South Dakota Newspapers, #65
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"We the People"
November 29, 2024

"James Iredell: Not Hamilton, but Well-Qualified for Supreme Court"

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Unlike Alexander Hamilton, a more famous Founding Father who wrote extensively about the proposed Constitution and championed its ratification, and who became a 21st Century cultural icon on Broadway 200 years after his death, James Iredell had to settle for a mere appointment to the first U.S. Supreme Court.

Iredell's name, image, and likeness are nowhere to be found outside of North Carolina, which he had served as a judge on the state's superior court and as attorney general before President George Washington named him to the Court. Unlike Hamilton, he has no presence on any official currency. And, unlike Hamilton, whose adult behavior inspired his friend, Martha Washington, to nickname him, "Tomcat," Iredell is not known to have stimulated any pet names.

What Iredell did have going for him during the founding period, however, was a richly deserved reputation as one of the most penetrating constitutional theorists of his generation, a first-rate attorney whose arguments educated the nation's citizenry, and a cogent advocate for judicial review, nearly two decades before Chief Justice John Marshall invoked it for the first time, in 1803, in Marbury v. Madison. And, for the record, some of Hamilton's most famous writings, including those on judicial review, were anticipated by Iredell. In sum, Iredell possessed eminent qualifications for a seat on the High Bench.

Iredell, born in England, sailed to America at the age of 17, to be King George III's Comptroller of Customs in Edenton, North Carolina. It was more than ironic that Iredell, while serving the king, became an advocate for the American Revolution and, indeed, one of the leading essayists in the cause of rallying the colonists to join the movement for independence. In 1775, he penned an essay, "Principles of an American Whig," which foreshadowed the arguments and themes set forth by Thomas Jefferson in the Declaration of Independence. For example, Iredell asserted that the people have the right to pursue happiness, to which end government is created. When government violates its mandates, the people have a right to revolt.

Iredell was the floor leader of the North Carolina Ratification Convention, and fought, in vain, to persuade state delegates to approve the proposed Constitution. Delegates rejected the Constitution until the Bill of Rights was added, when they ratified it. President Washington took note of Iredell's masterful writings on behalf of the Constitution and rewarded him with a nomination to the Supreme Court.

Iredell's advocacy for the Constitution was built atop numerous essays that educated the public about its aims and purposes. One of his writings anticipated Hamilton's historic essay, Federalist No. 78, which explained and championed the Constitutional Convention's decision to vest in the federal judiciary the awesome power of judicial review; that is, the authority and responsibility to declare statutes unconstitutional. Hamilton's arguments were embraced by Chief Justice Marshall in his opinion for the Court in Marbury v. Madison: "It is emphatically the province and duty of the judiciary to say what the law is."

Iredell's closely knit argument, that the judiciary has a duty to uphold the Constitution rather than a statute in conflict with it, poured the foundation for

Federalist 78 and the Marbury opinion. “The Constitution, therefore, being a fundamental law ... the judicial power, in the exercise of their authority, must take notice of it ... either ... the fundamental unrepealable law must be obeyed, by the rejection of an act unwarranted by and inconsistent with it, or you must obey an act founded on authority not given by the people.” The judiciary, like the legislative and executive branches, he wrote, has no authority to disobey the Constitution and therefore is obligated to declare unconstitutional a law in conflict with the constitution.

Iredell addressed with considerable wisdom and insight historically important constitutional themes and powers that resonate in our time. He was concerned about the usurpation of power and checks and balances, which he believed critical to the maintenance of the Constitution, and preserving fundamental choices made by the people in their writing and ratification of the Constitution.

Those choices, including the creation of the treaty power, required strict observance. For example, he wrote that the president, who shares the treaty-making power with the Senate as provided in Article II of the Constitution, could be impeached if he withheld from the Senate important information relevant to its discussions and debates about the merits of the proposed treaty.

Impeachment, for Iredell, was an effective means of limiting presidential abuse of power. He emphasized in North Carolina that the Framers’ rejection of the royal prerogative power, grounded on their disdain for the English legal principle that the “king could do no wrong,” reflected their conclusion that, in fact, the king “could do wrong.” The president, unlike the king, would be “triable.” Having rejected the principle of executive immunity, the president, like all other

citizens, would be subject to the law and amenable to the judicial process.

Justice Iredell, like his colleagues on the Court, performed the duty of riding circuit, an arduous task given difficult traveling conditions. The work took its toll on Iredell and contributed to his early death at the age of 48, after serving on the Court from 1790-1799.

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