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CONGRESS.

HOUSE OF REPRESENTATIVES.

DEBATE

On the Resolution offered by Mr. G. W. Campbell for authorising the President to SUSPEND THE EMBARGO under certain contingencies.

WEDNESDAY, APRIL 13.

(CONTINUED.)

MR. LOVE said, to a proposition having for its object the removal of the embargo, at the first moment the public interests would permit, he had presumed there would have been no objection made either on that floor, or by any man in the nation. In this presumption (said Mr. L.) I am extremely sorry to be disappointed, and more especially so, as the mode of opposition calls for a reply from those who have been the advocates of the system of policy pursued by the government, during the embarrassing crisis it has been compelled to encounter.

The proposition before the committee is so familiar to those who have been long in the habits of legislation, from the frequent exercise of the general principle on which it rests, that nothing not already obvious to the minds of the greater part of this honorable body, I am sure, can be said in support of it. In the observations therefore, sir, which I shall trouble the committee with, it will not be necessary to say more than shall be proper in answer, only, to the objections which have been made at this time, to the exercise of the power contemplated by the resolution.

I have heard no argument yet urged against the right of delegating in any situation, or under any circumstances, the exercise of special powers which are acknowledged to be vested in a more general view essentially in the legislature. The argument if urged to such an extent would evidently defeat itself, and go to destroy the operations of this or any other government deriving the source of its authority from a legislature. Our constitution has enjoined many duties on Congress, which without a delegation of the powers thus vested in it, could never be effected. An objection to the resolution under discussion on so broad a ground, would have been too obviously untenable. The question has not been thus directly met; but in opposition to the constitutionality of the delegation of power contemplated, a distinction has been taken between the authority which should be given to suspend a law, already in operation, and one which has not yet commenced its operation.

I listened, sir, with every possible attention to the argument made on this distinction, I am obliged to say there was no reason intelligible to my mind, offered in support of it. I will content myself therefore with expressing the opinion that the circumstance of a postponed or present operation, cannot make a difference in the principle. In both cases the authority which delegates the agency is the same, it is the act of every branch of the legislature, and there can be no distinction which would not apply to one equally with the other. It may in the manner of its exercise be assimilated to the powers of a legislature to repeal a law already in existence, in contradistinction to the power of repealing one, the operation of which had been suspended. If such a position could be sustained (as a proper inference from our constitution) it would be vain; for if the legislature have the right of repealing a law, they might in the same breath that they would repeal this, enact another which should provide in a manner so far in conformity with the practice acknowledged to be correct, as to be enticely exempt from the objection urged on the ground of this distinction.

When I compare the limited nature of the power now proposed to be delegated, with those almost unbounded trusts, which it has been the constant practice of the legislature to confide in the executive department, I cannot help feeling at a loss to account for the present opposition on any grounds of consistency. Those delegations of authority have not been confined in practice to either of the political parties which have at different times given a tone to the government. The gentleman from Tennessee who has introduced the resolution, has mentioned several instances in which this has been done, permit me to add others, in which it appears to me the principle has been carried further than in the present case.

By the constitution the power of borrowing money is in express terms *exclusively* vested in Congress. Yet this has been only exercised by a delegation of it, from the commencement of the government till the time has ceased when it was necessary to exercise it. I hope, sir, it may never be necessary to do it again, but if it should, I ask gentlemen how it will be effected but by the intervention of an agency, although the words of the constitution, permit *Congress only* "to borrow money on the credit of the United States."

