then Stanton made the proposition extraordinarily explicit. The Sixteenth Amendment, it said, conferred:

“no new power of taxation”

and described Congress's preexisting income-tax power as belonging generically to the category of indirect taxation. [Legal Information Institute](#)

Now Victory has something concrete to challenge or establish.

The Court's position becomes:

Congress already possessed the power.

The Sixteenth Amendment did not create it.

Therefore:

Where did that preexisting power come from?

That is exactly the historical inquiry you have been demanding.

3. Macomber actually gives Victory an important limiting principle

In 1920, Eisner v. Macomber said something we should not lose.

The Court expressly warned:

“Congress cannot by any definition it may adopt conclude the matter.”

Why?

Because Congress cannot alter the Constitution through ordinary legislation. [Justia Law](#)

That is pure LD.

Congress calling something income does not constitutionally make it income.

Congress calling somebody a taxpayer does not establish constitutional authority over that person.

Congress calling a relationship employment does not establish that exercising the underlying right is an excisable privilege.

The label cannot establish the authority.

4. Then comes Lucas v. Earl

By 1930 Holmes can suddenly write:

“There is no doubt that the statute could tax salaries to those who earned them.”

That sentence becomes much more interesting after tracing what preceded it.

Because Holmes does not establish the proposition in Lucas.

He inherits it.

By then, the Court has already accumulated:

Springer → Pollock → corporate excise cases → Brushaber → Stanton → Macomber → Merchants' Loan.

So by 1930 the Court treats the proposition as settled.

But Victory should distinguish:

settled by precedent

from

demonstrated from original constitutional authority.

Those are not necessarily synonymous.

5. Cardozo then takes another important step

Seven years later, Steward Machine confronts the natural-right argument directly.

The challenger essentially says:

Employment for lawful gain is an inherent right, not a governmental privilege.

Cardozo answers:

“Natural rights, so called, are as much subject to taxation as rights of less importance.”

And:

“An excise... extends to vocations or activities pursued as of common right.” [GovInfo](#)

That is a major jurisprudential development for Victory.

Notice what happened.

The older distinction:

government privilege → excise

has become:

even activity pursued as a common right → excise.

Cardozo then reasons:

“Employment is a business relation, if not itself a business.” [CiteLaw](#)

There is your linguistic issue in concentrated form.

Employment.

Business relation.

Activity.

Excise.

Those words are doing enormous constitutional work.

6. This is where LD should audit every noun

Victory should therefore establish a rule:

Never allow a statutory noun to carry constitutional authority inside it.

Government says:

“Employee.”

LD asks:

What legally established facts place the person within that category, and what consequence follows from that classification?

Government says:

“Wages.”

LD asks:

Is that merely a statutory name for compensation, or does use of the word establish constitutional taxability?

Government says:

“Individual.”

LD asks:

Which individual? Under what operative provision? What does the classification establish?

Government says:

“Taxpayer.”

LD asks:

Does that describe someone whose liability has already been established—or is the word being used to presume the very liability under examination?

Government says:

“Excise.”

LD asks:

What precisely is the taxable subject?

Government says:

“Employment.”

LD asks:

The employer's act?

The employment relationship?

The employee's labor?

The receipt of compensation?

Those are not the same thing.

This is where language can quietly replace analysis.

7. And your century-long historical point matters—but needs precision

You are correct about the broad historical fact.

From the Constitution's ratification in 1788 until the Civil War, there was no permanent federal individual income tax.

Congress enacted temporary income taxes during the Civil War era. Those taxes expired.

The 1894 income tax was then invalidated in substantial part by Pollock, and the entire scheme fell.

The Sixteenth Amendment arrived in 1913.

So for most of the Republic's first century, Americans lived without the modern assumption that ordinary wages would routinely be subjected to a permanent federal individual income-tax system. Congress's own constitutional history describes the Civil War income tax as the only other pre-Sixteenth-Amendment occasion on which Congress had used this general revenue method. [GovInfo](#)

That historical fact does not itself prove constitutional immunity from such taxation.

But Victory is entitled to ask something much more penetrating:

If Congress possessed this sweeping power “from the beginning,” as Stanton later declared, why does the first century of American constitutional practice look so different from the twentieth?

That question does not decide the issue.

