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From Empire to Law: Customs Collection in the American Founding

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RAO, GAUTHAM. *National Duties: Custom Houses and the Making of the American State*. Chicago: University of Chicago Press, 2016.

This essay investigates the eighteenth-century origins of the federal administrative state through the prism of customs collection. Until recently, historians and legal scholars have not closely studied collection operations in the early federal custom houses. Gautham Rao's National Duties: Custom Houses and the Making of the American State *(2016) offers the most important and thoroughly documented historical analysis to date. Joining a growing historical literature that explains the early development of the US federal political system with reference to imperial models and precedents, Rao shows that the seductive power of commerce over the state within eighteenth-century imperial praxis required the early federal customs officials to "negotiate" their authority with the mercantile community. A paradigm of accommodation dominated American customs collection well into the nineteenth century until Jacksonian centralizers finally began to dismantle it in the 1830s. The book brings welcome light to a long-neglected topic in American history. It offers a nuanced, historiographically attentive interpretation that rests on a broad archival source base. It should command the sustained attention of legal, social, economic, and constitutional historians for it holds the potential to change the way historians think about early federal administration. This essay investigates one of the central questions raised in* National Duties*: How were the early American custom houses able to successfully administer a comprehensive program of customs duties when their imperial predecessors had proved unable to collect even narrowly tailored ones? Focusing on the Federalist period (1789–1800), I develop an answer that complements Rao's, highlighting administrative change over continuity and finding special significance in the establishment of the first federal judicial system.*

I. INTRODUCTION: FORGOTTEN MOMENTS IN EARLY FEDERAL GOVERNANCE

Taxation, not liberty, presented the most pressing problem for the American founders in 1787. For no factor better illuminated the Articles of Confederation's fundamental flaws than the Continental Congress's inability to raise a revenue sufficient to make required payments on the union's sizable war debts. The growing commitment among nationalist-oriented reformers in 1787 to cure the federal revenue problem goes a long way toward explaining the framing and ratification of the US Constitution (Brown 1993).

The broad taxation powers in Article I of the Constitution—including, emphatically, the power "to collect"—together with creation of independent

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executive and judiciary branches with jurisdiction over tax collection, solved the revenue problem as a constitutional matter. The task of actual revenue administration, however, fell to the first federal government.

Not surprisingly, the First Congress made taxation its first and foremost order of business, passing a number of substantial revenue bills by the summer's end in 1789. And, judging from the recorded monetary returns over the next decade, the customs collection regime established by the infant federal government experienced impressive successes virtually from the outset. Revenue grew strongly and steadily throughout the 1790s and dwarfed what the states had collected after the Revolution (Edling and Kaplanoff 2004, 739). Within five years after ratification, the federal government had not only pulled itself back from the edge of disaster, but had acquired fiscal legitimacy. By decade's end, the Federalists had established a respectable fiscal-military state on the European model (Edling 2008).

A question of considerable legal-historical significance therefore arises: Just how did the early federal government execute this reversal of financial fortune? How, moreover, did it manage to secure such impressive revenue receipts from a people accustomed to hardly any taxation at all, who looked with suspicion on any taxation measure intended simply to collect revenue for the state, many of whom had during the 1780s successfully waged tax rebellions in their respective states?

Until recently, the historical literature on the early federal government lacked considered, thoroughly researched answers. In that portion of the historiography concerned directly with early federal revenue collection, meanwhile, the overwhelming focus on the whiskey excise and its repercussions has produced a woefully incomplete picture. For neither the whiskey tax nor any of the other abortive internal tax experiments conducted by the Federalists prior to 1800 can account for anything but a very small part of the federal government's revenue-related intrusions into the society in the early years, and an even smaller portion of its receipts.

The administrative function of the early federal government that best explains why it succeeded where its predecessors had failed in the area of revenue collection lay in a single sphere of action whose early history may seem humdrum when compared to the Whiskey Rebellion: the collection of customs duties in the ports. Receipts from these duties accounted for well over 90 percent of the revenue generated by the new nation in the decades after ratification (Wallis 2006). Alone they could have sufficiently funded the government's operations, paid down the debt, and bolstered the nation's credit. Without their effectual collection, the infant union would have doubtless collapsed before 1800.

To be sure, the Federalists' emphasis on customs duties over excises and direct taxes reflected concessions to the revolutionary heritage. Generally, it relied on a narrow construction of Article I's substantive scope that mollified the American anti-tax contingent. It seized on a distinction between "internal" and "external" taxes that held immense significance for revolutionary-era Americans (Slaughter 1984). Above all, import duties held the virtue of minimal intrusiveness. They directly touched but only a small subset of Americans (merchants) and the merchants themselves could, under normal market conditions, pass a portion of the duties along to purchasers.

With these things said, however, we must take care not to underestimate the depth of the administrative problem the Federalists faced in 1789 as the First Congress assembled itself. Historically, collecting customs duties in the American commercial context had presented special challenges. Crown administrators had failed time and again to collect customs duties in the colonies (Barrow 1967). For the short time they existed, the temporary customs regimes established by the states after the Revolution performed no better. No real wonder. The eastern seaboard included nearly two-thousand miles of coastline. A multitude of rivers, inlets, and small ports gave designing merchants many ways to escape detection under the old regime. The mercantile community itself presented equally serious difficulties. "The habit of smuggling pervades our country," observed Fisher Ames during the First Congress. "We were taught it when it was considered rather as meritorious than criminal" (Gales 1834, 299). How, then, did the first federal government rise to the challenge of tax collection in the ports where its predecessors had failed?

Fundamental as it seems, the question has gone almost totally ignored by historians, legal scholars, and political scientists. The publication of Gautham Rao's *National Duties: Custom Houses and the Making of the American State* (2016) presages an end to the neglect and serves as the historiographical occasion for this essay. Rao's readable volume includes extensive consideration of previously neglected customs-related documents in dozens of archives across the country and reveals a fascinating hidden history of early federal governance in the ports.

First and foremost, Rao finds that even as supervisory federal administrators in the Treasury Department, such as Alexander Hamilton, seemed at times to endorse strict and vigilant enforcement of the revenue laws, a different legal world existed in the early custom houses themselves. Limitations in communications gave the early collectors a broad practical scope of action nearly exempt from oversight, which they employed from the outset to promote commerce and to accommodate the merchants. "[O]ver and over" in "subtle negotiations," Rao observes, the officials "interpreted laws generously toward merchants, limited enforcement of purportedly intrusive legislation, and looked the other way when confronted with illicit waterfront activities" (12–13). If they did not do so, they "inevitably faced abuse, intimidation, shaming campaigns, tax avoidance, riots, and lawsuits from angry merchants." Treasury's occasional interventions in custom house conflicts, meanwhile, did not rebuke the collectors' actions so much as encourage them to "take seriously the opinions of the commercial community within which they resided" (13).

To this point, Rao's line of argument builds on Frederick Dalzell's excellent PhD dissertation (1993), to which Rao and others have cited with approval (see Rao 2016, 85, 95; Edling 2008, 210; Mashaw 2012, 297). *National Duties*, however, distinguishes itself from and improves on Dalzell's scholarship by looking both backward and forward to understand what happened during the formative period. Thus, in discussing why early Federalist customs officials adopted an accommodative approach, Rao looks to the imperial paradigm of "negotiated authority" that shaped eighteenth-century customs administration under the Navigation Acts (Rao 13, 93; see also Greene 1986; Bilder 2004). The empire rested on a rough division of authority between England and the Americans. Prior to the Revolution, the relationship endured and even flourished, in large part because London negotiated rather than

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imposed authority over the colonists. Loose customs enforcement practices instantiated this approach, and those same practices, Rao maintains, "structured the rise of the new federal government" (195). Early federal customs officials for the most part "replicated [eighteenth-century] imperial governance" (13).

Looking forward from the early national period, Rao shows that the accommodationist practices born out of the imperial period and carried on in the American ports in the 1790s persisted well into the nineteenth century. His discussion of the embargo fiasco ascribes the failure of Jefferson's embargos, which relied heavily on enforcement efforts in the ports, to the accommodative paradigm's continued strength and vitality. Later chapters demonstrate, however, that events in the years after the War of 1812 conspired to unravel it. A combination of increased governmental oversight arising out of customs bond scandals of 1819, a new zeal for protectionism that underlay the "American System," and the overt politicization of customs appointments led to the dismantling of discretion in the custom houses in the 1840s, and to the beginning of the end of the imperial paradigm in American customs governance. In response to perceived abuses, the Jacksonians tightened the appraisement process for goods subject to *ad valorem* duties; created a Solicitor General with superintending authority over the district attorneys in custom bond prosecutions; and phased out the credit system in favor of government warehousing of bonded goods. By the time Jackson left office, Rao writes, "the necessity of segregating the inner workings of the state from the operations of the marketplace had become clear . . . there would be no turning back" (196).

Rao's analysis expands on a number of very live and fruitful lines in the prevailing historical scholarship, including the early history of the federal administrative state and the origins of capitalism. *National Duties* also touches on abiding questions regarding the historical impact of the American Revolution on American law and society (Mann 1993; Knapp 2013). In particular, Rao's arguments suggest a substantial measure of socio-legal continuity in the ports in the decades after Independence, rather than dramatic change or counterrevolution. This includes, contrary to many historians' assessments, a theme of substantial continuity in the transition from the Federalists to the Jeffersonians.

