DEMOCRACY AND THE TARIFF

SPEECH

OF

HON. ROBERT L. OWEN

OF OKLAHOMA

IN THE

SENATE OF THE UNITED STATES

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The Senate, as in Committee of the Whole, having under consideration the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes—

Mr. OWEN said:

Mr. PRESIDENT: I have listened with interest to the Democratic Senators from Louisiana urging a tariff rate on sugar which will give "protection" to the sugar planters of Louisiana, Colorado, and other States, and the citations of the junior Senator from Louisiana, quoting Washington, Jefferson, Madison, Andrew Jackson, and various great Democrats down to Samuel J. Tilden, showing that they approved—incidental—protection under a revenue-producing tariff.

I have observed the vote of various Democratic Senators for a revenue duty, with its incidental protection, on lumber, iron, and so forth, and various Democratic speeches favoring a duty on articles produced in their several States, with rates which carried incidental protection to such industries.

It has been suggested in various ways that the action of these Senators was not Democratic. Mr. President, I do not agree with the suggestion that this is necessarily a just criticism of their action.

Mr. President, the first duty of a Democratic representative is to represent the will of the people who have sent him. He has no right, in my opinion, to disregard the well-known wishes of the great majority of the people of his State, and should resign if he can not represent them.

He has a right to believe, however, that when he is nominated and elected by the Democrats of his State he is elected by those who believe substantially in the teaching of Democracy. And I respectfully submit that these Senators have not violated the true canons of the Democracy when they vote for a tax on lumber, or on lead and zinc, or hides, or on pineapples, when they represent the wishes of the majority of the people of their States, provided always that the duty imposed is not prohibitive, does not prevent competition, and is laid at a point not in excess of a maximum revenue-producing point.

Article I of section 8 of the Constitution lays down the authority of Congress, which every Senator must construe on

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honor to the best of his judgment and according to the dictates of his conscience—

That the Congress shall have power to levy and collect taxes, duties, imposts, and excises to pay the debts and to provide for the common defense and general welfare of the United States.

When, under the color of raising the revenue for the common defense and general welfare of the United States, a duty is imposed having for its purpose to prevent importations and prevent a revenue being derived from such pretended revenue law, it is a transparent wrong, a violation of the spirit of the Constitution itself, and is not Democratic doctrine. Taxation can only have for its legitimate object the raising of money for public purposes and the proper needs of government economically administered, and the exaction of moneys from citizens for other purposes and to favor private interests at the expense of all the people is not a proper exercise of this power. No one has more strongly expressed than Cooley the distinction between a duty imposed for revenue under the constitutional authority and a duty imposed for the purpose of preventing imports, and thereby protecting some industry from competition. Cooley says:

It is only essential that the legislature keep within its proper sphere, and should not impose burdens under the name of taxation *which are not taxes in fact;* and its decision as to what is proper, just, and political must *then* be final and conclusive. (Con. Lim., 7th ed., p. 678.)

John Marshall said, in McCulloch *v.* Maryland (4 Wheat., 316):

The power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation. The people of a State, therefore, give to their government a right of taxing themselves and their property; and as the exigencies of the government can not be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator and *on the influence of the constituents over their representative to guard them against its abuse.*

And in the case of Providence *v.* Billings (4 Pet., 514) he said:

The power of legislation, and consequently of taxation, operates on all persons and property belonging to the body politic. This is an original principle, which has its foundation in society itself. It is granted by all for the benefit of all. It resides in the government as part of itself, and need not be reserved where property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the legislature. *This vital power may be abused;* but the interest, wisdom, and justice of the repre-

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sentative body and its relations with its *constituents furnish the only security* where there is no express contract against unjust and excessive taxation, as well as against unwise legislation generally.

With the consent of the Senate, I desire to insert in the RECORD an extract from Cooley and from the decisions of the Supreme Court upon this point.

THE PURPOSES OF TAXATION.