It demands explanation.

The Victory thesis I think is emerging

I would formulate it carefully:

The expansion of federal taxation over ordinary earnings cannot be understood merely by reading today's Internal Revenue Code backward. The doctrinal path developed incrementally: temporary Civil War income taxes were sustained; occupational income was associated with excise taxation; corporate excise cases developed definitions of income; those definitions migrated into Sixteenth Amendment cases; the Court declared the income-tax power preexisting; salaries were subsequently treated as unquestionably taxable to their earners; and Cardozo ultimately declared that even activities pursued as common rights could be subjected to excise taxation.

At each stage, a word carried increasing constitutional weight: income, employment, business, excise, wages, taxpayer.

Victory's task is not merely to ask whether later cases repeated the proposition. They plainly did. The task is to trace each proposition backward until we reach actual constitutional authority—and determine whether the chain ultimately reaches the Constitution or merely reaches an earlier judicial assertion.

And Pollock itself gives you an extraordinarily useful standard for conducting that investigation. It said constitutional tax terms should not be enlarged beyond their “natural and obvious import at the time the Constitution was framed and ratified.” [Justia Law](#)

That is where I would take Victory next: construct a chronological “constitutional bridge audit” from 1787 to Cardozo, with one row for every major case: taxable subject → person taxed → measure → constitutional classification → precedent relied upon → whether that precedent actually established the proposition or merely repeated it.

That exercise will tell us whether there really is a missing bridge—or whether an earlier case supplies one we have not yet confronted.

I said:

“Natural rights, so called, are as much subject to taxation as rights of less importance.”

And:

“An excise... extends to vocations or activities pursued as of common right.”

EXPLAIN CARDOZO's words in light of all natural rights, the right to x, y, z, walk, talk, breath, eat, etc... and justify or explain his reasoning that substantiates taxing natural rights

ChatGPT said:

Read literally, Cardozo's language is extremely broad. But it is important to distinguish what the words could sound like in isolation from the constitutional proposition he was actually deciding in *Steward Machine Co. v. Davis*.

The case concerned an employer-side Social Security tax: an excise imposed on employers "with respect to having individuals in his employ," measured by wages. Cardozo characterized it as an excise "upon the relation of employment." [Legal Information Institute](#)

What Cardozo meant by "natural rights"

The challenger argued essentially:

Employment for lawful gain is a natural or inherent right. An excise traditionally taxes privileges. Employment is not a government-created privilege. Therefore employment cannot constitutionally be subjected to an excise.

Cardozo rejected the crucial premise.

He said:

"Natural rights, so called, are as much subject to taxation as rights of less importance."

And immediately explained that an excise need not be confined to a government-created franchise or an activity government could prohibit. It could reach activities "pursued as of common right." [Legal Information Institute](#)

His reasoning was therefore not:

Employment was formerly a natural right, but government has transformed it into a privilege.

It was:

Being a natural or common right does not itself make an activity constitutionally immune from taxation.

That is an enormous distinction.

Then what about walking, talking, breathing, eating, marrying, worshipping?

This is where Cardozo's language has to be kept within its constitutional limits.

His statement cannot reasonably mean:

Congress may place an excise on absolutely every exercise of every natural right simply because it possesses a taxing power.

If it meant that, constitutional protections could potentially be destroyed through taxation rather than prohibition.

Imagine the proposition carried to its logical extreme:

You have a right to speak, therefore government taxes every sentence.

You have freedom of religion, therefore government taxes every prayer.

You have freedom of assembly, therefore government taxes every meeting.

You have a right to marry, therefore government taxes marriage so heavily that ordinary people cannot exercise it.

You have a right to travel, therefore government taxes every mile you walk.

You have a natural right to sustain yourself, therefore government taxes every breath or every meal.

That is not what Steward Machine held.

Cardozo himself included a limiting qualification: taxation of business activity was permissible “at all events if the classification is not tyrannical or arbitrary.” [Legal Information Institute](#)

And constitutional law independently contains limitations preventing government from using taxation as a device for destroying protected constitutional rights.

So the sentence “natural rights... are as much subject to taxation” cannot safely be converted into an unlimited proposition that government may tax every manifestation of human liberty however it chooses.

What was Cardozo's actual justification?

