Volume II: Issue 5

The BEACON *Lite*

A Condensed Curriculum of Constitutional Study

Clauses Discussed:

• Article I, Section 8, Clause 1

Concept Discussed:

• Lay and collect Taxes

Section 8 of **Article I** is the section of the Constitution which enumerates the primary powers of Congress.

It is easiest to learn about the Constitution by studying first legislation which has been enacted within its clear boundaries. Looking back through American history, three fairly-distinct periods regarding the extent of government activity can be seen.

The initial period of *limited government* lasted from the beginning of government under the Constitution in 1789 until the Civil War era. The second period of *conversion* lasted from then until the era of the Great Depression and World War II. The last period of *government omnipotence* has continued since.

Because government action varies greatly depending upon the era viewed, it will ultimately prove beneficial to study government authority by the era.

Clauses 1-18 of Section 8 will therefore only be initially covered through to the Civil War period.

Primary among the list of powers (responsibilities) of Congress is to provide adequate revenue out of which funds can be appropriated to carry out necessary government functions. In recognition of that primary duty and power, **Clause 1** of **Section 8** declares that:

> "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;".

The power to raise revenue by the government is a critical power, here one finds it enumerated first among the powers expressly delegated to Congress.

The main principle of Article I, Section 8, Clause 1 is, of course, that Congress has the power *to raise revenue* by the laying and collecting of Taxes, Duties, Imposts and Excises.

Other principles are discussed in Clause 1, even if only to restrict that primary power. This can best be seen by *abbreviating* Clause 1 as follows:

> "The Congress shall have Power To lay and collect Taxes…to pay the Debts and provide for the common Defence and general Welfare of the United States."

The Power to lay and collect Taxes, Duties, Imposts and Excises would be seen in this instance as a *qualified* power — that Congress may not raise revenue for any purpose they see fit, but that it must be for a reason generally authorized within constitutional parameters.

Numerous parties claim Clause 1 gives Congress four separate powers, the powers to:

> (1) Lay and collect Taxes, Duties...;
>
> (2) pay the debts of the United States;
>
> (3) provide for the common Defense of the United States; and
>
> (4) provide for the general Welfare of the United States.

The specific ability for Congress to legislate in all cases which could be said merely to be for *the general Welfare of the United States* would certainly be an extensive power.

With such a power, it would be difficult to call Congress a branch of government with *delegated* power. It would appear that Congress, by this wording, would have wide *discretionary* powers — the enumeration of other powers would therefore actually be unnecessary.

That the possibly-separate powers to "provide for the common Defence…of the United States" and "to provide for the general Welfare of the United States" should be included within the clause discussing the raising of revenue would make little sense if these general welfare and defense powers were, in fact, powers separate from the raising of such revenue.

It would be odd indeed that such important and all-inclusive powers would not be discussed by themselves in their *own* clauses (the power of Congress to defend the United States is specifically detailed in one manner or another in no less than *seven* such clauses of Article I, Section 8 — in Clauses 10-16).

Only if the wording *to provide for the common defense and general welfare* gives a general overview of the purposes for which money to be raised may be spent does it make full sense to include these words in Clause 1.

The power "to pay the debts of the United States" provides the purpose for which revenue is raised.

The power to raise revenue and the power disburse from that revenue are linked together inexorably.

The very structure of Clause 1 helps to reinforce that the words "to pay the Debts and provide for the common Defence and general Welfare of the United States" simply relate to the power "to lay and collect Taxes, Duties, Imposts, and Excises".

The word "*to*" in the clause is a *preposition*, and is often used before a noun or adjective. A preposition modifies or otherwise limits nouns, adjectives or verbs. A preposition does not link together separate thoughts, but is used between various thoughts to *qualify* or *relate* one to the other.

When the word "to" is used before a verb (as in "to pay"), it acts as a *function word* to relate the *infinitive* case of a verb to another part of the sentence.

In either case, "to" will relate that which *follows* to that which *precedes*, regardless of the use of a *comma* (which gives but *pause* to the sentence).

The wording in Clause 1 "to pay" clearly relates back to another portion of the sentence; it implicitly asks "who pays" or "for what reason does one pay", depending upon the specific wording used.

If the power relates back to Congress (directly), then it could simply be a power of Congress, separate from other powers listed (or possibly only a general description for specified powers which would then follow).

If the phrase "to pay" relates back to Congress directly, then this could also imply that Congress does not have any express restrictions on the laying and collecting of Taxes, Duties, Imposts and Excises.

Relating to a government of delegated powers, of course, it would make sense to limit the ability to raise revenue within the justifiable ends of government.

In a government of discretionary powers, it would make sense that broad powers be open-ended and that powers for raising revenue be left unrestricted.

Any number of people would like the pertinent portion of Clause 1 to read:

> "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, ***and*** to pay the Debts and provide for the common Defence and general Welfare of the United States."

Use of the conjunction *and* would necessarily relate the phrase "to pay" back to the Congress, rather than to merely qualify the laying and collecting of Taxes, Duties, Imposts and Excises.

With use of a conjunction, Congress would be able to tax and Congress would be able to separately provide for the general welfare of the United States.

This clause actually only lists a *single* power of Congress while also giving (three) separate reasons for which that power may be used.

One must realize that the Constitution merely provides the form and framework for the government of the United States of America. Prior to the Constitution, the government was organized under the Articles of Confederation.

Tying the raising of revenue and the proper disbursement of it together was not something dreamed up by the constitutional convention delegates. **Article VIII** of the **Articles of Confederation** declares:

> "All charges of war, and all other expenses that shall be incurred for the *common defence or general welfare*...shall be defrayed out of a common treasury."

Article III, similar to the Preamble of the Constitution, declares that:

> "The said states hereby severally enter into a firm league of friendship with each other for their *common defence*, the security of their liberties, and their mutual and *general welfare*."

The main complaint about the Articles were their lack of command. Obviously the same overall wording in different documents of the same time period couldn't give little power in one and in another, great power.

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