

MAINE STATE LEGISLATURE

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RESOLVES

OF THE

ELEVENTH LEGISLATURE

OF THE

STATE OF MAINE,

PASSED BY THE SESSION

Which commenced on the fifth day of January, and ended on the second day of April, one thousand eight hundred and thirty-one.

—◆—
PUBLISHED AGREEABLY TO THE RESOLVE OF 28TH JUNE, 1830.
—◆—

Portland.

TODD AND HOLDEN.....PRINTERS TO THE STATE.

1831.

Chapter 92.

Resolve respecting the Records in the office of the Secretary of State.

Approved April 2, 1831.

Resolved, That the Secretary of State be, and he is hereby, authorized and required, as soon as may be, to make and complete, under the direction of the Governor and Council, the Records required to be kept in his office, so far as he can do the same from original documents and papers in said office, which were not recorded, or which were imperfectly recorded, previous to his election to office; *Provided*, That the Secretary shall keep an accurate list of such corrections as he may by this Resolve be authorized to make upon the Records, subject to the call or inspection of the Legislature.

MESSAGE OF THE GOVERNOR.

To the Senate and

House of Representatives :

I herewith communicate the Report of the Agent appointed to superintend the sale and settlement of the Public lands.

I also lay before you the following Resolutions communicated from other States, with the request of the respective Executives of those States, that they might be laid before the Legislature.

Resolutions of the General Assembly of Kentucky, in favor of the American System and Internal Improvements.

Resolutions of the General Assembly of the State of Delaware, in favor of the Tariff.

Resolutions of the Legislature of the State of Louisiana, in favor of the Tariff.

Resolutions of the General Assembly of the State of Connecticut, in opposition to an alteration of the Constitution of the United States, as proposed by the Legislatures of Missouri and Georgia.

And also Resolutions of the General Assembly of the State of Vermont, in opposition to the beforementioned alteration in the Constitution of the U. States.

SAMUEL E. SMITH.

COUNCIL CHAMBER, }
January 19, 1831. }

STATE OF MAINE.

IN SENATE, March 29, 1831.

The Joint Select Committee, to which was referred so much of the Governor's Message as relates to Internal Improvements and Surplus Revenue; and to which were also referred the Resolution of the General Assembly of the State of Delaware, approving the Tariff of 1828; the Resolutions of the General Assembly of the State of Louisiana, approving the Tariff; and the Report and Resolutions of the General Assembly of the Commonwealth of Kentucky, advocating a System of Internal Improvements to be executed by the Federal Government and approving the Tariff, have had the same under consideration and submit the following REPORT:—

The power of the Government of the United States to lay and collect taxes, duties, imposts and excises for the purpose of paying the debts and providing for the common defence and general welfare of the Union is expressly granted in the Constitution, and, it is believed, has never been denied by those, who are opposed to, and oppressed by, the Tariff of 1828. The complaints, which have been made, and justly, against the Tariff, are that it is unequal in its operation, unnecessarily oppressive, and imposes upon the people a burdensome taxation, indirect, it is true, but not the less onerous and grievous, for objects evidently not contemplated by the Constitution, and, therefore, not authorized by that instrument.

The Committee cannot concur in the opinion, expressed by the General Assembly of Kentucky, that "the grant in the Constitution to Congress of the power to lay and collect taxes, duties, imposts and excises is *without limitation*, except that they shall be uniform throughout the United States, and except also in the case of direct taxes, that they are to be apportioned among the several States, according to their respective numbers, determined by a prescribed rule." The grant of this power is most obviously limited and restricted to the raising of a revenue for the purpose, as before stated, of paying the debts and providing for the common defence and general welfare of the Union. These purposes can be legitimately executed by the Federal Government only by the exercise of the powers granted in the Constitution to Congress, and in the manner and to the extent by that instrument prescribed. It is believed, that the doctrine advanced by Kentucky is too broad and that it does not find support in the Constitution. It asserts a power in Congress to raise money for all purposes without limitation, except as to the manner.