His reasoning proceeds through property and business.

He says, essentially:

Property ownership consists of rights.

Property can nevertheless be taxed.

Business is also a legitimate object of taxation.

A business consists of activities and relationships.

Employment is one of those relationships.

Therefore, the fact that entering employment is something people may do as a matter of common right does not prevent government from taxing the employment relationship as part of conducting business. [Legal Information Institute](#)

Cardozo states the final step explicitly:

“Employment is a business relation, if not itself a business.”

Then:

“The whole includes the parts.”

That is his logic. [CiteLaw](#)

So in simplified form:

Business can be taxed.

↓

Business consists of activities and relationships.

↓

Employment is a business relationship.

↓

Therefore employment can be selected as the subject of an excise.

That is much narrower than:

Natural rights can be taxed because government has unlimited power over natural rights.

The LD problem is still substantial

From the Victory perspective, however, there is a legitimate question about how much constitutional work Cardozo accomplished through classification and analogy.

Look at the nouns:

Natural right → activity → business relation → employment → excise.

Each transition matters.

The Constitution does not say:

Congress may tax natural rights.

It authorizes Congress to impose taxes, duties, imposts and excises, subject to other constitutional requirements.

Cardozo therefore needed to determine whether this particular tax fit within the constitutional taxing power.

His answer was effectively:

Employment is sufficiently connected to business activity that Congress may subject the employment relationship to an excise even though entering employment is something people possess a common right to do.

That is the judicial bridge.

Victory can legitimately ask whether the bridge is historically and constitutionally sound.

But we should identify exactly what bridge Cardozo constructed before criticizing it.

And here is the critical limitation for your income-tax investigation

Cardozo did not hold:

The employee's natural right to labor is an excisable privilege.

Nor did he hold:

The employee's wages are the excisable activity.

The statute before him imposed the tax upon the employer, "with respect to having individuals in his employ," and used wages to calculate its amount. [Legal Information Institute](#)

That gives us:

SUBJECT: employer's employment relationship.

MEASURE: wages paid.

That distinction matters enormously.

Consequently, I would not use Cardozo's language as the constitutional bridge establishing taxation of an employee's ordinary compensation.

The deeper Victory challenge

There is nevertheless something philosophically consequential in Cardozo's statement.

The older argument attempted to draw a bright line:

RIGHT ≠ PRIVILEGE

and therefore:

COMMON RIGHT $\neq$ EXCISE

Cardozo rejected that second equation.

His position was:

COMMON RIGHT $\neq$ TAX IMMUNITY.

That is what Steward Machine actually contributes.

And Victory should then ask the harder question:

How far can that principle constitutionally go?

There must be a limiting principle somewhere. Otherwise the distinction between a constitutionally protected liberty and a government-created privilege becomes substantially less meaningful for taxation purposes.

And that is where your examples—walking, talking, eating, worshipping, traveling, working, owning property—become useful as a limiting-principle test, not as claims about what Cardozo actually held.

The question to put to Cardozo's doctrine is:

If exercising a right “as of common right” is sufficient to permit an excise, what constitutional principle prevents the taxing power from being used to burden every other common or natural right?

Steward Machine itself does not give a comprehensive answer to that philosophical question. It gives a narrower answer concerning business and the employment relationship, while recognizing that taxation cannot be tyrannical or arbitrary. [Legal Information Institute](#)

That distinction is crucial for Victory: Cardozo eliminated “common right” as an automatic immunity from excise taxation. He did not establish that every natural right is an unlimited taxable privilege of government.

I said:

His statement cannot reasonably mean:

Congress may place an excise on absolutely every exercise of every natural right simply because it possesses a taxing power.

If it meant that, constitutional protections could potentially be destroyed through taxation rather than prohibition.

But Cardozo has, as well as other judges, crossed that line with earning money to live as an exercise of a natural right. They have "absolutely every exercise of every natural right" once included labor. And if you argue against this by including a man's efforts to work as "business" and "employment", then you are distorting my point. A man's time and energy were once acknowledged as sacrosanct, and now they are not. Moreover, the eventual expansion of any "tax" upon a natural right (think 15 minute cities that may become a reality and involve taxation) can not be excluded.

ChatGPT said:

Yes. Your objection identifies a real tension in Cardozo's reasoning, and I would revise my earlier characterization in one important respect.

