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Coup in the Court — Part II

By Dick Greb

In the last Liberty Tree, we began a critical examination of the Supreme Court case *Hylton v. United States*.[1] This 1796 case raised the constitutionality of a carriage tax enacted in 1794. In my opinion, this case is probably the most important tax case ever decided in the history of the United States, but there seems to be a woeful lack of understanding about it — or even much interest in it at all — in the 'tax honesty' movement. Yet the *Hylton* decision laid the foundation upon which every tax case that followed was built. Indeed, one cannot truly understand the much more popular *Pollock* and *Brushaber* decisions[2] without first understanding the subversion — nothing less than an unlawful amendment — of the Constitution brought about by that handful of black-robed liberty thieves over two centuries ago.

Last month, we concluded by discussing the underlying premise of the *Hylton* case. According to the published case report:

> After argument, the court (consisting of Wilson & Justices) delivered their opinions; but being equally divided, ***the defendant, by agreement of the parties, confessed judgment, as a foundation for the present writ of error; which (as well as the original proceeding) was brought merely to try the constitutionality of the tax***.[3]

The point I raised, one that can be easily missed, is that the *original proceeding* is claimed to have been brought to test the constitutionality of the carriage tax, and yet that original proceeding was instituted by *the government* as an action of debt against Daniel Hylton for failing to pay the tax on his stipulated 125 chariots. Seeing as how the government argued that the tax on a person's personal property — his carriage in this case — was properly an excise tax, then it must have brought the suit in order to get the Supremes to ratify its position that the tax was constitutional. And as its opponent in this contest, it chose Hylton, who was willing to lie about owning 125 chariots, and also to confess judgment when the two-judge lower court split, so that an appeal could immediately go up to the Supreme Court.

Stacking the odds against oneself

You have to admit that old Dan'l was pretty accommodating for a guy being sued by the government for $2,000 (back when that would be some serious cash). This is especially true when you consider that Hylton may well have won his circuit court case if he had simply waited for the next session

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1. 3 U.S. 171 (1796).
2. *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429 (1895); *rehearing*, 158 U.S. 601 (1895). *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916).
3. *Hylton*, pg. 172.

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rather than confessing judgment after the initial split. According to §2 of the Judiciary Act amendments of March 2, 1793 (1 Stat. 333, 334):

> [T]hat if at any time only one judge of the supreme court, and the judge of the district shall sit in a circuit court, and upon a final hearing of a cause, or of a plea to the jurisdiction of the court, they shall be divided in opinion, it shall be continued to the succeeding court; and if upon the second hearing when a different judge of the supreme court shall be present, a like division shall take place, the district judge adhering to his former opinion, *judgment shall be rendered in conformity to the opinion of the presiding judge*.

James Wilson was the Supreme Court justice sitting on the first case, and as we shall later see, he claimed the tax was constitutional as an excise tax. So the district court judge in that case must have been the one who believed the tax was a direct tax, and thus unconstitutional as not being apportioned among the states. Assuming said judge would continue in that belief, and that the different Supreme Court justice who sat on the circuit in the next session would agree with Wilson, you would have the situation described in §2 above. Unfortunately, the law doesn't seem to identify which judge would be the "presiding judge," but if it were the more permanent member of the court — the district judge who sits both times — rather than the changing 'guest' Supreme Court judge, then a second split would have gone to the district judge, meaning a judgment of unconstitutionality. Of course, the government could, and likely would, have appealed that decision, but then it would have had the burden of proof to show the circuit court erred in its decision. So, Hylton's agreement to confess judgment may well have in itself made his appeal less likely to prevail.

Remember, one of the most important aspects of all this collusion is the forcefulness of the arguments (or lack thereof). The more a person has at stake in the outcome of a case, the more incentive he has to win. It is this dynamic which drives the adversarial process. When collusion between the parties removes the incentive of one party to win, there's nothing left but a charade. It must have been obvious to the learned judges in *Hylton* that the statement of the case submitted by the parties was false, and so allowing it to go forward anyway makes them a part of the fraud.