But will it be pretended, that Congress can, under that grant of power, lay and collect taxes, duties, imposts and excises for the purpose of maintaining an army in Europe to coerce and compel the people of any nation there to submit to the existing government? for the purpose of constructing roads and canals in France? or for the purpose of paying the national debt of Great Britain? No one will contend that Congress can do so. Neither will it be pretended, that Congress can lay and collect taxes for the purpose of paying the debts of the individual States, or the debts of private corporations, from whatever source they may derive their existence, or for the purpose of supporting the Gospel Ministry in the several towns and cities in the Union, however extensively such an expenditure might promote the general welfare. It is clear, then, that the power of Congress to raise money is not without limitation, except as to the mode of raising it, and can be legitimately exercised only for certain purposes; the purposes, and those only, for which the Federal Government was established.

And what are the purposes for which the several States confederated and formed the Government of the United States? Certainly not for the management of the domestic concerns of the individual States, for each State still retains absolute sovereignty over her domestic affairs. The several States by their compact of Union, the Constitution of the United States, united so much of their individual sovereignty, as was sufficient to place them in the position, in relation to all other sovereign States, of an individual sovereign power, leaving each State, as it respects its internal concerns, a separate and independent sovereignty; and, when they granted to the Federal Government so much power as would enable it to maintain that position for the common defence and general welfare of all the States, as a whole, so far as foreign nations were concerned, they also granted to that government the power, and imposed upon it the obligation, of securing inviolate to each of them respectively its individual sovereignty over its own domestic affairs. The great objects to be effected and accomplished, by the establishment of the federal government, appear to be, to protect and defend each and all the States against the action of foreign governments, by making all the States one and indivisible as to those governments; to prevent collision and preserve harmony among them, as separate sovereignties; to secure to each a republican form of government, and by consequence to prevent the coalition, or consolidation of the several States into a government, inconsistent with the individual sovereignty of each. It is believed, that these are the objects intended to

be effected by the formation of the union, or confederation, existing between the several States, and that the powers, granted in the Constitution to Congress, and intended to be exercised by the government of the United States, all look to *their* accomplishment. Any exercise of power, therefore, by the federal government, however it might, in the estimation of that government, tend to promote the general welfare of the several States, unless it relates to these objects and is specifically delegated in and by the Constitution, or is necessary to the execution of a specifically delegated power, is wholly unauthorized, and must be regarded as an encroachment upon the rights of the States, or of the people.

The question then occurs;—Is the power of raising a revenue for the purpose of making internal improvements, such internal improvements, as the several States, in their individual character, are competent, without the aid or consent of the federal government, to make, in the manner and at the times, each State may deem it proper, a power necessary to effect the objects for which the Union was formed? and is it granted in the Constitution to Congress? That this power is expressly granted no one will pretend. Is it then incident to any power so granted? If it be incident to any power specifically granted, it must be necessary for carrying that power into execution. But which of the powers expressly granted to Congress, it may be asked, cannot be fully exercised and executed without the power of making those internal improvements, which the several States are acknowledged to be competent to make without the consent of Congress? or rather, which of the powers expressly granted to Congress could not be completely executed, even if it had been expressly declared, in the Constitution, that Congress should not have the power to make internal improvements? It is believed no one, however strenuous an advocate for a system of internal improvements, will pretend, that Congress could not fully execute all the powers specifically granted in the Constitution, even if this power had been expressly denied. This power of making internal improvements, then, not being expressly granted in the Constitution, and not being incident to any power so granted, or in other words, this power not being one of “the powers delegated to the United States by the Constitution, nor prohibited by it to the States, is reserved to the States respectively, or to the people,” and, therefore, cannot be legitimately exercised by Congress.

A system of internal improvements is clearly, then, not an object for which Congress has the power of raising a revenue, or for which any surplus revenue, in the Treasury of the United States, can be expended, under the existing Constitution.