Most significant for our purposes, *National Duties* contributes to a growing literature that places eighteenth-century American political and constitutional developments in the larger context of the Atlantic world and that explains the early development of the American federal political system with reference to the English imperial model (Greene 1986; Bilder 2004; Hulsebosch 2005). Too many histories of the American founding have failed to appreciate the pre-Revolutionary imperial constitution's explanatory power. In and after 1787, Americans looked with fondness and reverence on much of the pre-Revolutionary experience. It served as their only real model for a functional "federal" union. It helps explain why, at the Federal Convention, Madison and others supported the congressional negative over the state legislatures (the negative represented a republicanized version of the Privy Council negative on the colonial legislatures), and how they reconciled this sweeping undefined negative with state sovereignty and the libertarian heritage (they intended it to function less as a command than as negotiating leverage) (see Hobson 1979; Greene 1986). During ratification, it helps explain why the

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Federalists opposed a written bill of rights, for rigid articulations of rights had contributed to the empire's destruction (see Greene 1986). In the decades after ratification, it helps explain why both the Federalists and, even more so, the Jeffersonians confined the federal government's operations to an exceedingly narrow sphere, and exercised significant restraint in the enforcement of the federal criminal jurisdiction.

And, as Rao has now shown, the imperial experience helps explain the manner in which early federal customs collectors went about their business. With one major difference in outcome, however, that Rao acknowledges: judging from the federal government's revenue receipts, the federal custom houses created by the Collection Acts enjoyed impressive success in the 1790s. From 1792 to 1795, federal officials in the major ports collected nearly six times as much as their state counterparts had in the period from 1785–1788 (Edling and Kaplanoff 2004, 739). Over the course of this decade, annual customs revenues steadily increased and by decade's end had grown nearly fourfold.

The question I pursue in this essay concerns less the importance or accuracy of Rao's observations regarding imperial continuity and mercantile accommodation than their *explanatory power*. Some factor other than administrative continuity must explain the different administrative results obtained by the English and early American custom houses. What is it? Why ultimately did the American custom houses succeed in administering a comprehensive program of import duties where their imperial predecessors had failed to collect even narrowly tailored ones?

This essay develops an answer that suggests a story somewhat different from Rao's. My goal, however, is to build on Rao's achievement, not supplant or undermine it. The insights in *National Duties* shall serve as central points of reference and inspiration throughout.

Section II examines eighteenth-century customs house governance prior to Independence. The analysis suggests that imperial customs collection foundered in the American colonies primarily due to legal and administrative inadequacy. The heart of the essay, Section III, presents an independent analysis of what, if anything, changed with the creation and implementation of the first federal customs system in 1789 that might explain the different outcomes in American customs collection across the eighteenth-century and beyond. My answer highlights an integral component of the new system not accorded substantial attention in *National Duties*—the new federal courts. I argue that the court system created by the Judiciary Act of 1789 for the customs officials' use helped set in motion an administrative paradigm shift, from empire to law, that best explains why the American system succeeded where London and the states had failed.

II. EMPIRE, TAXATION, AND THE DEGRADATION OF LAW

England's Glorious Revolution in 1689 represented a triumph for English liberties insofar as it confirmed principles established by the revolutionary parliamentarians, substantially narrowed the king's domestic power, and made Parliament

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supreme. The event, however, also ushered in a period of state and empire building unlike any other in English history, with significant consequences for the North American colonies (Brewer 1989). As a cultural and commercial matter, the colonists became more involved in the growing empire and in their Englishness during the first half of the eighteenth century (McConville 2006). As a political and magisterial matter, however, they insisted on and received substantial local control (see Lovejoy 1972).

Historians have long observed that from the Glorious Revolution (1689) to the middle of the eighteenth century, enforcement of the various Navigation Acts in the American colonies remained lax and inconsistent (Barrow 1967; Henretta 1972; Greene 1986; see also Bilder 2004). Rao endorses this view. In this era of "salutary neglect," he elaborates, Hanoverian administrators in fact believed that accommodating the merchants, and permitting some measure of smuggling, "strengthened the bonds of empire" (Rao 2016, 21). Yet to understand these practices as "corruption" or "regulatory capture" in the modern sense, Rao observes, rests on a normative commitment to separating the state from the market that did not exist in the eighteenth century. Rather, classical political economy contemplated the state "tap[ping] into the merchant capital," which in turn required "incorporating merchants and their capital into the fold of the state" (11). Empire required commerce. Commerce sustained the empire. Official submission to the market's "irresistible pull" and "undeniable power" lay at the heart of the imperial paradigm of customs governance (47). Colonial customs officials thus felt compelled to "negotiate" their authority with the merchants rather than to impose it.

The American Revolution disrupted the system that had been in place since the Glorious Revolution. After the French and Indian War (1754–1763), London began to increase its tax and customs enforcement in the American ports. Parliament established a new brigade of salaried customs officials for the colonies and, ultimately, armed forces to support them. Existing customs officials used to accommodating the merchants now took a stricter line. Although he acknowledges the colonists' oft-discussed constitutional arguments, Rao sees the "problem of the unaccommodating customs officials" as central to the American Revolution (43). American merchants stood up to revolt against a collections system that they believed did not pay due respect to the forces of commerce and rhythms of the market. "Their tool of choice was the mob," but they also employed "lawsuits" and "social pressure" (19).

The merchants' patriotic resistance in the period leading up to the Revolution, however, only went so far. Many in the commercial community did not agree with the non-importation efforts in the 1760s and 1770s. The merchants' commitment to commerce over law thus "complicated" revolutionary-era attempts to channel commerce toward revolutionary political ends (47). Yet for the Federalists in and after 1787, the whole revolutionary experience provided a "cautionary tale about how *not* to govern an empire" (22). Which is to say, in setting up the American system, experience suggested it safer to revert to the looser practices that marked the first half of the eighteenth century than to take the harder-line approach that London did in the 1760s.

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Rao's analysis of the imperial period cites to a wealth of rich secondary materials and to various records and correspondence. Still, these chapters in *National Duties* do not give detailed attention to the actual imperial legal and administrative framework that evolved in the seventy years after the Glorious Revolution. The analysis therefore does not specifically address whether the legal framework permitted or required accommodation. Did the officials act at variance with the formal legal framework, or consistent with it? Does the answer change over the eighteenth century? Rao's analysis tends to assume that an administrative *choice* existed and that officials in London and, in some measure the colonies, chose to elevate politico-economic concerns over administrative ones. But did a real choice exist for those officials in the colonial ports? Certainly, smuggling and evasion of the laws occurred. Did the colonial officials permit it to happen notwithstanding the prevailing administrative framework, or did it happen, in some measure, *because* of the prevailing administrative framework? Finally, the connection that Rao draws between the imperial and early national periods tends to equate the respective purposes of, on the one hand, the eighteenth-century British administrators vis-à-vis the American colonial ports and, on the other, early federal administrators in the American context. Does the analogy hold? How, if at all, did the American system differ from its imperial predecessor? Elucidating these matters requires a stronger focus on the earlier period from both legal and administrative perspectives.

In the latter half of the seventeenth century, during a period of deep political turmoil and transformation, Parliament passed a series of Navigation Acts with specific geopolitical and economic purposes: to protect English shipping, to establish a closed system of trade within the British empire, and thereby to elevate the empire to a position of world hegemony (Dickerson 1951; Barrow 1967; Hoon 1968; Harper 1973). Toward these ends, the acts prohibited the English colonies from trading enumerated commodities with any nation outside of the empire. In terms of enforcement, the Act of 1660 established the initial framework. It required that the royal navy seize any foreign vessels trading in forbidden waters and incentivized citizens to report violations by offering them one-third of proceeds from any resulting seizures. The Act included two additional enforcement measures: (1) English purchasers of foreign ships had to register the vessels with customs officers; and (2) merchants dealing in enumerated commodities had to post bond, with adequate security, to comply with the Acts. Obligations imposed on the merchants under the Acts ran immediately to the colonial governor, who in turn received implicit enforcement powers. The Crown, however, appointed the main collection officials.

For decades, the American officials proceeded with considerable handicaps relative to their English counterparts. Not until the Act of 1696, for example, did Parliament extend to the colonial officers privileges and enforcement powers already possessed by English officials, such as rights against harassment ("molestation"), rights to general search warrants, and rights to forceful entry in cases where officials suspected fraud. By 1710, Parliament had divided the eastern seaboard into a handful of formal administrative districts, each with an appointed collector and, in a few cases, a surveyor and/or searcher. Naval officers and, as noted, colonial governors also participated in customs administration (Barrow 1967).

It would appear that the American merchants obeyed the Navigation Acts' prohibitions on trade outside the empire and that this involved no great sacrifice on their part (Dickerson 1951). By contrast, many on the American side resisted the export duties on the coastal trade enacted in 1673, as well as the outright prohibitions on trading certain goods that Parliament began enacting in the early eighteenth century. Administrators in London early recognized that efforts to enforce these laws remained woefully inadequate, that many merchants easily skirted the thinly staffed colonial customs operations, and that the collectors and merchants often conspired to evade the laws. Too far away to exercise direct oversight over the American officials, the Board of Trade charged an itinerant surveyor general with the task and, to a lesser degree, the governor and naval office, the latter of which London subsequently attempted to remove from local influence by Crown, rather than gubernatorial, appointment.

None of these measures sufficed. To begin, the abiding issue of divided authority in the empire greatly crippled colonial enforcement of the Navigation Acts (Barrow 1967). The local courts and legislatures proved incorrigible in their resistance to Crown administrators. Rather than come down hard on the colonies, however, in time London determined to let well enough alone, in part because, whether or not they obeyed the Navigation Acts, the American colonies produced a net benefit to imperial commerce (Rao 2016, 29–30). So began a considered policy noted by Rao of ignoring non-enforcement of the Navigation Acts in the American colonies, or "salutary neglect," that extended through the 1750s (Henretta 1972).