Constitutionally a tax can have no other basis than the raising of a revenue for public purposes, and whatever governmental exaction has not this basis is tyrannical and unlawful. A tax on imports, therefore, the purpose of which is, not to raise a revenue, *but to discourage and indirectly prohibit some particular import for the benefit of some home manufacture, may well be questioned as being merely colorable,* and *therefore not warranted by constitutional principles.* But if any income is derived from the levy, the fact that *incidental protection* is given to home industry *can be no objection to it,* for all taxes must be laid with some regard to their effect upon the prosperity of the people and the welfare of the country, and their validity can not be determined by the money returns. This rule has been applied when the levy produced no returns whatever; it being held not competent to assail the motives of Congress by showing that the levy was made, not for the purpose of revenue, but to annihilate the subject of the levy by imposing a burden which it could not bear. (Veazie Bank *v.* Fenno, 8 Wall., 533.) Practically, therefore, a law purporting to levy taxes, and not being on its face subject to objection, is unassailable, whatever may have been the real purpose. And perhaps even prohibitory duties may be defended as a regulation of commercial intercourse.

LEVIES FOR PRIVATE PURPOSES.

Where, however, a tax is avowedly laid for a private purpose, it is illegal and void. The following are illustrations of taxes for private purposes. A tax levied to aid private parties or corporations to establish themselves in business as manufacturers (Loan Association *v.* Topeka, 20 Wall., 655, 663; Allev *v.* Jay, 60 Me., 124); a tax, the proceeds of which are to be loaned out to individuals who have suffered from a great fire (Lowell *v.* Boston, 11 Mass., 454); a tax to supply with provisions and seed such farmers as have lost their crops (State *v.* Osawkee, 14 Kans., 418); a tax to build a dam, which, at discretion, is to be devoted to private purposes (Attorney-General *v.* Eau Claire, 37 Wis., 400); a tax to refund moneys to individuals, which they have paid to relieve themselves from an impending military draft (Tyson *v.* School Directors, 51 Penn., Sr., 9; Crowell *v.* Hopkinton, 45 N. H., 9; Usher *v.* Colchester, 33 Conn., 567; Freeland *v.* Hastings, 10 Allen (Mass.), 570; Miller *v.* Grandy, 13 Mich., 540); and so on. In any one of these cases the public may be incidentally benefited, but the incidental benefit is only such as the public might receive from the industry and enterprise of individuals in their own affairs, and will not support exactions under the name of taxation.

But, primarily, the determination what is a public purpose belongs to the legislature, and its action is subject to no review or restraint *so long as it is not manifestly colorable. All cases of doubt must be solved in favor of the validity of legislative action,* for the obvious reason that the question is legislative, and only becomes judicial when there is a plain excess of legislative authority. A court can only arrest the proceedings and declare a levy void when the absence of public interest in the purpose for which the funds are to be raised is so clear

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and palpable as to be perceptible to any mind at first blush. (Broadhead *v.* Milwaukee, 19 Wis., 624, 652; Cheaney *v.* Hooser, 9 B. Monr. (Ky.), 330, 345; Booth *v.* Woodbury, 32 Conn., 118, 128; Hammett *v.* Philadelphia, 65 Penn. St., 146; Tide Water Co. *v.* Coster, 18 N. J. Eq., 518.)

But sometimes the public purpose is clear, though the immediate benefit is private and individual. For example, the Government promises and pays bounties and pensions; but in every case the promise or payment is made on a consideration of some advantage or service given or rendered or to be given or rendered to the public, which is supposed to be an equivalent; and the law for the payment has in view only the public interest, and does not differ in principle or purpose from a law for the payment of salaries to public officers. The same is true where a State continues the payment of salaries to officers who have been superannuated in its service. The question whether they shall be paid is purely political and resolves itself into this: Whether the State will thereby probably secure better and more valuable service, and whether, therefore, it would be wise and politic for the State to give the seeming bounty.

