

Sec. 9—Powers Denied to Congress

Cl. 3—Bills of Attainder

passage of the law was held not to impose a punishment, but instead simply to deprive the alien of his ill-gotten privileges.¹⁸²⁸

Change in Place or Mode of Trial

A change of the place of trial of an alleged offense after its commission is not an *ex post facto* law. If no place of trial was provided when the offense was committed, Congress may designate the place of trial thereafter.¹⁸²⁹ A law that alters the rule of evidence to permit a person to be convicted upon less or different evidence than was required when the offense was committed is invalid,¹⁸³⁰ but a statute that simply enlarges the class of persons who may be competent to testify in criminal cases is not *ex post facto* as applied to a prosecution for a crime committed prior to its passage.¹⁸³¹

Clause 4. No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

DIRECT TAXES**The Hylton Case**

The crucial problem under clause 4 is to distinguish “direct” from other taxes. In its opinion in *Pollock v. Farmers’ Loan & Trust Co.*, the Court declared: “It is apparent . . . that the distinction between direct and indirect taxation was well understood by the framers of the Constitution and those who adopted it.”¹⁸³² Against this confident dictum may be set the following brief excerpt from Madison’s *Notes on the Convention*: “Mr. King asked what was the precise meaning of *direct* taxation? No one answered.”¹⁸³³ The first case to come before the Court on this issue was *Hylton v. United States*,¹⁸³⁴ which was decided early in 1796. Congress has levied, according to the rule of uniformity, a specific tax upon all carriages, for the conveyance of persons, which were to be kept by, or for any person, for his own use, or to be let out for hire, or for the conveying of passengers. In a fictitious statement of facts, it was stipulated that the carriages involved in the case were kept exclusively for the personal use of the owner and not for hire. The principal argument for

¹⁸²⁸ *Johannessen v. United States*, 225 U.S. 227 (1912).

¹⁸²⁹ *Cook v. United States*, 138 U.S. 157, 183 (1891).

¹⁸³⁰ *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390 (1798).

¹⁸³¹ *Hopt v. Utah*, 110 U.S. 574, 589 (1884).

¹⁸³² 157 U.S. 429, 573 (1895).

¹⁸³³ J. MADISON, *THE DEBATES IN THE FEDERAL CONVENTION OF 1787* 435 (G. Hunt & J. Scott eds., Greenwood Press ed. 1970).

¹⁸³⁴ 3 U.S. (3 Dall.) 171 (1796).