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WASHINGTON CITY, SATURDAY NIGHT, JULY 25, 1846.

CONGRESSIONAL.

SPEECH OF MR. BAYLY,

OF VIRGINIA,

In the House of Representatives, June, 30, 1846—On the tariff bill.

Mr. BAYLY said:

Mr. CHAIRMAN: Unlike the gentleman from Ohio, [Mr. BRINKERHOFF,] I shall vote with great pleasure for the bill reported from the Committee of Ways and Means, with such amendments as it is understood the chairman of that committee will propose, although it may not be precisely such a bill as I could desire. But it is a great—a very great improvement upon the tariff act of 1842, and is in every respect a much better bill than I had hoped we should be able to pass at so early a date. It is true, I never doubted that sooner or later we would return to correct principles of legislation on this subject But I had hardly hoped that the day of regeneration would have arrived so soon. In the act of 1842 the most universally recognised revenue principles were disregarded. I hold it to be an incontrovertible principle that the burdens of taxation should be principally borne by the wealthy and not by the poor. Government is instituted for the joint protection of persons and property. The wealthy enjoy a greater amount of protection, and ought to pay more for it. Besides, a tax falls more easily upon them, as they make a smaller sacrifice in paying it. It is a kindred principle, equally well recognised, that taxes should rather be imposed upon luxuries which may be dispensed with, than upon necessaries which cannot. In the former case the tax is voluntary; in the latter it is unavoidable. Both of these principles are glaringly violated in the act referred to. The highest duties are placed upon necessaries, and articles principally consumed by the poor, and the lowest upon luxuries, and such as are mostly consumed by the rich. This has been so frequently and incontestably proven that it would be superfluous for me to go into detail to establish it now. This condemns the law as a revenue measure. But it was enacted for the purposes of protection. Protection is stamped upon every feature of it. Nor is it necessary to stop to prove this. It is defended as a protective tariff; and so far from any one's denying that it is such, we are told throughout the debate that a law framed upon any other principle would be destructive to the best interests of the people. It being conceded to be a tariff levied for the purposes of protection, the first question which suggests itself is, Had the Congress which enacted it any warrant in the constitution for doing so?

I approach, Mr. Chairman, this branch of the argument with reluctance. I know that there is a great and growing indisposition in this House to listen to an argument against any measure based upon the denial of the constitutional authority of Congress to pass it. We have been told by a gentleman from Vermont, [Mr. COLLAMER,] a jurist, standing high in the confidence of his party, that the constitution is of no avail as a restraint on Congress, or any farther than as it prescribes the forms of government. I knew that his party for a long time had acted upon this idea, but I did not expect to hear it so soon, and so authoritatively announced

Mr. COLLAMER here interposed, and said that he had not expressed an opinion that such ought to be the case, but only that such was the case.

Mr. BAYLY. That only makes the matter worse. It is not announced as the opinion of a very intelligent and observant gentleman, but by such an one as a *fact*. I hope he is mistaken. I hope, at so early a period in our national existence, the constitution has not already ceased to be, what its framers designed it, a limitation of power in Congress and a restraint upon it. I hope the time has not already arrived when the discretion of Congress, and not the constitution, is the measure of its power. If so, a revolution has already taken place—stealthily and unobserved by the people, it is true, but no less mighty on that account. But, sir, although I cannot admit that events have already carried us to this point, yet I see that they are rapidly tending to it. This imposes upon such of us as value the constitution as something more than a book of forms, who cherish its checks and balances, its limitations and restraints as the palladium of our liberties, the duty of appealing to and proclaiming, and, as far as we can, of sustaining its supremacy. Sir, at the risk of ridicule, and being pointed at as a Virginia abstractionist, I mean, as long as I remain in public life, to support and defend the constitution as the fathers of the republic made and construed it, and as the administration of the government has more than once been revolutionized to maintain it. Sir, on this occasion, I appeal to the constitution, not as a dead form, but as still a living thing; and thus appealing to it, I desire it shall be shown in which of its clauses you find the power delegated to enact a protective tariff? Unless this can be done, it must be abandoned. Let us see if it can be done. All of the powers of the general government are derivative. It possesses no power which is not delegated. By an express provision of the constitution itself, it is declared that "the powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The constitution not only contains a delegation of powers, but to a great extent of the means by which they are to be executed, and the ends for which they are to be exercised. If, therefore, the clause cannot be pointed out in which this power is delegated, either in express terms or by necessary implication as a means or an end, it cannot be maintained. The power in question, is claimed by some as conferred in the power to lay and collect taxes, duties, &c.; and by others as an incident to the power to regulate commerce. Before I proceed to examine these two clauses in detail, I think it proper to submit a few general remarks. It will scarcely be disputed that, in exercising a power expressly granted, you must not lose sight of the purpose for which it was granted. If you exercise such a power for purposes not contemplated, you as effectually violate the constitution as if you usurp a power altogether. And it is equally clear, upon every principle of construction applicable to our constitution, that a power claimed as an incidental one must not be a distinct, independent, and substantive prerogative, of equal consequence, and more especially of superior consequence, to others expressly granted. For you cannot suppose that when the framers of the constitution took the pains to make a minute enumeration of such powers, it meant to confer others, by mere implication, of as great importance.

