

South Carolina Exposition and Protest

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The committee [of the South Carolina Legislature] have bestowed on the subjects referred to them the deliberate attention which their importance demands; and the result, on full investigation, is a unanimous opinion that the act of Congress of the last session, with the whole system of legislation imposing duties on imports, not for revenue, but the protection of one branch of industry at the expense of others, is unconstitutional, unequal, and oppressive, and calculated to corrupt the public virtue and destroy the liberty of the country; which propositions they propose to consider in the order stated, and then to conclude their report with the consideration of the important question of the remedy.

For the committee do not propose to enter into an elaborate or refined argument on the question of the constitutionality of the Tariff system. The General Government is one of specific powers, and it can rightfully exercise only the powers expressly granted, and those that may be necessary and proper to carry them into effect, all others being reserved expressly to the States or the people. It results, necessarily, that those who claim to exercise power under the Constitution, are bound to show that it is expressly granted, or that it is necessary and proper as a means of the granted powers. The advocates of the Tariff have offered no such proof. It is true that the third section of the first article of the Constitution authorizes Congress to lay and collect an impost duty, but it is granted as a tax power for the sole

purpose of revenue, a power in its nature essentially different from that of imposing protective or prohibitory duties. Their objects are incompatible. The prohibitory system must end in destroying the revenue from imports. It has been said that the system is a violation of the spirit, and not the letter of the Constitution. The distinction is not material. The Constitution may be as grossly violated by acting against its meaning as against its letter; but it may be proper to dwell a moment on the point in order to understand more fully the real character of the acts under which the interest of this, and other States similarly situated, has been sacrificed. The facts are few and simple. The Constitution grants to Congress the power of imposing a duty on imports for revenue, which power is abused by being converted into an instrument of rearing up the industry of one section of the country on the ruins of another. The violation, then, consists in using a power granted for one object to advance another, and that by the sacrifice of the original object. It is, in a word, a violation by perversion, the most dangerous of all because the most insidious and difficult to resist. Others cannot be perpetrated without the aid of the judiciary; this may be by the Executive and Legislative departments alone. The courts cannot look into the motives of legislators. They are obliged to take acts by their titles and professed objects, and if these be constitutional, they cannot interpose their power, however grossly the acts may, in reality, violate the Constitution. The proceedings of the last session sufficiently prove that the House of Representatives are

aware of the distinction, and determined to avail themselves of its advantage.

In the absence of arguments, drawn from the Constitution itself, the advocates of the power have attempted to call in the aid of precedent. The committee will not waste their time in examining the instances quoted. If they were strictly in point, they would be entitled to little weight. Ours is not a Government of precedents, nor can they be admitted, except to a very limited extent, and with great caution, in the interpretation of the Constitution, without changing, in time, the entire character of the instrument. The only safe rule is the Constitution itself--or, if that be doubtful, the history of the times. In this case, if doubts existed, the journals of the Convention itself would remove them. It was moved in that body to confer on Congress the very power in question to encourage manufactures, but it was deliberately withheld, except to the extent of granting patent rights for new and useful inventions. Instead of granting the power, permission was given to the States to impose duties, with the consent of Congress, to encourage their own manufactures; and thus, in the true spirit of justice, imposing the burden on those who were to be benefited. But, giving the precedents every weight that may be claimed for them, the committee feel confident that, in this case, there are none in point previous to the adoption of the present Tariff system. Every instance which has been quoted, may fairly be referred to the legitimate power of Congress, to impose duties on imports for revenue. It is a

necessary incident of such duties to act as an encouragement to manufactures, whenever imposed on articles which may be manufactured in our country. In this incidental manner, Congress has the power of encouraging manufactures; and the committee readily concede that, in the passage of an impost bill, that body may, in modifying the details, so arrange the provisions of the bill, as far as it may be done consistently with its proper object, as to aid manufactures. To this extent Congress may constitutionally go, and has gone from the commencement of the Government, which will fully explain the precedents cited from the early stages of its operation. Beyond this they never proceeded till the commencement of the present system, the inequality and oppression of which they will next proceed to consider.

