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AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 2: The Early National Era – Powers of the National Government

Hylton v. United States, 3 U.S. 171 (1796)

In 1794 Congress passed a number of revenue measures, including tariffs on selected imports and excise taxes on auction sales, retailers of wines and foreign spirits, snuff, and refined sugar. However, when the House considered a levy of one to ten dollars to be paid by the owners of carriages, a debate ensued over whether this should be considered a "direct" tax that was unconstitutional unless apportioned among the states according to population, as required by Article I Secs. 2 and 9. Those who supported a weaker national government pushed the claim that the carriage tax was a direct tax, because they knew that it would not be possible to administer it in a way that would result in a proportionate burden of taxation across the states (since some states had very few carriages and others had many). Supporters of broader federal powers insisted that the Constitution's reference to "direct" tax was intended to apply only to land taxes and so-called "capitation" or "head" taxes, which imposed a fixed amount on every person.

After Congress passed a $16 per carriage tax, James Madison lamented in a letter (dated May 7, 1794) that "The tax on carriages succeeded in spite of the Constitution by a majority of 20, the advocates of the principle being re-enforced by the adversaries of luxury." Many in the Federalist coalition felt that it was necessary to resolve the lingering controversy about its constitutionality. The result was the first "test case," organized by party leaders interested in obtaining a ruling from the Supreme Court on the constitutionality of a piece of legislation.

Daniel Lawrence Hylton, a wealthy merchant in Virginia, claimed to own 125 "chariots," for his own private use, so that he might get his appeal before the U.S. Supreme Court. (While the United States sued Hylton for failure to pay $2,000 in taxes, there was an agreement with the cooperative Hylton that if he lost the case he would pay only $16.) Supporters of federal power, including Secretary of the Treasury Alexander Hamilton, hoped that the Federalist justices would uphold national taxing authority. Jeffersonians, including Hylton's Virginia lawyer John Taylor, had hopes for a different outcome but still urged the federal judges to begin "deciding constitutional cases, like other judicial cases – independently of political influence, upon free discussion, and without a risqué of any disagreeable consequences to the party propounding them." Thus, by 1795, the authority of federal courts to determine the constitutionality of acts of Congress was supported by both parties, with the Jeffersonians taking the stronger view that judges should declare this particular law null and void.

As you read these opinions consider how the justices' opinions in this case, focusing on the intent of the framers rather than the literal-semantic meaning of the words "direct taxes," differed from the interpretive approach taken in Chisholm v. Georgia. *Also, consider why party leaders would go through the trouble of arranging for a judicial statement of the constitutionality of the tax. Why was it not enough to simply accept the legislative victory on its own terms?*

THE COURT delivered their opinions seriatim in the following terms.

JUSTICE CHASE. 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?

The principles laid down, to prove the above law void, are these: That a tax on carriages, is a direct tax, and, therefore, by the constitution, must be laid according to the census, directed by the constitution to be taken, to ascertain the number of Representatives from each State: And that

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the tax in question, on carriages, is not laid by that rule of apportionment, but by the rule of uniformity, prescribed by the constitution, in the case of duties, imports, and excises; and a tax on carriages, is not within either of those descriptions.

By the 2d. section of the 1st. article of the Constitution, it is provided, that direct taxes shall be apportioned among the several States, according to their numbers, to be determined by the rule prescribed.

By the 9th section of the same article, it is further provided, That no capitation, or other direct tax, shall be laid, unless in proportion to the census, or enumeration, before directed.

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

As it was incumbent on the Plaintiff's Council 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.

The great object of the Constitution was, to give Congress a power to lay taxes, adequate to the exigencies of government; but they were to observe two rules in imposing them, namely, the rule of uniformity, when they laid duties, imposts, or excises; and the rule of apportionment, according to the census, when they laid any direct tax. . . .

The Constitution evidently contemplated no taxes as direct taxes, but only such as Congress could lay in proportion to the census. The rule of apportionment is only to be adopted in such cases where it can reasonably apply; and the subject taxed, must ever determine the application of the rule.

If it is proposed to tax any specific article by the rule of apportionment, and it would evidently create great inequality and injustice, it is unreasonable to say, that the Constitution intended such tax should be laid by that rule.