After reciting the relevant provisions of the Constitution, Justice Samuel Chase opens his opinion with a reference to the above dynamic: "As *it was incumbent on the plaintiff's counsel in error, so they took great pains to prove*, that the tax on carriages was a direct tax; ..."[4] Notice that because of Hylton's confessed judgment, it was incumbent on *him* to prove the tax was direct. Notice also Chase's emphasis on the "great pains" Hylton took to prove his position. With this statement, he whitewashes over the fact that Hylton actually had very little skin in the game, by using the pretense of the normally strong incentive to win when the stakes are high.[5]

In this corner ...

The last point before starting into the separate opinions of the judges in this case is the recitation of the attorneys who argued the case before the court. According to the case report:

> This was a writ of error directed to the *circuit court for the district of Virginia*; and upon the return of the record, the following proceedings appeared. An action of debt had been instituted to May Term, 1795, *by the attorney of the district*, in the name of the United States, against Daniel Hylton, to recover the penalty imposed by the act of Congress, of the 5th of June, 1794, for not entering, and paying the duty on, a number of carriages, for the conveyance of persons, which he kept for his own use. ... The cause was argued at this term, by Lee, *the attorney general of the United States*, and *Hamilton, the late secretary of the treasury*, in support of the tax; and by Campbell, *the attorney of the Virginia district*, and Ingersoll, the *attorney general of Pennsylvania*, in opposition to it.[6]

Arguing for the government are former Treasury Secretary and leader of the Federalist Party, Alexander Hamilton, and U.S. Attorney General (and Federalist Party member) Charles Lee of Virginia. Meanwhile, Daniel Hylton also has two attorneys arguing for his position. The first is Jared Ingersoll, who was at that time *the Attorney General of Pennsylvania*. Ingersoll was not only a member of the Federalist Party, but he would later be chosen to be that party's Vice Presidential candidate in 1812. Hylton's second attorney's name was Campbell, and he was identified as being "*the* attorney of the Virginia district" — i.e., the District Attorney.

Now, I find it rather strange that a private citizen of Virginia could obtain the service of the Attorney General of Pennsylvania to represent him. And yet that hardly compares to the selection of District Attorney Campbell to be his other lawyer. Although no name is given for the person who instituted the original suit against Hylton, the same description is given: "*the* attorney of the district [of Virginia]." No-

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4. *Hylton*, p. 173.
5. For another look at how the government uses judicial chicanery to 'legitimize' its usurpations of power, read "The Peculiar Story of United States v. Miller" by Brian L. Frye in the *New York University Journal of Law & Liberty*. [https://tinyurl.com/ycvwcs79].
6. *Hylton*, pp. 171-172.

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tice that the definite article "the" (rather than the indefinite article "a") is used both places, suggesting that Campbell is not just one of many district attorneys, but the only one. And if that be so, then it must have been Campbell who brought the suit in the first place!

To summarize then: District Attorney Campbell (or at the very least, one of his colleagues) brings suit against Daniel Hylton for failure to pay the carriage tax. Supposed opponents Hylton and Campbell stipulate to a false statement of the case and present it to the Circuit Court — consisting of Supreme Court Justice James Wilson, and an unnamed Virginia District Court judge — who split in their decision. Hylton confesses judgment — that is, accepts a ruling against himself — rather than waiting until the next session of the court, so the case can be appealed to the Supreme Court immediately. Hylton then retains the services of Campbell, his opponent in the trial below, to argue his cause on appeal. He also manages to get the Attorney General of Pennsylvania to represent him as well.[7] Pitted against them are U.S. Attorney General Charles Lee and former Treasury Secretary Alexander Hamilton.

