Volume III: Issue 2

The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

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

Concept Discussed:
- To lay and collect Taxes, Duties, Imposts & Excises

As a necessary consequence to the declaration of War on June 18, 1812, extraordinary government expenditures quickly followed. Interestingly enough, expenses for the first year and a half of the war were paid from routine revenues and increased government borrowing.

With the continuation of war, however, it became evident that additional funds were needed to not only provide backing for subsequent borrowing, but also to begin to pay the mounting bills. Congress enacted a series of Acts to prepare for and once again lay domestic Duties and direct Taxes.

The Act of July 22, 1813 (III Stat. 22) designated new revenue districts within States. Each State was divided once more into numerous collection districts, consisting generally of one or more counties. Rhode Island was divided into three collection districts; Massachusetts, 18; and New York, 28, for example.

On July 24, 1813 (III Stat. 39), Congress once again established a Commissioner of the Revenue as an officer within the Department of the Treasury. Duties prescribed to the Commissioner were that of superintending the collection of the direct Tax and internal Duties laid by the authority of the United States.

Acts laying Internal Duties

When Congress finally began once again enacting revenue laws, many were quickly passed. On July 24, 1813, Congress re-enacted many Duties abolished over a decade earlier — on sugar refined within the United States; on carriages used for the conveyance of persons; on (licenses to) distillers of spirituous liquors; and on sales at auction of merchandise, ships and vessels.

On August 2, 1813, Congress laid Duties on licenses to retailers of wines, spirituous liquors & foreign merchandise and laid stamp Duties on notes, bonds, and bills of exchange of banking companies.

The Duties imposed by these various Acts were made collectable beginning January 1, 1814.

As the war continued into 1815, additional sources of income were needed to supplement the Duties (and direct Taxes) that had been laid to date. On January 18, 1815, Congress enacted two new revenue laws. The first laid a Duty on a variety of goods, wares and merchandise manufactured or made for sale within the United States and the second affected household furniture and gold & silver watches.

Of noteworthy consequence in each of the preceding Acts was the wording identical in effect to that found for licenses to distillers. **Section 7** of that Act was worded:

> "*And be it further enacted*, That this act shall continue in force until the termination of the war in which the United States are now engaged with Great Britain and Ireland and their dependencies, and for one year thereafter, and no longer." [1]

Acts laying Direct Taxes

1. A December 23, 1814 Act (III Stat. 159) eliminated the one-year post-war limitation of the Duty on goods sold by way of auction (while also doubling this Duty) and eliminated the similar time-limitation on licenses of retailers of spirituous liquors and foreign merchandise (while increasing that Duty 50%). Postal rates also increased fifty percent under this Act, all for the purpose, as stated in Section 5, "gradually to reduce and eventually to extinguish the public debt".

Distributed by: Foundation For Liberty.org
1500 Highway 2
Leavenworth, WA 98826

www.FoundationForLiberty.org
Copyright 2004, 2005 by Beacon of Liberty, LLC.
www.BeaconofLiberty.org

	United States Statutes at Large		Early Nineteenth-century Acts imposing Internal Revenue (Amendatory Acts omitted)				
	Volume	Page	Congress	Session	Chapter	Date of Enactment	Title of Act
Uniform Domestic Duty Acts	III	35	13th	1st	21	July 24, 1813	*An Act laying duties on Sugar refined within the United States.*
	III	40	13th	1st	24	July 24, 1813	*An Act laying duties on carriages for the conveyance of persons.*
	III	42	13th	1st	25	July 24, 1813	*An Act laying duties on licenses to distillers of spirituous liquors.*
	III	44	13th	1st	26	July 24, 1813	*An Act laying duties on sales at auction of merchandise and of ships and vessels.*
	III	72	13th	1st	39	August 2, 1813	*An Act laying duties on licenses to retailers of wines, spirituous liquors, and foreign merchandise.*
	III	77	13th	1st	53	August 2, 1813	*An Act laying duties on notes of banks, bankers, and certain companies; on notes, bonds, and obligations discounted by banks, bankers, and certain companies; and on bills of exchange of certain descriptions.*
	III	180	13th	3rd	22	January 18, 1815	*An Act to provide additional revenues for defraying the expenses of government, and maintaining the public credit, by laying duties on various goods, wares, and merchandise, manufactured within the United States.*
	III	186	13th	3rd	23	January 18, 1815	*An Act to provide additional revenues for defraying the expenses of government, and maintaining the public credit, by laying duties on household furniture, and on gold and silver watches.*
Apportioned Direct Tax Acts	III	53	13th	1st	37	August 2, 1813	*An Act to lay and collect a direct tax within the United States.*
	III	164	13th	3rd	21	January 9, 1815	*An Act to provide additional revenues for defraying the expenses of government, and maintaining the public credit, by laying a direct tax upon the United States, and to provide for assessing and collecting the same.*
	III	216	13th	3rd	60	February 27, 1815	*An additional Act to provide additional revenues for defraying the expenses of government, and maintaining the public credit, by laying a direct tax upon the district of Columbia.*
	III	255	14th	1st	24	March 5, 1816	*An Act to reduce the amount of direct tax upon the United States and the District of Columbia, for the year one thousand eight hundred and sixteen; and to repeal in part the act entitled "An act to provide additional revenue for defraying the expenses of government, and maintaining the public credit, by laying a direct tax upon the United States, and to provide for assessing and collecting the same;" and also the act entitled "An act to provide additional revenue for defraying the expenses of government, and maintaining the public credit by laying a direct tax upon the District of Columbia."*

