Volume II: Issue 7

The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

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

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

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. The general restriction and prohibition on the States from laying Imposts or Duties on Imports or Exports is detailed in **Article I, Section 10** of the Constitution. **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 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 by the United States to foreign countries allowed foreign producers better access to the American market.

This uniformity helped spur foreign trade which helped consumers and businesses by supplying them with imported goods to complement those available domestically.

There is a decided advantage in the study first of those items of revenue without ambiguity and which, overall, are unfamiliar. With the clear requirement of uniformity in Article I, Section 8, Clause 1 of the Constitution for the imposition of Duties, Imposts and Excises, study will begin here under this logic.

When discussing Duties, Imposts and Excises, it is, of course, helpful to know more-precisely these terms. They are, along with Taxes, often used improperly as inter-changeable types of revenue. Due to such incorrect usage over many years (even within laws), it is now unfortunately difficult to prescribe precise legal meaning to them.

Imposts are the most strictly-limited forms of revenue on the list and thus should be easiest to define. Imposts are a type of Duty (essentially, 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 only upon imported goods. Imposts are synonymous with the term *Customs* or, more fully, *Customs Duties*.

Imposts are Fees Laid upon Imported Goods

Duties became the chief form of revenue for early government from ratification of the Constitution until the Civil War era. The large majority of the Duties imposed in the first era of government were as Imposts on *imported* goods. 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.

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A *Duty of Tonnage* is a fee laid on ships or vessels for entering and clearing a port and paid according to their Tonnage[1] weight (burthen weight/carrying capacity), rather than on the goods which they happen to haul.

Duties not relating to importation will be discussed when the acts which laid them are covered.

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. These forms of revenue have been used more fully under the second and third eras of government since early in the 20th century.

A fuller understanding of Duties, Imposts and Excises can best be seen by studying the actual laws which imposed them.

The second enactment of law of the first Congress (**Chapter II**, Volume I, U. S. Statutes at Large, pg. 24), was "*An Act for laying a Duty on Goods, Wares, and Merchandises imported into the United States*".

Section 1 of the Chapter II act reads (in its entirety):

> "Whereas it is necessary for the support of government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid on goods, wares and merchandises imported:
>
> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the first day of August next ensuing, the several duties herein-after mentioned shall be laid on the following goods, wares and merchandises imported into the United States from any foreign port or place, that is to say:
>
> "On all distilled spirits of Jamaica proof, imported from any kingdom or country whatsoever, per gallon, ten cents.
>
> "On all other distilled spirits, per gallon, eight cents.
>
> "On molasses, per gallon, two and a half cents.
>
> "On Madeira wine, per gallon, eighteen cents.
>
> "On all other wines, per gallon, ten cents.
>
> "On every gallon of beer, ale or porter in casks, five cents.
>
> "On all cider, beer, ale or porter in bottles, per dozen, twenty cents.
>
> "On malt, per bushel, ten cents.
>
> "On brown sugars, per pound, one cent.
>
> "On loaf sugars, per pound, three cents.
>
> "On all other sugars, per pound, one and a half cents.
>
> "On coffee, per pound, two and a half cents.
>
> "On cocoa, per pound, one cent.
>
> "On all candles of tallow, per pound, two cents.
>
> "On all candles of wax or spermaceti, per pound, six cents.
>
> "On cheese, per pound, four cents.
>
> "On soap, per pound, two cents.
>
> "On boots, per pair, fifty cents.
>
> "On all shoes, slippers or goloshoes made of leather, per pair, seven cents.
>
> "On all shoes or slippers made of silk or stuff, per pair, ten cents.
>
> "On cables, for every one hundred and twelve pounds[2], seventy-five cents.
>
> "On tarred cordage, for every one hundred and twelve pounds, seventy-five cents.
>
> "On untarred ditto, and yarn, for every one hundred and twelve pounds, ninety cents.
>
> "On twine or packthread, for every one hundred and twelve pounds, two hundred cents.
>
> "On all steel unwrought, for every one hundred and twelve pounds, fifty-six cents.
>
> "On all nails and spikes, per pound, one cent.
>
> "On salt, per bushel, six cents.
>
> "On manufactured tobacco, per pound, six cents.
>
> "On snuff, per pound, ten cents.
>
> "On indigo, per pound, sixteen cents.
>
> "On wool and cotton cards, per dozen, fifty cents.
>
> "On coal, per bushel, two cents.
>
> "On pickled fish, per barrel, seventy-five cents.
>
> "On dried fish, per quintal, fifty cents.
>
> "On all teas imported from China or India, in ships or vessels built in the United States, and belonging to a citizen or citizens thereof, or in ships or vessels built in foreign countries, and on the sixteenth day of May last wholly the property of a citizen or citizens of the United States, and so continuing until the time of importation, as follows:
>
> "On bohea tea, per pound, six cents.
>
> "On all souchong, or other black teas, per pound, ten cents.
>
> "On all hyson teas, per pound, twenty cents.
>
> "On all other green teas, per pound, twelve cents.
>
> "On all teas imported from Europe in ships built in the United States, and belonging wholly to a citizen or citizens thereof, or in ships or vessels built in foreign countries, and on the sixteenth day of May last wholly the property of a citizen or citizens of the United States, and so continuing until the time of importation, as follows:
>
> "On bohea tea, per pound, eight cents.
>
> "On all souchong, or other black teas, per pound, thirteen cents.
>
> "On all hyson teas, per pound, twenty-six cents.
>
> "On all other green teas, per pound, sixteen cents.