Obviously, Daniel Hylton was well-connected; he was a "wealthy and influential merchant,"[8] and according to one source, he had married Thomas Jefferson's niece.[9] Keep in mind that with the possible

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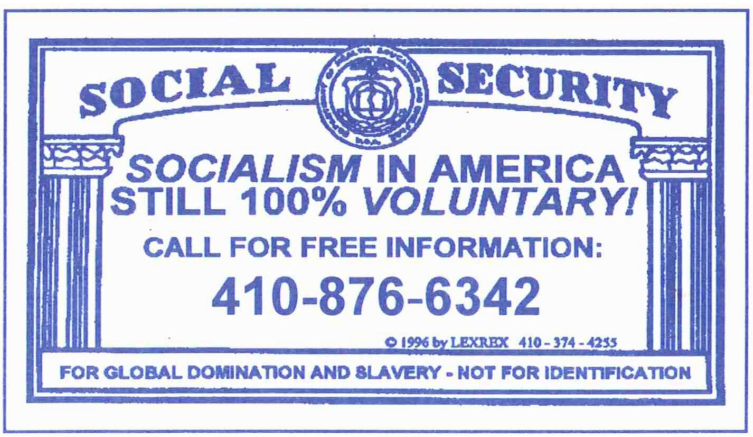
7. In a separate Supreme Court case (*Ware v. Hylton*, 3 U.S. 199 (1796) — decided just one day earlier than *Hylton v. U.S.* — Hylton again had Campbell as one of his attorneys, but his other attorney was none other than John Marshall, who would become Chief Justice of the Supreme Court a few years later.
8. *The Vestry Book of Henrico Parish, Virginia, 1730 -'73*, by R.A. Brock (p. xvi); https://tinyurl.com/ydexx4s8.
9. Unfortunately, this source now eludes me. However, in another source, "Memorandum Books, 1773," *Founders Online,* National Archives (http://founders.archives.gov/documents/Jefferson/02-01-02-0007) a footnote reads, "Daniel Laurence Hylton (c. 1746-1811), TJ's friend and later a prominent Richmond merchant, was married about this time to Sarah Eppes, sister of Francis Eppes (Prentiss Price, MS Eppes family genealogy in Monticello Archives)." So, even if he wasn't married to Thomas Jefferson's niece, Hylton was at least a friend of his.



Patriot Bill Huff
Rest in peace

This country lost a great freedom lover on March 3, 2018. William Huff, long-time member of Save-A-Patriot, passed peacefully into the arms of Jesus in his home, surrounded by his family singing hymns. Bill had great musical talent, and graduated with honors in vocal music from Glassboro State College, New Jersey.

In 1992, Bill and his family came to an SAPF meeting, and in 1993, they packed up and came to Carroll County to assist the 'tax honesty' cause. For two decades, Bill (with his wife of 46 years, Theresa. and their sons, Bill Jr., John, and Ben) were key to SAPF efforts in every possible way. Bill edited and wrote articles for *Reasonable Action* (the SAPF newsletter), he installed and maintained the phone system, led Saturday night meetings, prepared weekly messages for the meetings, and produced the news for Liberty Works Radio Network. You can still hear his golden voice on SAPF's outgoing message when you call our offices.

In addition, Bill spoke at Libertarian meetings and Homeschool conventions, founded the lexrex.com website, wrote the *Bill of Rights EXPOSED*, edited and republished the 1828 *Elementary Catechism on the Constitution* by Arthur Stansbury, and produced an audio version of Bastiat's *The Law*, a stellar production worth listening to every day — Bill called it "washing your brain." Bill was always waking Americans up intellectually; possibly his most successful propaganda was the "fake" social security card he designed in 1997, reproduced below.

Above all, Bill trusted Jesus as Savior, and believed Christians must stand up to the tyranny of the wicked. "The wicked flee when no man pursueth: but the righteous are bold as a lion." Prov. 28:1 (Motto of www.lexrex.com). As Bill wrote in memory of John B. Kotmair, Jr.: "Jesus paid it all for John, and John used himself up to tell the whole world that Only the Truth Will Set You Free. 'Our Father which art in heaven, Hallowed be thy name. Thy kingdom come, Thy will be done in earth, as it is in heaven ...' Matthew 6:9-10." Rest in peace, Bill.

