A Much Debated Debt:
The Virginia–West Virginia Debt Controversy

by Gregory H. Stoner

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For more than half a century, Virginia's antebellum debts loomed over the political and economic landscape of the commonwealth. In the years following the Civil War, Virginia's politicians grappled to formulate an approach that would both reduce the financial burden on the state and satisfy its creditors. A longstanding source of attention and debate centered on the obligations of West Virginia as related to this prewar debt. After years of discussion, political posturing, and various funding schemes, Virginia presented the case to the Supreme Court of the United States in 1906. Over the course of the next twelve years, the Court would hand down a series of decisions in the case that would eventually lead to a resolution — a financial settlement between Virginia and West Virginia of their much debated debt.

Origins

The origins of the controversial Virginia debt dated to the mid-1820s, when the Virginia government embarked on an ambitious campaign of funding internal improvements. Funds dedicated to rivers, canals, roads, turnpikes, railroads, and bridges served the dual purpose of stimulating the economy and improving transportation networks. While these efforts also helped mitigate longstanding sectionalism between eastern and western Virginia, issues concerning voting, representation, and taxation continued to be a source of contention between the regions.[1]

By 1861, sectional discord within the expansive state had reached a breaking point. Following Virginia's secession from the United States a series of Unionist conventions were held in the western town of Wheeling. At the Second Wheeling Convention, held in June 1861, the "Restored Government of Virginia" was organized. This government, which declared the government in Richmond did not represent Virginia, elected a governor and received recognition by President Lincoln as the legitimate government of the entire state. Efforts to formally separate the counties of northwestern Virginia and establish a new state soon moved forward. After voters approved the new constitution of West Virginia, Congress passed a statehood bill that President Lincoln signed in December 1862. A revised constitution was adopted the following March, and on June 20, 1863, West Virginia was formerly admitted to the Union.

Throughout the process to statehood, the new state recognized the prewar debts of Virginia. First, a provision from an ordinance of the Wheeling Convention acknowledged both the existence of the debt and the obligation to pay it:

> The new State shall take upon itself a just proportion of the public debt of the commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said State during said period.[2]

Article 8, Section 8 of the Constitution of the State of West Virginia also acknowledged the debt and directed the legislature to determine the extent of the obligation "as soon as may be practicable" and to "provide for the liquidation thereof."[3]

Following the Civil War, efforts to apportion and settle the debt became viable. During the next several years, authorities in Virginia and West Virginia made unsuccessful attempts to determine the proportion of the debt obligations of each state. Reconstruction in Virginia combined with a suit before the Supreme Court seeking a determination of the status of two border counties proved significant obstacles. In 1871, with Reconstruction complete and the border issue nearly resolved, Virginia's legislature proposed to have a group of commissioners arbitrate the debt. West Virginia rejected the proposal and instead created a debt commission to visit Richmond and conduct research in the records of the state. However, this method of ascertaining the debt was frowned upon by Virginia's governor and a reciprocal commission was not appointed.

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To manage state debts that had ballooned to more than $45 million, Virginia's legislature passed the first in a series of funding acts. The first act, passed by the legislature in 1871, called for Virginia to pay two-thirds of the debt, with West Virginia assuming the remainder. This calculation and apportionment of the debt was based on the assumption that at the time of its separation West Virginia contained "about one-third of the territory and population of Virginia." This independent determination of West Virginia's share of the debt, which lacked any definitive basis, would prove to be a primary source of contention in the years to come.

In the decades that followed, Virginia's legislature passed additional funding acts. By the early 1890s, Virginia had settled and adjusted the two-third liabilities it had accepted two decades earlier. In 1894, the Virginia legislature provided by joint resolution for the adjustment of the proportion of debt owed by West Virginia. Back and forth communications for more than a decade resulted in little progress, as West Virginia's governor and legislature refused to accept Virginia's steadfast assertion that they were responsible for one-third of the prewar debts. Frustrated with the inability to adjust the debt by negotiation, Virginia concluded that a resolution to the matter may only be reached in the Supreme Court of the land.

The Suit Commenced

On February 26, 1906, the Commonwealth of Virginia filed its bill of complaint in the U.S. Supreme Court, seeking "an adjudication of the amount due the former state by the latter as the equitable proportion of the public debts of the original state of Virginia" that West Virginia had assumed upon statehood. Virginia asserted that West Virginia had repeatedly recognized its liability for a just portion of the debt, and that the one-third division allocated by the commonwealth represented a just and equitable proportion. West Virginia filed a demurrer contending the Court lacked jurisdiction to resolve the dispute, but the Court disagreed in its first ruling in the matter.[4]

After the overruling of the demurrer in May 1907 and the filing of West Virginia's answer to the complaint, counsel for both states proposed that the case be referred to a special master for the purpose of ascertaining West Virginia's liability. The Court handed down its second decision in May 1908 and referred the case to a master who was instructed to examine evidence, consult with the authorities of both parties, and present to the Court a report of his findings.[5] Charles E. Littlefield of Maine, recommended by West Virginia, was selected by the Court as the special master.

Over the course of the next fifteen months, accountants and attorneys for both states conducted extensive research in Virginia's records. Several hearings were held in which schedules were reviewed and argued. Following his review of testimony and evidence, Littlefield prepared an extensive report of more than 200 pages.[6]

Littlefield determined that on January 1, 1861, the public debt of Virginia amounted to $33,897,073.82. He agreed with the conclusions reached by both states concerning the assessed valuation of the territory constituting each state and their respective population. Of the remaining questions the master was charged with determining, the most significant and controversial concerned whether interest on the public debt was an ordinary expense of government. Littlefield held that the interest paid on public debt was indeed an ordinary expense and calculated that Virginia had paid more than $18 million in interest prior to January 1, 1861. This determination, and the report overall, was viewed by many as favoring the assertions of Virginia in the dispute.