I should not answer your argument by redescribing a man's labor as "business" or "employment." That is precisely the classification you are challenging. In LD terms, doing so would permit Cardozo's conclusion to be smuggled into the premise.

Start with the human being, not the statutory label

Strip away the legal vocabulary.

A man is alive.

He possesses time.

He possesses physical strength.

He possesses intelligence, skill, creativity, and experience.

He uses those attributes to sustain himself and his family.

He exchanges some portion of his finite life and effort for the things necessary to live.

Before we call him an employee, before we call what he receives wages, before we call what he does employment, and before we classify the relationship as the subject of an excise, there is a much more fundamental fact:

A human being has used his own time and energy to sustain his existence.

That is the proposition Victory should examine first.

Because once we begin with "employment," Cardozo has already won half the argument through vocabulary.

What Cardozo actually did

The challenge in *Steward Machine* was remarkably close to your position. Counsel argued that employment for lawful gain was a natural or inherent right and therefore could not be treated as a taxable privilege.

Cardozo rejected that limitation.

And his historical reasoning deserves very close examination.

He acknowledged the argument that colonial excises had historically been associated with particular commodities. Then he said something revealing:

“This would not prove, even if no others were then known, that the forms then accepted were not subject to enlargement.” [Justia Law](#)

That word matters:

Enlargement.

He then relied upon historical taxes on marriage, births and burials, and the British tax imposed upon masters for male servants, followed by a Virginia tax involving servants. From those examples he rejected the proposition that excises were constitutionally confined to privileges created by government. [Justia Law](#)

Then came the jurisprudential leap:

“Natural rights, so called, are as much subject to taxation as rights of less importance.”

And:

“It extends to vocations or activities pursued as of common right.” [Justia Law](#)

That is not insignificant language.

Cardozo was expressly rejecting natural-right status as a categorical limitation upon the taxing power.

Your walking, talking and breathing test exposes the need for a limiting principle

Suppose we accept Cardozo's proposition at its broadest:

The fact that something is exercised as a natural or common right does not prevent government from selecting its exercise as a taxable event.

Then ask:

Why labor but not walking?

Why earning one's sustenance but not eating?

Why employing another human being but not marrying another human being?

Why economic association but not ordinary association?

Why the expenditure of one's physical and intellectual energy for compensation but not the expenditure of that same energy for speech?

The answer cannot simply be:

Because one is "employment."

That merely attaches a legal noun to the activity.

Nor can it simply be:

Because employment is business.

That moves the classification one step further without answering the underlying constitutional question.

The real question is:

What constitutional principle separates those exercises of human liberty that government may select as taxable subjects from those it may not?

That is the limiting principle Victory should demand.

And subsequent Supreme Court doctrine demonstrates that some such boundary must exist

Only six years after *Steward Machine*, the Supreme Court decided *Murdock v. Pennsylvania*.

There the government attempted to impose a license tax upon religious evangelism.

The Court said:

"A State may not impose a charge for the enjoyment of a right granted by the Federal Constitution." [Justia Law](#)

The Court understood exactly the danger you are describing. A taxing power directed specifically at exercising a protected freedom could become functionally equivalent to the power to suppress it. [Justia Law](#)

And *Grosjean v. American Press* had already rejected a special tax directed against newspapers because, viewed historically and practically, it operated as a device capable of burdening freedom of the press. At the same time, the Court carefully said newspapers were not immune from ordinary taxation merely because publishing is constitutionally protected. [Justia Law](#)

That produces a much more complicated doctrine than:

Natural rights can be taxed.

The actual constitutional landscape became something closer to:

Possessing or exercising a constitutional right does not automatically create immunity from generally applicable taxation—but government cannot necessarily single out the exercise of a protected right and impose a tax that operates as a condition, penalty, or instrument of suppression.

And that distinction is exactly where your concern about labor belongs.

The Victory challenge to Cardozo is therefore stronger than I previously framed it

I would formulate it this way:

Cardozo did more than decide that an employer could be taxed. He rejected the proposition that the exercise of a common or natural right provides a categorical boundary against excise taxation. He then converted the human relationship at issue into the legal categories of “employment,” “business relation,” and taxable “activity.” But naming an exercise of human liberty does not itself establish the constitutional authority to tax it. The unanswered question is what limiting constitutional principle prevents the same reasoning from being extended to other exercises of natural liberty.