1. One *Ton* of carrying capacity of a ship is the expression of the *area* measurement of forty-two cubic feet.

2. Though a *hundredweight* (abbreviated *cwt.*) in the United States was 100 pounds (avoirdupois weight), in England it was 112 pounds.

"On all teas imported, in any other manner than as above mentioned, as follows: —

"On bohea tea, per pound, fifteen cents.

"On all souchong, or other black teas, per pound, twenty-two cents.

"On all hyson teas, per pound, forty-five cents.

"On all other green teas, per pound, twenty-seven cents.

"On all goods, wares or merchandises, other than teas, imported from China or India, in ships not built in the United States, and not wholly the property of a citizen or citizens thereof, nor in vessels built in foreign countries, and on the sixteen day of May last wholly the property of a citizen or citizens of the United States, and so continuing until the time of importation, twelve and a half per centum ad valorem.

On all looking-glasses, window and other glass (except black quart bottles),
"On all China, stone and earthern ware,
"On gundpowder,
"On all paints ground in oil,
"On shoe and knee buckles,
"On gold and silver lace, and
"On gold and silver leaf,
— Ten per centum ad valorem.

"On all blank books,
"On all writing, printing or wrapping paper, paper-hangings and pasteboard,
"On all cabinet wares,
"On all buttons,
"On all saddles,
"On all gloves of leather,
"On all hats of beaver, fur, wool, or mixture of either,
"On all millinery ready made,
"On all castings of iron, and upon slit and rolled iron,
"On all leather tanned or tawed, and all manufacture of leather, except such as shall be otherwise rated,
"On canes, walking sticks and whips,
"On clothing ready made,
"On all brushes,
"On gold, silver, and plated ware, and on jewelry and paste work,
"On anchors, and all wrought, tin, and pewter ware,
— Seven and a half per centum ad valorem.

"On playing cards, per pack, ten cents.

"On every coach, chariot or other four wheel carriage, and on every chaise, solo, or other two wheel carriage, or parts thereof, — fifteen per centum ad valorem.

"On all other goods, wares and merchandise, five per centum on the value thereof at the time and place of importation, except as follows: saltpetre, tin in pigs, tin plates, lead, old pewter, brass, iron and brass wire, copper in plates, wool, cotton, dyeing woods and dyeing drugs, raw hides, beaver, and all other furs, and deer skins."

The first substantial action of Congress, as detailed in the Preamble of this act of July 4, 1789, was to provide financial support for the government by enacting import Duties. It is logical that a provision to financially support the government would be among the first activities of the new Congress. This follows from the financial necessity that a government must have funds in order to operate.