Other powers of great importance, solely confided to Congress, have been delegated, and not as now contemplated, in a restricted and limited degree, but in terms of the broadest and most absolute discretion; many instances have occurred of this in constant succession ever since the revolution, in political opinion, which has taken place in the legislature of the union; for scarcely were the republicans warm in their seats before they made a delegation of power to the President, more unlimited in principle, and more dangerous in practice than that now advocated, for suspending the operation of the embargo law. In 1802 he was authorised to organise a military corps. In February 1803 he was authorised to cause to be built several vessels of war, *if the exigencies* of the service should require it. In 1804 the same powers were repeated, and many others equally dangerous and equally necessary, were delegated both these years. In March 1805, he was authorised to permit or interdict *at pleasure* foreign vessels from coming into our ports; compare the discretion either in extent or importance vested by those laws, with that now contemplated, and on the ground of precedent we are more than justified; even in the present session we have delegated the power of suspending or continuing a law, now certainly in operation, by authorising the President to build and equip, or not, at his discretion, a number of gun-boats, or he may under the influence of the like discretion, forever desist from the execution of it.

If this body is supposed to act under the regular impulse of any political principles, it appears to me, sir, that the numerous precedents to be found in our statutory code, ought to have an effect. In those which I have mentioned, and many others which have been enumerated by the gentleman from Tennessee, the President was vested with the right *ad libitum*, to continue, suspend or terminate the operation of a law. In the present one the discretion is limited to the contingencies, of peace in Europe, a suspension of hostilities, or such conduct and assurances on the part of the belligerents who have invaded our commercial rights, as will enable our vessels to pass with our produce in safety to a foreign market.

Let us now examine, sir, the other constitutional objection made by the gentleman from Virginia (Mr. Randolph), that Congress have not the power to lay an embargo. If indeed this novel position be correct, the question is at an end, and the people of the United States would be justified in the resistance the argument invites. I had indeed understood the gentleman, as others near me did, to found his idea of the unconstitutionality of this embargo, on the circumstance of the laws imposing it being unlimited as to time. He defined an embargo to mean an inhibition for a limited time, and the *unlimited* nature of the present embargo, was dwelt on by him with peculiar emphasis; but when a gentleman from Kentucky, (Mr. Johnston) who followed him, had ably exposed the fallacy of this distinction, and completely sent the argument home to its author, the distinction was abandoned by explanation. I understand the explanation of the gentleman; but as the object in pressing the *unlimited* quality of this embargo, on the sensibility of the nation, cannot be mistaken. I have too, sir, for reasons alike obvious, thought it proper to mention it. But, sir, as to the power to lay an embargo.

The first motives for an union of the states, imply this as indispensable; it would be enough to shew it to be a measure of general defence, and protection, to give Congress a right to act on the subject; as such, sir, it expressly ranks among the provisions assigned as the great causes for the adoption of the federal constitution; for in the preamble to this instrument, the people say, they have adopted it, in order "to provide for the common defence and general welfare."

In the first paragraph of the eighth section of the first article, the same words are repeated; common defence and common protection, to the external interests of the U. S. are then the peculiar objects of its government. An embargo under some circumstances is not only a proper, but a necessary and indispensable means of common defence and protection; I might say that the present crisis is a strong illustration of such necessity; but if the right to lay an embargo is controverted, I would ask by what means is the government in time of war, or expected war, under the authority of law to secure the property of its citizens, which it is the business of all governments to do, towards all who claim under it the protection of their rights? Where is the power lodged if not in the national legislature, which shall prohibit your own, or even your enemies vessels from leaving your ports, after a declaration of war? Are the states vested with, or do they generally retain the right to lay an embargo? No, sir, they cannot so far enter into the collisions of interests which would follow among each other by preventing the vessels from sailing from the ports of any one of them. The effect of doing so would be too obviously an invasion of the general powers of commercial regulation solely entrusted to Congress. Can any man of rational mind suppose, then, that the government of this country is really so defective in what is not only to common sense an obvious reason but one of the express objects of its institution?

But to lay an embargo is unconstitutional, because Congress cannot lay an export duty! And it is argued by the same gentleman that the lesser power being thus provided against, the exercise of the greater must of course be included in the prohibition; the *minor* forming an objection, the *major* is *a fortiori* inadmissible. How easily sir, is this argument of inference retorted on the gentleman; for according to a familiar and certainly plain course of reasoning, it would seem, that if the subjects are the same as is said, when the framers of our constitution made an exception of the lesser power, if they had intended also to except the greater, they would not have forgotten it.

