Liberty Tree

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Coup In The Court

By Dick Greb

In his five-part series entitled "Lineage of two revolutions: One good — one evil,"[1] John Kotmair discussed the seditious decision of Supreme Court Chief Justice John Marshall in the 1819 case of *McCulloch v. Maryland*. That decision was the foundation for such subversions as judicial interpretation of the constitution, implied (as opposed to explicitly enumerated) powers, and state laws being considered subordinate to federal laws. These ideas are now largely considered 'principles' of law, which hardly need more than bare mention to establish the point. What this elevation into principles actually accomplishes, however, is the separation of the ideas from the reasoning — that is, the rationalizations — used to support them. But it is only by examining those roots that we can gain insight into just how flimsy the justifications often are. Unfortunately, that flimsiness doesn't prevent the long-standing nature of their ramifications.

There was another Supreme Court case from the founding era that likewise had far-reaching effects. Like *McCulloch*, it was decided by judges from the Federalist party, all of whom were nominated by George Washington. The Federalists advocated for a strong (national) central government, rather than a weaker confederation of separate state governments.

Although the point was never directly addressed, this case was predicated on the Supreme Court having the power to declare an act of Congress unconstitutional. The act in question was "*An Act laying duties upon Carriages for the conveyance of Persons*," enacted June 5, 1794.[2]

Your chariot tax awaits

The case we'll be looking at is *Hylton v. the United States*, 3 U.S. 171 (1796). It came to the Supremes on a writ of error from the circuit court in Virginia, where the United States brought suit 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."[3] The act of June 5, 1794 states:

> SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ***That there shall be levied, collected and paid, upon all carriages for the conveyance of persons, which shall***

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1. Part 1 of the series appears in the August 2016 *Liberty Tree*. The remaining four parts can be found in the October 2016 through January 2017 editions.
2. 1 Stat. 373; Chapter 45.
3. *Hylton v. the United States*, 3 U.S. 171 (1796). All emphases have been added throughout, and internal citations may be removed.

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be kept by or for any person, for his or her own use, or to be let out to hire, or for the conveying of passengers, the several duties and rates following, to wit: For and upon every coach, the yearly sum of ten dollars;—***for and upon every chariot, the yearly sum of eight dollars***;—for and upon every phæton and coachee, six dollars;—for and upon every other four wheel, and every two wheel top carriage, two dollars;—and upon every other two wheel carriage, one dollar. Provided always, That nothing herein contained shall be construed to charge with a duty, any carriage usually and chiefly employed in husbandry, or for the transporting or carrying of goods, wares, merchandise, produce or commodities.

...

SEC. 3. And be it further enacted, That ***every person having or keeping a carriage or carriages, which, by this act, is or are made subject to the payment of duty, shall, within the month of September in each year, make entry of the same*** with the officer of inspection of the district, in which he or she shall reside, ***and pay the duty thereon***: And ***such entry shall be in writing, subscribed by the owner*** of such carriage or carriages, and shall describe each by its proper denomination and number of wheels. ***... And if any person, having or keeping a carriage or carriages, charged with a duty or duties by this act, shall neglect or omit to bring, or send and deliver such list thereof,*** at or within any monthly period aforesaid, in manner above mentioned, ***or to pay the duty or duties thereupon payable, he or she shall, for every such neglect or omission, forfeit and pay a sum equal to the duty or duties payable upon the said carriage or carriages, in addition to the said duty or duties.***

Before getting into the case itself, notice that the tax here is levied on carriages for carrying people, and

