The
BEACON *Lite*
Volume II: Issue 8
A Condensed Curriculum of Constitutional Study



Clause Discussed:
- Article I, Section 8, Clause 1

Concept Discussed:
- Duties

Congress imposed their first domestically-oriented Duty in a March 3rd, 1791 Act. The Act imposed various import Duties on spirits distilled in foreign lands, a domestic Duty on alcohol distilled in the United States from imported materials and also on alcohol distilled within the United States (from domestic materials).

The Act also imposed a domestic annual Duty of sixty cents for every gallon of distillation *c*apacity on every still which distilled alcoholic spirits outside any city, town or village.

The Act allowed any owner of a still who distilled spirits outside any city, town or village the option to pay nine cents per gallon on all proof spirits distilled rather than the yearly Duty of sixty cents per gallon of *capacity* (provided he kept accurate records of quantities distilled and attested to those numbers).

Proceeds from the Duties imposed by this Act were earmarked first for payment of interest on government debt. Any funds raised over the amount necessary to pay interest were then applied to principal to reduce the public debt. No other uses of the funds were allowed.

Payment on debt depended upon the type of debt instrument presented. Lowest payment percentages were found in the payment for Continental Currency, where a penny-on-the-dollar ratio was paid. Such a low rate of conversion points to the inherent weakness of paper money — the subsequent monetary devaluation (hyper-inflation) resulting from earlier over-emission.

Debt instruments other than bills of credit (such as interest-bearing notes and bonds) were paid at full par value (differing repayment rates had to do with the responsibility of issuance).

For example, when the Second Continental Congress first resolved in 1775 to emit Bills of Credit, the 12 confederated colonies which pledged for their redemption acted in a responsible manner (if such can be said when printing paper money) by limiting the run to $2 million. As time progressed, and as the need for money intensified, Congress emitted greater sums in less-responsible fashion.

With subsequent over-emission, it became obvious to even the least-learned Citizen that things were afoul with Continental Currency. Merchants began refusing the currency, at least without appropriate discounts taken.

Rather than take the responsibility for their over-emission (which directly caused the devaluation), Congress attempted to blame individuals who merely sought to retain value for their efforts or products by appropriately discounting the bills from their face value to their actual purchasing power (exchange value).

The ninth of the **Articles of Confederation** authorized the Confederate Congress to emit bills of credit, provided nine States assented to the emission.

The **twelfth Article** states:

> "All bills of credit emitted, moneys borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged."

The **Constitution**, in **Article VI**, **Clause 1** states:

> "All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation."

By express constitutional mandate, there was no legal differentiation between types of debt to which the United States were obligated.

It was the sheer volume of continental currency emitted, however, which essentially precluded the

United States from honoring this debt at face value. Alexander Hamilton, in his **January 9, 1790 report** to Congress, wrote volumes about the virtues of paying the debts of the United States through the assumption of the State debts. However, the following was one of his only comments regarding bills of credit:

> "And let all sums of continental money, now in the treasuries of the respective States, which shall be paid into the treasury of the United States, be credited at specie value."

The said *specie value* was later determined by statute (in the August 4, 1790 Act) to be *one dollar of specie* (gold/silver coin) for every *100 dollars of currency*.

Hamilton detailed the war debt in his report, which is summarized as follows:

Foreign debt	$10,070,307.00
Arrears in Interest (@ 4% & 5%)	$1,640,071.62
Domestic debt	$27,383,917.74
Arrears in Interest on domestic debt	$13,030,168.20
Total debt	$52,124,464.56

Hamilton writes in the next paragraph:

> "The unliquidated part of the domestic debt, which consists chiefly of the continental bills of credit, is not ascertained, but may be estimated at 2,000,000 dollars."

Hamilton's report was recommending the debt which the United States *ought* to assume, not the amount to which they were legally *obligated*. Since Hamilton figured the continental bills of credit at their "specie-value", the debt amount attributable to these bills was actually 100 times higher, or $200,000,000.

The amount the United States really owed, then, was approximately $252,124,464.56, of which they would pay 100 cents-on-the-dollar for $52,124,464.56 of debt. On $200,000,000 of debt denominated in bills of credit, the United States would pay $2,000,000, or one penny-on-the-dollar. Adding together Hamilton's $52,124,464.56 with his discounted $2,000,000 comes to a total of $54,124,464.56 in *acknowledged* obligations.

Of course, since history provides that it was a difficult (though workable) struggle for the United States to pay the $54 million, it would have been improbable (if not financially impossible) to pay off $252 million.

Excessive debt necessitated that something be sacrificed. As common with every bankrupt, a settlement paying something beats being paid nothing.

Hamilton and Congress set in motion a fiscal plan by which new debt would be guaranteed to the full extent of the borrowing and taxation capabilities of the United States, as well as their assets (Western lands) destined to be sold. From this pool of assets, loans were uniformly guaranteed, better ensuring marketability.

Thomas Jefferson, though opposed to the assumption of State debts, removed his opposition when Hamilton and the Federalists agreed to remove their opposition to permanently locate the federal (government) seat on the Potomac River.

With this process of debt assumption and a mass of uniformly-guaranteed debt firmly set in place by the August 4th, 1790 Act, Hamilton and the Congress laid the next cornerstone of their monetary policy on February 25, 1791 by enacting the "*Act to incorporate the subscribers to the Bank of the United States*" (I Stat. 191).

Subscribers to the bank headquartered in Philadelphia were incorporated as a corporation and body politic for a period of twenty years.

Section 1 allowed a capital stock issuance of up to $10,000,000, of which the United States were allowed in Section 11 to subscribe to the amount of $2,000,000, for a 20% share-holder.

When the Senate bill proposing the (first) Bank of the United States reached President Washington's desk, Washington asked his principal officers for their opinion, in accordance with Art. II:2:1 of the Constitution, on the constitutionality of the United States incorporating a bank. Secretary of State Thomas Jefferson was opposed to it and thought it unconstitutional; Secretary of the Treasury Alexander Hamilton (in his February 23, 1791 report to the President), of course, was strongly in favor.

Hamilton, it should be noted, was not a proponent of the government *controlling* the bank. Hamilton wanted the government to own a share of the bank to lend credence to the bank which it could not obtain privately without government.

When Congress failed to renew the bank's charter in 1811, according to the original terms of the 1791 Act, the Bank of the United States closed.

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1500 Highway 2
Leavenworth, WA 98826

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