Bearing these principles in mind, which will scarcely be contested, let us examine the two clauses under which the power to enact a protective tariff is sought to be derived. The first is in these words:

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

Here, it is said, is an express authority to lay and collect taxes, duties, and imposts; and the tariff of 1842 is nothing more than a law doing it. This is true. But it must not be forgotten that the purposes for which the power is given are as explicitly stated as the power itself. The power is to raise money, and the purpose to discharge the pecuniary liabilities and engagements of the government. This is the purpose, and not to encourage manufactures. But to this it is answered that the purpose for which the power is delegated, is not only to pay the debts, but to provide for the common defence and general welfare; and it is contended that if Congress shall be of opinion that these objects will be promoted by a protective tariff, it has the power expressly given to enact it for that purpose. In other words, the power is claimed under what is familiarly called the "general-welfare doctrine." This doctrine has been so frequently exploded that I feel indisposed to say much in reference to it. Admit it to be true, and you make almost every other clause of the constitution surplusage. There is very little pertaining to government which may not be done under the sweeping power to provide for the general welfare. But there is nothing superfluous in the constitution. It is as remarkable for its literary execution as for its political wisdom.

Grant this doctrine, and you subvert the whole character of the government. In place of being one of few and delegated powers, it would be one possessing them to the most sweeping and absolute extent. Consider for a moment that the constitution confers upon Congress the power to make all laws necessary and proper for carrying into execution the granted powers, and declares upon its very face that all State laws and constitutions at variance with them shall be superseded, and do you not see that the doctrines contended for, if conceded, would strip the States of all powers and centre them in the general government?

It is impossible that such a suicidal construction can be correct. No construction of a particular clause which subverts the character of the whole instrument can by possibility be correct. It is very clear that the terms referred to are not designed as conferring any distinct power, but as a general designation of the purposes for which the powers delegated are to be executed. The effect is precisely the same as if the words used had been added at the end of each clause of the section conferring powers upon Congress, in place of being added at the end of but one. This was the view taken in the State conventions which adopted the constitution by all of its friends, particularly by Mr. Madison and Mr. George Nicholas, in the Virginia convention. Speaking of this clause, the latter gentleman said:

"He had endeavored to show the committee that it only empowered Congress to make such laws as would be necessary to enable them to pay the public debts and provide for the common defence; that this general welfare was united not to the general power of legislation, but to the particular power of laying and collecting taxes, imposts, and excises, for the purpose of paying the debts and providing for the common defence—that is, that they could raise as much money as would pay the debts and provide for the common defence in consequence of this power. The clause which had been affectedly called the *sweeping clause*, contained no new grant of power. To illustrate this position, he observed, if it had been added at the end of every one of the enumerated powers, instead of being inserted at the end of all, it would be obvious to any one that it was no augmentation of power. As it would grant no new power if inserted at the end of each clause, it could not when subjoined to the whole."

This is obviously the correct view. In fact, the words in question, so far from being designed as an enlargement of the powers of Congress, were designed as a restriction. Congress not only may not do whatever it may fancy will provide for the general welfare, but it may not even exercise the powers expressly granted for any other purpose than to promote THE GENERAL welfare. The powers granted are not to be used for special, but general purposes—not for sectional, but for national purposes. This view alone is fatal, as will be hereafter shown, to the tariff act of 1842, the operation of which is particularly sectional.

It is thus shown that the terms general welfare do not enlarge the purposes for which duties may be levied; and that the encouragement of manufactures is not one of them. This being clear, you cannot, without committing a fraud upon the constitution, levy them for the purpose of protection, under the pretext of doing it for revenue. I repeat, the object for which the power is exercised must not be lost sight of. Under the clause in question you may tax the land. But will any one maintain that you may do so, constitutionally, for the purpose of discouraging agriculture and driving people into other pursuits? You can do that as legitimately as you can tax commerce and agriculture for the benefit of manufactures, and thus entice the people into that pursuit.

If these views require confirmation, it will be found in the proceedings of the federal convention. On the 28th of August, near the close of the convention, when most of the provisions of the constitution had been agreed upon:

"Mr. Madison moved that the words 'nor lay imposts or duties on imports,' be transferred from article 13, where the consent of the general legislature may license the act, into article 12, which will make the prohibition on the States absolute. He observed, that as the States interested in this power, by which they could tax the imports of their neighbors passing through their markets, were a majority, they could give the consent of the legislature to the injury of New Jersey, North Carolina, &c.