On entering on this branch of the subject [the inequality and oppression of the Tariff system], the committee feel the painful character of the duty which they must perform. They would desire never to speak of our country, as far as the action of the General Government is concerned, but as one great whole, having a common interest, which all the parts ought zealously to promote. Previously to the adoption of the Tariff system, such was the unanimous feeling of this State; but in speaking of its operation, it will be impossible to avoid the discussion of sectional interest, and the use of sectional language. On its authors, and not on us, who are compelled to adopt this course in self-defence, by injustice and oppression, be the censure.

So partial are the effects of the system, that its burdens are exclusively on one side and its benefits on the other. It imposes on the agricultural interest of the South, including the Southwest, and that portion of the country particularly engaged in commerce and navigation, the burden not only of sustaining the system itself, but that also of the Government. In stating the case thus strongly, it is not the intention of the committee to exaggerate. If exaggeration were not unworthy of the gravity of the subject, the reality is such as to make it unnecessary.

...We are the serfs of the system, out of whose labor is raised, not only the money paid into the Treasury, but the funds out of which are drawn the rich rewards of the manufacturer and his associates in interest. Their encouragement is our discouragement. The duty on imports, which is mainly paid out of our labor, gives them the means of selling to us at a higher price; while we cannot, to compensate the loss, dispose of our products at the least advance. It is then, indeed, not a subject of wonder, when understood, that our section of the country, though helped by a kind Providence with a genial sun and prolific soil, from which spring the richest products, should languish in poverty and sink into decay, while the rest of the Union, though less fortunate in natural advantages, are flourishing in unexampled prosperity.

The assertion, that the encouragement of the industry of the manufacturing States is, in fact, discouragement to ours,

was not made without due deliberation. It is susceptible of the clearest proof. We cultivate certain great staples for the supply of the general market of the world: They manufacture almost exclusively for the home market. Their object in the Tariff is to keep down foreign competition, in order to obtain a monopoly of the domestic market. The effect on us is, to compel us to purchase at a higher price, both what we obtain from them and from others, without receiving a correspondent increase in the price of what we sell. The price at which we can afford to cultivate must depend on the price at which we receive our supplies. The lower the latter, the lower we may dispose of our products with profit, and in the same degree our capacity of meeting competition is increased; and, on the contrary, the higher the price of our supplies, the less the profit, and the less, consequently, the capacity for meeting competition. If, for instance, cotton can be cultivated at 10 cents the pound, under an increase of forty-five per cent on what we purchase, in return, it is clear, if the prices of what we consume were reduced forty-five per cent (the amount of the duty), we could, under such reduced prices, afford to raise the article at 5 1/2 cents per pound, with a profit, as great as what we now obtain at 10 cents; and that our capacity of meeting the competition of foreigners in the general market of the world, would be increased in the same proportion. If we can now, with the increased price from the Tariff, contend with success, under a reduction of 45 per cent in the prices of our products, we could drive out all competition; and thus add annually to the consumption of

our cotton, three or four hundred thousand bales, with a corresponding increase of profit. The case, then, fairly stated between us and the manufacturing States is, that the Tariff gives them a protection against foreign competition in our own market, by diminishing, in the same proportion, our capacity to compete with our rivals, in the general market of the world. They who say that they cannot compete with foreigners at their own doors, without an advantage of 45 per cent, expect us to meet them abroad under disadvantage equal to their encouragement.

But this oppression, as great as it is, will not stop at this point. The trade between us and Europe has, heretofore, been a mutual exchange of products. Under the existing duties, the consumption of European fabrics must, in a great measure, cease in our country and the trade must become, on their part, a cash transaction. He must be ignorant of the principles of commerce, and the policy of Europe, particularly England, who does not see that it is impossible to carry on a trade of such vast extent on any other basis than barter; and that, if it were not so carried on, it would not long be tolerated. We already see indications of the commencement of a commercial warfare, the termination of which no one can conjecture, though our fate may easily be. The last remains of our great and once flourishing agriculture must be annihilated in the conflict. In the first instance, we will be thrown on the home market, which cannot consume a fourth of our products; and instead of supplying the world, as we would with a free trade, we