As Rao also observes, however, for a brief moment in the 1730s it appeared that the imperial policy of inattention might come to an end. A substantial sugar trade between the American colonies and the French West Indies had arisen and British administrators concluded that it had resulted in dramatic reductions in receipts from the 4.5 percent export duties applicable to sugars produced in the British West Indies. For the purpose of encouraging the Americans to trade with the British sugar islands and thereby increase receipts from the 4.5% duty, Parliament passed the Molasses Act of 1733 (Rao 2016, 32–33).

Seen from the perspective of the American customs regime in the 1790s, one distinguishing feature of the imperial system prior to passage of the Molasses Act of 1733 was that it did not impose any customs duties at all on the American colonists, the only exception being a relatively small export duty on certain enumerated items exported from one English colony to another. Imposing a sizable duty on all foreign sugar imports into the colonies, the Molasses Act thus represented a true innovation.

Yet if the Act looked novel and somewhat daunting on paper, historians who have examined its administration in the colonies agree that it was not enforced and that it generated hardly any revenue. American merchants evaded the sugar duty with impunity (see, e.g., Dickerson 1951; Barrow 1967; Hoon 1968).

Rao explains the pitiful enforcement efforts with reference to the great influence the merchants had over governance in the colonial customs houses and, in turn, the supreme importance of commerce to the British empire. However, beyond these thematic assertions, and beyond citations to evidence suggesting collusive behavior between the customs officials and the merchants, Rao does not consider

why the Molasses Act in particular—which, as the first (and, as it happened, *only*) import duty imposed on the colonies prior to the 1760s and therefore an important basis for comparison with the later American regime, should hold considerable historical significance for Rao—went all but unenforced in the colonies.

A number of factors explain the non-enforcement. The first lay in the sheer amount of the duty. Parliament intended it as prohibitive and by all appearances the Americans also considered it so. The Act, for all intents and purposes, *banned* the dutiable commerce. For merchants unable or unwilling to purchase the British West Indies sugar, this doubtless increased the incentive to smuggle or engage in other subversive dealings.

And how did they get away with it? British naval vessels offered very little if any enforcement assistance. Even more significant, the Molasses Act introduced not a single new customs official to the American colonies and no new material supplies. The existing staffing remained quite inadequate to the purposes. From Newfoundland to sugar islands, only forty-two permanent officials staffed about forty customs districts. Only a few had a boat or tidewaiter. Without any real oversight, they worked irregular hours. For fraud detection, the collection system, if one could call it that, relied almost exclusively on private informants, not the officials themselves (Barrow 1967, 72, 136, 144).

When the handful of officials in the ports did make contact with the merchants, the officials let many violations go unreported, whether by accepting false papers, entering foreign sugar as imperial product, or dramatically reducing the duty—often in exchange for some form of bribe. Why did they do so? And how did they get away with it? Certainly, the intrusion of an informal deputy system, by which various colonial collectors deputized their positions to unbonded and usually unqualified individuals often involved in the very illicit commerce they purported to regulate, played a role (Barrow 1967, 140). So, too, did inadequate compensation. Although the collectors had small salaries, they needed transaction fees to make a living. Yet the legislatures passed laws dramatically reducing the allowable fees—a trend that greatly offended the Board of Trade. The inadequate fees, together with the merchants' willingness to line the officials' pockets to avoid the sizable sugar duty, made it difficult for most of the collectors to resist "composing" a private settlement (Barrow 1967, 144). Besides the occasional visit from an ineffectual surveyor general, moreover, the officials, whether or not deputized, faced virtually no administrative oversight. The Board of Trade remained at too far a distance to detect or do anything. Ultimately, under local popular control, the governors and legislatures did more to undermine regular collection efforts than to support them—and the Crown-appointed naval officers felt content to receive their salaries without rocking the boat.[1]

Perhaps most important, enforcement of the Molasses Act failed in the colonies because the collectors had no reliable way to punish violations and therefore no way to deter misconduct. By the Act of 1696, the Crown had established a few admiralty courts for these purposes (Ubbelohde 1960, 5–7; Snell 2007, 145). Yet inconveniences attended their use since the admiralty tribunals usually convened at distant

1. Although most of the collectors gave bonds for their collection efforts, there is no evidence in the available literature that London or the governors called them in with any regularity. See generally Barrow (1967).

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locales and proceeded without juries. The admiralty jurisdiction, moreover, did not extend to all revenue offenses and the local common law courts often issued writs of prohibition and the like to block admiralty proceedings involving locals (Ubbelohde 1960, 12–22; Barrow 1967, 154; Hoon 1968, 286). That the costs of prosecution fell on the official personally in the first instance discouraged officials from pursuing legal action (Hoon 1968, 286). Local control over the common law jurisdiction (including loyal colonial juries), meanwhile, meant that officials pressing collection suits at common law could rarely expect a fair recovery (Ubbelohde 1960, 21). Officials who pressed too hard in this connection often found themselves countersued or sued in other courts, as well as harassed and molested by resentful merchants and mobs on the waterfront (Hoon 1968, 275; Snell 2007, 151; Rao 2016, 19). Even if a prosecution resulted in judgment for the collector, just how would the collector enforce it? Here again, local political control over sheriffs and other enforcement officials rendered the task very difficult (Harrington 1995, 598–600).

In short, the collectors countenanced (and sometimes benefited from) violations of the Molasses Act not because of a commitment to mercantile imperialism over strict observance of the law, but because they had no real choice given the inadequacy of the administrative machinery and incentive structure. Nor can the policy of "salutary neglect" fully explain why London did not respond to the problems in the colonies because American importation of foreign sugar did not have any directly "salutary" commercial effects from the empire's perspective but, instead, deleterious ones. A more important reason for the imperial neglect lay in London's focus on fighting never-ending imperial wars (with American help), which, even as some trading with the enemy did occasionally occur in the colonies, made colonial customs administration virtually irrelevant.

The bribery and other various "extras" tendered as part of a given collector's settlements with the merchants resembled official corruption in the modern sense: official receipt of money in exchange for relaxations in enforcement. To say that the empire somehow depended on this corruption in a meaningful way is another thing. David Hume's essays had hinted at the salutary effects of some official corruption. Whether the collectors or the merchants viewed these practices as legitimate Rao does not say. Certainly, imperial authorities never deemed the practices legitimate in the colonies. The massive debts taken on in the French and Indian War only heightened awareness of its deleterious effects. The changes in policy that followed produced the American Revolution.

Parliament passed no further customs duties until the Revolution. Yet the legislative act that started the Revolution, the Sugar Act of 1764, actually reduced by half the sugar duty that had applied under the Molasses Act. London here intended to turn a prohibitively high duty into a collectible one. Four factors explain the intensified American response to the Sugar Act and to the other major customs reforms included in the Townshend Acts in 1767–1768. First, the Sugar Act marked an innovation insofar as Parliament intended it as a revenue-raising measure, rather than a commercial regulation. While Parliament ultimately repealed the Sugar Act, it later enacted the so-called Townshend duties in 1767 for the same purpose. This assertion of jurisdiction raised important constitutional questions debated at length by politically minded colonists (Morgan 1953).

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The remaining factors explaining the American response, however, concerned the enforcement issue in particular. First, the Sugar Act extended the admiralty jurisdiction to cover all revenue-related offenses, and established a Crown-appointed supreme admiralty court in Halifax, Nova Scotia. A few years later, Parliament established three additional such courts in Boston, Philadelphia, and Charleston (Ubbelohde 1960, 128–47). Second, the Act granted broad immunities to damages suits in the state courts by merchants enforceable in the new admiralty courts. Finally, and most importantly, it overhauled and augmented the hitherto inadequate customs staff. In the long years of neglect, the office of surveyor general (or comptroller) had disappeared. As part of its new more aggressive enforcement policy, London added twenty-five comptrollers in the period from 1764–1766, numerous other officials, and, for the first time, issued strict instructions to the existing collectors and naval officers (Barrow 1967, 186). A distinct change in approach in favor of greater enforcement ensued. In addition to giving the comptrollers salaries, Parliament purported to establish an equitable floor on the fees paid to comptrollers that the state legislatures could not reduce. The year 1767 saw London establishing an American Board of Customs Commissioners in Boston to oversee the collection operations.

As Rao notes, the American merchants greeted the new officials with disdain, resistance, and harassment, in part because their introduction violated customary norms, in part because it violated constitutional norms. The Americans' efforts to frustrate London's administrative innovations met with some success for a time. Parliament repealed the Sugar and Stamp Acts. At the same time, as Rao astutely notes, many American merchants had vested interests in continuing commercial relations with Britain. Thus, when patriots went so far as to introduce non-importation and other embargo measures, the mercantile community divided. In some circles, revolutionary political ideology and commerce stood at odds (Rao 2016, 45–47). The tipping point, however, came with the last major customs law of the imperial period, the Tea Act of 1773—intended at once to raise revenue, save the foundering British East India Tea Company, put an end to Dutch tea importations, and establish precedent for even greater taxation in the colonies. The Act's passage elicited a unanimous call for resistance among merchants, farmers, and professionals alike (Breen 2004).

Surely, as Rao observes, the Revolution provided a cautionary tale for the Federalists establishing the first federal customs system in and after 1789. London's inability to enforce the revolutionary-era taxes and duties by ordinary magisterial means led, over the course of the 1760s and early 1770s, to a dramatic increase in the standing British *military* presence in the colonies, particularly in New England. Rather than quelling the colonial dissent, however, this reawakened bitter memories from the colonial wars concerning the presence of regulars in the colonies and inspired the colonists to elaborate on an ideology against standing armies that would have lasting historical and constitutional significance (Reid 1981; Leach 1986). All this contributed to a commitment among the Federalists of 1787 to avoid military coercion at all costs in the enforcement of the first national customs regime.