"Mr. Williamson seconded the motion.

"Mr. Sherman thought the power might safely to the legislature of the new United States.

"Col. Mason observed that particular States might wish to encourage, by impost duties, certain manufactures, for which they enjoyed natural advantages—as Virginia, the manufacture of hemp, &c.

"Mr. Madison. The encouragement of manufactures in this mode requires a tax on imports, not only on imports directly from foreign countries, but from the other States in the Union, which would revive all the mischiefs experienced from the want of a general government over commerce."

Mr. Madison's proposition was lost by a vote of four States to seven.

The proposition of Mr. Madison to make the prohibition on the States absolute was voted down. But to obviate the objection, that as the States interested in the power by which they could levy duties upon the imports of their neighbors passing through their markets were a majority, they could give the consent of the legislature, and under the pretext of encouraging their manufactures tax the others, Mr. Sherman moved to add after the word "exports," in the 10th section of the 1st article of the constitution as it now stands, the words "nor with such consent but for the use of the United States." What was said in the convention upon this occasion is so important, I consider it proper to present it entire:

"Mr. Sherman moved to add after the word 'exports' the words 'nor with such consent but for the use of the United States,' so as to carry the proceeds of all State duties on imports or exports into the common treasury.

"Mr. Madison liked the motion as preventing all State imports; but lamented the complexity we were giving to the commercial system.

"Mr. Gouverneur Morris thought the regulation necessary to prevent the Atlantic States from endeavoring to tax the western States, and promote their interest by opposing the navigation of the Mississippi, which would drive the western people into the arms of Great Britain.

"Mr. Clymer thought the encouragement of the western country was suicide on the part of the old States. *If the States have such different interests that they cannot be left to regulate their own manufactures* without encountering the interests of other States, it is proof they are not fit to compose one nation.

"Mr. King was afraid that the regulation moved by Mr. Sherman would *too much interfere with the policy of the States respecting their manufactures, which may be necessary.* REVENUE, HE REMINDED THE HOUSE, WAS THE OBJECT OF THE GENERAL LEGISLATURE."

Here we find that the motion to make the prohibition upon the States to lay imposts or duties on imports absolute was resisted upon the ground that particular States might desire to lay them for the encouragement of certain manufactures, for which they enjoyed natural advantages. Well, what was the reply? Was it that power was already conferred upon the general government to levy imposts for that purpose?—that when levied by Congress they would be much more efficacious, and, therefore, there was no occasion to reserve the power to the States? This unquestionably would have been the conclusive reply if the facts would have justified it. A like reply was always a favorite one in the convention in similar cases. Very many examples might be given of this; the debates are full of them. In the proceeding which took place imediately before the one to which I am referring this reply was given.

Mr. Madison moved to insert after the word "reprisal" in the 10th section of 1st article of the constitution as it now stands, the words "nor lay embargoes." "He insisted that such acts by the States would be unnecessary, impolitic, and unjust."

"Mr. Sherman thought the States ought to retain this power in order to prevent suffering and injury to their poor."

"Mr. Gouverneur Morris considered the provision as unnecessary; the power of regulating trade between State and State, already rested in the general legislature being sufficient."

And in the case we are considering, if the members of the convention had supposed that the general government possessed the power to levy imposts for the purposes of protection, the reply to Col. Mason would have been not only that the power already conferred upon the general legislature was sufficient for that purpose, but that being vested there, it could be much more efficiently exercised by it than the States—so much more so that even if reserved to the States it would not be exerted. But so far from this being the answer, one is given which shows in the clearest manner the inexpediency of conferring upon the general government any such power; and that the power actually conferred was for revenue purposes, and for revenue purposes only.

Mr. Madison knew that the several States were suited for manufactures, and prepared to engage in them in different degrees. And he saw that such of them as enjoyed great natural advantages, and were in other respects better fitted to commence manufacturing, would get the start of those who were not so much favored; after which any protection to the latter by imposts would be unavailing which did not secure them as well against the competition of the former as of foreign nations. Our subsequent experience has demonstrated the soundness of these views. Let me put it to any member whose constituents have not yet entered upon manufacturing, if they desire to do it, against whom will they most require protection?—other States of this Union or foreign nations? If Ohio desired to-day to engage in manufactures, whose competition would she have most cause to fear?—that of Old England or New England? As to my own State, and more particularly as to my own district, I can speak with confidence. We manufactured to a much greater extent—including household manufacture—before the era of protective tariffs than we do now; and the trades and mechanic arts were much more flourishing. As young a man as I am, I can recollect when the poor women in the country made a good living by spinning and weaving—the only way, almost, in which they can be suitably and comfortably employed, as long as they remain in the country, where they ought to be permitted to remain; and there was scarcely a family which was not, to a great extent, clothed—and most neatly and *well* clothed—in linens and woollens of household manufacture; whereas now I scarcely ever see a roll of home-made linens or woollens, and none in the stores for sale, where formerly they were constantly found. And as to the mechanics, their business is almost entirely broken up by Yankee competition. I can recollect when every neighborhood had its shoemaker, its tailor, its saddler, its hatter; but now our shoes, our clothes, our hats, our saddles, our axes, hoes—almost everything made in a blacksmith's shop—in fact almost everything made by the mechanic—is brought from the north.