The reasons which influenced the framers of that instrument to provide against the power of laying an export duty, were obvious; the provision was adopted in that spirit of mutual accommodation, which was so necessary to the harmony of the whole; it would be difficult, it was easily foreseen to devise an export duty, which would not bear harder on some of the states than others; it was better therefore not to resort at all to a mode of taxation which would afford so fruitful a source of contention. The policy too of taxing exports was perhaps radically inadmissible; yet I cannot for my life, discern, how an export duty has been drawn into analogy with an embargo.

That the embargo was a curse, sir, and continues to be a most calamitous one to us all, I have heard no one deny; but until now, I have not heard the assertion advanced, that our government by its conduct was the author of that cause. Yes, sir, many evils which the injustice of other nations have inflicted on the peace and honor of the U. S. are acknowledged to be curses of the most irritating and affecting nature; but the gentleman has said more for England and France, than either of them have before said for themselves, when he attributes to his own government the misconduct which has produced those evils. It was scarcely to be expected that any state of internal division or any views of whatever description would have produced on this floor, an assertion which has thus put a new argument in the hands of our enemies in justification of their aggressions on us: it is more than our enemies have asserted. We have heard indeed from France and England that their decrees and orders, which make the present voluntary retirement from the seas necessary on our part, were the effect of an unjustifiable attack, which each has attributed in the first instance to the other. Each criminates the other, and not America, with being the author of the peculiar mode of warfare which has proved so destructive to the rights of neutrals. The very language of their orders and decrees, assume this position, and they are all prefaced with the declaration, that their orders are enacted in the spirit of *retaliation* on each other, and not, sir, for any offence which our government has been the author of as the gentleman now tells the American people; for what purposes let the nation judge.

I may surely be permitted to express my surprize and astonishment at this assertion, sir, as it has never before been insinuated, on this floor at least, and as it forms so strong a contrast with the declarations which have been before made by the same gentleman: permit me to recall the gentleman's attention to his arguments in conclave, and to notice, if it will not be out of order, (which I presume it will not, as all which then took place has been since directed to be published) the grounds of his opposition to the embargo at that time.

