Volume II: Issue 6

The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

Clauses Discussed:
- Article I, Section 8, Clauses 1 & 2

Concepts Discussed:
- To lay and collect Taxes, Duties, Imposts and Excises
- To borrow Money

The specific purpose given for calling the convention in 1787 was to revise the Articles of Confederation to "render the federal constitution adequate to the exigencies of government, and the preservation of the union".

Foremost inadequate about the confederate government which threatened the Union was the inability to raise sufficient funds to pay for those exigencies of government, primarily then the war debts.

The Articles granted only the ability to the confederate Congress to lay (direct) Taxes (under State authority).[1] The **Eighth** of the **Articles of Confederation** provided that:

> "All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.
>
> "The Taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled."

A significant difference between the Articles and the Constitution was the ability under the latter to lay and collect Duties, Imposts and Excises (the imposition of which were not allowed under the former), as well as Taxes, all under congressional authority. This new ability better ensured that the United States would have sufficient funds to carry out their proper functions.

Foremost inadequate about the confederate government which threatened the Union was the inability to raise sufficient funds to pay for those exigencies of government, primarily then the war debts.

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

Under the Constitution, Duties, Imposts, and Excises tend not only to be less *oppressive* ([small] proportions taken almost imperceptibly on many purchases), but also more *discreet* as well. As such, Duties, Imposts and Excises can raise far greater sums of money over time (especially in a thriving economy) with less turmoil.

(Direct) Taxes are certainly capable of raising a significant amount of funds, but it comes from wealth which is generally the most illiquid — (real) property. Those 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.

1. Article IX of the Articles of Confederation also allowed the United States in Congress assembled the ability to exact "such postage…as may be requisite to defray the expenses of the said (post) office".

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

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

Precisely because the United States had such little money of their own, money had to be borrowed to fund the Revolutionary War effort. This action, of course, only put off the day of reckoning while adding to it the cost of interest.

Creditors who lent money to the Confederate government to help fund the war effort against Great Britain saw their investments being brutally discounted in the credit markets.[2]

The primary time-sensitive push for establishment and ratification of the Constitution was by the monied interests to ensure a future credit-worthy customer. Others who simply desired a more-competent government were not so pressed for time (though they too realized the gravity of the economic situation and knew that prolonged delay and uncertainty did not bode well for the Union).

Added to these groups were the speculators who foresaw a chance to buy heavily-discounted government debt and possibly redeem it in the near future (under a new, more powerful government) at par values to make substantial short-term profits.

Against those speculators were convention delegates who spoke about separating the various classes of creditors, and in effect, paying them based upon their purchase price rather than the nominal amount of the obligations.[3] The delegates had little real option, however, other than to propose payment at full par value for all debt obligations (see Art. VI, Clause 1 of the ratified Constitution).

2. On August 25th, 1787, Colonel George Mason of Virginia, as detailed in Madison's notes of the convention, expressed his opinion that the "first Holders" (original government creditors holding government debt instruments) had a better claim to (full) payment on their government securities than the "fair purchasers" (who bought from the first Holders) at "4. 5. 6. 8 for 1" (4:1, 5:1, 6:1, or 8:1 [25¢ to 12.5¢ on the $1]).

Mason placed a "great distinction" between either of these two parties and those speculators who "purchased fraudulently of the ignorant and distressed" (at even greater discounts).

3. Pierce Butler, of South Carolina, complained on August 23rd of the "Blood-suckers who had speculated on the distresses of others, as those who had fought & bled for their country". He desired to vote "for a discrimination between those classes of people, and gave notice that he should move for a reconsideration".

Convention Proposals

The first proposal at the Convention for that which would eventually become Article I, Section 8, Clause 1 was **Article VII, Section 1, Clause 1** of the **August 6, 1787 Report** from the **Committee of Detail**. As detailed by Madison in his notes of that day at the convention, the report proposed that:

> "The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises."

This proposed wording was agreed to by all the States *present* (Rhode Island and New York[4] were *absent*) on August 16, 1787 when this clause was first discussed.

4. New York was absent after July 10th because delegates Robert Yates and John Lansing, Jr. (correctly) believed that the convention delegates were acting beyond their proper authority as they crafted a *new* Constitution (rather than merely *revising* the Articles of Confederation as they were specifically charged). Being that they could not condone such activity with their continued presence, they boycotted the convention and took with them the voting ability of New York.

The number of delegates necessary to represent the States varied amongst them.[5] New York was the only State which did not specify in the credentials of the delegates the minimum number needed to properly represent the State.