Mr. Madison and the framers of the constitution foresaw that protection by the general government would not operate equally throughout the Union, and that to make it effectual in many of the States, it would be necessary to levy duties not only upon importations from foreign nations, but from the sister States. This latter he was unwilling to do, for the reasons assigned.

From these proceedings, it appears that Mr. Madison desired to make the prohibition on the States for laying imposts absolute. But it was objected that some of the States might desire to impose them for the purpose of encouraging their manufactures. To this it was not replied—as it would have been if it could have been with truth—that the power to do that was vested in the general government, where it would be much more effectual. On the contrary, Mr. King, who was friendly to retaining the power for the States, said expressly that revenue was the object of the power in the general government. The convention refused to make the prohibition absolute. But to obviate the objection that some of the States, under the pretext of encouraging their manufactures, would tax their neighbors who imported through their ports—as New Jersey, for instance, through Philadelphia, and North Carolina through Norfolk—they were required not only to get the consent of Congress, but to carry the proceeds of the duties into the common treasury. And this was done in the teeth of the argument of Mr. Clymer, already quoted, and the objection of Mr. King, that it "would too much interfere with the policy of the States respecting their manufactures."

Col. Mason, who was one of the greatest men in that age of great men, and who was as remarkable for his republican simplicity as for his great political sagacity and wisdom, agreed with Mr. King. He knew that the power to levy imposts, delegated to the general government, was only for revenue purposes; and he thought that the restrictions proposed would so trammel the States as in fact to extinguish the power to levy duties on imports for the encouragement of manufactures. He had shown himself throughout the convention to be friendly to that object; and after he had found, as he thought, that all other modes had failed, he proposed, as will hereafter appear, a voluntary association of members of the convention for the purpose. From all this, it is clear that the power to levy imposts for the purpose of protection is not vested in the general government, but that it was reserved to the States to enable them to encourage their manufactures; and the restrictions contained in the constitution were designed to prevent the perversion of the power. Now, if the protectionists in this House are willing to confine themselves to this only constitutional mode, I am sure that we, on this side, will interpose no obstacle. We will give them at once the consent of Congress to levy, under the restrictions of the constitution, as high duties in their own ports as they please. And as it is for the encouragement of their manufactures, and not ours, they ought to regard this proposition as reasonable. It is true, the duties collected will go into the federal treasury; but as these gentlemen have assured us throughout this debate that these duties come out of the foreigner, and not the home consumer, they will not object to this. Of course not, if they believe in the truth of their argument.

But they will object to it. It will not answer their purpose to tax solely their own people to encourage their own manufactures. No; what they desire is to tax our people for their benefit. They want to compel us to purchase their fabrics at a higher price than we can get them elsewhere; and if they can do that, it is a matter of indifference to them if they destroy our commerce, impair the value of our exports, and injure our agriculture.

The power to enact a protective tariff is also claimed under the power to regulate commerce. I greatly fear this clause is fast becoming what the one we have been discussing was styled in the federal convention—"THE SWEEPING CLAUSE." Almost every imaginable power is claimed under it. But, thank God, there is no "sweeping clause" in the constitution. The framers of it placed no such clause there; and I hope others may not be permitted to do it by construction. I admit, at once, the power of Congress to levy countervailing duties for the purpose of regulating commerce. But I repeat again, the purpose must not be lost sight of. Discriminating duties cannot be levied, under the clause in question, for any other purpose than to regulate commerce. And when they are levied for this purpose, it is not to impose permanent burdens and restrictions, but with the view of resisting, as the best way to procure the removal of restrictions and obstructions. With this view we consent to submit to a temporary inconvenience, for the purpose of forcing the concession of a permanent good. And when they are thus levied, it is to resist injustice, the remedy for which is injurious to us, and which ought not to be enforced a day longer than the necessity exists. As soon as it accomplishes its purpose, it should be abandoned. This is the view which Mr. Jefferson and Mr. Madison always took of the subject. In his celebrated report on commercial privileges and restrictions, made on the 16th of December, 1793, after showing the extent of the restrictions on the commerce and navigation of the United States, Mr. Jefferson said:

"The question is, in what way they may best be removed, modified, or counteracted.

