



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 5: The Jacksonian Era – Federalism

South Carolina Protest and Instructions (1828)¹

In the final days of the John Quincy Adams administration, Congress passed the Tariff of 1828, which soon became known in the South as the “Tariff of Abominations.” The tariff bill established high protectionist duties on a wide range of goods and was justified by its supporters as an appropriate and essential part of national economic policy to develop and protect northern manufacturers and agricultural goods produced in the North and West. These duties were no longer defended as temporary expediencies to nurture infant industries or respond to short-term crises, but as permanent features of American political economy. The South, by contrast, was heavily invested in raising crops for export, particularly cotton and tobacco, and consuming imported goods. For southerners, free trade was essential to the continued success of the regional economy. After years of southern complaints about protectionism, the Tariff of Abominations seemed to set federal policy at war with southern economic success.

The national tariff policy was denounced by southern politicians and writers as both bad policy and bad constitutional law. Anti-protectionist sentiment was particularly strong in South Carolina and elevated a group of radical “fire-eating” politicians who strongly denounced the federal government. Vice President John C. Calhoun tried to get ahead of the movement in his home state by secretly working with state legislators to draft the South Carolina Exposition and Protest in the winter of 1828. These documents explained why the protectionist tariff was in conflict with the U.S. Constitution and asserted the right of the states to judge the constitutionality of the law and block the enforcement of unconstitutional federal statutes within their borders. They were then sent to Congress and distributed to the other states. The state legislature also adopted resolutions of protest, which the state’s senators were instructed to present in Congress. South Carolina subsequently “nullified” the tariff, declaring it unenforceable within the states. President Andrew Jackson threatened to use military force to collect the imposts in South Carolinian ports. The issue was resolved when Congress adopted the Compromise Tariff of 1833, which moved the United States to a free trade policy. What is South Carolina’s argument for the unconstitutionality of protective tariffs?

The Senate and House of Representatives of South Carolina now met and sitting in General Assembly . . . do, in the name and on behalf of the good people of the said commonwealth, solemnly protest against the system of protecting duties lately adopted by the federal government, for the following reasons: –

1. Because the good people of this Commonwealth believe that the powers of Congress were delegated to it in trust for the accomplishment of certain specified objects, which limit and control them, and that every exercise of them for any other purposes, is a violation of the Constitution as unwarrantable as the undisguised assumption of substantive independent powers not granted or expressly withheld.
2. Because the power to lay duties on imports is, and in its very nature can be, only a means of effecting objects specified by the Constitution; since no free government, and least of all a government of enumerated powers, can of right impose any tax (any more than a penalty) which is not at once justified by public necessity, and clearly within the scope and purview of the social compact; and since the right of confining appropriations of the public money to such legitimate and constitutional objects, is as essential to the liberties of the people, as their unquestionable privilege to be taxed only by their consent.

¹ Excerpt taken from *Statutes at Large of South Carolina*, ed. Thomas Cooper, vol. 1 (1836): 244–245.



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3. Because they believe that the Tariff Law . . . and all other acts of which the principal object is the protection of manufactures, or any other branch of domestic industry – if they be considered as the exercise of a power of Congress, to tax the people at its own good will and pleasure, and to apply the moneys raised to objects not specified in the Constitution – is a violation of these fundamental principles, a breach of a well-defined trust, and a perversion of the high powers vested in the Federal Government for Federal purposes only.

4. Because, such acts, considered in the light of a regulation of commerce, are equally liable to objection – since although the power to regulate commerce, may, like other powers, be exercised so as to protect domestic manufactures, yet it is clearly distinguished from a power to do so *eo nomine* [by that name], both in the nature of the thing, and in the common acceptation of the terms; and because the confounding of them would lead to the most extravagant results, since the encouragement of domestic industry implies an absolute control over all the interests, resources, and pursuits of a people, and is inconsistent with the idea of any other than a simple consolidated government.

....

6. Because, that whilst the power to protect manufactures is nowhere expressly granted to Congress, nor can be considered as necessary and proper to carry into effect any specified power, it seems to be expressly reserved to the states by the tenth section of the first article of the constitution.

7. Because, even admitting Congress to have a constitutional right to protect manufactures . . . yet of Tariff of which the operation is grossly unequal and oppressive, is such an abuse of power, as is incompatible with the principles of a free government and the great ends of civil society, justice and equality of rights and protection.

....

Deeply impressed with these considerations, the Representatives of the good people of this Commonwealth . . . [do] enter upon the journals of the Senate, their protest against it, as unconstitutional, oppressive and unjust.