New York voted on May 30th when but *two* delegates (Yates and Alexander Hamilton) were present (Lansing did not attend the convention until June 2nd). New York did not vote during the remainder of the convention after July 10th when only Hamilton was present. One can therefore deduce that at least *two* of the three New York delegates were required to properly represent the State.

Pennsylvania empowered any *four* of her eight delegates to represent her; Massachusetts, New Jersey, Delaware, Virginia, & North Carolina all specified *three*; South Carolina specified "Provided the State be not represented by less than *two*" *(or a majority* of the four delegates appointed); New Hampshire and Georgia specified *two*; Connecticut specified "one or more of them as shall actually attend the said Convention" (provided the others were absent "in case of sickness or accident"); Maryland specified any of "such of them as shall attend the said Convention shall have full Power to represent this State for the Purposes aforesaid".

When only one delegate from Maryland (James McHenry) attended between May 28th and June 1st, however, Maryland did not vote. McHenry left the convention on June 1st when his brother took ill (he returned in August). On June 2nd, Daniel of Saint Thomas Jennifer first attended for Maryland. On June 2nd, when this delegate was present and McHenry was absent, Maryland voted for first time. Delegate Robert Yates noted in his notes of the convention on June 2nd that "Present 11 states" (for the first time) with the attendance of Jennifer. (Vol. I of Farrand's Records, pg 89).

5. *Records of the Federal Convention of 1787*, Edited by Max Farrand, New Haven, Connecticut, Yale University Press, 1911. See Volume III, Pp. 559-590 for credentials of State delegates and Volume I, pg. xiv for notes regarding Yates and Lansing leaving the convention.

On August 18th, James Madison submitted a number of specified powers to be studied by the Committee of Detail, including the powers to:

> "To secure the payment of the public debt.
>
> "To secure all creditors under the New Constitution from a violation of the public faith when pledged by the authority of the Legislature."

On August 21st, the Committee (which had been committed on August 18th) delivered their report, discussion of which was laid on the table until the following day.

The committee's first recommendation for a clause to ensure payment of the debts incurred from fighting the Revolutionary War was as follows:

> "The Legislature of the U.S. shall have power to fulfil the engagements which have been entered into by Congress, and to discharge as well the debts of the U.S. as the debts incurred by the several States during the late war, for the common defence and general welfare."

Gouverneur Morris, of Pennsylvania, moved (on August 22nd) by way of amendment to substitute for the above wording the following, which was affirmed by all the States present:

> "The Legislature shall discharge the debts & fulfil the engagements, of the U. States."

Regarding the ability to raise revenue, the August 18th Committee of Detail recommended (Aug. 22nd):

> "At the end of the first clause of the first section of the seventh article add, '*for payment of debts and necessary expenses of the United States*'."

Due to such modification, **Article VII, Section 1, Clause 1** of the **August 6th Committee of Detail Report** recommendation was now proposed to read:

> "The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises for payment of debts and necessary expenses of the United States."

Discussion of this proposal continued on the 23rd of August. The clause was brought up again with an amendment, and approved to read as follows:

> "The Legislature shall fulfil the engagements and discharge the debts of the U.S. & shall have the power to lay & collect taxes duties imposts & excises."

The "engagements" and "debts of the U.S." refer most specifically to debts contracted and engagements entered into by the States and/or the Confederate Congress fighting the Revolutionary War, as also detailed explicitly in Article VI, Clause 1 of the final Constitution (to specifically acknowledge the debts of the United States *under the Confederation* would be paid by the United States *under the Constitution*).

On August 25th, discussion resumed on the taxing clause. (Madison noted that) Roger Sherman, of Connecticut:

> "thought it necessary to connect with the clause for laying taxes duties &c (& etc.) an express provision for the object of the old debts &c — and moved to add to the 1st clause of 1st sect. Art VII '*for the payment of said debts and for the defraying the expences that shall be incurred for the common defence and general welfare*'."

Roger Sherman's proposal would have changed Article VII, Section 1, Clause 1 of the August 6th Committee Report to read:

> "The Legislature of the United States shall have the power to lay and collect taxes, duties, impost and excises for the payment of said debts and for the defraying the expences that shall be incurred for the common defence and general welfare."

Sherman's proposal would have specifically tied the raising of revenue to the payment of the debts of the United States incurred from providing the common defense and general welfare. Though Sherman's proposal was initially strongly *defeated* (10:1 against) as "unnecessary", Sherman was ultimately avenged.