"As to commerce, two methods occur. 1. By friendly arrangements with the several nations with whom these restrictions exist; or 2. By the separate act of our own legislatures for countervailing their effects.

"There can be no doubt but that of these two, friendly arrangement is the most eligible. Instead of embarrassing commerce under piles of regulating laws, duties, and prohibitions, could it be relieved from all its shackles in all parts of the world; could every country be employed in producing that which nature has best fitted it to produce, and each be free to exchange with others mutual surpluses for mutual wants, the greatest mass possible would then be produced of those things which contribute to human life and human happiness; the numbers of mankind would be increased and their condition bettered.

"*Would even a single nation begin with the United States this system of free commerce, it would be advisable to begin it with that nation, since it is one by one only that it can be extended to all.* Where the circumstances of either party render it expedient to levy a revenue by way of impost on commerce, its freedom might be modified in that particular, by mutual and equivalent measures, preserving it entire in all others."

In this connexion permit me to remark, that one nation, at least, has shown a disposition to commence a system of free commerce with the United States, as we will hereafter see, and that the nation, too, which takes nearly one-half of our entire exports, and more than one-half of our agricultural exports. Shall we meet her half way? Subsequently, in the same report, Mr. Jefferson says: "But should any nation, contrary to our wishes, suppose it may better find its advantages by continuing its system of prohibitions, duties, and regulations, it behooves us to protect our citizens, their commerce and navigation, by counter prohibitions, duties, and regulations also. Free commerce and navigation are not to be given in exchange for restrictions and vexations; nor are they likely to produce a relaxation of them."

Again:

"When once it shall be perceived that we are either in the system or in the habit of giving equal advantages to those who extinguish our commerce and navigation by duties and prohibitions, as to those who treat both with liberality and justice, liberality and justice will be converted by all into duties and prohibitions."

On the 4th of January, 1794, Mr Madison introduced in the House of Representatives his celebrated resolutions upon the same subject, designed to carry out Mr. Jefferson's views, and in the speech which he made on the occasion, he thus endorsed them:

"He professed himself to be a friend to the theory which gives to industry a free course, under the impulse of individual interest, and the guidance of individual sagacity. He was persuaded that it would be happy for all nations, if the barriers erected by prejudice, by avarice, and by despotism, were broken down, and a free intercourse established among them."

These were the views of those two fathers of the republican faith, and yet they are sometimes quoted as the friends of levying duties discriminating for protection. I admit they conceded the power of laying discriminating duties under the power to regulate commerce, but only for commercial purposes. It is true, in some cases, they went so far as to admit, where any particular nation which laid onerous restrictions upon our trade was extensively engaged in a particular branch of manufactures, we might levy heavy duties upon their productions. But not for the purpose of permanently obstructing commercial intercourse with her, but to cause her to relax her restrictions. In other words, for the purpose in the end of securing free trade, and not for the purpose of obstructing it permanently.

Having thus seen for what purpose, under the power to regulate commerce, discriminating duties may be laid, let us inquire if the tariff act of 1842 levies them for any such purpose. In the act commercial principles are as distinctly lost sight of as revenue principles are. It gives comparatively free trade, on our part, to some nations in exchange for restrictions; and restrictions to others in exchange for comparative free trade. And this is done by a nation whose policy it should be to encourage the most unrestricted commerce with the world; and done, too, under the pretext of regulating commerce! I will not detain the committee by going through a calculation as to all the nations with whom we have commercial intercourse. But it would prove the truth of what I have asserted. As an illustration, I take the case of Great Britain and Brazil. We exported to the latter place, of our own products, for the years 1838-'39, and -'40, $6,374,817. The duties levied and collected upon which, in her ports, were $1,466,207. Of these exports, $3,599,132 were of flour, principally from Baltimore and Richmond, and made of wheat, to a large extent, from my own district. The duty upon this flour, levied in the ports of Brazil, is 48½ per cent. upon a fixed minimum value of $9 28 per barrel—which, as the commercial document of last year shows, is near double its real price. In other words, the duty levied is upwards of 80 per cent. Our imports for the same time were $13,411,489, of which $12,089,933 were entirely free of duty! and the balance bearing a very light duty. I have taken these three years because they were the last three preceding the tariff act of 1842, for which, at that time, we had returns; and they show the spirit in which that act was passed. But I have examined the commercial document of last year, and the trade of that year does not vary materially from that of the three years referred to; and the variation, such as it is, makes the inequality and want of reciprocity still greater.