Where a law for the levy of a tax shows on its face the purpose to collect money from the people and appropriate it to some private object, the execution of the law may be resisted by those of whom the exaction is made, and the courts, if appealed to, will enjoin collection or give remedy in damages if property is seized. But if a tax law on its face discloses no illegality, there can in general be no such remedy. Such is the case with the taxes levied under authority of Congress; they are levied without any specification of particular purposes to which the collections shall be devoted, and the fact that an intent exists to misapply some portion of the revenue produced can not be a ground of illegality in the tax itself. In cases arising in local government an intended misappropriation may sometimes be enjoined; but this could seldom or never happen in case of an intended or suspected misappropriation by a State or by the United States, neither of them being subject to the process of injunction. The remedies for such cases are therefore political and can only be administered through the elections. (Cooley's Principles of Constitutional Law, Chap. IV, p. 57, The Powers of Congress.)

The bills of rights in the American constitutions forbid that parties shall be deprived of property except by the law of the land; but if the prohibition had been omitted, a legislative enactment to pass one man's property over to another would, nevertheless, be void. (See Cooley's Con. Limitations, p. 208.)

Nor, where fundamental rights are declared by the Constitution, is it necessary at the same time to prohibit the legislature, in express terms, from taking them away. The declaration is itself a prohibition, and is inserted in the Constitution for the express purpose of operating as a restriction upon legislative power. (See Cooley's Con. Limitations, p. 209.)

Cooley also states on page 587, in speaking of the power of taxation, as follows: "Taxes are defined to be burdens or charges imposed by the legislative power upon persons or property, to raise money for public purposes."

Again, on page 598, he says: "Everything that may be done under the name of taxation is not necessarily a tax; and it may happen that an oppressive burden imposed by the Government, when it comes to be carefully scrutinized, will prove, instead of a tax, to be an unlawful confiscation of property, unwarranted by any principle of constitutional government. In the first place, taxation having for its only legitimate

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object the raising of money for public purposes and the proper needs of government, the exaction of moneys from the citizens for other purposes, is not a proper exercise of this power, and must therefore be unauthorized."

The Supreme Court of the United States, in the Topeka case, said:

"To lay with one hand the power of the Government on the property of the citizen and with the other to bestow it upon favored individuals to aid private enterprises and *build up private fortunes is none the less a robbery because it is done under the forms of law and is called taxation.* This is not legislation; it is a decree under legislative forms." (20 Wallace, 664, in Loan Asso. *v.* Topeka.)

Mr. OWEN. Mr. Cooley, in Constitutional Limitations, points out with great force that a legislator has no constitutional right, under the color of imposing a duty by which to raise revenues, to pass a law which, in fact, has the purpose to prevent importation and the raising of revenue by such pretended duty, but which in reality has for its purpose *to build up private fortunes by preventing competition.*

The Democracy has declared in one of its planks in the platform of 1892 in favor of a tariff for "revenue only," which is only another way of saying that duties shall not be imposed for any other *purposes* than revenue; that they shall not be imposed for the purpose of excluding importations and giving monopoly to combinations in this country, against which the Democracy has continually protested since 1892; but this language can not justly be construed to mean a declaration against incidental protection. The fact that it was so unjustly construed led the Democrats to drop the word "only" in the platform of 1896. thus affirming the doctrine of the Democracy that incidental protection is entirely just when equitably distributed.

Every *tariff for revenue* and *for revenue only* carries with it an unavoidable "protection." This unavoidable protection is called "incidental protection"—that is, a protection incidental to the raising of revenues under a constitutional tariff.

To say, therefore, that it is undemocratic to demand the incidental benefits or incidental protection of a revenue-producing tariff to be equitably distributed is utterly unreasonable and absurd. The very essence of Democracy is *equality before the law* and *under the law*, and since every tariff for revenue carries an incidental protection, it is perfectly just and perfectly right to ask that its benefits be equitably distributed. I therefore have no fault to find with Democrats who, representing their own States, demand a tariff for revenue which shall give incidental protection to their own States.

I venture to say that the Democratic Senators from Louisiana would probably cease to represent that State if they ignored the wishes of the people of that State in laying a revenue-producing duty carrying incidental protection to the sugar planter.

