Volume II: Issue 10

The BEACON *Lite*

A Condensed Curriculum of Constitutional Study

Clause Discussed:

• Article I, Section 8, Clause 1

Concept Discussed:

• Duties

When Congress enacted a Duty on horse-drawn carriages in 1794, a wide chasm developed between opponents such as James Madison who thought the Duty was but a unapportioned direct Tax (and therefore unconstitutional) and supporters such as Alexander Hamilton who praised the new revenue stream.

Virginian Daniel Hylton refused to enter his carriage(s) on the rolls or pay the new Duty. As a Defendant in the later government case against him, he only had to defend against the charge.

The federal three-judge circuit Courts of the era consisted of two supreme Court justices who rode "circuit" and the local district Court judge, any two of whom constituted a quorum.

When only one supreme Court justice was present with the district Court judge, and they ruled in opposition of one another (such as happened in the present case), proper procedure mandated that the case be continued to the succeeding court who would re-hear the case.

In the present case however, Hylton entered a judgement of confession which served as the foundation for a writ of error to be tried by the supreme Court. With such a confession, he now had the burden of proving his case (or his confession of guilt would stand).

Government officials argued *both* sides of the case.

In Court, both the prosecution and defense agreed to the "facts" of the case, which were stipulated to be:

> "That the Defendant, on the 5th of *June*, 1794, and therefrom to the last day of *September* following, owned, possessed, and kept, 125 chariots for the conveyance of persons, and no more: that the chariots were kept exclusively for the Defendant's own private use, and not to let out to hire, or for the conveyance of persons for hire: and that the Defendant had notice according to the act of Congress, entitled '*An act laying duties upon carriages for the conveyance of persons*,' but that he omitted and refused to make an entry of the said chariots, and to pay the duties thereupon, as in and by the said recited law is required, alledging that the said law was unconstitutional and void. If the court adjudged the Defendant to be liable to pay the tax and fine for not doing so, and for not entering the carriages, then judgment shall be entered for the Plaintiff for 2000 dollars, to be discharged by the payment of 16 dollars, the amount of the duty and penalty; otherwise that judgment be entered for the Defendant."

The "facts" of the case are troubling. *Carriages* were chosen for annual Duties, in large part because of their *limited* number, being items of relative *luxury*.

A 1798 Treasury Report details that 764 chariots were entered on the rolls in the entire United States in 1796. With only 332 chariots entered in all of Virginia, the likelihood that Hylton owned 125 is nil.

Each chariot was assessed a Duty by the 1794 Act in the sum of *eight* dollars; lack of payment doubled it.

The total amount of Duty and penalty for a single chariot was then $16. Multiplied by 125 chariots, this comes to the $2,000 stipulated as the amount "entered for the plaintiff" if the Defendant was found guilty.

After reading the stipulation that "judgment shall be *entered* for ... 2000 dollars", one reads that the judgment is "to be *discharged* by the payment of 16 dollars, the amount of the duty and penalty".

The stipulation, then, all but admits Hylton owned but *one* chariot.

A look elsewhere provides clues to help settle this discrepancy. The Judiciary Act of 1789 details the jurisdiction of the supreme Court.

In **Section 22** of the Act, Congress provides for the appellate jurisdiction of the supreme Court:

> "where the matter in dispute *exceeds* the sum or value of two thousand dollars, exclusive of costs".

With the actual value in dispute a mere $16, neither the supreme Court ($2,000.005 threshold) nor even the circuit Court ($500.005 original/$50.005 appellate jurisdiction) had jurisdiction to hear the appeal.

The Chief Justice and five Associate Justices properly constituted the supreme Court — "any *four* of whom shall be a quorum". Chief Justice Ellseworth declined taking part in the decision, having only been "sworn into office, in the morning; but not having heard the whole of the argument".

The four Associate Justices hearing the case (the fifth was sick) ignored the concept that apportionment was instituted to protect Citizens of their property while yet maintaining the authority of Congress to raise necessary revenue in extraordinary cases.

That it could prove patently unjust to lay a uniform Tax on items not universally located throughout the States is *precisely the reason for the rule of apportionment*.

Justice Wilson writes "*I should have thought it proper to join* in the decision" acknowledging that he did **not** join in the decision (either for or against).

Wilson discusses two separate topics; the first about it being proper for him "to join in the decision" and then about his relief from the "necessity" of doing so.

Looking at the second topic first, Wilson infers that "the unanimity of the other three Judges" relieved him "from the necessity" of expressing a judicial opinion.

If Wilson had ruled *against* Hylton, he would have added to their unanimity (4:0). Had Wilson ruled *in favor* of Hylton, the other three would have overruled him (3:1). Thus, his ruling either way would not have changed the majority-rule outcome against Hylton (as long as he gave an opinion).

It is in this sense only that his comment that his ruling was *unnecessary* could attempt to be justified. His additional comment that his "sentiments, in favor of the tax in question, have not changed" is irrelevant in that he did not give a judicial opinion of the matter.

Wilson's unchanging sentiments refers to when he earlier acted as primary Judge of the circuit Court which heard Hylton's case. Wilson there ruled against Hylton. Given that the Court Reporter's syllabus stated that the circuit Court was "equally divided", one can infer that the circuit Court Judge ruled in favor of Hylton.

"Joining in the decision" does not necessarily mean *agreeing* with the other Judges. It is true that Wilson *could* write those same words and mean only that he should come to the same agreement as the others. But Wilson's (in)actions prevent this meaning.

Of course Wilson should have "thought it proper" to join in to give a decision when he was one of "only four Judges...who attended the argument of this cause" because the 1789 Judiciary Act required a quorum of *four* Judges to hear argument and give opinions on a cause!

If only *three* Judges gave an opinion, even their unanimity does not over-ride the minimum quorum requirements for the Court to act with judicial authority, to hear the cause or give a ruling.

In this case a 3:1 ruling is much stronger than a 3:0 ruling; the first meets the minimum quorum requirements and is thus a valid ruling; the second does not and is not.

From this substantial viewpoint, his comment regarding his ruling as *unnecessary* is not only incorrect (if he meant that the other three could act with sufficient authority), but devastating to the ability of the Court to act with judicial authority.

Wilson's abstention from giving a judicial ruling invalidated any authority the Court could possibly have otherwise had.

Given Wilson's declared sentiments, his actions to withhold his vote would only be fully consistent his known obligation to uphold the law (which prevented supreme Court action). If the supreme Court exercised jurisdiction where they had none (insufficient value of controversy), they would subject themselves to impeachment proceedings.

By going through the motions, but failing to meet the requirements of a quorum, any "opinions" given by three judges could only possibly be in their *individual* capacities, *without judicial authority*.

The only proper outcome in Hylton's case, given the lack of proper supreme Court appellate authority, was to end with Hylton's final action, an admission of guilt! *The only legally-significant events of this case were that Hylton was charged with failure to enter his carriage(s) and that he plead guilty, paying the Duty and penalty of $16.*

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