On August 2, 1813, Congress laid a direct Tax of three million dollars; on January 9, 1815, Congress laid an annual direct Tax of six million dollars; on February 27, 1815, an annual direct Tax of $19,998.40 was laid on the District of Columbia; and on March 5, 1816, Congress repealed the annual nature of the two 1815 Tax Acts and laid a direct Tax of three million dollars on the United States and a $9,999.20 Tax on the District of Columbia.

Of Uniform Duties

Little pertinent difference existed between the Duties laid in 1813 from those laid in 1794 and 1797 (other than at approximately double the earlier rates). The 1813 Stamp Duty affected fewer items than the 1797 Act (only financial instruments such as bank notes, promissory notes, bonds and bills of exchange were now affected).

The Duties laid in 1815, however, had not heretofore been laid. Duties at the noted rates were laid on the following goods, wares, and merchandise manufactured or made for sale within the United States in **Section 1** of the **Act of January 18th** (Chapter 22):

"Pig iron, per ton, one dollar.

"Castings of iron, per ton, one dollar and fifty cents.

"Bar iron, per ton, one dollar.

"Rolled or slit iron, per ton, one dollar.

"Nails, brads, and sprigs, other than those usually denominated wrought, per pound, one cent.

"Candles of white wax, or in part of white and other wax, per pound, five cents.

"Mould candles of tallow, or of wax other than white, or in part of each, per pound, three cents.

"Hats and caps, in whole or in part of leather, wool or furs; bonnets, in whole or in part of wool or fur, if above two dollars in value, eight per centum ad valorem.

"Hats of chip or wood covered with silk or other materials, or not covered, if above two dollars in value, eight per centum ad valorem.

"Umbrellas and parasols, if above the value of two dollars, eight per centum ad valorem.

"Paper, three per centum ad valorem.

"Playing and visiting cards, fifty per centum ad valorem.

"Saddles and bridles, six per centum ad valorem.

"Boots and bootees, exceeding five dollars per pair in value, five per centum ad valorem.

"Beer, ale, and porter, six per centum ad valorem.

"Tobacco, manufactured segars and snuff, twenty per centum ad valorem.

"Leather, including therein all hides and skins, whether tanned, tawed, dressed, or otherwise made, on the original manufacture thereof, five per centum ad valorem."

From a consumption standpoint, Duties laid upon items manufactured domestically have no inherent difference from Duties laid upon imported goods. Both are laid upon goods prior to purchase by the consumer — one upon *importation* and the other upon *manufacture*. In either case, the self-limiting nature of the Duty would still function properly — Congress could not raise the Duties too high or the corresponding drop in the purchase of goods would eventually offset the higher Duty, resulting at some point of a *lower* total amount of revenue being raised *the higher the Duty*.

This self-limiting mechanism would thus limit the amount of Duty capable of being raised on any one particular item. The natural result of this limitation would be that *additional sources* of revenue would be needed when more total revenue was necessary. Uniform government revenue would naturally tend towards lower-rate Duties reaching more items, limiting the effect upon any one area of commerce or region of the country.

Government revenue would naturally tend towards lower-rate Duties reaching more items, limiting the effect upon any one area of commerce or region of the country.