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I should myself vote for a lower duty on sugar and increase the competition with the American Sugar Refining Company, whose exactions, I think, too great. Indeed, I favor free lumber, paper and wood pulp, free iron, free coal, free wool, and free hides, and free raw materials as a general rule. But I shall not take issue with the Democratic Senators of Louisiana because they represent the will of the constituency which sent them *nor read them out of the party.* If the Senators from Louisiana advocated a duty so high as to exclude foreign sugar from our country, cutting off potential foreign competition and establishing a complete monopoly behind a tariff wall for the sugar planter, I should then say, that although they claimed to be Democrats and claimed to represent a Democratic State, they were not Democrats on this sugar schedule and that their State was not Democratic in regard to this schedule, but, notwithstanding that fact, I should even in that contingency *still be glad to see their cooperation in every other respect with the organized Democracy.*

Mr. President, I can not approve the view of those statesmen who lay down too hard and fast or dogmatic rule by which they approve or condemn a man who claims to be a Democrat, and would refuse political association to a man who believes with the Democracy in the body of the Democratic doctrine, but represents occasionally a local interest at variance with a national platform. No member of any great political party agrees in every particular with every other member of that party. There must be greater or less differences among six or eight millions of people as to what constitutes Democracy, and as to what constitutes Republicanism. As I understand the differences the Democratic doctrine insists on freedom of speech, freedom of the press, freedom of conscience, the equality of all citizens before the law, the greatest good to the greatest number, the faithful observance of constitutional limitations, and believes in as great a measure of decentralization as is consistent with the strict exercise of the national function, while the Republican party generally believes in the greatest exercise of the national function, unmindful or in willful disregard of the reserved rights of the States, although against this is recently appearing some respectable Republican reaction, and therefore the tendency of the Republican party is to give constantly increasing powers to the centralized government, while the Democratic party insists that the powers of government should be retained as near to the people as possible. The Democratic party would trust the people more; the Republican party would trust the convention leaders of the people more;

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the Republican party would exclude foreign competition, actual or potential, for the benefit of certain favored individuals and the enrichment of private persons and corporations, while the Democratic party would favor a tariff for revenue carrying incidental protection, but not to the extent of cutting down the revenue by being above the maximum revenue-producing point or cutting off foreign competition and so establishing monopoly.

Both parties declare themselves attached to purity of government, and both parties practice it just in degree as the judgment and the consciences of the local constituencies require.

The Democrats in 1892 denounced Republican protection as a fraud, a robbery of the great majority of the American people for the benefit of the few. It should be observed that it was not protection or incidental protection which was denounced as a fraud; it was "Republican protection" which was denounced as a fraud, as a robbery of the great majority of the American people for the benefit of the few. It was pointed out at the same time by this Democratic platform that this robbery of the great majority was due to monopolies built up as a natural consequence of the prohibitive taxes, which prevented free competition. There is an element of justice and wisdom in so drafting our revenue tariff as to afford incidental protection to American industries. And a tariff for revenue which imposes a duty upon articles of international trade high enough to produce a proper revenue will always be found high enough to protect American labor and the American manufacturer who desires of his fellow-citizens nothing more than a tariff rate which shall equal "the difference in the cost of production at home and abroad."

The Republican party pretends to stand for this, but in the Senate and House have utterly disregarded this rational standard, have ignored "the difference in the cost of production," which will not equal 20 per cent, and written a tariff averaging more than 100 per cent higher than would be required to equal "the difference in the cost of production at home and abroad." They have written a tariff to prevent legitimate competition, and in this manner promote monopoly and favor special persons and corporations at the expense of all the people.

It seems to me that the Democratic party contains within itself and should welcome and embrace all of those whose sympathies are, in the main, with the Democracy, and not impose too narrow or too dogmatic standards of Democracy, which will tend to disintegrate that great party of the people and make its future success impossible.

The first duty of a patriotic minority is to become a majority and write its principles into the laws.

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