It appears to me, that a tax on carriages cannot be laid by the rule of apportionment, without very great inequality and injustice. For example: Suppose two States, equal in census, to pay 80,000 dollars each, by a tax on carriages, of 8 dollars on every carriage; and in one State there are 100 carriages, and in the other 1000. The owners of carriages in one State, would pay ten times the tax of owners in the other. A. in one State, would pay for his carriage 8 dollars, but B. in the other state, would pay for his carriage, 80 dollars. . . .

I am inclined to think, but of this I do not give a judicial opinion, that the direct taxes contemplated by the Constitution, are only two, to wit, a capitation, or poll tax, simply, without regard to property, profession, or any other circumstances; and a tax on LAND. -- I doubt whether a tax, by a general assessment of personal property, within the United States, is included within the term direct tax.

As I do not think the tax on carriages is a direct tax, it is unnecessary, at this time, for me to determine, whether this court, constitutionally possesses the power to declare an act of Congress void, on the ground of its being made contrary to, and in violation of, the Constitution; but if the court have such power, I am free to declare, that I will never exercise it, but in a very clear case.

I am for affirming the judgment of the Circuit Court.

JUSTICE PATERSON . . . I never entertained a doubt, that the principal, I will not say, the only, objects, that the framers of the Constitution contemplated as falling within the rule of apportionment, were a capitation tax and a tax on land. Local considerations, and the particular circumstances, and relative situation of the states, naturally lead to this view of the subject. The provision was made in favor of the southern States. They possessed a large number of slaves; they had extensive tracts of territory, thinly settled, and not very productive. A majority of the states had but few slaves, and several of them a limited territory, well settled, and in a high state

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of cultivation. The southern states, if no provision had been introduced in the Constitution, would have been wholly at the mercy of the other states. Congress in such case, might tax slaves, at discretion or arbitrarily, and land in every part of the Union after the same rate or measure: so much a head in the first instance, and so much an acre in the second. To guard them against imposition in these particulars, was the reason of introducing the clause to the Constitution, which directs that representatives and direct taxes shall be apportioned among the states, according to their respective numbers. . . .

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JUSTICE IREDELL. -- I agree in opinion with my brothers, who have already expressed theirs, that the tax in question, is agreeable to the Constitution; and the reasons which have satisfied me, can be delivered in a very few words, since I think the Constitution itself affords a clear guide to decide the controversy.

The Congress possesses the power of taxing all taxable objects, without limitation, with the particular exception of a duty on exports.

There are two restrictions only on the exercise of this authority:

1. All direct taxes must be apportioned.

2. All duties, imposts, and excises must be uniform.

If the carriage tax be a direct tax, within the meaning of the Constitution, it must be apportioned.

If it be a duty, impost, or excise, within the meaning of the Constitution, it must be uniform.

. . . .

As all direct taxes must be apportioned, it is evident that the Constitution contemplated none as direct but such as could be apportioned.

If this cannot be apportioned, it is, therefore, not a direct tax in the sense of the Constitution.

That this tax cannot be apportioned is evident. Suppose 10 dollars contemplated as a tax on each chariot, or post chaise, in the United States, and the number of both in all the United States be computed at 105, the number of Representatives in Congress.

This would produce in the whole - Dolls. Cts. 1050

The share of Virgina being 19-105 parts, would be - Dollars 190

The share of Connecticut being 7-105 parts, would be - 70

Then suppose Virgina had 50 carriages, Connecticut - 2.

The share of Virgina being 190 dollars, this must of course be collected from the owners of carriages, and there would therefore be collected from each carriage - 3 80

The share of Connecticut being 70 dollars, each carriage would pay - 35

If any state had no carriages, there could be no apportionment at all. This mode is too manifestly absurd to be supported, and has not even been attempted in debate. . . .

Some difficulties may occur which we do not at present foresee. Perhaps a direct tax in the sense of the Constitution, can mean nothing but a tax on something inseparably annexed to the soil: Something capable of apportionment under all such circumstances.

A land or a poll tax may be considered of this description.

The latter is to be considered so particularly, under the present Constitution, on account of the slaves in the southern states, who give a ratio in the representation in the proportion of 3 to 5.

Either of these is capable of apportionment. . . .

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