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III. CREATING THE FIRST FEDERAL CUSTOMS SYSTEM

Like all wars, the Revolutionary War required money and both the states and the Continental Congress took on sizable debts in the process. As the Revolution wound down in the early 1780s, the states scrambled to begin implementing their own revenue systems. Their taxation programs prioritized direct taxes on persons and property. By mid-decade, the state governments had proven themselves either unable or unwilling to collect direct specie taxes in the face of rural resistance (Brown 1993).

Toward the end of the Revolution, most of the coastal states enacted customs duties and made some attempts to collect them. Powerful memories of the events and controversies surrounding British customs collection during the imperial struggle, however, seem to have prevented emphasis on vigorous collection and led to the reinstitution of the lax and informal customs collection practices that existed prior to the Revolution (Gales 1834, 299; Goss 1897, 10–23; White 1948, 461; Hamilton 1961, 5:459). Gaping regulatory holes left most of the coastline vulnerable to undetected importation. The collectors rarely employed the state courts to put pressure on offenders and delinquents. Even law-abiding merchants struggled to keep up with all the different states' rates and regulations. New Jersey collected no duties at all (Maclay 1890, 46). Disagreements concerning the mode of collection ultimately prevented the Continental Congress from amending the articles to provide for a federal impost (Dalzell 1993).

A. Statutory Framework

With the commitment to a new constitutional framework in 1787 came a commitment to creating an effective uniform federal customs collection system to replace the teetering state regimes. The Constitution itself gave the new federal government ample power to do so. The First Congress's first order of business consisted of passing a comprehensive program of import and tonnage duties. As we have seen, for the whole imperial period prior to the 1760s, London imposed only one import duty on the Americans—the flat rate sugar duty in the Molasses Act. By contrast, the American Impost of 1789 imposed flat rate duties on nearly forty enumerated items and, with a handful of stipulated exceptions, an *ad valorem* on every other item imported into the country. Congress continually augmented these lists and raised the duties in the decades after ratification. The impost's unprecedented depth and scope required at the outset an enforcement program unlike anything eighteenth-century Americans had ever seen.

To enforce the impost, Congress passed the Collection Act of 1789. The Act created a customs collection regime that imposed more rules, more sanctions, and created more enforcement officials than anything the empire or states had. The legislation's attempts to regularize collection procedures and to prevent fraud and evasion suggested a commitment to doing away with the imperial-era indulgences rather than retaining them. This required, first, monitoring and detection and,

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second, coercion or credible threats thereof for purposes of punishing wrongdoing, deterring future wrongdoing, and creating due respect for the new federal state.

For these purposes, the Collection Act first divided the coastline into administrative districts and within each district designated customs ports. The approach drew on the imperial model, with the difference, however, that the American statute created a greater number of districts and designated ports—in some instances dramatically greater. For example, whereas under the imperial regime Massachusetts consisted of two districts, under the Collection Act it consisted of twenty; and whereas Virginia used to consist of eight districts, the Collection Act created twelve. The Collection Act also made a distinction between ports of entry and ports of delivery that the English laws did not.[2]

On the question of staffing, the Collection Act provided for nearly four times the number of customs officials that existed in 1760, most of the increase attributable to the very types of hands-on enforcement officials that the English system had lacked—surveyors, inspectors, weighers, measurers and gaugers.[3] The collector served as the central official in the districts, with primary authority over the assigned ports, subject in some ports to the countersigning authority of the naval officer, an office that the Collection Act otherwise substantially demoted relative to the colonial period. The collectors, in turn, answered directly to the federal Treasury and, to this extent, the Collection Act of 1789 incorporated a key feature of the English and European "fiscal-military" revolutions of earlier years (see Edling and Kaplanoff 2004).

Proposals in Congress to establish regional intermediate-level surveyors general or comptrollers in the federal system met with defeat. Rao suggests that this opened the way for the collectors to exercise discretion in favor of the merchants (67). However, the American system departed in this regard from the colonial customs system, which did at various times incorporate these intermediate officials, without substantial results (Barrow 1967, 141). The imperial system's primary supervisory problems in the colonies lay less in weak and irregular surveyors general, but in the Board of Trade's and, ultimately, the Lord Treasurer's failure to exercise any direct control over the colonial collectors—a problem exacerbated not only by the distance across the Atlantic Ocean, but by the interferences and obstructions of the state legislatures, governors, and local courts. By contrast, in the American system, the Treasury Secretary assumed direct control over the collectors at the outset,

2. Although relatively little historical evidence exists of the legislative debates surrounding the collection legislation, we know that early debates focused on essentially one question: whether to equip all ports for formal customs entry, or to create selected ports for entry with the remainder for delivery only. The merchants and their advocates in Congress advocated the first option. Yet if it made the merchants' lives easier, the first option also raised the possibility of inconsistent entry procedures and spreading the federal officials too thinly within districts. For these reasons, the second option ultimately won the day, requiring importing merchants to first make entry in designated ports of entry before proceeding to their destination ports. Channeling all merchants destined for a given district into an exclusive port of entry made fraud detection and enforcement more efficient and effective, and required many merchants to clear two layers of administrative review before unloading their goods (De Pauw et al. 1972, 4:286, 16:784–85).

3. The colonial customs service had always been understaffed. In 1760, only fifty-three regular customs officers existed. From 1710 to 1760, despite the growth in commerce, the Board of Trade added only ten officers to the colonies (Barrow 1967, 72).

conducting a substantial correspondence with the collectors and propounding numerous instructions in his circulars (Dalzell 1992, 142–45). The Constitution and Collection Act, moreover, vested the federal government with exclusive jurisdiction over customs collection, which the state governments never disputed after ratification (US Constitution, Art. I, Section 8, cl. 1; Art. I, Section 10, cl. 2). The issues concerning divided authority in the colonies that rankled English administrators therefore did not exist to the same degree for the Federalists. The Collection Act envisaged, and the early federal system actually incorporated, a much clearer line of authority over the individual federal collectors than the colonial collectors had ever experienced.

With regard to official compensation, the Collection Act established a system based on transaction fees, a percentage of total collections, and bounties.[4] American officials received no permanent salaries as colonial officials did. Bounty and fee-based compensation tended to promote a measure of adversarialism between the officials and the merchants—the one's gain being the other's loss. Bounties, in the words of one historian, encouraged "the aggressive exercise of coercive power" (Parrillo 2013, 4).

One of the first major controversies in the imperial struggle concerned the writs of assistance, general warrants authorizing collectors to enter and search ships upon suspicion of fraud, without obtaining a judicial warrant. Apparently, the ghost of James Otis did not loom large in the First Congress. To police fraud and thereby increase their compensation, customs officials wielded substantial independent powers of search, inspection, property seizure, and detainment. The collector, for example, could indefinitely detain ships for suspected violations by simply refusing to surrender the vessel's register (required papers for a ship to sail) (Collection Act, 42).[5] If an importer opted to deposit goods to secure duties but failed to pay the duties as promised, the collector could sell the deposited goods at public sale to cover the duties and storage costs without a court order (42). The Act empowered officials to board any incoming ship not already entered for the purpose of acquiring manifests and other information (32). When directed by the collector, inspectors could go on board any arriving ship to examine declared goods and to monitor the unloading process to ensure that the seamen did not unload goods not specified in the manifest (40–41). Goods removed from the wharf without the collector's signoff became subject to seizure and forfeiture.[6]

4. The Coasting Act of 1789 (regulating the coastal trade) supplemented the Collection Act in this regard. See note 6.

5. This provision applied to ensure payment of tonnage duties, but control of the register would soon become "a means of enforcing compliance with all formalities of entry, payment of dues … and other requirements imposed upon shipmasters and shipowners" (White 1948, 446; see also Collection Act of 1799, 675).

6. Jurisdiction over ships bound from foreign ports, however, would not suffice to prevent all frauds on the revenue. Vessels engaged in the coastal trade—"coasters" in contemporaneous parlance—had traditionally played key roles in smuggling schemes and the imperial regime neglected to squarely deal with the issue. Passed a few days after the Collection Act, legislation relating to the coastal trade (Coasting Act) contained many provisions that helped address this issue and others relating to revenue collection. For information-gathering purposes, for example, the Coasting Act established registration and enrollment procedures for American vessels, and required outgoing clearance for all ships bound to foreign ports, subject to fines (60–61). Coasters bound for a foreign port had to surrender their license, subject to fines (63–64).

Yet one critical piece remained—probably the most significant departure from the imperial regime. Enforcing the various fines and forfeitures set forth in the early revenue legislation would depend on the participation of adjudicatory tribunals. As we have seen, the jurisdictional conflicts between the old vice-admiralty courts and the local colonial courts had discouraged the colonial collectors from seeking judicial enforcement of the Navigation Laws in the first instance. Rarely could they expect a favorable result in court given the biases of local judges and juries (Barrow, 128, 154). In the Confederation period, the state customs collectors did not appear to rely on the courts with any regularity. Not until 1787, for example, nearly a decade after it established its custom houses, did Maryland even create a cause of action for unpaid duties.

Against this background, the need for dependable and proximal federal tribunals with clear, enforceable jurisdiction over revenue matters ranked high on the First Congress's list of priorities. Just as the first Impost Act required the Collection Act, so, too, the Collection Act required federal courts.[7] Passed a few weeks after the Collection Act, the Judiciary Act of 1789 created the federal district courts primarily for the customs collectors' use. Section 9 vested the district courts with exclusive original jurisdiction over "all seizures" made on water or land under the federal impost laws, and "all suits for penalties and forfeitures incurred under the laws of the United States" (Judiciary Act, 77). Litigants could file appeals in the circuit courts and, in large cases, to the Supreme Court. The Act did not prevent the merchants from filing private suits for damages in the state courts against the federal collectors, a tactic they had often employed during the imperial period. Beyond an expensive appeal to London that might take years to resolve, the colonial collectors had no real recourse. The Judiciary Act provided a much clearer means of recourse: Section 25 permitted the collectors and the government to prosecute appeals to the Supreme Court from state high court decisions denying a federal claim or defense (Judiciary Act, 85–87). The early Supreme Court exercised jurisdiction under this critical provision for the first time in a revenue-related matter discussed below.