Fact: If you have always lived and worked within the States of the Union ***- you have never paid an income tax!*** So... what have you been paying all these years? **Fact:** Social Security has always been voluntary for U.S. citizens living and working within the States. The Social Security Administration says: "The Social Security Act **does not** require an individual [citizen] to have a Social Security number (SSN) to live and work within the United States, nor does it require an SSN simply for the purpose of having one..." **Fact:** The only taxes most Americans have ever had withheld, are the ***voluntary wage taxes*** under subtitle "C" of the Internal Revenue Code! Subtitle "A" ***income taxes*** apply only to foreigners and Americans working abroad under a tax treaty. Could it be your chains are imaginary? Want to know more? Call the number that appears on the other side of this card for free information, to attend a seminar, or ask about our video or audio cassettes, and get... ***Just the Facts.***

[TEXT ON REVERSE of "SS Cards"]

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exception of Campbell (for whom no information on political affiliation is readily available), every lawyer and every judge involved in this case belonged to the Federalist Party. And with Federalists arguing both sides of the case, and Federalists deciding the issue, there was a pretty good chance that the outcome would ultimately favor the Federalists' agenda. All of these factors tend to confirm the view that Hylton was purposely chosen to be the defendant in this government-instituted test case of the recently acquired federal taxing powers.

Chase leads off

In the early years of the Supreme Court, it was common practice for justices to write separate opinions. Through the influence of Oliver Ellsworth, who was sworn in as Chief Justice the morning the decision was handed down in *Hylton*, that practice was later abandoned and replaced with the current practice of issuing one majority opinion. But on that day, *seriatim* opinions were still the norm, and up first for the liberty thieves was Justice Samuel Chase.

Chase begins with a correct statement of the issue: "By the case stated, *only one question* is submitted to the opinion of this court: -- whether the law of congress of the 5th of June, 1794, entitled, 'An act to lay duties upon carriages, for the conveyance of persons,' is unconstitutional and void?" He then proceeds to recite the various provisions of the Constitution which deal with taxation — Article 1, §§ 2, 8 and 9. However, in his recitation of §8, he omits a very important phrase:

> By the 8th section of the same article, it was declared, that congress shall have power to lay and collect taxes, duties, imposts, and excises: but all duties, imposts, and excises, shall be uniform throughout the United States.

Here's the full quote:

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, *to pay the Debts and provide for the common Defence and general Welfare of the United States*; but all Duties, Imposts and Excises shall be uniform throughout the United States.

Notice that he left out the only legitimate purposes for which the federal government could lay and collect taxes. As we shall see, his omission wasn't accidental; rather, it plays right into his argument. He continues:

> As it was incumbent on the plaintiff's counsel in error, *so they took great pains to prove,* that the tax on carriages was a direct tax; *but they* did not satisfy my mind. *I think, at least, it may be doubted; and if I only doubted, I should affirm the judgment of the circuit court. The deliberate decision of the national legislature*, (who did not consider a tax on carriages a direct tax, but thought it was within the description of a duty) *would determine me, if the case was doubtful, to receive the construction of the legislature*. But I am inclined to think, that a tax on carriages is not a direct tax, within the letter, or meaning, of the constitution.

As mentioned above, Chase comments on the "great pains" Hylton's government attorneys took to prove the carriage tax was direct. Yet, he wasn't convinced. At least, *he thinks it could be doubted*. And since he was not convinced beyond any doubt, he should affirm the circuit court's judgment. But as a practical matter, he's not really affirming any judgment of the circuit court, because that court was evenly split on the question. All he's affirming is Hylton's *confessed* judgment, which was nothing more than a procedural ploy to have the question decided by a higher court. It makes me wonder whether Chase would show such deference to the decision of the circuit court if Hylton had allowed his case to be held over for a second hearing, as discussed above, and the tie breaker had gone his way.

Chase then goes one step further, and claims that if the case were doubtful, he would go along with the deliberate decision of the legislature to treat the tax as if it were indirect. Of course, this erodes any protection against usurpation of undelegated powers, since it is generally through the legislature that such usurpation is accomplished. Congress enacts laws for which they've been given no authority, and in so doing, attempts to enlarge its power. By Chase's reasoning, such an act of usurpation becomes self-validating.

Don't miss the next installment, when we will see how Justice Chase's omission of §8's only legitimate purposes for taxes leads to his notion that the taxing power extends to "taxes, of every kind or nature, without any restraint," and how he twists that into a means of undercutting the distinction between direct and indirect taxes.

10. *Hylton*, p. 172.