It has been very justly asserted by the Legislature of South Carolina, "that it is an unconstitutional exercise of power on the part of Congress, to tax the citizens of one State, to make roads and canals for another State," and notwithstanding the broad and unqualified power, asserted in Congress by the General Assembly of Kentucky, to lay and collect taxes, duties, imposts and excises *without limitation*, except as to the mode, that General Assembly feels and admits the force of the objection, but disavows the knowledge or belief "that Congress has ever, in fact taxed the citizens of one State, to make roads and canals for another." "If that had been done," they say, "it would be admitted to be unconstitutional." If Congress has applied any portion of the funds of the general government, collected from the resources of the several States, or from their joint property, for the purpose of making roads or canals in individual States, have not the citizens not only of one State, but of all the States, in fact been taxed, not directly, but indirectly, to make roads or canals in a single State? The circumstance, that the taxation for this purpose is indirect, cannot change the principle. That Congress has thus applied a part of the revenue of the United States, it is believed, none will deny. Will it, then, be pretended that the citizens of *one* State have not in fact been taxed to make roads or canals for another State, because the citizens of *all* the States have been taxed to the same extent for that purpose? If then this cannot be asserted, or pretended, with truth, and it cannot, unless the number of the citizens of *all* the States does not embrace and comprehend the citizens of *each* of the States, upon the principle, unequivocally conceded by the General Assembly of Kentucky, it must be admitted, that the application of the funds of the United States, raised by "taxes, duties, imposts and excises," to the construction of roads and canals in the individual States, is unconstitutional.

While your Committee believe, that no intelligent citizen of the United States will deny to Congress the power to lay and collect a *direct tax*, in want of funds obtained in the usual mode by duties on imports, for the purpose of constructing and maintaining fortifications in any one of the States for the defence of that State, they apprehend that few can be found, who would hazard their reputation for intelligence and discretion by asserting the power in Congress to lay and collect a *direct tax* for the purpose of constructing and maintaining roads and canals in the several States. And why, it may be asked, do not the advocates of a system of internal improvements, to be executed by the federal government, openly and boldly maintain the power in Congress to raise money by *di-*

rect taxation for that purpose? Congress can certainly lay and collect a *direct tax* for any purpose for which it can raise a revenue by *indirect taxation*, in the shape of duties on imported articles, such as is imposed by the Tariff; and if it is admitted, that Congress can constitutionally impose duties on imports for the purpose of carrying on a system of internal improvements, it must also be conceded, that it has the power to impose *direct taxes* upon the people for that purpose. And it may safely be predicted, that as soon as the means, derived from the *former* source, prove insufficient, resort will unquestionably be had to the latter, if the several States, disregarding their interests and individual rights, acquiesce in and countenance the exercise of the power, assumed by Congress, to make appropriations of the funds of the United States for the purposes of internal improvements. But the friends of this system carefully and studiously keep out of view this most certain and unavoidable consequence of their loose construction of the Constitution, *direct taxes* upon the people, to any extent Congress shall think proper to fix. Let the people admit the soundness and correctness of this doctrine, and they may expect in a few years a Tariff more ruinous, than the present, to the commercial interests of the country, and with that *direct taxation*; they may expect, and they will most assuredly find, that burdens, grievous to be borne, will be imposed upon them, both by direct and indirect taxes. Let the States yield up their rightful jurisdiction over "internal improvements" to the general government, and let the people sanction the doctrine, which asserts in Congress, under the present Constitution, the power to make them; and there can be no bounds set to the innovations, which the federal government may claim to make in the administration of State affairs, under the name of what she may determine to be *internal improvements*; the general government might determine, if she were permitted to adopt all measures, which may be supposed to promote the general welfare, that a change in the Constitution and laws of the several States, would be greater internal improvements than the construction of roads and canals; and, if the States supinely acquiesce in the assumption of power by Congress to make *internal improvements* by constructing roads and canals, what security is there to the States and to the people, that the general government will not assume to make what she may consider internal improvements, by changing the Constitution and laws of the several States, whenever she may think, the *general welfare* may be thereby promoted?