B. Praxis

To the extent Rao means to suggest that the Collection Act of 1789 and its sister legislation envisioned an American customs system modeled on imperial administration in the colonies, the foregoing observations suggest a different perspective. Yet Rao maintains that even if the Collection Act did in fact contemplate a fairly vigorous collection regime, and even if Hamilton and other high-level

7. Without them, Otho Williams wrote on May 12, 1789, "no system of revenue can be put in execution—And if any system is attempted before it can be guarded by the Judiciary it will, most assuredly, induce habits of deception and fraud, which it will be extremely difficult for any future regulation, or even rigour, of Government, to reform" (De Pauw et al. 1972, 15:534). In a letter to George Thatcher (representative for the district of Maine in Congress), the to-be federal collector at Biddeford, Maine, Jeremiah Hill, reiterated the point: "[A]s there must be a Chain of Revenue Officers from one End of the United States to the other in order to secure Government, protect the fair & honest Trader, and detect the Smugler, so, it appears to me, there must be a line of Inferior Courts in the same Manner to protect those Officers, command Obedience to the federal Laws and ordinances & to punish Offenders" (Marcus 1985, 4:365–66).

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officials did too, the federal collectors created another, more accommodating kind of regime in their everyday dealings with the merchants (77).

To be sure, the early federal government faced a situation in the custom houses that required prudence and, in some circumstances, moderation. Customs revenue and therefore the federal government itself *depended* on the merchants and on a robust coastal and transatlantic trade. No one in the federal government wanted to make war on the merchants. No one wanted to tax the merchants out of existence. All desired to facilitate free trade, not impede it. All knew that establishing the federal government's authority would by necessity take time and should proceed in increments. With these things said, however, the accommodationist thesis probably overstates the extent to which the early federal customs regime deferred to the merchants.

In the early years, Treasury Secretary Hamilton countenanced and even recommended the exercise of discretion on the part of the collectors in areas where the law permitted it and where such discretion did not threaten revenue security. Where economic circumstances (particularly liquidity issues) rendered strict compliance with the revenue laws unusually burdensome, or where the merchants appealed over the collector's head, Treasury took notice. Rarely, however, did it relent. Rao cites to the well-known case of Providence collector Jeremiah Olney, arguing that both Olney and Treasury eventually "acced[ed] to the merchants' authority" in the matter (96). The proposition requires significant qualification here since Olney (who had a reputation for strict enforcement practices) and the government prevailed over very powerful Rhode Island mercantile interests in this case, quashing the jury verdict below and vindicating the Court's jurisdiction over state high courts under the Judiciary Act (see *Olney v. Arnold* 1796, 3 U.S. (3 Dall.) 308).

Rao discusses a handful of other examples of collectors exercising restraint in enforcing the Collection Act's provisions in the early period. He finds, for example, that some collectors ignored Hamilton's instruction to collect duties for the four-to-six-week period between passage of the impost and establishment of the custom houses under the Collection Act (85). He cites further evidence suggesting that, for a time, certain collectors calculated duties based on the invoices and/or oaths of masters, rather than on actual inspection of the goods upon landing.[8]

In the early custom collectors' practices with respect to customs bonds, however, Rao believes he has struck upon something more substantial and abiding. These practices constitute the primary evidence on which Rao relies to sustain his argument that the early federal collectors accommodated the merchants in much the same way that the colonial collectors did. The Collection Act gave masters and consignees the option of paying assessed import duties *after* selling the goods at market by giving a bond in lieu of payment, together with either sureties or a deposit of goods as security. Rao argues this provision borrowed from imperial

8. Rao's evidence here is Hamilton's May 13, 1791 circular to the collectors in which Hamilton states that certain unnamed collectors had engaged in this activity (Hamilton 1961, 8:340). Just which custom houses engaged in the purportedly illegal practice, how many, how Hamilton came to learn of the alleged practice, or whether the subject calculations resulted in any underpayments, Hamilton's letter did not say. Nor does Rao suggest that the collectors failed to heed Hamilton's instruction to cease the practice.

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practices, describing such bonds as "the inner connective tissue of the British imperial customs laws"—a "staple" of the English system (67).

The primary bonds on which the imperial customs system relied, however, memorialized promises to carry enumerated goods to ports within the empire, not promises to pay customs duties at a later date. Rao offers no evidence of contrary practices in the American ports.[9]

Rather, statutory future-payment bonds seem to have first arisen on American shores in the temporary state customs regimes during the confederation period, primarily in response to the scarcity of hard money after the Revolution, to ease the money-strapped merchants into paying duties (see Maryland Act of 1784; New York Act of 1784). Thus the Collection Act's future-payment bond provision did not borrow from imperial laws, but from confederation-era state laws and practices.

Under the Collection Act, once these bonds went delinquent, and assuming that any deposited goods sold at public sale did not satisfy the balances in full, a statutory duty devolved on the collector to bring suit for recovery of any unpaid amounts. Rao emphasizes the extent to which the federal early collectors let bonds go delinquent without initiating prosecutions.

Evidence that Rao cites from the early period after ratification problematizes rather than supports his thesis. He cites, for example, Hamilton's report on custom house receipts in 1791, which included sizeable sums listed under the heading "Bonds Uncollected" (174).[10] Rao equates "uncollected" with "delinquent," but the report did not specify the portion, if any, of the "Bonds Uncollected" amounts attributable to delinquent bonds not yet put in suit (Hamilton 1961, 13:39).[11] Evidence not cited by Rao suggests that in some of the large ports, this portion remained quite low. During the period covered by the report, for example, Boston experienced very few, if any, delinquencies. Collector Benjamin Lincoln submitted returns to Hamilton in November 1791 establishing that the merchants in Boston had punctually paid their bonds "for more than a year past."[12] As to those bonds that did go delinquent, the New England district court records in the 1790s (not part of Rao's research) do not suggest lax enforcement practices. Particularly in Connecticut, the courts' files contain many prosecutions on overdue bonds, all of which involved coercive original processes and some of which proceeded to

9. Neither of the two Acts imposing duties collectible in the American colonies—the Navigation Act of 1673 and the Molasses Act of 1733—provided for bonds that extended the timing of payment. The Act of 1673 required that the merchant tender an appropriate portion of the commodities as payment in the event that he had no ready money to pay the duties. The Molasses Act required payment "in ready money" prior to landing the dutiable goods. Nor did the major import duty legislation of the revolutionary period—the Sugar Act of 1764 and the Revenue Act of 1767—permit future-payment bonds.

10. See, in particular, note 19, p. 255. Rao suggests the same equation when he cites a financial statement prepared by New York collector David Gelston in 1802 that included a "Bonds outstanding" entry (89).

11. The report is entitled "Receipts and Expenditures of Public Monies in 1791," dated Nov. 1792. According to the Collection Act of 1790, bonds came due in four to twelve months depending on the products (168). Most if not all the amounts in the "Bonds Uncollected" category could have represented unpaid bonds still within the four-month payment window.

12. Benjamin Lincoln to Hamilton, Nov. 10, 1791, Treasury Correspondence, RG56, M178, Roll 11, National Archives, Waltham. See also Sharp Delany to Hamilton, (Sept. 30, 1790), in Hamilton (YEAR, 7:80–81), noting that all bonds will "be punctually paid."

judgment and execution. These prosecutions grew over the first few years, hitting highs in 1795.[13] The pattern suggests increasing enforcement, not accommodation.

The evidence does suggest that throughout the 1790s and beyond, many importers preferred to give bonds, as it allowed them to sell their goods at market and pay duties from the proceeds. In certain ports, up to 75 percent of the transactions proceeded on some measure of credit. Some merchants operated on margins so thin that they had no choice but to obtain credit. When markets dried up unexpectedly, this often left these merchants without wherewithal to pay their bonds.[14] Issues surrounding payment by notes from state banks also delayed bond cancellation in the early period, as did small infractions, such as postdated checks (Dalzell 1992, 379). If certain collectors exercised restraint under these types of circumstances, it redounded to the benefit of the revenue and marked less an accommodation to the merchants or "commerce" than to unfortunate economic realities. Whether some delay in putting late bonds into suit ran contrary to the Collection Act, moreover, remained open to question because the legislation prescribed no time limit for commencing prosecutions.[15]

The collectors' practices with respect to future-payment bonds concerned the timing, not the requirement, of payment. All but a small portion of late bonds were eventually paid, often with interest accruing from the maturation date. When all else failed, the merchants simply tendered some or all the goods that they had been unable to sell.[16] In April 1810, Treasury Secretary Gallatin reported that revenue bonds outstanding since the government's commencement amounted to $9,600,000. Gallatin estimated that less than $1,000,000 of the entire outstanding amount constituted "bad debts," that is, lost revenue. (Lowrie and Clarke 1832, 2:422). This represented about 0.6 percent of the total customs revenue collected during the period. According to an 1831 Treasury report, for the forty-year period from 1789 to 1830, less than $6 million of a total $781 million in secured duties went uncollected. Which is to say, here again, less than 1 percent, a figure that includes the substantial irregular losses arising out of the Panic of 1819.