Duties laid upon domestically-produced items varied only in the manner which they affected the person or entity made liable for their collection. Imposts affected the *importer*, whereas domestic Duties affected the local *manufacturer*.

Local manufacturers (other than distillers, sugar refiners, snuff manufacturers, etc.) had little experience with domestic Duties and naturally objected to the laying of them. That Congress sought to target specific industries with Duties was seen as an unequal punishment of some for the benefit of all.

The constitutional prohibition in Article I, Section 9, Clause 5 preventing a Tax or Duty from being laid on Articles "exported from any State" can be seen not only as a means to better allow domestic companies to compete with foreign competition, but also as the primary means to prevent Congress from targeting any one area of the country with expenses which should be borne by all. A Tax or Duty on cotton or tobacco exported would have certainly affected the South or if on manufacturing, the North.

That Congress be explicitly prohibited from taxing exports but be allowed the discretion to lay a Duty on any domestic manufacture would be to prohibit the *lesser* power but allow the *greater*.

A government of delegated authority does not have inherent power — without the express authority delegated to perform a certain activity, it cannot be assumed. Any assumption in questions of delegated government power must be in the *negative* until properly showed in the alternative. That a lesser power be expressly denied would not tend to allow the greater.

If one accepts the assumption that most companies would prefer (for sake of ease) to sell locally first, then nationally, and only then internationally, then Congress, if they could lay Duties on domestic manufacture, were allowed to lay Duties on America's *necessities* even while they were expressly exempted from taxing her *excess*.

Secretary of the Treasury Alexander Hamilton earlier silenced a number of potential dissenters with his observation that if government was unable to seek revenue from domestic manufacturers, as American industry grew and displaced foreign imports (as a source of revenue), American government could, in theory, collapse.

"The growth of manufactures diminishes the quantum of duty on imports, the public revenue, ceasing to arise from that source, must be derived from articles which the national industry has substituted for those previously imported. If the Government cannot then resort to internal means for the additional supplies, which the exigencies of every nation call for, it will be unable to perform its duty, or even to preserve its existence. The community must be unprotected, and the social compact be dissolved."[2]

An answer to Hamilton was that State governments more properly taxed domestic manufacturers, whereas the federal government more properly received revenue dealing with international trade (since the federal government was primarily the States' unified agent dealing with foreign States). If, over time, fewer products were being imported (which has not been the case), then there would be less reason for the federal government.[3]

---

2. American State Papers, Finance Series, Volume I, 2nd Congress, 1st Session, House Document #35 "*Spirits, Foreign and Domestic*", pg. 151 @ 153. 1792.

3. Issues of Interstate Commerce, of course, aside. Trade between States of the Union would be far less involved than between the Union and sovereign foreign countries, allowing for *less* government.

So long as a wide variety of manufacturing items were assessed, the possibility that only one geographical area or industry would be singled out and effectively punished was diminished. The dilemma would be that while minor use of such a power could contradict principles of State equality and lead to favoritism, widespread use of that power would not.

Excises masquerading as Duties

Leaving such discussion (at least for now), of greater current interest is the subsequent Act laid on January 18, 1815 (III Stat. 186, Chapter 23), entitled *An Act to provide additional revenues for defraying the expenses of government, and maintaining the public credit, by laying duties on household furniture, and on gold and silver watches*.

Section 1 of this Act stated, in part:

> "That there shall be and hereby is imposed an annual duty on all household furniture kept for use, the value of which, in any one family, with the exception of beds, bedding, kitchen furniture, family pictures and articles made in the family from domestic materials, shall exceed two hundred dollars in money, according to the following scale…"

The scale for the stated Duty was listed as follows:

furniture valued over	but not over	was assessed with a Duty of:
$200	$400	$1.00
$400	$600	$1.50
$600	$1,000	$3.00
$1,000	$1,500	$6.00
$1,500	$2,000	$10.00
$2,000	$3,000	$17.00
$3,000	$4,000	$28.00
$4,000	$6,000	$45.00
$6,000	$9,000	$75.00
$9,000		$100.00

Section 1 also then laid:

> "an annual duty of two dollars on every gold watch kept for use, and of one dollar on every silver watch kept for use."

Section 13 further defined the meaning of *household furniture*; stating that such term:

> "shall be considered as including pictures, plate, clocks and time-pieces (except watches) and as excluding books, maps, and philosophical apparatus".