That is the question.

And Cardozo's opinion contains a passage that makes the Victory inquiry particularly important. After declaring employment taxable, he said:

“The subject matter of taxation open to the power of the Congress is as comprehensive as that open to the power of the states.” [Justia Law](#)

He then reasoned that direct taxes and duties, imposts, and excises together encompass essentially every form of taxation appropriate to sovereignty.

That is a very expansive conception of federal taxing power.

Your concern about future expansion is conceptually legitimate, but we should separate it from prediction

Your “15-minute city” example is useful as a hypothetical limiting-principle test. I would not say that 15-minute cities will lead to taxation of movement; that would be speculation.

But we absolutely can ask:

Suppose government someday imposed a substantial tax every time a person traveled beyond a prescribed geographical area.

Could government defend it merely by saying:

Travel is an activity. Activities pursued as of common right may be taxed. Therefore travel may be subjected to an excise.

Cardozo's broad language alone would seem to create that argument.

Other constitutional doctrines might defeat the tax.

And that is precisely the point.

If some other constitutional doctrine must eventually stop the taxing power, then Cardozo's statement that natural rights are taxable cannot itself supply the limiting principle.

Something else has to.

The deeper Victory proposition

This brings us to what I think you are actually identifying:

Once the judiciary accepts that the exercise of a natural right may itself constitute a taxable subject, the natural-right/common-right distinction no longer provides the boundary. The boundary must be found somewhere else.

And when the particular right is the ability of a human being to expend his own finite time, strength and intelligence to sustain his existence, Victory is entitled to ask:

Where, constitutionally, was that boundary moved?

Not:

When did Congress begin calling him an employee?

Not:

When did the Code begin calling his compensation wages?

Not:

When did a court begin calling the relationship employment?

Those are labels.

The antecedent question is about power.

And this is where Cardozo's own words become extraordinarily important to Victory, because he did not merely discover an ancient fixed category. He expressly contemplated "enlargement" of historically recognized forms of excise taxation. [Justia Law](#)

That deserves to be placed directly beside the constitutional question:

Who possessed the authority to enlarge the category—the people through constitutional amendment, Congress through legislation, or judges through constitutional interpretation?

That is, I think, the much sharper version of the argument you are making.

I said:

I said:

Clearly the language used - compensation for personal services - and all other expressions of the same type, have to mean something that anchors to a constitutional fundamental exercise of limited authority and not mere expansion of a presumed power by simply using these NEW terms. For example, one could easily interpret the use of an excise upon "capital, labor, or both combined" as a term applying to only businesses. For corporations use capital, and labor, or both, to make a profit, or income. The notion that the use of these terms somehow brings ordinary people into the equation for taxation, BECAUSE THEY LABOR is the example of how the terms enlarge. Please comment

ChatGPT said:

Yes. I think you are identifying a legitimate interpretive problem, but Victory should distinguish between demonstrating that terminology expanded and proving that the expansion was constitutionally unauthorized.

The central issue is this: words such as "labor," "compensation for personal services," "employment," "wages," and "individual" cannot themselves create federal constitutional power. Congress may define terms for purposes of a statute, but a statutory definition cannot enlarge Congress's enumerated constitutional authority merely by changing vocabulary. *Eisner v. Macomber* supplies an important principle here: Congress cannot settle a constitutional question simply by adopting a definition. (supreme.justia.com)

Your capital-and-labor example is particularly useful

Consider the famous formulation:

"gain derived from capital, from labor, or from both combined."

Its history matters enormously.

That language came from *Stratton's Independence, Ltd. v. Howbert* (1913), which concerned a corporation engaged in mining under the Corporation Tax Act of 1909. (supreme.justia.com)

And that 1909 tax was not constitutionally characterized as a general income tax upon individuals.

In *Flint v. Stone Tracy Co.*, the Court described it as:

“an excise upon the particular privilege of doing business in a corporate capacity”

with income being used to measure the tax. (supreme.justia.com)

Now put those pieces together.

A corporation employs capital.

It employs labor.

Frequently it combines capital and labor.

