

William Barton: On the Propriety of Investing Congress with Power to Regulate the Trade of the United States, *American Museum*, January 1787

The propriety of investing congress with powers to regulate the trade of the united states, has been controverted by some, and as it is a point of great importance, it merits a candid discussion. If, on the one hand, this measure should be found to encroach too far on the sovereignty and rights of the several states individually, there can be no doubt that it ought to be rejected. But if, on the other hand, nothing of that kind is to be apprehended, and it can be made evident, that the adoption of the measure would be attended with the happiest consequences to every state in the union,—we may conclude that none but persons inimical to us, or contracted speculative politicians, will give it any opposition.

The 3d article of the confederation, is in these words: “The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare: binding themselves to assist each other, against all force offered to, or attacks made upon, them, or any of them, on account of religion, sovereignty, TRADE, or any other pretence whatever.” Nothing can be stronger than this solemn compact entered into by the several states, one grand object of which is, “their mutual and general welfare.” By the sixth article, it is declared, that “no state, without the consent of the united states in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with, any king, prince, or state.” And that “no two or more states shall enter into any treaty, confederation, or alliance whatever, between them, without the consent of the united states in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.” Here, then, are rights of sovereignty transferred by the several states to congress for “their mutual welfare.” A member of civil society makes a voluntary surrender of part of his natural rights, in a free government, to secure the remainder: in the same manner, does each state relinquish some of its sovereign prerogatives, in order that they may be exercised by the supreme council of the union, for the greater security and happiness of the whole. If the articles of the confederation be examined, it will appear to be the spirit and intention of them, that congress should be invested with all such powers and authority as are necessary to give consistency and efficiency to federal measures, both with respect to the different states in the union, and to foreign countries; and, at the same time, that each state should reserve such rights of sovereignty as might be fully competent to its own legislation and government. Thus, every state is, with respect to its own police, distinctly considered, free, sovereign, and independent: and, as a component part of the united states, is also free, sovereign, and independent. As the united states of America form one grand, entire republic, composed of a number of small ones, confederated for their common safety and advantage, and distinct only for their greater conveniency, with respect to legislation and internal police—the supreme sovereign authority of the whole ought, most undoubtedly, to be lodged in congress; and that body should possess such powers and privileges, not incompatible with the happiness of a free people, as usually appertain to sovereignty, in order to enable them to

direct the common concerns of the united states, upon UNIFORM principles, so as to afford EQUAL advantages to each, and give energy to the whole.

It is obvious to the most superficial observer, that the commerce of the united states with foreign countries, ought to be regulated and protected by proper treaties. But how are these treaties to be negotiated? No separate state can treat. Therefore, either congress must have this power, or the whole trade of this country must lie at the mercy of foreign nations, the consequences of which are already too fatally experienced. It may be objected, that, if congress were invested with powers to regulate the trade of the united states, they might adopt measures which would be injurious to some states, though beneficial to others. Happily, the regulations and restrictions which our foreign trade requires, could not prove injurious to ANY of the states; but only might operate less beneficially for some than for others. It is the business of congress to promote the "mutual and general welfare" of ALL the states, and their duty to consult the interests of EACH, so far as is compatible with those of the whole. The several counties of a state may, in some instances, be unequally affected by the tendency of a general law: but all the legislature can do, in such a case, is, to make the law as beneficial as possible for the whole.

If, however, an opposite principle should be admitted, and that every state should be at liberty to pursue its own views, without any regard to its relation to the other states in the union, the necessity for such a body as congress is superseded, and the confederation become a dead letter. But this no American will be weak enough to believe. We can only be respectable and prosperous, by adhering inviolably to the wise and liberal principles of the union. AS THE UNITED STATES, only, are we politically known to other powers: as such, we send and receive ambassadors, enter into treaties and alliances, declare war, and proclaim peace, &c. &c. These, and others of equal importance, are powers with which we have invested the united states in congress assembled: and yet it is said, that to allow that delegated body a right to regulate the TRADE of the united states, is too great a power to be entrusted to them! Can this be seriously meant by any man, who enjoys the use of his reason; or do we not suffer ourselves to be duped by designing men, who do all in their power to excite groundless suspicions and jealousies, in order to weaken our federal government? It is much to be feared that the latter is the case.

