Taney’s Zeno and Scalia’s Mobilia

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ABSTRACT.
Zeno’s most famous paradox (of motion) is related to us through Aristotle, who presents Zeno’s ‘problems’ in his Physics, 239b11-14. Aristotle “asserts (on Zeno’s behalf) the non-existence of motion on the ground that any object in locomotion must arrive at the half-way stage before it arrives at the goal.”

Keywords: Taney, Zeno, Aristotle

A. INTRODUCTION. A grid may be constructed (or a clock) so that, when you run 100 meters, each meter is the successor of the previous meter. Or, as Thomas Jefferson might have said, all meters are created equal. But when I run the race, my second meter (the second meter of the 100, that is) is not the successor of the first. It’s only half. In short, somehow Zeno has corrupted the grid so that the dimension of each succeeding meter is a function of half the prior meter.

When I say, ‘Whoa, Z! this grid is corrupt. It’s not fair (true, honest, sufficiently Newtonian),’ Zeno can reply, ‘Perhaps. But each of the ninety-nine meters you run is the successor of the first. Or half of each one that was deployed before. Something like that?’

B. NOT A SUCCESSOR IF IT’S LESSER. The easiest way to see that Zeno could not be trusted to lay out a course (for the hundred meter dash, for example) at the Stadion in Olympia is to ask this: Could you take 100 of Zeno’s (1 m.) measuring ropes and by a random draw, use them to lay out the course?

Zeno wouldn’t let you do that.

He wants you to take a length of rope one meter long and then to apply his operation – and now take one-half of whatever you have in hand – before you lay out the next length.

In short, this interpolated operation – take one-half of the prior length – is the master of (or dominates) the next-up-to-be-measured grid’s worth of race course (otherwise) Newtonian.

Newton supposed (wrongly, no gloating, Zeno) that any clock tick and any grid mark could be exchanged for any other. Indeed it didn’t make any difference how fast you were moving in computing how you fast you are moving.

Zeno’s mind experiment poked over-elaborate fun at the notion of measuring movement through swappable, exchangeable – that is equal – ticks and chocks. Zeno’s trick-up-his-sleeve: By corrupting the ruler or clock before the course was laid out.

Zeno does his usual, half-a-league onwards and so forth. Aristotle has “torn this to pieces [dieilomen].” Physics 239b14. This should cast serious doubt on the value (in dialogue) of subdividing effort. What’s at stake?

C. ZENO THE BADGERER. Zeno’s ‘paradox’ (Aristotle’s apostrophes) reduces to Zeno’s badgering his companion (me, in this retelling) that nothing has happened, because he, Zeno, can imagine that the squares/segments (on the track) get smaller and smaller and therefore more and more time is consumed in transit.

It’s important to keep in mind that Zeno’s paradox in action required Zeno to get me to buy into the operation (halving-the-measuring rod/rope) at the beginning; this is important because we’re going to bring Roger B. Taney back into the conversation in a minute.

It’s not really much of a paradox if you unravel the Zeno-companion interaction after the same fashion as Zeno pretended to unravel the flight of the arrow. But that’s the point. That’s the way it is with kinetic fallacies. If you can take an object in motion, and freeze one or some or many or all Newtonian or disposable dimensions and then talk about it, you can come up with some crazy observations.
When Zeno denies motion, he is just an old man who suffers the monomania of a cheesy conceit: if he gets you to buy into his assumptions, then you are the victim of his ‘paradox’ until, that is, you make your own observations.

Or just say, ‘Hey, Z. Let’s swap rulers (or clocks)’ and see how quickly he insists on defining your race course for you. Which is just a way of saying that your position in the race can’t have the features resulting from honest measurement of your place from the beginning or the finish line.

Zeno will be upset that the measurements by coordinates in each set are not identical, which is what I am saying. ‘It’s always the same,’ he argues. ‘Start with a stick and that stick fixes the amount of space that can be cast aside in the second interval. Each previous stick contains twice as much of the next interval’s worth of race course.’

Aristotle addresses this fallacy in discussing the purported ‘impossibility’ of building a two-dimensional space from points which lack magnitude. Imagine that a body “consists of points,” Aristotle proposes; “it will not possess any magnitude.” On Generation and Corruption, 316a19. No magnitude, no coordinates.

Or as OCL likes to say, if it’s a successor, it’s not lesser.

Aristotle leaves the reader with the comfort that a pest like Zeno isn’t in charge, which yields to Taney’s Zeno.

D. TANEY’S ZENO. Taney had the same problem as Zeno did. That is, he needed an operation that went something like this. An object (other than real estate) must be subject to a rule that, if it moves, it always retains (certain) properties that were assigned to it before it moved.

One can say that the location of the res is a function of measurements within the 3- or 2-space. Fine. But you could also say that the location of the res can be measured from the point of departure. But the measuring has to be honest.

From Taney’s point of view, a res cannot acquire the predicate ‘unfree.’ It could never acquire any characteristics inconsistent with its ‘unfree-ness.’ The res could acquire such predicates as ‘is able to play the harp’ or ‘has become a parent’ or ‘has recovered from yellow fever.’ There are dozens of properties or features or attributes of any given res which the res can acquire or shed. And these can be measured from the beginning or end or anyplace else in any Newtonian universe. Measurements can be swapped (or calibrated). The ‘how much’ question, when answered (as to any moment in time or place in space) yields honest results.