The assessed furniture specifically included "pictures, plate, clocks and time-pieces". The value of many pictures could well be the frame (often of gold leaf). *Plate* refers to plated objects, flatware (such as [silver] serving trays), tea sets, eating utensils (silverware), etc. Clocks and time-pieces were also of fine metalwork. Such fine furnishings would be family heirlooms of relative *luxury*.

Items of a more-practical nature, specifically "beds, bedding, kitchen furniture, family pictures and articles made in the family from domestic materials" were expressly exempted from the definition of assessable household furniture. Intellectual property (books, maps and "philosophical apparatus") was also exempted.

A few factors help distinguish this Act from others imposing routine Duties. The first is that items luxurious in nature were assessed while items of a practical nature were exempted. A minimum threshold level was also set, below which no fees were due (the first $200 of assessable furniture was exempted).

The most important clue to a better understanding of the workings of this Act, however, can be found by comparing the *title* with the *body* of the Act.

The title declares that a Duty is being laid "on" furniture and "on" gold and silver watches. Even though titles of Acts carry no legal significance (they are not part of an Act in a strict legal sense) they can certainly set the tone. In this instance, the title conveniently mis-informs the reader of the actual circumstances of the Act.

Within Section 1, one reads that "there shall be and hereby is imposed an annual duty on all household furniture kept for use". The first Section later states that there is imposed "an annual duty of two dollars on every gold watch kept for use, and of one dollar on every silver watch kept for use".

It is natural to attempt to remove all seemingly extraneous information and concentrate on that which appears to be the most important. This would lead one to naturally concentrate on the Duty being laid "on" furniture and "on" gold and silver watches. To do this, however, is to concentrate on the wrong point and discard that which is of greatest relevance.

More careful reading brings to one's attention the fact that the fee was being imposed only "on" furniture and watches *kept for use*. The phrase *kept for use* allows for the possibility that the fees being imposed were not literally "on" the items quoted, but only upon the "use" of such items.

That the phrase *kept for use* was repeated verbatim *three* times within the same section is the first indication of the importance of such words. Repetition of unusual words or phrases often provides an important clue as to which legal principles an Act follows.

Repetition of unusual words or phrases often provides an important clue as to which legal principles an Act follows.

Kept for Use

Use is a concept theoretically different from *ownership*. When the *use* and *ownership* are *united* within the same person or entity, the thought that they are or can be separated is more difficult to ascertain, but this does not necessarily prevent the separation.

The clearest differentiation between *use* and *ownership* is when one person or entity *owns* some non-consumable property and another person *leases* this property from its owner (for its use). When the *use* and *ownership* belong to *different* persons or entities, a clear distinction is easily possible.

Those persons who today lease automobiles or business or residential property should be readily familiar with the fact that while they do not *own* such property, they obtain a primary benefit from it — its *use*.

The concept splitting *use* from *ownership* does not necessarily dissolve when the two are combined within one person, but neither does it necessarily remain open.

Principles discussed in earlier issues of *The Beacon of Liberty* suggest, if not mandate, that Congress could only assess (real or personal) property with an apportioned Tax. It should be relatively obvious that Congress would very much like to uniformly collect revenue on all property, for the strict requirements and limitations of apportionment would then be bypassed.

No matter what Congress may like or dislike, however, they cannot do what they are prevented from doing by strict constitutional commands which they are powerless to ignore or change.[4] This fact does not necessarily prevent ingenious attempts to circumvent the commands of the Constitution, however.

Separating the *use* of the property from the property itself (at least the ownership of that property) is such an attempt to bypass the requirement of apportionment. Strictly speaking, *underhandedness* is not inherent in this methodology, at least when attempts are not made to hide the process to keep people from understanding the principles involved (so greater deception can be later practiced).

By definition, if the *use* of the property has been separated from the ownership of it, then a fee assessed on the *use* of that property would not be a fee laid "on" that property. Thus, since the fee is not laid "on" the property, it does not require apportionment. This principle could fully conform to the Constitution.

The principal question, therefore, would be *when could the use of property properly be separated from the property itself*? If the answer was *always*, then apportionment is but a hollow command. The only property capable of withstanding such an attack would be only property *without use*.

The only fee capable of being laid "on" property is an apportioned Tax. Fees laid on the “use” of property could theoretically be any uniform Duty, Impost or Excise, all laid without apportionment.

The only fee capable of being laid *on* property is an apportioned Tax. Fees laid only on the *use* of property could be uniform.