The first substantial action of Congress was to provide financial support for the government by enacting import Duties.

Legislative acts occasionally use *preambles*, which are words used to help show legislative *intent* (at least the intent to which Congress is willing to admit). Such wording is not part of the law actually enacted (notice that this wording is given *before* the enacting clause ("*Be it enacted…*").

It is interesting that the preamble to Chapter II states that the law is also for "the encouragement and protection of manufactures". Though such wording does not state (domestic) *manufacturers*, it may as well have, for that is the ultimate meaning of such wording. Due to this stated intent of the first Congress (as well as numerous acts themselves), it would be difficult to attempt to prove that the early government did not view *protectionism* (of American *products*, if not *producers*) against foreign competition as a legitimate government function.

Combined with the express power of Article I, Section 8, Clause 3 "to regulate Commerce with foreign Nations", the power of Congress affecting foreign trade is a far-reaching power.

This act of the Fourth of July placed Duties on "goods, wares, and merchandises *imported into the United States from any foreign port or place*".

Duties laid upon imported goods are generally politically the least offensive form of revenue that Congress can lay (at least when imported goods come from countries with lower operating costs than the United States).

American Imports in the 21st century are often from countries with less-expensive business climates, especially due to low labor rates and few business regulations. In early America, however, most imports came from Europe (mostly the United Kingdom of Great Britain [England, Scotland & Wales] and Ireland, even though Europe generally had the highest labor and general business rates), because the United States was far less-developed. It was not until 1917 (due to World War I) that imports from Asia overtook Europe in the

value of overall imports into America.[3] Even through to 1970 however, whether Asia or Europe exported more goods to the United States was a toss-up on any given year (in 1953/4, imports into the United States from Red China ceased; under the Jackson-Vanik Amendment to the Trade Act of 1974 [88 Stat. 1978], China must receive annual waivers to trade with the U.S.).

Countries of Europe then offered more-refined goods which were often otherwise unavailable. Imposts on expensive goods are more intrusive generally than on inexpensive goods, but they generally affect fewer people (thereby still being less politically-offensive generally).

The extensive reach of the Duties to numerous items can be readily seen in Section 1 of Chapter II. The differences between the specific and ad valorem Duties can be easily understood by reading the said Section; the first laid on goods according to their unit or weight, the latter on the item's value.

The last paragraph of Section 1 declares that the value of goods for the ad valorem Duties is figured "at the time and place of importation". If one is able to buy foreign goods inexpensively and import them into the United States where they happen to be valued highly, importers benefit by lower valuations when the goods are valued at the place of importation.

Sections 1 and 5 of this act provided a direct stimulus to the American-owned shipping industry, tilting the favor *toward* American-owned shipping companies (the American ship-*building* industry received its stimulus in the act following). **Section 5** allowed a *discount* of ten per centum on all Duties imposed by the Act when the goods imported came in:

> "vessels built in the United States, and which shall be wholly the property of a citizen or citizens thereof, or in vessels built in foreign countries, and on the sixteenth day of May last, wholly the property of a citizen or citizens of the United States, and so continuing until the time of importation."

The third Act of the First Congress (Chapter III; I Stat. 27) imposed Duties of Tonnage. Duties were paid on the tonnage capacity of the ships or vessels when they entered into a port of entry in one of the various States. **Chapter III** reads (in its entirety):

> "Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the following duties shall be, and are hereby imposed on all ships or vessels entered in the United States, that is to say:
>
> "On all ships or vessels built within the said States, and belonging wholly to a citizen or citizens thereof; or not built within the said States, but on the twenty-ninth day of May, one thousand seven hundred and eighty-nine, belonging, and during the time such ships or vessels shall continue to belong wholly to a citizen or citizens thereof, at the rate of six cents per ton. On all ships or vessels hereafter built in the United States, belonging wholly, or in part, to subjects of foreign powers, at the rate of thirty cents per ton. On all other ships or vessels, at the rate of fifty cents per ton.
>
> "Sec. 2. *Provided always, and be it enacted*, That no ship or vessel built within the aforesaid States, and belonging to a citizen or citizens thereof, shall, whilst employed in the coasting trade, or in the fisheries, pay tonnage more than once in any year.
>
> "Sec. 3. *And be it further enacted*, That every ship or vessel employed in the transportation of any of the produce or manufactures of the United States, coastwise within the said States, except such ship or vessel be built within the said States, and belong to a citizen or citizens thereof, shall, on each entry, pay fifty cents per ton.
>
> "Sec. 4. *And be it further enacted*, That this act shall commence and be in force from and after the fifteenth day of August next.
>
> "Approved, July 20, 1789."

