# Excerpts from the South Carolina Exposition and Protest, 1828 (*Written anonymously and adopted by the South Carolina Legislature on December 19, 1828*.)

The committee 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.

The committee does 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 to some 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. ...

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-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. ...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 committee feels 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 the sectional language. On its authors, and not on us, who are compelled to adopt this course in self-defense, 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 South-west, 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. ...

That the manufacturing States, even in their own opinion, bear no share of the burden of the Tariff in reality, we may infer with the greatest certainty from their conduct. The fact that they urgently demand an increase, and consider every addition as a blessing, and a failure to obtain one as a curse, is the strongest confession that, whatever burden it imposes, in reality falls, not on them, but on others. Men ask not for burdens, but benefits.

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.

...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 carryon 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. ...

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.

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. ...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.

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 we look to the history and practical operation of the system, we shall find, on the side of the States, no means resorted to in order to protect their reserved rights against the encroachments of the General Government; while the latter has, from the beginning, adopted the most efficient to prevent the States from encroaching on those delegated to them. The 25th section of the Judiciary Act, passed in 1789, -immediately after the Constitution went into operation, -provides for an appeal from the State courts to the Supreme Court of the United States in all cases, in the decision of which, the construction of the Constitution, -the laws of Congress, or treaties of the United States may be involved; thus giving to that high tribunal the right of final interpretation, and the power, in reality, of nullifying the acts of the State Legislatures whenever, in their opinion, they may conflict with the powers delegated to the General Government. A more ample and complete protection against the encroachments of the governments of the several States cannot be imagined; and to this extent the power may be considered as indispensable and constitutional. But, by a strange misconception of the nature of our system, -and, in fact, of the nature of government, -it has been regarded as the ultimate power, not only of protecting the General Government against the encroachments of the governments of the States, but also of the encroachments of the former on the latter; -and as being, in fact, the only means provided by the Constitution of confining all the powers of the system to their proper constitutional spheres; and, consequently, of determining the limits assigned to each. Such a construction of its powers would, in fact, raise one of the departments of

the General Government above the parties who created the constitutional compact, and virtually invest it with the authority to alter, at its pleasure, the relative powers of the General and State Governments, on the distribution of which, as established by the Constitution, our whole system rests; -and which, by an express provision of the instrument, can only be altered by three fourths of the States, as has already been shown. It would go farther. Fairly considered, it would, in effect, divest the people of the States of the sovereign authority, and clothe that department with the robe [ sic] of supreme power. A position more false and fatal cannot be conceived. Fortunately, it has been so ably refuted by Mr. Madison, in his Report to the Virginia Legislature in 1800, on the Alien and Sedition Acts, as to supersede the necessity of further comments on the part of the committee. Speaking of the right of the State to interpret the Constitution for itself, in the last resort, he remarks: -"It has been objected that the Judicial Authority is to be regarded as the sole expositor of the Constitution. On this objection, it might be observed, -first -that there may be instances of usurped power" (the case of the Tariff is a striking illustration of the truth), "which the forms of the Constitution could never draw within the control of the Judicial Department; -secondly, -that if the decision of the Judiciary be raised above the authority of the sovereign parties to the Constitution, the decision of the other departments, not carried by the forms of the Constitution before the Judiciary, must be equally authoritative and final with the decision of that department. But the proper answer to the objection is, that the resolution of the General Assembly relates to those great and extraordinary cases in which the forms of the Constitution may prove ineffectual against the infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers not delegated, may not only be usurped and exercised by the other departments, but that the Judicial Department also may exercise or sanction dangerous powers beyond the grant of the Constitution; and consequently, that the ultimate right of the parties to the Constitution to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another; by the Judiciary as well as by the Executive or the Legislative. However true, therefore, it may be that the Judicial Department is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort, this resort must necessarily be considered the last in relation to the authorities of the other departments of the Government; not in relation to the rights of the parties to the constitutional compact, from which the Judicial and all other departments hold their delegated trusts. On any other hypothesis the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with others in usurped powers might subvert for ever, and beyond the possible reach of any rightful remedy, the very Constitution which all were instituted to preserve."

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. ...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. Nor does this important conclusion stand on the deduction of reason alone. It is sustained by the highest contemporary authority. Mr. Hamilton, in the number of the Federalist already cited, remarks that, -"in a single republic, all the power surrendered by the people is submitted to the administration of a single government; and usurpations are guarded against, by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself." He thus clearly affirms the control of the States over the General Government, which he traces to the division in the exercise of the sovereign powers under our political system; and by comparing this control to the veto, which the departments in most of our constitutions respectively exercise over the acts of each other, clearly indicates it as his opinion, that the control between the General and State Governments is of the same character. Mr. Madison is still more explicit. In his report, already alluded to, in speaking on this subject, he remarks; -"The resolutions, having taken this view of the Federal compact, proceed to infer that, in cases of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States, who are parties thereto, have the right, and are in duty bound to interpose to arrest the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them. ...The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the Constitution, that it rests on this solid foundation. The States, then, being parties to the constitutional compact, and in their sovereign capacity, it follows of necessity that there can be no tribunal above their authority to decide, in the last resort, whether the compact made by them be violated; and, consequently, as parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition." To these the no less explicit opinions of Mr. Jefferson may be added; who, in the Kentucky resolutions on the same subject, which have always been attributed to him, states that- "The Government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; -but, as in all other cases of compact between parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

The committee have thus arrived, by what they deem conclusive reasoning, and the highest authority, at the constitutional and appropriate remedy against the unconstitutional oppression under which this, in common with the other staple States, labors, -and the menacing danger which now hangs over the liberty and happiness of our country; -and this brings them to the inquiry, -How is the remedy to be applied by the States? In this inquiry a question may be made, -whether a State can interpose its sovereignty through the ordinary Legislature, but which the committee do not deem it necessary to investigate. It is sufficient that plausible reasons may be assigned against this mode of action, if there be one (and there is one) free from all objections. Whatever doubts may be raised as to the question, -whether the respective Legislatures fully represent the sovereignty of the States for this high purpose, there can be none as to the fact that a Convention fully represents them for all purposes whatever. Its authority, therefore, must remove every objection as to form, and leave the question on the single point of the right of the States to interpose at all. When convened, it will belong to the Convention itself to determine, authoritatively, whether the acts of which we complain be unconstitutional; and, if so, whether they constitute a violation so deliberate, palpable, and dangerous, as to justify the interposition of the State to protect its rights. If this question be decided in the affirmative, the Convention will then determine in what manner they ought to be declared null and void within the limits of the State; which solemn declaration, based on her rights as a member of the Union, would be obligatory, not only on her own citizens, but on the General Government itself; and thus place the violated rights of the State under the shield of the Constitution.