These are only a few of the ruinous and monstrous consequences, which must be expected to result, from the exercise

of a power by the general government to execute a system of internal improvements; a power which, it is admitted, is not expressly given in the Constitution to Congress, and which that body can claim to exercise only by a forced and latitudinarian construction of the Constitution. This system, which Congress have not the rightful power to execute, and which could not be executed by the general government, if she had the necessary power, without resorting to a *Tariff* much higher than that of 1828, and also to *direct taxation* upon the people, if the system is to be carried on to an extent corresponding in any degree with the views and wishes of its advocates, is no other, than the system falsely and absurdly called the "*American System.*" This system, that appears never to have been contemplated by the framers of the Constitution, which is the supreme law of the land; which expresses all the powers intended to be vested in Congress, and which ought to be construed in favor of those, who granted the powers therein enumerated and upon whom they are to be exercised, and most rigidly and strictly against those by whom those powers are to be executed, is attempted to be supported and carried into effect by a construction of the Constitution, that, if sanctioned, will justify the exercise of any power by Congress, which that body may choose to assume. This system, which, if adopted, will tend to the certain destruction of the State sovereignties, finds advocates among patriotic citizens, because the designing and ambitious, by successful artifice, have concealed its ugliness and deformity, and even made it appear beautiful and fascinating, by clothing it in a garb furnished by a name, "*The American System.*"

Let this system be sanctioned without an amendment to the Constitution, and one step, or to speak more properly, an alarming stride, is taken towards the destruction of that, which to the friends of civil liberty and republican institutions is most dear, a written Constitution. Let the advocates of a system of internal improvements, to be executed by the general government, succeed in their objects, without an amendment of the Constitution of the United States, and the true AMERICAN SYSTEM, that upon which all our hopes of maintaining a republican government and free institutions depend, will inevitably be demolished, and the fair and noble edifice, which our fathers erected for our protection and happiness, instead of being preserved for the benefit of posterity, will fall in undistinguishing ruin, as well upon the heads of the innocent, as of those, whose sacrilegious hands shall remove its supporting pillars. The only system that is worthy of, or that ought for a moment to be admitted to be entitled to, the name of "THE AMERICAN SYSTEM," is that, which appears in

the *written Constitutions* of the United States and of the several States, and this system can only be preserved by a rigid and scrupulous adherence, in the most minute particulars, to the principles in them established, and by frowning with indignation upon all and hurling them from places of trust, who shall seek to exercise powers not delegated to them by the Constitution, or seek to accomplish objects other than those for which they may be placed in power. This system of written Constitutions needs not the aid of constructive powers to carry it into full and complete effect. It provides by its own prescribed rules for enlarging or modifying the powers of the servants of the people; and when the powers already granted to their servants are found to be too limited, the people, who are the only proper judges of what powers ought to be delegated, will enlarge the powers granted, or give others, according to their sovereign will and pleasure, the only power having control over the Constitutions. This system requires all placed in office to exercise only so much power as is plainly given in the written rule by which their conduct is to be governed, and to abstain from the exercise of all doubtful power, however usefully such power might be exercised, if granted, because it is a material part of the system, that public servants, whether they act individually, or in legislative bodies, shall exercise no power, except what is clearly granted by a written Constitution, or other law, interpreted according to its plain and obvious meaning.

This system can alone claim the honorable and distinguishing appellation and title of the *American System*, and every system which is found to conflict with the principles of this, must be rejected and detested, however fascinating and alluring it may appear under the garb of a borrowed, or stolen, name. And the system of internal improvements, to be executed by the general government, must be regarded as conflicting with the American System, because it can only be carried into effect by the exercise of a power not delegated to Congress; because it proposes to effect objects by the exercise of *constructive* powers, which would unquestionably have been expressly granted to the federal government, if it had been intended that that government should exercise them, and because it proposes to subject to the action of the general government those things, which are more appropriately subject to the action of the State governments, and which the latter governments are perfectly competent to manage, without the aid or consent of the United States.