It is recollected by us all that the honor of presenting a resolution in conformity to the policy recommended by the President in his message of the 18th of December last, was an object of emulation between the gentleman from Virginia and one from Massachusetts, (Mr. Crowninshield) whose absence from the House, the nation has so much cause to deplore, and we all so sensibly feel. I thought it then, and still think it was an honorable emulation, arising from a patriotic sense of duty. The gentleman from Virginia finally succeeded, and became the author of the resolution in this House for laying the embargo: scarcely had he, however, presented the resolution, the necessity of which he at the same time took occasion to observe, he had long foreseen, and for two years at least, before the period when it was recommended, (and of course, sir, prior to the rejection of this noted London treaty of December, 1806, now so much eulogised) scarcely had he thus expressed his approbation of the embargo, till he again doubted its policy, and soon after denounced its justice, not yet indeed for any of the reasons we now hear, respecting the rejection of the treaty, but because it was a measure said, or insinuated to be dictated by France, and that it was to have an injurious operation solely on England. It was in vain that the friends of the embargo urged the probable existence of the very grounds, that measure now more strongly rests on; that the hostile determinations of France to enforce her decree of November 21st, 1806, would probably be followed by orders as harsh, on the part of Great Britain; that this was the course of policy the adoption of which England had already announced, and its execution might therefore be fairly anticipated; that the king's proclamation of the 16th of October, 1807, a copy of which accompanied the President's message, was an evidence of the determination of that government to offer no satisfactory accommodation of our differences, and of its determined usurpation of our maritime rights; to these arguments nothing was replied, but the repetitions in lengthened speeches of the same charges. The opinions then avowed, sir, by the advocates of the embargo, have met with support from the events which have since been developed, while the unjustifiable grounds of opposition are abandoned, even by their authors. But, sir, if there is any gentleman who with his eyes open to the situation of the commerce of the world, will say that the embargo ought to be removed, & that the policy is unsound, let me now ask him to tell us what, in the embarrassing state in which we are placed, by the efforts of France and England to involve us in their conflicts, we are to do? The gentleman from Virginia has hinted at arming our merchant-men! War then is the substitute; it is indeed the only one, I agree. To arm our merchantmen, leads to war, nay sir, it is war, according to the interputation nations have a right to put on such an act, of a government; it will be opposed by open war, and undisguised hostility; if we are to have war, let it be in the direct tone and unequivocal language of a nation indignant at the insults it has received, not in the indirect manner of arming a few trading vessels, the masters of whom would chuse for the nation its enemy, or involve us with both the belligerents at once, as their particular animosities might dictate; if we are to go to war, it might be well to fight one at a time at least; but, sir, I cannot but hope if our strong, but pacific policy is adhered to, *cursed* as it is said to be, it may yet preserve us from the conflicts of Europe. It is a curse indeed sir, under which we are compelled to labor, but what is the alternative? I have thought much sir, on the subject; it has been my duty as well as that of every other gentleman to weigh it well. We hear its effects are severely felt, and we hear too what are the exertions of our opponents to seize the favorite opportunity, which it is so well calculated to produce, to excite the sensibility of the people through the medium of their immediate interests; but remove the embargo, and we must arm our vessels & war is at once declared. I have heard no one deny that this must be the alternative; compare the evils, both of great extent. I admit, by the embargo we lose half the value of the products of our country, or the receipt of it is suspended; by war to admit the effect in this particular no worse, at least it could be no better; but have we counted the costs of the armies we are to raise, and to pay, of the supplies we are to furnish, of the loss of our blood and the diminution of our strength, of the reduction of the profits of agriculture itself, by calling men from their domestic occupations, and lessening the number of hands for tillage—have we calculated the thousand other evils, which follow in the train of war; to plunge into war, sir, to escape the curse of the embargo, would be truly fulfilling the adage of old, out of the frying pan into the fire. I do not hesitate to say that if we have patriotism enough to pursue our own interests, better would it be for this country to remain under the truly calamitous curse of the embargo for years, than at once to launch itself into war: But if we must at length, after all our efforts to prevent it, have war, let it be a war dependent on national sentiment and arising from no doubtful necessity, which must be produced by the conflicts of our vessels at sea. We all know, and have felt that it has required the exertion of an unparalleled fortitude, to resist the emotions which have impelled us to acts of vengeance and redress, for our injuries; let us not then seek for new causes of doubtful necessity, to place us at once at war, as would be the case by arming our vessels. No, sir, let it be a cause which in spite of our divisions so earnestly of late fomented, must unite us, in one spirit of opposition, in one sentiment of indignation against the enemy who shall attack us; with the spirit of unanimity with which a sense of injury will inspire us. I do not too highly estimate our strength or, I trust, our patriotism, when I say, that no army which Europe combined, could transport across the Atlantic could long withstand the American arms. That we have had ample cause of war, wanton, unprovoked cause, I had not till now supposed had been doubted; we are now indeed informed that our government is to blame, and that the insults and injuries to which we have been subjected, are in a great measure attributable to its misconduct. What the object is, in making these assertions, let the nation judge; believing them groundless, I do not fear to be able to prove them so. The non-importation law has been mentioned as one of the subjects of just umbrage to England, & as having had an embarrassing effect on the state of our negociations there. The gentleman has certainly but little attended to the documents which have lately been read in this House; if he had he would there have found under the sanction of authority which he is not presumed to doubt, that it was a measure one of our ministers in London has given his most unequivocal approbation to.