

## Lesson 25 Article 1, Section 8

### The powers given to congress – Part I

Many of the founders had witnessed first-hand the shortcomings of the Articles of Confederation. Probably none so pointedly as George Washington; who begged congress repeatedly for men, supplies, and money during the eight long years of the war. He's still waiting.

As we discussed a while back, there are many schemes that a government can use to extract revenue from its citizens. Property and wealth can be taxed, or can be assessed “per nose.” The members of the convention, having been in state government and having seen the many taxes imposed by the British before the war were aware yet extremely wary regarding giving the federal government the power to tax.

Although terrifying, the power to levy and collect taxes is essential to the existence and continuance of a national government. (Question 1) A federal government must be able to support itself, for there is no higher body to petition for assistance.

#### **Provision 76**

The people hereby delegate to the federal Congress the power to collect taxes, duties, imposts, and excises.

Let's define some of these terms:

I assume you know what taxes are.

The Treasury Department defines **duty** as “a tax levied by a government on the import or export of goods,” **imposts** as “a tax, especially an import duty,” and **excise** taxes as “taxes on the manufacture, sale, or consumption of goods, or upon licenses to pursue certain occupations, or upon corporate privileges.” Our book defines excise as a federal sales tax.

The founders knew from the experience with the Articles of Confederation, that assessment of taxes to the states would be impossible to enforce. If a state failed or refused to submit its required allotment to the federal government, what recourse would the feds have? Send in the army? To do what, arrest the governor? (Question 2) So this method was pretty much abandoned.

It's important to distinguish between “direct” and “indirect” taxes.

Direct taxes, are taxes on people. These taxes are not voluntary, so people feel the pinch. Force or coercion is needed to collect direct taxes. (regardless how the taxes are assessed – on income, property etc.) (Question 3)

Indirect taxes are taxes on things (not people). Easier to collect since they are usually collected by merchants or importers. The people are, generally, oblivious to the collection of these taxes since they're built into the prices of the goods purchased. Additionally, indirect taxes are, in a way, self-regulating; set the rate too high and smuggling will occur, lowering revenue. (Question 4)

It's important to note that duties and imposts are only allowed by the federal government. This was another check and balance to assure the states that they weren't giving up too much taxing power to the central government.

It was assumed that duties and imposts would supply sufficient funds to the government for normal day-to-day operation. (Question 5) But the founders knew that a war or other calamity could upset this plan. After all, a country with no navy would, surely, have its ports blockaded – cutting off all chance to collect duties and imposts. Also, in a crisis, demand for money would go up which would

restrict the purchase of non-essential goods. So an alternative had to be set up – just for emergencies mind you.

They, again, considered getting the states to fork-over the needed cash. But all the founders could agree on is that: It's hard enough to get all the states to cooperate in the first place, in an emergency it would be even harder. Suppose the state legislature wasn't in session (as is the case most of the time). By the time a special session is convened, and the funds appropriated, collected, and delivered, the emergency could have already climaxed.

This is why the imposition of direct taxes – despite all of the negatives they entail – was permitted as an option. Some restrictions apply. For example, they still had to assess taxes on a per person basis. And the rate had to be uniform across the nation. Although force or coercion would still be necessary to collect, it's a lot easier to coerce an individual than an entire state.

Easier still would be a simple excise tax on “luxury” goods such as wine, brandy, and other spirits. This should be sufficient, the founders agreed, to keep the government funded beyond what it could acquire through duties and imposts alone.

### **Provision 77**

The people empower the Congress to use the money collected through taxes to pay its debts.

The crushing Revolutionary War debt was forcing the government to take out loans just to pay the interest, this was one of the main reasons the constitutional convention was called in the first place. So it seems obvious that the obligations incurred before the Constitution would have to be honored after its ratification.

### **Provision 78**

The people empower the congress to spend tax money for the common defense.

Nearly all of the men at the convention were veterans of the war. They knew first-hand the horrors of war. They also knew that the best way to avoid war in a world full of belligerent nations was to always be prepared to fend off any attempt on our sovereignty.

Defense and taxation are nearly as intertwined as taxation and representation. You cannot field an adequate national defense without adequate funding.

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### **Summary:**

So we begin examining the heart of both “enumerated powers,” and constitutionally limited government. The handout provides a numbered list of the limited powers delegated by the people of the United States to the federal government.

The founders, aware of the power of taxation – the power to destroy a sovereign nation, – tried to restrain the Congress. Only to a slight degree because a government that cannot support itself cannot survive. But they also knew that they could not see the future; what conditions or emergencies might erupt that might upset their carefully laid-out plans. So contingencies were included.

Generally, they had to give just about every possible power of taxation to the federal government; rights already used in all 13 states. The one big exception is duties and imposts exclusively held at the federal level. And forbidden from taxing interstate goods.

As always, there are unintended consequences. Excise taxes on products infers a right for the government to regulate those products. Regulate how they're packaged, shipped, measured, sold etc.

The Supreme Court has allowed the government to impose rigorous restrictions on the transport or sale of certain items: prescription drugs, and firearms, for example.

Congress can tax activities even if they're illegal. Federal “licenses” are required for certain gambling equipment.

Tax laws and regulations have often been used to suppress the importation and sales of items the government wishes it could outlaw altogether such as machine guns and silencers.

One thing is certain: no matter how much money the government can confiscate from its own citizens (either directly or indirectly), when asked how much money the government needs, the answer is always, “MORE!” (Question 8)

The founders, hoping that prudent legislators – who are also at the mercy of the tax collector – would voluntarily restrain this god-like power over the lives of ordinary men. Few have been equal to the level of Thomas Jefferson and Andrew Jackson.

Jefferson had the current excise tax repealed. He abolished the internal revenue system. He sold public lands in the newly acquired Louisiana purchase. As a result, he paid off half the government debt (still left over from the war).

Jackson also sold public lands. He was not only able to pay off the remainder of the debt, but returned 28 million dollars to the states. He closed the Bank of the United States, the Federal Reserve of that time. Jackson used the veto more than all previous presidents put together.

There is only one way to stop the egregious spending we now see in Washington (assuming it isn't now too late). We must elect wise, prudent, fiscal conservatives to the House of Representatives. As Edmund Randolph said, “Will not the people choose men of integrity ... to represent them? Will the people reelect the same men who repeat oppressive legislation? Will the people commit suicide against themselves...?”

I ask, will they indeed? (Question 9)