Whatever other powers Congress may possess, your Committee are satisfied, that the power of executing a system of internal improvements does not belong to the federal govern-

ment, and they most fully concur in the justness of the remarks, contained in the Governor's Message, that "the course, which has been pursued by the general government in the appropriations for the purposes of internal improvement, from the direct bearing, which it has upon the equal rights, interests, and sovereignty of the individual States, has become a subject of too great importance to be now regarded with indifference, or suffered to pass by without being presented to the consideration of the Legislature and people of this State. If it should continue to be the policy of the United States to raise an annual revenue from duties on imports and from other sources, more than sufficient for the gradual extinction of the public debt, and the ordinary expenses of the government, the surplus fund will remain in the national Treasury, without any benefit resulting therefrom to the people, or some *constitutional* mode must be devised for its appropriation and expenditure."

Believing that the States are fully competent, and better qualified, than the general government, from their more intimate knowledge of the wants of the people, to make internal improvements, to the extent required and at the most suitable times, according to the ability of the people to contribute to those objects; that no more money should be collected into the national Treasury, than the ordinary exigencies of the government require; that much money must be lost to the people by collecting it into the national Treasury for distribution among the several States, and that that policy is best calculated to promote the true interests of the people, which requires the *least taxation*; and believing also that every attempt, by public functionaries, to exercise powers not delegated to them, should meet the marked disapprobation of the several States, as tending to the injury of the people, by marring the true American System and violating its essential principles, and as encroaching upon the rights of the States; your committee, therefore, recommend the passage of the following Resolutions.

JOHN L. MEGQUIER, Chairman.

IN SENATE, March 29, 1831.—Read and accepted. Sent down for concurrence.

ROBERT P. DUNLAP, President.

HOUSE OF REPRESENTATIVES, March 30, 1831.—Read and concurred.

BENJA. WHITE, Speaker.

STATE OF MAINE.

Resolve respecting the Tariff and Internal Improvements.

Resolved, That the Government of the United States, not having the power of executing a system of internal improvements expressly granted to it in the Constitution, and that power not being necessary for carrying into execution any powers so granted, ought not, in raising a revenue, to consider internal improvements among the purposes, for which it may lay and collect taxes, duties, imposts and excises.

Resolved, That the Tariff of duties on imports ought to be so modified, if possible, a due regard being had to all the interests of the country, that the receipts, from them and the other sources of revenue, into the Treasury of the United States shall not greatly exceed the ordinary annual expenses of the Government.

Resolved, That, if with a due regard to all the essential interests of the country the duties on imports cannot be so reduced, that no surplus fund shall remain in the national Treasury, after paying the ordinary and necessary annual expenses of the government, such surplus ought to be equitably distributed among the several States in a mode and by a rule to be prescribed by an amendment to the Constitution.

Resolved, That the Governor be, and he is hereby requested to transmit a copy of the foregoing Report and Resolutions to the Executive of each of the States, that they may be submitted to the Legislatures of the same for their consideration; and also a copy to each of the Senators and Representatives of Maine in Congress.

IN SENATE, March 29, 1831.—Read and passed. Sent down for concurrence.

ROBERT P. DUNLAP, President.

HOUSE OF REPRESENTATIVES, March 30, 1831.—This Resolve was read twice and passed in concurrence with the Senate.

BENJA. WHITE, Speaker.

STATE OF MAINE.

IN SENATE, FEB. 18, 1831.

The Joint Committee of the Legislature, to which was referred an Order, instructing them "to inquire into the expediency of requesting the co-operation of the States of New-Hampshire and Vermont in adopting measures, and making