would be compelled to abandon the cultivation of three fourths of what we now raise, and receive for the residue, whatever the manufacturers, who would then have their policy consummated by the entire possession of our market, might choose to give. Forced to abandon our ancient and favorite pursuit, to which our soil, climate, habits, and peculiar labor are adapted, at an immense sacrifice of property, we would be compelled, without capital, experience, or skill, and with a population untried in such pursuits, to attempt to become the rivals instead of the customers of the manufacturing States. The result is not doubtful. If they, by superior capital and skill, should keep down successful competition on our part, we would be doomed to toil at our unprofitable agriculture, selling at the prices which a single and very limited market might give. But, on the contrary, if our necessity should triumph over their capital and skill--if, instead of raw cotton, we should ship to the manufacturing States cotton yarn and cotton goods, the thoughtful must see that it would inevitably bring about a state of things which could not long continue. Those who now make war on our gains, would then make it on our labor. They would not tolerate, that those, who now cultivate our plantations, and furnish them with the material, and the market for the products of their arts, should, by becoming their rivals, take bread out of the mouths of their wives and children. The committee will not pursue this painful subject; but, as they clearly see that the system, if not arrested, must bring the country to this hazardous extremity, neither prudence nor patriotism would

permit them to pass it by without raising a warning voice against a danger of such menacing character. ...

The committee having presented its views on the partial and oppressive operation of the system, will proceed to discuss the next position which they proposed, its tendency to corrupt the Government, and to destroy the liberty of the country.

If there be a political proposition universally true, one which springs directly from the nature of man, and is independent of circumstances, it is, that irresponsible power is inconsistent with liberty, and must corrupt those who exercise it. On this great principle our political system rests. We consider all powers as delegated by the people, and to be controlled by them, who are interested in their just and proper exercise; and our Governments, both State and General, are but a system of judicious contrivances to bring this fundamental principle into fair, practical operation. Among the most prominent of these is, the responsibility of representatives to their constituents, through frequent periodical elections, in order to enforce a faithful performance of their delegated trust. Without such a check on their powers, however clearly they may be defined and distinctly prescribed, our liberty would be but a mockery. The Government, instead of being directed to the general good, would speedily become but the instrument to aggrandize those who might be intrusted with its administration. On the other hand, if laws were uniform in

their operation--if that which imposed a burden on one, imposed it likewise on all--or that which acted beneficially for one, acted also, in the same manner, for all--the responsibility of representatives to their constituents would alone be sufficient to guard against abuse and tyranny--provided the people be sufficiently intelligent to understand their interest, and the motives and conduct of their public agents. But, if it be supposed that, from diversity of interests in the several classes and sections of the country, the laws act differently, so that the same law, though couched in general terms and apparently fair, shall, in reality, transfer the power and property of one class or section to another--in such case, responsibility to constituents, which is but the means of enforcing fidelity of representatives to them, must prove wholly insufficient to preserve the purity of public agents, or the liberty of the country. It would, in fact, fall short of the evil. The disease would be in the community itself--in the constituents, and not their representatives. The opposing interests of the community would engender, necessarily, opposing, hostile parties--organized on this very diversity of interests--the stronger of which, if the Government provided no efficient check, would exercise unlimited and unrestrained power over the weaker. The relation of equality between the parts of the community, established by the Constitution, would be destroyed, and in its place there would be substituted the relation of sovereign and subject, between the stronger and weaker interests, in its most odious and oppressive form. . . . The committee has labored to little purpose, if they have

not demonstrated that the very case, which Mr. Hamilton so forcibly describes, does not now exist in our country, under the name of the American System--and which, if not timely arrested, must be followed by all the consequences which never fail to spring from the exercise of irresponsible power. On the great and vital point--the industry of the country--which comprehends almost every interest--the interest of the two great sections is opposed. We want free trade--they restrictions; we want moderate taxes, frugality in the Government, economy, accountability, and a rigid application of the public money to the payment of the debt, and to the objects authorized by the Constitution. In all these particulars, if we may judge by experience, their views of their interest are precisely the opposite. They feel and act, on all questions connected with the American System, as sovereigns, as men invariably do who impose burdens on others for their own benefit; and we, on the other hand, like those on whom such burdens are imposed. In a word, to the extent stated, the country is divided and organized into two great parties--the one sovereign and the other subject--bearing towards each other all the attributes which must ever accompany that relation, under whatever form it may exist. ...