The act imposed a Duty of six cents per ton for any ship or vessel owned by a Citizen of any of the United States (even if foreign-built, as long as it was American-owned on May 29, 1789 and remained so).

A Duty of *thirty cents per ton* was imposed on all American-built ships owned by foreign subjects; while a Duty of fifty cents per ton was imposed upon all other ships, including foreign-built ships owned by foreign subjects or foreign-built ships first owned by Americans after May 29, 1789.

American-built, American-owned "coasting" vessels (ships and vessels fishing or trading between the various ports only along the American coast) paid Tonnage Duties (at six cents per ton) but once per year (with all others subject to such Duties [fifty cents per ton] upon every [re-] entry into the ports of the United States).

The act of July 31, 1789 (I Stat. 29) denominated "*An Act to regulate the Collection of the Duties imposed by law on the tonnage of ships or vessels, and on goods, wares and merchandises imported into the United States*" (detailed in **Chapter V** of the Statutes) provided extensive regulations, workings and details for the imposition of the Customs Duties which had been imposed under Chapters II and III.

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3. *Historical Statistics of the United States, Colonial Times to 1970*, Bureau of the Census, U.S. Department of Commerce, printed as House Document Number 93-78, 93rd Congress, First Session. Pp. 905 - 907, Series U 343, U 347.

Section 1 of the July 31st act established the various collection districts. Each State was divided into one or more districts depending upon the quantity, quality and importance of their Ports (New Hampshire, Pennsylvania, and Delaware constituted *one* district each; New York *two*; Connecticut, New Jersey and South Carolina *three*; Georgia *four*; Maryland *nine*; Virginia *twelve*, and Massachusetts was constituted into *twenty* districts).

As pointed out in Section 38 below, Rhode Island and North Carolina, as of the July 31, 1789 date of this act, had not yet ratified the Constitution and thus were not considered then as part of the United States.[4]

Section 38 reads, in part:

> "*And whereas*, The States of Rhode Island and Providence Plantations, and North Carolina, have not as yet ratified the present Constitution of the United States, by reason whereof this act doth not extend to the collecting of duties within either of the said two States, and it is thereby become necessary that the following provision with respect to goods, wares or merchandise imported from either of the said two States should for the present take place:
>
> "Sec. 39. *Be it therefore further enacted*, That all goods, wares or merchandise not of their own growth or manufacture, which shall be imported from either of the said two States of Rhode Island and Providence Plantations, or North Carolina, into any other port or place within the limits of the United States, as settled by the late treaty of peace, shall be subject to like duties, seizures and forfeitures, as goods, wares or merchandise imported from any State or country without the said limits."

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 to 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*."

Section 2 of the July 31st act prohibited ships or vessels not wholly owned by Citizen(s) of the United States from unloading at any ports except the larger ports specifically listed. Ships or vessels traveling from the Cape of Good Hope (tip of South Africa) or beyond were further generally restricted to only to the largest of the ports specifically named.

A ship or vessel destined for a Port of Delivery had to first come to the Port of Entry of the appropriate district. At the Port of Entry, the master or commander of any ship or vessel would, within 48 hours (see Section 11) and as specified in **Section 3**:

> "make entry, deliver a manifest of her cargo, and pay, or secure to be paid, all legal duties, tonnage, port fees and charges, in manner by this act provided, before such ship or vessel shall proceed to her port of delivery."