13. For examples in the Connecticut district court, see U.S. v. Uffoot (Feb. 1790), U.S. v. Hopkins (Feb. 1790), U.S. v. Clarkas (Dec. 1790), U.S. v. Kimberly (Feb. 1791), U.S. v. Clark (Feb. 1791), U.S. v. Chapman (Apr. 91), U.S. v. Mansfield (Apr. 91), U.S. v. Hotchkins (Dec. 1792), U.S. v. Howell (Dec. 1792), U.S. v. Coggeshall (Dec. 1792), U.S. v. Barney (Jan. 1793), U.S. v. Pint (Jan. 1793), U.S. Clark (Jan. 1793), U.S. v. Squire and Brady (Dec. 1793), U.S. v. Meigs (Aug. 1794), U.S. v. Jesup et al. (Aug. 794), U.S. v. Bellamy and Whiting (Aug. 1794), U.S. v. Daniels (Feb. 1795), U.S. v. Mansfeld (Feb. 1795), U.S. v. Atwater (Feb. 1795), U.S. v. Humphrey (Feb. 1795), U.S. v. Gillett (Feb. 1795), U.S. v. Leeds and Woodward (Feb. 1795), US. v. Bellamy (May 1795), U.S. v. Daniels (Oct. 1795), U.S. v. Dickerson and Thompson (Nov. 1795), U.S. v. Wetmore (Nov. 1795), USDC Ct., Case Files, RG21, National Archives, Waltham. In some cases, the marshal jailed the defendant for want of assets to satisfy the judgment. See, e.g., U.S. v. Chapman (Apr. 1791).

14. Evidence from Philadelphia and New York suggests that economic contractions in 1794 caused the collectors there to temporarily refrain from prosecuting late bonds on pleas from the merchants (Dalzell 1993, 195–99).

15. It bears mention, too, that the legislation gave the collectors little incentive to prosecute late bonds. The Collection Acts provided for no penalties or bounties in such cases. By programmatically suing the merchants the moment bonds went late, the collector stood to gain nothing but a soured relationship with the defendant.

16. For an example, see Defendant's Plea, Cross v. Marquand, USDC Mass., June 1790 term (offering unsold salt to satisfy the bond).

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Perhaps, then, the most remarkable feature of bond practices in the custom houses in the 1790s is not the collectors' failure to prosecute late bonds, but the extent to which merchants ultimately followed through on their bond commitments. Why did they do so? To argue that they paid because the collectors accommodated them by permitting them to pay late only begs the question: Why did the merchants in such cases pay at all? Perhaps a sense of legal obligation played a part. Perhaps they paid "voluntarily" out of a sense of patriotism or conscience. Plainly, however, the Collection Act did not set up a system that relied exclusively on the merchants voluntarily complying. It rather meticulously affixed sanctions, in the form of penalties, property forfeitures, and even imprisonment, to each and every breach of the rules. In the case of delinquency on bonds, this included the magisterial sanction of a coast-wide credit freeze, the threat of which doubtless incentivized many delinquent merchants to pay.

Even those collectors who permitted bonds to go late, moreover, did not cancel the bonds. Interest therefore accrued and, until 1799, the courts and collectors exercised some discretion in setting the rate. Official leniency as to the timing of bond payments did not relinquish the means of regulation to the merchants. The bonds always loomed over their heads. They stood exposed to prosecution at any time. Behind every bond, whether late or not, lay coercive remedies that the merchants wanted to avoid and that, if the early court files are any indicator, the collectors or government attorneys, or both, could and would pursue.

The evidence that, at first glance, best fits the accommodationist thesis on future-payment customs bonds in the 1790s comes from a single port—Charleston, South Carolina (Dalzell 1993, 201–10; Rao 2016, 89). By 1797, the Treasury Department had acquired evidence that delinquent bonds had become a serious, perhaps even systemic, problem in Charleston under the collectorship of Isaac Holmes. To make matters worse, Holmes had submitted highly misleading account reports to Treasury in an effort to hide the problem. Once the problem came to light, however, Treasury did not simply let it lie or otherwise indulge the Charleston custom house's leniencies. It took decisive action, appointing a new collector (James Simons) who ramped up enforcement efforts. By June 1798, Simons had turned the situation around, reporting huge revenue receipts from Charleston. Secretary Wolcott commended Simons for correcting the "devious" habits that Holmes had countenanced and perhaps even encouraged (Dalzell 1993, 207).

When Simons floated the idea of forgiving some of the previous losses, Treasury refused the suggestion. Instead, the federal government arrested and commenced a slew of high-profile prosecutions against prominent Charleston merchants—one against Robert Hazlehurst for $59,000 on twenty-three bonds; another against Ebenezer Coffin for over $16,000 on two bonds; and four others for amounts around $10,000 each. Rao discusses these cases, but contends that they ultimately "died" and that the outcomes demonstrated to the Charleston merchants that they "had little, if not nothing, to fear" from defaulting on their bonds (Rao 2016, 89).

In fact, at least from the time the litigation commenced the government held the upper hand against the defendants straight through to the end of the cases. The US Marshal personally seized the defendants by *capias* writs, brought them into

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court, and, subsequently, juries returned verdicts for the government in all the cases (Marcus 1985, 8:271–72). That the Supreme Court in the leading case, *Hazlehurst* v. *United States*, 4 US (4 Dall.) 6 (1799), affirmed, but the merchants' nonappearance does not mean the cases "died." It means that the merchants had cried uncle—which is understandable considering that they had no real defense. Nor does the apparent absence of signed execution writs in the circuit court's files mean, as Rao suggests, that the government relented after the appeal. The government, after all, had a jury verdict in its favor backed up by the US Supreme Court. The legal process did benefit the defendants insofar as their as-of-right appeals bought them some time to acquire money. That process, however, also had an ultimate end and became progressively severe in moving toward that end. By all appearances, after the Supreme Court's ruling, under threat of foreclosure, seizure, and imprisonment, the South Carolina defendants in the *Hazlehurst* matters finally paid up (Marcus 1985, 8:274).

Rao's focus on the timing rather than the requirement of payments tends to obscure the Collection Act's central objective: the prevention of fraud. When we measure the practices in the custom houses against *this* objective, a different picture emerges. The federal collectors had no intention of continuing to tolerate the merchants' evasions and manipulations. All pledged to do their best to prevent it. Without salaries, their livelihoods depended on it. My own review of the New England district court records and Hamilton's correspondence with the collectors suggests that the new federal officials charged quite hard out of the blocks—to stake out the federal government's new administrative ground and to show the merchants that the Collection Act's prohibitions on revenue fraud would carry real punch under the new system.[17]

Soon after the new federal customs houses went into operation in 1789, reports of smuggling busts, property seizures, and a whole host of other regulatory violations began to appear. In one early case, the New Jersey district court obliged collector John Ross's suit to fine Adam Caldwell for assisting in unloading cargo on the night of August 29, 1789 in the Delaware River near the town of Elizabeth (American Museum 1790, 4). In Boston, having obtained word of a nighttime offloading, collector Benjamin Lincoln and his inspectors found the merchandise in question "in a barn in the north part of the town far distant from the Ship." Thereupon, Lincoln seized the property and the ship, and sued *in rem* in the district court for penalties, which the court awarded on default.[18] A few weeks later, Lincoln and his staff uncovered a devious scheme to disguise fish from Nova Scotia as local product. "I considered the detection of this fraud as a matter of importance," Lincoln wrote, "for they were not only evading the duties but they were drawing from us a bounty

17. After organization of the new custom houses, another historian had concluded, smugglers "soon came to realize the energetic character of the new administration. Accustomed to ply their trade almost with impunity, they now found that infractions of the law were followed by vigorous prosecution. Before the first month of the new regime had gone by several of these offenders were caught and heavily fined" (Stephens 1909, 97).

18. Lincoln to Hamilton, May 27, 1790, June 1, 1790, Treasury Correspondence, RG56, M178, Roll 11, National Archives, Waltham. For the case files, see United States v. Two Trunks of Merchandise, USDC Mass., Case Files, June 1790 Term, RG21, National Archives, Waltham.

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of five Cents upon every quintail." After intercepting the scheme at the wharf, boarding the offending vessel, seizing the fish and the ship, and detaining the captain, Lincoln prosecuted all the participants for penalties. In the interim, "[t]he Captain was taken and committed."[19]

Certainly, the collectors did not regard the Collection Act as perfect, and Rao presents evidence that, for example, the collectors did not, by sight, verify ship manifests in all instances. Yet if the collectors interpreted and relaxed legal provisions in favor of the merchants, they also believed in going through the prescribed constitutional channels in attempting to change the law to fit their views and ongoing experiences. Here, however, the collectors generally did not seek changes that accommodated the merchants, but changes that conferred greater enforcement and fraud-detection powers in the ports. In this connection, they worked with (not against) Hamilton.

On April 22, 1790, Hamilton presented proposed legislative revisions to Congress that reflected opinions he shared with the major collectors. Concerned that the forty-eight-hour entry rule permitted ships to proceed elsewhere during the window, Hamilton proposed to narrow the window to twelve hours. He recommended additional penalties and to increase some of the existing ones. He thought it prudent to empower inspectors to stay on board ships carrying imported goods as they went from district to district to monitor unloading; and to "secure with proper fastenings" all the hatches and other communications with the holds of ships. Hamilton considered these invasive measures a *benefit* to trade since it would relieve merchants of the duty to enter and secure duties on imported goods intended for other ports. To deter the merchants from delaying payment on their bonds, Hamilton proposed a coast-wide credit ban as an automatic administrative sanction upon delinquencies (Hamilton 1904, 3:64, 63, 76, 66, 67, 68).