In January 1911, the matter again returned to the Court where both sides presented their arguments by way of briefs and oral argument. In its most noteworthy ruling to date in the proceeding, the Court calculated that the debt was $30,563,861.53 as of January 1, 1861. Regarding the debt as general and assumed for the benefit of the entire state and not a particular region, the Court declined to attempt a determination based on the location of improvements and their cost. Instead, the Court adopted the master's view that an apportionment of the debt was best determined by utilizing the estimated valuation of real and personal property in the states (excluding slaves) at the date of separation, June 20, 1863. Using this method, the Court calculated that West Virginia was responsible for 23.5 percent of the debt, a sum of $7,182,507.46.[7]

While the March 1911 ruling of the Court signified noteworthy progress in the dispute, the issue of West Virginia's liability to pay interest on the debt remained open. In an expression of optimism, the Court directed the two states conference in the hope of resolving the matter.

> ...this case is one that calls for forbearance upon both sides. Great states have a temper superior to that of private litigants, and it is to be hoped that enough has been decided for patriotism, the fraternity of the Union, and mutual consideration to bring it to an end.[8]

Unfortunately, such confidence was misplaced. Progress toward an eventual resolution had only just begun.

Per the Court's direction, members of the Virginia commission appointed many years earlier began to plan for negotiations with their counterparts from West Virginia. When West Virginia failed to promptly organize a committee to conference, Virginia filed a motion requesting the Court to "determine all questions left open by the decision of March 6, 1911." While holding that the questions should be disposed of without excessive delay, the Court ruled that West Virginia had not attempted to shirk its responsibility and obligation.[9]

By 1913 the committees from both states had begun to conference. West Virginia argued that the Court's 1911 order to conference was for the purpose of evaluating West Virginia's share of both principal and interest, while Virginia believed the matter of interest was the only issue of note remaining unresolved. Frustrated with the lack of progress, Virginia petitioned the Court for a final decree in October 1913. However, a patient Court remained unmoved and instead granted West Virginia additional time to attempt a resolution.[10]

When the matter again came before the Court in June 1914, it granted West Virginia's request to file a supplemental answer to Virginia's original 1906 complaint and explain how certain credits should be applied in calculating its portion of the debt principal. While noting that such action by the Court was highly irregular, the opinion explained the unique nature of the case. The matter was once again directed to Master Littlefield.[11]

In his report dated January 1915, Littlefield notified the Court that additional assets and investments, not previously disclosed, resulted in a net credit to West Virginia in the amount of principal owed. He also determined that West Virginia was indeed liable for interest on the debt for more than a fifty year period from 1861 to 1915. Largely following Littlefield's recommendations, the Court ruled that West Virginia's total obligation was $12,393,929.50, with additional interest of 5 percent per annum until the entire debt was discharged.[12]

The Debt Resolved

In 1916, Virginia petitioned the Court for a writ of execution against West Virginia for a money judgment in connection with the Court's prior ruling. Determining that the West Virginia legislature had not met during the intervening period, the Court denied the petition.[13]

Two years later, following a long period of inactivity by the West Virginia legislature, the Court issued its ninth and final decision in this protracted dispute. In its opinion, the Court

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asserted the finality of its June 1915 ruling, that the Court had the authority to enforce the judgment, and that Congress had the power to secure the enforcement of a contract between states.[14] After continued discussions with the Virginia commissioners, the West Virginia legislature passed legislation on April 1, 1919, providing for the payment of West Virginia's share of the debt. Under the legislation, the amount would be settled by a combination of bonds spread out over the course of the following twenty years and an initial cash payment. On April 18, 1919, a check for $1,062,869.16, representing the largest single payment ever made by the state, was presented to the attorney general of Virginia at a ceremony between the two commissions. By 1939, West Virginia's proportion of Virginia's debt had been liquidated. Finally, after nearly eight decades, countless meetings and years of litigation, this unique and unparalleled controversy finally drew to a close.[15]

Endnotes:

1 For a discussion of the issues surrounding the origins of the suit, see Randolph Harrison, *West Virginia's Contributive Share of the Debt of Virginia*, 10 Va. L. Reg. 1055-1071 (1905).
2 *Virginia v. W. Virginia*, 220 U.S. 1, 25 (1911).
3 *Id.* at 26.
4 *Virginia v. W. Virginia*, 206 U.S. 290 (1907).
5 *Virginia v. W. Virginia*, 209 U.S. 514 (1908).
6 CHARLES LITTLEFIELD, REPORT OF SPECIAL MASTER (1910).
7 *Virginia v. W. Virginia*, 220 U.S. 1 (1911).
8 *Id.* at 36.
9 *Virginia v. W. Virginia*, 222 U.S. 17 (1911).
10 *Virginia v. W. Virginia*, 231 U.S. 89 (1913).
11 *Virginia v. W. Virginia*, 234 U.S. 117 (1914).
12 *Virginia v. W. Virginia*, 238 U.S. 202 (1915).
13 *Virginia v. W. Virginia*, 241 U.S. 531 (1916).
14 *Virginia v. W. Virginia*, 246 U.S. 565 (1918).
15 BIENNIAL REPORT OF THE TREASUER OF WEST VIRGINIA FOR THE PERIOD ENDING JUNE 30, 1920 (1920) at 9-10; and Rosewell Page, *The West Virginia Debt Settlement*, 5 Va. L. Reg. n.s. 257 (1919-1920). For a more extensive narrative and analysis of the entire debt controversy, see Elizabeth J. Goodall, *The Virginia Debt Controversy and Settlement*, 24 W. Va. Hist. 42, 296, 332 (1962-1963); 25 W. Va. Hist. 42, 102 (1963-1964) (published in five parts).