The wording of Section 3 provides the primary purpose of such Ports of Entry; which is to receive all Duties, port fees and charges — i.e., to collect revenue.

The officers manning the Port included the *Collector*, whose duty was to:

> "receive all reports, manifests and documents made or exhibited to him by the master or commander of any ship or vessel, conformably to the regulations prescribed by this act, to make due entry and record in books to be kept for that purpose, all such manifests and the packages, marks and numbers contained therein; to receive the entry of all ships and vessels, and of all the goods, wares and merchandise imported in such ships or vessels, together with the original invoices thereof; to estimate the duties payable thereon, and to endorse the same on each entry; to receive all monies paid for duties, and to take all bonds for securing the payment of duties; to grant all permits for the unlading and delivery of goods, to employ proper persons as weighers, gaugers, measurers and inspectors at the several ports within his district, together with such persons as shall be necessary to serve in the boats which may be provided for securing the collection of the revenue, to provide at the public expense, and with the approbation of the principal officer of the treasury department, store-houses for the safe keeping of goods, together with such scales, weights and measures as shall be deemed necessary, and to perform all other duties which shall be assigned to him by law."

4. North Carolina ratified the Constitution on November 21, 1789 and Rhode Island May 29, 1790.

The duty of the *Naval Officer* was to:

> "receive copies of all manifests, to estimate and record the duties on each entry made with the collector, and to correct any error made therein, before a permit to unlade or deliver shall be granted; to countersign all permits and clearances granted by the collector."

The duty of the *Surveyor* was to:

> "superintend and direct all inspectors, weighers, measurers and gaugers within his district, and the employment of the boats which may be provided for securing the collection of the revenue; to go on board ships or vessels arriving within his district, or to put on board one or more inspectors, to ascertain by an hydrometer, what distilled spirits shall be of Jamaica proof, rating all distilled spirits which shall be of the proof of twenty-four degrees as of Jamaica proof, and to examine whether the goods imported are conformable to the entries thereof; and the said surveyors shall in all cases be subject to the control of the collector and naval officer."

Each of these Officers of the Customs had to take an oath to "truly and faithfully execute and perform all the duties" of their respective offices "according to law, and the best of (their) skill and ability".

Each officer also had to provide bonding, the amount of which varied depending upon the level of commerce activity of the district. By a comparison of the bonds of the Officers of the Mint[5], one can understand the high level of importance of the Officers of the Customs and then get a feel for the vast amount of money which some of them handled.

Section 28 of the act provided the bonding requirements for the officers of the various districts. Collectors in the districts not named (i.e., those with the lowest rates) required a *two* thousand dollar bond. The lowest rate for the named districts required a *five* thousand dollar bond. Many Collectors had a *ten* thousand dollar bonding requirement, others *fifteen*, *thirty*, and even *forty* thousand dollars. The Collector of New York required a *fifty* thousand dollar bond and of the Collector of Philadelphia was required a *sixty* thousand dollar bond. The bonding level for Naval Officers of named ports was $10,000; all others required a $2,000 bond; Surveyors were $5,000 and $1,000.

The Duties and fees to be collected were required to be paid by the *importer* in Section 19 of the act. Before a permit would be granted to land goods, the Duties were required to be paid (amounts over $50 could be bonded).

Payment for amounts over $50 made immediately (in gold or silver coin, as required in Section 30) received a 10% discount (as detailed in Section 19).

Duties over the amount of $50 could be secured by monetary bond payable within four to twelve months (depending upon the particular articles imported).

Another option for amounts over $50 allowed by Section 19 was to deposit a quantity of the imported goods with the Collector (at the expense and risk of loss to the depositor) *double* of the value of the monetary bond. At the end of the time limit, if the bond was not yet monetarily satisfied, the deposited goods were sold at auction to the highest bidder (with the importer receiving any excess over the Duty and related charges).