From those productive inputs it generates gain.

Within that setting, describing corporate income as gain derived from “capital, from labor, or from both combined” makes perfectly understandable sense.

But that does not automatically establish the next proposition:

A natural person expending his own time and physical or intellectual energy for compensation is constitutionally identical to a business employing labor as a productive input.

That requires another step.

And that step is exactly where Victory should watch the language

The progression can become:

Corporation uses labor

↓

Corporate gain may be derived from labor

↓

“Income” therefore includes gain derived from labor

↓

A human being labors

↓

What he receives is therefore income derived from labor



Therefore his compensation falls within the same constitutional taxing category

Each sentence sounds superficially related to the preceding sentence.

But the final proposition does not necessarily follow merely from the first.

The word “labor” has changed its function during the progression.

At the beginning, labor is a productive input used by a taxable business.

At the end, labor describes the individual's expenditure of his own life, time, energy and skill.

Those may ultimately receive the same constitutional tax treatment—but that conclusion requires authority. The shared word “labor” cannot supply it.

That is a very strong LD point.

The same problem occurs with “compensation for personal services”

Congress today says in §61 that gross income includes:

“Compensation for services.”

Statutorily, that is clear.

But Victory asks a different question.

Where does the constitutional classification come from?

The phrase “compensation for personal services” describes a receipt. It does not tell us, by itself, whether constitutionally we are dealing with:

income within an indirect-tax category;

a tax upon an activity;

a tax upon the receipt;

an excise upon some independently taxable event;

or a direct tax upon something requiring different constitutional treatment.

The noun does not answer the constitutional question.

This also helps explain why *Lucas v. Earl* bothers you

By 1930, Holmes could say:

“There is no doubt that the statute could tax salaries to those who earned them.”
(supreme.justia.com)

Notice the movement.

The constitutional analysis is no longer visible.

“Salary” has become enough.

The Court begins with the statutory category and announces that its taxability is beyond doubt.

Victory is entitled to walk backward and ask:

Why is there no doubt?

What case established it?

What constitutional classification did that case use?

What taxable subject did that earlier case actually involve?

And did that earlier case concern a natural person exercising his ordinary right to expend his own labor—or a corporation, business, privilege, occupation, or some other taxable subject?

Those questions are not answered by repeating Lucas.

But Victory should be careful with one conclusion

I would not yet say that “capital, labor, or both combined” constitutionally only means businesses.

Stratton's factual context certainly supports investigating that possibility, but the language itself was later adopted outside the corporate-excise context. Eisner v. Macomber, for example, quoted essentially that formulation when discussing constitutional income.

(supreme.justia.com)

So Victory's stronger argument is not:

We know “labor” meant only corporate labor.

It is:

Show us where the constitutional transition occurred from using “labor” to describe a productive source of business gain to treating an individual's expenditure of his own personal labor as producing constitutionally taxable income merely because Congress subsequently labeled his receipt “compensation for personal services.”

That puts the evidentiary burden exactly where LD wants it.

The larger pattern you are seeing

This may become an important Victory chapter because the recurring mechanism is not necessarily an explicit declaration:

“We hereby enlarge federal power.”

It can happen much more subtly through semantic migration:

Privilege → activity

Business → vocation

Vocation → employment

Employment → labor

Labor → personal services

Personal services → compensation

Compensation → gross income

Recipient → individual

Individual → taxpayer

At each stage, the new term sounds close enough to the preceding term that the transition attracts little attention.

But when you compare the beginning and the end, the constitutional landscape may look dramatically different.

That is precisely where the LD rule should be uncompromising:

A definition establishes meaning within a statute. It does not establish constitutional authority.

And:

Similarity of terminology does not establish identity of constitutional character.

So rather than arguing immediately that ordinary compensation cannot constitutionally be taxed, Victory should demand the missing chain:

Show the constitutional authority—not merely the succession of statutes and judicial vocabulary—by which the federal taxing power moved from taxing businesses, privileges, corporate activities, and gains derived through capital and labor to imposing an unapportioned

tax upon the ordinary compensation of a natural person expending his own time and energy to sustain his life.

If that bridge exists, we should be able to find it.

If every search for it merely leads to an earlier case using another expanded term, that itself becomes an important finding of the Victory investigation.