On August 31st, Sherman motioned for a committee to be formed to deal with issues which had been postponed and the portions of Reports which had not yet been acted upon. The committee was formed and Sherman was elected as one of the 11 committee members.

The committee report of September 4th made nine recommendations for alterations or additions to the preliminary Constitution being formed. Their first recommendation was to alter the **first Clause** of **proposed Section I** of **Article 7** to read:

> "The Legislature shall have power to lay and collect taxes duties imposts and excises, to pay the debts and provide for the common defence & general welfare, of the U.S."

Upon vote, the 11 States present now voted unanimously to add the wording "to pay the debts and provide for the common defence & general welfare of the United States" to the words that Congress shall have power "to lay and collect taxes duties imposts and excises".

This wording was essentially kept intact in final form (the "Legislature" was replaced with "Congress", and the requirement for uniformity of Duties, Imposts and Excises was added) in the Constitution as ratified.

The inclusion of the wording "to pay the Debts and provide for the common Defence & general Welfare" was, as shown by the specific wording, sentence

structure, and history of such clause, specifically added to link together the laying and collecting of Taxes, Duties, Imposts and Excises to provide sufficient funds to meet the proper expenses of government.

It must be stated that the delegate's primary reason for doing this was **not** specifically to ensure that the raising of revenue was strictly *limited* to providing the proper ends of government. The primary purpose for this wording was to allay the fears of the creditors of the United States. The words were added to specifically ensure that creditors would understand that Congress was properly-empowered to raise funds to cover these express purposes of proper government.

To borrow Money

Article I, Section 8, Clause 2 of the Constitution affirms that the Congress shall have Power:

> "To borrow Money on the credit of the United States."

The power of Congress "to borrow Money" is a power dissimilar from all other governmental powers. It is simple enough to give Congress the ability to borrow money, but that in itself does not mean that the government will ever be loaned even one dollar.

This clause points out the primary weakness of government, where government has no extraordinary power.

This clause proves that government (at least for this one power) is subservient to Murphy and his Golden Rule: *He who has the Gold Makes the Rules*.

Murphy's Golden Rule trumps the awesome powers of government.

Government cannot easily command others to loan it money. If it is another's money, this person or entity has the right to decide what to do with it.

While the (temporary) *use* of a Citizen's money seems to be a lesser evil than the permanent confiscation of it, the basis for the borrowing and loaning of money and the basis for the imposition of a Tax, Duty, Impost or Excise are not co-equal.

The idea that government has the right to the *use* of another's money has not been recognized in any major government. The concept that government could force Citizens to loan it money is an idea which is fraught with inherent contradictions (Taxes, Duties, Imposts and Excises are viewed as legitimate charges for providing necessary services, even though force is used [or threatened] to obtain those funds).

The loaning of money acknowledges the fundamental ownership of that wealth by the Citizen or entity, neither of which can be deprived of property without due process (and just compensation).

The laying of a Tax, Duty, Impost or Excise to permanently divest such Citizen from a portion of his wealth lays on the principle that government is necessary for society to develop and that government must be supported.

Any number of the functions which the government provides are difficult to charge for directly (though creative alternatives should be continuously sought); broad-based revenue is therefore collected indirectly from those who obtain benefit since it must come from somewhere.

The borrowing and loaning of money supports government while supporting private property. The laying of Taxes, Duties, Imposts, and Excises acknowledges that there is no such thing as a free lunch and that all must pay their "appropriate" share of government providing for the common defense and general welfare.

Government must go to the market as any individual and provide sufficient income, collateral and a proper credit history before money begins flowing in that direction in the form of a loan.

The rule that the debtor is beholden to the creditor does not necessarily subside just because the debtor happens to be government. That the government must act in certain fashion to maintain its ability to borrow money may not often be discussed, but this does not mean that this is not true. That the government must kowtows to the monied-interests should not be a surprise to anyone — those of sufficient wealth can wield their influence by deciding to whom they loan that money.

The government's ability to borrow money under the Articles of Confederation had essentially ceased. The government's ability to emit *bills of credit* (paper money) and spend its way out of financial ruin had, due to previous over-emission (resulting in hyper-inflation/monetary debasement), also ceased.

With the cessation of the Revolutionary War in 1783, creditors who previously felt a strong sense of patriotism and desire of independence from oppression were now more likely to look at their limited funds in a new light. They would again be primarily concerned with debt repayment and profit potential and would therefore withhold future funds until better assurance of repayment was provided.