Now let us turn to our trade with Great Britain. For the year 1840—I take that year alone because it will avoid too great a complication of calculation; the others do not materially vary the result, and, as far as they vary it at all, it is in favor of my argument. For that year our exports to Great Britain, exclusive of tobacco, were $50,624,981; the duties collected were $5,822,946, or a little upwards of 10 per cent. The rate of these duties were, in many instances, reduced before the enactment of our tariff law of 1842; and most of them since have been entirely removed, or at any rate very much modified.

For instance: of the $5,822,946 of duties collected, $3,247,880 29 were from cotton, the duty upon which was removed, even before the late modification of her tariff was proposed; and much of the balance was from articles upon which there was a reduction before that time. But without including these last, the average British duty upon our exports, exclusive of tobacco was about 5 per cent. And this was the law as it stood before the late modification proposed by the British ministry. That modification, which, before this time, is doubtless the law of the land, abolishes, or very much reduces, all the remaining duties, except upon tobacco; and, except as to that article, our trade with Great Britain is already as free as she can make it. But I may be asked why I except that article? In the first place, the duty she levies upon it is not to raise up a rival production in her own territories to exclude ours. It is not a protection, but purely a revenue duty, levied upon what she considers a pernicious luxury; to enable her to collect which, she prohibits its cultivation, under severe penal enactments, in the United Kingdom; but for which enactments it would be cultivated at home to nearly, or quite, a sufficient extent to supply her demand. Perfectly good tobacco can be made in the southern counties of England, and most of Ireland. Indeed, before the cultivation of it was prohibited, it was grown in Ireland to a very large extent. Thus, to enable her to raise a large revenue from it, she gives the tobacco-growers a monopoly of her market, and some of the best informed merchants, engaged in the tabacco trade, are of opinion that this monopoly more than compensates the tobacco-grower for the heavy duty which is collected.

Let us now see upon what footing our trade with her American colonies stands. To them our exports in 1840, including tobacco, of which there was a considerable export, were of the value of $5,537,056. Total amount of duties levied, $187,920—between three and four per cent. only on their imports from us.

Now let us see what amount of duties we levy upon our imports from Great Britain under the present law. The average rate of duty, under the law of 1842, upon dutiable articles, as calculated at the treasury, is 35 per cent. and a fraction. [See annual report, page 71.] But the average duty imposed upon imports from Great Britain, is much higher, as most of the articles, bearing a very high duty, are imported from that country. Let us take a few leading articles:

	Imported from England. Value.	Rate of duty Per cent.
Cloths and Cassimeres	$3,815,853	40
Cotton goods, colored	7,177,301	43½
" uncolored	1,666,162	47
Iron, &c.	3,730,407	
Articles in most common use—viz!		
Woods screws		60
Spikes, cut or wrought		168
Chain cables		87
Other chains		101
Hoop iron		115
Band iron, &c.		70
Bar, manufactured by rolling		75

I have not had time to make an average for Great Britain; but I can safely say it is much higher than the general average of 35 per cent. And, in this connexion, it is proper to mention that we take a much smaller amount of our free articles from Great Britain than any other nation, in proportion to our aggregate imports. We imported from Great Britain last year, $44,687,859, of which only $1,621,801 were of free articles; and, excluding, gold, silver, and copper, only $475,349 were of free articles, out of an entire import of $22,147,840 of free articles, or only a little above 2 per cent We exported to Great Britain last year $46,286,178, and imported from her $44,687,859, of which but a little more than 2 per cent. were free articles. I have already shown the exports and imports to and from Brazil, and the proportion which free articles bear to the latter. From this statement the committee can see how every thing like a legitimate regulation of commerce is discarded in the tariff of 1842.

Sir, there is no disguising or disputing the fact that the tariff of 1842 was not designed as a commercial law. But, if so, every correct principle of commercial legislation is lost sight of. No, sir, it was enacted for the purpose of encouraging manufactures. And I deny that you have any power to do that under the power "to regulate commerce." I cannot conceive by what process of reasoning manufactures are made an incident to commerce. It is a distinct branch of business, as much so as commerce itself. The three great branches of industry are agriculture, manufactures, and commerce. By an express provision of the constitution, jurisdiction is given to Congress over the last, but not over the two first. And when you see the power over commerce expressly delegated, you cannot conclude that it is designed to be conferred over the others by implication. On the contrary, the rules of construction to which I have adverted are fatal to any such conclusion. And, sir, it was not accident or inadvertence that the power over commerce was delegated, and that over agriculture and manufactures was reserved. It was by design; and the reason is obvious.

In the division of powers between the general government and the States, all such as relate to the external relations of the States are delegated to the former, and all such as relate to their domestic concerns are reserved to themselves. Commerce with foreign nations and between the States belonging to the first class, hence jurisdiction over it is delegated to the general government. Agriculture and manufactures belong to the last, and hence jurisdiction over them is reserved to the States.