While fees based upon *use* would generally be *Duties* or *Excises*; on items *luxurious* in nature, *Excises* would be most commonly thought of first.

The ownership of property, whether of great or small value, whether of opulence or of poverty, is an inalienable right of all Americans (though too often challenged today) secured by the various State Constitutions.[5]

The purpose of focusing on the *use* of a type of property versus on the property itself is to allow Congress to lay a *uniform Excise* or *Duty* rather than an

---

4. Those who seek to command without restriction must get Americans to believe that these people of power-lust can do anything to anyone at anytime — that the Constitution is a dead letter and that the Bill of Rights is null and void.

To be ruled without restriction, people must give up the thought that they can learn the mechanism of oppression and fight for liberty. Futility of thought causes inaction and precedes poverty and oppression, such the reason for mantras such as "you can't fight city hall" or "it is as inevitable as death and taxes".

5. Section 1 of Virginia's June 1776 Constitution and Declaration of Rights, for example, declares (with emphasis added):

> "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with *the means of acquiring and possessing property*, and pursuing and obtaining happiness and safety."[6]

Article I, Section 1 of the Washington State Constitution (1889) declares, in part:

> "Governments…are established to protect and maintain individual rights."[7]

6. U.S. Serial Set, 59th Congress, 2nd Session, House Document # 357 *The Federal and State Constitutions*, Microfiche Reference # 5194, pg. 3813.

7. Ibid, pg. 3973.

apportioned Tax. That the *use* of an item be separated from its ownership within an Act seeking revenue is done to attempt to bypass the constitutional limitations of apportionment.

Excises

A brief look of activities that undeniably are extensions of government privilege is helpful when studying Excises.

Congress has the delegated power "to regulate Commerce with foreign Nations" and also to lay and collect Imposts. Before imported goods can be released to the importer/distributor, Customs agents must clear them. Of course, all Customs Duties must be paid on items subject to such before they can be cleared.

If the agents only allowed the off-loading of ships *after* the imported goods were cleared, then the ship and crew would be required to stay in port much longer than otherwise necessary.

If the ship could be quickly off-loaded and goods stored in a warehouse for clearing there, then a ship could be sooner back at sea earning her keep.

Government warehouses thus allowed for greater productive efficiency.

As the import volume increased, however, the need for an extensive number of warehouses became obvious. Unless the government desired to more-fully go into the warehousing business to keep up, another answer was needed. In 1854, Congress enacted a law allowing private warehouses to store and clear dutiable goods (10 Stat. 270).

Private bonded warehouses, by the statute allowing them, understandably required specific government approval for their existence. These businesses needed to conform precisely to government statutes and regulations — in fact, the Customs officer was given "joint custody of all the merchandise stored in said warehouse" while the warehouse itself was "placed in charge of a proper officer of the customs" in Section 1 of the Act.

Section 3 gave the bonding requirements of the private warehouse necessary to exonerate and hold harmless the United States on account of risk, loss, or expense connected with the warehouse merchandise. Many importers took up the offer to temporarily store goods at the warehouse until needed (the Customs Duties did not need to be paid until the goods cleared, which aided the importer's cash flow needs).

With this joint-venture (government/private business), the ship Captains and owners benefited by quickly off-loading their ships; importers benefited by being able to import and store greater quantities (yet not having to pay the Duties immediately); government benefited by having warehouse space provided at no direct cost to government; and the warehousemen benefited by having a potentially-profitable business.

That the warehousemen needed express government authorization was a given. A license provided proof that this privilege had been obtained. That the license-holder must perform the required activities was understood (including payment of all licensing fees).

Excises include fees on such grants of government privilege. That the government has the right to lay fees on such grants of government privilege could hardly be contested.

Excises are easiest to understand when they are viewed from their purest and simplest form. This is likely to occur at law when the Act imposing an Excise is at least referred to as such. A look into a law (with a wider business impact than bonded warehouses) that established an Excise is in order.

Departing from the normal routine of *The Beacon of Liberty*, a quick look into an Act from the second period of government activity (between the Civil War and the Great Depression/World War II eras) will be beneficial.

In 1909, Congress enacted what can be viewed as the precursor to the Income Tax Act of 1913 — a Corporate *Excise* (36 Stat. 11 @ pg. 112). This Act which established a Corporate Excise imposed the Excise on the *privilege of incorporating a business*.