The united states being considered, in their intercourse and transactions with other countries, as but one nation, and being so, in fact, as to "their mutual and general welfare," it follows, that their common concerns ought to be conducted on equal and uniform principles. Local policy, and particular interests, should give way to the general good. Judge Blackstone observes, that "every member (of parliament) though chosen by one particular district, when elected and returned, serves for the whole realm. For," says he, "the end of his coming thither, is not barely to advantage his constituents, but the *common* wealth." A member of congress, for Pennsylvania, stands in the same relation to the united states, that a member of the British parliament, for Yorkshire, does to the whole realm. A majority of votes, in both instances, binds all their constituents, on every question, of which these two bodies have cognizance. The federal constitution of the American empire, is intended to preserve a union of its parts: and such union is essential to the peace, liberty, and independence of the states, separately and

collectively. “The credit of the united states,” says doctor Price, “their strength, their respectableness abroad, their liberty at home, and even their existence, depend on the preservation of a firm political union: and such a union cannot be preserved, without giving all possible weight and energy to the authority of that delegation which constitutes the union.”

It is admitted, that the interests of the several states may not coincide, in every particular instance; neither do those of the different counties in the same state: but this cannot be urged as an argument against the practicability of making general regulations, for the benefit of the commerce, or other common concerns of the united states. As well might an inhabitant of Yorkshire contend, that an act of parliament for improving the navigation of the Thames, should not be passed, because that river does not run through his county. Those who contemplate our national policy, at a distance, free from the bias of local prejudice, party, and private interest, plainly discern the defects of our federal constitution; and of these there is none more glaring, than the want of a sufficient power in congress, to form a beneficial system of foreign trade for their constituents. The late M. Turgot, comptroller general of the finances of France, observes, among other errors in our national police, that “no fixed principle is established in regard to imposts. Each state is supposed to be at liberty to tax itself at pleasure, and to lay its taxes upon persons, consumptions or importations, that is to say, *to erect an interest contrary to that of other states.*”

At the present juncture, our foreign trade is harrassed, restricted, and injured, in every possible manner, by other powers, whilst we wantonly deprive ourselves of the means of redress. In fact, the only commerce of the united states with other nations, which is not injurious to the former, is in a fair way of being annihilated, unless congress be speedily empowered to pursue the only proper mode of frustrating the designs of our adversaries. What is to prevent this great end being accomplished? Shall we suffer our enemies to triumph over the inefficient system of our federal government, created by our own groundless jealousies and divisions? and shall we, by grasping at the shadow, lose the substance? Forbid it, heaven—and grant that we may transmit to our children’s children the invaluable blessings we have earned! “Such is the good fortune of America,” says M. Turgot, “that she cannot have an external enemy to fear, if she does not become self divided; therefore she may and ought to estimate, at their true value, those pretended interests, those grounds of discord, which are ALL that endanger her liberty.” And dr. Price concludes his “Observations on the importance of the American revolution,” with these words, which should be strongly impressed on the mind of every American: “Should the return of peace, and the pride of independence, lead the united states to security and dissipation—should they lose those virtuous and simple manners, by which, alone, republics can long subsist—should false refinement, luxury, and EXCESSIVE JEALOUSY distract their governments; and clashing interests, subject to no controul, BREAK THE FEDERAL UNION,—the consequence will be, that the fairest experiment ever tried in human affairs, will miscarry; and that a revolution, which had revived the hopes of good men, and promised an opening to better times, will become a discouragement to future efforts in favour of liberty, and prove only an opening to a new scene of human degeneracy and misery.”

Cite as: The Documentary History of the Ratification of the Constitution Digital Edition, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009. Original source: Commentaries on the Constitution, Volume XIII: Commentaries on the Constitution, No. 1