Yet perhaps the most pressing proposed legislative revision in the direction of greater enforcement concerned adequate material supplies. No sooner had the Collection Act gone into effect than collectors in the major ports began a concerted campaign to acquire a supply of official government ships to patrol the coasts for which the first Collection Act had failed to provide (Hamilton 1961, 5:519–20, 5:477, 7: 613–14; Kern 1975, 21).[20] Until 1791, the collectors made do with whatever boats they might acquire on their own without apportioned funding. A few borrowed small open row or sail boats. In Philadelphia, Sharp Delany employed a "Barge with Sails"

19. Lincoln to Hamilton, July 17, 1790, Treasury Correspondence, RG56, M178, Roll 11, National Archives, Waltham. For the case files, see Lincoln v. Schooner Bee, USDC Mass., Case Files, Sept. 1790 Term, RG21, National Archives, Waltham. Other early fraud cases in the Massachusetts district court included, in the March 1790 term, Hiller v. One Chest of Tea, etc., United States v. Burdett, United States v. Saunders, Lincoln v. One Bag of Coffee, Lincoln v. 16 Boxes of Lemons, Lincoln v. 1 Chest of Tea, 3 Horses, and 1 Wagon; in the June 1790 term, U.S. v. 1 Hogshead of Molasses, etc., United States v. Ship Neptune, Lincoln v. McNeil, Sargent v. Low, Cross v. Marquand; at the September 1790 term, Hiller v. Seldon, U.S. v. Sprague, U.S. v. Scott, Lincoln v. Six Saddles, Lincoln v. Smith, Lincoln v. McNeil, U.S. v. Burleigh, U.S. v. Hopkins; in the Dec. 1790 term, U.S. v. 4 Bags of Coffee; and at the March 1791 term, U.S. v. Schooner Nancy, Lincoln v. One Barrel of Sugar, Lincoln v. 4 Bags of Coffee—all in USDC Mass. Case Files, RG21, National Archives, Waltham. In most of these cases, the government prevailed by default.

20. For Boston collector Benjamin Lincoln's efforts in this regard, see Benjamin Lincoln to Hamilton, Jan. 20, 1790, Treasury Correspondence, RG56, M178, Roll 11, National Archives, Waltham.

(Hamilton 1961, 5:477). Yet small boats could only venture so far from the coast and had limited speed and maneuverability. Their small size did little to command the respect of the large commercial vessels they had to police. All the collectors agreed that only fully decked, armed schooners or sloops could answer the purpose.

Finally, the entry rules relied largely on the initiative of the shipmaster to come forth and declare upon "arrival" in a port or district; and the Coasting Act exempted licensed vessels under twenty tons from all entry and clearance requirements. The collectors believed both provisions had permitted foul play among designing merchants.[21]

With revenue cutters and a supporting fleet of smaller boats, the collectors sought to secure the revenue by preemptive administrative action. They wanted official revenue cutters on patrol at all times to spot any and all ships (including coasters) approaching the coastline in high-risk areas, to confront and board the ships, and to secure manifests *prior to* "arrival." This would also operate to prevent unidentified incoming vessels from entering into inlets and rivers where the merchants had the upper hand. Over the merchants' objections, Hamilton agreed with the collectors and asked Congress to fund ten revenue cutters in the first instance, "the utility of which will increase in proportion as the public exigencies may require an augmentation of the duties" (Hamilton 1904, 3:61).

The Collection Act of 1790 obliged Hamilton and the collectors on all the foregoing enforcement proposals, and marked yet another step toward greater enforcement in fraud protection. Most important, it provided for the construction of revenue cutters as per Hamilton's proposal, and for crews on each with guaranteed compensation. Collectors could purchase as many additional open boats as needed for the better detection of fraud. The Act of 1790 also conferred expanded search powers on the cutter officers.[22]

Hamilton assigned the first ten cutters to the ten busiest ports. At launching, each vessel carried light but considerable arms—at least ten muskets with bayonets, twenty pistols, one broad axe, and two chisels (Hamilton 1961, 12:333–34; Canney 1995, 2–3). At least three had swivel guns installed on deck. All the first ten cutter captains commissioned by Washington came recommended by the respective collectors, local politicians, and, in some cases, merchants. All but one had served at sea during the Revolution as naval, marine, or privateering officers (King 1978, 27).

On June 4, 1791, Hamilton disseminated a circular to the new cutter captains, underlining key provisions in the Collection Act of 1790 and offering instructions as to how to execute their duties. The cutters' sole task, according to Hamilton,

21. See, e.g., Benjamin Lincoln to Hamilton, Apr. 15, 1790, Treasury Correspondence, RG56, M178, Roll 11, National Archives, Waltham.

22. Under the Collection Act of 1789, inspectors could, at the behest of the collector, go on board any ship arriving from a foreign port to examine manifests and supervise unloading; absent a reason to suspect fraud, officials had no search powers and even those with access to small open boats could scarcely venture out of port to meet an arriving ship. The Collection Act of 1790 gave the new revenue cutter officers (and other port officials) the power to go on board *an*y arriving ship (even a coaster) and to intercept the ship as far out as twelve miles from the coast. Upon boarding a ship, moreover, officials now possessed broad powers to search "the cabin and every other part of the ship," to install locks on the hatches and other portals to the ship's hold during the nighttime hours, to seal any containers found outside the hold, and to remain on board a ship going from one district to another (164–65, 175).

consisted in guarding the revenue from all infractions on the coast, bays, and rivers "pre[vi]ous to the anchoring of Vessels." For these purposes, the cutters would need constantly to "ply along the Coasts in the neighbourhood of your Station, & to traverse the different parts of the Waters which it comprehends." The officers, Hamilton wrote, must confront, board, and demand manifests "indiscriminately" from incoming vessels. Hamilton also laid emphasis on Section 15 of the Collection Act of 1790, which authorized the cutter officers to "arrest and bring back" any ship hailing from abroad attempting to depart from a district within the United States without reporting to the relevant officials (Collection Act, 158). Preventing such departures "must essentially depend on the Revenue Cutters." Finally, while Hamilton recommended "in the strongest terms … activity, vigilance & firmness," he also admonished the officers to "keep in mind that their Countrymen are Freemen & as such are impatient of every thing that bears the least mark of a domineering Spirit." The officers should therefore avoid all "haughtiness, rudeness or insult" and "endeavour to overcome difficulties … by a cool and temperate perseverance in their duty." Law, not emotion or impulse, governed the relationship. The officers, after all, had the law on their side and could "meet with nothing disagreeable in the execution of their duty which [] [the law] will not severely reprehend."[23]

Of course, ten cutters, no matter how large and fitted out, could not patrol every area of the coast at once. Stationed at strategic spots with telescopes, however, the cutter crewman could detect most incoming ships. Every maritime historian who has studied the early revenue cutter operations has concluded without hesitation that the first revenue cutters reduced smuggling, deterred dishonest conduct, and otherwise greatly contributed to the effective enforcement of revenue and other coastal regulations (King 1978).[24]

In the coming years, the federal government would call upon the revenue cutters to do more than secure revenue. The cutters helped enforce neutrality-related prohibitions and the embargo of 1794 (Kern 1977a, 35; King 1978, 137–38). In the period from 1797 to 1799, the government constructed a fleet of revenue cutters substantially larger than the first ten and employed them in the quasi-war with France together with other naval vessels. For a few years, the American revenue

23. Hamilton to the Captain of the Revenue Cutters, June 4, 1791, Circular Letters of the Secretary of the Treasury (T Series), RG 56, M735, National Archives, Waltham.

24. For a case-by-case study of each of the first ten cutters that draws this conclusion, see Kern (1976a, 1976b, 1976c, 1977a, 1977b, 1977c, 1978a, 1978b, 1979). A few months after launching the *Massachusetts*, collector Benjamin Lincoln observed that many merchants now paid their dues with "cheerfulness & punctuality." Benjamin Lincoln to Hamilton, Nov. 10, 1791, Treasury Correspondence, RG56, M178, Roll 11, National Archives, Waltham. Not all did, however, and soon thereafter revenue cases spiked on the New England district court dockets—many based on revenue and coasting violations first detected by the revenue cutters. At the Massachusetts district court's September 1792 and June 1793 terms, for example, a noticeable increase in revenue cases came in, most attributable to cutter operations as evidenced by references to the cutter captains in the declarations. The spike is also apparent elsewhere in New England where cutters existed. See USDC Ct., Case Files, 1790–1795, RG21; USDC N.H., Final Record Book, Vol. 1, 1789–1813, RG21, National Archives, Waltham. See also USDC Rhode Island, Case Files, 1790–1795, RG21; USDC Rhode Island, Minute Book, 1790–1792, ibid. In addition to smuggling, the cutters' indiscriminate boardings and searches exposed innumerable other infractions such as failure to carry manifests, sailing abroad without surrendering a coastal license, and carrying false registration papers (Hamilton 1961, 9:425–26; 11:315; 11:518; 14:316, 471; 16:286; see also Kern 1976b, 16). Irving King's perusal of the log of the *Massachusetts* reveals many daily entries stating "Caught their manifests" (King 1978, 92).

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cutters thus functioned as both warships and domestic police forces. In addition to light arms and swivel guns, these larger cutters boasted as many as sixteen cannons (King 1978, 150–52; Canney 1995, 5–6). By 1798, the cutters had mounted cannons and the next year, as part of the Collection Act of 1799, Congress made it lawful for the cutter crews, after firing a warning shot, to "fire at or into" any vessel that attempted to flee inspection (Collection Act of 1799, 701).

Passed at the apex of High Federalism, the Collection Act of 1799 fittingly crowned the Federalists' achievements in customs administration. This elaborate seventy-eight-page statute included not only stronger enforcement provisions but fifty-six different forms, schedules, and bond forms. The dizzying array of forms and verbiage that the legislation required the collectors to employ stands in some tension with Rao's suggestion that the early Congresses and Treasury at this point still "trusted" the collectors "because of their ability to negotiate authority with [the merchants]" (Rao 2016, 190). As well, the criminal fines imposed by the Collection Act of 1799 on officials for taking unlawful fees or bribes, for involvement in regulated commerce, and for failing to weigh, gauge, or measure applicable cargos (Collection Act of 1799, 680, 695) complicate Rao's assertion that the "crime of corruption" first emerged as part of Jacksonian reforms in the 1830s (196). At the very least, the Collection Act of 1799 suggests that the movement toward confining discretion in the custom houses had begun a good period before Rao asserts. Incidentally, the Act survived the Jeffersonian ascendance untouched and, with occasional modifications, formed the foundation for US customs administration straight to the end of nineteenth century (Goss 1897, 28).

