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The Incorporation of State-Guaranteed Rights unto the Confederation Government, 1783–1786

Even before the Articles of Confederation were formally adopted, the Continental Congress considered amendments for the proposed form of government. In February 1781 Congress submitted to the states a proposal allowing Congress to levy a five percent tariff the revenue of which was earmarked to pay the wartime debt. April 1783 Congress again proposed an amendment to the Articles giving Congress the power to levy a five percent tariff for twenty-five years to pay the wartime debt. But because Article XIII of the Articles of Confederation required the unanimous approval of the state legislatures for amendments, these efforts failed.

The Impost of 1783 was in essence part of an ongoing debate over the division of power that had begun during the colonial era in determining what powers could be exercised by the colonial assemblies individually and what powers were exclusively retained by the imperial authorities in London. This debate ended with the inclusion of Article II that provided that the states retained their sovereignty, freedom, and independence, while Congress had only those powers that were “expressly delegated” to it by the Articles of Confederation.

At the state level, the new Revolutionary-era state constitutions made it clear that state governments alone possessed powers over the people, while state bills of rights placed specific limitations on the state governments thus protecting the rights of the people. States were particularly suspicious of any alterations of powers of the national government, particularly powers related to regulating commerce.

Other state limitations placed upon Congress in levying a tariff provided that Congress could not violate the protections afforded to their citizens in their state constitutions, bills of rights, and laws. In an attempt to justify New York’s restrictions, “A Republican,” indicated “that the acts of the different states were lately published in the New-York Gazetteer” and “that not a single state in the union, had fully adopted the system recommended” by Congress. The excerpts from “A Republican” printed below list some of the state restrictions on Congress.

Many of the same federalism issues were soon to be raised during the debate over the ratification of the Constitution. This debate gained traction because of the failure to incorporate a bill of rights in the Constitution, the ambiguity of the necessary and proper clause, and the fear that the supremacy clause would invalidate the protections in state constitutions and bills of right.

Massachusetts Act Ratifying the Impost of 1783, 20 October 1783 (excerpt)

. . . [A duty of five percent ad valorem] to be collected under such regulations as the United States in Congress assembled shall direct, provided such regulations do not extend so far as to subject any citizen of this Commonwealth to be carried out of the same for trial, or to compel him to answer to any action without the State, or to deprive him of a trial according to the constitution and laws of this Commonwealth, or to convict him criminally without a trial by Jury, or his own voluntary confession in open Court, or to impose excessive fines, or to inflict punishments which are either cruel or unusual in the Commonwealth, or to break open any dwelling-house, store or warehouse, at any other than the day time, and between the rising and the setting of the sun, or then without a warrant from a lawful magistrate, and issued upon the oath of the party requesting the same: And also provided, that the trial on all seizures and questions under this act, shall be before the Court of Common Pleas in the several counties within this Commonwealth where such seizures shall be made and such questions arise; and from the judgment of the said Court, either party shall be allowed an appeal to the Supreme Judicial Court of this Commonwealth, before whom a trial shall in all cases be final; and that in no case a forfeiture shall exceed the goods seized, and the vessel in which such goods may be imported, with her cargo. . . .

A Republican: Excerpts from State Adoptions of the Impost, 1787

The act of Connecticut varies from the requisitions of Congress in the following instances: . . .

2d. It enacts that all such rules and ordinances, as shall be made by the United States in Congress assembled, for levying and collecting the duties, “not inconsistent with the constitution, and the internal police of that state, shall be duly observed.”

This will effectually guard the rights of the state; for it is manifest that no rule or ordinance, inconsistent with the constitution, or government, or laws of that state can have any force or validity in Connecticut. . . .

The act of New-York varies from the system recommended by Congress in the following particulars: . . .

. . . if the act had vested Congress with the power to levy the duties, to have inserted a proviso similar to the clause in the act of Connecticut, or the proviso in the acts of Delaware or Maryland; but this would have defeated the intention of the Legislature, for, I believe I may venture to assert that, in such case, no rule, regulation, or ordinance of the United States, for collecting the duty, would have the force of law in that state. . . .

The act of the state of Delaware varies from the system recommended by Congress in

1st. It provides that the rules and ordinances to be established by Congress, for collecting and levying the duties, be not repugnant to the constitution and laws of that state. . . .

The Maryland act varies from the system recommended by Congress, in these instances: . . .

2d. It limits the powers granted to Congress by providing that their ordinances, regulations, and arrangements shall not be repugnant to the constitution of that state. . . .

. . . In several of the states, those regulations must be conformable to the constitutions of the states, and there[fore], every ordinance or regulation which is not so, will be void. . . .

Here it may be proper to observe, that should ever any rash act take place, by which questions, respecting the powers of Congress in this particular, may be brought into discussion, they must be determined in the courts of justice in the states where they arise; in which political considerations however weighty they may appear, and the vague opinions of men of over heated imaginations, must give way to the deliberate and sober decisions of judges, under the solemn ties of an oath, and governed by the rigid principles of law *alone*. . . .

I think it may be accomplished without essentially changing our federal government, or breaking upon the constitutions of the different states, which, for their wisdom, are justly the admiration of the enlightened part of mankind, and which we are bound by every tie to hold sacred: and to violate these inestimable charters of the rights of the people, for what can only be considered as a temporary expedient at best, I shall hold most unpardonable. . . .

It is *money*, and not *power* that ought to be the object;—the former will pay our *debts*—the latter might destroy our *liberties*.

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