There are a number of substantial reasons for incorporating a business. Among these reasons includes the ability to remove personal and perhaps financial liability of the incorporator(s) from the corporate activity. Another is to create a legal entity with a "life" outside that of the incorporator(s). The capability of precise ownership and therefore control of a separate entity (by owning definitive shares) is of great benefit. Yet another major purpose is to pool resources for large-scale projects that would have difficulty getting off the ground without such a regimented structure.

Government does not mandate this business structure; people are free to operate sole proprietorships, partnerships, unincorporated business associations or similar entities. Only persons requesting incorporation and willing to following the guidelines and requirements can receive corporate status. In that there are important benefits to incorporating a business, it is proper that government receives due compensation for this service.

Any number of possible compensation packages could have been theoretically chosen, some perhaps better than others. The compensation mechanism chosen in 1909 used *corporate income* as the measure of the benefit received by the corporation from incorporating.

Section 38 of the Act imposed:

> "a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars."

Corporations did not pay an *income tax* — there was not a tax assessed on *income* — corporations paid an Excise *equivalent* to one percent of corporate income (over $5,000) for the benefit of incorporating. *Corporate income* was the *measure* used to determine the amount of Excise paid to the government for granting the benefit.

Privileges extended by government are capable of being laid with an Excise; bonded warehouses and corporate status are two such examples of an extension of government privilege.

Of Fine Furniture and Watches

The question to ask concerning the 1815 Act with regards to furniture and watches is whether the ownership of such items of luxury — property itself — can be laid with an Excise (or Duty). Can the ownership of items of luxury (be considered an extension of government privilege that can) be laid with an Excise? The answer in respect to the constitutional protection of property by apportionment is *no*.

Since the "Duties" were only laid "on" luxury furniture and watches *kept for use*, however, the fees assessed were actually only laid on the *use* of such property.

Congress therefore did not attempt to assess property *directly*, for that would have required apportionment; they sought to collect revenue based upon the *use* of such (luxurious) property.

The real question is therefore *whether the **use** of the designated property can be separated sufficiently from its ownership to keep such activity from being held as nothing more than an unapportioned tax* (and therefore unconstitutional).

Before answering this question, it is appropriate to look back at the 1794 Act entitled *An Act laying duties upon Carriages for the conveyance of Persons* (I Stat. 373).

Section 1 of this Act does not stop where does the title.[8] The pertinent portion of Section 1 reads (emphasis added):

> "That there shall be levied, collected and paid, upon all carriages for the conveyance of persons, which shall be *kept* by or for any person, *for his or her own **use**,* or to be let out for hire, or for the conveying of passengers, the several duties and rates following…"

The title of the Act declares that "duties" are being laid "upon carriages". Stated in such manner, it is extremely difficult to see how any fee collected would not need to be apportioned, since it purported to be a fee "upon carriages" — on *property*.

The phrase "carriages for the conveyance of Persons" would appear initially to be but a phrase acting to limit *which* carriages would be subject to the stated Duty. But Section 1 of the Act expressly exempted carriages "usually and chiefly employed in husbandry, or for the transporting or carrying of goods, wares, merchandise, produce or commodities". That the Act *twice* limited *which* carriages would be affected could simply prove to be a protective redundancy; but it could also prove more subtle and even of devious design.

Filling in the implied words of Section 1 and emphasizing others, a more-correct version would read:

> "That there shall be levied, collected and paid, upon all carriages (*used*) for the conveyance of persons, which shall be *kept* by or for any person, *for his or her own use*, or (for the *purpose*) to be let out for hire, or for the (*use* of the) conveying of passengers."

Of primary importance in Section 1 is the admission that carriages "which shall be kept...for…use" are levied with a "Duty". *Use* is the operative word of the entire Act. Of course, *kept...for...use* was the same phrase used in the 1815 Act dealing with fine furnishings and gold & silver watches.

A quick glance at the 1813 Act laying "Duties" "on" "carriages for the conveyance of persons" again actually refers to the *use* of such carriages of relative luxury.

Never were there any such "Duties" laid "on" carriages, "on" furniture or "on" gold or silver watches. Duties (more properly, Excises) were laid on the *use* of these items of relative luxury.

Use versus *Ownership* of Property

If the *use* of property could be separated from its *ownership*, there would have been nothing to stop Congress from laying an Excise on the *use* of *slaves* to abolish slavery.