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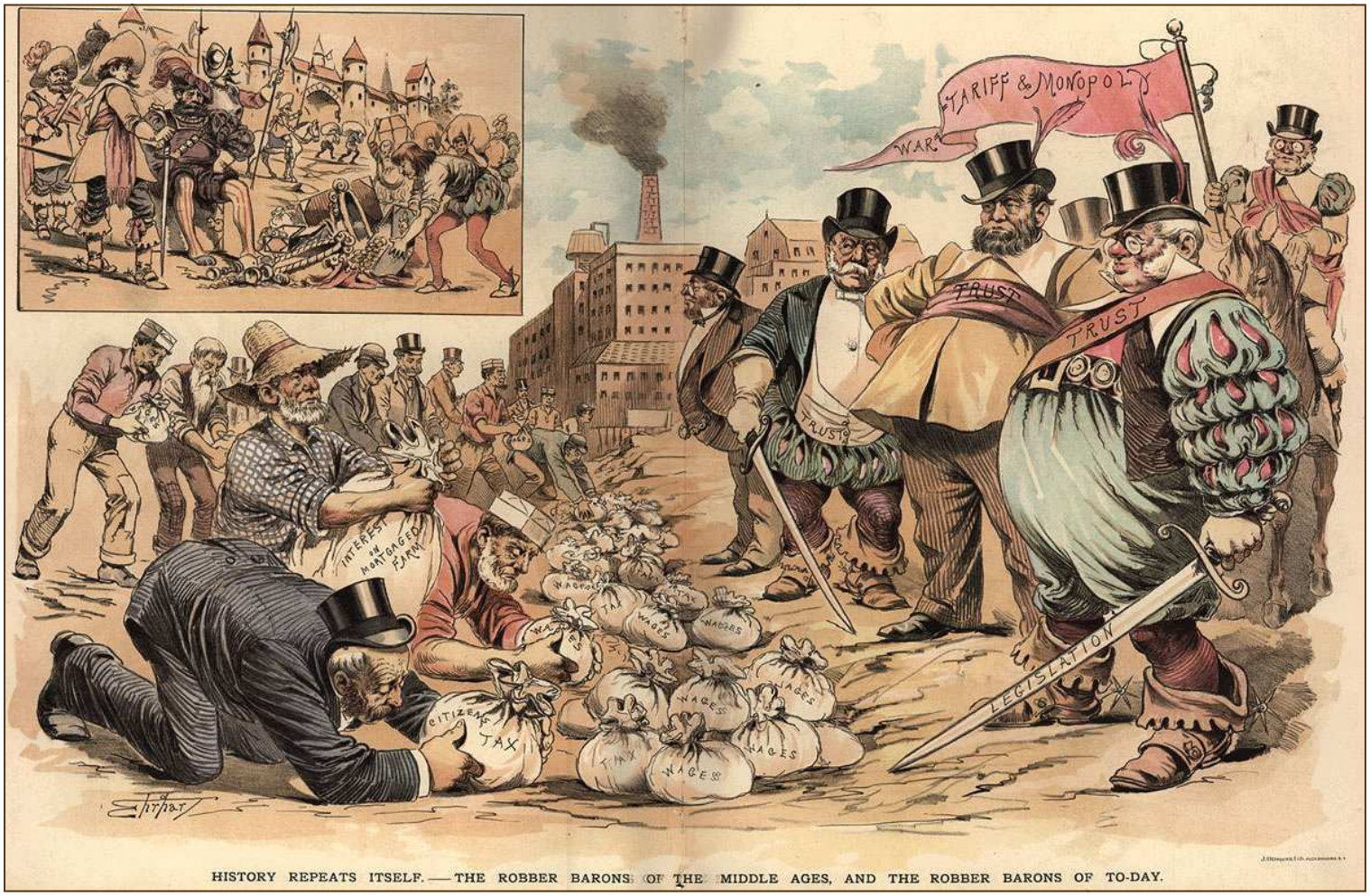

HISTORY REPEATS ITSELF. — THE ROBBER BARONS OF THE MIDDLE AGES, AND THE ROBBER BARONS OF TO-DAY.

Another return of the real April Fools' Day, the 15th!

"HISTORY REPEATS ITSELF. — THE ROBBER BARRONS OF THE MIDDLE AGES, AND THE ROBBER BARONS OF TODAY."

Just as Samuel Ehrhardt observed in his cartoon in *Puck* magazine in 1889, nothing had really changed since the middle ages, when feudal landowners robbed merchants, land travelers, and even river traffic by charging them high tolls without authority from the Holy Roman Emperor. In the late 1800s, the money trusts, using wars, tariffs, and monopolies, and armed with the sword "legislation," stole wages, interest, and taxes. Monetary monopolies, *i.e.,* banks printing "money" out of thin air, and the corporations they enable, are still promoting illegal wars and using legislation to fleece the citizenry today.

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specifically excludes carriages used to carry goods, merchandise, commodities, etc. Notice also that it applies to such carriages whether for the personal use of the owner, or hired out to others for their use, or used by the owner to convey others for hire. The "entry" that is required is basically a signed (sub-scribed) return of the owner, filed with the "officer of inspection." Further, there was a 100 percent penalty imposed for failure to file the return or pay the tax. With these preliminaries out of the way, let's dig into *Hylton*.

Skin in the game

The first issue I want to address is something that a casual reader of the case might overlook. The case began as an "action of debt" brought against Daniel Hylton by the U.S. Attorney to collect the carriage tax and the penalty for non-compliance.

> The defendant pleaded nil debet,[4] whereupon issue was joined. But the parties, waiving the right of trial by jury, ***mutually submitted the controversy to the court*** on a case, which stated "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, alleging 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***; other wise that judgment be entered for the defendant." 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***.[5]

Hylton's response to the suit is that he owes nothing. But instead of taking his case to a jury of his peers — presumably arguing to them that the tax was unconstitutional, and having them decide the question — he *waives* that right, and instead *agrees* with the government attorney to allow *federal judges* to decide it. But notice that it doesn't say the original suit attempted to collect $2,000 from him. That sum only arises from the *stipulated facts* that the parties *mutually agreed upon*.