The committee has demonstrated that the present disordered state of our political system originated in the diversity of interests which exists in the country--a diversity recognized by the Constitution itself, and to which it owes one of its most distinguished and peculiar features--the division of the

delegated powers between the State and General Governments. Our short experience, before the formation of the present Government, had conclusively shown that, while there were powers which in their nature were local and peculiar, and which could not be exercised by all, without oppression to some of the parts--so, also, there were those which, in their operation, necessarily affected the whole, and could not, therefore, be exercised by any of the parts, without affecting injuriously the others. On this different character, by which powers are distinguished in their geographical operation, our political system was constructed. Viewed in relation to them, to a certain extent we have a community of interests, which can only be justly and fairly supervised by concentrating the will and authority of the several States in the General Government; while, at the same time, the States have distinct and separate interests, over which no supervision can be exercised by the general power without injustice and oppression. Hence the division in the exercise of sovereign powers. In drawing the line between the powers of the two--the General and State Governments--the great difficulty consisted in determining correctly to which of the two the various political powers ought to belong. This difficult task was, however, performed with so much success that, to this day, there is an almost entire acquiescence in the correctness with which the line was drawn. It would be extraordinary if a system, thus resting with such profound wisdom on the diversity of geographical interests among the States, should make no provision against the dangers to

which its very basis might be exposed. The framers of our Constitution have not exposed themselves to the imputation of such weakness. When their work is fairly examined, it will be found that they have provided, with admirable skill, the most effective remedy; and that, if it has not prevented the danger with which the system is now threatened, the fault is not theirs, but ours, in neglecting to make its proper application. In the primary division of the sovereign powers, and in their exact and just classification, as stated, are to be found the first provisions or checks against the abuse of authority on the part of the absolute majority. The powers of the General Government are particularly enumerated and specifically delegated; and all powers not expressly delegated, or which are not necessary and proper to carry into effect those that are so granted, are reserved expressly to the States or the people. The Government is thus positively restricted to the exercise of those general powers that were supposed to act uniformly on all the parts—leaving the residue to the people of the States, by whom alone, from the very nature of these powers, they can be justly and fairly exercised, as has been stated.

Our system, then, consists of two distinct and independent Governments. The general powers, expressly delegated to the General Government, are subject to its sole and separate control; and the States cannot, without violating the constitutional compact, interpose their authority to check, or in any manner to counteract its movements, so long as they are confined to the proper sphere. So, also, the peculiar and

local powers reserved to the States are subject to their exclusive control; nor can the General Government interfere, in any manner, with them, without violating the Constitution.

In order to have a full and clear conception of our institutions, it will be proper to remark that there is, in our system, a striking distinction between *Government* and *Sovereignty*. The separate governments of the several States are vested in their Legislative, Executive, and judicial Departments; while the sovereignty resides in the people of the States respectively. The powers of the General Government are also vested in its Legislative, Executive, and judicial Departments, while the sovereignty resides in the people of the several States who created it, But, by an express provision of the Constitution, it may be amended or changed by three fourths of the States; and thus each State, by assenting to the Constitution with this provision, has modified its original right as a sovereign, of making its individual consent necessary to any change in its political condition; and, by becoming a member of the Union, has placed this important power in the hands of three fourths of the States--in whom the highest power known to the Constitution actually resides. Not the least portion of this high sovereign authority resides in Congress, or any of the departments of the General Government. They are but the creatures of the Constitution, and are appointed but to execute its provisions; and, therefore, any attempt by all, or any of these departments, to exercise any power which, in

its consequences, may alter the nature of the instrument, or change the condition of the parties to it, would be an act of usurpation...

