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The BEACON *Lite*

A Condensed Curriculum of Constitutional Study

Clause Discussed:

• Article I, Section 8, Clause 1

Concept Discussed:

• Imposts

With the grant of power under the Constitution to lay Duties, Imposts and Excises, Congress received a power vastly different from that allowed under the Articles of Confederation (which was only to defray expenses out of the common treasury which had been supplied by direct Taxes imposed under State authority).

Granting Congress the new authority to lay and collect Duties, Imposts and Excises removed from the States a significant portion of the revenue which they had previously collected for themselves (as detailed in **Article I, Section 10, Clause 2** of the Constitution, which reads, in part:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws."

Clause 3 continues:

> "No State shall, without the Consent of Congress, lay any Duty of Tonnage."

With imported goods subject to uniform Imposts and Duties laid by *congressional* authority (rather than each State enacting a myriad of laws with varying rates), trade was made more efficient. The united front portrayed to foreign countries allowed foreign producers better access to the American market and made trade more efficient for American consumers.

Imposts are a type of Duty (all Imposts are Duties, but not all Duties are Imposts) which relate strictly to fees charged during the importation or exportation of goods. Since the Constitution forbids all Duties on exported articles, the constitutional meaning of Imposts are fees laid on imported goods. Imposts are synonymous with the term *Customs* or, more fully, *Customs Duties*.

Duties became the chief form of revenue for early government from ratification of the Constitution until the Civil War era. When Duties are laid on items according to their value, they are referred to as *ad valorem* Duties. When Duties are laid in the more common fashion on an item according to its weight, number, or measure, they are *specific* Duties.

A *Duty of Tonnage* is a fee laid on ships or vessels for entering and clearing a port and paid according to their Tonnage weight (burthen weight/carrying capacity), not upon the goods they haul.

Excises relate to internal matters (rather than external goods imported into the country or domestic goods exported externally); most often especially dealing with activity needing a government license or privilege. Excises were more fully utilized under the second and third eras of government (following the Civil War).

The very first law enacted by the first Session of the first Congress involved the oath members must give prior to being seated. The second enactment of law raised revenue for the government by imposing Duties on imported goods.

Duties laid upon imported goods are generally politically the least offensive form of revenue that Congress can lay.

The third Act of the first Congress imposed Duties of Tonnage. The fifth Act of the first Congress provided extensive regulations, workings and details for the imposition of the Customs Duties which had been earlier imposed.

Section 1 of the latter Act established various collection districts within the States. Each State was divided into one or more districts depending upon the quantity, quality and importance of their Ports.

As pointed out in this fifth Act, Rhode Island and North Carolina, as of the July 31, 1789 enactment date, had not yet ratified the Constitution and thus were not considered then as part of the United States.

Rhode Island and North Carolina were treated much in practice as they actually were in law, *outside* (the limits) of the United States — not *of* the United States. Not until they voluntarily ratified the Constitution were they brought within the new Union of States and fell under their laws.

To keep from directly punishing Rhode Island or North Carolina for not yet ratifying the Constitution, Congress exempted from Duties goods imported from these two States which were "of their own growth or manufacture".

Congress could not, of course, allow such duty-free importation of *foreign* goods which first came through these States, for that would ultimately defeat the imposition of all Duties on foreign goods (for they would simply be landed through Rhode Island or North Carolina and then be routed through the United States).

Within each district was one Port of Entry through which each ship was required to enter and clear before traveling to one of the other Ports of Delivery within the district. That each State must constitute at least one district with its own Port of Entry is to fulfill the requirements of **Article I, Section 9, Clause 6** of the Constitution which details:

> "No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: *nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another*."

The Act further provided Customs Officers the direct monetary incentive to watch out for smuggling and to prosecute the same, allowing them (and also informants) a cut of the action.

Every person who assisted or aided the landing, removing, warehousing, or otherwise securing the same in contravention to the Act (except when compelled by distress of weather or other sufficient cause), upon conviction, had to forfeit the sum of four hundred dollars for every offense and was disabled from any office of trust or profit under the United States for a term of up to seven years.

Moreover, the fifth Act provided for the strict seizures laws in cases of evasion for which revenue laws became notorious.

Obviously, the forfeiture and seizure of a vessel and her tackle would be a serious financial blow to the owners of that ship. From such drastic measures gives an indication of the seriousness of such evasion as viewed by Congress. Though confiscation of the vessel involved in smuggling was possible (when the value of the goods was $400 or more), this also limited the exposure of the owner of the vessel to no more than the vessel and her goods, tackle, apparel and furniture.

The legal fiction that chattel (animate or inanimate personal property) can be attacked directly and subject to forfeiture and seizure is the nature of the "guilty property" theory of an *in rem* proceeding. An *in rem* proceeding is an action against an item or thing itself (as if it were conscious) without consideration of the person who happens to own or control that item. Seizure in an *in rem* action is not considered as punishment of a person for any offense. No imprisonment was imposed.

In contrast, an *in personam* proceeding is an action against a person individually (and the property of the person is attacked collaterally as a form of punishment).

An *in rem* action stems from the law of the *Deodand*[6] ("a thing to be given to God").

Deodand stems from the Mosaic Law in the first five books of the Bible (specifically Exodus 21:28).

As expressed in Latin, there are two general types of wrongs, *malum in se*, and *malum prohibitum*. *Malum* (as in *malice*) references a wrong, an evil, or a bad thing. *Malum in se* is something that is generally considered evil or immoral in itself, such as murder or robbery. Most offenses at common Law are such items which are widely considered inherently evil (one common trait is that they most often have an innocent victim).

In contrast, *malum prohibitum* is something which is wrong simply because it is forbidden by law. Prohibitions such as detailed in the fifth Act are examples of *malum prohibitum*; there being nothing inherently wrong with bringing in goods from foreign countries by small boat or by land.

In order to keep tabs on the movement of goods where Duties were placed upon their importation, the system of bringing goods into the country had to be restricted to observable areas. If goods were allowed on small vessels, they could sneak more easily into small estuaries, bays, rivers, and even creeks, allowing for ease of smuggling.

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