On the 20th of August, Gouverneur Morris, who was one of the most eminent men in the convention which framed the constitution, and the member who gave the finish to the style and arrangement of it, submitted, seconded by Mr. Pinkney, another eminent member, a series of propositions, by which it was proposed to constitute several public officers—viz:

"2. The secretary of domestic affairs, who shall be appointed by the President, and hold his office during pleasure. It shall be his duty to attend to matters of general police, *the state of agriculture and manufactures, the opening of roads and navigation, and the facilitating communications through the United States;* and he shall from time to time recommend such measures and establishments as may tend to promote those objects.

"3. The secretary of commerce and finance, who shall be appointed by the President, during pleasure. It shall be his duty to superintend all matters relating to the public finances, to propose and report plans of revenue, and for the regulation of expenditure, and also to recommend such things as may, in his judgment, promote the commercial interests of the United States.

"4. The secretary of foreign affairs, whose duty it shall be to correspond with foreign ministers, prepare plans of treaties, &c.

"5. The secretary of war, whose duty shall be to superintend every thing relating to the department of war, &c.

"6. The secretary of marine, whose duty it shall be to superintend the public ships, dock-yards, naval stores, &c."

These several propositions, thus imposingly submitted, were referred to the committee of detail; and we find in the constitution, as it came from the committe, of which the mover of the propositions was the leading member, express power is conferred upon Congress over each of the subjects referred to in them, except those in the second. As I have already said, this omission was not accidental. The men who composed that convention were not the men to be guilty of inadvertence of that sort. It is true the constitution did not provide for the organization of these departments, but it conferred authority upon Congress over the subjects, and left it to Congress to organize the departments to take charge of them.

From these proceedings it appears that the leading members of the convention considered the several subjects referred to in these propositions as equals in point of importance—as subjects "*ejusdem generis*"—of the same class. And when it is evident that they so regarded them, and conferred authority upon Congress over all of them but two in express terms, can you, upon any just principle of construction, infer that they meant to confer it over the others by mere implication? It is impossible. And in confirmation of this view, we find that when the first Congress came to organize the departments, they substantially adopted the suggestions of Mr. Morris, with the exception of the second, which shows that they did not suppose that jurisdiction over the subject referred to in it was confided to Congress. Otherwise how can you account for the omission to organize such a department?

To show that the wise men of the convention did not understand that power was conferred upon the general government to protect manufactures, either expressly, under the power to lay impost, or as an incident to any other power, I refer to a proceeding of the convention, which is very significant. On the 13th of September, only three legislative days before the adjournment, when the business of the convention was through, in convention Col. Mason said:

"He had moved, without success, for a power to make sumptuary regulations. He had not yet lost sight of his objects. After descanting on the extravagance of our manners, the excessive consumption of foreign superfluities, on the necessity of restricting it, as well with economical as republican views, he moved that a committee be appointed to report articles of association for encouraging, *by the advice, the influence, and the example* of the members of the convention, economy, frugality, *and American manufacture*."

Can anything be more conclusive than this? Had so wise a man as Colonel Mason thought that the power was vested in the general government for this purpose, he would certainly have looked to legislation, rather than the voluntary association of gentlemen, to effect it. His movement was obviously the last effort of a gentleman reluctant to abandon a cherished object. To all this, the protectionists can only reply, that if the power to lay protective duties is not vested in the United States, it is so trammelled in the States as to be in fact extinguished; and that the first revenue bill imposing duties on imports recognised in its preamble the right of the general government to levy them for the purpose of protection.

In answer to this, all I can say is that I think have shown that the power to levy imposts for the purposes of protection does not exist any where except in the States under the restrictions of the constitution. But the levying of imposts is not the only mode by which manufactures can be encouraged. It may be done by bounties. It may be done in a variety of other ways, all within the legislative competency of the States. One of the first and most effectual laws passed in Great Britain for the encouragement of the woollen manufacture was the one requiring the dead to be buried in woollens. But suppose the power were entirely extinguished, it would not be without many examples in our system.

As to the cotemporaneous construction, so far from the tariff of 1789 recognising the principle of protection, it does precisely the reverse. It is true, in the preamble of the act, the necessity of encouraging manufactures is recited as one of its objects. But it must be borne in mind that a preamble is no part of a law, and that it is not legitimate to refer to, even as an aid in construction, unless the provisions of the law are obscure. Where they are clear, you cannot refer to the preamble at all. Before I refer to the provisions of the tariff of 1789, to show that it was anything but a protective tariff, I desire to premise a few remarks.

