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The BEACON *Lite*

A Condensed Curriculum of Constitutional Study

Clause Discussed:

• Article I, Section 8, Clause 1

Concept Discussed:

• To lay and collect Taxes, Duties, Imposts & Excises

The Constitution discusses four types of Revenue — *Taxes, Duties, Imposts* and *Excises*, as specifically listed in Article I, Section 8, Clause 1.

Section 9 of **Article I** lists restrictions on federal power, including limitation on the laying of revenue.

Article I, Section 9, Clause 4 provides the requirement for apportionment for direct Taxes, stating:

> "*No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration* herein before directed to be taken."

Article I, Section 2, Clause 3 repeats the directive for apportionment of direct Taxes above stated (the only principle in the main body of the Constitution to be so repeated). Clause 3 states (in part):

> "Representatives and *direct Taxes shall be apportioned among the several States* which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."

Even though the United States had the indirect ability to lay and collect Taxes under the Articles of Confederation, funds were limited. Taxes laid upon apportioned land, by their very nature, affected Citizens harshly. This directly limited the amount of money which could be realistically raised through such means.

(Direct) Taxes may certainly raise significant funds, but it comes from wealth which is generally the most illiquid — (real) property. Persons with significant amounts of property seldom have an ample supply of ready cash to pay large amounts of unexpected Tax (and the selling of property to pay a Tax is viewed with great enmity). Those with significant holdings of property generally find it to their advantage to support politically those who disfavor Taxes, to spread the burden of government greater amongst the many Citizens by the use of Duties, Imposts and Excises.

Due to financial turmoil during the Constitutional Convention era, it is not surprising that a good deal of the constitutional convention centered around ensuring adequate revenue-raising ability. It is safe to say that had there been no crisis of government funding, the chances that the convention would have been proposed and the Constitution ratified are slim.

The second qualification of *uniformity* (for Duties, Imposts and Excises) is found in **Article I, Section 8, Clause 1**, which states:

> "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*."

Article I, Section 9, Clause 5 provides the primary exception, stating:

> "No Tax or Duty shall be laid on Articles exported from any State."

The **Sixteenth Article in Amendment**, said ratified in 1913, provides but a definition by way of a clarification. It reads:

> "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Clarifying that taxing income *derived* from its source (i.e., separated from its source) is not a tax **on** that source, the 16th Amendment allows the imposition of a uniform (indirect) tax (more correctly called an *excise*) on all income which has been separated from its source. The 16th Amendment will be discussed during the next era.

It is necessary to delve into the different forms of Revenue to learn their similarities and differences before learning how the Constitution deals with each.

By comparing Article I, Sections 2 and 9 with Article I, Section 8, Clause 1, one can better understand the primary source for confusion regarding the raising of Revenue for the last two centuries.

Article I, Section 8, Clause 1 gives Congress the express ability to lay and collect "*Taxes, Duties, Imposts* and *Excises*" but only there gives the requirement that "all *Duties, Imposts* and *Excises* shall be uniform".

Clearly, all *Duties, Imposts* and *Excises* must be *uniform* throughout the United States because that is the specific requirement given.

Taxes are noticeably absent from this *uniformity* requirement. Thus, one must look elsewhere for any requirement, qualification or prohibitions listed on the laying and collecting of *Taxes*.

Looking to Article I, Section 2, Clause 3, one finds that "direct Taxes shall be apportioned".

Looking at Article I, Section 9, Clause 4, one also finds that "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken".

So, all *direct Taxes* (which include *Capitation* Taxes), must be *apportioned*.

While the Constitution gives the requirement that *direct Taxes* must be apportioned, it unfortunately specifically states that *Taxes* may be laid and collected.

That these Sections were not written consistently presents Americans today with a legitimate source of confusion.

Had Article I, Sections 2 and 9 specifically only mentioned "Taxes" instead of "direct Taxes", then there would have been no controversy or confusion.

Alternatively, had Article I, Section 8 only referenced "direct Taxes", then there would have been no confusion.

Given that *Taxes* are expressly allowed and given the express mention of *direct Taxes*, one could certainly infer that there could also be *indirect Taxes*, though one would not know any express qualification on their imposition.

A third alternative wording to remove any source for confusion would have been to give an express qualification for any *indirect* Taxes. If all indirect Taxes were merely subject to *uniformity*, then the latter portion of Article I, Section 8, Clause 1 could have been worded "but all Duties, Imposts, Excises, and all [other] indirect Taxes shall be uniform".

In defense of the wording of the Constitution, prior to its use in the 16th Amendment in 1913, there is no reference to an explicit type of *Tax* which was not direct.

To Americans in the 18th century who were more familiar with constitutional principles, this did not necessarily present itself as a legitimate source of potential confusion.

Nothing is more logical than to hold that all "Taxes", in a proper, strict constitutional sense, are "direct Taxes", which must be apportioned (absent any other direction, such as provided by the 16th Amendment).

The Articles of Confederation, for instance, clearly references (only) "Taxes" in Article VIII. That these Taxes are clearly direct, apportioned Taxes is not questioned (referring to charges raised “in proportion to the value of all land within each State, granted to or surveyed for any person”). These Taxes were raised under a form of government which had no ability to lay and collect Duties, Imposts or Excises.

Further study regarding Congress’ revenue-raising ability is necessary to better understand this primary power which directly affects Citizens. Study will concentrate on the following:

A. Qualifications

1. Direct Taxes shall be apportioned.

2. Duties, Imposts and Excises shall be uniform.

B. Prohibitions

1. No Tax or Duty shall be laid on Articles exported from any State.

2. No...Vessels bound to, or from, one State, be obliged to...pay Duties in another.

C. Procedural Qualification:

All Bills for raising Revenue shall originate in the House of Representatives.

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