In Section 29 of the Act, the following fees were allowed and paid to the Collector of the district (and split with the Naval Officer where both happened to be located at the same port) for their pay and "necessary expenses of stationary, and the rent of an office":

> "For every entrance of any ship or vessel of one hundred tons burthen or upwards, *two dollars and a half*; for every clearance of any ship or vessel of one hundred tons burthen or upwards, *two dollars and a half*; for every entrance of any ship or vessel under the burthen of one hundred tons, *one dollar and a half*; for every clearance of a ship or vessel under one hundred tons burthen, *one dollar and a half*; for every permit to land goods, *twenty cents*; for every bond taken officially, *forty cents*; and for every permit to load goods for exportation, which are entitled to drawback, *thirty cents*; and for every official certificate, *twenty cents*; and for every bill of health, *twenty cents*; for every other official document (registers excepted) required by the owner or master of every vessel, not before enumerated, *twenty cents*."

To such Collectors were also allowed one-half (at the larger ports) or one percent (at the smaller ports) of "all monies by them respectively received and paid into the treasury of the United States".

To each *Surveyor* was allowed:

> "On board any ship or vessel of one hundred tons and upwards, and having on board goods, wares and merchandise, subject to duty, *three dollars*; for the like services on board any ship or vessel of less than one hundred tons burthen, having on board goods, wares and merchandise, subject to duty, *one and a half dollars*; on all vessels not having on board goods, wares and merchandise, subject to duty, *two thirds of a dollar*."

To each *Inspector*:

> "There shall be allowed for every day he shall be actually employed in aid of the customs, a sum not exceeding *one dollar and twenty-five cents*."

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5. Initially set at $10,000 each for the Assayer, Chief Coiner, and the Treasurer, before being later lowered, as discussed in B.O.L. I:10.

To the *Measurers, Weighers and Gaugers*:

> "For the measurement of every one hundred bushels of salt or grain, *eighteen cents*; for the measurement of every one hundred bushels of coal, *twenty-five cents*; for the weighing of every one hundred and twelve pounds, *one cent*; for the gauging of every cask, *six cents*."

That such officers (other than the Inspectors) were not paid a set rate (monthly salary or hourly rate) seems odd today. That Collectors of the Revenue would be compensated on the basis of their output would allow them much of the benefit of having a private business (income based upon output), but little of the disadvantage (namely competition, for this business would be protected as an area-monopoly by government-instituted mandate).

Section 17 of the Act (Chapter V) gave the formula for placing the value of all goods subject to ad valorem Duties discussed in Chapter II (actual cost at place of importation, exclusive of all charges, plus 10% or 20%):

> "*And be it further enacted*, That the ad valorem rates of duty upon all goods, wares and merchandise, at the place of importation, shall be estimated by adding twenty per cent. to the actual cost thereof, if imported from the Cape of Good Hope, or from any place beyond the same; and ten per cent. on the actual cost thereof, if imported from any other place or country, exclusive of all charges."

Section 15 authorized the landing on board of any ship or vessel at any port, inspectors whose main duty was to verify the manifests with the actual cargo (to ensure payment of proper Duties and prevent smuggling).

Section 23 allowed the Officers of the Customs, after entry of the ship, to open and examine, in the presence of two or more reputable merchants, any package on suspicion of fraud. Goods not matching the manifests were subject to forfeiture and seizure.

Section 20 of the Act required that all Duties imposed on the tonnage of any ship or vessel be paid within 10 days of entry and prior to clearing out of such port.

The act further provided Officers of the Customs direct monetary incentive to watch out for smuggling and to prosecute the same, as also for Informants, allowing each a cut of the action. **Section 38** provided that:

> "All penalties, fines and forfeitures, recovered by virtue of this act (and not otherwise appropriated), shall, after deducting all proper costs and charges, be disposed of as follows: One moiety shall be for the use of the United States, and paid into the treasury thereof; the other moiety shall be divided into three equal parts, and paid to the collector, naval officer and surveyor of the district wherein the same shall have been incurred; and in such districts where only two of the aforesaid officers shall have been established, the said moiety shall be equally divided between them; and in such districts where only one of the aforesaid officers shall have been established, the said moiety shall be given to such officer: *Provided nevertheless*, That in all cases where such penalties, fines and forfeitures shall be recovered in pursuance of information given to such collector, by any person, other than the said naval officer and surveyor, the one half of such moiety shall be given to the informer, and the remainder thereof shall be disposed of between the collector, naval officer and surveyor, in manner and form as above limited and expressed."