Just as with any entity or individual, the income/outgo of government is looked at closely by those loaning funds. The primary income to the government is, of course, the various Taxes, Duties, Imposts and Excises which are listed in Clause 1.

Sales of government assets were another important source of government revenue during the period of limited government (total federal government revenue in 1836 came 49% from sales of public lands and 51% from various Duties, Imposts or Excises).[6]

Looked at in proper fashion, the tying of the wording in Clause 1 "to pay the Debts and provide for the common Defence and general Welfare of the United States" to the laying and collecting of "Taxes, Duties, Imposts and Excises" was not necessarily to provide for *immediate* needs, but to provide support for the power of Clause 2 to borrow Money in the future.

The largest of uncertainties for future need has historically been to defend against foreign aggression. War is not only devastating to people and buildings, but is also incredibly devastating to the pocketbook. One of the most critically-important weapons for war is a thick wallet. Besides ready cash in the billfold, of equal or greater importance is the credit card with a high spending limit.

The wording in Clause 1 “to lay and collect Taxes, Duties, Imposts and Excises”, then can be seen to directly provide for the *immediate* needs of government. The added wording “to pay the Debts and provide for the common Defence and general Welfare of the United States” can be seen as additional assurance that the government would be best able to provide for *future* needs.

The added wording in Clause 1 “to pay the Debts and provide for the common Defence and general Welfare of the United States” was added to provide proper support for the power of Clause 2 “to borrow Money”.

The added wording in Clause 1 “to pay the Debts and provide for the common Defence and general Welfare of the United States” was added to provide proper support for the power of Clause 2 “to borrow Money”.

Knowing first-hand and full well the cost of war, the framers of the Constitution sought to provide ample power to Congress to raise sufficient funds to provide for necessary government actions.

Whereas $20,000,000 was spent on interest in the Revolutionary War (20% of total original costs [not counting Veteran's benefits]), $1,172,000,000 was spent for interest in the War between the States (North only), or 37% of the war's original cost.[7]

As the victors in war repeatedly show, the financial strength of the parties comes into play almost as much as their determination. The *financial* strength, of course, helps determine *numerical* strength, both in men and armament. Critical in any war is the chest of gold and a platinum credit card to better allow one to persevere until success.

From such economic shambles under the Articles of Confederation (not so much to people of less means, but especially to the government and the monied men who lent it money), the framers of the Constitution sought to ensure the government's ability "to borrow Money".

The wording of Clause 1 specifically meant to provide assurance that the power to raise revenue would *extend* to such named purposes. With this express safety check, creditors would open the floodgates to loan government money when the government needed it.

The extension of such power to raise revenue to pay the debts and provide for the common defense and general welfare acts, also to restrict the ability of Congress (*beyond* such purposes), however.

For instance, with such express wording to "provide for the common Defence and general Welfare", it would be difficult to specifically argue that the ability to raise revenue extends to providing for the *un*common defense, the common *offense*, or the *uncommon offense*.

It would also be difficult to argue that the power to raise revenue would extend to such purposes as the *specific* welfare (of certain individuals or entities) of the United States, to the general *detriment* of the United States, to the *specific detriment* (of certain individuals or entities) of the United States, to the general welfare of those *not* of the United States, to the general *detriment* of those *not* of the United States or to the *specific detriment* of those *not* of the United States.

In an interesting test to see how far America has traveled down the road of government omnipotence is to temporarily concede to those who support the theory that Congress may do anything which could be said to be for the common defense or the general welfare of the United States.

---

6. *Historical Statistics of the United States, Colonial times to 1970*, U.S. Department of Commerce, Bureau of the Census, printed as House Document No. 93-78 of the 93rd Congress, 1st Session, Series Y 352 & Y356, Pg. 1106.

7. Ibid, Series Y854 & Y855. Pg. 1140.

20th century American history provides innumerable examples of instances which far exceed the given themes (especially for the *general welfare*). How many different actions which the federal government performs today would not even fit within "the common Defence of the United States" or for "the general Welfare of the United States"?

For example, *income redistribution* (the taking from Peter to give to Paul) can in no way be regarded as for the *general* welfare. The creation of a victor and victim class can never be considered *general*. The removal of all potential sources of envy (by making everyone equally poor) cannot easily be said to be for anyone's *welfare*.

The creation of a victor and victim class can never be considered *general*.

Subsidies by their very nature punish *success* and reward *failure*, exactly opposite of the long-term interests of a nation.

To oppressively tax Americans for (excessive amounts of) foreign aid cannot easily be said to be for the general welfare *of the United States*.