---

8. The title is conspicuously worded; proper syntax requires that implied words be stated, such that the Act would be titled; *An Act laying duties upon Carriages **used** for the conveyance of Persons.*

Slavery would be a type of property especially prone to (Duties or) Excises based upon *use*, since slavery was a type of property that *would not have existed but for the express government authority allowing it*. Without colonial (and by historical precedent, later State) laws allowing for a property in men, there would have been no slavery in America.

It would be simple to show that the ownership of slaves was not a *necessity*, but a *luxury*, due to the disproportionate ownership of slaves by those of great wealth. England even provided the historical precedent of using slaves as articles of commerce that were laid with uniform Duties.

If the only requirements for property to be laid with an Excise were that property only had to be one of *luxury* and based upon government *privilege*, then the *use* of slaves ***should*** have been levied with a uniform Excise.

Under the economic principle that *higher prices* discourage (the ownership of) property, simply laying an Excise on the *use* of slave labor could have abolished it. Free labor would have been supported and slavery penalized, within proper moral and religious principles.

To not lay an Excise on (the use of) slaves but to hold other (use of) property arbitrarily subject to an Excise or Duty is to have the *worst* of both worlds — where an Excise would have freed oppressed people, saved hundreds of thousands of lives and countless fortunes, it was not laid. In other instances, Excises were laid on (the use of) property (carriages/watches) where no concurrent moral benefit occurred.

That there never was an Excise laid on the *use* of slaves better supports the argument that the *use* and ownership *of* property, at least under normal circumstances, cannot be separated.[9]

Hylton v. U. S. (3 U. S. 171 @ 173, 175)

Justice Samuel Chase, in his 1796 "opinion" in the case against the Duty nominally on carriages, stated (when one eliminates all superfluous wording) the argument necessary to prove unconstitutionality of the 1794 Carriage Duty Act:

> "The principles laid down, to prove the above law *void*, are these: That a tax on *carriages*, is a *direct tax*, and, therefore…must be laid *according to the census*…And that the tax in question…a tax on *carriages*, is not" (a Duty, Impost or Excise). (Italics in original).

In this case where the burden of proof was on the Appellant (Plaintiff in Error), he must correctly argue his point to succeed. It would be difficult to win an argument if he argued the *wrong* points (that the fee laid "on" carriages required apportionment [which it would]; but this fee was not laid *on* carriages, it was laid on the *use* of such carriages).

It would have been necessary to argue that the Excise laid on the *use* of carriages of luxury did not materially differ in practice from an unapportioned direct Tax, and therefore void; that if property and the *use* of property can be separated at will, then apportionment is a hollow requirement. Property without *use* has little or no value.

Chase also stated (with emphasis added in bold):

> "I think, an annual tax on carriages **for the *conveyance* of persons**, may be considered as within the power granted to Congress to lay *duties*...It seems to me, that a tax on *expence* is an *indirect* tax; and I think, an *annual* tax on a carriage **for the conveyance of persons**, is of that *kind*." (Italics in original).

Implied in Chase's equivocal statement is that the carriages were *used* for the conveyance of persons.

A sufficient number of Congressmen understood the difference between *use* and the property itself to get the Act passed; the Court Justices also understood the difference. Unfortunately, the real argument of *use* was not brought into the circuit Court.[10, 11]

One could not expect a court victory by arguing an irrelevant set of facts (that the Act laid an unapportioned Tax "on" property). The Act specifically stated that the fees were assessed on such property *kept for use* — failing to argue *use* versus *ownership* would naturally lead to failure, *especially in a case where guilt had been admitted* and where it was now incumbent upon the Plaintiff in Error to prove his innocence (and that the Act improperly imposed such fees).

9. Perhaps *leased* property, where the *use* and *ownership* have been actually *separated* by contract between the *owner* and *user* of the property in question, is the only type of property properly subject to an Excise.

10. Early American Imprints, Evans Collection, Microfiche Reference # 29606 "*An Argument Respecting the Constitutionality of the Carriage Tax*", by John Taylor. 1795.

11. Ibid, Ref. # 29889 "*The Substance of an Argument in the Case of the Carriage Duties*" by John Wickam, (Counsel for the U. S.). 1795.

Distributed by: Foundation For Liberty.org
1500 Highway 2
Leavenworth, WA 98826

www.FoundationForLiberty.org
Copyright 2004, 2005 by Beacon of Liberty, LLC.
www.BeaconofLiberty.org