If there ever was a time when a high protective tariff might with propriety have been laid, if the power existed, it was in 1789. We had but a short time before come out of the long and bloody war of the revolution. It had been the policy of the mother country to discourage manufactures in the colonies; there had consequently few grown up in America. During the war, our people had suffered intensely for the want of their products. There was very naturally at that time a strong wish that in any subsequent war me might not be in the same situation. In addition to this, we had come out of the war loaded with a heavy national debt, and the great difficulty with the patriots of the land was to raise a revenue to meet the engagements, and sustain the credit of the government. If there ever was a time when a high tariff would have been tolerated it was then. As there were but few manufactures in the country, the foreign articles would not have been superseded in the market by domestic products. A high tariff at that time would have produced a large revenue, which was so much needed. Besides, it would at the same time have given protection to the manufactures while they were in their infancy. Yet with all these inducements to enact a high protective tariff, the average rate of duty in the one they did enact was 5½ per cent. only! and the highest rates imposed were upon luxuries not produced at all in this country. Yes, sir, this is the character of the act the fathers of the republic enacted at a time when the pecuniary wants of the government were such that it was compelled to resort to direct taxation at the expense of domestic discontent and actual insurrection. And this they did rather than enact a tariff with an average higher than 5½ per cent. This is the law, a casual expression in the preamble of which is seized hold of as a recognition of the power of Congress to enact a protective tariff! But here is a practical test of the character of that law. Gentlemen say it was a protective tariff. It was passed when our manufactures were in their infancy, and when they were weak. They are now in the full vigor of manhood, and of course require less support than they did then. Will gentlemen now take for their manufactures the protection which was accorded them then? Sir, we all know they will not. Why, sir, if we were now to propose such a rate of duty as was adopted in 1789, these gentlemen would be ready for open rebellion. They are not satisfied with a rate of duties on an average five times as high. And yet they tell us about the act of 1789 being a protective tariff. Such a thing as a protective tariff never was heard of until 1816.

But, sir, the power to levy a protective tariff not only is without warrant in the constitution, but it is most palpably in derogation of its spirit. In construing the constitution of the United States, like all other instruments, you must not look to its letter only, but to the spirit in which it was framed—to the mischiefs designed to avoided by it; and you must so construe it as to advance its object, and to suppress the mischief. What were the abuses against which our constitution was designed to provide? The whole of that grand movement, commencing with the dawn of our revolution, and ending with the adoption of the constitution of the United States, was set on foot to get clear of the piles of regulations, trammels, restrictions, and monopolies with which the private pursuits of man were burdened and harassed. It is a very narrow and contracted view of that movement to suppose that it was against any particular statute of the British government. It was against the abuses of the British system—against the relics of feudal and dark ages—among which were the legislative claim of interfering with the religion, the commerce, and the private pursuits of the people. All this our fathers thought wrong. They were of opinion that when government took effectual means to encourage industry, by securing to it its fruits, to secure property, repress violence, and discountenance fraud—when it had taken effectual means of securing man in the unmolested liberty in his person and property, that it had exhausted its function. Fortunately, the right of government to interfere with our religion is taken away in the most emphatic manner. But religion is a universal truth. It is unaffected by time, place, or circumstances. The true religion for one man is the true religion of all. If it was not, therefore, for its transcendent importance, concerning as it does a man's eternal happiness, it would be a fitter subject for legislation than the pursuits of industry, which are affected by soil, climate, habits, tastes, and a thousand things which makes it peculiarly proper that individuals should not be interfered with in them by government. Individual tastes, habits, and interests will always direct them to the pursuits which they had better follow without the interference of government. And I am in favor of leaving every man in his industrial pursuits, as in his religion, to work out his own salvation in his own way. Government is incompetent to this business, and it cannot undertake it without mischief. What one of my constituents would allow me to regulate his private pursuits? If he would not allow me, how much more reluctant would he be to allow a representative from Maine or Texas? And the same would be the case with them. If no one district would consent that its own member, acquainted with their wants and habits, should control them in their private pursuits, why should they be more willing that others should collectively do it?

There is no policy on earth so fatal, particularly in a free government, as that by which the people are taught to look up to and lean upon government too much. Adversity will sooner or later befall all pursuits. Teach the people, on such occasions, to rely upon themselves, and you make them good citizens; but learn them to look up to, and lean upon, the government, and when disaster comes, they call upon the government, which is powerless to aid without wrong to others, and you breed discontent and disaffection. This is particularly the case with manufactures. In them there is a constant tendency in production to outrun consumption. There is a constant tendency to embarrassment; and if government interferes at all, whenever it occurs, there is a clamor, and it is appealed to for more protection.

Before Congress determines to adhere to the jurisdiction of protection, I desire it to consider to what it will lead. If you legislate at all upon this matter, your legislation must, and ought to, be complete. If you take control of the subject of manufactures, you must sooner or later pass all the laws incident to it. Well, what are they? More than half of the legislation of Great Britain, and other manufacturing nations, relative to manufactures, is in regulating the hours of labor, the ages at which