But, according to Taney, there is one predicate that a res can never acquire. It is as if Taney denies that a res can move.

E. A SHORT HISTORY OF THE LAW OF MOBILIA. It takes no particular experience in life to know that mobilia gain, lose, and transmute predicates based on their location in provinces or states or cities.

I may possess a handgun in Washington; but in Canada I will discover that this is now an illegal possession.

I may smoke a cigar on a public street but not on an airliner.

I may own a television without a bill of sale but not an automobile.

The coins in my pocket will purchase goods and services in one country but not in another.

I may pocket ten thousand dollars in cash, but transportation of this sum into or outside the United States obliges additional effort, or I have a nasty visit through federal court ahead of me.

Indeed, I am obliged to study the coin in hand to discover the official image, which image serves as a visual clue which informs me: am I in a country where merchants will take my money?

F. SCALIA ON MOBILIA. “It seems to us that the property owner necessarily expects the uses of his property to be restricted, from time to time, by various measures newly enacted by the State in legitimate exercise of its police powers; as long recognized, some values are enjoyed under an implied limitation and must yield to the police power. Pennsylvania Coal Co. v. Mahon, 260 U. S. at 413. And in the case of personal property, by reason of the State's traditionally high degree of control over commercial dealings, he ought to be aware of the possibility that new regulation might even render his property economically worthless (at least if the property's only economically productive use is sale or manufacture for sale), see Andrus v. Allard, 444 U.S. 51, 66-67 (1979) (prohibition on sale of eagle feathers).” Lucas v. South Carolina
Coastal Council, 505 U.S. 1003, 1027-1028 (1992)[some internal quote marks omitted].

G. AN INSTRUCTION TOO MANY. The reader will draw this conclusion from Justice Scalia’s remarks. It is a property of states – here states of the union – that they can assign properties to mobilia. If you want to say that they can do this because states are immobile, fine. If you want to say they can do this because that’s one of the attributes some states (that’s thirteen) acquired before 1789, that’s fine too.

But then Zeno intrudes himself, ask yourself if the additional instructions that Zeno gives are complete and consistent.

Said again: Before Zeno, folks were competing in races.

The judges were laying out a track.

The competitors were waiting for the signal and running as fast as they could for the finish line.

Zeno adds additional, and corrupting, instructions for the judges who are laying out the course. OCL thinks the reader sees that point: Zeno would be yelling at the race-judges, ‘No, don’t use the 1 meter rope over and over again. Cut it in half!’

In a slightly larger vista, what’s wrong with Zeno/Taney is that the additional instructions are not consistent with pre-existing instructions.

For Zeno, he has to have a res that’s interested in moving. Or claiming that she can move. Then Zeno can go to work, adding additional instructions that immediately implode common sense as soon as they are examined.

When Taney hears that Alabama has declared X unfree, he wants an additional instruction implied by which the force of the declaration applies outside of Alabama.

The judges at the Stadion and the Alabama legislature were doing just fine, thank you, assigning predicates before Zeno and Taney motored up.

‘The second interval of the race,’ Zeno sputters, ‘must be less than the first. And that rule should be replicated ad infinitum throughout the grid.’

‘The African-American must be less of a person than the white,’ Taney insists, ‘and that rule must apply everywhere.’

H. THE LARGER LESSON. Taney was dissatisfied with his own reasoning, on OCL’s account, because he had to argue that state governments lacked power to assign attributes to mobilia. And disabling state governments was antithetical to Taney’s program. He was lucky enough to have the federal government exercise the power of state government in the territories; this was how the case came to the court.

But, in a larger perspective, Taney was arguing that the operation of attributing of a single predicate – being free; that is, one’s status as chattel slave being terminated – was an operation which bound governments as much as they bound human beings, white and non-white.

And, of course, Taney wanted a one-way application of his super-rules. If State A said that X was free, then State B could say that X was unfree. But if the mobilia moved vice versa and events played out the other way ‘round, then State B was disabled from saying that X was free.

Taney was unwilling to play out the narrative with the reasoning – imagining additional instructions for state-line crossing enslaved persons where none existed – just as Zeno would be very unwilling to give up his additional instructions as to cutting the measuring rope in half.

But Taney and Zeno do remind us, yet again, that Lewis Carroll was right in What the Tortoise said to Achilles, 4 Mind 278 (1895), is worth re-reading at this point. The official website will direct the reader to the text. www.lewiscarroll.org/logic.html.

You know, subjectively, that you’re in trouble, logically, if you need more instructions. If you started off on left-footed assumptions which are revealed to be incomplete or inconsistent or both, then you will be back shopping for predicates, just like Roger B. Taney, saying that when these events occurred (in the past) these other features are (now) attributed to the res in transit.

If you start with a logic that sets you up for failure, then you have to keep on larding on instructions. Which is another reason why Taney did such a bad job of dismantling eighty years of constitutional history. His own tangle with kinetic fallacy was, in any event, unresolvable given the premises he asserted. At least Zeno never bragged he could finish the race with the (corrupt) instructions he gave himself.
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