Chapter V prohibited the off-loading of goods in contravention to the procedures thereunder detailed. **Section 12** reads, in part:

> "*And be it further enacted*, That no goods, wares or merchandise, shall be unladen or delivered, from any ship or vessel, but in open day, or without a permit from the collector for that purpose."

Every person who assisted or aided the landing, removing, warehousing, or otherwise securing the same in contravention to Section 12 (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. The names of all persons convicted were also placed in a public gazette of the State in which they resided.

Moreover, Section 12 provided for the strict seizures laws in cases of evasion for which revenue laws became notorious:

> "And all goods, wares and merchandise, so landed or discharged, shall become forfeited, and may be seized by any officer of the customs; and where the value thereof shall amount to four hundred dollars, the vessel, tackle, apparel and furniture, shall be subject to like forfeiture and seizure."

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 Section 12 enabled confiscation of the vessel involved in smuggling (when the value of the goods was $400 or more), such confiscation indirectly limited the exposure of the owner of the vessel to no more than the vessel and her goods, tackle, apparel and furniture. Such confiscation did not directly punish the owner, who could very well be completely innocent of any crime.

The consequences for off-loading goods from any ship in contravention to the specified procedures only resulted in financial repercussions, loss of qualification for any executive or judicial political office and potential embarrassment. No imprisonment was imposed.

The legal fiction that chattel (animate or inanimate personal property, as opposed to real property [land]) can be attacked directly and thus 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.

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

An *in rem* action is not considered as punishment of a particular person for an offense.

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

The principle of *Deodand* derives from those items that were confiscated when found and given out as charity.

The example of giving to the poor the apparel of a stranger who was found dead (to the benefit of the poor for the good of the dead man's soul) was an example of deodand given by William Blackstone.[7]

Blackstone also mentions the examples of when an adult is killed from falling from a cart or after being gored by an ox, then the cart or ox would be given as a sacrifice (on the belief that every adult, being a sinner, stood in need of atonement; and the forfeiture of the item which was the causative agent in the death supplied the sacrifice).

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

6. *Deodand* is the Anglicized version of the Latin *Deo dandum*. *Deo/Deus* (as in *deity*) is Latin for *God* (recall the Christmas carol: *Angels We Have Heard on High* and its chorus "*Gloria in excelsis Deo*" meaning "Glory to God in the Highest").

7. See *Blackstone's Commentaries on the Laws of England,* Book 1, Chapter 8 on "Of the King's Revenue".

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 Section 40 are examples of *malum prohibitum*; there being nothing inherently wrong with bringing in goods from foreign countries by small boat or by land, as detailed:

> "Sec. 40. *And be it further enacted,* That no goods, wares or merchandise of foreign growth or manufacture, subject to the payment of duties, shall be brought into the United States, in any other manner than by sea, nor in any ship or vessel less than thirty tons burthen, except within the district of Louisville, and except also in such vessels as are now actually on their voyages; nor shall be landed, or unladen, at any other place than is by this act directed, under the penalty of seizure and forfeiture, of all such vessels, goods, wares or merchandise, brought in, landed, or unladen, in any other manner. And all goods, wares and merchandise brought into the United States by land, contrary to this act, shall be forfeited, together with the carriages, horses, and oxen, that shall be employed in conveying the same."

In an era before transcontinental railroads and a Interstate highway system (or cargo planes, for that matter), ocean-going ships and river boats were the only efficient means of moving large volumes of goods.

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.

In the same way, goods subject to Duties brought into the United States (from Canada or North Carolina, for example) on carriages or carts would be difficult to monitor. Though the roads were obviously limited in number and could therefore be monitored, the amount of goods which could be affordably transported in this fashion would be so small as to be cost-prohibitive to allow for a customs house.

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1500 Highway 2
Leavenworth, WA 98826

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