So we are to believe that Mr. Hylton owned **125 chariots!** The stipulated facts state that all 125 of them "were kept exclusively for [his] own private use," and that none of them were rented out nor used to carry passengers for hire. Apparently, old Dan was particularly partial to chariots. Not only did he own enough of them that he could ride in a different one every day for over four months, but he didn't have any of the other types of taxed carriages. You would think that someone who could afford *ten dozen* chariots, might be inclined to splurge on at least one or two coaches as well, or maybe have a phæton to knock around in for a change of pace now and then.

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4. **Nil debet.** He owes nothing. The form of the general issue in all actions of debt on simple contract. *Black's Law Dictionary, 5th Edition.*
5. *Hylton*, at 171-172.

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But not Dan, he was a chariot man all the way.

With so many carriages, one can understand why Hylton might protest the tax laid on them. After all, he'd be looking at a cool thousand dollars in taxes he would owe. And refusing to comply with the reporting and paying requirements — rather than paying and challenging it afterward — meant he was literally *doubling down* if he ultimately lost his case. And so, you might imagine that with so much at stake personally, there could hardly be a better contestant against the tax than Daniel Hylton.

Collusion instead of controversy

And yet, the 'facts' laid out above are literally unbelievable, even taken on their own. But there's more to consider. Because, if Hylton loses, the U.S. Attorney agreed to allow his $2,000 judgment to be discharged by the payment of **$16!!** Are we really to believe that the government agreed to accept less than 1 percent of the amount Hylton owed in taxes and penalties, especially after the expense of having to sue him for it? And what authority would a U.S. Attorney have to make such an arrangement? To me, the answer is obvious. Hylton didn't own 125 chariots. He owned no more than one of them. In fact, he may not have owned any carriages at all. The entire premise of the case may have been fabricated from whole cloth solely for the purpose of bringing this issue to the Supreme Court, *with Hylton as the defendant*.[6] And if the two parties stipulated to a set of false 'facts,' then they perpetrated a fraud upon the court.

This type of collusion thwarts the whole purpose of our adversarial system of justice, because if the parties are working together, then they're not really adversaries. Black's Law Dictionary says this about the adversarial system: "The jurisprudential network of laws, rules and procedures characterized by *opposing parties* who contend against each other *for a result favorable to themselves*." The whole system is based on opposing interests being represented, because only then can each party's viewpoint be expected to be vigorously defended. But if the parties are in collusion, then instead of contending for a result favorable to itself, a party might actually (and surreptitiously) be contending for a result favorable to the *other* party. And instead of presenting a vigorous argument to support its position, might instead present a flawed argument, or a weak one — in other words, an easily defeated one. With both parties actually contending for the same result, the chances are pretty good that it will indeed prevail.

One last point to note from the opening recitation of the case is about the stated purpose of the original case and its outcome. Supreme Court Justice James Wilson was sitting as a member of the Circuit Court that heard the original case in Virginia, due to the requirement that SC judges 'ride circuit.' According to the Judiciary Act of 1789 (1 Stat. 73), as amended by the act of March 2, 1793 (1 Stat. 333), the Circuit Courts consisted of one Supreme Court judge, and the district judge of the district. If they didn't concur, then the case was to be held until the next session, when a different SC judge would be present.

So, although the quote refers to "Wilson & Justices" (plural) being equally split, according to the 1793 law, there would only be one other justice on the court. But, instead of waiting for the next session for his case to be decided, Hylton "confessed judgment" — that is, he allowed the court to enter the judgment against him — so the case could go up on appeal to the Supremes without additional delay. Because, after all, the appeal "(as well as *the original proceeding*) was brought merely to try the constitutionality of the tax." Let me repeat that. The **original proceeding** was brought merely to try the constitutionality of the tax! But don't forget that it was the government that initiated the original suit — for the purpose of having the tax declared constitutional — and it selected Hylton to be its 'adversary.'

We will pick this up in the next installment of this tale, and start breaking down the opinions of the black-robed liberty thieves who ensured that this attack on the Constitutional limits of government taxing powers would succeed.

6. If Hylton didn't own 125 chariots, then every bit of the stipulation is suspect. **Falsus in uno, falsus in omnibus.** False in one thing, false in everything. [The doctrine] is particularly applied to the testimony of a witness who, if he is shown to have sworn falsely in one detail, may be considered unworthy of belief as to all the rest of his evidence. *Black's Law Dictionary, 5th Edition*.