Constitutional Requirements of Raising Revenue

The Constitution imposes a number of *qualifications* and *restrictions* regarding the laying and collecting of Taxes, Duties, Imposts and Excises.

Regarding the generation of revenue by Congress, the Constitution provides two primary requirements (qualifications). The first requirement that *direct Taxes must be apportioned* is listed in Article I, Section 2 and is repeated in Section 9 (the only principle in the main body of the Constitution to be so repeated).

Article I, Section 2, Clause 3 states:

> "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."

Article I, Section 9, Clause 4 repeats the requirement for apportionment for direct Taxes.

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

The second qualification of *uniformity* for all 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*."

Besides these two major qualifications, there is a *procedural* qualification in **Article I, Section 7, Clause 1**, which reads:

> "*All Bills for raising Revenue shall originate in the House of Representatives*; but the Senate may propose or concur with Amendments as on other Bills."

Besides qualifications, the Constitution also lists *exceptions*. **Article I, Section 9, Clause 5** provides the primary exception, stating:

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

Article I, Section 2, Clause 3 provides what turned out to be a temporary exemption (Indians not taxed), giving the formula for determining the respective number for the apportionment of direct Taxes. **Article I, Section 2, Clause 3** states:

> "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*."

Free Persons and indentured servants were counted in Clause 3 fully as a whole number each; Indians not taxed were not counted at all (*exempted* fully); and all other Persons (slaves) were counted in three-fifths proportion (two-fifths *exempted*).

Article I, Section 9, Clause 1 restricts taxation through the specific allowance of it to a limited extent. Knowing that the power to tax includes the power to destroy, the Southern States did not want the slave trade destroyed. A compromise was fashioned which prohibited the Congress from regulating the slave trade before 1808, but the allowance of a Tax or duty not exceeding $10 was allowed upon the *importation* of any slave (free Citizens *migrate*). **Clause 1** reads:

> "The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a *Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person*."

Article I, Section 9 prohibits favoritism or cronyism among the ports in the various States. Exempting vessels bound to one State from having to pay Duties in another and prohibiting favoring one port over another was to allow commerce to prosper without political consideration (certain ports, of course, are more important than others due to depth of channel, local weather patterns, industries served, market size, etc.). **Clause 6** reads:

> "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 States are specifically prevented in **Article I, Section 10** from laying Imposts or Duties in certain situations. **Clause 2** reads:

> "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: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress."

Clause 3 of **Section 10** reads, in part:

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

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.

The **Twenty-fourth Article in Amendment**, ratified in 1964, prohibited anyone from being denied the right to vote when that person did not pay any *poll tax* or other tax. Though one does not pay Taxes cannot be used as a means to keep that person from voting.

As a noun, *poll* references specifically a *head* (literally the back/top of one's head) As a verb, *poll* references the tallying of each person individually (i.e., their vote). A poll tax is therefor a head [capitation] tax; without reference to position, income, property of the person being taxed, or ability to pay).

In summation, the Constitution provides the following Qualifications, Prohibitions and Requirements with regards to raising revenue:

A. Qualifications

1. Direct Taxes shall be apportioned among the several States...according to their respective Numbers.

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 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.

C. Prohibitions which turned out to be temporary

1. Indians were not taxed

2. Two fifths of "all other Persons" were exempted from Tax, though a Tax or Duty could be laid upon their importation up to $10 each.

D. Procedural Qualification:

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

E. Restrictions applicable to the States:

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

2. 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 its inspection Laws.

3. The net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States.

4. All State Revenue laws regarding Imports or Exports shall be subject to the Revision and Control of the Congress.

Taxes, Duties, Imposts and Excises

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.

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

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*, including *Capitation* Taxes (also a direct Tax), must be *apportioned*.

The Constitution gives the requirement that *direct Taxes* must be apportioned, but specifically allows *Taxes* to be laid and collected.

Unfortunately, there is no express qualification listed within the Constitution specifically for *Taxes*.

There is no express qualification within the Constitution specifically for *Taxes*.

That these Sections were not written consistently presents Americans 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.[8]

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.

---

8. The 16th Amendment specifically references a "Tax" on incomes while also specifically exempting the tax from apportionment. This amendment provides the first true example of an indirect Tax, by definition (unapportioned methods of raising revenue would have been previously been referred to more precisely as an *excise* in a less-confusing manner).

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

www.FoundationForLiberty.org
Copyright 2003, 2005 by Beacon of Liberty, LLC.
www.BeaconofLiberty.org