IV. CONCLUSION: FROM EMPIRE TO LAW

If the creation and administration of the first federal customs houses borrowed from past experience, it also marked a movement toward greater enforcement and administration. The Americans succeeded where London, the states, and the Continental Congress had failed precisely because they turned away from a paradigm of empire and accommodation, and toward a paradigm of law and administration. In all events, the early period saw the federal government taking and holding much more administrative ground in the ports than it ceded.

The Americans, to be sure, invented an accommodative mechanism not provided for under the imperial laws—the future-payment customs bond—and the early federal collectors exercised some discretion as to when and whether to sue on delinquent bonds. If economic realities counseled some measure of accommodation as to the timing of payment, however, rarely if ever did the early port officials accommodate the merchants on the requirement of payment itself. Nor does the evidence suggest they accommodated the merchants when it came to securing the revenue against fraud.

The First Congress, the Treasury Department, and the early American port officials sought to accomplish essentially the same goal that the British had sought to accomplish after the French and Indian War: to raise revenue through customs duties for the purpose of funding the central government's debt and building its credit. But why did the first federal government under the Constitution succeed

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where the British failed? Or, put another way, why did the merchants of the 1760s and 1770s start a revolution over revenue-raising import duties, while the merchants of the 1790s routinely complied?

Certainly, the federal import duties themselves possessed greater perceived constitutional legitimacy than the earlier measures. The American merchants could no longer cry "taxation without representation" (Dalzell 1993). Government-bond-holding merchants also stood to benefit directly from an adequate revenue. Perhaps, also, accommodations as to the timing of payment through future-payment customs bonds helped ensure that the merchants would, at last, pay the assessed duties (Rao 2016, 94).

Most importantly, however, the Americans established a collections regime that, even as it may seem modest by modern standards, far exceeded anything that had ever preceded it in terms of administrative system and capacity. As we have seen, the Federalists innovated in a number of areas here. Yet if one had to select a single innovation that best explains the American successes relative to their British forebears, it would be the creation of the federal courts.

The British could never establish independent courts in the American colonies. Even after London increased the number of colonial officials in the 1760s, its primary weakness in the area of enforcement lay, as always, in the colonists' control over the local legal institutions and, increasingly, the colonists' unwillingness to submit to the jurisdiction of the juryless vice-admiralty courts. The late 1760s saw Parliament and British administrators adopting a new way to respond to the problem: standing military force. Yet instead of imposing order on the colonies, enforcing the colonial customs laws by military coercion only elicited further American outrage and resistance—and, ultimately, a military reprisal.

Herein lay the American Revolution's real lesson. British employment of military coercion to enforce taxation policy during the imperial crisis provided Americans with an example of how *not* to govern. Against this background, the Federalists of 1787 began with a commitment to avoiding military coercion in revenue enforcement. Yet they did not, as Rao suggests, pursue a paradigm of accommodation in its stead. They pursued coercion by other means. In the first instance, this entailed the various fraud enforcement mechanisms employed independently by officials in the ports—what Hamilton called the "coercion of the magistracy" (Madison et al. 1987, 149). To recover statutory penalties and unpaid customs bonds, and to consummate forfeitures and seizures, however, the First Congress required that the collectors obtain court orders in federal district courts established primarily for this purpose. In the employment of coercion by other means in the ports, all roads led ultimately to what the North Carolinian Federalist lawyer William R. Davie called "coercion through the judiciary" (Elliot 1891, 4:155).

Revenue cases completely dominated the district courts' dockets in the early 1790s. No other category of cases even compares (Henderson 1971, 55–56).[25] The

25. The collectors usually brought the suits in their own name, with the district attorney and attorney general intervening in higher-profile matters. Most cases proceeded to judgment by default. See specifically USDC Mass., Maine, Ct., RI, Case Files; New Hampshire Final Record Book, 1790–95, RG21, National Archives, Waltham. For a monograph on the New Jersey district court, see Lender (2006, Ch. 1).

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early collectors and federal attorneys prosecuted virtually all the provable revenue violations concerning the requirement (vs. timing) of payment that came under their jurisdiction. Yet of what precisely did "coercion through the judiciary" consist? The judiciary exerted coercion through writs of process, issued by the court but in the president's name, commanding the US Marshal to execute certain instructions. Under the Process Act of 1790, the first federal courts incorporated state writ processes but possessed greater coercive enforcement powers at the execution stage and, due to the Judiciary Act's institutional merger of law and equity, had a broader range of writs at their disposal than any of the English courts alone did. The writ forms in the early federal district courts' files in revenue matters and otherwise within the familiarity of eighteenth-century Americans, included summons (order for defendant to appear), *capias ad respondendum* (seizure of a defendant's body to secure a first appearance in court), *venire facias* (compelling appearance of jurors or witnesses), *scire facias* (compelling a person to come before the court and show cause), *capias ad satisfaciendum* (seizure of the defendant's body to secure payment of a judgment), *fieri facias* (levy on goods and chattels to satisfy a judgment), and *elegit* (seizure of personalty or realty to compel payment of judgment). In equity and admiralty, subpoenas and arrest warrants, respectively, served the purpose of compelling appearances.

Probably because it conforms to modern conceptions of judicial power, constitutional scholars more often describe the federal judiciary in its original conception as the federal government's monitor than its administrative arm—not as an administrator of governmental power, let alone an instrumentality of state coercion, but as the guardian of individual rights *against* government power. To the extent historically minded scholars have attempted to place the judiciary within the administrative context, they have reinforced this understanding by focusing primarily on the development of what we now call *administrative law*—that is, judicial review of federal administrators (Mashaw 2012, 65–79). The approach obscures the Federalists' most frequently stated rationale for the Article III judicial power, reiterated over and again during the Federal Convention and ratification debates, and given concrete expression in the early 1790s, particularly in the district courts. The "controlling power of the Judiciary of the United States," declared one Federalist lawyer, existed for one reason above all others: "to enforce obedience to the [law]" (Elliot 1891, 4:157). The proposition well describes the judiciary's role within the revenue system in the 1790s.[26]

The question therefore becomes: Why did the early American merchants generally submit to the federal courts but not the imperial courts? The availability of juries to soften the Collection Act's rigors in the final judgment may very well help explain the difference, as does the relative constitutional legitimacy of the federal courts and local familiarity with most collectors. Long experiences with and historical acceptance of local legal processes and institutions (including lawyers, judges, common law writs, and local juries), however, seem to possess the greatest

26. "Public policy, national purposes, and the regular operations of government," the early Supreme Court declared in *Priestman v. United States*, "require that the revenue system should be faithfully observed, and strictly executed" (1800, 34).

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explanatory power here. For although the Judiciary Act did make some innovations in the direction of greater judicial enforcement power, it and its sister legislation also drew largely on the same practices and processes that the American common law courts had employed for well over a century.

Rao advances a narrative of imperial continuation and decline to describe the federal customs system's first half-century. By contrast, the foregoing observations suggest a narrative of legal invention and evolution. The Jacksonians did refine the appraisement process for goods subject to *ad valorem* duties; create a Solicitor General with superintending authority over the district attorneys in bond prosecutions; and phase out the credit system in favor of government warehousing of bonded goods. None of these reforms, however, signaled the decline of the imperial paradigm because the Federalists had already abandoned it in 1789. Nor, on closer inspection, did any of the Jacksonian reforms substantially change the existing administrative system and structure.

The tighter appraisal requirements responded to the problem of "fictitious" invoices that Hamilton had flagged as early as 1790 but that had, in the perception of more than a few politicians, become considerably more severe in the inundation of imports that followed the War of 1812. The antebellum legislative developments built upon appraisal provisions in the Collection Acts of 1789 (34), 1790 (154), and 1799 (666). Congress created the Solicitor General, moreover, less to narrow the collectors' discretion than the district attorneys' discretion. Congress had long before transferred jurisdiction over bond prosecutions to the US district attorneys. Creating a Solicitor General simply added another official to the existing hierarchical structure, much like the creation of the Comptroller of Finance in the 1790s. The Treasurer and Comptroller continued to wield ultimate authority over the collectors, the Solicitor, and district attorneys (Butler 1837, 247–52).

Finally, the Jacksonian efforts to phase out the credit system did not flow from criticisms of the port officials' discretion. Overproduction in Britain after the last Napoleonic war and the economic bubble that followed saw merchants starting to abuse the credit system in ways over which the American collectors had no control, creating vast speculative bubbles that contributed to the Panic of 1819. Jacksonian reformers squarely blamed the credit system. They sought and ultimately succeeded in implementing a warehousing alternative, thereby preventing the merchants from trading in bonded goods prior to payment of duties and, in theory, nipping speculative credit bubbles at their foundations (Philadelphia Chamber of Commerce 1828).[27]

If the customs system that existed on the eve of the Civil War differed from the original framework established by the Federalists in the 1790s, the difference lay in degree not kind. The society, to be sure, had changed. The fundamental structure of the customs collection system, however, had remained substantially the same (Goss 1897, 28). The Federalists, the early port officials, and federal courts—not the Jacksonians—steered American customs collection away from the old imperial model and toward a new model predicated on homegrown legal institutions. To pursue their own reforms, the Jacksonians stepped onto the shoulders of their forebears.

27. Incidentally, during the 1860s, critics attacked the warehousing system as "merely another method of giving credit on imports" (Goss 1897, 57).

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