If it be conceded, as it must be by every one who is the least conversant with our institutions, that the sovereign powers delegated are divided between the General and State Governments, and that the latter hold their portion by the same tenure as the former, it would seem impossible to deny to the States the right of deciding on the infractions of their powers, and the proper remedy to be applied for their correction. The right of judging, in such cases, is an essential attribute of sovereignty, of which the States cannot be divested without losing their sovereignty itself, and being reduced to a subordinate corporate condition. In fact, to divide power, and to give to one of the parties the exclusive right of judging of the portion allotted to each, is, in reality, not to divide it at all; and to reserve such exclusive right to the General Government (it matters not by what department) to be exercised, is to convert it, in fact, into a great consolidated government, with unlimited powers, and to divest the States, in reality, of all their rights. It is impossible to understand the force of terms, and to deny so plain a conclusion. The opposite opinion can be embraced only on hasty and imperfect views of the relation existing between the States and the General Government. But the existence of the right of judging of their powers, so clearly established from the sovereignty of States, as clearly implies a veto or control, within its limits, on the action of

the General Government, on contested points of authority; and this very control is the remedy which the Constitution has provided to prevent the encroachments of the General Government on the reserved rights of the States; and by which the distribution of power, between the General and State Governments, may be preserved for ever inviolable, on the basis established by the Constitution. It is thus effectual protection is afforded to the minority, against the oppression of the majority....

It is thus that our system has provided appropriate checks between the Departments, a veto to guard the supremacy of the Constitution over the laws, and to preserve the due importance of the States, considered in reference to large and small, without creating discord or weakening the beneficent energy of the Government. And so, also, in the division of the sovereign authority between the General and State Governments, by leaving to the States an efficient power to protect, by a veto, the minor against the major interests of the community, the framers of the Constitution acted in strict conformity with the principle which invariably prevails throughout the whole system, where separate interests exist. They were, in truth, no ordinary men. They were wise and practical statesmen, enlightened by history and their own enlarged experience, acquired in conducting our country through a most important revolution; and understood profoundly the nature of man and of government. They saw and felt that there existed in our nature the necessity of government, and government of

adequate powers; that the selfish predominate over the social feelings; and that, without a government of such powers, universal conflict and anarchy must prevail among the component parts of society; but they also clearly saw that, our nature remaining unchanged by change of condition, unchecked power, from this very predominance of the selfish over the social feelings, which rendered government necessary, would, of necessity, lead to corruption and oppression on the part of those vested with its exercise. Thus the necessity of government and of checks originates in the same great principle of our nature; and thus the very selfishness which impels those who have power to desire more, will also, with equal force, impel those on whom power operates to resist aggression; and on the balance of these opposing tendencies, liberty and happiness must for ever depend. This great principle guided in the formation of every part of our political system. There is not one opposing interest throughout the whole that is not counterpoised. Have the rulers a separate interest from the people? To check its abuse, the relation of representative and constituent is created between them, through periodical elections, by which the fidelity of the representative to the constituent is secured. Have the States, as members of the Union, distinct political interests in reference to their magnitude? Their relative weight is carefully settled, and each has its appropriate agent, with a veto on each other, to protect its political consequence. May there be a conflict between the Constitution and the laws, whereby the rights of citizens may be affected? A remedy may be found in the

power of the courts to declare the law unconstitutional in such cases as may be brought before them. Are there, among the several States, separate and peculiar geographical interests? To meet this, a particular organization is provided in the division of the sovereign powers between the State and General Governments. Is there danger, growing out of this division, that the State Legislatures may encroach on the powers of the General Government? The authority of the Supreme Court is adequate to check such encroachments. May the General Government, on the other hand, encroach on the rights reserved to the States respectively? To the States respectively each in its sovereign capacity is reserved the power, by its veto, or right of interposition, to arrest the encroachment. And, finally, may this power be abused by a State, so as to interfere improperly with the powers delegated to the General Government? There is provided a power, even over the Constitution itself, vested in three fourths of the States, which Congress has the authority to invoke, and may terminate all controversies in reference to the subject, by granting or withholding the right in contest. Its authority is acknowledged by all; and to deny or resist it, would be, on the part of the State, a violation of the constitutional compact, and a dissolution of the political association, as far as it is concerned. This is the ultimate and highest power, and the basis on which the whole system rests.

With these views the committee are solemnly of the impression--if the present usurpations and the professed doctrines of the existing system be persevered in--after due forbearance on the part of the State--that it will be her sacred duty to interpose--a duty to herself--to the Union--to the present, and to future generations--and to the cause of liberty over the world, to arrest the progress of a usurpation which, if not arrested, must, in its consequences, corrupt the public morals and destroy the liberty of the country.



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